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## National Security Law as the New Basic Law of Hong Kong

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### Abstract

Although Hong Kong is a deniable part of Chinese territory but it has always drawn world attention as an international city and an Asian financial center. The approval of National Security Law by the National People's Congress in June 2020 is a turning point in the regional politics. The authority of the central government has been expanded considerably afterward and Hong Kong is now integrated to the mainland China more than ever. This article will elaborate on the legal basis of the legislation, interlink between the Basic Law and National Security Law its innovation and impact will be discussed. Although the central government takes the issue as an internal affair, but based on international law, the 1984 Agreement is still valid and China has a commitment which cannot be neglected. On the other hand, the structure planned for the implementation of the mentioned law challenges high degree of autonomy of Hong Kong and freedoms of its citizen.

**Keywords:** Basic Law, China, Hong Kong, National Security

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### Introduction

By the end of colonial presence of Great Britain in Hong Kong, the position of this area as one of the freest and most successful economical and social systems around the world defined in the new initiative of One Country- Two Systems<sup>1</sup>. The situation which -based on the Joint Declaration of 1984- was supposed to bridge two opposite systems of liberalism in Hong Kong and communism in China until 2047 in the framework of the Basic Law.

National Security law of Hong Kong is finally enacted after 23 years of tensions not by the Legislative Council of Hong Kong but

through the procedure of National People's Congress. This was the ending point for one of the most important challenges of Hong Kong however brings up new conflicts and at the same time a new era in the history of the region. Although it was up to the local government to enact the national security law according to Article 23 of the Basic Law, the central government referring to the negligence of local government and the exceptional interpretation of Article 18 of the later, ratifies the law and as the Zhang Xiaoming, deputy head of the Hong Kong and Macau Affairs Office mentioned, presents a 'birthday

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gift' to Hong Kong on the 23rd anniversary of the handover (Xiaoming, 2020).

The Basic Law is significantly overshadowed by the new law as it can be considered as the new Basic Law of Hong Kong.

From the Central Government's perspective, there is no doubt about legality of the process then the allegations were neglected in practice. It's believed by the Central Government that National Security issues are far beyond the authority of the local government. There have been a lot of researches regarding the OCTS, Basic Law and Joint Declaration; besides there have been holding few webinars regarding the new Law but no significant research has been published until know. This article sheds a light on the legal status of Sino-British Joint Declaration and scrutinizes the National Security Law legislature based on the Basic Law and focuses on some of the aspects of the Law as a binding document. If the National Security Law subverts the Basic Law through overlooking the High Degree of Autonomy promised in the Joint Declaration and Basic Law? Is the Joint Declaration still valid? Is the content of the National Security Law in accordance with the Basic Law and fundamental freedom of Hong Kong citizens based on the ICCPR?

Hong Kong National Security is a turning point in the history of the region and a clear sign of new Hong Kong. Detention and conviction of political dissidents, education system reform, tightening controls over education, journalists and social media and so on are some characteristics of new Hong Kong in the post national security era. It seems that the probable 2047 changes are now occurring on 2020 and the 2019 protests acted as a catalyst for it.

### **Hong Kong Crown Colony**

Hong Kong Crown Colony was emerged in the aftermath of First Anglo-Chinese War

(1839–42), known as the 'Opium War' which was followed by the Second War (1856–60). "London was determined to get what it wanted by war. The thinking was that if British forces could occupy strategic points that would allow them to control the internal commerce of the Chinese empire" (Tsong, 2007, p.12). Hong Kong Island (in Chinese means Fragrant Harbor) by Nanking Treaty and Kowloon peninsula by Peking Treaty were ceded to the British Empire by the Qing dynasty and the area of New Territories and 230 surrounding islands were leased by a 99-year contract subsequently.

