



A CRITICAL REVIEW OF THE PROTECTION OF THE *FREEDOM OF SPEECH* IN *HONGKONG SECURITY LAW* REVIEW BASED ON THE JOINT DECLARATION OF CHINA – ENGLAND 1984 (*SINO-BRITISH JOINT DECLARATION 1984*)

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Abstract

The Sino-British Joint Declaration was a declaration that was signed by Great Britain and China in 1984 in order to discuss about Hongkong which was under British control at that time where British gave Hongkong to China as the part of 99 year lease, but it ended up in disaster after the Hongkong's 2020 National Security Law. The type of research that the author uses is normative where this research refers to international regulations that apply in international relations, court decisions, and norms that apply in international relations. Based on the studies that have been carried out and based on expert opinions and theories that have been put forward, it can be concluded that China violated the contents of the Sino-British Joint Declaration which protects the principle of Freedom of Speech in Hongkong with the ratification of the Hongkong National Security Law. Based on the conclusions above, the authors provide the following suggestions, the Chinese government must carry out International Responsibility by revising the Hong Kong National Security Law both in substance (to avoid rubber articles such as Article 29 point 5) and the process of making the law to follow the law-making procedures in force in Hong Kong.

Keywords: *Sino-British Joint Declaration, Hongkong, National Security Law*

I. PRELIMINARY

A. Background Behind

Sino-British Joint Declaration (usually called with *The Sino-British Joint Declaration*; name official : *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hongkong* ; **Bahasa Mandarin** : 大不列颠及北爱尔兰联合王国政府和中华人民共和国政府关于香港问题的联合声明) is make treaty signed by the government China (represented by former Premier Zhao Ziyang) and government Britain (represented by former Prime Minister

Margaret Thatcher) ratified on 19 December 1984 in Beijing , China ¹.

Agreement this discuss about current Hong Kong that held power by the British where power English against Hong Kong itself start from occupation Hong Kong Island in 1841 during War Opium First . Hong Kong then handed over to Great Britain by the Treaty of Nanking, ratified by the Emperor Daoguang which is emperor from The current Qing dynasty that hold control China after 1842. Island _ this established as colony England (also called *Crown Colony*) in 1843. Colony this expanded until covers Kowloon Peninsula in 1860 after War Opium Second . Hong Kong area then expanded more continued in 1898 when _ English get 99 year lease in the *New Territories* consisting of from the mainland north *Boundary Street* on the Kowloon Peninsula and south of the Sham Chun River (which is border between Hong Kong and China), and more of 200 islands isolated like Lantau Island, Lamma Island , Cheung Chau, and Peng Chau). Though China deliver Hong Kong Island and Kowloon for forever in Nanking, *New Territories* lease agreement covers part big of the total area of Hong Kong so that English no see decent way _ for share colony the with China , meanwhile China no consider for extend rent or allow administration English after finish agreement 99 years lease *New Territories* that , so that second party decide for make The Sino-British Joint Declaration in 1984 .

In agreement that , made a system Hong Kong government created for maintain democracy which is unique thing _ from Hong Kong (no like areas of the People 's Republic of China moment that 's what's not know democracy , Hong Kong has different system _ because held by the British) ²which is called with “*one country, two system*” or “*one country, two system* ” ³. Law in Administrative

¹Albert HY Chen, "The Law and Politics of the Struggle for Universal Suffrage in Hong Kong, 2013–15", *Asian Journal of Law and Society* , Issue 3 Number 1 Year 2016, p . 189–207.

²DJ Lewis, “A Requiem for Chinese Customary Law in Hongkong”, *The International and Comparative Law Quaterly* , Volume 32, Number 2 (April 1983): 347-349.

³“One Country, two systems” is a system government in force in Hong Kong and Macau after they Becomes province *Special Administrative Regions* in China in 1997 and 1999 where only there is one China but second area the could maintain system economics and administration they itself which is default from government previously temporary China Mainland use system from China

Region Hong Kong specifically has base in system law general English , inherited from used colony English believe system *common law* . A number of source applicable law _ in Hong Kong 's constitution is laws made by the Hong Kong Legislative Council and jurisprudence made by decisions Hong Kong court .

Framework Hong Kong 's constitution is regulated by the Hong Kong Constitution or what is known as the Hong Kong Constitution with *Hong Kong Basic Law* , which is part of the National Law of the People 's Republic of China and practical have constitutional status in Hong Kong. Principle *one country, two system* immortalized in Article 5 applicable *Hong Kong Basic Law* until year 2047.⁴

Besides arrange system Hong Kong government like system applicable law and framework _ constitutional law in Hong Kong, also discussed several Thing about the procedure Hong Kong setting attached in 3 *annexes* or attachment .

In attachment first from agreement the decipher about policy base government China for Hong Kong. There are 14 policies listed in Appendix I, which provides framework work where government post hand over accept will formed ⁵.

