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**HONG KONG'S MAINLANDIZATION AND ITS IMPACT ON
THE FREEDOM OF EXPRESSION IN THE SPECIAL
ADMINISTRATIVE REGION**

Bachelor's thesis

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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ABSTRACT

For Hong Kong, the end of British colonial rule was directly associated with the People's Republic of China's commitment given to the newly created special administrative region that the declared principle of the 'one country – two systems' would be genuinely maintained. The negotiated agreement provided for 50 years to maintain the aforementioned principle, but it could be argued that official Beijing has already possessed a much stronger political mandate over Hong Kong than it was agreed for. The focus on this thesis is to evaluate the increased impacts and intervention of Mainland China as well as the overall predominant discontent of the existing autonomy of Hong Kong. In this dissertation, a range of factors which have boosted some of mainlandization effects, in Hong Kong will be determined and discussed. The orientation towards political breakdown has contributed to the apparent loss of Hong Kong constitutional and administrative structures secured in the region's quasi-constitutional document – the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The objective of this research is to examine a triangular type of relationships between the general principles of freedom of expression set out in the Universal Declaration of Human Rights (Article 19), provisions of the Basic Law and the intensified extracts of China over Hong Kong. The hypotheses on the detectability of interrelations between mainlandization and freedom of expression are constructed in the research.

Keywords: Basic Law, Freedom of Expression, Mainlandization, China, Hong Kong

LIST OF ABBREVIATIONS

CCP Chinese Communist Party

HKSAR Hong Kong Special Administrative Region

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

NPC The National People's Congress

PRC People's Republic of China

UDHR Universal Declaration of Human Rights

OCTS One Country Two Systems

IPCC Independent Police Complaints Council

INTRODUCTION

On July 1st 1997, after 150 years beneath the British colonial rule, Hong Kong was returned to a Chinese state that is now in the socio-political form of the People's Republic of China. In April 1990, China adopted the region's quasi-constitution, *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (further – the Basic Law), which followed the Joint Declaration, which specified the terms for the sovereignty change. Through changing power, the process framed a set of comprehensive and complex socio-cultural relations between Mainland China and Hong Kong, which were in place until now. During the transfer of Hong Kong back to China, Britain set conditions of transformation of China, which were ratified with the Joint Declaration. The Joint Declaration included the application of rights represented on two covenants – International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) established by the United Nations. Both ICCPR and ICESCR were supposed to be implemented in the entire region of Hong Kong.¹ The joint role of both documents was to enable the safeguard for Hong Kong, including the rights for civil, political, economic, social and cultural codification².

Since the return of Hong Kong the China's geostrategic realm, its political future has become a subject of a debate, which corresponds to the combined population under the One Country Two Systems. OCTS demonstrates Chinese policy framework regarding Hong Kong. The system predicts an individual right for Hong Kong to have an existing economic, political and legal system. Under the OCTS China agreed that it would continue to indicate the same settlements to Hong Kong for 50 years.³ The enforced OCTS policy has ceased the tension between China and

¹ Horowitz, S., Schnabel, A. (2004) *Human Rights and Societies in Transition, Causes, Consequences, Responses*. UNU. Press, p 339-362.

² Keller, P. (1992). Freedom of the Press in Hong Kong: Liberal Values and Sovereign Interests. *Texas International Journal*, 27(2), p 371-418.

³ Flowerdew, J., Scollon, R. (1997). Public discourse in Hong Kong and the change of sovereignty. *Journal of Pragmatics* 28, p 417-426.

Hong Kong and an extended procession of public demonstrations. More or less, the tensions reflect concerns and unresolved questions of Hongkongers will they have right for self-determination⁴.

Since the handover, in July 1997 Hong Kong has been successfully maintained by the PRC. Beijing's political authority over Hong Kong has illustrated China's power and political aspirations on keeping Hong Kong under its rule.⁵ The former leader of Hong Kong Cgee-hwa announced the coherent policy, which supported the predominantly pro-Chinese who wished to express their support to the mainland as their state and ruler. The vast influence of enforced policies during Tung's administration directly endorsed the practices of the mainland on legal, political processes bringing Hong Kong economically and politically closer to China.⁶ Tung's governance aim was to indemnify Hong Kong's economic rise to benefit China and prevent possible economic separation⁷. To hold control over Hong Kong Tung's government proposed a Security Bill, based on Art. 23 of the Basic Law⁸. The proposed bill was supposed to restrict Hong Kong from enacting laws that would go against the central government's interest. The bill prohibited any prospective actions against the central government as well as passing foreign activities with foreign political bodies. Moreover, the core idea of the security bill was to allow Hong Kong to enact its laws that do not contradict with the policies of the central government⁹.

Although the national security bill imposed by Art. 23 of the Basic Law was not implemented; it provoked further protests¹⁰. The Tung administration's Mainland-driven policies received comprehensive discontents of Hongkongers, which culminated into pro-democracy movements. The pro-democracy movements encouraged an unravelled mass of residents who took the streets on July 1st 2003 with an intention to protests against the national security legislation and governments officials.¹¹ The motives behind the demonstrations emphasised the Hongkongers ordinary senses of democratical values and the fear of losing the self-identity. More broadly as the

⁴ Keller, P, (1992), *supra nota* 2.

⁵ Shiu-Hing Lo, S. (2008). *The Dynamics of Beijing-Hong Kong Relations A Model for Taiwan*. Hong Kong University Press.

⁶ *Ibid.*

⁷ Shiu-Hing Lo, S. (1999). The Democratic Party in The Hong Kong Special Administrative Region. *The Round Table*, 88:352, p 635-668.

⁸ *Ibid.*

⁹ Shiu-Hing Lo, S. (2008), *supra nota* 5, p 59-63.

¹⁰ *Ibid.*

¹¹ Lam-Knott, S. (2017). Understanding protests "violence" in Hong Kong from the youth perspective. *Asian Anthropology*, 16:4, p 279-298.

demonstration indicated the cohesion of Hongkongers political participation¹². The impact of half a million protesters on the street shocked Hong Kong's central government by the extent of the sudden public participation. The protests grew from 2003 till today has regarded a large part of people with profound discontent to governments proposed amendments. The initially peaceful protests and demands for political change from PRC passage have become more radical, especially between protesters and Hong Kong police.¹³ The stirring protests have got the immediate attention of the world.

As it comes to the hypothesis of this research, it is argued that, due to the intensifying acts of mainlandization, there is an evident likelihood that the process of transmitting Hong Kong under profound control of China can be completed sooner than the Joint Declaration provided. To test this claim this research is to be using the pluralistic qualitative research methodology legal discourse analysis and process tracing to review available academic literature, primary and secondary sources in the process of determining causal relations on the matter. The research seeks to analyse the increased role of mainlandization in Hong Kong from the perspective of violation against Art. 19, UDHR the right for freedom of expression. More precisely, this paper aims at answering the research question of the immediate role of mainlandization and its part in limiting the free speech provisions guaranteed within the UDHR and the Basic Law. The findings will be observed whether Mainlandization has increased and imposed reducing the restriction of the rights for freedom established in Art.19 UDHR.

This thesis is divided into three chapters which observes the findings referring to the current *Hong Kong mainlandization* struggles. The first chapter represents a comprehensive background and explanation of the mainlandization through pragmatic analyses¹⁴. It will provide a better understanding of this phenomena with knowledge of China and Hong Kong relationship regarding the mainlandization. It will also seek the reasons behind China's mainlandization on Hong Kong and understand how the discursive political interactions of China has cultivated into various demonstrations starting from 2003 to the current time in 2020¹⁵. The second chapter proceeds to respond to a research question of what are the Hong Kong mainlandization impacts on freedom of expression provided on article 19 UDHR. To analyse the mainlandization extend to restrictions of

¹² Lee, LFL., Chan MJ. (2008). Making Sense of Participation The Political Culture of Pro-democracy Demonstrations in Hong Kong. *Critical Asian Studies*, 52:1, p 18-32.

¹³ Purbrick, M. (2019). A Report of the 2019 Hong Kong Protests. *Asian Affairs*, p 465-487.

¹⁴ Klotz, A., Prakash., D. (2008) Qualitative Methods in International relations. *Palgrave macmillan*.

