

Investigation of a Death Long Feared: How China Decided to Impose its National Security Law in Hong Kong

Minxin Pei

Fall 2020 Issue 65

Tuesday September 1, 2020

China's imposition of a national security law in Hong Kong has effectively ended the "one country, two systems" governance model in the former British colony. Available evidence suggests that this was one of the options for Beijing in order to quell the unrest in the city. Chinese leaders were reluctant to resort to this drastic measure until last year when protests against a controversial extradition law resulted in mass demonstrations and escalating violent confrontations between protesters and police. Our open-source research suggests that because the events in Hong Kong were deemed by Chinese leaders as touching the "bottom line" set by Xi Jinping in his speech commemorating the twentieth anniversary of Hong Kong's reversion to Chinese rule on July 1, 2017, they decided to use this option. The decision to impose a national security law was likely made between late July and the end of August 2019 with little involvement of the SAR's leadership.

By announcing its decision to impose a broad and harsh national security law (NSL) in Hong Kong at the annual session of the National People Congress (NPC) on May 22, 2020, China effectively gutted the "one country, two systems" (OCTS) governance model that had been in effect in the former British colony since the city's reversion to Chinese rule on July 1, 1997. Although China pledged, in the Sino-British Joint Declaration on Hong Kong signed in 1984, to keep intact Hong Kong's economic and social systems and to protect the rights of its citizens for 50 years after China regained sovereignty in 1997, doubts about Beijing's commitment existed almost as soon as the declaration was inked.¹ With China's imposition of the NSL on the Hong Kong Special Administrative Region (HKSAR) on July 1, 2020, the case of the skeptics has been thoroughly vindicated. The end of the HKSAR as a semi-autonomous entity came much sooner than expected – less than half-way through the 50-year grace period originally promised by China.

Among the decisions made by Chinese leader Xi Jinping, the imposition of the NSL on the HKSAR at a critical juncture in China's relations with the West must rank as one of his most momentous decisions, on par with the building of militarized artificial islands in the South China Sea, the Belt and Road Initiative, and the mass internment of Uighurs in Xinjiang. By breaking probably its most important international commitment, Beijing has seriously undermined its credibility, alienated potentially neutral actors such as the countries in Europe, and greatly bolstered Washington's case for confronting China before it is too late. While the Chinese Communist Party (CCP) and General Secretary Xi Jinping may reap substantive short-term domestic political benefits from restoring some semblance of stability in the HKSAR through rule by fear, Beijing may pay dearly for scrapping the OCTS model. The NSL has prompted a slew of Western sanctions and probably has played a role in London's decision to ban Huawei from the United Kingdom's 5G networks. The combination of growing tensions between China

and the West over Hong Kong and the crippling of the rule of law caused by the NSL might well jeopardize the city's status as a leading global financial center connecting China's closed financial system to the outside world. Full implementation of the law may also trigger an exodus of the city's best and brightest and meet resistance from its defiant younger generation, the mainstay of the protest movement since last year. Another grave long-term consequence of Beijing's imposition of the NSL is the total discrediting of the OCTS model, originally conceived as a plausible framework for Taiwan's eventual peaceful reunification with the mainland.

Given the consequential nature of China's NSL, it is unlikely that the CCP leadership took this step lightly. Yet, the opaqueness of the Chinese decision-making process makes it difficult for analysts to peer through the fog and understand the drivers behind one of the most important developments of the post-Mao China. We attempt to shed some light on this puzzle in the remainder of this essay. In particular, we will investigate the following questions:

- (1) When did the Chinese government start seriously treating the option of imposing the NSL on Hong Kong?
- (2) What were the critical turning points in 2019 that led to Beijing's decision to embrace this option?
- (3) Were there any signals in official Chinese pronouncements suggesting that the Chinese government was committed to this course of action?

We first try to piece together how the "bottom line" was spelled out by Xi Jinping in July 2017, the peculiarity of decision-making in a system under strongman rule, and how perceptions of the nature of the crisis in Hong Kong constrained Beijing's options and eventually led to the formal adoption of this option at the Fourth Plenum of the CCP's Central Committee at the end of October of 2019. We then focus on the preparatory moves made by the CCP between November 2019 and February 2020, ahead of the announcement of the imposition of the NSL in late May.

Tantalizing Clues

A quick review of key statements by Xi, Chinese officials in charge of HKSAR affairs, and commentaries in the CCP's mouthpiece, *People's Daily*, during the last three years yields tantalizing clues that the Chinese leadership had been preparing the option of imposing its own NSL on Hong Kong long before the party announced its intention in the resolution of the Fourth Plenum of the 19th Central Committee at the end of October of last year. The first hint is contained in Xi's speech delivered in Hong Kong on July 1, 2017 commemorating the twentieth anniversary of the city's return to Chinese rule. Referring to the situation in Hong Kong, Xi said, "currently implementation of 'one country, two systems' in Hong Kong is encountering some new situations and problems. Hong Kong's system of safeguarding national sovereignty, security, and developmental interests still needs to be made complete and better" (当前, "一国两制" 在香港的实践遇到一些新情况新问题。香港维护国家主权、安全、发展利益的制度还需完善).² Although the phrase "Hong Kong's system of safeguarding state sovereignty (and) security needs to be made complete and better" received little attention at the time, in retrospect this most likely referred to the passage of an NSL that was among Beijing's options to reassert control in the city. In fact, Xi offered another clue, contained in the same speech, when he issued a set of "personal opinions" on how to implement the OCTS model in the future. He