Hong Kong was having always played an important role as one of China's main gateways to the West, in business, foreign investment, smuggling into the country during the US and UN sanction on 50s. "As the Cold War tensions escalated, Hong Kong became known as the 'Berlin of the East'. The establishment of the PRC and the outbreak of the Korean War, however, forced the United States to reconsider Hong Kong's strategic value. And with the escalation of the Cold War, America saw the potential of using existing and former colonies to help contain communism. With its proximity to China, good British facilities and supply of local Chinese talent, Hong Kong was a perfect base for intelligence gathering and China-watching. When President Harry Truman closed the American embassy and consulates in China during the winter of 1949–1950, consular and reporting work shifted to Hong Kong. Thus, by the 1950s this consulate had a larger staff than any other American consulate in the world" (Carroll, 2007, p. 179).

Hong Kong returned to the motherland after almost 150 years of British sovereignty in 1997. Besides the negative impact of the colonial rule such as discrimination and suppression, there were some positive aspects.

Hong Kong was more developed than many other countries during that time; apart from being an important financial center, ranked 7<sup>th</sup> in terms of foreign exchange reserve, 3<sup>rd</sup> largest exporter of clothing, its GDP per capita was higher than Australia, Britain and Canada. On the other hand, the social services shortcoming made the situation to the middle class difficult; even free primary education approved in 1987 and as result only 5 percent of pupils could continue their courses to achieve certificate.

### **Joint Declaration and Beginning of Transition Period**

Since coming to power in 1949, the Chinese government had generally left Hong Kong alone, rarely even discussing its political status. Hong Kong had played an important role in the Chinese economy in the 1960s and 1970s. After the disastrous Great Leap Forward and through the Cultural Revolution, foreign currency acquired through colonial Hong Kong financed much of the PRC's imports. In the 1960s, the PRC earned almost half of its hard currency from selling food and water to Hong Kong. China's only rewarding bridgehead with the rest of the world and China's most convenient springboard for export dumping forays into South East Asia (Carroll, 2007, pp. 221-222).

Once resolution 2758 on 1971, recognized the People's Republic of China (PRC) as the only legitimate representative of China to the United Nations, the Chinese government formally requested the removal of Hong Kong and Macao from the UN list of Non-Self-Governing Territories. According to the PRC representative, "Hong Kong and Macau are part of Chinese territory occupied by the British and Portuguese authorities. The settlement of the questions of Hong Kong and Macau is entirely within China's sovereign

right and do not at all fall under the ordinary category of colonial territories. Consequently, they should not be included in the list of colonial territories covered by the declaration on the granting of independence to colonial territories and people. With regard to the questions of Hong Kong and Macau, the Chinese government has consistently held that they should be settled in an appropriate way when conditions are ripe" (Chan, 1996, p. 45).

In another words, Hong Kong was part of China which only administered by British government. The PRC claims sovereignty for the whole region including New Territories, on lease until 1997 plus Hong Kong Island and Kowloon which had been ceded to Britain in perpetuity after the Opium Wars base on onerous "unfair and unequal treaties". Subsequently, the United Nations General Assembly passed the resolution on removing Hong Kong and Macau from the official list of colonies confirming the PRC's request in the absence of Britain objection.

Given the real potential for PRC military action to back its demands, as well as the UK's inability to counter such force, handing over Hong Kong was Britain's only rational choice. But the British fought hard for certain concessions, including electoral reform. So, the handover, with these concessions incorporated into the deal, resulted in the 1984 Sino-British Joint Declaration (Gregory, 2016, p. 352). Moreover, returning Hong Kong to the Chinese sovereignty was a prestigious start for PRC heralding end of humiliation century of China.

Britain has defined more extended interests in keeping and extending the relations with China then has taken a new approach toward Hong Kong. "In 1967 the British Treasury concluded that Hong Kong was no longer an economic asset for Britain. Nor

could Britain have resisted China militarily. British planners had realized by the late 1950s that Hong Kong could not be defended from an attack by China” (Carroll, 2007, p. 225). Finally, the two countries came to the point of 1984 Sino–British Joint Declaration.

### **Legal ground for the new local government**

The Basic Law of Hong Kong Special Administrative Region was edited by a 59-member committee including 23 Hongkongers. It’s been a matter of discussion for 5 years and finally was adopted by the National People’s Congress on April 1990 to form the framework of the “One Country Two Systems” initiative.