In attachment second from agreement the arrange formation Group liaison Combined *Sino - English* , consisting of from diplomats from second government , for facilitate ongoing dialogue in progress for implementation Joint Declaration and smooth transfer of government ⁶.

In attachment third from agreement that discuss validity rent land granted by the government Hong Kong colonial . All contract rent existing land _ Keep going recognized by the government *Special Administration Region* (SAR) post hand over thank . All rent without option Ending update _ before June 30 , 1997 can be extended for period no later than June 30 , 2047.⁷

In accordance with the principle of " one country, two " agreed system _

⁴Hongkong Basic Law Drafting Committee, *Basic Law of the Hongkong Special Administrative Region of the People's Republic of China*

⁵ Government UK and Government People's Republic of China , *Sino-British Joint Declaration* , Annex 1

⁶ *Ibid*, Annex 2

⁷ *Ibid.*, Annex 3

Among English and Chinese , Administrative Region Hong Kong only (HKSAR) no will practice system socialist in China land , and system capitalist as well as method existing Hong Kong life in life Hong Kong 's social and political will changed for 50 years until 2047. This Joint Declaration require policy base this written in *Hongkong Basic Law* and obeyed by both split party .

Along walking time , government China start violate the provisions made in agreement that , some incidents that happened in Hong Kong for 10 years to the back have same pattern , where _ government China To do *breach of authority* to Hong Kong and the government English in agreement that . As happened in 2014 where _ _ Committee Selection Affairs Overseas UK _ banned by China entered Hong Kong on a planned visit in December as part from investigation they on progress implementation The *Sino -British* Joint Declaration . In debate emergency parliament about the prohibition that has not been once occur before , chief Richard Ottaway committee revealed that the officials China consider Joint Declaration " now no valid and only covers period from signing in 1984 to _ handover in 1997 " .⁸

In July 2017, when British Foreign Secretary Boris Johnson⁹ urge progress democracy in Hong Kong, interpreter Chinese Foreign Ministry spokesman Lu Kang said agreement binding Hong Kong surrender by law with English “ as document history , no again have significance practical ,” and “ same very no tie management government center over Hong Kong. English no have sovereignty , no have power for rule and not have power for watching Hong Kong after submission " .¹⁰ As response , office Overseas UK _ said : " this is binding agreement _ by law ,

⁸Danny Lee and Gary Cheung, "China says British complaints over Hongkong visit ban 'useless'", South China Morning Post, <http://www.scmp.com/news/hong-kong/article/1654603/china-says-british-complaints-over-hong-kong-visit-ban-useless> , Retrieved December 13 , 2021 .

⁹ Government United Kingdom , "Hongkong Special Administrative Region 20th anniversary: written ministerial statement", <https://www.gov.uk/government/speeches/hong-kong-special-administrative-region-20th-anniversary-written-ministerial-statement> , Accessed on December 13 , 2021

¹⁰Neil Connor, "China says legally binding Hongkong handover treaty with Britain has 'no practical significance' " , <https://www.telegraph.co.uk/news/2017/06/30/china-says-legally-binding-hong-kong-handover-treaty-britain/> , Accessed on December 13 , 2021

registered with the United Nations and continues apply . Like as one _ signatory , government English committed for monitor implementation with careful .” Johnson emphasized return commitment English for Hong Kong immortalized in the same " agreement " strong day it 's like 20 years then .¹¹ However , official China has warn to mix hand foreign and accusing office English hide pattern think colonial .

During Revolution Umbrella in 2014 which is a campaign oppose guess violations in HKSAR by the Government China , Sino-British Joint Declaration deemed " void " by China , concluded for first time by official China according to a member parliament England . Rita Fan, when that the only one Hong Kong representative for Committee Permanent National People's Congress in Beijing, confirmed that not quite enough answer supervision English has end so that Declaration the already considered *void* or no apply again .¹²

This thing peak when government China implement Hongkong *National Security Law* Hong Kong National Security in 2020 where according to decision the law _ National Security aims for prevent mix hand external in Hong Kong ¹³affairs , criminalize threatening action _ security national like subversion and separation self , allow Central People's Government (State Council) China for establish a security agency national in Hong Kong if need and ask Head Executive for send report periodically to government center about security national .¹⁴ Constitution this by no direct violate the principle of " one country, two " system ” listed in The new Anglo - China Joint Declaration will done coming into force in 2047 and worrying many Hong Kong residents later decide for leaving Hong Kong

¹¹Reuters, "China says the Sino-British Joint Declaration on Hongkong no longer has meaning", <https://www.reuters.com/article/us-hongkong-anniversary-china-idUSKBN19L1J1> , Accessed on December 13 , 2021

¹²Grace Tsoi, "Does China Think the Sino-British Joint Declaration Is Void?", Foreign Policy, <https://foreignpolicy.com/2014/12/18/does-china-think-the-sino-british-joint-declaration-is-void/> , Retrieved December 13 , 2021

¹³The Government of the Hongkong Special Administrative Region, *Hongkong National Security Law* .