¹⁵ *Ibid*.

freedom of expression the focus will be on analysing a relevant legal case study judicially ruled under the Canadian federal legislation. The case study is observed and argued to be relevant for Hong Kong freedom of speech abuse as both Canadian human rights charter and Hong Kong Bill of rights are inherited from the English common law . This chapter will explain the reader the legal framework of the Art.19 and how it is applied and secured in Hong Kong legislation in the Basic Law. Also, the second chapter will explain China's restrictive actions and violations towards the freedom and provide supporting elements for the research argumentation of China's influence on restricting Hongkongers autonomy in the region. Chapter 3 will answer to the final research question of how freedom of expression is guaranteed from China's perspective and how China is treating this right. The aim of chapter 3 is to reveal the possible future of whether Hong Kong can continue its self-determination in the contrast of the freedom of expression. The chapter will move from the data-gathering to discussional part of the thesis. Finally the chapter will form a discussion of the gathered data and conclude the three-research questions examination.

In sum, the of the aim of this research is to address the three following research questions: (1) **What is the relationship between China and Hong Kong regarding the Mainlandization?**, (2) **To what extend does the Hong Kong's mainlandization activities comply to the principle of freedom of expression provided in Art. 19 of the UDHR;** and finally (3) **China's position toward freedom of expression and Hong Kong?**. In order to understand the first chapter will present the specific aspects of mainlandization policies exploring its effectiveness of Hong Kong. Instead of focusing on various human rights violations, the paper is focused on the viewpoints of evolving changes on freedom of expression

1.UNDERSTANDING THE PROCESS OF MAINLANDIZATION

The term mainlandization was popularised in 1998 when a Hong Kong newspaper used it describe for mainland China's negative actions in Hong Kong.¹⁶ The term is used to describe Chinese actions for pulling Hong Kong closer to mainland political governance and control before the 50-year timeframe set in OCTS model. The phenomena emphasise Chinese detrimental cultural, ethnic, and national actions detract Hong Kong's autonomy.¹⁷ In general, mainlandization can be understood as a recolonisation process which implies to the cultural transformation and power strengthening practised by China.¹⁸ China has enforced mainlandization frameworks to cease the transformation and power strengthening in the Hong Kong region. Since mainlandization represents the primary focus of this research, the policies based on it are compared with the rights determined under the Basic Law. Looking at the extension of mainland policies, this research will provide a discussion of the Chinese pro-government processes encouraged in Hong Kong. The pro-government processes will be examined through the review of Basic Law in relation to China. In order to examine the first research question of "What is the relation between China and Hong Kong regarding the mainlandization?" the existing knowledge of academic literature is presented and reviewed.

¹⁶ Hargreaves, S. (2019), Grinding down the edges of the free expression right in Hong Kong. *Brooklyn Journal of International Law*, 44(2), p 671-713.

¹⁷ Valjakka, M. (2011), Urban Art Images and the Concerns of Mainlandization in Hong Kong. *Amsterdam University Press*.

¹⁸ Wing Lo, T. (2012), Resistance to the Mainlandization of Criminal Justice Practises: A Barrier to the Development of Restorative Justice in Hong Kong. *Journal of Offender Therapy and Comparative Criminology*, 56(4), p 627-645.

1.1 The Basic Law and its linkage to China

Hong Kong's territorial unity and legal guidance are provided for in the SAR's quasi-constitutional document the Basic Law. This presently active constitution enacts unique principles and processes conducting the autonomy of Hong Kong and from motherland China's judiciary model. Chinese and British signed Joint Declaration has established the national unity of Hong Kong. This national unity the security and common aspirations of Hong Kong was officially established in accordance with the Art. 31 under the Constitution of the People's Republic of China.¹⁹ Hong Kong judiciary the Basic Law outlines the rights of the Hong Kong residents as well the relationship between Hong Kong and China.²⁰ The structure of the Basic Law is composed of the Joint Declaration, which was developed to set the conditions for the reunification of Hong Kong back to China²¹. The document was drafted by the time the exclusive administrative rights were given to Hong Kong in 1997, which enabled Hong Kong to carry a high-level autonomy under "one country two system".²² The OCTS model represents a foundational model for the Hong Kong mini-constitution, the Basic Law, which will be explained in section 1.1.1. The sovereign power of Hong Kong protected in Basic Law provisions enables authorities and legislatures of Hong Kong to execute independent judicial power as well as the final adjudication.²³ The distributed sovereign power has provided a high level of autonomy for Hong Kong, but concurrently Hong Kong is under the central government restrictions and responsibilities, which leaves Hong Kong's political shape unpredictable. Unpredictability increases because Basic Law policies and the system practised in Hong Kong are enacted by the National People's Congress, which ensures that the policies of Basic Law are implemented ensuring the PRC policies towards Hong Kong.

¹⁹ Third Session of NPC of the PRC, (1990), The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

²⁰ Hargreaves, (2019), *supra nota* 16. p 671-713.

²¹ Manero de Lemos, M. (2019), The Basic Laws of Hong Kong and Macau as Internationally Shaped Constitutions of China and the Fall off of "One country, Two systems". *Tulane Journal of International and Comparative Law* 27(2), p 277-388.

²² Wing Lo, T, (2012), *supra nota* 15, p 627-645.

²³ Third Session of NPC of the PRC, The Basic Law of the Hong Kong SAR, (1990), *supra nota* 16.

Hong Kong's political system is anything but a smooth division between two separate political powers; it is a limbo waiting for China's annexation to take place²⁴. Following the distinct legal cultures between China and Hong Kong characteristic model being a non-sovereign state and non-political entity has not guaranteed stable orientation between China and Hong Kong.²⁵ Hong Kong is merely a local administrative region under the dominative system, which means that Hong Kong is neither occidental nor Chinese. Currently, the territory enjoys a high degree of autonomy but is overwhelmingly moving closer and closer under the careful watch of Beijing authorities. The Basic Law has stipulated the promised autonomy for Hong Kong over China but also ensured the considerable authority for central authorities.²⁶ Consequently, the mainland dominance of the public government has restored the self-governance principle assured in Basic Law.²⁷ Nonetheless, when discussing the Basic Law relation to China, it can be inferred that even though Basic Law ensures the independence of the HKSAR judiciary the unclear clarification of the document status gives an advantage for China to maintain the exercise of its socialist policies over Hong Kong. The increasing lack and inferior implication of the fundamental rights and freedoms indicates Basic Law documents constitutional failure. The possible effects of Basic Law continue to appear in One Country Two System. The model of One Country Two System is an essential part of this research as it highlights the legal traditions and elements applied in Hong Kong.²⁸ The chapter below will analyse the OCTS model to the existing behaviour of mainland China, and ongoing restrictions of the cultural and identity practise in Hong Kong.

1.1.1. The concept of One Country Two Systems: A legal aspect

In the early stage of the OCTS model, Hong Kong was ending its colonial time. During this time, Hong Kong was in the middle of the heated arguments of China and Britain. The dispute between Chinese and British involved the questions of whether Hong Kong should be returned under Chinese rule or should the British seek to renew the lease. The further the heated negotiations

²⁴ So, A.Y. (2011). "One Country, Two Systems" and Hong Kong-China National Integration: A Crisis-Transformation Perspective. *Journal of Contemporary Asia*, 41:1, p 99-116.

²⁵ Tang, G., Hau-yin Yuen, R. (2016). Hong Kong as the Neoliberal Exception of China: Transformation of Hong Kong Citizenship Before and After the Transfer of Sovereignty. *Journal of Chinese Political Science*, 21(4), p 469-484.

²⁶ Geping, R., Zhenmin, W (2007). Hong Kong's One Country, Two System's Experience under the Basic Law: two perspectives from Chinese legal scholars. *Journal of Contemporary China*, 16:52, p 341-358.

²⁷ Pepper, S. (2000). Elections, Political Change and Basic Law Government: The Hong Kong System in Search of a Political Form, *Cambridge University Press*, p 410-438.