declared that, “in implementing the constitutional order established by [the Chinese] Constitution and the Basic Law, the central government’s exercise of power according to law and the responsibility of the Special Administrative Region (SAR) as the entity to execute [this power] must be combined organically; the institutions and mechanisms in connection with implementation of the Basic Law need to be made complete and better” (在落实宪法和基本法确定的宪制秩序时，要把中央依法行使权力和特别行政区履行主体责任有机结合起来；要完善与基本法实施相关的制度和机制).³ Despite the abstruse legal language, Xi was obviously referring to the lack of an NSL because Article 23 of the Basic Law, which requires the enactment of an NSL by the city’s legislature, had not yet been fulfilled due to strong local opposition.⁴

A report in the *New York Times* in early August of this year on hardline Chinese academics reveals that a law professor at Peking University had submitted a study on Hong Kong’s NSL to the General Office of the Central Committee in 2018.⁵ The website of the Constitutional and Administrative Law Center (宪法与行政法研究中心) still displays a newsletter that contains the information referred to in the *New York Times* story. The brief reference simply states “Professor Chen Duanhong submitted a study entitled ‘The Dilemma of Enacting a National Security Law in Hong Kong’ to the General Office of the Central Committee; it was adopted by the Office for Research [中办调研室, which is not to be confused with the Central Office for Policy Research, 中央政策研究室, a higher-ranking unit which serves the Politburo] of the General Office, and leader[s] wrote comments and instructions on it. (陈端洪教授就香港问题向中办提交研究报告《香港国家安全立法的两难困境》，被中办调研室采纳，并有领导批示).⁶ Despite its brevity, this item is revealing. In terms of timing, it is clear that at least two years before the Chinese government announced its decision to impose the NSL on Hong Kong, the CCP policy-making apparatus was reaching out to legal scholars for plausible options. It is possible, but unlikely, that Chen Duanhong, who specializes in constitutional theory and began to write on issues related to Hong Kong and Macau five years ago, volunteered his services to the Central Committee.⁷ Far more likely is that the Central Committee’s Office for Research commissioned Chen (or the Constitutional and Administrative Law Center with which he is affiliated) to undertake such a study, probably through an intermediary, as is the common practice in China. The title of the study is also revealing. What is the dilemma Chen is referring to? Most likely he is talking about the two difficulties facing Beijing. On the one hand, enacting the law through Hong Kong’s Legislative Council (LegCo) would not only meet strong local opposition but also likely would produce a weaker version, even if the pro-Beijing forces could muster enough votes. On the other hand, Beijing could bypass the LegCo and impose a law that would best serve its own interests, but doing so would violate the provisions of the Basic Law and generate profound adverse international repercussions.

Touching Xi’s Bottom Line

Although Xi’s speech on the twentieth anniversary of Hong Kong’s reversion to Chinese rule is known for the hardline position he staked out, perhaps only now can we appreciate how it directly framed or defined the unrest in the city in 2019. Specifically, Xi established a set of markers in his speech on July 1, 2017 and termed them the “bottom line for OCTS” that must not be touched.

As a matter of analyzing when the Chinese government began to run out of patience with the events in Hong Kong, we can look for the first appearance of language associated with Xi's "bottom line" because a formal characterization of the activities in Hong Kong as "touching the bottom line" would signal a qualitative escalation and a major decision point for the Chinese authorities. As our reconstructed chronology shows, the ominous phrase did not appear until late July 2019. The implications of characterizing or framing the protests as "touching the bottom line" were profound. Since this bottom line was personally and publicly set by Xi, touching or breaching it was a direct challenge to his authority and thus had to be met with a firm response. In such a confrontation, only one side could win: if the protestors did not retreat, Xi would lose his credibility and strongman image. We can gain a deeper understanding of how the Chinese leadership arrived at the fateful decision of imposing the NSL on Hong Kong by analyzing the decision in the context of Xi's speech on July 1, 2017 and the official framing of the protests in Hong Kong using language that is nearly identical to that in Xi's speech.

Besides obliquely referring to the need to enact an NSL in his speech on July 1, 2017, Xi set the limits of China's tolerance of the activities in the SAR with the declaration that "Any activities that endanger national sovereignty and security, challenge the authority of the central government and the authority of the Basic Law of the Special Administrative Region, and use Hong Kong to engage in infiltration and sabotage in the mainland touch [our] bottom line and will absolutely not be permitted" (任何危害国家主权安全、挑战中央权力和香港特别行政区基本法权威、利用香港对内地进行渗透破坏的活动，都是对底线的触碰，都是绝不能允许的).⁸ This declaration, in retrospect, pushed Xi into a corner because if the protest activities in Hong Kong were characterized as such and deemed as "touching" his bottom line, then he would have to respond with forceful actions instead of other less drastic options.