¹⁴Xinhua News Agency, "Highlights of China's decision on Hongkong national security legislation", http://www.xinhuanet.com/english/2020-05/28/c_139095813.htm , Accessed on December 13 , 2021

to English past track *British National (Overseas) passport* (BNO)¹⁵. A number of critics guess that future, China could do arbitrarily in agreement international and can free from all problem that will faced by other countries when violate agreement that .

Pro - democracy activists arrested by the Hong Kong government with the basis of " separation " self ", " subversion ", " terrorism " and " collusion with strength foreign " however in *Hong Kong National Security Law* violation the defined so large so that them (in Thing this is Hong Kong government and Government China mainland) can with easy make criticisms as base use *Hong Kong National Security Law* in prosecution patterned political with potential punishment _ heavy until maximum punishment lifetime live .

Contents of *Hong Kong National Security Law* interpreted that actions like give opinion nor demonstrate for criticize government could considered as action for " separation " self ", " subversion ", " terrorism " and " collusion with strength foreign " so contrary with agreement *Sino-British* which states that things it (such as give opinions , criticisms , demonstrations , etc.) _ protected in system *one country, two systems* . This thing proven with day first implementation of the *Hong Kong National Security Law* where party authorized start use it for take action legitimate and peaceful expression _ according to law international and treaty *Sino-British* the because in law international and treaty *Sino-British* the set that state opinion by peace about system political not threat for security national a country and must protected .

Many people were arrested because have flags , stickers and banners with pro - democracy political slogans . Police and officials also claim that slogans, t-shirts, songs , and paper white used _ During protest democracy in Hong Kong during 2019 can endanger security national and lead to demands criminal .

¹⁵ *British National (Overseas) passport* is passport issued by the government English for British citizen _ with the status of living outside English (like Hong Kong). Owner passport this is population permanent Hong Kong resident living in Hong Kong until June 30 , 1997 and electing for permanent Becomes British citizen _ with register self Becomes British nationals living abroad _ _ _ English when Hong Kong was still under government England .

Two day after Constitution that ratified , the Hong Kong government declared that “ *Liberate Hongkong, the revolution of our times* ” , a political slogan general During protest in 2019 connotes _ “ *Hongkong independence* ” , or separate Hong Kong from China , and effective forbid its use .¹⁶

In theory law international law _ international alone only operate at the level international and not in law domestic / national . According to sect or perspective positivism , law international and law national / domestic are 2 different and independent systems . Temporary according to sect law nature , law international and law national is one mutual system _ related where focused approach _ to Right basic Man or something fundamental norms sustain second law that .

Case this relate with Convention Vienna 1969 concerning the Law of Covenants because according to a number of expert law , ¹⁷the basis of making *Hong Kong National Security Law* that alone contrary with Article 27 of convention the¹⁸ where is the binding country self to a agreement international no allowed use law national as reason violate law international (agreement) alone enter as one _ source law international). However , thing this depends from position law international in legislation national a country. So that troublesome position pro - democracy activist in protect *freedom of speech* guaranteed by Article 5 of agreement *Sino-British* that .

B. Formulation Problem

Based on background the back that has been submitted above , there is two

¹⁶Amnesty International, “Hongkong's national security law: 10 things you need to know ”, <https://www.amnesty.org/en/latest/news/2020/07/hong-kong-national-security-law-10-things-you-need-to-know/> , Accessed on December 13 , 2021

¹⁷Victoria Tin- Bor Hui, “Hongkong's New Police State”, <https://thediplomat.com/2021/05/hong-kongs-new-police-state/> , Retrieved 13 December 2021. The same is also mentioned in Hongkong Bar Association, “Statement of the Hongkong Bar Association on Proposal of National People's Congress to enact National Security Law in Hongkong.”, <https://web.archive.org/web/20200525134948/https://www.hkba.org/sites/default/files/20200525%20-%20Proposal%20of%20National%20People%27s%20Congress%20to%20enact%20National%20Security%20Law%20in%20Hong%20Kong%20%28E%29.pdf> , Accessed on December 13 , 2021.

¹⁸United Nations, *Vienna Convention on the Law of Treaties 1969*.

problem as following :

1. How protection on principle *Freedom of Speech* in Hong Kong in Covenant Law perspective International ?
2. How not quite enough answer Government China on protection principle *Freedom of Speech* in Agreement *Sino-British* 1984 in perspective not quite enough answer international ?

