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HONG KONG AFTER THE ELECTIONS: THE FUTURE OF "ONE COUNTRY, TWO SYSTEMS"

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BEFORE THE

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HONG KONG AFTER THE ELECTIONS: THE FUTURE OF "ONE COUNTRY, TWO SYSTEMS"

THURSDAY, SEPTEMBER 23, 2004

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA
Washington, DC.

The hearing was convened, pursuant to notice, at 1:03 p.m., in room 192, Dirksen Senate Office Building, Hon. James A. Leach, [Chairman of the Commission] presiding.

Also present: Senators Chuck Hagel [Co-chairman of the Commission] and Max Baucus; and Representative Sander M. Levin.

OPENING STATEMENT OF HON. JAMES A. LEACH, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chairman LEACH. We convene the CECC today to examine the progress and prospects of constitutional development in Hong Kong. Nothing could be more timely, given the Legislative Council [LegCo] elections just concluded on September 12. Whether the 21st century is peaceful and prosperous will depend on whether China can live with itself and become open to the world in a fair and respectful manner. Hong Kong is central to that possibility. As such, Hong Kong's affairs and people deserve our greatest attention, respect, and goodwill.

America and China both have an enormous vested interest in the success of the "One Country, Two Systems" model in Hong Kong. From a congressional perspective, it seems self-evident that advancing constitutional reform, including universal suffrage, would contribute to the city's political stability and economic prosperity.

In that light, the September 12 elections had both good and bad news. While a record number of Hong Kong's voters turned out and voted heavily for candidates favoring continued reform, the bad news is that the prospect was constrained by rules under which the Hong Kong people could not enjoy full democratic autonomy.

Hence, we continue to be concerned that, while recent decisions by Beijing that set limits on constitutional development of Hong Kong implicitly acknowledge a degree of autonomy for Hong Kong, they do not represent a forthright commitment to the high degree of autonomy that was promised by the central authorities in the 1982 Joint Declaration and Basic Law.

Few places on the planet are better prepared for democratic governance than Hong Kong. In the LegCo elections earlier this month in which record numbers voted, the people of Hong Kong again made plain their aspirations for greater democratic autonomy, aspirations fully within the framework of the "One Country, Two Sys-

tems" formula. They previously had shown their keen interest in participatory democracy when they turned out in record numbers for the District Council elections last November. Yet the way forward is now rather murky. No one is certain what will happen after 2007. The central PRC Government says that it maintains a commitment to universal suffrage and direct election of the Chief Executive and the LegCo, as contemplated by the Joint Declaration and Basic Law.

But without a timetable, the fullness of this commitment lacks clarity and instills uncertainty. We must all acknowledge that the recent election is a step forward, but democratic frustration continues to build because there is simply no credible reason to thwart the pace of democratic transformation in Hong Kong.

Hong Kong is important unto itself. It is also a model for others. What happens there is watched particularly closely by Taiwan. In a globalized world where peoples everywhere are seeking a sense of community to serve as a buttress against political and economic forces beyond the control of individuals and their families, it is next to impossible to reconcile political systems based on unlike institutions and attitudes. Mutual respect for differences is the key to peace and prosperity in a world in which, history suggests, conflict has been a generational norm.

To help us understand what has just transpired in the Hong Kong elections and how it might affect the progress of constitutional development, we turn to our witnesses this morning.

Our first witness, Randy Schriver, joins us from the East Asia Bureau at the State Department to give the U.S. Government's perspective, and we have a distinguished panel of private experts who will share their expertise with us a bit later.

Before beginning, let me note that there are a series of votes that are about to be called on the House floor, and that will be a little discombobulating to the hearing this morning. But we are going to try to proceed, if possible, through the votes.

Secretary Schriver, proceed.

STATEMENT OF HON. RANDALL G. SCHRIVER, DEPUTY ASSISTANT SECRETARY, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. SCHRIVER. Thank you, Mr. Chairman. Thank you for the opportunity to address this topic today, the very important topic of Hong Kong's future prospects for democracy, and also to talk about the recently concluded election.

As you know, Mr. Chairman, we meet shortly after the LegCo elections on September 12, and there are plenty of people who are giving thought and producing analyses on who may have won or lost, or what the outcomes might mean. While that unfolds, we can certainly say that some things are indisputable and very clear.

Mr. Chairman, you already noted that perhaps the most significant outcome we observed is the fact that voters turned out in record numbers. To us, this suggests a very clear message to both the Government of Hong Kong and the central authorities in Beijing, that the people in Hong Kong want democracy and they value it very much, and they want it sooner rather than later. This has been a consistent message from the people of Hong Kong for some

time. This was prominently expressed in July 2003, and also July of this year when people took to the streets to express their views and ask that their voice be heard.

I think the voter turnout was as impressive as it was, perhaps, in part to respond to the regrettable decision that the central authorities made last April to cut short public debate on universal suffrage and direct election of the Chief Executive and the LegCo in future elections.

Mr. Chairman, some other notable results. The Democratic Coalition came away with 25 seats and a very impressive 62 percent of the vote of those seats that were up for direct election. I think sometimes the worst thing you can do in politics is fall short of expectations, and it is important that we be mindful of the fact that they did get a very significant and large majority of the vote, a very impressive 62 percent.

Also, some very high-profile government critics won seats in the LegCo, including radio personality Albert Cheng, who believes he may have lost his job in radio through intimidation and coercion from Beijing. So, this is significant that the people did make the choice to send him to the legislature. The Pro-Business Liberal Party, which we believe leans toward Beijing, but nonetheless came out against the national security legislation last year, won 10 seats, and for the first time also won two seats that were directly contested in direct elections for those seats. The Pro-Beijing Democratic Alliance for the Betterment of Hong Kong won 12 seats, which makes them the largest single bloc in the LegCo.

The election did highlight some shortcomings, and we are aware of some of the allegations of technical and procedural problems. But we are also aware that the Electoral Affairs Commission will investigate these, and we wish them well in that endeavor.

But more fundamentally and more troubling, there are persistent charges of voter intimidation and that a climate of fear existed in the run-up to the election. Here, too, the Government of Hong Kong has promised to investigate these issues and to defend vigorously the integrity of its elections. This is extremely important. It is appropriate that these matters be investigated, but it is also much more important that their deeds at this point match their words, because the people of Hong Kong certainly deserve no less.

Beijing issued a statement after the election stating that this proves that the people of Hong Kong are masters of their own house. Surely a more accurate statement would note that Beijing will continue to wield significant influence on the future of Hong Kong. Nonetheless, I think even Beijing realizes at this point that to move their agenda and ensure that their vision comes to fruition, they need to find a way to mobilize genuine support within the LegCo and within the population of Hong Kong to ensure their own success.

The Government of Hong Kong and the central authorities in Beijing may not have to face a democratic coalition majority, but they certainly have to take their views into account, and they will not be successful in their agenda if they do not undertake some effort to generate genuine popular support.

Let me speak very briefly, also, about our goals with respect to Hong Kong more broadly, and then wrap up.

Our underlying goals associated with Hong Kong are the same as they were before reversion, and they continued through reversion and up to the present day. That is, we want to see the people of Hong Kong succeed, we want their prosperity to continue, and their way of life to continue. This is not only the right thing for the people there, but also serves important U.S. interests. We believe that Members of Congress share that goal as well, and this is probably part of the spirit behind some of the recent legislation we have seen that is, I believe, designed to support the people of Hong Kong.

Hong Kong, in a way, continues to be a work in progress. There is a foundation that has been laid with the 1984 Joint Declaration, the promulgation of the Basic Law, the fact that Hong Kong has maintained control of its day-to-day affairs for just over seven years now, and has laid a foundation that allows us to continue to treat Hong Kong as a unique and separate entity, and it lays a foundation for Hong Kong to continue its political and economic evolution. We have embraced this unique status, the Congress in the Hong Kong Policy Act, and the Administration in the implementation of that Act.

Mr. Chairman, as you noted, we do have profound interest in Hong Kong. Some 45,000 Americans reside there, and over 1,000 U.S. firms operate from Hong Kong. It is our fourteenth largest trading partner. We have significant foreign direct investment there. Hong Kong, as a major trading entity, shares a lot of our goals on trade liberalization worldwide, and they have been an important partner in the World Trade Organization [WTO] and the trade discussions there.

I think the trade and the commercial relations are well-known. Perhaps less well-known is the developing security relationship we have with Hong Kong and the ways that they are making very valued contributions to American security interests. As the single largest source of U.S.-bound sea containers, Hong Kong is vital to our ability to protect America from potentially dangerous inbound cargo, and thus Hong Kong's participation in the Container Security Initiative is a very significant contribution to our security.

They have also played a leadership role in the Financial Action Task Force, to help address terrorist financing. Our law enforcement cooperation continues to be excellent. Hong Kong has continued to serve as a welcome port of call to many of our U.S. Navy vessels and Air Force aircraft.

Finally, Hong Kong's effective export control system remains in place and ensures that illicit and dangerous commodities and equipment are not transshipped through Hong Kong.

Then there is Hong Kong's comparative advantage. It remains one of the freest economies and places in the world, and this is reflected in many indexes that are well known. The Heritage Foundation, for example, every year ranks Hong Kong as the most free economy in the world. People in mainland China benefit from Hong Kong's openness, not only in the direct economic sense, but also in the fact that Hong Kong serves as an important model for China in so many ways.

U.S. policy has been very clear. We want to see the people of Hong Kong succeed. We believe that the key to that success is

Hong Kong continuing to move forward with democratization and reaching the goal of universal suffrage. The political future of Hong Kong should rightfully be in the hands of the people of Hong Kong. We in no way seek to usurp their decisions, nor do we in any way wish to interfere in the relationship between the people of Hong Kong and the central Chinese Government. Nonetheless, we will always stand for our core principles of democracy and freedom, and we will not shrink from making those principles known.

Again, Mr. Chairman, as you noted, the most telling point of this election in Hong Kong is the fact that people turned out in record numbers, and through that displayed their strong desire for continued participation in their government. They certainly are a proud, smart, and capable people who deserve every chance for success in this century.

While Chinese sovereignty is a reality that will heavily influence the success of those dedicated to democracy in Hong Kong, our view is that we can respect Chinese sovereignty but continue to make points in a very straightforward manner to our interlocutors in both Hong Kong and Beijing that this is important to us and it is important to the people of Hong Kong and the goals that we share.

With that, Mr. Chairman, I welcome any questions you may have. Thank you.

[The prepared statement of Mr. Schriver appears in the appendix.]

Chairman LEACH. Well, thank you very much for that testimony. Let me just stress, I think it is well articulated and balanced, and the stress being that both the Executive Branch and the U.S. Congress have no desire to upset any kind of relationship between Hong Kong and Beijing in the sense of a "One China" policy. But we also support two systems. In that regard, I would only like to stress—and you pointed out—the United States has a significant interest in Hong Kong. But our principal concern is for the Hong Kong people. We think democracy is stabilizing, not destabilizing. I stress this point because there is a great concern about potential instability in China. I can think of nothing more stabilizing in Hong Kong than full democracy.

Also, when we think of Chinese history, I think of Sun Yat-Sen and his approach to staged democracy. Hong Kong provides a wonderful model for the rest of Chinese society. Maybe that is one of the reasons why there is reluctance to give it fuller autonomy at this time, or fuller democratic autonomy, but I think it is something that, from our point of view, we have to point out. In any case, I know of few subjects where the Executive Branch and Congress are more in lock-step. I think your testimony is a perfect reflection of that.

Senator Hagel has joined us. As I announced earlier, we are expected to have a long series of votes on the House floor shortly. I apologize for that. But let me recognize the Senator.

Senator HAGEL. Mr. Chairman, thank you very much. I add my welcome and appreciation, Mr. Schriver, for your testimony. I apologize for getting caught late. Nonetheless, we are mindful of the effort that you are making, along with your colleagues, and

again appreciate your coming forward and offering your testimony. Thank you.

Mr. Chairman, thank you. I have a statement that I would ask be included in the record.

Chairman LEACH. Admitted without objection, of course.

Senator HAGEL. Thank you.

[The prepared statement of Senator Hagel appears in the appendix.]

Chairman LEACH. If you have no questions, we will go to our panel of private sector witnesses.

Senator HAGEL. Mr. Chairman, I would like to ask just a couple of questions before the other panel comes up. I would be interested in knowing, how often does the U.S. Government bring up the issue of Hong Kong with the Chinese Government, and on what basis do we do that? What parameters are set, or not set? Thank you.

Mr. SCHRIVER. Yes, sir. Thank you. I would characterize it as quite frequent. It would be difficult to put an exact number or percentage of time and meetings, but it is often raised at the senior-most levels of our government. I would describe it as one of the priority issues so that it is quite frequently discussed.

Sometimes we have very specific issues that we raise. At the time of the national security legislation, we made our concerns known. Sometimes it is a more general discussion on the future of Hong Kong. Our feeling, and I believe the Chairman's remarks on this are consistent with our view, is that we actually have some shared objectives related to Hong Kong. We both want Hong Kong to succeed and we both think that the key to that success if faithful implementation of the agreements that are in place.

So, though we have some different views, we do try to approach this from a perspective where we actually have some things we share with the Chinese on this subject, and that our belief is that the central Chinese Government should not be threatened by the political evolution and democracy of Hong Kong, but rather should see it as a force that will ultimately be a stabilizing force for Hong Kong and will contribute to its continued success. So, that is the nature of how we frame it. Again, it is a priority for us, and I believe the Chinese as well, so it is often addressed in our senior dialogue.

Senator HAGEL. How often does the Taiwan issue come up in the framework of these discussions?