To be sure, a speech made two years prior to the crisis in Hong Kong in 2019 probably would not have precluded Xi's other options but for the "path dependence" nature of decision-making in the Chinese party-state and the peculiarity of defining the political nature of an event (定性) by the top leader that either permits or precludes certain options. In confronting any challenge to his authority, a top Chinese leader typically first frames the nature of the threat, which determines the principle behind a subsequent policy response. The more serious the threat to his authority or to the survival of the CCP, the less room there is for compromise. In the Tiananmen crisis of 1989, it was Deng Xiaoping's designation of the student demonstrations in the People's Daily editorial published on April 26, 1989 as "anti-party, unlawful turmoil" that helped radicalize the protesters and made it difficult for moderates such as General Secretary Zhao Ziyang to find a face-saving way to end the crisis.⁹

Despite the vastly different circumstances, the political dynamics of decision making at the top of the CCP had changed little by 2019. Open-source materials suggest that the top leadership convened a critical, albeit undisclosed, meeting in July to discuss the worsening crisis in Hong Kong.¹⁰ While no precise date of this meeting is given, it is nevertheless possible to estimate when it took place by examining the escalation of the rhetoric in official statements. It is reasonable to believe that senior Chinese leaders at such a meeting would have agreed to a certain "definition" of the events in Hong Kong and this "definition" would be reflected in the official rhetoric immediately following the meeting.

Indeed, it is not difficult to detect a dramatic shift in official language in late July. On July 22, the day after protesters defaced the national insignia at the entrance of the central government's Central Liaison Office in Hong Kong, the spokespersons for the Chinese Foreign Ministry and the Hong Kong and Macau Office of the State Council both characterized the protests in Hong Kong as "having touched the bottom line of 'OCTS' and [stated that they] were absolutely intolerable," using nearly identical language to that in Xi's speech on July 1, 2017. Notably, Carrie Lam, Hong Kong's chief executive, also used the same phrase "touching the bottom of OCTS" when she denounced the protesters at a press conference on July 22, suggesting that the central government had given her guidelines on messaging.¹¹ Our search of official publications and statements reveals that July 22 was the first time the Chinese government formally used this phrase to characterize the events in Hong Kong.

What likely happened was that either a key meeting took place on July 21 or a top leader issued a set of instructions on the same day on Hong Kong that defined the nature of the protest. Since the symbolic assault on the Central Liaison Office occurred in early evening (around 7 pm) on July 21, which happened to be a Sunday, it was highly unlikely that senior leaders were summoned to an emergency meeting that evening. Far more likely is the second possibility: a top leader, in this case Xi Jinping himself, responded to an urgent report on the events in Hong Kong on July 21 with a set of comments and instructions, which the CCP apparatus quickly translated into messaging guidelines in defining the protests in the city.

This analysis suggests that the crucial undisclosed meeting reported by the *New York Times* referred to above must have occurred shortly after July 22, following the defacing of the symbol of Chinese sovereignty adorning the central government's Central Liaison Office in the SAR. Since a regular Politburo meeting was convened on July 31, as reported by the *People's Daily*, it is extremely likely that the undisclosed meeting referred to in the *New York Times* story was a Politburo Standing Committee meeting between July 22 and July 30.

Even though it is impossible to know whether a decision to impose an NSL on Hong Kong was made at the crucial meeting mentioned in the *New York Times* story, the law was highly likely to be among the top options weighed at the time. The fact that, according to the *New York Times*, the senior leaders at the meeting decided not to "intervene forcefully, at least for now," also suggests that imposing an NSL was a less costly and probably more effective move than sending in the Chinese military or the People's Armed Police to crush the protests.¹² The CCP Central Committee formally endorsed the decision to impose the NSL at its Fourth Plenum at the end of October 2019, but the fate of Hong Kong was sealed in the summer of 2019, most likely at the undisclosed meeting of the top leadership in late July.

Escalation of the Rhetoric and the Road to the Fourth Plenum

The CCP's propaganda apparatus lost no time in signaling the top leadership's new assessment of the crisis in Hong Kong with a round of escalation of the rhetoric. Three themes dominated the propaganda blitz following the undisclosed meeting in late July. First, official spokespersons and commentaries in authoritative publications consistently emphasized the party line that the protest activities in the city had "touched the bottom line of OCTS" and would not be tolerated.

Second, the Chinese government dramatically raised the stakes by claiming that the protesters were directly challenging the authority of the central government and were even engaged in a “color revolution.” Third, Beijing directly accused hostile external forces, in particular the United States, of being the instigator behind the protests. Here we provide a sample of key statements made by high-level spokespersons and commentaries in the most authoritative official press outlets, such as Xinhua and *People’s Daily*, to illustrate how the Chinese leadership maintained consistent messaging and raised the stakes by exaggerating the threats posed by the protests.