II. DISCUSSION

A. Case Position and Sit Case

In 1842 , the Qing . Kingdom¹⁹ give Hong Kong to the British Empire as contents from the Nanjing Treaty/ *Treaty of Nanjing* which marks ending war opium first so that Hong Kong becomes colony England . ²⁰In 1860 , the British Empire win war opium second so the Qing Kingdom was forced give Kowloon to England in 1860 in _ agreement *Convention of Beijing* and give rent for 99 years to area *New Territories* in 1898 in agreement *Second Convention of Beijing*.²¹

In the second world war , Japan had time occupied Hong Kong from 1941 to 1945 where estimated 100,000 Hong Kong residents executed because To do resistance oppose population Japan or To do a number of error like have Hong Kong Dollar currency, ²²When the war over , Hong Kong is back held by England after soldier Japan expelled by the British and Chinese soldiers and experienced addition population from immigrants from _ from China mainland caused a number of

¹⁹The Qing Kingdom is standing kingdom _ from the years 1636 to 1912 and is kingdom last standing in China _ before changed Becomes Republic of China (*Republic of China*) and is kingdom China 's biggest in Thing territory .

²⁰ China's Qing Government and Government England , *Treaty of Nanjing 1842*.

²¹Kallie Szczepanski , "Why Did Hongkong Belong to Britain? " , <https://www.thoughtco.com/china-lease-hong-kong-to-britain-195153> , Retrieved 13 December 2021

²²HKUST Library, "Three Years and Eight Months: Hongkong during the Japanese Occupation", <https://library.ust.hk/exhibitions/japanese-occupation/> , Accessed on December 13 , 2021

situation gripping in China like Revolution Communists in 1949 and the *Great Leap Forward* program from 1958 to 1962.²³

In the 1950s, Hong Kong changed Becomes center where to trade in Asia companies make industry and manufacturing in Hong Kong, position this strengthened when China decide for open self to the world.²⁴

In 1984 , Former British Prime Minister Margaret Thatcher and Former Chinese Premier Zhao Ziyang signed the *Sino-British Joint Declaration* and then on July 1 , 1997, Hong Kong was granted to China through ceremony *Handover of Hongkong* and enforce *Hong Kong Basic Law* ²⁵. one _ arranged thing _ in *Hong Kong Basic Law* is about formation Constitution Regulated National Security in Article 23 *Hong Kong Basic Law*.

Article 23 of the *Hong Kong Basic Law* is written that :

*“The Hongkong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region , and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”*²⁶

If it means in Indonesian , article the arrange that Hong Kong government must make a the law that prohibits action treason , separation self , incitement _ _ submersive to government center China , steal state secret , establishment

²³*Great Leap Forward* Program is a campaign for build back ROC (*Republic of China*) from the country of argaris become a communist country with delete ownership personal for land and force all family for work in state - operated communes . Consequence from this program , estimated 15 to 55 million citizens who died as a result of starve and make Thing this as starving worst along history .

²⁴Catherine R. Schenk, “Economic History of Hongkong”, <https://eh.net/encyclopedia/economic-history-of-hong-kong/#:~:text=The%20industrialization%20of%20Hong%20Kong,the%20embargoes%20of%20the%201950s.&text=Hong%20Kong%27s%20industry%20was%20found ed.intensive%20production%20mainly%20for%20export> . , Accessed December 13 , 2021

²⁵Hongkong Free Press, “In Pictures: The 1997 Handover of Hongkong from Britain to China”, <https://hongkongfp.com/2017/01/01/pictures-1997-handover-hong-kong-britain-china/>, 3 Accessed on December 13 , 2021

²⁶ Hong Kong Government , *Hong Kong Basic Law*, article 23.

organization or political body foreign for To do activity character politics in Hong Kong includes also doing connection political with organization or political body local .

Constitution security national in Hong Kong law will related with three the rules that make up law criminal law in Hong Kong ²⁷which consists of from :

- 1) *The Official Secrets Ordinance* (Regulating about state secret)
- 2) *Crimes Ordinance* (Regulate security in Hong Kong and it works for avoid formation groups criminal like TRIADS ²⁸)
- 3) *Societies Ordinance* (Regulate about difference potential opinion _ endanger national security)

After some test for make Constitution security national in Hong Kong, happened a the final event give birth to *Hong Kong National Security Law*. All starting in 2019 where _ The Hong Kong government plans for make amendment for Constitution Where is Hong Kong extradition ? amendment the will allow extradition to areas like China Mainland and Taiwan in a number of situation certain . Second area the no have agreement extradition so that troublesome Hong Kong government for complete case Tony Chan/Chan Tong- kai 's murder of his girlfriend , Amber Poon/ Poon Shark -Wing who is pregnant in Taiwan.²⁹

Because of murder the happened in Taiwan where the Hong Kong government did not have jurisdiction so party Hong Kong authorities do not could sue Chan with murder , and only could punish him on accusation money laundering due to murder that . Chan does n't either could extradited to Taiwan because no there is agreement extradition between Hong Kong and Taiwan. As response from case At this time , the Hong Kong government made a bill proposal (Formula Law)

²⁷Hongkong Human Rights Monitor, “House of Commons-Foreign Affairs-Minutes of Evidence” , <https://publications.parliament.uk/pa/cm199798/cmselect/cmfaaff/710/8042820.html> , Accessed December 13 , 2021

²⁸TRIAD is a syndicate crime transnational organization based in Greater China and having outposts in various countries with _ population Significant Chinese.Usually TRIAD can _ found in areas that have population Chinese .