According to this principal document, Hong Kong as part of Chinese territory enjoys a high degree of autonomy but foreign affairs and defense remain the purview of the Central People’s Government (Articles 12–14) and the socialist system and policies to not be practiced in Hong Kong and the capitalist system and way of life before the handover remain for 50 years after the handover (Article 5). Article 45 stipulates that the Chief Executive shall be selected by election or through local consultations and be appointed by the Central People’s Government, with the ultimate aim of selection by universal suffrage upon nomination by a representative committee under democratic procedures.

Hong Kong residents enjoy, among other things freedom of speech, press, publication, association, assembly, procession, demonstration, communication, movement, conscience, religious belief, marriage, to join trade unions and to strike. OCTS meant the confluence of the two inconsistent political, social, economic and legal systems and was practical resume of China’s approach toward Western-style values.

The CCP has been familiar with the concept of OCTS for more than sixty years. During the anti–Japanese War in the late 1930s and early 1940s, the tiny region that was under CCP control was the “other system” in a country controlled by the Nationalist Party. This first OCTS experiment failed several years after its implementation and China plunged into a prolonged civil war. Immediately following the victory of the CCP in 1949, the party applied OCTS to Tibet... Since then, an autonomy system based on ethnicity has been a key part of the Chinese political system (Fu & et. al, 2007, pp. 2-3).

In practice, OCTS faced with different challenges as a sign of dissatisfaction of either side. The Central government main concern was the approval National Security Law to criminalize treason, secession, sedition and subversion which are mentioned in article 23 Basic Law and on the other side democracy activists in Hong Kong demand the Universal Suffrage to choose Chief Executive and all members of Legislative Council. These two crucial expectations, have never been accomplished instead have been a source of turmoil into the city in 2003, 2014 and 2019.

### **Hong Kong’s Autonomy, an internal or international issue**

Chinese government has always been in the position that the situation in Hong Kong is an internal issue which must be respected by other countries while the opposition believes that Hong Kong issues are an international concern because of the 1984 Joint Declaration at least until 2047. This could be a pivotal point that deserves scrutiny. In case of internal issues, any interfere should be condemned and in case of international commitments it would be the matter of responsibility.

Joint Declaration addressed two separate aspects of Hong Kong's future status: Firstly, its constitutional position as a sub-entity... within and towards the People's Republic; secondly, the establishment of a qualified legal personality for the territory under international law. The policies stated in the Declaration would be stipulated in a Basic Law by the National People's Congress (NPC) of the PRC and remain unchanged for fifty years (Langer, 2008, p. 310).

Most fundamentally, China argues that "unequal" international treaties are null and void. This is a reasonable point that resonates with international law. From this, one may conclude that there was never a need to conclude the Sino-British Joint Declaration (Ruhlig, 2018, p. 12). The conclusion is more surprising than the argument itself, since contrary to the article 8 of the Declaration which refers to its binding nature, China assumes the Declaration a non-obligatory document. As the Chinese Foreign Ministry declared: "Sino-British Joint Declaration, as a historical document, no longer has any realistic meaning. It also does not have any binding power on how the Chinese central government administers Hong Kong. Britain has no sovereignty, no governing power and no supervising power over Hong Kong" (Ng, 2017).

But from the legal perspective, in the absence of an applicable termination provision, the treaty remains in force. This is true even if all treaty rights and obligations have been carried out and satisfied. In the case of the Joint Declaration, executory provisions arguably remain given China's promise to maintain the OCTS guarantee for 50 years after the handover — a period that does not expire until 2047 (Gordon, 2016, p. 366). As the Basic Law stipulates in article 2, "the capitalist system and way of life shall remain unchanged for 50 years".

Also consistent with the PRC's belief that the treaty was not invalid and continued to remain in force even after the 1997 handover, the PRC participated in the Sino-British Joint Liaison Group that dealt with issues related to Hong Kong's transition until it wound up at the end of 1999 (Gordon, 2016, p. 364). The China's argument that the Joint Declaration expired in 1997 with the handover and the adoption of the Basic Law... finds no basis in the international law applicable to treaties (Williams, 2020, p. 6).