In terms of messaging, statements by the Hong Kong and Macau Affairs Office and strident commentaries consistently focused on how the protest activities in Hong Kong must not be tolerated because they touched the “bottom line of OCTS,” often using the same language as that in Xi’s speech on July 1, 2017. For example, on July 29, 2019, Yang Guang, a new spokesperson for the Hong Kong and Macau Office, gave a one-hour press briefing during which he first underscored the same bottom line as laid out by Xi and then declared that the development of events in Hong Kong not only seriously challenged the rule of law and social order in the territory and threatened the safety and security of the life and property of Hong Kong’s residents but also seriously touched the bottom line of the principle of OCTS and must not be tolerated” (严重挑战了香港法治和社会秩序, 严重威胁到香港市民的生命财产安全, 也严重触碰了“一国两制”的原则底线, 绝对不能容忍).¹³ The official news agency, Xinhua, published a commentary on August 29 titled “Touching the Bottom Line of the Principle of ‘OCTS’ Will Never be Allowed.” (“一国两制”原则底线绝不容许触碰).¹⁴ Two days later, *People’s Daily* also published a commentary on Hong Kong.¹⁵ Notably, the commentary directly quoted the part of Xi’s speech on July 1, 2017 that laid out his bottom line (任何危害国家主权安全、挑战中央权力和香港特别行政区基本法权威、利用香港对内地进行渗透破坏的活动, 都是对底线的触碰, 都是绝不能允许的). Based on the modus operandi of the Chinese propaganda apparatus, such consistent messaging can only be the result of an explicit and strict directive from the highest authorities in charge of ideological and propaganda work.

A close reading of the official statements and commentaries in leading press outlets of the party in late August and early September shows that starting in late August, the Chinese government dramatically escalated its rhetoric, denouncing the protests, raising the stakes in Hong Kong, and blaming hostile external forces, primarily the United States, for stirring up unrest in the city.

A new commentary published by Xinhua on August 25 signaled this round of escalation of the rhetoric and, as we will analyze below, hinted at a more permanent legal solution to the SAR’s unrest. Although the commentary invoked late leader Deng Xiaoping, its most important points more accurately reflected the thinking of the hardline positions of the current Chinese leadership. Like the other official statements, we will briefly analyze below, this commentary radically raised the stakes in Hong Kong. If the violent activities in the city were allowed to spread, warned the editorial, “Hong Kong is in danger of falling” (如果任其蔓延, 香港有沉沦的危险).¹⁶ Even more alarmingly, the editorial equated the protests with a “color revolution.” It claimed that the protest activities were no “ordinary demonstrations, but a ‘color’ revolution” that would not be tolerated, and must be punished by law” (这已绝非一般的游行示威活动, 而

是意在从根本上毁掉特别行政区宪制秩序的“颜色革命。”对此绝不能姑息，必须依法惩治).¹⁷

A second Xinhua commentary, published on August 29 and referred to earlier in this essay, claims that what China was facing in Hong Kong was nothing short of a “decisive battle over whether to protect the ‘OCTS’ or destroy it!” (当前摆在我们面前的，是要守护“一国两制”还是要毁掉“一国两制”的决战！) It further charged that “the rioters, acting on the schemes and commands of the forces behind them, not only want to paralyze Hong Kong and the government of the SAR but also point their spears directly at the ‘OCTS’ and the central government” (暴徒在其背后势力的策划指挥下已不只是为了瘫痪香港、瘫痪特区政府，矛头更直指“一国两制”、直指中央). The anonymous author of the commentary vowed that “the poisonous tumor destroying the ‘one country, two systems,’ must be removed” (必须铲除破坏“一国两制”的毒瘤).¹⁸ A commentary in *People’s Daily* on August 31 similarly accused the protesters of “paralyzing the SAR government and its police forces, plunging Hong Kong into anarchy, and fighting with the central government over power to govern Hong Kong” (就是要瘫痪特区政府和警队力量，令香港陷入无政府状态，与中央争夺香港的管治权).¹⁹

The most authoritative voice of the Chinese government joined the fray on September 3 when Yang Guang, the spokesperson of the Hong Kong and Macau Office, stated at a news conference that “the goal and target [of the protesters] now have nothing to do with revision of the extradition law. They willingly serve as the pawn of external forces and the ‘anti-China and destabilizing Hong Kong’ forces.... [their] goal is to create chaos in Hong Kong, paralyze the SAR government, and then seize power to govern the region and turn Hong Kong into an independent or semi-independent political entity. They are using the pretext of a high degree of autonomy and ‘Hong Kong governed by Hong Kongers’ to realize the goal of complete autonomy and resistance to the central government, ultimately making ‘OCTS’ exist in name only but defunct in reality” (他们的目的、他们的矛头所向，已与修例无关。他们心甘情愿充当外部势力和“反中乱港”势力的马前卒，不惜做出暴力违法的恶行，目的就是要搞乱香港、瘫痪特区政府，进而夺取特区的管治权，从而把香港变成一个独立或半独立的政治实体，假高度自治、“港人治港”之名行完全自治、对抗中央之实，最终使“一国两制”名存实亡).²⁰