²⁸ Jordan, A. (1997), Lost in the Translation: Two Legal Cultures, the Common Law Judiciary, and the Basic Law of the Hong Kong Special Administrative Region. *International Law Journal*, 30(2), p 335-380.

lasted, the more vivid it became to Hong Kong people that they were unwilling to become part of the communist entity across the border. The increased fear of China unsurprisingly raised Hongkongers willingness to continue coexistence with British.²⁹ Despite Hong Kong's national unification, Hong Kong did not compound with China's nor Britain. Instead, Hong Kong discourse took a turn to the progressive advocations of autonomy practices. Finally, the negotiations between China and Britain formed the Joint Declaration agreement, which stimulated the separation of two individual policy systems.³⁰ The division clarified the creation of Hong Kong political identity.³¹ However, the division by no means denoted Hong Kong political identity to be entirely independent of Chinese rule. China never granted a high degree of autonomy for Hong Kong as Beijing retains the influence over the selection and probe of Hong Kong's Chief Executive.³²

Hong Kong's economic role and assets toward China have allowed Hong Kong to hold a partial autonomy under the OCTS model. As a result, Hong Kong's autonomy is greatly influenced by the reconciliation and formation of the mixed rules under the OCTS model. The profound nature of the OCTS model implemented to Hong Kong underlines the law and legitimacy management model with laws from the British colonial common law system for Hong Kong with separated practises from China until the unification with China³³. The exercise of distinct legislative and judicial power for Hong Kong under the OCTS model is confirmed under the Constitution of PRC by the Art.31. The Art 31 states that “ *The state may establish special administrative region when necessary and the system to be instituted in a special administrative region shall be prescribed by law enacted by the National People's Congress in the light of specific conditions*” which by no means allow Hong Kong to avoid China's exercise of power.³⁴ Moreover, the OCTS model ables HKSAR courts to exercise judicial power over administrative decisions and allows Hong Kong residents to adduce legal proceedings against the Hong Kong administration authorities. This right for legal proceedings against authorities in Hong Kong courts is guaranteed in Art.35 of the Basic Law. Although HKSAR courts exercise of judicial power is limited to under the principle of OCTS

²⁹ Wing Lo, T, (2012), *supra nota* 15, p 627-645.

³⁰ Gordon, G, (2015), When One Country Two Systems Meet One Person One Vote The Law of Treaties and The Handover Narrative Through The Crucible Of Hong Kong's Election Crisis. *Melbourne Journal of International Law*, 16(2), p 344-397.

³¹ *Ibid.*

³² Wing Lo, T, (2012), *supra nota* 15, p 627-645.

³³ Tai, Y.T. B. (2010). Judicial autonomy in Hong Kong, *University of Hong Kong China*, 24(3) p 296-315.

³⁴ Constitution of The People's republic of China. (1982), Fifth Session of the Fifth Session of the Fifth National People's Congress.

and PRC control³⁵. For this regard, there is no doubt that the eventually the OCTS model is going to lead Hong Kong from one country two systems to one country.

Autonomy is predominantly something which Hong Kong view as the ultimate ground for its existence.³⁶ The stable economic status and cultural impacts of Britain has had a considerable effect on Hong Kong separation from the mainland's policies.³⁷ However, over the past years, Beijing has increased its agenda to accommodate Hong Kong back to Chinese national framework. Notably, China has acknowledged the functionality of Hong Kong, which highly against China's usual actions has decreased its unification actions toward Hong Kong. In order to understand China's motives, over Hong Kong, it is consequential to concentrate on the struggles from the cultural revolution which China was willing to contribute to the reform in Hong Kong.³⁸

China saw an opportunity in Hong Kong to get closer to foreign capital. An agreement was made which with China guaranteed for British to divided socio-economic structure for Hong Kong. The arrangement the OCTS guaranteed temporary safety for Hong Kong residents from uniting to China. However, ever since Hong Kong received its status quo, it has been uncertain.³⁹ The special administrative status in Hong Kong is something which it has gained because of the OCTS policies. OCTS has accommodated Hong Kong's ability to uphold its autonomy over China in economic, political and cultural affairs. Moreover divided governing has cultivated into the formation of pro-Hong Kongers and pro-Beijing (Chinese) sides.⁴⁰ The pro-Beijing movements outline the most significant influence on Hong Kong political landscape. The process of Mainlandization has, together with pro-government movements, limited the common grounds and traditions of Hong Kong characterised by the former British rule. In result, Hong Kong had become more frequent towards China in various ways. For instance, in 2012, Hong Kong's government released a new idea for education which main aim was to emphasise Hong Kong closer to Chinese bureaucratic policies and eventually diminish British inheritance.⁴¹ In particular, mainlandization and Hong Kong's authorities continuous convergent relations to China has evolved concerns about

³⁵ Tai, Y.T. B. (2010), *supra nota* 31, p 298-303.

³⁶ Gordon, G, (2015), *supra nota* 27.

³⁷ Jackson, L. (2017). Relations of blood? Racialization of civic identity in twenty-first century Hong Kong. *Studies in the Cultural Politics of Education*, Vol. 40, NO. 6, 761-772.

³⁸ Jordan, A, (1997), *supra nota* 25, p 335-380.

³⁹ Lui, T. (2015). A missing page in the grand plan of "one country, two systems": regional integration and its challenges to post-1997 Hong Kong. *Inter-Asia Cultural Studies*, 16:3, 396-409.

⁴⁰ Wing Lo, T, (2012), *supra nota* 15, p 627-645.

⁴¹ Hui, C, Y.T, Wing, Lo, T. (2015). One Country, Two Cultures: Are Hong Kong Mock Jurors "Mainlandized" by the Predominant Chinese Criminal Justice Concept of Confession? p 1104-1124.

the future role of the English language. English began a highly cherished language in Hong Kong as it was essential for the identity of Hong Kong separate from China.⁴² English is Hong Kong's most significant similarity to the Western world, and for young students, English is an indispensable study language. There is a predominant concern of the increasing Cantonese role in Hong Kong's educational system and governmental agencies.⁴³ Most recently, China's exploit force over OCTS has took eliminated power over Hongkongers⁴⁴.

1.1.2. Pro-Beijing movement and rising protests

Ever since the transfer of sovereign power from Britain to China Hong Kong has been struggling with the complex processes of two systems integrated into one country. The interference and propound amendments of the PRC government has shaken the Hong Kong's right for self-determination and encouraged large parts of Hong Kong residents to protests their discontents about Hong Kong authorities increasing loyalism towards China.⁴⁵ The prolonged protests have extended from protests towards Chinese authorities into clashes between Hongkongers and the Hong Kong government, which exemplifies that the people's discontents are not only confined towards China⁴⁶. Moreover, the vibrant actions of Hong Kong residents against China, illustrate the ongoing battle towards self-determination, together with the urge to separate from the political control of Beijing.⁴⁷ Since the Hong Kong handover, the social movement and demands of Hongkongers for civil, and political liberties have seen a considerable increase in popularity. The indication of social movements and concerns of tightening PRC passage over Hong Kong has generated uncertainty within the local Hongkongers. In light of the rising concerns, the request for "self-determination" of the nation have encouraged people to take actions against the authorities.⁴⁸ In response to the demand for self-determination, the various demonstrations have turned into nationalist protests leading to resentments against authorities⁴⁹. In general, the demand for

⁴² Evans, S. (2006). Language Policy in British Colonial Education: Evidence from Nineteenth-Century Hong Kong. *Journal of Educational Administration and History*, 38:3, p 29-312.

⁴³ Flowerdew, J., Scollon, R. (1997), *supra nota* 3.

⁴⁴ Lee, F. (2020). Solidarity in the Anti-Extradition Bill movement in Hong Kong. *Critical Asian Studies*, 52:1, p 18-32.

⁴⁵ Purbrick, M. (2019). A report of the 2019 Hong Kong protests, p 465-487

⁴⁶ Campbell, C. (2019), Hong Kong's uprising rattles the mainland.

⁴⁷ Lui, T. (2015), *supra nota* 33.

⁴⁸ Cantoni, D., Yang, D., Yuchtman, N., Zhang, Y. (2017), Are protests games of strategic complements or substitutes experimental evidence from Hong Kong democracy movement. *NBER Working Paper No.23110*.

⁴⁹ Lagerkvist, J., Rühlig, T. (2016), The Mobilization of Memory and Tradition: Hong Kong's Umbrella Movement and Beijing's 1989 Tiananmen Movement. *Contemporary Chinese Political Economy and Strategic Relations: An International Journal*, Vol 2, Iss 2, p 735-774.

democratic political change in Hong Kong has been around for years, but the persistent hope of Hongkongers for a society where equal rights of individuals are protected has pushed the stipulations of political change even further.⁵⁰ Given the increased stipulations for a political change, it is arguable that the drive for political change and autonomy is currently more alive in Hong Kong than it has ever been before⁵¹.