The complexity comes from this point that while Hong Kong is an inalienable part of Chinese territory, it should be governed for 50 years as described and agreed on the Joint Declaration which has registered in accordance with the article 102 of the U.N. charter as an international treaty or agreement.

#### **Dispute resolution Mechanism**

There are no dispute resolutions and supervision mechanism mentioned in the Joint Declaration, then the only option is to refer to the general principles of responsibility and dispute resolution.

The law of treaties would allow for the termination or suspension of a bilateral treaty in case of a material breach by one of the parties. Yet a repudiation of the Declaration would not restore sovereignty to Britain. Nor could the United Kingdom invoke a fundamental change of circumstances to withdraw from the treaty: As the Declaration establishes boundaries, this option is barred by Article 62(2)(a) of the Vienna Treaties Convention. Therefore, the law of treaties does not offer effective remedies for a breach of the Declaration (Langer, 2008, p. 336).

The European Union has asked its Member States to consider filing a case before the International Court of Justice on the violation of the Sino-British Joint Declaration and the

ICCPR by the imposition of the national security law of Hong Kong while bringing the case to the International Court of Justice would require China's consent as it has not accepted the compulsory jurisdiction of the ICJ to involve this case.

There is also an idea that the Permanent Court of Arbitration could be an option, while China's stance against the Court's decision on the case of Philippines claims regarding the Exclusive Economic Zone also known as the South China Sea Arbitration, showed the result would be farfetched. China's Ministry of Foreign Affairs declared that the ruling is "null and void and has no binding force and China neither accepts nor recognizes it (Buszynski, 2015, p. 128).

On the other hand, Britain does not have too much at stake to confront China on this issue and even stances like defend of democracy and people's opinion in Hong Kong seems to the observers as crocodile tears since it has done almost nothing during its presence in Hong Kong considering that the first ever election of the region took place in 1985 and after signing of the Joint Declaration. From the internal point of view, Britain had renounced its "sovereignty or jurisdiction over any part of Hong Kong" since 1<sup>st</sup> July 1997 by the enactment of Hong Kong Act 1985.

#### **Imposition of law to take over the crisis**

The growing interference of Western governments, in Hong Kong affairs and the local government's incompetence to control, convinced the Central Government to step in. In order to provide a legal basis and a fundamental solution to this crisis, the Hong Kong National Security Law was approved by the Standing Committee of the People's Congress of China on June 30, 2020, amid serious ar-

guments between the opposition and the proponents and promulgate on the 23rd anniversary of Hong Kong's handover to China on July 1, 2020. In response to this legislature, the special treatment afforded to Hong Kong was terminated by US Presidential Resolution 13936 and the region ranked the same to the other Chinese cities. In addition, 34 Hong Kong and Chinese officials, including the region's chief executive and security and justice ministers, were identified on the US sanctions list, and so far, 13 countries have suspended their extradition agreements with Hong Kong SAR.

#### **Central government's legal argument**

Article 23, as one of the most controversial principles of the Basic Law, has been the source of various challenges during the last 24 years. This principle requires the Hong Kong local government to legislate the national security law<sup>1</sup>. But even after 24 years the Hong Kong government failed to implement this essential article.

It should be noted that, "the Basic Law forms the only valid constitutional connection between HKSAR laws and the PRC Constitution...The Basic Law does not, however, establish a complete constitutional "firewall" around the HKSAR. Several "points of intersection" allow the mainland to influence Hong Kong's legislation and legal system. For example, Annex III sets out which national laws are to apply to Hong Kong" (Fu & et. al, 2007, pp. 3-4).

Article 18 of the Basic Law provides the legal ground for the central government to enforce certain national laws in the region. According to this article:

The laws in force in the Hong Kong Special Administrative Region shall be this

1- The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political

Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the region.

National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

Laws listed in Annex III to this Law shall be confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.