One possible explanation for the escalation of the rhetoric is that the Chinese government was simply responding to the increasingly violent confrontations between the protesters and Hong Kong police in August, especially after the protesters shut down the airport in mid-August. Yet, the qualitative escalation of the official Chinese rhetoric denouncing the protests was not detected until the end of August. If the references to “constitutional order” in the Xinhua commentary published on August 25 are to be taken as a serious clue, it may not be a stretch to speculate that the Chinese government’s thinking about imposing its NSL moved further along in the intervening month. The most plausible explanation we can offer is that a more specific hardline option for addressing the crisis in Hong Kong received support from senior Chinese leaders at their annual summer retreat in Beidaihe in early August and it was formally endorsed by the Politburo at its meeting on August 30, 2019, which also decided to convene the Fourth Plenum of the 19th Central Committee in late October. Revealingly, the press release of the Politburo meeting on August 30 also announced the main agenda for the forthcoming plenum,

the most prominent item of which was approval of a resolution called “Maintain and Perfect the Socialist System with Chinese Characteristics and Promote Modernization of the Governance System and the Capacity of the State”²¹ (坚持和完善中国特色社会主义制度、推进国家治理体系和治理能力现代化若干重大问题).

Because the resolution of the Fourth Plenum, as we will see in the next section, contains language suggesting the imposition of an NSL, it is reasonable to pinpoint the Politburo meeting on August 30 as the occasion when the option of imposing the law was formally approved by the top Chinese leadership. Without such approval, it is unimaginable that this item would have been placed on the agenda of the forthcoming plenum. In the CCP decision-making process, plenums of the Central Committee serve as instruments to endorse, rather than to debate or to deliberate, policies already decided upon by the Politburo and its Standing Committee.

The Writing on the Wall: The Fourth Plenum Communiqué and Resolution

The communiqué of the Fourth Plenum published on October 31 contains just one cryptic but ominous sentence – “establishing and completing the legal system and enforcement mechanism to safeguard national security in the Special Administrative Region” (建立健全特别行政区维护国家安全的法律制度和执行机制).²² The full text of the resolution of the Fourth Plenum released on November 6 spells out in greater detail the framework of Beijing’s plan to reassert control in the rebellious SAR. For our analysis, it is worth noting that imposing the NSL was only part of a comprehensive strategy. Among other things, it also called for making complete and better the mechanism of appointing and dismissing the chief executive and the principal officials of the SAR, and the system of interpreting the Basic Law by the Standing Committee of the NPC, so that the various powers granted to the central government by the Constitution and the Basic Law could be exercised according to law (完善中央对特别行政区行政长官和主要官员的任免制度和机制、全国人大常委会对基本法的解释制度，依法行使宪法和基本法赋予中央的各项权力). This suggests that we should expect China to revise the Basic Law or use other legal maneuvers to gain greater control over the top leadership of Hong Kong in the coming years. As for the “legal system and enforcement mechanism to safeguard national security,” the text of the resolution declares that “The legal system and enforcement mechanism to safeguard national security in the Special Administrative Region shall be established and completed, and the power of law enforcement of the Special Administrative Region shall be supported” (建立健全特别行政区维护国家安全的法律制度和执行机制，支持特别行政区强化执法力量).²³ This reference to supporting the power of law enforcement in the SAR can be read to refer to the establishment of Chinese security agencies in the territory. If this is the case, it is likely that the Chinese leadership had decided on the general framework of the NSL by the end of October 2019.

To be sure, the reference to “the legal system and enforcement mechanism to safeguard national security” contained in the communiqué and the resolution of the Fourth Plenum was seen at the time as merely another unpromising attempt by Beijing to pressure Hong Kong to pass its NSL according to Article 23 of the Basic Law, and thus it did not raise much alarm. Indeed, immediately after release of the resolution of the Fourth Plenum, even some of the most informed pro-Beijing insiders in Hong Kong, such as Regina Ip, the former security chief who

unsuccessfully promoted Article 23 in 2003, told the *New York Times* that Article 23 was “not something that can happen any time soon,” even though it “weighs heavily on the minds of Chinese leaders.”²⁴

However, with the benefit of hindsight, we can detect some hints in an article published on November 9, 2019 by Zhang Xiaoming, director of the Hong Kong and Macau Office, that states that the “legal system and enforcement mechanism to safeguard national security” that the Chinese government had in mind was an NSL that it could impose unilaterally. In his article, Zhang first asserts that under China’s unitary state, the central government enjoys “comprehensive power to govern” (具有全面管治权) and the “highly autonomous power to govern” enjoyed by Hong Kong and Macau “originates from delegation by the central government” (来源于中央授权). He further elaborates that “the central government and the Special Administrative Regions must take responsibility to review implementation of the Constitution and the Basic Law and to make complete and whole relevant institutions and mechanisms. Laws that should be made must be made” (中央和特别行政区都有责任在全面检视宪法和基本法实施情况的基础上, 进一步完善相关制度和机制, 该制定的法律要制定). When specifically discussing the “legal system and enforcement mechanism to safeguard national security,” Zhang first praises Macau’s passage of its NSL and establishment of its “Commission on Safeguarding National Security,” but he then points out that Hong Kong had not yet passed a similar law or set up the required enforcement agency. He blames the absence of such a law and its attendant agency as one of the principal reasons for the escalation of the “Hong Kong independence movement” and the rise of radical separatist forces (香港尚未完成基本法第二十三条立法, 也未设立相应执行机构, 这也是近几年来“港独”等本土激进分离势力的活动不断加剧的主要原因之一).²⁵