The protests in 2003 demonstrate the causal effect of pro-Beijing movements to have increased mainly by several protests. In order to evaluate the causes of Hong Kong protests against China, further analysis of the reasons that lead to the first significant demonstration of Hongkongers in 2003 must be in place. Furthermore, an assessment of the formation of pro-democratic demonstrations in Hong Kong will guide this research in analysing and elaborating the core reasons behind the present conflicts in Hong Kong. Most recently, the cultural clashes and a changing civil society structure in Hong Kong has increased the turmoil relations between Beijing and Hong Kong.⁵² Thus many Hongkongers are worried about the consequences of growing China-Hong Kong relations allowing Beijing to exercise tighter control over Hong Kong. According to the Joint Declaration, Hong Kong is allowed to exercise a high degree of autonomy for the time remaining before the year 2047.⁵³ However, thus democracy has continued to dominate the Hong Kong's political agenda Beijing has the ultimate mandate to conclude changes. In order to observe the recent occupations of protests in Hong Kong, it is evitable to crackdown the role of the 2003 political turmoil in Hong Kong against SAR.

On July 1st 2003 up to half of million residents in Hong Kong joined the pro-democracy movement triggered by the (SAR) government's statement of implementing the Art.23 of the Basic Law.⁵⁴ In light of the fundamental nature of Basic Law, the ratification of the Art.23 was going to narrow the Hong Kong's autonomy⁵⁵. The Art.23 states that: "*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 organisations or bodies from conducting political activities in the Region, and to prohibit political*

⁵⁰ Lee, LFL, Chan. (2008), *supra nota* 12.

⁵¹ Cantoni, D., Yang, D., Yuchtman, N., Zhang, Y, (2017), *supra nota* 38.

⁵² Shiu-Hing Lo, S. (2010), *Competing Chinese Political Vision, Hong Kong vs. Beijing on Democracy*. Westport: Praeger.

⁵³ Shiu-Hing Lo, S. (2008). *supra nota*. p 34-45.

⁵⁴ *Ibid*.

⁵⁵ Kwong, Y. (2016). State-Society Conflict Radicalisation in Hong Kong: The Rise of 'Anti-China' Sentiment and Radical Localism. *Asian Affairs*, 47:3, p 428-442.

*organisation or bodies the region from establishing ties with foreign political organisations or bodies".*⁵⁶ The Art.23 emphasised a controversy of the SAR and Beijing roles under the one country two policy systems⁵⁷. Besides, the proposal illustrated Beijing's political pressure to increase integration between China and Hong Kong. As a result, the political visions of PRC have taken more comprehensive control over the Hong Kong administration. China's involvement in Hong Kong has ensured that the process of Hong Kong democracy has not evolved and China's vision for domestic economic prosperity has maintained its domination. The fact that Hong Kong has remained under the control of PRC is by no means to be considered as Hong Kong's political framework having to remain in line with the mainland policies.⁵⁸ The controversy of two policy systems has caused various problems in Hong Kong and hence increased the worries of Hongkongers of their future⁵⁹. In this regard, the ongoing political changes boosted by the proposed Art.23 has broadened the democratic movements of Hong Kong citizens in order to voice their demands for political rights such as freedom of speech⁶⁰. Moreover, the increased political changes set by Beijing immediately grew the fear of Hongkongers about losing their civil liberties. These fears and concerns of Hongkongers initiated people to resist Beijing's political control. Hongkonger resentment towards Beijing interpretation and the selection of emerged issues of political liberties are primarily evolving concerns of young Hongkongers.⁶¹

Since the handover, the young Hongkongers have been more active in underlying the concerns of the evolving mainlandisation trends in Hong Kong. In particular, the Tiananmen Square demonstration together with the Umbrella Movement mostly led by the young Chinese students calling for the right freedom of speech and democracy, has kept the pro-democracy movement unceasing. For analysing the structure behind the several pro-democratic protests and the linkage to Hong Kong's mainlandisation and pro-democracy movements, the relevant concept of protests dimensions is discussed.

The year 2012 can be seen as the major peak of Hong Kong's people trust toward central government since 2012 was the year when a passionate mainland dissident Li Wangyang was found dead. Li Wangyang was a well known pro-democracy patron who was sent to jail in China

⁵⁶ The Basic Law of The Hong Kong Special Administrative Region of The People's Republic of China.

⁵⁷ Kwong, Y. (2016), *supra nota* 55.

⁵⁸ Shiu-Hing Lo, S. (2010), *supra nota* 41.

⁵⁹ Kwong, Y. (2016), *supra nota* 55

⁶⁰ Shiu-Hing Lo, S. (2008), *supra nota* 5, p 18-20.

⁶¹ Lee, F., Chan, J. (2018), *Media and protest logics in the digital era, The Umbrella Movement in Hong Kong*. Oxford University press.

for more than 20 years during 1989. After Li Wangyag was found dead the story of his braveness and fight for liberal Hong Kong spread all over the Hong Kong's media which after over 25,000 Hongkonger protesters started public demands for Hong Kong political renewal.⁶² Thereby protests have become the centrepiece of the China-Hong Kong relationship and noticeable hindered provisions for Hongkongers universal civil rights. For example, right after Chinese government published the White Paper (control practise over Hong Kong), it corresponded once again China's way of provoking Hong Kong which eventually leads to large mass movement the Umbrella Movement⁶³. Umbrella Movement in 2014 has been the most significant civil campaign in Hong Kong's history, and consequently, it has formed a platform for several new protests.⁶⁴ Yet the Umbrella movement has continued the rise of the anti-China sentiments which deepened already during 2012 ⁶⁵. During the time of Umbrella Movement Hong Kong democrats had concerns how could they affect the NPC to arrange direct elections of the Chief Executive for SAR government. Despite the democrat's disobedience movements, the NPC declared a framework for the elections of CE which stated that a person running for CE must get an approval from a member of the nomination committee and the nomination committee shall stay unaltered.⁶⁶ NPC decision was a slap against democrats since pro-Beijing's dominate the nomination committee⁶⁷. The frustration of Hongkongers over Beijing deepened domination over Hong Kong was the strongest accusation of Hongkongers towards China.

The rising social injustice among Hong Kong residents reflects the different values of young Hongkongers, which has formed the movement of democratisation in Hong Kong. While there are still residents in Hong Kong who engage themselves with Beijing, it is evident that Hong Kong's political unification policies the elimination of outside movements has rapidly increased the national movements, especially among young students. In fact since 2003 till 2020 the actions of protests have took turn into more violence. Before 2003 Hongkongers rarely used violence towards authorities⁶⁸. In general the protests have turned to longer and more provoking actions against authorities where various police-protest conflicts have included physical attacks with serious injuries⁶⁹. Even though the radical movements have not reach an ideal changes protesters have

⁶² *Ibid.*

⁶³ Solomon, F. (2019). Hong Kong in Revolt Last Bastion of Freedom Unites Against Beijing, *Time USA, LLC*.

⁶⁴ *Ibid.*

⁶⁵ Ma, N. (2015). The Rise of "Anti-China" Sentiments in Hong Kong and the 2012 Legislative Council Elections. *The Chinese University of Hong Kong Press*, Vol 15. No. 1. P 39-66.

⁶⁶ Lee, F., Chan, J. (2018), *supra nota* 56

⁶⁷ *Ibid.*

⁶⁸ Lagerkvist, J., Rühlig, T, (2016), *supra nota* 43

⁶⁹ Lee, F. (2020), *supra nota* 38

enforced radical activities in counter to Chinese pro-government actions. In fact Hong Kong's authorities regardless of protesters have continued enforcing the government bills which constitutes mainland aspirations⁷⁰. In response to faint democratic development, the pro-democrats have aimed to composed more cogent communications with the western states. Hong Kongers have become less patriotic towards mainland and HKSAR authorities.⁷¹ For this reason, many young students associate themselves closely with idealists views of democracy as a specification of equality in opportunities, social security and human rights. At the same time, China has found itself in an uncomfortable situation which has driven the Chinese government to use more radical actions against Hong Kong⁷². Over all the emerging protests in Hong Kong stipulates residents desires to protection of rights and freedoms with a high degree of autonomy.

Beijing views the pro-democrats as a menace for national security.⁷³ In this sense, China has been extremely against proposed democratic reforms because China is simultaneously growing its strength in Hong Kong by focusing on localism.⁷⁴ Localism and radicalism are the major strategies to increase the essential role of the mainland power. Therefore any amendments of democracy during the remaining years of the 50-year agreement are prohibited since it would decrease the power of central government in Hong Kong.⁷⁵ Moreover, China wants to avoid any obstacles what might come before the transition of Hong Kong. In this regard, instead of accepting the growing democracy movement in Hong Kong China has continued its strategy smoothly include Hong Kong part of the Chinese political union.⁷⁶ Since China has increased its control over Hong Kong, the violent encounters between police and pro-democratic protesters have exploded⁷⁷. Moreover, the majority of Hongkongers consider themselves culturally part of China but execute themselves as citizens of Hong Kong⁷⁸.