As mentioned in the last paragraph, the scope of the laws will be applied to the region based on Annex III will be limited to defense, foreign policy and other matters that are deemed outside the competence of the local government according to the Basic Law. The previous enactments using this article includes items such as capital, calendar, anthem, flag, emblem, national day, citizenship law, territorial water, exclusive economic zone, consular and diplomatic privileges and immunities and establishment of the People's Liberation Army garrison in Hong Kong. The above mentioned specifically deal with defense, foreign policy, and matters outside the jurisdiction of the local government, so there shouldn't be any opposition about them.

Meanwhile, the National Security Law passed by the NPCSC criminalizes seces-

sion, subversion, terrorism, and colluding with foreign forces which at least two of them are explicitly within the jurisdiction of the Hong Kong government. Interestingly, from the Central Government's point of view, the Hong Kong government's responsibility for implementing Article 23 regarding criminalizing: "treason, sedition and theft of state secrets still remains in place. This is mentioned in Article 7 of the National Security Law as an urgent duty of the Hong Kong Government.

The ignorance of this evident regulation couldn't be justified and apparently the Central Government posed the National Security Law in a higher legal position than the Basic Law.

To determine whether legislation is in the scope of foreign policy, defense, and matters outside the jurisdiction of the Hong Kong Government it was discussed during the Hong Kong Legislative Council meeting in 1999. In response to this ambiguity, the then Minister of Constitution and Mainland Affairs of Hong Kong stated:

Under Article 18, before a decision to add to or delete from the list of laws in Annex III is to be made by the NPC Standing Committee, the Basic Law Committee as well as the Hong Kong Government shall be consulted. Based on the nature and content of that national law in question, relevant bureaus and departments, as well as the Department of Justice, would examine whether that national law was related to the three areas as specified in Article 18. They would also consider

whether that national law in question would have any practical or substantial effect on Hong Kong, for example whether it had any relation to the internal affairs of Hong Kong.

Responding to a Member's concern on whether the Hong Kong Government had any right to object to a proposed application of a national law, the then Secretary for Constitutional Affairs advised that an opinion could be raised to the NPC Standing Committee, if it was found upon examination and consultation that the national law should not be added to Annex III.

While it was supposed that the new Law would be published for a brief period of consultation, there seems no trace of such event. "In fact, the text of the new law was kept secret and was made public only after the law was passed" (Tirkey, 2020, p. 19).

Although the Central Government recourse to the local government's failure to impose the law under Article 18, it couldn't be a legal justification as this obviously led to ignoring Article 23 of the basic law and more importantly the Chinese government's international commitment in the 1984 agreement. The interpretation of the NPC and domestic legislation cannot legitimize this contradiction.

On the other side, Hong Kong is supposed to enjoy high degree of autonomy and executive, legislative and independent judicial power and capitalist system and way of life shall remain unchanged for 50 years.

Autonomy in the Joint Declaration includes both an institutional and a personal aspect: Executive, legislative and judicative powers are granted to the HKSAR, and its government will be composed of local inhabitants. There is no generally accepted definition of "autonomy" for the purposes of international law; therefore, its meaning with regard to Hong Kong has to be derived from the provisions of the Declaration itself and its object and purpose. Autonomy in the Joint Declaration includes both an institutional and a personal aspect: Executive, legislative and judicative powers are granted to the HKSAR, and its government will be composed of local inhabitants. The territory is autonomous in the sense proper as it carries primary responsibility for legislation (Langer, 2008, p. 321).

### **The Interactions of the new law and Basic Law**

Despite the legal challenges, National Security Law came into effect in six chapters and 66 articles, by Chief Executive's promulgation. It is of special importance to scrutinize the new law and its interaction with the Basic Law. The new law will undoubtedly develop the Central Government's dominance over Hong Kong and will have serious implications on the legal, political and even economic system of the region.

### **Human rights concerns**

A wide range of activities and actions could be deemed as a threat to the national security under the broad and vague definition of "secession", "subversion", "terrorism" and "collusion with foreign forces". This can lead to discriminatory interpretation and enforcement of the law and undermine human rights protection.