Although Zhang’s article mentions the fact that Hong Kong had yet to pass its NSL according to Article 23 of the Basic Law, it is unlikely that he was thinking of relying on the city’s unreliable LegCo to ram it through. Zhang’s hints of unilateral action by Beijing, one may argue, can be detected in his assertion that the central government has “comprehensive power to govern Hong Kong,” in his demand that “laws that should be made must be made,” his laudatory reference to Macau’s Commission on Safeguarding National Security, and his attribution to the absence of an NSL in Hong Kong as one of the principal reasons for the unrest in Hong Kong (such a diagnosis obviously implies a logical solution – passage of an NSL and establishment of its enforcement mechanism).

The evidence and clues gathered here are understandably circumstantial because the Chinese government did not want to set off a firestorm with a more explicit declaration of its plans (one plausible reason is that Beijing was engaged in difficult negotiations with Washington to de-escalate the trade war at the time). However, in conveying its resolve to reassert control in Hong Kong with an unspecified “legal system and enforcement mechanism to safeguard national security” at the Fourth Plenum of the CCP Central Committee at the end of October, it is extremely unlikely that top Chinese leaders were counting on the LegCo of Hong Kong to make another effort to pass the NSL. Instead, they must have had confidence that they had unilateral means to accomplish this critical objective.

After release of the resolution of the Fourth Plenum, Beijing wasted little time in getting ready to administer its coup de grace. Its first order of business was the appointment of hardliners who could be trusted with the task of overseeing the drafting and implementation of the NSL. Luo Huining, the recently retired former party chief of Shanxi province with no experience of working on Hong Kong issues, was made director of the Central Liaison Office, on January 5, 2020 (Luo was later appointed the central government's adviser to the newly established Commission on Safeguarding National Security in Hong Kong in July 2020). On February 13, Xiao Baolong, former hardline party chief of Zhejiang and a Xi loyalist who had also served as Zhejiang's security chief, was made head of the Hong Kong and Macau Office, in a move that suggested Xi was not taking any chances with the execution of his new Hong Kong strategy. It was also reported that the party had elevated the status of the "Central Small Coordination Group on Hong Kong and Macau" (中央港澳工作协调小组) by renaming it the "Central Small Leading Group on Hong Kong and Macau" (中央港澳工作领导小组). Although Han Zheng, a member of the Politburo Standing Committee, remained the head of the newly named group, Xiao Baolong was made its executive deputy head. (The new small leading group was first mentioned in the official Chinese media on June 3, 2020, after Beijing announced its plan to impose an NSL).²⁶ If anything, this development – the appointment of hardliner Xi loyalists in early January and the elevation of the status of the small leading group on Hong Kong and Macau – suggests that the Chinese government was committed to passing the NSL during this year's annual session of the NPC. In other words, contrary to some speculation that China took advantage of the COVID-19 pandemic to impose the law, the minds of Chinese leaders were already made up at the beginning of 2020 – before COVID-19 became a global pandemic.

One final puzzle is when did Beijing inform Hong Kong's top leaders, in particular its chief executive Carrie Lam, of its plan to impose the NSL. There were two publicly disclosed meetings between Lam and top Chinese leaders (one with Xi and one with Han Zheng) and one secret meeting between Lam and Xia Baolong before Beijing's announcement of its plan in late May 2020. Despite the brevity of official Chinese coverage of Lam's meetings with Xi and Han, the timing of these meetings is noteworthy. Lam's meeting with Xi took place in Shanghai on November 4, 2019. She then traveled to Beijing to meet Han on November 6.²⁷ The first meeting occurred immediately after release of the communiqué of the Fourth Plenum, while the second meeting took place on the day that the full text of the resolution of the plenum was published. It is highly unlikely that the subject of "the legal system and enforcement mechanism to safeguard national security" in Hong Kong did not come up during their conversations. But it is impossible to know whether top Chinese leaders shared their plans fully with Lam during these meetings. It seems a reasonable position to take that, during these meetings, Lam was not asked or pressured to ram an NSL through Hong Kong's LegCo since she made no such attempt after returning to Hong Kong. The meeting at which Lam mostly likely was informed of the details of Beijing's plan was the secret one between Lam and Xia Baolong between the end of April and early May in Shenzhen – immediately before China announced its intention at the NPC annual session on May 22.²⁸

Conclusion

The following conclusions are reached based on evidence obtained from open-source research and our preliminary investigation of the death of the OCTS governance model in Hong Kong as a result of the Chinese government's imposition of the NSL. First, Beijing most likely began to formulate plans to quell Hong Kong's pro-democracy movement shortly after the Umbrella Movement ended in December 2014. This process probably accelerated following Xi Jinping's July 1, 2017 "bottom line" speech marking the twentieth anniversary of Hong Kong's reversion to Chinese rule. Imposition of an NSL was most likely high on the list of his options.