⁷⁰ Hui, C, Y.T, Wing, Lo, T. (2015), *supra nota* 41.

⁷¹ Cantoni, D., Yang, D., Yuchtman, N., Zhang, Y, (2017), *supra nota* 38.

⁷² Kwong, Y, (2016), *supra nota* 55

⁷³ Shiu-Hing Lo, S. (2008), *supra nota* 9

⁷⁴ Young, S. (2004), Restricting Basic Law Rights in Hong Kong

⁷⁵ Shiu-Hing Lo, S. (1999), *supra nota* 7.

⁷⁶ Bosco, J. (2014). Hong Kong and the Demise of 'One Country, Two Systems. *Journal Asian Affairs*, (1), p 127-134.

⁷⁷ *Ibid.*

⁷⁸ Horowitz, S., Schnabel, A, (2004), *supra nota* 1, p 354.

2. ARTICLE 19 UDHR-THE FREEDOM OF EXPRESSION

One of the fundamental principles of the Universal Declaration of Human Rights is the principle of freedom of expression which is covered on the Art.19. The Art.19 states: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*".⁷⁹ The adequate implementation of the right is equally applied for all people and nationals around the globe. By nature, Freedom of Expression is not binding, but it is universal, which means that states can decide how they wish to implement it. Moreover, the universal nature of the right enables states to apply the right in various ways if the core nature of the right is not violated⁸⁰.

In Hong Kong's jurisprudence freedom of expression is legally secured in the ordinance of Bill of Rights as well as in the Basic Law through Art.27. The Bill of Rights contains the rights of ICCPR, (Multilateral treaty adopted by the United Nations General Assembly), which is also entrenched into Basic Law.⁸¹ What comes to the justification of the Art.19 Hong Kong has ratified it into its Basic Law. However, due to a China's intense pressure the article is lacking effectiveness which for the right has not been active. The lack of Art.19 interpretation is the core reason for severe violations of the right.⁸² Under the OCTS model China enjoys a coexisting power over Hong Kong's Basic Law which for Hong Kong does not enjoy independency from China. For example China's oppressive control and encroachment over freedom of press and free speech of people has erupted the rise of protests⁸³. Many protesters have demanded an independent Human Rights

⁷⁹ United Nations, Universal Declaration of Human Rights Article 19 Freedom of Expression.

⁸⁰ *Ibid.*

⁸¹ Chan, J.M. (1998). Hong Kong's Bill of Rights: Its Reception of and contribution to international and comparative jurisprudence, *International and Comparative Law Quarterly*, 47(2), p 306-336.

⁸² Ning, Y.M. (2001). One Court, Two Rulings, Freedom of Expression in Post-1997 Hong Kong. *Asia Pacific Media Educator*, 11, p 4-9.

⁸³ Solomon, F. (2019). *supra nota* 63.

Commission with statutory power for securing and managing civil liberties.⁸⁴ Arguably the absence of human rights supervision in Hong Kong reflects straight to the bad protection of the rights.

As a former British colony, Hong Kong has inherited provisions for human rights from the English common law. The admission to human rights and the recognition of the ICCPR in both Basic Law and Bill of Rights approximates Hong Kong closer towards international standards of human rights. The legal system in Hong Kong is the core source of human rights protection if government and authorities obey and enforces the rights rightfully. Freedom of expression alongside with rest of the human rights have noticeable reflections of Mainland phrasing style which place rights protection under the mainland policies.⁸⁵ Furthermore to answer to the research question of “what extent Hong Kong’s mainlandization activities comply to the principle of freedom of expression provided in Art.19 UDHR? case study of the violation of freedom of expression Fleming v. Ontario ruled by the Canadian Supreme Court is examined. There are several common law countries but Canada is one of the closest and similar to Hong Kong human rights principles⁸⁶. The Canadian Charter of Rights and Freedoms has interpreted the formation of Hong Kong’s Bill of Rights, and therefore the case of Fleming v. Ontario will provide a feasible example of how could Art.19 be used in Hong Kong courts. This chapter will argue that the violation of the Art.19 UDHR is increasing and is higher than it has ever been in Hong Kong. Furthermore section 2.1 argues that the violation of the Art.19 UDHR is closely linked with China’s mainlandization efforts in Hong Kong.

2.1. The legal framework and application of the article to a legal case

The freedom of expression is a universal right which has been expressed in three documents including the Hong Kong Basic Law, the Bill of Rights and ICCPR. The documents were adopted and ratified exclusively by Britain. Indeed, after the handover the three documents purpose were to secure Hong Kong’s national legislation from China’s interference.⁸⁷ Moreover, the ratification of the freedom of expression act fundamentally obligate states who have ratified both the ICCPR

⁸⁴ Wai-man, L. (2014). Nongovernmental International Human Rights Organizations: The Case of Hong Kong. *American Political Science Association*, p 644

⁸⁵ Chan SC, J., Kaufmann, C. (2008). Comparative Constitutional Law – The Protection of Human Rights under the Hong Kong Basic Law. *The University of Zurich Faculty of Law*.

⁸⁶ Geping, R., Zhenmin, W. (2007). Hong Kong’s ‘One Country, Two Systems’ Experience under the Basic Law: two perspectives from Chinese legal scholars, p 341-358 *journal of contemporary china* 16:52, p 341-358.

⁸⁷ *Ibid*.

and ICESCR to report their country's human rights situations to the Human Rights Committee⁸⁸. However, China has not ratified either one of the documents. Therefore, pressure to enforce that the rights are implemented is left for the NGO's and states. All in all, the pressure from the NGO's has contributed enhancement of human rights in China.⁸⁹ China has executed some liberal values secured in human rights in order to boost its economy. On the other hand, the rights have not been equally applied to all as there is a remarkable difference between rich and poor.⁹⁰ Although the human rights conditions are still far from satisfactory as China carried out its authoritarian rule.

The Fleming v. Ontario case perfectly represents how the Art.19. freedom of expression should be applied, to Hong Kong especially in the current socio-political environment: *In 2009, Mr Fleming was going to join a protest held in Caledonia, Ontario. He was carrying a Canadian flag when a Canadian police officer sped towards him arrested him and finally put him into jail for a few hours.*⁹¹ In Canada, police officers have the power to arrest people under the common law rules if it considered being necessary for “*preserving peace, preventing a crime or protection of life and property*”.⁹² In this case, Mr Fleming was arrested on the grounds of “breach of the peace”, which allows for a person to be arrested if it is assumed that the person may cause a risk of violence and perturbation to other people⁹³. The case was brought to the Province of Ontario with a claim of violation of individual's rights for taking part in protests and express personal views that are secured under the Canadian Charter of Rights and Freedoms Section 2(b) freedom of expression. The Canadian Supreme court ruled that the police officers arrest of Mr Fleming was unlawful and prevention of Mr Flemings freedom of expression cannot be justified.⁹⁴ Indeed the case of Mr Fleming indicates an ideal interference of the article towards an unlawful use of legal authority. The Supreme Court ruling in Mr Fleming's case demonstrated the practical impact of the Art. 19 extension into the Canadian Charter Section 2(b) freedom of expression. The same trend cannot be found in Hong Kong's Bill of Rights legal practices. With the growing protests in Hong Kong, the unfortunate reality is that protesters cannot postulate similar protection from Hong Kong governmental organisations which were ensured in the case of Mr Fleming v Ontario. In fact, the

⁸⁸ Horowitz, S., Schnabel, A. (2004), *supra nota* 1.

⁸⁹ Ngok, M. (2015), The Rise of “Anti-China” Sentiments in Hong Kong and the 2012 Legislative Council Elections, *The China Review*, Vol.15, No.1, p 39-66.

⁹⁰ Wai-man, L. (2014). *supra nota* 84, p 642-645.

⁹¹ Fleming v. Ontario, 2019, SCC 45, *supra nota* 85.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

present protests have shown the failure of Hong Kong police to endure such freedom secured under the Hong Kong Basic Law Art.27⁹⁵.