Mr. SCHRIVER. Sir, the Taiwan issue is almost always raised by our Chinese counterparts and interlocutors, again, at every level and certainly at the senior-most levels. Usually it is raised on its own and not linked to the Hong Kong question. When we raise issues related to Taiwan, we generally do not link it, either. So it tends to be a separate discussion.

Senator HAGEL. So you would not say that in any way it shapes our conversations with the government of the People's Republic of China.

Mr. SCHRIVER. Well, I think the Chinese themselves are aware that they will be judged on the success or failure of Hong Kong, and that there is a watchful audience in Taiwan, there is a watchful audience in the United States and elsewhere. But it is not nec-

essarily a point of leverage or something that we draw their attention to. I think it is something that is always in the back of their minds.

Senator HAGEL. Have we gotten good cooperation from the Hong Kong Government regarding counter-terrorism, and other wider issues?

Mr. SCHRIVER. Yes, sir. Excellent cooperation. Again, they were one of the first ports to conclude the Container Security Initiative [CSI]. I have gone through the operation there, and our officials cite it as a model operation for the CSI. Also, in the Financial Action Task Force that addresses counter-terrorism financing, Hong Kong was in the chair, I believe in 2003, of the Asia-Pacific Group and played a very valuable role there.

Senator HAGEL. You may have noted this in your testimony, which, as you know, I came in the last part of it, and I apologize if I am covering ground you have already covered. But regarding your views of the September 12 elections, can you develop your answer further with an assessment of any positive signs or hopeful signs, and what are the holes? I would be interested also in your overall assessment for the future.

Mr. SCHRIVER. Yes, sir. I think I did address it. Probably the most significant outcome we have observed is the very high voter turnout. We take that as a very strong sign that the people of Hong Kong want and value democracy, and want it sooner rather than later.

It is also very significant that the Democratic Coalition, although the rules and the framework that were in place did not make it easy for them to have large gains or gain a majority of the LegCo seats, but they did win 62 percent of the vote for those seats that were directly contested. They did have a net gain in the number of seats, so they control 25 of the 60 seats.

In addition, several prominent critics of the government won seats in the LegCo. So, I would put all that in the category of good news, in that it reflects a vibrant population and people who are very interested in their future and who want a say in that future.

In the "not-as-good" category, there were some issues about procedural or technical glitches, which we have been told the Hong Kong Government will look into. Then, I think more troubling are the allegations—and these have been consistent in the lead-up to the election—that there was a climate of intimidation and fear among some. Human Rights Watch did a very important report on this question. This is something that is more difficult to get at, and also much more serious.

So, again, the Government of Hong Kong has said that they will vigorously defend the integrity of their election system and they will investigate these matters, but it is critical that they do so in a way that their deeds match their words.

Senator HAGEL. Mr. Schriver, thank you.

Mr. Chairman, thank you.

Chairman LEACH. Mr. Levin.

Representative LEVIN. Good afternoon.

Sir, I missed your opening statement. I am glad to join my distinguished colleagues. Let me just ask you a few questions, because I have read part of your text and heard part of your answers to Senator Hagel.

You say on page 3, in the top full paragraph there, that "the government may not have to face a democratic majority, but it certainly will need to continue to find ways to win in LegCo and less popular support for its actions. It cannot govern through administrative fiat." Is that not more or less what it is doing now?

Mr. SCHRIVER. Thank you, Congressman. Clearly, the framework and the rules that are in place give the central authorities a very strong hand, and they have used that on issues that they have identified as being important. We saw that last April with respect to the prospects for further constitutional change. But we have also seen an example related to the national security legislation, where people took to the streets and expressed their point of view, where the government was responsive to that. They have pulled the legislation for consideration and were responsive to the people.

Representative LEVIN. They withdrew it, not necessarily forever.

Mr. SCHRIVER. That is correct.

Representative LEVIN. So when you say it cannot govern through administrative fiat, you mean that that is what is going on now unless 250,000 people take to the streets?

Mr. SCHRIVER. I think the fact that people have taken to the streets, combined with other elements like the very impressive voter turnout we saw in the LegCo on the 12th of September, the fact that the Democratic Coalition did so well, winning over 60 percent of the vote, all those elements, I believe, would make it more difficult for Beijing to govern in a way that was not satisfying or popular to the people of Hong Kong. It is an opinion and it is a view. Clearly, they sustain the upper hand, and they have done that by design.

Representative LEVIN. So why do you not say that?

Mr. SCHRIVER. Well, I think I did. I commented on Beijing's assessment of the election, where they said this proves that the people of Hong Kong are "masters of their own house." But, in fact, as I stated, a more accurate assessment would clearly note Beijing's continuing influence on all the important things related to Hong Kong's future.

Representative LEVIN. You used the word "influence." I mean, essentially they determine the key decisions. Is that not correct?

Mr. SCHRIVER. I think, to date, they certainly have, yes.

Representative LEVIN. I will finish so we can go on. So why do you say, on the second page, "Here, too, the Hong Kong Government has promised to investigate any lead, and to defend vigorously the integrity of its elections. That is appropriate. The government's deeds should match its words." If, essentially, they are now not influencing, but essentially directing the outcome on key things, do you have faith that their deeds are going to match their words?

Mr. SCHRIVER. Well, that remains to be seen. It is very important that they do, and that is why we take opportunities like this very public forum here, to say that this is something that people watch closely. As I noted, there is a very robust and energetic NGO community that watches these things. We had an important report from Human Rights Watch. So, we want to take all the opportunities that are afforded us to say that this is important to us, and we are watching.

Representative LEVIN. I asked these questions thinking we were right to increase our engagement with China. But part of that approach was also to call them as we see them and to be very direct and frank. I must say, I think the language here is maybe more "diplomatic" than it is candid. For example, where you say, "But I do firmly believe that Beijing's vision of Hong Kong can best be realized by moving more rapidly toward the goal of a genuine representative government," I am not quite sure what that really means to say.

Mr. SCHRIVER. I think the leaders in Beijing do want Hong Kong to succeed. I think they want it to be prosperous. I think they would take pride in a Hong Kong that continues to succeed economically. Our concerns are that if the pace of political evolution, and in particular political liberalization, does not meet the aspirations of the people of Hong Kong, Beijing will not get the outcome that they desire and instead, I think, will have a more unstable situation. So we try to portray this as an area where, in fact, we might have a common view of this. We both want Hong Kong to succeed. Our view is that democratization is one element, and a very key element to that.

Representative LEVIN. All right. Quickly, how much further toward the goal of a genuine representative government do you think Hong Kong is today compared to five years ago?

Mr. SCHRIVER. I think this election was a step forward, but it is insufficient to meeting the ultimate goal, which even Beijing has embraced and embodied in the Basic Law, that Hong Kong will move to universal suffrage. But I think it is a step forward after the LegCo elections.

Representative LEVIN. Thank you.

Chairman LEACH. Thank you, Secretary Schriver.

We will now move to the second panel. It is composed of Professor Michael C. Davis. Professor Davis is currently the Robert and Marion Short Visiting Professor of Law at Notre Dame Law School. The second witness is Ms. Veron Hung. Veron Hung is an expert on Chinese law. She is admitted as a barrister in England, Wales, and Hong Kong, and is a member of the New York Bar and the District of Columbia Bar. Our third witness is Dr. William H. Overholt, who is Asia Policy Chair, Center for Asia and Pacific Policy of the RAND Corporation. Previously, Dr. Overholt was a Senior Fellow at Harvard, and before that spent 21 years running research teams for investment banks in Asia. He is the author of five books, including The Rise of China. Welcome, Dr. Overholt. Unless there is a prearrangement, we will just proceed in the order in which the introductions were made.

Mr. Davis.

STATEMENT OF MICHAEL C. DAVIS, ROBERT AND MARION SHORT VISITING PROFESSOR, NOTRE DAME LAW SCHOOL, SOUTH BEND, IN

Mr. DAVIS. Thank you. Thank you, Mr. Chairman.

I appreciate the opportunity to testify here at this hearing. I think Hong Kong certainly has been a great interest to people in the United States in general because of our commitment to democracy.

I note in that regard, this morning I was reading some literature telling me that during the 1990s, the number of democracies in the world nearly doubled. So it seems to me that we should bear in mind that democracy is becoming the norm, rather than the exception, and is something I think we all encourage.

Now, I should say that, in addition to being at Notre Dame University, I have lived in Hong Kong for the last 20 years. I am a legal resident of Hong Kong. I even vote in Hong Kong and have been involved in public affairs there for a long time. I have also been involved with the Article 45 Concern Group and the Article 23 Concern Group, which were trying to promote democracy in Hong Kong during the past year, and were instrumental in several demonstrations that were held there.

Now, the official from the State Department has described the consequence of the election. I personally would like to say that there is an interpretation going around about the election that I hear in the international media, that Hong Kong people voted for stability, the implication being that somehow they were choosing stability over democracy, and assuming that those things were somehow in opposition to each other. I would like to contest that interpretation. The State Department has correctly pointed out that the support for democracy in Hong Kong in this election was substantial. If Hong Kong's democrats did not win the election with 62 percent of the vote, it is because of serious flaws in the electoral system there.

The United States, recall, has been asked to treat Hong Kong as a separate entity. So, beyond our spirit of support for democracy, we have a very definite interest that Hong Kong carry on under the Sino-British Joint Declaration.

Now from the opening statements of the Chairman, I know you are familiar with the requirements that Hong Kong move toward universal suffrage, but this is spelled out in the basic law and the Sino-British Joint Declaration. So what I would suggest, is that the Chinese Government has taken a view that universal suffrage is dangerous in Hong Kong and it has expressed this view in no uncertain terms during the last six months. So we have to appreciate that this election is not just about counting the votes or whether the ballot boxes were open during certain events when they were over-stuffed and they were tamped down. This is a serious problem that has to be investigated. But I think the deficiency of an election where 62 percent of the voters vote for one camp, and that camp loses the election, has to be fully appreciated. Another point that I would like to draw attention to, is that the election is built around functional constituencies, so fully half the seats in the election are taken by a small circle of electors, in a sense, just under 200,000 voters—and a good portion of them corporations—get to choose half the members of the Legislative Council.

Another thing is that even for direct elections, they use a system of proportional representation. If we are investigating this, we should at least draw attention to these specific kinds of problems. The proportional representation system is one that favors getting more pro-Beijing candidates in, so this is something specific to draw attention to.

Beyond that, I would like to highlight the history of intimidation before this election. The last nine months or so before the election had a series of attacks on Hong Kong democrats. The first one was the so-called "patriot debate," where one member, a chairman of the Democratic Party, was actually vilified for testifying here before the U.S. Senate. He was accused of being unpatriotic, and a Chinese official attacked his father also as being unpatriotic, though previously no one had ever contested his father's patriotism. So this "patriot debate" was one form of intimidation.

The second one was some argument about gradual and orderly progress, where Hong Kong people were told that Deng Xiaoping did not intend democracy to proceed very quickly, except that Deng Xiaoping's own words contested that viewpoint.

The third one that came up in the last six months was an argument largely from the Beijing media where they started threatening to disband the Legislative Council after the election if more than 30 members of the Democratic camp were elected. They made statements that, "if those who try to use democracy to exclude the Communist Party of China and respect Taiwan take the majority of seats in LegCo, Hong Kong's executive-led government will collapse and the central authority and national security will be severely challenged." A local pro-Beijing paper, the Wen Wei Bao, quoted a Beijing official as saying, "I have a knife. Usually it is not used, but now you force me to use it." So, what I am suggesting to you is that the level of intimidation was quite high.

After that, the next stage in this effort was to start talking about the spirit of the Basic Law, and accusing the Democrats in Hong Kong of promoting fake democracy. The next phase was when the National People's Congress interpreted the Basic Law on April 26, ruling out direct elections in 2007 and 2008, even though the Basic Law, as interpreted by them, would have allowed that.

Finally, the intimidation continued into the election itself, where a whole range of things were done or alleged to have been done to intimidate voters who were registering, to intimidate talk show hosts, to threaten enacting a national unification law that would get around the national security laws that they tried to enact last year.

Trying to reach out to Democrats was one good thing. There were some carrots. The mainland government also had military parades and an Olympic medalist parade past Hong Kong people, trying to persuade them. And when you read the pro-Beijing press, you would see a very strong bias, so Beijing was taking a role in the election on the side of the pro-Beijing camp and against the pan-Democratic camp.

So I think when Hong Kong people, in the face of all of this, still voted 62 percent to support the pan-Democratic candidates and had the highest turnout ever, it is hard to say that they have chosen some form of "stability" over democracy. I think this is an important thing for the Commission to take note of.

Thank you.

[The prepared statement of Mr. Davis appears in the appendix.]

Senator HAGEL. Dr. Davis, thank you very much.

Dr. Overholt.

STATEMENT OF WILLIAM H. OVERHOLT, ASIA POLICY CHAIR, CENTER FOR ASIA AND PACIFIC POLICY, RAND CORPORATION, SANTA MONICA, CA

Mr. OVERHOLT. Mr. Chairman, I am honored to be invited to testify before you. Like the other members of this panel, I am here to try to be useful rather than to represent any specific interest. I have submitted written testimony and I will make brief comments to supplement that.

I think we need to start with the fact that this election did have one more step toward democratization. Before the Chinese demanded Hong Kong back from Britain, 100 percent of all Hong Kong legislators were appointed by the British Governor. With this election, for the first time, there are no appointed legislators. They are all elected in some form. However, the pace of movement has been slow. There is nothing approaching real democracy in Hong Kong, because the Chief Executive is hand-picked by Beijing, the system is so-called executive-led, and of course half of the legislature is functional constituencies, which are designed to be predominantly conservative.

This system is gridlocked. People are unhappy with it. That has led to big, peaceful demonstrations, demanding what the Basic Law presents as an ultimate goal, namely direct elections by universal suffrage, although it does not firmly commit to any timetable in achieving that, or even to ever fully accomplishing it.