Second, by characterizing the protest activities as "touching the bottom line" defined in Xi's speech, starting on July 22, 2019, the Chinese government signaled that its assessment of the nature of the protests in Hong Kong had fundamentally changed. As a result of this change, no compromise or concession would be possible. Instead, a drastic measure such as imposition of the NSL became an even more attractive solution to the crisis in Hong Kong because the crisis constituted a serious and direct challenge to Xi's leadership, especially in the context of his "bottom line" speech.

Third, the top leadership most likely embraced, in principle, the NSL as the solution to Hong Kong's protests in late July in 2019, as indicated by the characterization of the protests in the city as "touching the bottom line of OCTS," even though the formal decision was probably not reached until the Politburo meeting at the end of August. By the time the CCP revealed in the communiqué and resolution of the Fourth Plenum of the Central Committee at the beginning of November, its plan to establish and complete "the legal system and enforcement mechanism to safeguard national security in the HKSAR," the decision process was largely complete. Only details, such as appointing Xi's trusted aides to key positions in charge of HKSAR affairs and finalizing the language of the NSL, still had to be worked out. Existing evidence suggests that the HKSAR leadership was not informed until either early November 2019 or between the end of April and the beginning of May 2020.

One lesson to be learned from this exercise of tracing the process when the Chinese government made the fateful decision to impose its NSL on Hong Kong is that Beijing in fact repeatedly sent out oblique signals hinting at this solution. Unfortunately, based on the shock with which China's decision was received when the NPC annual session opened on May 22, we missed them. Re-examining them today not only helps us gain a better understanding of how one of Xi's most consequential decisions was made but also reminds us of the value of scrutinizing official Chinese rhetoric for clues to Beijing's assessments of critical developments and its intentions to address them.

About the Contributor

Minxin Pei, editor of *China Leadership Monitor*, is Tom and Margot Pritzker '72 Professor of Government. He is also non-resident senior fellow at the German Marshall Fund of the United States. Pei has published in *Foreign Affairs*, *Foreign Policy*, *The New York Times*, *The Financial Times*, *Project Syndicate*, *Nikkei Asian Review*, and many scholarly journals and edited volumes. His most recent book is *China's Crony Capitalism: The Dynamics of Regime Decay* (Harvard, 2016). Pei formerly was senior associate at the Carnegie Endowment for International Peace (1999–2009) and assistant professor of politics at Princeton University (1992–1998). He was the Library of Congress Chair in U.S.-China Relations from January to August 2019.

Photo credit: <https://www.voanews.com/east-asia/hong-kong-protesters-demand-chief-execs-resignation#&gid=1&pid=1>, Public Domain,
<https://commons.wikimedia.org/w/index.php?curid=79766078>

Notes

¹ “Full Text of Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong,” http://english1.english.gov.cn/2007-06/14/content_649468.htm, accessed August 16, 2020.

² 习近平, “在庆祝香港回归祖国 20 周年大会暨香港特别行政区第五届政府就职典礼上的讲话,” 新华社, July 1, 2017, http://www.xinhuanet.com/politics/2017-07/01/c_1121247124.htm, accessed August 16, 2020.

³ Ibid.

⁴ The text of Article 23 is: “The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”
https://www.basiclaw.gov.hk/en/basiclawtext/chapter_2.html, accessed August 16, 2020.

⁵ Chris Buckley, “‘Clean Up This Mess’: The Chinese Thinkers Behind Xi’s Hard Line,” *New York Times*, August 2, 2020, <https://www.nytimes.com/2020/08/02/world/asia/china-hong-kong-national-security-law.html>, accessed August 16, 2020.

⁶ 宪法与行政法研究中心 CALC 季度简报 2018 年第 2 期 (总第 54 期),
<http://www.publiclaw.cn/static/upfile/201807251034548539.pdf>, accessed August 6, 2020.

⁷ Chen’s bio can be accessed at <http://www.publiclaw.cn/?c=rabbi&m=view&id=2>, accessed August 16, 2020.

⁸ 习近平, “在庆祝香港回归祖国 20 周年大会暨香港特别行政区第五届政府就职典礼上的讲话,” http://www.xinhuanet.com/politics/2017-07/01/c_1121247124.htm, accessed August 16, 2020.

⁹ Zhao’s executive assistant and Central Committee member, Bao Tong, recalls that Deng personally designated the student demonstrates as “chaos” in late April and instructed the People’s Daily to publish an editorial conveying his assessment, thus setting up the confrontation that ended with the June 4 massacre.
<https://hk.appledaily.com/china/20190415/SZHIGRSBUPV3FATI65ZAXQKUTM/>, accessed August 9, 2020.

¹⁰ Steven Lee Myers, Chris Buckley, and Keith Bradsher, “Is Xi Mishandling Hong Kong Crisis? Hints of Unease in China’s Leadership,” *New York Times*, September 7, 2019,
<https://www.nytimes.com/2019/09/07/world/asia/china-hong-kong-xi->

[jinping.html?_ga=2.135990002.2125006689.1596221454-1896699917.1468727948](#), accessed August 9, 2020.