To compare the Hong Kong protests to the case of Mr Fleming it can be argued that there is a clear judicial affiliation. In this regard the Hong Kong police arrests of protestor institutes the violation ruled by the Canadian Supreme Court. The Canadian Supreme Court noted that the “police officers have the right to use the power actions to preserve peace under the common law, although Mr Flemings actions did not fulfil the criteria for necessary arrestment and prevention of person’s freedom stated under the Canadian Charter of Rights and Freedoms Section 2(b).⁹⁶ Besides, the Canadian Supreme Court stated that police use of power to interfere individual’s liberty is not necessary as police can effectively ensure peace with less limitation of freedom.⁹⁷ The judgment against Canadian police officers use of force given by the Canadian Supreme Court stated a clear violation of the Art.19 UDHR and section 2(b) of the Canadian charter. After all, the judgment of the Supreme Court illustrates the fundamental nature of the common law, which is to ensure the principle of legality and that authorities’ restrictions of individuals rights and freedoms must have the judicial base⁹⁸.

In Hong Kong “breach of power” executed by the Hong Kong police has publicly been justified as police obligations and intent to ensure peace⁹⁹. Despite the public accusation of police brutality in Hong Kong police forces have systematically continued the mass arrests along with excessive use of force.¹⁰⁰ Even though mass protests have decreased, police arrests have continued.¹⁰¹ In addition to the investigations of Hong Kong police use of force, Hong Kong courts have not executed whether there has been violence of the freedom of expression under the Art.27 of the Basic Law. The Hong Kong courts do not enjoy a high degree of autonomy to resolve disputes concerning the use of power between Hong Kong and Chinese authorities¹⁰². In fact, the OCTS model does not guarantee tools for Hong Kong courts to ensure interpretation of freedom of expression over China’s interests which for the courts can use legislative power only within the provisions ruled by the central government¹⁰³.

⁹⁵ Schultz, C.E. (2020). Hong Kong protesters are human rights defenders, not rioters.

⁹⁶ Fleming v. Ontario, 2019, SCC 45, *supra nota* 83

⁹⁷ *Ibid.* SCC 45.

⁹⁸ *Ibid* SCC 45

⁹⁹ Schultz, C.E. (2020), *supra nota* 86.

¹⁰⁰ Tai, Y.T. B. (2010), *supra nota* 31, p 298-303.

¹⁰¹ Schultz, C.E. (2020), *supra nota* 86.

¹⁰² Tai, Y.T. B. (2010), *supra nota* 31, p 298-303.

¹⁰³ *Ibid.*

It can be argued that Hong Kong's mainlandization effects have addressed broad restrictive actions against universal freedoms provided on Art.19 UDHR and the Hong Kong Basic Law Art 27. For example, the violent clashes between the anti-government protesters and the police have turned into a point where the justification for the police use of force is not strictly ensured. In various cases, police's use of force has extended into abuses of protesters which also the Hong Kong government has admitted gone too far.¹⁰⁴ In such cases, where police have overreached their power, the Hong Kong government has given the investigation power to the Independent Police Complaints Council (IPCC) to investigate such breaches of power¹⁰⁵. However, the ability of IPCC to investigate Hong Kong government's actions is highly restricted. Especially to prove whether the government's restrictions of Hongkongers rights and freedoms have been illegal is very complex and challenging. In fact, there is a considerable procedural ground limitation to what extent IPCC's is capable of exercising investigation¹⁰⁶. In this regard, the main problem lies in the IPCC capacity to investigate massive protests because the government conceals the necessary information.¹⁰⁷ Nevertheless, this illustrates once again how polarised is the current situation in Hong Kong. Even though Basic Law provides many principles secured in the Art.19 UDHR, such rights are not implemented if the exercised legitimacy is not in accordance with mainland ideology.¹⁰⁸

In addition, it can be argued that the current crisis in Hong Kong has expanded into a battle between Hong Kong police and citizens of Hong Kong. Furthermore, more rallies are prohibited, and arrestment of hundreds of protesters has continued. The current reality in Hong Kong's freedom of expression protection comes down to a heavily state-controlled right that lacks recognition. The increased state-control over the rights has decreased Hongkongers abilities to enforce their civil liberties¹⁰⁹. The intervention of central authorities and strengthened control over individuals has proved the failing protection of HKSAR over its resident's rights.

¹⁰⁴ Gunia, A. (2019). Hong Kong's Police Watchdog Is Unable to Do Its Job, Experts Say. *Time magazine*.

¹⁰⁵ *Ibid*.

¹⁰⁶ Siu, P., Lum, A. (2019). Nothing independent about Hong kong police complaints process say critics, as watchdog floats idea of special panel to investigate extradition bill violence.

¹⁰⁷ Gunia, A. (2019). *supra nota* 104.

¹⁰⁸ Chan, J. (2019). The Power of the Chief Executive to grant an Amnesty: A Possible Solution to the Extradition Bill Controversies, *University of Hong Kong Faculty of Law Research Paper* No. 2020/014, p 865-882.

¹⁰⁹ Hui, C, Y.T, Wing, Lo, T. (2015), *supra nota* 41.

In order to understand the current condition of rights protected under the Art.19 UDHR, it is essential to analyse the role of the nongovernmental organisations for addressing Hong Kong Human Rights conditions. Nongovernmental organisations have had a significant role in securing and raising awareness of human rights violations in Hong Kong. Fundamentally NGO's purpose is to secure national and international cooperation between societies and offer advice for good governance. In the case of Hong Kong, the government of HKSAR has become a central concern of NGO, and therefore more attention has directed toward it. In this regard, an accusation from NGO's toward China will be analysed.

On July 1st on 2018, Human Rights Watch accused China of decreasing Hong Kong's freedom over the past years. Human Rights Watch sent a letter to Hong Kong's Chief Executive Carrie Lam right after her election in 2017 as Hong Kong's leader.¹¹⁰ The letter brought up concerns over various rights restrictions of political reform, request of dropping charges against opposition leaders, and restriction of government's censorship towards journalists and university professors.¹¹¹ The accusation and caution from Human Rights Watch indicate the most common violations occurring in Hong Kong. There are various cases in Hong Kong, where Chinese authorities have prevented different sources of promoting information about human rights issues. Primarily what has caused the dwindling press freedom is the Hong Kong government and Beijing's acts of censorship toward local media publications. In this regard, for instance, Hong Kong Free Press and Apple Daily have faced various restrictions when trying to publish articles about China's increasing role in Hong Kong.¹¹² In order to underline China's part in decreasing Hong Kong's press freedom, it can be argued that any criticism about China has encouraged it to decrease provisions for press freedom. The restriction of media freedom has led to various problems of recognition of human rights violations. The restricted media and unlawful accusation targeted toward protesters has increased attention among the international community. In this regard, significant criticism from the Western world has indicated toward China.¹¹³ Giving an example of the current arrestment is the instance of Jimmy Lai is analysed as an unjust violation of freedom of expression.

¹¹⁰ Human Rights Watch. (2018). Hong Kong: Freedoms Rapidly Deteriorating. *Human Rights Watch*.

¹¹¹ *Ibid.*

¹¹² Human Rights Watch. (2018). *China Events 2018*.

¹¹³ *Ibid.*

For the context, there is a story of Jimmy Lai, a well-known businessman, loud government criticiser and the founder of Apple Daily News, the Hong Kong's second-biggest newspaper¹¹⁴. Apple Daily news is known as innovative China-bashing newspaper which pursues a democratic movement all over Hong Kong. In August 2020 Jimmy Lai was arrested on taking part to unlawful assembly and protesting with other anti-governmental activists. The arrestment of Jimmy Lai was authorised based on his violation of the public order ordinance.¹¹⁵ The arrestment itself included various violations of the Art.19 UDHR for example, the right to peaceful protests was violated along with an individual's right for public expression of opinions. Even though Jimmy Lai was released with bails after few days after his arrestment, he was again arrested in 2019 along with former lawmaker Martin Lee and democracy advocate Albert Ho. According to the United States, the arrestment of pro-democracy activists was a severe violation of the high autonomy assured for Hong Kong¹¹⁶. The charge against the arrested pro-democracy activist was based on the protests against the extradition bill allowing HKSAR to transfer detained residents to the mainland for trial.¹¹⁷ Even though the bill was withdrawn, it did not end the protests, and therefore the authorities representing Beijing in Hong Kong have continued taking actions against the protests¹¹⁸.