²⁹Mike Ives, “What Is Hongkong's Extradition Bill?”, <https://www.nytimes.com/2019/06/10/world/asia/hong-kong-extradition-bill.html> , Accessed on December 13 , 2021

amendment for Constitution *The Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019* in February 2019.

Opt-in China to change Constitution this Becomes attention Where are the Hong Kong people ? academics and law enforcement law respond that this bill could result in loss separation system law Among Mainland China with Hong Kong and can violate principle “*one country, two systems.*” . Besides because Thing that , the Hong Kong people consider that system the law in mainland China is not as good as Hong Kong where lack of protection right basic humans and mainland China have history where government communist rule _ China data push difference opinion politics . ³⁰This thing proven with arrest pro - democracy activists committed in 2017 ³¹and failure _ *Umbrella Revolution* ³²in 2014 .³³

This demo produce results where is the bill canceled , However , Government China The mainland via the *National People's Congress Standing Committee* (NPCSC) decided for make Constitution Hong Kong National Security started with exit decision title *The Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hongkong Special Administrative Region to Safeguard National Security* issued on 28 May 2020³⁴ because according to government China mainland , Law this needed for safety Hong Kong national security which was infiltrated by parties who did not responsible like the protestors against _ the drafting of the extradition bill .

In decision this , the law security Hong Kong national created for for prevent mix hand external in Hong Kong affairs , criminalize threatening action _ security

³⁰Kelly Chernin , “Mass protests protect Hongkong's legal autonomy from China – for now”, <https://theconversation.com/mass-protests-protect-hong-kongs-legal-autonomy-from-china-for-now-118753> , Accessed on December 13 , 2021

³¹Hillary Leung, “Then and Now : 79 Days of Protest in Hongkong”, <https://time.com/5661211/hong-kong-protests-79-days/> , Accessed on December 13 , 2021

³² *Umbrella Revolution* is protests caused by the *Standing Committee of the National People's Congress* (NPCSC) Secrete proposal for carry out system reform where is Hong Kong election ? Public respond proposal it's very limiting pro - democracy candidate .

³³ Helier Cheung, "Hongkong extradition: How radical youth forced the government's hand" , <https://www.bbc.com/news/world-asia-china-48655474> , Accessed December 13 , 2021

³⁴Xinhua News Agency, “China adopts decision to make Hongkong national security laws” , http://www.xinhuanet.com/english/2020-05/28/c_139095012.htm , Accessed December 13 , 2021

national like subversion and separation self , allowing the NPCSC to set up a security agency national in Hong Kong if need and need Head Executive for send report periodically to government center about security national in Hong Kong.³⁵This thing make pro- democracy camp , consultant law and organizations right basic people in Hong Kong criticize decision the because decision the considered as threat to principle “*one country, two system*” , supremacy law and freedom civilian³⁶.

On June 30 , 2020, NPCSC certifies *The Hongkong National Security Law (the Law of the People's Republic of China on Safeguarding National Security in the Hongkong Special Administrative Region)* after protest regarding the proposed extradition bill in 2019 that would allow perpetrator crime to be extradited to China mainland . Constitution this start valid on the same day .³⁷

In Constitution this set crimes that include in things considered _ as dangerous for Hong Kong,³⁸ Among other :

1. Subversion ;
2. Terrorism ;
3. Collusion with organization foreign ;
4. Speech or verbal and nonverbal promotion of Hong Kong independence from China .

Application from Constitution the give right to party authorized for monitor , detain , and search suspected persons violate Constitution the as well as oblige publisher templates , *website* hosting services and providers internet service for

³⁵Xinhua News Agency, “Highlights of China's decision on Hongkong national security legislation ” , http://www.xinhuanet.com/english/2020-05/28/c_139095813.html , Accessed December 13 , 2021

³⁶ Twinnie Siu and James Pomfret, “Hongkong and Beijing officials defend security laws, citing threat of terrorism”, <https://www.reuters.com/article/us-china-parliament-hongkong/hong-kong-and-beijing-officials-defend-security-laws-citing-threat-of-terrorism-idUSKBN231009> , Accessed December 13 , 2021

³⁷ Helen Regan, “China passes sweeping Hongkong national security law : report”, <https://www.cnn.com/2020/06/29/china/hong-kong-national-security-law-passed-intl-hnk/index.html> , Accessed on December 13 , 2021

³⁸ Hong Kong Government , *The Hongkong National Security Law*

block , delete , or limit content according to party authorized has break it .
Constitution this for apply for inhabitant permanent nor no stay hong kong too those
outside Hong Kong . _

Constitution this have six chapter with a total of 66 articles that discuss fourth
crimes that can sentenced punishment maximum lifetime alive and at least three
year for participant active as well as under three year test if participant the behave
passive in To do crime the nor deliver self to party authorized .