China has reacted to those lawful, but large, demonstrations with fear of instability. You have a new administration in Beijing which has little experience of Hong Kong and has suffered, to some extent, from what I have called "the three confusions." They confuse the situation of democracy in Hong Kong with the independence movement in Taiwan; they confuse the implication of peaceful, lawful, traditional-type demonstrations in Hong Kong with disruptive demonstrations in mainland China; and they confuse the democratic movement, which is very broad, peaceful, deep, and basically loyal to Chinese sovereignty, with a few very anti-Chinese leaders of the democratic movement.

I would characterize the Beijing policy as divided into two pieces. What has been important to them is a response to these demonstrations and to the movement regarding universal suffrage in 2007. There, they have had a very broad, wide-ranging strategy which Mr. Davis and Mr. Schriver have highlighted. The core of that strategy was interpretation of the Basic Law to make direct universal suffrage elections in 2007 and 2008 illegal, along with staging such events as military parades, fleet visits, taking measures to reinvigorate the Hong Kong economy, and sponsoring high-profile, positive steps like visits from the "Buddha's Finger bone" and from the Chinese Olympic athletes.

All these are directed at the 2007 election, and that is important. The 2004 election has been a separate issue. There has been a series of disquieting incidents of intimidation and election problems, but as yet there has been no persuasive evidence that these were other than local political entrepreneurship and local business vengeance. There has been no serious argument by even the most partisan commentators that these incidents actually influenced the shape of the outcome of the election in Hong Kong.

The election had very high turnout in a very calm atmosphere, even an atmosphere of pride, despite the things that had happened earlier and despite problems with the size of ballot boxes.

The democrats clearly won the popular vote. Everybody agrees on that, 62 or 63 percent of it. The skewing of the system, however, meant that even a fair ballot led to the conservatives getting 34 out of 60 of the seats. The fact that the Liberal Party, a conservative group, was one of the very big winners and won its first two general election seats ever, has to do with the fact that they supported democratization. Their leader resigned over the proposed tough anti-subversion laws. So here again, even in the conservative victory, we see the strength of the democratic feeling behind it. There was a mandate in this election for democratization, but democratization pursued by moderate means that reassure Beijing.

Mr. Chairman, the body of Hong Kong's freedoms—freedom of speech, freedom of press, religion, of assembly, and the rule of law—is basically intact. There are some dents and scratches this time around, and if those dents and scratches continue to accumulate there will be real problems, but so far we have dents and scratches on a sound body. There has been an environment this time where people felt they could get away with intimidations and tricks that they did not try in the past. As Mr. Schriver said, everybody will be looking to see exactly what the Hong Kong Government does to make sure that that permissive environment is reversed.

Beijing's hard-liners believe that economic recovery, plus repressive actions, will contain the democratic movement. My forecast is that, in the end, such a strategy will be like sitting on the lid of a kettle of boiling water. The movement will boil up. It is strong and getting stronger. The political parties do not fully represent the strength of that movement. Hong Kong's political parties are very weak. Beneath the political party results, there is a much stronger movement. That movement has only one chance of success, and that is to push hard for democracy, while reassuring Beijing of their loyalty. Most of the leaders of the democracy movement have now coalesced around that strategy. There is no assurance that it will work, but it is the only one that has any chance.

What does this mean for the United States? Well, we are in a in a frustrating situation. We have very limited positive leverage. We have a lot of ability to do damage. Speaking out very strongly, reasoning with Chinese leaders, can certainly help. They do talk, they do think, they do take evidence on board. The biggest gift we could give to the Beijing's hard-liners would be a confrontational policy that allows them to portray Hong Kong democratization as a struggle between China and the United States, not as a struggle between them and some of their own people. In that regard, proposed changes in Hong Kong's trade status would simply harm those people of Hong Kong whom we say we are trying to help. The first law of doctors is "do no harm," and it is a good rule for all policies.

Hong Kong democratic forces have coalesced around a strategy of demanding democratization, but reassuring Beijing. The electorate has clearly endorsed that strategy. We should not do anything to undermine it. We do provide assistance to democratization in Hong

Kong in a variety of different ways, predominantly through NGOs, things like teaching fundraising. That is very helpful. But some of our efforts appear to single out one particular and particularly anti-Beijing figure, who is not the leader any longer of any party. That can only divide the democratic movement and harm its chances. So, we have to be very careful which things we emphasize in our consensus support for democratization in Hong Kong.

I would close with the thought that there is no basis for despair. The recent completion of the generational transfer of power in China could mean less politics and more careful policy calculation in China. As these people gain more experience, that will probably be helpful. They are engaging in more and more dialogue with democratic forces in Hong Kong.

The other positive thing that we must never discount, is Hong Kong people are enormously well-informed and good at thinking these things through, and we can rely heavily on their skills. But there are no assurances. Nobody can say for certain, even if we do all the right things, that this is going to work out well.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Overholt appears in the appendix.]

Senator HAGEL. Dr. Overholt, thank you very much.

Ms. Hung, welcome.

STATEMENT OF VERON HUNG, ASSOCIATE, CHINA PROGRAM, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, WASHINGTON, DC

Ms. HUNG. Thank you. Today I would like to focus on one issue: will Hu Jintao, who finally took over China's military chairmanship from Jiang Zemin last Sunday, soften Beijing's stance on democratization in Hong Kong? Although Hu is generally hailed as a moderate reformer, he is unlikely to revoke Beijing's decision made in April that rules out universal suffrage in Hong Kong in 2007 and 2008.

The decision stems largely from Chinese leaders' two fears: first, that a democratic Hong Kong may liberate itself from Beijing's control; and second, that democratization in Hong Kong would inspire and mobilize mainland Chinese to challenge the Communist Party's governance.

Sharing such fears, Hu Jintao, whose goal is to sustain the party's role through reform but not to destroy it, will likely uphold the April decision. But the need for Hu to prove his governing ability may bode well for a dialogue with Hong Kong Democrats. The absence of such a dialogue would suggest to foreign nations a pessimistic future for political reform in China, intensifying their doubts about China's claim to seek a "peaceful rise" to regional and international prominence.

International criticism of China will likely escalate and overshadow Beijing's 2008 Olympics, which China sees as a milestone marking the country's rise. All of this criticism will not reflect well on Hu's leadership. Therefore, he should have an interest in meeting with the Democrats.

Such interest may further increase after Hu Jintao considers two implications of the Legislative Council election results. First, the Democrats' failure to win the majority of seats signals that even

direct elections would not guarantee the Democrats a landslide victory. Feeling less worried about direct elections, Hu may be more receptive to discussing democratization in Hong Kong with the Democrats.

Second, the record-high turnout rate of 55.6 percent in the election shows that the Hong Kong people's demand for full democracy is still strong. If Hu does not respond to such a demand by meeting with Democrats, citizens in Hong Kong may, when their government blunders, demonstrate again on every July 1 to demand full democracy. But even if Hu Jintao welcomes a dialogue with Democrats, a crucial question remains: can Democrats stay united to speak in one voice? Some Democrats in Hong Kong insist on pressuring Beijing to revoke the April decision. Others, such as pro-democracy barristers who just won in the election, appear to be more flexible. In my opinion, the Democrats must adopt a strategically flexible approach. In light of Beijing's two fears about democratization in Hong Kong, the harder that the Democrats push for early introduction of universal suffrage, the more threatened Beijing will feel and the more readily it will play its trump card, the Basic Law. This law gives Beijing the ultimate power to determine the city's political future and forestall the Democrats' hopes. In theory, of course, we may argue that Democrats could always trump Beijing with the threat of massive unrest, but public support for such a strategy is not present or foreseeable. Most Hong Kong citizens are pragmatic, desiring to keep intact the city's legal framework, prosperity, and stability.

The Democrats should aim at dispelling Beijing's fear through dialogue. Knowing that Beijing cannot tolerate universal suffrage in 2007 and 2008, the Democrats should relinquish this demand, but require commensurate concessions from Beijing, namely, a promise that once universal suffrage is introduced, citizens will be allowed to exercise their right to vote for the Chief Executive and all legislators by direct elections instead of indirect elections. I must emphasize this point, because all Hong Kong politicians have missed it. Strictly speaking, "universal suffrage" only means that all citizens of voting age have the right to vote. Full democracy, which is the Democrats' goal, cannot be exemplified if universal suffrage is implemented through "indirect elections," whereby citizens elect representatives who, in turn, choose the ultimate office holders.

Recent surveys show that many Hong Kong politicians, including those from the pro-Beijing camp, support introduction of universal suffrage in 2012. Such wide support may encourage China's leaders to consider it to be an option. Delaying introduction of universal suffrage by four to five years in exchange for a "universal suffrage plus direct elections" package sounds acceptable.

As every sailor knows, a boat cannot move when it is directly against the wind because the sail luffs. To lead Hong Kong toward full democracy against Beijing's resistance, Democrats must master the art of steerage to position the boat at the best angle possible under the circumstances.

Ending the dispute with Beijing over democratization of Hong Kong helps build mutual trust, upon which successful implementation of "One Country, Two Systems" depends. Thank you.

Senator HAGEL. Dr. Hung, thank you. Each of your statements will be included in the record. I noted, Dr. Overholt, that you essentially summarized your statement. But all of the statements will be included for the record. Thank you very much.

Let me ask a general question for the three of you. Dr. Hung, in your statement, you talked about the internal leadership situation in China and you drew some observations and conclusions regarding the possibilities for Hu Jintao's emerging and future role as president of China. How will this role affect Hong Kong? I would like to ask your two colleagues for their interpretations as well, not just of what you said, but also to widen it a bit, and then come back to you and see if you would like to add any further observations. I will begin with Professor Davis. Thank you.

Mr. DAVIS. Thank you, Mr. Chairman.

This question of the change of leadership is a very important one. There is some speculation that Hong Kong policy has been under the sway of very conservative elements in the Chinese leadership, and some question whether Hu would change that, and some doubts that he will, that in some ways having a harder hand at the rudder might be viewed as a favorable policy for him while he secures and consolidates his own position as the Chinese leader.

This relates to the other statements of Dr. Hung, how Hong Kong people should react to it. I would resist the view that China is this static thing, monolithic thing, and Hong Kong Democrats are this monolithic thing on the other side, and they cannot push too hard or the Chinese leaders will get angry, and so on. I think it has been a mutually constitutive process over the years that I have been in Hong Kong, whether it is interpreting the Basic Law, whether it is pushing for democracy. And I am actually 1 of the 10 members of those barristers to whom Dr. Hung referred. To use the language of academia in this country, it is a mutually constitutive process. On both sides, we are speaking to each other. Sometimes we push hard. And so the Chinese leadership under Hu—he will not want trouble in Hong Kong. So Hong Kong Democrats could say, "All right, fine, we go meet with him and that is it." But they know that he is not going to give them anything if they do not have a strong hand.

So, it is a bit of both. It is a bit of pushing and tugging. So, the United States' role in this is generally, I think, to represent, I think, the views that Bill Overholt suggested. For example, encouraging China to talk to the Democrats, to encourage dialogue, because it is within the context of that discussion that Democrats, while pushing on the street, can talk to Chinese leaders and maybe the Chinese leaders will come to a point where they will see the Democrats are not so fearsome after all. Quite frankly, the Democrats in Hong Kong are the most moderate bunch of revolutionaries, if that is what they are, that I have ever seen on earth. I have been in the Democratic camp for nearly 20 years. I know Martin Lee personally. He gave away my wife at our wedding. I mean, I know these people all very personally. I never heard the word "independence" out of a Democrat's mouth in Hong Kong. The only time I ever hear the word "independence" in Hong Kong is from people from China. They talk about Hong Kong, and sometimes they advocate that Hong Kong advocate independence. But Chinese

officials worry that Hong Kong people have some idea of independence or getting away from Beijing. I never hear it.

So I think the leaders need to be persuaded, to the extent that diplomacy persuades, that they need to talk to the people in Hong Kong, the people that have the majority of support in Hong Kong. And I think these people are very moderate. Are they going to always look perfectly moderate? No. Sometimes they have to push. If they get nowhere, they have to be louder. They have to ratchet up. Chinese leaders, I think, respond to that better than always, as the more so-called conservatives in Hong Kong, who always do whatever China's bidding is. I think you have more influence in dealing with China when you are a bit tough at times and conciliatory at other times. The leadership in Beijing needs to understand this about the Democrats as well. Sometimes they may insist on what they want, but other times be willing to listen. Up until now, they have rarely been willing to listen to Democrats. I have attended meetings where our group of barristers were invited.

Listening to Democrats meant going to a meeting, having the Chinese leaders tell you the decision they had already made, and then flattering my colleagues in the Article 45 Concern Group for a bit of time, telling them that we appreciate you coming here, blah, blah, blah, but not consulting before the decision is made. So if we are talking as a country trying to encourage China to deal with Hong Kong in a way that is consistent with our values and with the Basic Law, then I think this kind of dialogue is something we can talk to them about. I think they are starting to understand it, but there is such a great, deep reluctance to really give away power in Beijing. The idea of not being in control of someone that you are dealing with is very hard in Chinese politics, and so this is a hard thing. But, then again, bearing in mind that Beijing itself is not monolithic. There are reform-minded leaders in China as well. So, we have to approach them with this understanding. But do not ask the Democrats to be passive. Sometimes they have to be tough. That is how you get what you want, and that is what is going on there.

Senator HAGEL. Thank you.

Mr. Overholt.

Mr. OVERHOLT. Mr. Chairman, I believe your question had to do with the relationship between the power struggle or generational change in Beijing and Hong Kong policy. This has been a period when thinking about Hong Kong has been very heavily influenced by what comes close to a war fever over developments in Taiwan, and at a time when there was divided leadership.