Adherence to the International Covenant on Civil and Political Rights and the Interna-



tional Covenant on Economic, Social and Cultural Rights is enshrined in Article 39 of the Basic Law, but due to human rights concerns it is reiterated in Article 4 of the National Security law.

However, these restrictions are contrary to the provisions of the two Covenants. Under Article 22 of the ICCPR, restrictions on the rights of individuals are possible only if they are "necessary" and "clearly defined". While the necessity and definition of these provisions are irresolute.

"The principle of legal certainty in conformity with the ICCPR demands that the contours of each legal act be clearly defined and ascertainable so as to ensure the rule of law and the rights of the individual are fully observed. For example, Subversion is generally understood as a 'political crime'...deployed to punish individuals for what they think (or what they are thought to think) rather than on the basis of action or activities which pose a defined criminal threat (Aolain & et. al, 2020, p. 7).

In July 2020, the Chinese Government's Commissioner's Office in Hong Kong, citing Article 22, criticized the role of Dr. Benny Tai, a law professor at the University of Hong Kong, in holding primary elections and his comment on the Hong Kong political system. He was accused of attempting Hong Kong version of 'color revolution' and weakening the electoral system. As a sign of restrictions on expression and academic freedom under the National Security Law, the University of Hong Kong fired him just days after the announcement. In addition, many books written by critical Beijing pro-democracy figures, including Joshua Wong and Tanya Chan, were removed from the list of public libraries, following the enforcement of the National Security Law.

The probable penalty for national security offenses is divided into three terms: less than

3 years, 3 to 10 years and 10 years to life imprisonment. As result of vague definition of the crimes the threshold which determine the imprisonment period is unclear which definitely infringes on the principle of legal certainty.

Article 43 confers extensive powers the department for safeguarding national security of Hong Kong Police Force to like searching properties, restricting or prohibiting travel, freezing or confiscating assets, censoring on-line content and engaging in covert surveillance, including intercepting communications all without a court order.

The authorities can also require information from organizations and individuals, even if the information in question may be self-incriminating. Anyone failing to comply can be fined or imprisoned. This essentially removes for national security cases a person's right to silence, an essential component of the presumption of innocence. (Amnesty: 2020)

The wording of this article is so broad that raised concerns about restrictions on press freedom. In August 2020, just one month after the law was passed, Hong Kong Radio and Television was forced to remove its interview with Nathan Lu the prominent pro-democracy figure that fled to the UK after the new law was passed. While peacefully expressing of opinion regarding political systems could not pose a threat to national security.

### **Extraterritorial and transnational jurisdiction**

The National Security Law is in fact a universal law. The extraterritorial jurisdiction of this law makes any person anywhere in the world, regardless of nationality or place of action, subject to this law. In other words, actions deemed by the investigating authority against national security, whether inside or outside of Hong Kong, or by its residents,

foreign nationals or companies, can be prosecuted under this law.

Just about a month after the enactment of law, a foreign national was prosecuted by Hong Kong Police Force on charges of "encouraging secession" and "colluding with foreign government". This is a clear example of the extraterritorial nature of the law, which is considered contrary to various legal principles.

This could have had some implications on Iran. The Islamic Republic of Iran has concluded the extradition agreement with the People's Republic of China in 2015. Under Article 1 of the Agreement, the Parties undertake to extradite persons present in their territory who are wanted by the other Party for the purpose of conducting criminal proceedings or enforcing a sentence. As result, although Article 2 of the Extradition Agreement makes criminals or defendants subject to criminalization in the judicial system of the parties, due to the general and vague wording of the National Security Law, at least extradition of persons whose trial in the mainland is ongoing could be possible.