According to scholars and observers law , existing content _ in the
Constitution the could unsettling residents who want give opposite opinion _ with
Hong Kong and Chinese governments mainland .

Worries this proven with arrest a number of pro - democracy activists
consisting of from ex- member Hong Kong legislation , activist social , and
academics on January 6 , 2021 with accusation To do subversion to government
China mainland . Besides arrests of pro - democracy activists , Hong Kong Police
also raided 72 places stay , place work nor related organizations _ with arrested
activist _ the as well as confiscated the related \$ 200,000 with arrested *legislator* .

³⁹
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Arrested activists _ with accusation subversion Among other :

1. Benny Tai, ex professor law at Hong Kong University;
2. Au Nok- hin , ex member of the Hong Kong Legislative Council (2018–
2020);
3. Ben Chung, chairman *Sai Kung District Council* and vice chairman *Power
for Democracy*;
4. Andrew Chiu, vice chairman *Eastern District Council* and chair *Power for
Democracy*;
5. John Clancey , attorney and treasurer *Power for Democracy*;
6. Ng Ching-hang, activist ;

³⁹Vivian Wang, Austin Ramzy , and May Tiffany, “Hongkong police Arrest Dozens of Pro-
Democracy Leaders”, [https://www.nytimes.com/2021/01/05/world/asia/hong-kong-arrests-
national- security - law.html](https://www.nytimes.com/2021/01/05/world/asia/hong-kong-arrests-national-security-law.html), Retrieved December 13 , 2021

7. Tiffany Yuen, member *Southern District Council*;
8. Fergus Leung, member *Central and Western District Councils*;
9. Tat Cheng, member *Eastern District Council* ;
10. Chui Chi-kin, member *Eastern District Council* ;
11. Clarisse Yeung, chairman *Wan Chai District Council*;
12. Michael Pang, member *Southern District Council*;
13. Jimmy Sham, member *Sha Tin District Council* and ex chairman *the Civil Human Rights Front*;
14. Claudia Mo, ex members of the Legislative Council (2012–2020);
15. Calvin Ho, member *Sham Shui Po District Council* ;
16. Frankie Fung, founder *Peninsular Commons*;
17. Lawrence Lau, lawyer and member *Sham Shui Po District Council* ;
18. Helena Wong, ex members of the Legislative Council (2012–2020);
19. Lau Chak-fung , activist ;
20. Jeffrey Andrews, worker social ;
21. Joshua Wong, ex secretary general *Demosistō* ;
22. Jeremy Tam, ex members of the Legislative Council (2016–2020);
23. Li Ka-tat, member *Kwun Tong District Council*;
24. Tam Tak -chi, vice chairman *People Power* ;
25. Wu Chi - wai , ex chairman *Democratic Party* and members of the Legislative Council (2012–2020);
26. Sze Tak-loy , chief *the Hongkong Association for Democracy and People's Livelihood* and members *Wong Tai Sin District Council*;
27. Eddie Chu, ex members of the Legislative Council (2016–2020);
28. Sam Cheung, member *Tuen Mun District Council*;
29. Wong Ji -yuet , ex interpreter talk *Scholarism*;
30. Ng Kin- wai , member *Yuen Long District Council*;
31. Andrew Wan, member *Kwai Tsing District Council* and former members of the Legislative Council (2016–2020);

32. Kwok Ka-ki, ex members of the Legislative Council (2004–2008; 2012–2020);
33. Carol Ng, chairman Confederation Union Hong Kong workers ;
34. Gwyneth Ho, ex journalist for *Newsstands*;
35. Ventus Lau, activist ;
36. Alvin Yeung, ex leader *Civic Party* and ex members of the Legislative Council (2016–2020);
37. Raymond Cham, leader *People Power* and ex members of the Legislative Council (2012–2020);
38. Owen Chow, activist ;
39. Lam Cheuk-ting, member *North District Council* and former members of the Legislative Council (2016–2020);
40. Gary Fan, member *Sai Kung District Council* and former members of the Legislative Council (2012-2016; 2018–2020);
41. Hendrick Lui, worker social ;
42. Leung Kwok-hung, ex members of the Legislative Council (2004–2017);
43. Mike Lam, entrepreneur ;
44. Tam Hoi-pong, member *Tsuen Wan District Council*;
45. Ricky Or, member *Sai Kung District Council*;
46. Lee Chi- yung , interpreter talk for *the Association of Parents of the Severely Mentally Handicapped*;
47. Kwong Chun- yu , member *Yuen Long District Council* and ex- members of the Legislative Council (2016–2020);
48. Lester Shum, member *Tsuen Wan District Council* ;
49. Wong Pak- yu , member *Yuen Long District Council*;
50. James To, member *Yau Tsim Mong District Council* and ex members of the Legislative Council (1998–2020);
51. Lee Yue-Shun, member *Eastern District Council*;
52. Winnie Yu, chairman *Hospital Authority Employees Alliance*;