We do not know what happens between the leaders at the very top, but we can see what is going on between their followers. The divisions have been powerful. The issue of one side or the other being soft on issues of national security or stability has been, if anything, even more intense in that country than it has in ours. So I think there is reason to hope—I choose my words carefully—that their successful transition peacefully from one generation to the next will remove some of the political intensity that has surrounded the debate over Hong Kong.

Senator HAGEL. Let me ask a follow-up on that. I note in the summary bullet points of your written statement you say "deep

division in China over proper policy toward Hong Kong." Do you want to add anything to what you just said in light of this point? I did not get the sense, from what you just said, that the intensity of disagreement is necessarily that deep.

Mr. OVERHOLT. I have made many, many trips to China in recent years and talked with dozens and dozens of people about Hong Kong. There are many, many experts and officials who think that the hard line has been counter-productive and hope that there will be some liberalization in the future. I do not think anybody can claim to have an adequate survey of Chinese experts or officials, and particularly not of top-ranking officials. But if you came to this country in 1993 when a new leader was saying we should cutoff our principal trade ties with China, removing most favored Nation status, or if you came here in 2001 when some people were saying, treat China as an adversary, you would have gotten the same division between the official experts and the new brooms coming in at the top. My sense is that it is much more intense in China on this subject. That is why I am trying to convey.

Senator HAGEL. Thank you.

Dr. Hung.

Ms. HUNG. Yes. Thank you. I just want to make a few points in response to the comments made by my colleagues here.

The first point I want to make is that I am pleased to tell you that one pro-democracy barrister who won in the election made an announcement yesterday. He, himself, recognized that it may not be politically realistic to pressure Beijing to revoke the April decision, and he may consider just stepping back a little bit to pressure Beijing to consider introducing universal suffrage in 2012. I think that is a very good sign.

Second, I want to emphasize one point. Pressure does help sometimes, but not always. Look at the April decision. I understand that my colleague, Professor Davis, argues that sometimes we cannot appear to be weak. But the proposal that I am making here is not a weak proposal, it is a functional, strategically sound proposal. In the past, the Democrats pressured Beijing so hard, that they forgot about the two fears Chinese leaders had. So that is the reason why Beijing came up with this April decision. My worry is that, if we continue to pressure Beijing to revoke the April decision, it might actually resort to the Basic Law again through interpretation or through amendment of the Basic Law to further tighten control over the democratic development in Hong Kong.

Given the fact that even the pro-Beijing camp supports universal suffrage in 2012, if democrats also support this and bargain for a concession from Beijing, saying that "We want you to promise that universal suffrage should be done through direct elections," I think this is actually a nice way to attain the final goal, that is, full democracy. Thank you.

Senator HAGEL. Thank you.

Dr. Overholt, I do not have it exactly in your written statement, but I will paraphrase what I think I heard you say. You noted that the United States must be careful not to damage the overall relationship by how we handle the Hong Kong issue with China. In the universe of that relationship, Hong Kong is an important issue, but it is one of many.

One of the things you said, I think, if I can refer back to my notes, is that we should be careful not to allow our handling of the Hong Kong issue to fuel internal leadership divisions in China in a way that ultimately harms Hong Kong.

Now, if I have got that about right, would you develop it further for us—and I would ask the other two panelists to comment on this as well—that is, areas you think the United States should be doing more or less of in our current policy toward China? Thank you.

Mr. OVERHOLT. I think the things we do well are expressing our views, holding hearings that put all the arguments on display, for the Chinese as well as for ourselves. I think our human rights groups do a wonderful job when they shine the light on bad things that happen. We should do as much of those things as we can. Having very firm arguments never hurts. We talk in very firm ways with the Chinese about many issues, including Taiwan and North Korea, and the dialogue moves forward.

When we start threatening sanctions, then the hardliners say, "The democracy movement is just the Americans trying to impose their will on China." That obscures the real issue, which is, maybe Hong Kong would be stabilized by democratization rather than destabilized, which I think all of us here agree on. When we appear to take sides among the democrats, focusing on Martin Lee rather than some of the others for instance, it just divides the democrats. It gives Beijing another excuse for putting its thumb on them. It is very unhelpful.

When we do things that directly associate democracy with instability, we feed the hardliners. For instance, when the National Endowment for Democracy [NED] gave Martin Lee an award that was the little Goddess of Democracy statue from Tiananmen Square, if there is any way we could at low cost do more damage to the image of what democratization would mean, I cannot imagine it. We have to be very careful not to gratify our own feelings at the expense of harming the democratization movement.

I think, on the whole, American policy has been quite balanced and reasonable. We have made small mistakes. The hardliners have taken full advantage of the small mistakes we have made. But I would endorse everything that Mr. Schriver has said. I think that the core of American policy has been absolutely sound, and I think the Congressional resolutions have been helpful.

Senator HAGEL. Thank you.

Professor Davis.

Mr. DAVIS. Yes. I agree with what Bill has said, generally, that we need to exercise some degree of caution, and not to be a bull in a China store—literally a China store in this case—when it comes to China policy. I have not seen that much of that from the United States, but I do find that sometimes the Chinese can be very selective. They have recently vilified the National Democratic Institute [NDI] and the NED, unrelated to any awards to Martin Lee, in this recent election as improperly interfering in Hong Kong, and it kind of becomes like America trying to improperly influence the election. In fact, the NED has funded the Republican Institute to do work in China, as well as the NDI in Hong Kong. I know we have actually had to caution the NDI. They have given as many

seminars to the pro-Beijing camp as they have the Democratic camp.

So I think if it were known that the NDI was not really favoring one side, that it was actually trying to talk to politicians on both sides—I know the people in Hong Kong that do the work of the NDI, and I know that they do a good job and they have for long tried to be balanced about it.

I think there are things the United States should just be consistent about. One, is encouraging dialogue with Democrats in Hong Kong, not just with Martin Lee, but all the Democrats, and that, as a friend of China, that we would like to see the Chinese have a good relationship with those people in Hong Kong that won the popular vote in the last election.

So our State Department people are very good, hopefully, at trying to find nice ways to say that and make that message clear. One thing that I have also noted here that I think is important: I would like to see more investment in our dialogue with China itself on the rule of law, on issues of elections in China. China has elections. The NED has often been the vehicle through which we fund that kind of work. But a rule of law initiative has been batted around Washington for years, and sometimes it does not get too far. I would like to see more of that, because then it does not look like we are just singling out Hong Kong, but we care about China's long-term development, about the rule of law in China. And the rule of law is a little more neutral than some other terms you can come up with. I would like to see growth in that initiative.

On the democratic development in Hong Kong, I think some encouragement for a timetable is something that we might ask for. If we want to ask for something definite, maybe encourage Beijing to indicate a timetable. As Dr. Hung has suggested, that timetable may well be 2012. But why not indicate that? So, that is something specific.

I agree with Bill Overholt. Sanctions are something you do after an event like Tiananmen Square. It is not something that is normal policy. So, using some heavy dose of sanctions is something the United States really should not include in its China policy at the moment. It is just not the circumstances where that is required. So, I agree with that. We just should not be doing that.

These are some other things. One can think of other things from time to time. I think on the Taiwan question, we really have to be very, very sensitive there. But that gets beyond Hong Kong. It is somewhat connected, but separate.

Senator HAGEL. Thank you.

Dr. Hung.

Ms. HUNG. Yes. I think that Washington should continue expressing its concerns about the democratic development in Hong Kong through low-profile diplomacy. Given the fact that there is a high possibility that Beijing and the Hong Kong Democrats may have a dialogue, I do not think that at this stage the United States should react too strongly. The more vocally the United States opposes Beijing's policies toward Hong Kong, the more firmly Chinese leaders will believe the Democrats in Hong Kong are actually in league with the United States to try to overthrow it. I would also urge the United States not to consider changing U.S. policies to-

ward Hong Kong as authorized under the U.S.-Hong Kong Policy Act. There are three reasons. First, is that, on this issue, Hong Kong people are in a passive position. They want universal suffrage as soon as possible, but it is Beijing that made the April decision.

So if critics of China say that, "Oh, because Hong Kong can no longer enjoy a high degree of autonomy, we should suspend these benefits for Hong Kong," then these critics are in effect punishing Hong Kong people for something that they have not done. This is not fair to the Hong Kong people.

Second, I also believe that it is not good for United States' interests either, because any punishment on Hong Kong would develop anti-American sentiments in Hong Kong and mainland China.

Third, we need to think about the possible reactions from China as well. For example, this April the United States sponsored a human rights resolution at the United Nations Human Rights Commission, and in response China suspended the U.S.-China human rights dialogue. What I worry about, is if we change the U.S. policies toward Hong Kong, China may react so strongly that it might suspend the rule of law projects and continue suspending the U.S.-China human rights dialogue. For the sake of human rights developments and rule of law developments in Hong Kong and China, I do not think that at this stage the United States should change its policy toward Hong Kong, as authorized under the U.S.-Hong Kong Policy Act. Thank you.

Senator HAGEL. Dr. Hung, thank you.

We have been joined by the former Chairman of this Commission, the distinguished Senator from Montana. Senator Baucus, welcome.

If I might just interrupt the hearing for a moment to do a little business, I understand that you want to cast your vote at our business meeting. So if you would register your vote, Senator, then we can get on with whatever you have.

Senator BAUCUS. I vote aye.

Senator HAGEL. Thank you, sir. You see the influence you have on Senator Baucus? It is amazing. [Laughter.] Senator, would you like to add anything, a statement, questions?

Senator BAUCUS. I am fine. I have already learned by listening. Thank you.

Senator HAGEL. Thank you. Dr. Overholt, you had noted in your comments, and again I think I have written down basically what you said, and I think this was your term, "basic freedoms are still intact in Hong Kong." You, I think, mentioned specifically freedom of speech, freedom of the press.

In light of the concerns that this Commission has had regarding freedom of religion in the PRC, how is religious freedom—and I would ask the three of you the same question—faring in Hong Kong? Is there any carry-over to Hong Kong on this issue from the mainland?

Mr. OVERHOLT. Hong Kong has freedom of religion. Every religion I know of practices in Hong Kong. Many of them proselytize across the border in ways that Beijing could object to, but has chosen not to. Falun Gong practices openly. They have public sessions in public places throughout Hong Kong where they do their exercises. They have people passing out leaflets in very prominent

places. For instance, on either side of the Star Ferry, they pass out leaflets. They have not been inhibited in practicing their religion in Hong Kong in any way. There are two complaints they have that have some substance. In the early days, they were allowed to rent out city hall for Falun Gong exercises. They have not been able to do that, at least as much, recently. And the Hong Kong Immigration has not allowed in Falun Gong people from outside Hong Kong to participate in demonstrations. One can argue that either way, but with those, in the large scheme of things, minor footnotes, freedom of religion is alive and well in Hong Kong.

Senator HAGEL. Professor Davis.

Mr. DAVIS. Yes. I agree with Bill Overholt. For the most part, freedom of religion is fully respected. There have been some issues. The Falun Gong one, I think he has mentioned. It has become a kind of barometer on freedom of religion in Hong Kong. When people see Falun Gong suppressed or harassed, then people start worrying. So if you want a barometer, it is one of them that I think comes up.

Other developments. There have been debates about the Department of Education's effort to change control over religious schools in Hong Kong by having committees of parents. The bishop of Hong Kong has taken a strong stance against that. I do not think this is an issue that should really concern U.S. foreign policy. It is peculiar because Hong Kong has much less separation of church and state than we do in the United States, so a great deal of public funding goes to religion-run schools. So those religions that are getting the public funding have worried that if the government requires a kind of elected committee, then the bishop or other sponsors will lose control over the message and the way the school wants to conduct itself.

The bishop of Hong Kong, Bishop Zen, the head of the Catholic church, has spoken out forcefully against a change in regulations. So this is an issue involving freedom of religion, but peculiar for us to complain about because our degree of separation of church and state means that the public funding would not even go to all these schools as it does in Hong Kong. Hong Kong has much less separation. They do provide public funding to church-sponsored schools. The Baptist University of Hong Kong is a publicly funded university. So, I do not think this is something of concern to U.S. foreign policy.

On the positive side, Bishop Zen, who has been very outspoken in the democracy movement in Hong Kong, has actually been invited to Shanghai to meet with mainland church officials. The mainland has the so-called kind of patriotic religious churches. They do not allow private churches and they do not allow the Vatican-sponsored Catholic churches in China. But Bishop Zen, who has spent some of his earlier career doing work in China, who is now the head of the Catholic Church in Hong Kong, has been invited to China to meetings. So you are talking about dialogue with Democrats. There is also dialogue with this very prominent religious leader who is also very prominent in the democracy movement. So, it is a bit of a mixed bag. But I think the statement that there is religious freedom in Hong Kong to date is an accurate one.

Senator HAGEL. Thank you.

Dr. Hung.

Ms. HUNG. I think that is an excellent piece of information. I just want to make one minor point. Religious freedom has never been a main concern in Hong Kong because we generally enjoy that freedom. The main concern right now is freedom of speech, press freedom. This is the case, especially after three famous talk show hosts resigned in May, claiming that they were pressured to do so. Those resignations created a climate of fear, which was widely reported by the Western media. But lately, this situation seems to have improved a little. According to numerous polls announced before the September 12 election, Hong Kong people's confidence in "One Country, Two Systems" and the Hong Kong Government and Beijing has increased.

That actually shows that they feel more comfortable about the political environment there. That is a very good sign. But, of course, we just keep our fingers crossed that things will continue to improve.

Senator HAGEL. Thank you.

Senator Baucus, any questions? I, unless Senator Baucus has anything to contribute, am going to adjourn the hearing. But before I do, I would ask if the three of you have any additional comments that you would like to add.