In this regard, the main reason for the protesters to continue protesting regardless the fact that the bill was withdrawn was and the frustration of HKSAR continuous violations of freedoms and rights protected under the Basic Law and Bill of Rights. In fact, Hong Kong and its government have received international critiques to protect its citizen's rights in a comprehensive manner. For example, US Attorney General William P. Barr and Secretary of State Mike Pompeo have commented on the arrest as violations of the rule of law and liberties of the people of Hong Kong¹¹⁹. Besides, the western countries have criticised China from its actions of decreasing Hong Kong's autonomy and freedom of expression. Furthermore, because of the mainlandization efforts, the legal framework for the application of Art.19 UDHR in Hong Kong has major contradicting issues regarding the article implementation and functionality. For example, the Basic Law guarantees freedom of expression for Hongkongers with the notion that it could only be limited within the context of ICCPR. However, China has restricted the right because of the fear of the

¹¹⁴ Forbes, (2004). At it Again, p 134-134.

¹¹⁵ Zhang, K., Lum, A. (2020). Hong Kong protests: Apple Daily owner Jimmy Lai Charged over August 31 march and alleged intimidation of reporter at 2017 vigil.

¹¹⁶ Yu, V. (2020). U.S. condemn Hong Kong arrests of democracy advocates, NBC News.

¹¹⁷ Solomon, F. (2019). *supra nota* 63.

¹¹⁸ Yu, V. (2020). *supra nota* 116.

¹¹⁹ *Ibid.*

right threatening its sovereign status.¹²⁰ In conclusion, to the research question “to what extent does Hong Kong’s mainlandization activities comply with the principle of freedom of expression provided in Art.19 of the UDHR”? It can be stated that China’s mainlandization actions do not comply with the Art.19 principles but moreover shows China’s unwillingness to integrate liberal values and treat Hong Kong as a separate region under the OCTS model.

2.2. China’s position of Human Rights Policies

This chapter moves to more deep analyses into the second research question to find out the extent which with China is willing to comply with providing the rights secured in Art.19 UDHR. On this sense, it can be stated that for quite some time, China has been an unwillingness to enforce human rights. In addition, China considers human rights more as concepts tradition and collective rights of people to the socio-economic development and security of the state to secure sovereignty.¹²¹ As a government with strict control, China lacks measures for governmental responsibility to ensure that the rights and interest of individuals are above the law¹²². From this perspective, it is clear to state that fundamentally China considers human rights as western propaganda damaging its political system. In this regard, China believes that the core nature of human rights is a hidden agenda of western societies to input democratic values and norms into the Chinese political system with tensions to undermine Communist system¹²³. For this reason, China has actively ignored Western countries leaders, media and NGO exposure and sanctions of its human rights violations¹²⁴. It can be assumed that China has not taken a full account of the accusations for human rights violations because such willingness to affirm the public accusations could hurt its power status. However, as the world is a one entirety states cannot define themselves as separate regions which for even China has acknowledged globalisation as part of

¹²⁰ Hargreaves, S. (2019). *supra nota* 16, p 704-708

¹²¹ Tsyvk, A.V., Tsyvk, G.I. (2019). China’s human rights concept and its international promotion. *RUDN Journal of Sociology*, Vol 19. No 1, p 20-30.

¹²² Wing Lo, T, (2012), *supra nota* 15, p 627-645.

¹²³ Horowitz, S., Schnabel, A, (2004), *supra nota* 9, p 339-340.

¹²⁴ Gordon, G, (2015), *supra nota* 29.

the reality. The growing international system has, to some extent, pushed China to implement international rights and to maintain the relationship with the west.¹²⁵

Despite the various abuses of human rights, Beijing has officially accepted Hong Kong's ratification of the two international covenants on human rights which both are implemented into Hong Kong's Basic Law. However, to define China's present position on Hong Kong's human rights execution, it is necessary to underline the importance of the 1917 close negotiations between Britain and China. In fact, the negotiation with China was a definite ending point for the British to hand over power over Hong Kong.¹²⁶ Thus the fear of totalitarian society was unavoidable, which at last gave Britain no reason not to apply human rights policies in Hong Kong. The adoption of the Bill of Rights was Britain's way to secure that Beijing would cover the rights of Hongkongers after the looming handover¹²⁷. Although, after the transfer and enforcement of the Basic Law, Beijing expressed its concerns of displacement of Bill of Rights over Basic Law. China was under pressure to create systems for freedom and justice. More precisely before Basic Law came into force, Hong Kong's Legislative Council passed over the Bill of Rights, which also covered the ICCPR stipulations¹²⁸. Despite the ratification of human rights into Basic Law, it can be argued that a tremendous impact from mainlandization has forced Hongkongers to live under authoritarian rule.

To compare political perspectives from Asian regimes, Hong Kong belongs to one of the most liberal regimes. Even though China has actively expressed its authoritarian power over rights provided in Basic Law, Hong Kong has stayed relatively autonomous. Hong Kong's autonomy has maintained a positive image amongst Hongkongers forming a stronger perception of democratic freedoms. Nonetheless, in recent years PRC governmental rules have actively admonished recognised universal statute of Art.19 UDHR. As a response to the diminishing rights, this paper argues that Hongkongers have become motivated to defend the idea of self-rule and freedoms protected from the mainland activities as provided in the three foundational documents. However, the fact that the Hong Kong government has expanded Chinese policies

¹²⁵ Gruffydd-Jones, J.J. (2019). Citizens Condemnation: Strategic Uses of International Human Rights Pressure in Authoritarian States. *Comparative Political Studies*, Vol. 52(4), 579-612.

¹²⁶ Wing Lo, T, (2012), *supra nota* 15, p 627-645.

¹²⁷ Horowitz, S., Schnabel, A, (2004), *supra nota* 1, p 354.

¹²⁸ Lam, W. (2014). *supra nota* 90, p 642-645.

has been pulling away the last vestiges of that for self-rule. As a result, the relations between its residents and the government of Hong Kong has deteriorated. Moreover, the disputes between the Hong Kong administration and its citizens have contributed to the intensification and continuation of demonstrations such as the anti-government protests and clashes between police and protesters. For quite some time, Hong Kong has moved closer towards mainland. In result international norms and standards have been diminishing along with the censor and limitation of public voices¹²⁹.

The hypothesis put forward in the introduction which, suggested that the mainlandization, of Hong Kong, will result in the city-state coming under complete control of Beijing sooner than the Joint Declaration provided is corroborated by the present dire situation regarding political freedoms and human rights in Hong Kong. In more precisely, this paper argues that the shift from the OCTS model will soon be transformed into one country, one system model. Because of the PRC's failure to reassure Hong Kong's autonomy and execution of human rights, various controversies have occurred in press freedom. In this regard, while freedom of expression is legally provided in the Basic Law at the same time, any public criticism of China will be considered as actions against government policies¹³⁰. For example, instead of allowing Hongkongers to have court hearings, the HKSAR government has viciously continued unlawful arrests. In particular, the arresting of reporter Xi Yang has changed the dynamic between protestors and the HKSAR authorities.¹³¹ The arrestment of reporter Xi Yang dignifies the vital turning point between the Hong Kong government and protestors. In 1994 Xi Yang was accused of stealing government secrets which for he was concealed from the outside world and sent in prison for 12 years yet later got an early release¹³². The underline imprisonment of Xi Yang is essential because it outbroke a wave of self-censorship among several journalists. This movement has continued even today, although it can be argued that the several arrests distinctly indicates the CCP's tactic to ensure that Hong Kong follows the rules and laws provided in the Basic Law.

¹²⁹ Gruffydd-Jones, J.J. (2019), *supra nota* 108.

¹³⁰ Geping, R., Zhenmin, W. (2007). *supra nota* 83

¹³¹ *Ibid.*

¹³² Lai, C.P. (2005). *Media in Hong Kong: Press Freedom and Political Change 1967-2005*, p 50-57

Furthermore, as a cosmopolitan city, Hong Kong promulgation of laws has been indicated from international laws which means it recognises obligations under international law¹³³. For example, Hong Kong domestic law and international human rights are legally connected with each other. Even though human rights and Hong Kong domestic law are expected to go hand in hand, the line between them has become blurry.¹³⁴ China has submitted its own report to show its human rights development, although west denied Chinese statements immediately.¹³⁵ Some thought that the demonstration was a political victory for Hongkongers as it turned down the proposed security bill. The rising demonstration against the HK government and its pro-Beijing inclination waked by former chief executive Tung Chee-Hwa to subdue the freedom of the press to "secure national freedom", which was a direct gutting edge act towards the numerous arising conflicts.¹³⁶ The 2003 protests have demonstrated strong democratisation movements towards HKSAR. People were demanding the resignation of the chief executive, which directly increased Chinas support to stabilise the situation. The reason why China was willing to stabilise the situation without any extreme use of force was that it wanted to reassure the situation. Moreover, it can be argued that China's aims and mechanisms towards Hong Kong are direct acts of mainlandization. Along with the mainlandization Beijing's political control clearly illustrates China's motives to retrieve its power and drive Hong Kong under it curtail ¹³⁷.