53. Michael Lau, officer *the Hongkong Allied Health Professionals and Nurses Association*;

54. Joseph Lee, ex members of the Legislative Council (2016–2020);

55. Yuen Wai Kit, head school *School of Nursing of the Union Hospital*.

According to Hong Kong government , arrested activists planned for overthrow state power with attempted for get chair majority in the Hong Kong Legislative Council with destination for disable Hong Kong government . Activists the To do fundraising , research about opinion public , publicity and do discussion with inhabitant around for interesting voice Hong Kong people vote pro- democracy candidates .⁴⁰

All activist except Joshua Wong and Tam Tak -chi who already arrested more formerly with different charges _ released tomorrow day with guarantee except for Wu Chi - wai who violated regulation quarantine health so that no could given guarantee .

Arrest this get condemnation in Britain , British Foreign Secretary , Dominic Raab respond that arrest this is violation *Sino-British Joint Declaration* where freedom of *speech* activists the do protected in agreement international that .⁴¹ Consequence from arrest this , english give opportunity for Hong Kong residents who have passport *British National (Overseas) Passport* for evacuate to UK and some countries like UK and Canada give *warning* to inhabitant country for no visit Hong Kong.

B. How protection on the principle of Freedom of Speech in Hong Kong in Covenant Law perspective International ?

⁴⁰Hongkong Free Press, "Security chief says mass arrest of democrats 'necessary' due to 'malicious' plot to paralyse Hongkong", <https://hongkongfp.com/2021/01/06/security-chief-says-mass-arrest-of-democrats-necessary-due-to-malicious-plot-to-paralyse-hong-kong/>, Accessed on December 13 , 2021

⁴¹Patrick Wintour, "China 'misled world' on Hongkong security law, says Dominic Raab ", <https://www.theguardian.com/world/2021/jan/06/british-politicians-urge-eu-to-drop-china-deal-after-hong-kong-arrests>, Accessed on December 13 , 2021

In case this , government China proven To do violation to *The Sino-British Joint Declaration* which resulted in violated principle *Freedom of Speech* in Hong Kong with implemented *Hong Kong Security Law*. This thing proven with existence chapters 7 and 8 in *Sino-British Joint Declaration* where written :

“ 7. *The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the annexes to this Joint Declaration.*

8. *This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its annexes shall be equally binding.*”

In second chapter that , it is written that agreement the tie second split party and second split party has agree for implement agreement the to in ratification in both countries _ so that agreement this could happening in China nor English (This is prove that English and Chinese use theory Dualism in law International), because agreement this already ratified so Chinese and English have obligation for operate agreement the in accordance with contents agreement . This thing set in Article 26 of *the Vienna Convention on the Law of Treaties of 1969* where written :

“*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*”

So , according to *Vienna Convention on the Law of Treaties of 1969*, should party China nor party English bound to agreement the because second party the sign agreement the so that tie self they to agreement that and second split party must obey contents agreement that . Statement from party China (such as what the interpreter said _ Chinese Foreign Ministry spokeswoman Lu Kang stated that agreement binding Hong Kong surrender by law with United Kingdom (*Sino-British Joint Declaration*) “ as document history , no again have significance practical ,” and “ Absolutely no tie management government center over Hong Kong. English no have sovereignty , no have power for rule and not have power for watching Hong Kong after submission ”) no could justified .

In an international agreement, if in an agreement there is a commitment that must be fulfilled (in this thing this is protection of basic human rights inherited from the English to Hong Kong, one of them is freedom of opinion (*Freedom of Speech*)), then listed commitments in an agreement must be kept because the commitment is dealt together so that principles of international agreement like *pacta sunt servanda*, *Equality Rights*, *Reciprocity*, *Bonafides*, *Rebus sic Stantibus*, and *Courtesy* apply in an agreement that.

Besides that, on June 12, 1985, the agreement registered to the United Nations (United Nations) and considered as a binding agreement – second split parties by the United Nations because of the binding clause in an agreement that. So, in China's opinion that declaration is only unilateral and Chinese are entitled to violate an agreement for state security is not allowed because it violates the principle *pacta sunt servanda* which is one of the most important principles in making an international agreement and not because of urgency or *force majeure* which resulted in China must violate an agreement that.

In the first chapter from the attachment first from *Sino-British Joint Declaration* written that “... *that after the establishment of the Hongkong Special Administrative Region the socialist system and socialist policies shall not be practiced in the Hongkong Special Administrative Region and that Hongkong's previous capitalist system and life-style shall remain unchanged for 50 years.*” Which became one – proof that in an agreement that, no disturbing changes in the Hong Kong system and life, thing this in accordance with one – theory of state succession where the English give Hong Kong to China with all infrastructure the former state administration held during occupation of Hong Kong by the British and in an agreement takeover of Hong Kong territory from the English to China by explicit state that Hong Kong will follow the system derivative from England which is the one before Hong Kong.