Yes. Professor Davis.

Mr. DAVIS. Yes. I would just say that I have submitted a written statement, so that is in the record, I think.

Senator HAGEL. That will be included. All the written statements will be included in the record.

Senator BAUCUS. Mr. Chairman?

Senator HAGEL. Senator Baucus.

Senator BAUCUS. I am just curious whether you can sense any change in China's relationship with Hong Kong with the recent, if you will, resignation of Jiang Zemin, that is, relinquishing military power, and Hu Jintao, I suppose, is basically in charge. Does that mean anything or not?

Ms. HUNG. Actually, I think I should answer that question. I addressed that issue at length in my statement.

Senator BAUCUS. I am sorry I missed that.

Ms. HUNG. So, it is on record. But I want to just add one final remark.

Senator BAUCUS. Sure. Could you just, for one or two sentences, summarize?

Ms. HUNG. I think although Hu Jintao is generally hailed as a moderate reformer, we should not expect that he can decide to revoke the decision made in April, to allow Hong Kong to have universal suffrage in 2007 and 2008. But then I believe that because he has to prove that he has the governing ability, he has to establish a dialogue with Democrats, otherwise that does not reflect well on his leadership.

Mr. DAVIS. Just to add a brief comment. I think it has been true of China's team on Hong Kong for some years that they have been a very conservative element of the Chinese leadership. Some of this creeps into the Taiwan issue as well. There is a sense that it is kind of a "one China" issue, and they should be tougher. So I do not think Hu Jintao, who is trying to consolidate his position, is

going to be inclined to release all of that and put moderates suddenly in position. But I do agree that even the conservatives have started to have dialogue with the Democrats, and I think he would be well advised to encourage that direction.

Senator BAUCUS. Thank you. Thank you very much.

Thank you, Mr. Chairman.

Senator HAGEL. Senator, thank you. Thanks to each of you. We appreciate very much your contributions. It has been important.

This Commission is adjourned.

[Whereupon, at 2:33 p.m. the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF RANDALL G. SCHRIVER

SEPTEMBER 23, 2004

Mr. Chairman, thank you. I appreciate the opportunity to testify before the Committee today on a subject that engages Americans and America's interests directly: the prospects for democratic development in Hong Kong.

We meet just 11 days after the Legislative Council elections in Hong Kong. I have seen a lot of analysis about who won, who lost, and what these scorecards portend for the future. While there may be a variety of views on the election, we can cite some important outcomes that are indisputable. Perhaps of greatest significance, is the fact that the people of Hong Kong turned out to vote in record numbers, a clear message to the governments in Hong Kong and Beijing that they want—and value—democracy. They want it sooner rather than later. This has been a consistent message for some time, including the most prominent expression of this desire on July 1, 2003, when a half-million people marched in the streets of Hong Kong protesting the attempt by the Hong Kong government to rush through passage of national security legislation.

The voter turnout was impressive and owes much, in my opinion, to the desire of the people in Hong Kong to exercise their rights—and I think perhaps to respond in a positive way to China's regrettable decision last April to cut short the public debate about establishing universal suffrage for the election of the Chief Executive in 2007 and the fourth Legislative Council in 2008. Over 55 percent or 1.78 million of those eligible to vote in the direct elections went to the polls. Those who voted in the 30 functional constituencies—where there are human voters as well as corporate ones for seats representing a variety of professions, from educators and accountants to industry and finance—similarly turned out in record numbers, though the numbers were much smaller, just 135,000 or about 70 percent of those eligible.

Some notable results include:.

- The democratic coalition came away with a total of 25 seats, though the Democratic Party itself found its number reduced from 11 to nine. The coalition won an impressive 62 percent of the vote in the seats that were directly elected. A couple of very high profile government critics—radio personality Albert Cheng, who believes that he lost his job because of intimidation by Beijing, and Leung Kwok-heung, nicknamed "longhair"—both won, and they will bring perspectives that likely will give the Legislative Council a more colorful cast.
- The pro-business Liberal Party, which leans toward Beijing, but which had opposed national security legislation in 2003, won ten seats, including, for the first time in Liberal Party history, two that were directly contested.
- The pro-Beijing Democratic Alliance for the Betterment of Hong Kong won twelve seats, becoming the largest single bloc in Legco, despite some predictions that it might be tainted by backing Beijing on the decision to delay the introduction of direct elections and universal suffrage for the 2007 Chief Executive and the 2008 Legislative Council elections.

The election, which may move Hong Kong away from the polarization of the past year, did highlight some shortcomings. We are well aware of allegations that there were a number of technical and procedural problems in some locations. We understand that the Electoral Affairs Commission is looking into them and will review the entire operation to correct any irregularities in time for the next election. In fact, the Electoral Affairs Commission has ordered the examination of voting in four functional constituencies where the number of ballot papers counted exceeded those issued to registered voters.

But more fundamentally, there have been consistent charges of voter intimidation in the run-up to the election. The campaign period was, at times, marred by scandal mongering and allegations of not-too-subtle pressure from the central authorities. Here too, the Hong Kong government has promised to investigate any lead and to defend vigorously the integrity of its elections. That is appropriate, and the government's deeds should match its words. Our hope is that this election can be the foundation for a steady reversal of some of the negative trends in Hong Kong over the past year. The Hong Kong people have earned no less.

The elections also showed that no group can stand pat and assume that the people will follow their lead. The government of Hong Kong may not have to face a democratic majority, but it certainly will need to continue to find ways to win

Legco—and thus popular—support for its actions; it cannot govern through administrative fiat.

Although Beijing issued a statement that the elections showed that the people of Hong Kong were masters of their house, a more accurate assessment would make note of the significant influence that Beijing will continue to wield on important matters related to Hong Kong's future. Meanwhile, it is becoming increasingly clear that Beijing too needs to find a way to mobilize genuine popular support for its vision of a Hong Kong united with the mainland in a "one-country, two systems" framework, forging a prosperous future together. After all, more than half of the votes cast in this election were for supporters of the democratic coalition. I am not suggesting that some members of the Democratic Alliance for the Betterment of Hong Kong and the Liberal Party are not also interested in promoting and supporting the expansion of democracy in Hong Kong. But I do firmly believe that Beijing's vision of Hong Kong can best be realized by moving more rapidly toward the goal of a genuine representative government—one which would meet the aspirations of the vast majority of the people of Hong Kong. One important element of the Basic Law, Hong Kong's mini-constitution, was realized in 2004 with the expansion of directly elected seats from 24 to 30. It is important that this trend be continued, if the intent of the Basic Law—a Hong Kong governed by Hong Kong people—is to be realized.

We have a great deal of important work to do with this new Legislative Council in Hong Kong and with the Administration there, but let me note that nothing that happened in this election changes America's underlying policy toward Hong Kong, a policy which also promotes important American interests. Both before and after the 1997 reversion, our goal remains—to the best of our ability—to help the people of Hong Kong preserve their prosperity and way of life. Elections do just that. The people's representatives will now have an opportunity to justify their selection, doing the sorts of things that legislatures normally do—enact laws, approve budgets, hold the government accountable for its actions, and openly debate issues that are in the public interest. We wish the Hong Kong government, the Hong Kong legislature, and the Hong Kong people well in this task and are prepared to assist to the best of our ability in helping them.

I believe that the U.S. Congress has the same view of the situation and that this is behind the spirit of the recent Congressional resolutions on Hong Kong, which support the people of Hong Kong in freely determining the pace and the scope of constitutional developments.

Let me offer some general comments about Hong Kong and about America's view of it. The 1984 Joint Declaration of the UK and the PRC, the subsequent promulgation of the Basic Law, and Hong Kong's sustained, autonomous management of its day-to-day affairs laid a foundation for Hong Kong's continued economic success, as well as its political development. The United States embraces and supports Hong Kong's uniqueness through passage and implementation of the Hong Kong Policy Act of 1992 which established the legal authority to treat Hong Kong as an entity distinct from the People's Republic of China.

America has a profound interest in—and commitment to—the success of Hong Kong as a vibrant democracy. Some 45,000 Americans live and work there. Hong Kong hosts more than 1,100 American firms, 600 of which have regional operational responsibilities and employ a quarter of a million people. Cumulative American foreign direct investment in Hong Kong, a region with nearly seven million residents, totaled over $44 billion at the end of 2003. We also have considerable trade interests in Hong Kong. Total exports of goods and services to Hong Kong amounted to $13.5 billion in 2003, while imports of the same reached approximately $8.9 billion, making Hong Kong our 14th largest trading partner.

With global trade in goods at $455 billion, Hong Kong has a vital interest in liberalizing trade internationally. We have counted Hong Kong among the most vocal and effective supporters of open market principles, and, more generally, Hong Kong has been at the forefront of efforts in the Doha Round to reduce barriers to trade. Hong Kong hosted an important APEC Telecommunications conference in May and will host the next WTO ministerial meeting next year.

Beyond the trade and investment statistics, there exists the evolving but vital bilateral cooperation with Hong Kong authorities which greatly enhances America's security. Hong Kong, the single largest source of U.S.-bound sea containers, joined the Container Security Initiative in September 2002 and made its program operational eight months later in May 2003. In joining the CSI, the Hong Kong Government underscored our common interest in protecting the smooth functioning of the global trading system in the face of terrorist threats. In addition to CSI, Hong Kong, the second largest financial market in Asia, has worked closely with us and through the premier global institution for attacking money laundering, the Financial Action

Task Force, which Hong Kong chaired in 2002, to find ways to cutoff terrorist access to financial sources. Law enforcement cooperation, across-the-board, has been excellent and targeted at protecting the safety and well-being of the people of Hong Kong and America alike. And Hong Kong has been a welcoming port-of-call for visits by American ships.

I would also note that Hong Kong has an effective, autonomous, and transparent export control regime that is strengthened through pre-license checks and post-shipment verification of Hong Kong companies by U.S. Department of Commerce representatives. Hong Kong government officials are working with us to strengthen our already close cooperation. They told Deputy Under Secretary of Commerce Mark Foulon earlier this month that these kinds of controls are important to ensure that our trade rests on a solid security foundation and that they would address proactively all areas of concern as soon they arose. Our exports of high technology commodities to Hong Kong depend on the integrity of Hong Kong's separateness and on the effective and vigorous enforcement of Hong Kong's export control rules and regulations.

Hong Kong's openness, its international status, its welcoming attitude to businesspeople throughout the world, its active participation in economic organizations, including the World Trade Organization—these are elements of Hong Kong's comparative advantage. The Cato Institute once again recognized just how open and free Hong Kong's economy is by naming it—for the 8th consecutive year—the freest economy according to the findings in its annual report on Economic Freedom of the World.

The people of mainland China benefit from Hong Kong's openness as well. Hong Kong has played a key role in helping alter the landscape in China, especially in South China, where ten million workers or more in at least 65,000 Hong Kong-run factories are gainfully employed and learning how to do business with an international focus, and according to free market principles. Hong Kong provides access to capital markets and listings on the Hong Kong stock exchange for PRC companies that are also becoming more international in their orientation everyday.

Democracy is predicated on the assumption that there will be disagreements, and disagreements are settled in democracies by the ballot box. Today's disagreements in Hong Kong are over how best to govern and, for the most part, there is a legislature that is balanced with a lot of different views, but with general agreement that Hong Kong's future is best served by better communication between government and the governed. An unproductive debate on whether some in Hong Kong are being influenced by outsiders is the last thing that men and women of goodwill should engage in, What will work best is for all parties, across the political spectrum in Hong Kong, to forge responsible positions that contribute to the resolution of Hong Kong's governing structure and its prosperity.

Our role is clear. We want to see the Hong Kong people succeed. They deserve a stable and prosperous home. The best means to that end, in our view, is the steady evolution of Hong Kong toward its democratic future. That future should rightfully be in their hands, for them to decide. We don't seek to usurp their decisions, nor do we intend to interfere with the Hong Kong people's relationship with their central government in Beijing. But the United States will always stand for the fundamental principles of democracy, and we will not shrink from declaring our core principles. We certainly won't agree with those who argue that democracy is a luxury to be offered to a people only at some distant point in the future when they are somehow more prepared for it. The most telling point that can be made about Hong Kong's legislative election is this: the Hong Kong people proved again that they have the wisdom and maturity to be trusted with universal suffrage. They are a proud, smart, capable, and industrious people who deserve the best possible chance to succeed in the 21st century.

With that Mr. Chairman, I will be pleased to take your questions.

PREPARED STATEMENT OF MICHAEL C. DAVIS

SEPTEMBER 23, 2004

Mr. Chairman, let me first express my appreciation for holding this hearing on the Hong Kong election. The development of democratic governance in Hong Kong has long been a matter of great interest in the United States. In the recent flurry of reports over the Hong Kong election some international media reports highlighted that Hong Kong people had chosen stability over democracy. I think this misreads voter preferences in Hong Kong. An assessment of the complexity of and obstructions built into the Hong Kong electoral system may assist your assessment of the

September 2004 Legislative Council election in Hong Kong. At 55.6 percent of the registered voters, the September 12th election had the highest voter turnout in Hong Kong history. As with the previous high turnout, just after the handover in 1998, this increased voter interest may reflect growing public concern with governance in Hong Kong. The election has exposed a number of problems in respect of Hong Kong's political development under the commitments of the Sino-British Joint Declaration and the Basic Law. While there were some concerns about the balloting process, more serious concerns have arisen over the basic fairness of the election.