#### **Extensive authority of Central Government**

To enforce the National Security Law, exclusive departments have been established to investigate and prosecute the cases. Accordingly, the local government will form a "National Security Committee" which shall be under the supervision of and accountable to the Central People's Government<sup>1</sup>. Information relating to the work of the Committee shall not be subject to disclosure and decisions made by the Committee shall not be amenable to judicial review<sup>2</sup>. In addition, national security departments have been established in the Hong Kong Police and department of Justice, which will be appointed, the chief executive will appoint a judge to

deal with national security cases. As it is clear, the central government has a decisive role in all the stages of detection, investigation and prosecution of crimes are subject to this law, which is a threat to the autonomy of local government mentioned in the Basic Law.

One of the most important establishments of the law is The Office for Safeguarding National Security of the People's Republic of China in Hong Kong, whose members will be staffed by the Central government national security institutions.

The office will monitor the performance of the foreign organizations, news agencies and companies. Clearly, the Central Government gained a broad leverage through this office, and almost all of the various stages of national security cases are handled under the supervision or by participation of the Central Government.

Pursuant to Article 53, the Office for Safeguarding National Security is responsible for establishing a mechanism for cooperation with the National Security Committee and for monitoring the process in the region and providing guidelines. In fact, in the national security cases, this office is the highest-ranking body in the region, and even the National Security Committee, chaired by the Chief Executive, is required to coordinate and follow the instructions of this body. This could be in stark contrast to the "high degree of autonomy" of Hong Kong government.

#### **Undermining Hong Kong Independent Judicial Power**

Undoubtedly, one of the most challenging articles of the law is Article 55 on the competent authority for reviewing national security cases. Pursuant to this article, the Central Government's National Security Protection Office in Hong Kong can gain jurisdiction

1- Article 12

2- Article 14

over three categories of national security cases eroding independent judicial power of Hong Kong which is enshrined in article 2 of the Basic Law.

Owing to the general phrasing, in practice many cases can actually be involved and as result the Central Government will handle these cases and consequently, the extradition with mainland China has been established in national security cases. While the genesis of 2019 protests in Hong Kong was the now withdrawn extradition bill which faced with huge backlash from Hongkongers. The High degree of autonomy of Local government requires approval of the Hong Kong Legislative Council.

The strong and unsupervised participation of Central Government institutions threatens the rule of law as the most important value of Hong Kong society and undermines civic institutions and the fundamental freedoms of citizens. The Hong Kong Legislative Council election, which was supposed to be held in September 2020, was postponed for by the decision of the Chief Executive. In response to criticism of the legitimacy of such a decision, the Chief Executive referred to the Standing Committee of the PRC to comment. Instead of adhering to the Basic Law, the Hong Kong government provided a justification for its decision. This was perhaps unimaginable in the Hong Kong legal system before the approval of National Security Law.

#### **Conclusion:**

Pursuant to the establishment of the Hong Kong Special Administrative Region in 1997, as a result of the 1984 agreement between Britain and China, the One-Country –Two Systems structure was used to maintain Hong Kong's status quo as an integral part of China. The structure, which was supposed to bridge the Central Government and the local

government, faced three socio-political challenges during its 23 years of operation, each of which was more formidable than the other. The protests of 2003, 2014 and 2019 alerted the Central Government and made it determined to change the situation. It was in 2019 social turbulence that for the first time, China's sovereignty over Hong Kong was challenged by the protesters. This was in contrast with the Sino-British Joint Declaration and the Basic Law of Hong Kong.

Despite legal arguments confirming the local government's competence to draft and enact the National Security Law according to the article 23 of the Basic Law, it was the Central Government that finally passed and imposed the National Security Law and, in a way, ignored the 1984 Sino-British Joint Declaration and the Basic Law. In addition to the enactment procedure, the vague wording of the provisions undermines the Basic Law and fundamental freedoms of Hong Kong citizens. Moreover, the universality of the law is contrary to the principles of legislation, internationally binding conventions of Hong Kong such as ICCPR and freedoms of citizens in other countries. The National Security Law in various cases challenges and effectively overshadows the autonomy of the Hong Kong Government, to which the Basic Law attaches great importance.

In fact, the National Security Law is a turning point in the history of Hong Kong to the extent that it could be considered as the new Basic law of Hong Kong which implies the new era in Hong Kong and One Country-Two Systems structure.

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