¹¹ 人民日报,“国务院港澳办发言人就香港激进示威者围堵香港中联办表示强烈谴责,”“香港特区政府发言人强烈谴责激进示威者冲击中央政府驻港机构,” July 22, 2019, p. 4, http://www.gov.cn/xinwen/2019-07/22/content_5412398.htm, accessed August 16, 2020 ; 外交部: 触碰“一国两制”原则的底线, 绝对不能容忍 <http://www.nbd.com.cn/articles/2019-07-22/1356350.html>, accessed August 16, 2020; “行政長官會見傳媒開場發言和答問內容,” <https://www.info.gov.hk/gia/general/201907/22/P2019072200881.htm>, accessed August 20, 2020.

¹² Myers, Buckley, and Bradsher, “Is Xi Mishandling Hong Kong Crisis?”

¹³ 新京报,“暴力活动严重触碰‘一国两制’底线,” <http://www.bjnews.com.cn/news/2019/07/30/609201.html>, accessed August 5, 2020

¹⁴ 新华社,“‘一国两制’原则底线绝不容许触碰,” http://www.xinhuanet.com/gangao/2019-08/30/c_1124939086.htm, accessed August 16, 2020.

¹⁵ 人民日报评论员,“绝不允许暴力绑架香港未来,” <http://opinion.people.com.cn/n1/2019/0831/c1003-31329117.html>, accessed August 16, 2020.

¹⁶ 新华社评论,“重温邓小平关于香港问题的重要讲话坚定维护香港特别行政区宪制秩序,” August 25, 2019, http://www.ccdi.gov.cn/toutiao/201908/t20190825_199346.html, accessed August 16, 2020.

¹⁷ Ibid.

¹⁸ 新华社,“‘一国两制’原则底线绝不容许触碰,” http://www.xinhuanet.com/gangao/2019-08/30/c_1124939086.htm, accessed August 16, 2020.

¹⁹ 人民日报评论员,“绝不允许暴力绑架香港未来,” http://paper.people.com.cn/rmrb/html/2019-08/31/nw.D110000renmrb_20190831_2-04.htm, accessed August 16, 2020.

²⁰ 国务院港澳办,“已到维护‘一国两制’原则底线和香港繁荣稳定重要关头,” 人民日报, September 4, 2019, p. 4. http://paper.people.com.cn/rmrb/html/2019-09/04/nw.D110000renmrb_20190904_6-04.htm, accessed August 16, 2020.

²¹ 新华网,“习近平主持中共中央政治局会议 决定召开十九届四中全会,” http://www.xinhuanet.com/politics/leaders/2019-08/30/c_1124943080.htm, accessed August 16, 2020.

²² “中国共产党第十九届中央委员会第四次全体会议公报,” <http://cpc.people.com.cn/n1/2019/1106/c64094-31439558.html>, accessed August 16, 2020.

²³ “中共中央关于坚持和完善中国特色社会主义制度 推进国家治理体系和治理能力现代化若干重大问题的决定,” <http://cpc.people.com.cn/n1/2019/1106/c64094-31439558.html>, accessed August 16, 2020.

²⁴ Chris Buckley, “China Vows Tougher Security in Hong Kong. Easier Said Than Done,” *New York Times*, November 6, 2019, <https://www.nytimes.com/2019/11/06/world/asia/hong-kong->

protests-china-national-security.html?_ga=2.102829378.390706994.1597248164-1896699917.1468727948, accessed August 16, 2020.

²⁵ 张晓明, “坚持和完善‘一国两制’制度体,” <http://4g.zijing.org/?app=article&controller=article&action=show&contentid=800249>, accessed August 16, 2020.

²⁶ “中央港澳工作協調小組升格領導小組, 夏寶龍任常務副組長,” https://hk.on.cc/hk/bkn/cnt/cnnews/20200529/bkn-20200529090136925-0529_00952_001.html, accessed August 16, 2020; 新京报, “中央港澳工作领导小组亮相,” <http://www.bjnews.com.cn/feature/2020/06/03/734562.html>, accessed August 16, 2020.

²⁷ 习近平会见林郑月, http://paper.people.com.cn/rmrb/html/2019-11/05/nw.D110000renmrb_20191105_4-02.htm, accessed August 16, 2020; 人民日报, “韩正会见香港特别行政区行政长官林郑月娥,” November 7, 2019, p. 4.

²⁸ rfi, May 8, 2020, “传夏宝龙深圳密会林郑月娥指点香港事务,” <https://www.rfi.fr/cn/%E4%B8%AD%E5%9B%BD/20200508-%E4%BC%A0%E5%A4%8F%E5%AE%9D%E9%BE%99%E6%B7%B1%E5%9C%B3%E5%AF%86%E4%BC%9A%E6%9E%97%E9%83%91%E6%9C%88%E5%A8%A5%E6%8C%87%E7%82%B9%E9%A6%99%E6%B8%AF%E4%BA%8B%E5%8A%A1>, accessed August 16, 2020.