Respecting the former, the balloting, though generally successful, was occasionally marred by acts of incompetence in the maintenance and availability of ballots. This involved some instances where over-filled ballot boxes lead to delays in allowing some voters to cast their vote. Some members of the democratic camp in Hong Kong have worried that when this became public knowledge it may have deterred some voters from coming to the polls. As a consequence of this problem some ballot boxes were allegedly opened in an inadequately supervised manner in order to tamp down the ballots inside. There may have been some diminution of these difficulties and greater confidence in the voting process if election officials had taken greater advantage of local and international election monitors who were on hand to observe and offer advice. Other than these cases of seeming incompetence there appeared to be generally an acceptable level of performance in respect of the mechanics of the electoral process.

More serious electoral problems arose in respect of the overall fairness of the election and its implications for Hong Kong's political development. Two key areas are of concern: (1) the fundamentally unequal voting system, and (2) the level of intimidation and seeming official bias that preceded the election. Problems in these areas undermine public confidence in the "one country, two systems" model and represent a serious challenge to Hong Kong political development. Chinese and Hong Kong officials should be encouraged to adopt a firm timetable to move forward on Hong Kong's political reform agenda as required by the Sino-British Joint Declaration and the Basic Law.

THE UNEQUAL VOTING SYSTEM

The stark denial of equal voting rights in this system is most simply revealed in the numerical outcome of the election: overall, candidates from the pan-democratic camp garnered approximately 62 percent of the vote but were allotted only about 41 percent of the seats in the Legislative Council. This odd numerical outcome is a consequence of a voting system designed to insure an electoral outcome favorable to the existing government and its policies. This has been combined historically with a deep-seated distrust of pro-democracy politicians. Given the relative moderation of the democratic camp in Hong Kong this distrust has long been unwarranted. Under the current system, driven by these concerns, fully half of the 60 seats in the Hong Kong Legislative Council are filled by legislators from functional constituencies representing in total just under 200,000 voters. Of the 30 functional constituencies ten have purely human voters, while 20 have either corporate voters alone or a mix of corporate and human voters. The bias of these constituencies toward the pro-government/Beijing position is revealed in the fact that pro-democracy candidates, in spite of winning 50 percent of the functional constituency vote, were only able to take eight of the functional constituency seats, the highest number they have taken in this sector to date over three elections. Eleven functional constituency candidates even ran unopposed, producing for the pro-government camp without contest nearly two-thirds of the seats that pan-democratic candidates won in the hard fought geographical constituency component of the election.

Only 30 legislators are directly elected in geographical constituencies by the 3.2 million registered Hong Kong voters. Even for the directly elected seats the government has devised a proportional representation system which aims to insure that minority parties—in Hong Kong generally meaning pro-government/Beijing parties—take several of the seats with only a small fraction of the vote. This system entails multi-seat districts with voters having only one vote for their favored candidate list. The purpose is allegedly to allow representation of minority parties and candidates. The consequence in Hong Kong has tended to be to gain some additional seats (in addition to those virtually guaranteed seats in the functional constituencies) for pro-government politicians. If one appreciates that the government itself is not directly elected then the deleterious consequence for democracy can be appreciated. This system allows pro-Beijing politician supported by a minority of voters to dominate the Legislative Council. The outcome in this election is that 34 or 35 (depending on whether one legislator is deemed an independent) seats are in the

pro-government camp, while 25 are held by pro-democracy politicians. The pro-democracy camp effectively lost the election with 62 percent of the popular vote.

This proportional representation model used for the 30 geographical constituency seats in Hong Kong has other flaws. Under this system the need for parties and politicians to agree on the number and order of candidates on a list breeds endless conflict in and among political parties from all political camps, as parties seek to devise electoral lists that satisfy the electoral ambitions of their core members and allied parties. At the same time various parties in both the pan-democratic and the pro-government camps are put to predicting the level of support and devising the correct number of lists so as to maximize the number of seats taken in the direct election. A miscalculation in this regard could result in a list garnering a large number of votes that practically do not count toward the electoral outcome. This is in fact what happened in the present election for the Hong Kong Island constituency, resulting in an even split of the six candidates between the pro-democracy and pro-government camps, even though the pro-democracy camp won the popular vote by approximately 200,000 as against the pro-government camp's 140,000 votes. This system not only confuses and angers voters but also undermines democracy by wasting many votes. Even within the parameters of a proportional representation system simply allowing voters to indicate a second choice so as not to waste votes would contribute to greater concurrence with voter intentions.

INTIMIDATION OF VOTERS AND CANDIDATES

The September 12 election was preceded by months of political intimidation, first over political reform and then over the election itself. This intimidation and the doubts that preceded it raise grave concern for Hong Kong's political future. The current democracy debate followed on the heals of the large demonstrations against national security legislation by over a half-million demonstrators on July 1st 2003. The overbearing and dismissive way in which the government had presented this legislation had incensed Hong Kong people and signaled the need for political reform. The national security legislation was eventually withdrawn in the face of such severe opposition. In spite of popular outrage over the style of governance the local and Beijing governments have not been significantly responsive to emerging calls for democracy. In late 2003 and early 2004 Beijing took an increasingly assertive position against democratic reform. Retreating to its long-establish hostility toward the democratic camp and democratic reform, Beijing launched a campaign against democracy and severely attacked the democratic camp. This campaign constituted the backdrop to the current election. Statements from Beijing officials and supporters initiated a level of intimidation that had not been seen in Hong Kong since the attacks on the British Hong Kong government in the mid 1990s. These attacks progressively escalated as follows:

First, Beijing officials and their supporters launched the so-called patriot debate. Hong Kong was told that under any democratic reform "patriots must be the main body of those who govern Hong Kong." While Deng Xiaoping was cited for this requirement, Deng was frequently on record as indicating that patriots do not exclude people who criticize the communist party. Categories of democracy activist who were labeled unpatriotic in this campaign included those who were said to be subversive of mainland authorities, those who allegedly supported Taiwan independence, those who raised the flag of democracy but were accused of being running dogs for Western forces, and those who opposed the Article 23 national security legislation. The patriot debate reached its zenith when former Democratic Party Chair Martin Lee was attacked for testifying before a US Senate hearing on Hong Kong. He was vilified by a variety of leftists but the greatest attack came when Mr. An Min, a PRC Vice Minister of Commerce attacked even Martin Lee's father, General Li Yinwo, who had been an officer in the KMT resistance during World War II.

The second stage of the attack on democracy was to offer a steady diet of Deng Xiaoping statements arguing the meaning of "gradual and orderly progress." This was cherry picked to suit the moment and again with no Basic Law support. As it became apparent that "Deng thought" could be used on either side this barrage slowed down. Ultimately, one suspects the best source of Deng thought is the Basic Law, which is better subject to current interpretation—rather than vague and contradictory interpretations. Such is more consistent with the rule of law.

The third stage of this attack on democratic reform became even more aggressive when the Beijing media started publishing threats to dismiss the Legislative Council if democrats took more than 30 seats in the September elections. The China Daily warned, "If those who try to use democracy to exclude the Communist Party of China and 'respect Taiwan self-determination' take the majority of seats in Legco, Hong Kong's executive-led government will collapse and the central authority and

national security will be severely challenged." The local pro-Beijing paper, the Wen Wei Po, quoted an unnamed Beijing official as saying, "I have a knife. Usually it is not used but now you force me to use it." These statement were understood locally to threaten dissolution of the Legislative Council if pro-Beijing parties lost control in the next election. It is true that the Basic Law has provisions specifying that the Chief Executive may dissolve the Legislative Council, after consultations, if it refuses to pass bills proposed by the Chief Executive. But these provisions require a new election of a new Legislative Council and specify that if the Legislative Council again refuses to pass such bill then the Chief Executive must resign. It must be seriously in doubt whether the current non-elected Chief Executive would willingly subject himself to what amounts to a referendum. This actually points to another argument for democratization, as the Basic Law constitutional design clearly contemplates the use of such provisions by an elected Chief Executive with political support. The only alternative to using these provisions for the purpose implied in the above comments is the declaration of a state of war or turmoil under Article 18, but such extraordinary provision only indicates the application Mainland laws, not dismissal of government.

The fourth phase in the crisis was to lecture Hong Kong on the "spirit" of the Basic Law and the demerits of "fake democracy." Hong Kong was told by a mainland "legal expert" that the spirit, not words, is the key to the Basic Law. The spirit in question appeared to be a very mainland-regarding spirit and offered little regard to the long ago assurances that Hong Kong people should put their hearts at ease and that the rest of the world might rely on Hong Kong's autonomy. The pro-Beijing business elite has also weighed in on this spirit, asserting a Hong Kong by and for business interests and worrying about a welfare state. At this stage the extreme rhetoric had caused such a negative response in Hong Kong it seemed to be called off.

The fifth phase in the current process was launched by the announcement that the NPC Standing Committee would interpret the above noted reform provisions in the Basic Law. The NPC Standing Committee made this interpretation behind closed doors with the advice of a Basic Law Committee made up of six mainland and six local members, the latter all being from the pro-Beijing camp. This interpretation essentially added the requirement that the Chief Executive initiate any reform process by issuing a report. The Chief Executive and Task Force reports that quickly followed effectively imposed a variety of socio-political conditions on reform. On April 26, 2004, a further NPC Standing Committee interpretation in response to the Chief Executive's report largely ruled out significant democratic reform. Essentially, Beijing has seized for itself control over not only the approval but the initiation of any future reform effort. Unless Beijing has a change of heart it is likely that it will only allow future reforms that retain Beijing control over critical political outcomes.

A sixth stage in the reform debate has seen Beijing, after its April 26th interpretation, seek to gain a favorable electoral outcome in the September 2004 Legislative Council election. This has been done through a variety of strategies. There have been allegations of heavy-handed tactics in registering voters and allegations of intimidation of popular radio talk-show hosts. More clearly visible has been support for pro-Beijing candidates (and opposition to democrats) in the Central Government controlled media and soft inducements toward patriotic support through military parades and visits by Olympic medalists. The carrot of better dialog with the democrats, aimed at reducing the size of democratic support in public demonstrations and elections has also been tried. It is not clear whether there is any hope of reversal of the anti-democrat stance. During the election period Beijing appeared to articulate support for pro-Beijing politicians in various pro-Beijing newspapers, especially the Hong Kong edition of the China Daily. There have also been various accusations of Beijing meddling in organizing the pro-Beijing camp, in deciding who should stay in or drop out of the elections. During this period Mainland public security officials also arrested on prostitution charges and detained without trial for six months of reeducation a member of the Democratic Party who was running for the Legislative Council. The daily diet of drawing attention to Democratic party difficulties in pro-Beijing papers has generally been seen as an effort to gain local support for pro-Beijing candidates.

THE FUTURE OF "ONE COUNTRY, TWO SYSTEMS"

The basic constitutional and electoral design in Hong Kong has long sought to privilege the Beijing appointed local government and its supporters. That elected Hong Kong politicians swear to uphold the central government is, of course, a legitimate Beijing concern. The problem for Hong Kong has been the degree of Beijing's

concern over political loyalty and the measures taken to insure full political support. One would like to see a more generous posture that aimed to keep the fundamental democracy and human rights commitments required by the Sino-British Joint Declaration and international human rights law. The Sino-British Joint Declaration provides for a high degree of autonomy in Hong Kong and that democracy and basic civil liberties be protected in accordance with international standards. By inviting international support for its "one country, two systems" model China has invited international concern for these commitments.

In respect of democracy, the Sino-British Joint Declaration requires that members of the Legislative Council be chosen by elections. The Hong Kong Basic Law, in this respect, reflects the above noted Beijing anxieties, by providing for a very slow pace of democratic development. Articles 45 and 68 and Annexes I and II of the Basic Law outline the method and pace of democratic development. These articles specify the ultimate aim as full universal suffrage both in respect of the Chief Executive and the Legislative Council. The annexes in question provide that the method for choosing the Chief Executive and the Legislative Council can be changed for elections subsequent to 2007. In April of 2004 the Chinese government, in interpreting the Basic Law, rejected any substantial changes for the upcoming 2007/2008 elections. Many pro-democracy politicians have run on a platform of trying to change this position and encourage a more firm and prompt timetable for democratic reform.

An additional factor making democratic reform of great urgency is the political impotence of the Legislative Council. The Legislative Council is currently restricted from proposing bills on public policy and bills that require public expenditure. A split voting system between directly elected and functional legislators further ties the hands of legislators who would like to take the initiative on matters of public concern in Hong Kong. The Basic Law provides a way out of this by allowing for a change in both the method of election and the methods for voting on bills from 2007. These provisions on reform were the source of the recent tension over political reform. The democratic camp pushed for democratic reform and the Beijing government refused such reform, leaving Hong Kong largely polarized over its political future. This debate became the basis for the extreme intimidation over the past few months, which carried over into the just-completed election.

In considering the future of "one country, two systems" in Hong Kong, it is obvious that the time for establishing a substantial reform agenda is fast approaching. Without reform it appears that the level of trust in government will continue to erode. This will mean a government with decreasing legitimacy prone to crisis management and indecisiveness. Rather than congratulating themselves for avoiding a train wreck in the current election local and central officials should recognize the need for political reform before confidence is eroded further. The costs to Hong Kong of continued dithering over political reform can be enormous. Hong Kong is clearly positioned quite favorably for full democratic development. The levels of civic engagement and economic development both point to a society well positioned for a democratic transition. Without forthright movement on reform the risk that Hong Kong will fall back from this favorable posture and enter a phase of continuing political crisis and lost public confidence is high.

At this stage the only obstacle to democratic reform appears to be Chinese government anxiety about democracy and democrats. The cure to this I believe is greater Beijing engagement with the pro-democracy camp. China's leaders, the Hong Kong Government and pro-Beijing politicians should be encouraged to take a more inclusive and tolerant attitude toward democracy and democrats. The costs of stifling Hong Kong's political development have already been evident in uncertain governance and a series of crises that have emerged in Hong Kong since the handover. A government which has no popular legitimacy in a democratic process, supported by unpopular legislators who do its bidding, has clearly angered the Hong Kong public on several occasions. This was especially evident in the mass demonstrations over national security legislative proposals in 2003 and over democracy in 2004. A more inclusive system of democratic governance offers much greater promise for Hong Kong and China and would better address the human rights concerns of the local and international communities. A movement toward greater inclusiveness would appear to be the next step in Hong Kong's democratic transition. From such posture the Beijing government should work out a clear time-table for full democratic reform to be achieved as soon as possible.

