

## **Hong Kong's Autonomy After The New National Security Law: Challenges and Perspectives**

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**Panelists: *Sebastian Veg* (Professor of Intellectual History of Modern & Contemporary China, School of Advanced Studies in Social Sciences, Paris);**

***Victoria Tin-bor Hui* (Associate Professor in Political Science, University of Notre Dame, Indiana - USA);**

***Samson Yuen* (Assistant Professor, Department of Government and International Studies, Hong Kong Baptist University);**

***Ilaria Maria Sala* (Journalist and Writer based in Hong Kong)**

**Moderator: *Dr. Hemant Adlakha***

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, was passed by the National People's Congress on the 30<sup>th</sup> of June, 2020. Article 18 of the Hong Kong Basic Law allows Chinese laws to be valid in Hong Kong if they are included in Annex III of the Basic Law. This national security law adds teeth to Article 23 of the Basic Law, which reads:

“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 organisations or bodies of the Region from establishing ties with foreign political organisations or bodies.”

Numerous attempts have been made in the past such as in 2003 to enact national security laws under the aegis of Article 23 but they have not come to fruition given public opposition to the same. The latest effort began in the Summer of 2019 with the Extradition Law Amendment Bill which again saw massive opposition by student led

movements, however these events made Beijing go the Article 18 route and pass a law concerning Hong Kong, given that the protests would preclude the passing of the same under Article 23. The 66 Article Bill, contents of which were kept secret until its successful passage mainly creates four offences of separatism, subversion, terrorism and foreign interference.

**Sebastian Veg** in his address commenced by quoting noted Chinese legal and political theorist, Jiang Shigong who is also an expert on Hong Kong affairs states that the National Security Law is a complete restructuring of Hong Kong as we know it. Veg goes on to explain the new law's on-ground consequences such as the border between Hong Kong and Mainland China opening, making the demand the Extradition Amendment Bill redundant. He further states that the new prosecution system, long arm jurisdiction as well as the position of a Beijing appointed Central Government Commissioner for National Security serves to further institutionalise the role of the Han Zheng led Central Leading Group on Hong Kong & Macau Affairs. The speaker further states that beyond the proximate cause i.e. the protests against the extradition bill that brought the National People's Congress to pass this law, there has been a systematic and consistent erosion of the autonomy of Hong Kong. The law focuses on the three areas of prosecution, police and immigration, as special immigration office has also been created to deal with status of foreign journalists.

Prof. Veg returns to Jiang Shigong's commentary who sees the Basic Law of Hong Kong being redefined as a tool to become an offensive law to help consolidate Beijing's control over the island. Jiang Shigong contextualises this approach within the sphere of the ideas promulgated in Xi Jinping's Document No. 9 which reflects seven problems that were deemed as noteworthy problems (Promotion of Western Constitutional Democracy, West's values being deemed Universal, Civil Society attempting to dismantle the ruling party's social foundation, Promoting Economic Neoliberalism, Promoting Western Idea of Journalism, Promoting Historical Nihilism, Questioning Reform and Opening and the socialist nature of socialism with Chinese characteristics). He quotes Jiang Shigong, stating that any moves into Hong Kong must be seen as achieving goals laid out in Document No. 9, as well as to consolidate comprehensive control of the Party.

**Victoria Tin Bor Hui** echoed the previous speaker in explaining that the National Security Law implies a fundamental restructuring of the erstwhile city state. She further stated that in the aftermath of the anti-extradition bill protests both Hong Kongers as well as the world community underestimated China's resolve to end the one country two systems model.

The speaker further stated that once the protests became violent in 2019, the pretext to quell became very easy for the law enforcement agencies. They sent in riot control personnel and contained the situation far more effectively, without a need to do it in a Tiananmen Style. The new law makes it even more difficult to protest with the need for a No Objection Certificate from the police in order to carry out any protests. This has indeed resulted in the dimming of numbers that are now coming out in the streets. Other causes for the same are that almost 10,000 people have been arrested this year, the costs of protesting being expensive have started to permeate into the public consciousness. Prof. Hui then spoke of the theme of amnesia that has been brought out lucidly in Louisa Lim's *People's Republic of Amnesia*, she referred to this in the context of the 21<sup>st</sup> of July attacks at Yuen Long station in Hong Kong. And further highlighted the need for collective memory to endure in such times, citing various examples from the Tiananmen movement as well as from Xinjiang.