¹³³ Mushkat, R. (1997). One Country Two International Legal Personalities, The case of Hong Kong. *Hong Kong University press*, 1-227.

¹³⁴ Geping, R., Zhenmin, W. (2007). *supra nota* 113.

¹³⁵ Human Rights Watch. (2018). *supra nota* 101.

¹³⁶ Lam, W, (2014), *supra nota* 100.

¹³⁷ *Ibid.*

3. DISCUSSION: THE FUTURE STATUS AND PROTECTION OF THE FREEDOM OF EXPRESSION IN HONG KONG

This final chapter will answer to the final research question of “what is China’s position toward freedom of expression and Hong Kong, and what position the freedom will hold during the upcoming years?”. To find out whether Hong Kong will continue its self-determination in contracts to the freedom of expression, the relevant functions will be examined. Finally, this chapter will conclude the examination of the three-research question to find the triangular type of relationship formed between the three research questions.

3.1. Future of Hong Kong’s self-determination

The diminishing autonomy and increasing disorders in Hong Kong have increased Hongkongers will for self-determination. Furthermore, it can be argued that in the last two years, 2019 and 2020, Hong Kong’s political landscape has changed predominantly. The continuing mainlandization and repression of Hongkongers’ freedoms have increased concerns of mainland China’s influence over Hong Kong. In this regard, the future of Hong Kong is highly dependent on how determined China is about transferring Hong Kong back under its control. Since China’s control over Hong Kong has increased on multiple levels, Hongkongers have started to accelerate their claims for self-determination. Moreover, the consistent pressure from China has successfully advanced mainland policies in Hong Kong.

In order to understand Hongkongers existing problems and fears a few examples of the present situation in Hong Kong are warranted.

On December 2019, China released a report to the World Health Organization (WHO) that it had discovered a virus causing severe health problems and in most serious cases, deaths of people. This virus known as a Coronavirus (COVID-19) has now turned into a worldwide pandemic causing severe health problems and numerous deaths of people. Since the rapid spread of the coronavirus, many countries have declared a state of emergency, including Hong Kong.¹³⁸ Hong Kong's government has declared strict restrictions concerning hygiene, travelling, and prevention of any public gatherings.¹³⁹ Evidently, coronavirus has not stayed unnoticed, but definitely, it has taken attention away from Hong Kong and the pro-democracy protests¹⁴⁰. In this sense, China has got a forefront to interference into Hong Kong's affairs regardless of the non-interference principle secured for Hong Kong¹⁴¹.

Arguably the ongoing coronavirus has complicated the relationship between the Hong Kong government and its residents. For example, in 2019 announced emergency regulations had forwarded the authoritarian rules in the semi-autonomous region. These announced emergency laws enable the Hong Kong government to exercise strict passage over residents' civil freedoms.¹⁴² The emergency laws in power would deteriorate Hongkongers civil rights and shut down the voice of the people. Further to deduce to what extend mainlandization activities have complied with the principles of freedom of expression provided in Art.19 UDHR, it can be argued that because of the coronavirus Beijing has successfully enhanced the one country, one system model. Moreover, as a result, the prohibited demonstrations have quiet down the already diminishing provisions of Art.19 UDHR in Hong Kong. However, as the virus has been decreasing within the restrictions of gatherings, many protesters have started to take actions. After the city lock down protesters have now started again the public gatherings to protest against Beijing. In response the Hong Kong police has taken actions too, for example Hong Kong's opposition Democratic party members have been arrested along with other protester based on the violation of public gatherings.¹⁴³ The tensions between protesters and the Hong authorities has caused another prolonged anti-

¹³⁸ Promise, L. (2020). Why coronavirus hasn't stopped Hong Kong's protest movement, *openDemocracy*.

¹³⁹ Phelan, A.L., Katz, R., Gostin, L.O. (2020). The Novel Coronavirus Originating Wuhan, China Challenges for Global Health Governance. *Jama Network*.

¹⁴⁰ Richburg, K.B. (2020). Hong Kong's autonomy, dying in full view. *Australian strategic policy institute*.

¹⁴¹ *Ibid*.

¹⁴² Yu, V. (2019). Hong Kong emergency law 'marks start of authoritarian rule'. *The Guardian*.

¹⁴³ Hui, M. (2020). Hong Kong police are using coronavirus restrictions to clamp down on protesters. *Quartz*.

government movement.¹⁴⁴ Moreover, it can be argued that even though the fear of losing freedoms to China, Hongkongers have not lost their will to fight for their freedom.

For some time, the OCTS has been under a transition into one country, one system model. Arguably China has been embracing its power over Hong Kong by justifying its action to the ratification of Joint Declaration. In China's point of view, the Joint Declaration enabled a high degree of autonomy for Hong Kong, without decreasing China's sovereignty over the territory.¹⁴⁵ Indeed, China has implemented mainland policies so that it could compose new laws with mainland interest. The various Bill proposals, for instance, the extradition bill (criminal matters) proposed in 2019 indicates explicit infiltration of mainland administrative policies.¹⁴⁶ In this regard, China's position toward freedom of expression offers no grounds for reasonable or practical reinforcement of the right. Based on this research, the future status of freedom of expression will probably decrease. Unquestionably, the Art.19 UDHR and its provisions will not stay in enforce unless a significant move towards its enforcement is carried out.

The increasing hopes of Hongkongers for self-determination and continuous mainlandization has disrupted the already fragile political landscape in Hong Kong. While mainlandization has taken over Hong Kong's political and social concepts, China has continued endorsing the one country, one system model over the OCTS. The uncertainty in Hong Kong has not only affected the rights provided under Art.19.UDHR but more importantly, it has jeopardised Hong Kong's autonomy. Although it is yet to be discovered how will the current pandemic change the atmosphere in Hong Kong. Finally, to conclude the triangular relationship between the three-research questions it can be stated that the increasing mainland policies and diminished autonomy of Hong Kong will eventually increase China's efforts to achieve complete control over Hong Kong.

¹⁴⁴ Griffiths, J. (2020). As coronavirus passes, Hong Kong might be set for more mass protests. *CNN World*.

¹⁴⁵ Tsyvk, A.V., Tsyvk, G.I. (2019). *supra nota* 121.

¹⁴⁶ Yu, V. (2020). *supra nota* 104.

CONCLUSION

This research aimed at analysing and revealing the increased role of mainlandization in Hong Kong from the perspective of violation against Art.19, UDHR the right for freedom of expression. The paper findings were observed and tested with pluralistic qualitative research methodology namely legal discourse analysis and process tracing to examine the central governments' extensive reunification interpretation against Hong Kong's self-determination claims. The findings revealed that the tightening PRC passage over Hong Kong and the process of mainlandization has together with the pro-government movements restricted the common grounds and traditions of Hong Kong. In this regard the core findings of this research were that the political breakdown and loss of Hong Kong constitutional and administrative structures since the handover has served China's success in implementing the one country, one system model in Hong Kong. In the result of the interference and propound amendments of the PRC government, it is evident that Hong Kong has become more frequent towards mainlandization.

This research was able to point out that the tensions between China and Hong Kong have outbreak both mass of anti-government protests and executive violation of the freedom of expression. In this regard and according to the research analyses, it seems that not only the right secured under Art.19 will lose its legitimacy, but moreover, there is a likelihood it will diminish under PRC control. Moreover, it is essential to understand that the current events of protests underline the increasing transformation of Hong Kong into one country, one system model. The recent protests, China's freedom restrictions and coronavirus leave no contradiction of the research hypothesis that there is an actual probability that the process of transmitting Hong Kong under profound control of China will be completed sooner than the Joint Declaration provided. Even though central authorities have increased a high power over Hong Kong self-determination claims the unresolved question of "What the future will hold for Hong Kong autonomy?" has yet to be answered. More recently, the pandemic has imposed a new movement of protests, which has once again increased the tensions on the region. The ongoing pandemic and the immediate role of mainlandization and

whether Hong Kong will continue its self-determination will be left academically 'unattended', providing for a need of examining this matter in the future.

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