PREPARED STATEMENT OF WILLIAM H. OVERHOLT[1]

SEPTEMBER 23, 2004

SUMMARY

The recent Hong Kong election was noteworthy for:

- Very gradual democratization;
- Recent new restrictions on the pace of future democratization that clearly frustrate a majority of Hong Kong people;
- Chinese central government fear of the democracy movement leading to repressive tactics that are largely legal but ultimately contrary to its own interests;
- Some unsettling incidents of legal and illegal intimidation prior to the election;
- A high turnout election in a calm atmosphere with an outcome that was not affected by the incidents;
- A voting majority above 60 percent for pro-democracy candidates;
- An electoral system that nonetheless translated the pro-democracy majority vote into a majority of seats (35/60) for pro-government conservatives;
- A clear mandate for a strategy of democratization and moderation;
- Weak, semi-competent, scandal-ridden political parties poorly representing their social bases;
- A democracy movement caught between a rising, frustrated consensus on the necessity of more rapid democratization and a deepening consensus against direct confrontation with Beijing;
- Deep division in China over proper policy toward Hong Kong;
- Considerable hope in Hong Kong for an understanding that accommodates both Hong Kong's democracy aspirations and China's security concerns;
- Policy proposals in the U.S. that expressed understandable frustration but risked undermining the democracy movement.

GRADUAL DEMOCRATIZATION/ABSENCE OF DEMOCRACY/RISING FRUSTRATION

Hong Kong has been experiencing very gradual democratization. Up to the time when China demanded Hong Kong back from the British, 100 percent of legislators were appointed by the British Governor. Effective with this election, 0 percent of legislators are appointed.

Notwithstanding this gradual improvement, the system has not progressed to the point where even very popular views can effect structural change or ensure policy change. China's central government handpicks the Hong Kong Chief Executive through a carefully chosen small committee that has no autonomy. The central government has less control over the legislature, but the elitist functional constituencies constituting half of the legislature (30/60) heavily weight electoral outcomes in favor of candidates who follow the Chief Executive's wishes; that gives the Chief Executive effective control over most policy issues.

DIRTY EVENTS/CLEAN ELECTION

A number of intimidating incidents and violations of people's freedoms occurred prior to the election. Beijing efforts to contain the democracy movement have been directed primarily not at this 2004 election but at staunching pressures for universal suffrage elections in 2007–8. Chinese officials and media announced in late 2003 and early 2004 that Hong Kong could only be ruled by patriots and put a newly restrictive interpretation on "patriots." The Politburo Standing Committee issued a quasi-constitutional "interpretation" of Hong Kong's Basic Law that barred universal suffrage elections in 2007–8. (China has the unambiguous legal right to make that decision; the issue is not whether it is legal but whether it is sensible policy.) A Chinese fleet sailed through Hong Kong harbor for the first time since 1997, and the Peoples Liberation Army held its first-ever military parade in Hong Kong. Equally prominent were carrots designed to win favor from Hong Kong people, most notably measures that successfully reflated the Hong Kong economy, visits by Olympic athletes and a finger of Buddha, conciliatory albeit uncompromising vis-

[1] The opinions and conclusions expressed in this testimony are the author's alone and should not be interpreted as representing those of RAND or any of the sponsors of its research. This product is part of the RAND Corporation testimony series. RAND testimonies record testimony presented by RAND associates to federal, state, or local legislative committees; government-appointed commissions and panels; and private review and oversight bodies. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors.

its from Beijing dignitaries, and gradually increasing willingness to consult quietly with pro-democracy figures.

Second, and quite separately, there was also a series of human rights and democracy violations affecting the current election whose origin and intent were more obscure. There were isolated reports of attempts from people on the mainland side of the border to influence votes, including demands for cell phone photographs of their completed ballots. Three radio station hosts resigned after alleged intimidation. A Democrat Party candidate was imprisoned for soliciting a prostitute. Office fronts belonging to three prodemocracy figures were vandalized. Some commentaries lumped such incidents together as part of a concerted campaign by Beijing to influence the election.

The reality behind these violations was more complex. Some were unambiguous violations of ambiguous origin. Some may or may not have been actual violations. The head of a movement opposing further landfills in Hong Kong's harbor was threatened, resigned his position, and left Hong Kong. The vandalism definitely occurred. In all probability there were some actual cases of people in China trying to impose voting choices on Hong Kong people.

However, unlike the clear effort to repress demands for universal suffrage in 2007–8, the origins and intents of these violations related to the 2004 election remained unclear. It is difficult to imagine Beijing taking a serious interest in the Save the Harbour movement, easier to imagine action by enraged local business interests, and successor Christine Loh seems not to have been intimidated. Radio host Albert Cheng, who had been physically attacked in the past after for publicly denouncing triad criminals, said he resigned because of threats, but he then ran for election, giving his abrasive views a much bigger megaphone, and won. Apparently he felt intimidated about one job but not the other; he certainly did not moderate his views.Radio host and former conservative politician Allen Lee resigned following what he believed was an intimidating phone call that referred to his virtuous wife and beautiful daughter; it transpired that the phone call came from a retired Chinese official, Cheng Sousan, who had made such calls to quite a number of people, who apparently didn't feel threatened, and Beijing immediately identified the person in question. Was this intimidation, or an elderly gentleman seeking news?

Democrat Party candidate Alex Ho was arrested for soliciting a prostitute. Fearful democrats could reasonably infer malice when a single Democrat was arrested at this particular time although numerous other politicians, officials and executives were vulnerable to arrest for the same offense over the years and few or no others have been arrested. On the other hand, despite the scandal, the Hong Kong government certified Ho as a candidate even though it might have been able to interpret the law restrictively. If the goal was to hurt the Democrats in the election, Alex Ho was a strange target, since nobody gave him any chance of election. Was such an arrest part of a grand Beijing intimidation plan or some local prosecutor trying to impress his boss?

I do not know conclusively whether Beijing strategy or local political entrepreneurship or business vengeance was behind any of these cases. Anyone who claims to know must elucidate details and show evidence. It is difficult not to notice that Beijing's repressive posture regarding 2007–8 exhibited a very clear strategy, with sticks and carrots clearly proportionate to the (regrettable) goal it sought to achieve, whereas the incidents affecting the 2004 election made no strategic sense either individually or as a group. To put it another way, Beijing has so far taken a clear repressive stand on the issue of structural changes in the electoral system, but there is as yet no persuasive evidence that it is interfering with the election process itself.

Third, there were occasions of election day incompetence. Long lines formed at some polling booths and some ballot boxes were not big enough to accommodate the consequences of larger turnout, larger ballots, and crumpled ballot sheets. There is an argument that pro-democratic voters tend to vote later and therefore may have suffered more discouragement from late-day delays. Conversely, there are reports of more votes than eligible voters in some of the functional constituencies won by democratic groups.

Through the fog of conflicting evidence on such incidents, five things stand out.

- The functional constituency structure is designed to allocate seats disproportionately to conservative forces and did so.
- No commentator of standing, including the most partisan, has argued that any of these instances of intimidation, rights violations or incompetence significantly affected the basic shape of the election outcome. Exit polls and election results tallied to the degree expected in a proper election. The balloting process was basically clean and calm despite the problems.
- In longer perspective the main consequence of the anti-democratic incidents has probably been to broaden and deepen the appeal of the democracy movement.

- There has been a permissive atmosphere in which threatening incidents have become more common than in the past. The Hong Kong government has an indisputable responsibility for ensuring an atmosphere of rigorous observance of people's rights, and it will at some point have to provide a thorough account of how vigorously it protected rights, what scale of investigative resources it devoted to identifying potential malefactors, and most importantly whether the permissive atmosphere disappears.
- The body of Hong Kong's freedoms of speech, press, religion, assembly, rule of law and so forth, remains intact, but has accumulated dents and scratches at a rate that raises concerns.

The real issue for Hong Kong democracy is not the detail of this legislative election but whether there will be substantial, early progress toward a system that would give Hong Kong people more direct leverage over the officials and decisions that affect them or whether, on the contrary, democratization will be indefinitely stalled.

THE ELECTION OUTCOME

The election itself enjoyed a record turnout of 55.6 percent and a calm atmosphere. Clearly a majority of Hong Kong people felt that their votes mattered and that they were comfortable voting.

Pro-democratic groups got over 60 percent of the vote but only 25 of 60 seats. Beijing takes heart from conservatives' continued numerical control of the legislature, while democrats demonstrated, and slightly increased, their dominance of the popular vote. Among the conservatives, the Liberal Party gained substantially and won its first ever popularly elected seats. Much of its popularity was due to the fact that it has not been a conservative rubber stamp. Liberal Party leader James Tien resigned from the government last year to oppose the controversial anti-subversion law, and the Liberal Party platform calls for universal suffrage elections in 2012. Hence the Liberal Party's gains demonstrate simultaneous support for wider suffrage and for moderate strategies.

While the results send a strong message to Beijing that Hong Kong's majority wants wider suffrage, they also demonstrate a continued embrace of moderation by a large center of gravity of the electorate. There have been huge controversies over the antisubversion bill of 2003 and over suffrage for the 2007–8 elections, but and the Hong Kong majority is standing firm about these issues but is equally firm about avoiding gratuitous confrontation.

An important caveat to the electorate's embrace of moderation comes from the elections of abrasive former radio commentator Albert Cheng and disruptive Trotskyist "Long Hair" Leung, which constitute a warning that segments of public opinion can take a different turn if aspirations are frustrated too long. Cheng is the Ralph Nader of Hong Kong and Leung is analogous to a leader of the old 1960s "Weatherman" faction of Students for a Democratic Society. Conservative groups associate opposition to democracy with "stability," but the election of "Long Hair" indicates that rigidity and social frustration could cause future instability.

Collectors of historical ironies should note that the single most unsettling aspect of this election for Beijing was Hong Kong's first-ever election of a disruptive Marxist, and the most upsetting thing for Hong Kong's democrats was Beijing's insistence on further entrenching rules that give special advantages to Hong Kong's leading capitalist interest groups.

AN IMMATURE PARTY SYSTEM

It would be a mistake for either Washington or Beijing to view the election results as a clear image of the electorate's sentiments. Not only are the rules such that democratic groups' majority of the popular vote translates into a minority of seats, but also immature political parties only partially translate the breadth and intensity of democratic sentiment.

Democratic political parties are split and much weaker than the social forces they represent. There are several distinct parties among the democracy advocates. The Democratic Party of Hong Kong has a total of 638 members (according to its website on September 15, which cites July 2004 figures) and negligible ability to raise funds from Hong Kong citizens. It is deeply divided between an elitist leadership and a populist base, and between older leaders who are confrontational toward China and

younger supporters who are far less so. It lacks distinctive policies on the principal social and economic issues facing Hong Kong.[2]

For some years new leadership, under Yeung Sum, has run the Democratic Party of Hong Kong, with Martin Lee continuing to serve as a primary spokesman toward foreigners because of his exceptional command of the English language. In addition, other democratic groups have arisen. Audrey Eu is now the most popular figure in the democratic movement, running first in popularity among legislators compared to Martin Lee's seventh, and her Article 45 Concern Group has, according to HKU POP polls, slightly exceeded the Democratic Party in name recognition among the electorate.[3] Political figures like Audrey Eu, Ronnie Tong, Alan Leong, and Margaret Ng are coalescing into what may become a formal political party.

The conservative DAB, which won the most seats, is better organized than any other party. Its links to its constituents are based on detailed study and emulation of the major U.S. parties. DAB events are well funded due to the contributions of the local subsidiaries of Chinese state enterprises—a large advantage in any polity. It receives loyal support from the trade union leadership. (Over 90 percent of the union functional constituency vote went to conservative groups.) But it has lost credibility from support of last year's government-proposed anti-subversion law, from abandonment of past promises to advocate democratization, and from some deeply ideological leadership. In the previous election, it was severely set back by leadership scandals, and its improved position this time is largely a bounce-back from those scandals.

The issue of outside influence over Hong Kong campaigns continues to have great salience. Many in China charge that the democratic movement is manipulated by the United States and support their charges by citing Martin Lee's long reliance on an American strategy advisor, his vigorous solicitation of foreign support, and his pre-1997 characterization of laws restricting foreign political party donations as a human rights abuse. Grants from American NGOs, his warm welcome in Washington in March of this year, and the National Endowment for Democracy's presentation to him of a democracy award modeled on the statue of freedom in the 1989 Tiananmen Square demonstrations have been emotionally gratifying for some Americans, but their main consequence has been to bolster the hardliners in Beijing and to fuel controversy inside Hong Kong's democracy movement. In recent years, Lee's foreign support has undoubtedly hurt his party more than it has helped. Every conversation I have about Hong Kong in China, even with the most sympathetically liberal figures, quickly homes on this issue of U.S. manipulation.

Having said that, anyone who has lived in Hong Kong, as I have, knows that those long lines of middle class families demonstrating against tough anti-subversion laws and in favor of greater democratization come from the heart and could not imaginably be mobilized by foreigners. U.S. favoritism toward Lee may in fact have weakened the ascent of stronger leaders in his own party and also slowed the competitive rise of parties more likely to be able to consolidate the democratic movement. A lesson from the business world: any party that depends for long periods on foreign NGO donations is never going to learn to raise money itself. The rising stars of the democracy movement are not those with particularly strong foreign connections. The charge of U.S. domination of the democracy movement is false, but our own actions make it difficult to convince a skeptical observer.