**Samson Yuen** provided a holistic statistical analysis of the situation Hong Kong. He has been tracking the number of protests and arrests and as to how they've been affected by the National Security Law's passage. He states that from a high number between August and September 2019, the number has sharply dwindled. This year the only big protest was on the 1<sup>st</sup> of July, and as stated above he states that the National Security Law is undoubtedly making protesting far more costly. He states that different forms of protest are being adopted which include the boycotting of pro-government stores.

The speaker highlights that one of the major challenges that faces the future prosperity of the Island is the prospective migration of Hong Kongers as well as their assets to countries such as the UK and Australia that are preparing guidelines to assimilate the populace. While this will result in massive brain drain for the Chinese state it will also lead to dwindling of bank reserves that help make Hong Kong such a unique world financial center in the first place. Dr. Yuen further highlights that the law in addition to unleashing a new security apparatus is also catalysing a social reorganisation of the city state, with steps being taken for mainland chinese to migrate. Another latent grievance is an abstract yet very important one. Yuen highlights that there is indeed a changing sense of belonging to the city – as the Chinese Communist Party slowly asserts its will on the people.

**Ilaria Maria Sala**, a foreign journalist based in Hong Kong gave listeners a perspective of the impact of the National Security Law on the media as well as the freedom of

speech. She highlights that Hong Kong has long been a base of international journalists and media companies operating in East and South East Asia given that many headquarters of corporations have been located there. She states that the new law has via vague provisions bestowed wide discretionary powers on authorities making the situation for foreign journalists uncertain. This is again in line with the spirit of Document No. 9's message. She further highlights the long arm jurisdiction that the law bestows, which gives Hong Kong authorities to hold persons beyond Hong Kong shores responsible.

Ms. Sala uses the example of the arrest of Jimmy Lai, founder and publisher of the popular pro-movement Apple Daily newspaper to show the repressive effect of the National Security Law. Secondary effects of the law have been a drying of advertising revenue for such publications that serves the function of chilling free speech. The RTHK broadcasting company (set up along the lines of the BBC) has also seen its editorial freedoms seriously constrained. The speaker further highlights that there is at the present moment a serious change in modus operandi of how journalists both local and foreign behave in order to stay on the legal side of affairs.

Following the opening remarks, moderator Hemant Adlakha and the audience engaged in conversation with the guest speakers. On the unlawful extension of the HK LegCo for one year, especially the predicament of the 22 opposition lawmakers (total Strength of the Legco is 70, 41 are pro-Beijing whereas now 19 are pro-democracy, the remaining seats lie vacant), Ms. Sala noted that here has been a strong division among pro-democracy legislators about what the correct course of action is with regard to the extension of the legislative council for one year. While on one hand three members have decided to step down and not continue in a council they see as illegitimate, while the others choose to continue in council to represent the voice of the pro-democracy populace. On the other hand it is important to remember that the legislature doesn't have any real power to propose laws, that lies within the domain of the executive, their responsibilities are limited to approving, rejecting and providing comments on legislations proposed by the executive. The 1997-1998 legislative council can serve as a kind of precedent for what is taking place at present, given that after the handover from the British the Chinese didn't accept the elected candidates of the legislative council and for that year the council was composed of unelected members. Another question was to what extent was the text of the Basic Law an act of the National People's Congress and a part of a larger legally enforceable agreement between the UK and China at the time of the transfer of power in 1997? Given that China often states that Hong Kong affairs are an internal matter, can the violation of the Basic Law be a breach of a legally enforceable international treaty? In response, Prof. Veg pointed that the Basic Law grows out of the 1984 Sino-British joint declaration. On its own, the Basic Law is a national law as

opposed to an international treaty. Insofar as the Basic Law grows out of the 1984 treaty it encapsulates certain promises and it enshrines certain promises made in the joint declaration as an international treaty lodged with the UN into Chinese law. There is a large body of commentary that infringing the Basic Law would in turn violate the 1984 treaty. One example of this is that the joint declaration enshrines that Hong Kong will have right of final adjudication, if this is infringed upon then that is indeed a violation of an international treaty.