Mainland Chinese influence on the other hand is everywhere manifest. Mainland officials authoritatively exhort members of the Chief Executive Selection Committee to back Tung Chee-hwa. While the subsidiaries of mainland firms operating in Hong Kong are local entities, the extent to which they finance the DAB by funding its events certainly gives Beijing great leverage. DAB leaders reverse their policy positions, including on democratization, when Beijing demands it.

WHERE DOES HONG KONG GO FROM HERE?

Hong Kong's future path will depend on the wisdom of leaders in Beijing and Hong Kong. Success, even if defined narrowly in classic Hong Kong terms as stability and prosperity, will require compromise on both sides. Instability and decline will result from rigidity or confrontation on either side.

Hong Kong immediately after the election is quiescent. Conservatives among the leaders in China may see this as confirming their view that a combination of prosperity and firmness will squelch the democratic movement. Many Chinese as well

[2] See for instance its website statement of education policy, a subject where major reform is a vital issue for Hong Kong's future: http://www.dphk.org/e site/index e.htm.

[3] See the Hong Kong University Public Opinion Poll surveys of August 9–16, 2004, and September 14, 2004. http://hkupop.hku.hk/english/release/release241.html

as foreign experts recognize that as an illusion. There was a time when Hong Kong people were apolitical and obsessed with economic growth to the exclusion of political concerns. Two things have changed that. First, there is a pervasive sense among political aware groups that Beijing chose an ineffective leader for Hong Kong, then insisted on reselecting him, and that Hong Kong's future therefore depends on Hong Kong people being given a chance to choose their leadership. Second, the Tung government's handling of the Article 23 controversy of 2003 created for the first time very focused popular fears about their freedoms. A Chinese policy of trying to push back the tide will not bring stability, whereas a policy of gradually channeling the tide will benefit all parties.

The center of gravity of Hong Kong opinion wants both moderation and democratization. It recognizes that confrontation with Beijing in the service of democratization is selfdefeating, and hence it seeks to reassure. The most important democratic leaders in Hong Kong, including Martin Lee, have for instance recently been emphasizing their consensus acceptance of Chinese sovereignty over Hong Kong and also Taiwan. Some reached out to China by re-labeling the July 1, 2004, demonstration for democracy as a "celebration of civic society." From personal experience I can testify that most people in the democratic movement celebrate China's successes. But a clear majority also demands improvement of the current system and, if the policy of democratic reassurance fails to find partners in Beijing, political pressure will build up like steam in a covered kettle. When and how that steam will vent I cannot predict, but eventually it will.

While the strategy of reassuring Beijing while pressing hard for greater democracy provides the only strategy that has any chance at all of success for Hong Kong's democracy movement, there is no assurance whatever that it will succeed. That depends on politics in Beijing, and I cannot predict the outcome of that process. In pure policy terms, there is a great divide between the top leaders' current choice of a hard line and the view of large numbers of officials and scholars with expert knowledge of Hong Kong that the hard line is self-defeating. Policy analysis has suffered from what I call the Three Confusions: confusion of Hong Kong, where there is virtually no separatist sentiment, with Taiwan; confusion of the meaning of traditional lawful demonstrations in Hong Kong with disruptive demonstrations in the mainland; and confusion of the anti-China tactics of a few older democratic leaders with the moderate loyal sentiments of the overwhelming majority of the democratic movement. There is reason to hope that, with greater experience on the part of the new leaders, such confusions will dissipate.

Purely political considerations, however, dim the prospects for such intellectual clarity in the short run. Perceptions of Hong Kong have become tied to a crisis atmosphere regarding Taiwan. Moreover, any leaders who might wish to pursue a more generous approach to Hong Kong are exquisitely vulnerable to the charge that they are insufficiently attentive to the security of the nation. In China as in our own country, there is no more serious charge.

Such overwrought charges have been magnified during a transitional period of divided leadership in 2003–2004, as they have been during own election. With the retirement of all the top leaders of the pre-2003 era transitional stresses should decline. In addition, Beijing leaders are exhibiting more willingness to talk with leaders of the democracy movement. In the past they have largely limited senior Chinese consultations to Hong Kong groups that have strong business interests to oppose democratization, but now they are broadening their contacts and possibly their vision. That is a good start. But the prosperity and stability they seek will eventually require substantial steps toward the democratization that is enshrined as the ultimate goal in the Basic Law, a document that Chinese leaders wrote themselves.

The key strategic considerations for the democracy movement are two. First, democratization will never happen unless the central government is comfortable with it. (The Basic Law shows that in principle they can get comfortable with it.) Second, in an executive-led government, the key to giving the people some influence over policy is to give them traction over the choice of Chief Executive. Short of direct universal suffrage election of the Chief Executive, which China banned for 2007–8, there is an infinitely divisible range of possibilities from the present near-zero traction up to broad popular election of the Selection Committee, which would then function like the U.S. Electoral College.

The key strategic consideration for China should be straightforward. Because of recent demonstrations, the central government fears instability in Hong Kong. But repression of popular desires for wider suffrage will cause instability whereas satisfying them will ensure stability and continued loyalty. The argument to the contrary is based on what I have called the Three Confusions. The argument that Hong Kong can be stabilized by purely economic means is obsolete. The argument that democratization in Hong Kong will destabilize the rest of China is wrong; ever since Deng

Xiaoping invented one country, two systems, there has been broad acknowledgment that the Hong Kong system is different. While the argument that the central government can't make political concessions as a result of demonstrations in Hong Kong without encouraging demonstrations in the mainland has some validity, any capable mainland politician of good will should be able to overcome this by making the case that broader suffrage was encouraged by the Basic Law and negotiated with parties that are emphasizing a policy of reassurance.

U.S. INTERESTS AND POLICY

The United States has large interests in Hong Kong. Tens of thousands of Americans live there, and tens of billions of dollars of American money are invested there. We enjoy the ability of our Navy to visit Hong Kong. But economic and strategic interests are mostly not at stake in the debate over Hong Kong democracy. When Americans and American businesses leave Hong Kong, they predominantly move to Shanghai, which is less democratic. Militarily the Hong Kong port calls are a convenience, not a necessity, and anyway they are not at stake unless we have a larger confrontation.

For the purpose of this hearing, therefore, the American interests at stake are our fellow feeling for the Hong Kong people, our sympathy for the democratic movement, and our hope that China under its new leaders can become as comfortable with democracy in Hong Kong as they have become with the rule of law in Hong Kong.

U.S. policy has a frustrating dilemma. Americans love democracy and would like to support it in Hong Kong, but we have limited positive leverage and great negative leverage. Stating our views emphatically and reasoning with Chinese officials can help; most are in fact open to dialogue. Ultimately, no matter what we do, there is no assurance that China's central government will move in the direction we prefer. The best we can do is to argue our case and to avoid actions that would impair chances for a broader suffrage.

There have been proposals to express our concern over China's recent hard line by removing Hong Kong's status as a separate customs territory or removing its exemption from export controls. Changing Hong Kong's separate trade status would cause grievous harm to precisely those Hong Kong people they purport to help. Removing its exemption from export controls would destroy the ability of banks, including our own banks based there, to upgrade their computers; that would destroy Hong Kong as Asia's and America's regional banking center and cause grievous harm to the people we wish to help. Turning to political strategy, confrontational policies would defeat the moderate strategy of the democratic forces in Hong Kong and the desire of Hong Kong people for a strategy of moderation as clearly expressed in this month's balloting. Nothing serves China's hardliners better than an ability to portray the Hong Kong problem as a confrontation with the United States rather than a negotiation with some of their own people. Times may change, but for now the American posture most supportive of Hong Kong's democratic forces combines a clear voice with avoidance of confrontation.

Put another way: We Americans have every right to press China to show some respect for the clear mandate the Hong Kong people gave for a policy of democratization and moderation. When we make that case, we incur our own obligation to show respect for the second part of the mandate as well as the first.

There are also clear implications of this analysis for the roles of U.S. government-related NGOs. Teaching all political parties in Hong Kong how to organize and raise funds from the electorate provides an unexceptionable service. The parties advocating democratization benefit disproportionately from such a service, because they don't have Chinese enterprises funding their events, but the service itself does not discriminate between the DAB and the Democratic Party, and, equally important, it does not favor one democrat over another. On the other hand, with anti-democratic conservatives basing their influence on an argument that democratization in Hong Kong equates to instability, a policy of systematic American favoritism toward one particularly anti-Chinese figure, and awarding him a statue that associates Hong Kong's democracy movement with Tiananmen Square 1989, seriously damages the prospects of democratization. The ancient rule of the medical profession is valid here: When you seek to help a patient, first do no harm.

PREPARED STATEMENT OF HON. JAMES A. LEACH, A U.S. REPRESENTATIVE IN CONGRESS FROM IOWA, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 23, 2004

2255 Rayburn House Office Building We convene the CECC today to examine the progress and prospects of constitutional development in Hong Kong. Nothing could be more timely, given the Legislative Council elections that just concluded on September 12. Whether the 21st Century is peaceful and prosperous will depend on whether China can live with itself and become open to the world in a fair and respectful manner. Hong Kong is central to that possibility. As such, Hong Kong's affairs and people deserve our greatest attention, respect, and good will.

America and China both have enormous vested interests in the success of the "one country, two systems" model in Hong Kong. From a Congressional perspective, it seems self-evident that advancing constitutional reform—including universal suffrage—would contribute to the city's political stability and economic prosperity. In that light, the September 12 elections had both good and bad news: while a record number of Hong Kong's voters turned out and voted heavily for candidates favoring continued reform, the bad news is that the process was constrained by rules under which the Hong Kong people could not enjoy full democratic autonomy. Hence, we continue to be concerned that while recent decisions by Beijing that set limits on constitutional development in Hong Kong implicitly acknowledged a degree of autonomy for Hong Kong, they do not represent a forthright commitment to the "high" degree of autonomy that was promised by the central authorities in the 1982 Joint Declaration and the Basic Law.

Few places on the planet are better prepared for democratic governance than Hong Kong. In the LegCo elections earlier this month, in which record numbers voted, the people of Hong Kong again made plain their aspirations for greater democratic autonomy, aspirations fully within the framework of the "one country, two systems" formula. They previously had shown their keen interest in participatory democracy when they turned out in record numbers for District Council elections last November. Yet the way forward is now somewhat murky; no one is certain what will happen after 2007. The central PRC government says that it maintains a commitment to universal suffrage and direct election of the chief executive and LegCo, as contemplated by the Joint Declaration and Basic Law. But without a timetable, the fullness of this commitment lacks clarity and instills uncertainty. We must all acknowledge that the recent election is a step forward, but democratic frustration continues to build because there is simply no credible reason to thwart the pace of democratic transformation in Hong Kong.

Hong Kong is important unto itself; it is also a model for others. What happens there is watched particularly closely by Taiwan. In a globalized world where peoples everywhere are seeking a sense of community to serve as a buttress against political and economic forces beyond the control of individuals and their families, it is next to impossible to reconcile political systems based on unlike institutions and attitudes. Mutual respect for differences is the key to peace and prosperity in a world in which history suggests conflict has been a generational norm.

To help us understand what has just transpired in the Hong Kong elections, and how it might affect the progress of constitutional development, we turn to our witnesses this morning.

Randy Schriver joins us from the East Asia bureau at the State Department, to give the U.S. government's perspective, and we have a distinguished panel of private experts who will share their expertise with us a bit later.

PREPARED STATEMENT OF HON. CHUCK HAGEL, A U.S. SENATOR FROM NEBRASKA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

CHINA SEPTEMBER 23, 2004

A majority of the Hong Kong population supports the development of democratic institutions and a local government that fully represents their interests. This aspiration is within reach but has not yet been realized despite the commitment to universal suffrage in Hong Kong's Beijing-promulgated Basic Law. We meet today to examine the road ahead to a popularly elected Hong Kong government.

Mr. Chairman, I congratulate you for holding today's hearing. The United States has important interests in Hong Kong. There are over 1,000 U.S. businesses in Hong Kong and more than 50,000 American citizens reside there. The international business community is attracted to Hong Kong by its strategic location and international status, its open and transparent economy, and its strong tradition of rule

of law. These are impressive achievements. Hong Kong's economic attractiveness is further strengthened by its steady progress toward democratic governance, a process set in place by the British in 1991 and carried forward by the Chinese government after 1997. Despite continued steps forward in the recent Hong Kong Legislative Council election, I am concerned that recent actions by Beijing toward Hong Kong were driven by backward looking policies designed to dampen Hong Kong's continued enthusiasm for democracy.

China's central government continues to state its support for eventual universal suffrage in Hong Kong as laid out in the Basic Law. However, the continuing process is no longer clear, and lack of clarity breeds uncertainty. Hong Kong stands as a successful model for all China, but uncertainty will stifle the prospects for Hong Kong's future prosperity and development. Beijing is both challenged and charged with developing China in a positive way. Mr. Chairman, as you have astutely pointed out, "Hong Kong will only become a threat if China makes it so."

The United States has a vested interest in Hong Kong's continued autonomy and the success of the "one country, two systems" model as laid out in the 1984 Sino-UK Joint Declaration and the Basic Law. Hong Kong's political and economic development has much to offer by example to China's leaders as they experiment with reforms elsewhere in the county. The United States wants to work with China to build a more open and participatory society. The United States and China will not always agree, and the United States should not shy away from voicing its concerns about human rights and the rule of law. Political change is complex and multidimensional, and it should be up to the Chinese people to decide where their country goes and how it gets there. But Beijing must listen to the voices of all China's citizens and take the first steps, and the United States must be ready to assist.

Thank you.