Chapter the could be one – proof that China does violation because *Hong Kong National Security Law* alone is not in accordance with the *lifestyle* that has been anyone in Hong Kong who knows *Freedom of Speech*. Even though Article 23 of

the *Hong Kong Basic Law* explained that Hong Kong should have a Constitution national security , however content from *Hong Kong National Security Law* threaten principle Protected Freedom of *Speech* in agreement this is proven with arrest pro - democracy activists on January 6 , 2021 with accusation effort for overthrow state power though the things they do is ordinary things _ carried out by regions that know democracy (such as fundraising , research about opinion public , publicity and do discussion with inhabitant around) which resulted in Fright for residents in Hong Kong in give aspirations them later _ day if aspirations the no in accordance with thinking from China .

Making *Hong Kong National Security Law* also not in accordance with article 2 appendix I of *Sino-British Joint Declaration* where only the legislature in Hong Kong has authority for make Constitution in accordance with *Hong Kong Basic Law* so the NPCSC doesn't have authority for make laws in Hong Kong and only entitled for get report to Constitution what only that have been legalized in Hong Kong. In fact , the *Hong Kong National Security Law* created and authorized by NPCSC so that should Constitution this no considered legitimate by by the *Hong Kong Basic Law* and is null and void (void *ab initio*) .

In Justice for solution related cases _ with *Hong Kong National Security Law* is also considered no in accordance with Article 1 Annex I of *the Sino-British Joint Declaration* where The Hong Kong government has autonomy level tall and have power independent executive , legislature and judiciary _ so that The Hong Kong government has authority for To do decision end without mix hand government China . In *Hongkong National Security Law*, Persons sued under law the will face a different judge with Hong Kong court where the judges handle case this will direct elected by *the Chief Executive of Hong Kong* who is holder power executive in Hong Kong. In other words, the judges who would handle case it will be siding to China Land and potential no could give justice added with follow mix it up party executive into the realm judicial .

In Covenant Law glasses International , the principle of freedom of speech in Hong Kong itself protected in *Sino-British Joint Declaration* because principle the listed in Article 13 Annex I of the written *Sino-British Joint Declaration* that :

“The Hongkong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hongkong Special Administrative Region according to law. The Hongkong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hongkong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.”

So that principle the should upheld high by the government China because principle the entered to in *The Sino-British Joint Declaration* which includes in binding agreement _ Chinese and English . Besides that , in one _ theory succession , there something guarantee that the substitute country could inherit rights and obligations from a changed country for the sake of sustainability system law in succession area _ this and as it happened in case this , Hong Kong is given to China with condition where Hong Kong 's rights and obligations are gift from party English and in *Sino-British Joint Declaration*, China required for maintain system the up to 50 years to come coming (until 2049).

But in *Hong Kong National Security Law* , principle *Freedom of Speech* and some *social liberites* other limited by the Hong Kong government, especially in article 29 point 5 where action for criticize Hong Kong and Chinese governments could considered as " provocation " with breaking way _ law with spark hatred between _ Hong Kong residents against Government China Mainland or The Hong Kong government, which is likely big will cause serious consequences . ” , hal this show that China same very no respond that principle *Freedom of Speech* is protected thing _ in agreement it and do *breach* to *Sino-British Joint Declaration* . Reasons given by China _ about his actions (believe for the security of the Chinese state

from split nation) no could allowed because in Article 27 *Vienna Convention on the Law of Treaties of 1969* a country not allowed violate a agreement international with reason use law national they as base for violate agreement that , agreement international only could violated (in Thing this exception) if occur consensuality between the parties (article 20), defense self (article 21), *force majeure* (article 23), a difficulty / *distress* (article 24), circumstances forced (article 25), and actions reply to that country (articles 49-52). Due to in case this no there is elements that , then party China considered violate agreement the because party China and party English already tie self to agreement the proven with the evidence already attached .

Though in *The Sino-British Joint Declaration* does not have governing clause _ about applicable sanctions _ if one _ party To do violation in agreement that , because *The Sino-British Joint Declaration* has binding clause _ second split party for bow down to agreement that , then China could given punishment based on principles and principles generally applicable in the agreement International . Violated principle _ in Thing this is the principle of *pacta sunt servanda* where party China no obey provisions , decisions , statutes , and agreements in *Sino-British Joint Declaration* and act as you like heart so that harmful rights from Hongkongers for _ express and think in advance general .

C. How not quite enough answer Government China on protection principle *Freedom of Speech* in 1984 Sino-British Agreement in perspective not quite enough answer international ?

Due to violation that , China must To do *International Responsibility* for repair the mistake the because China violate his obligations in *Sino-British Joint Declaration* for guard freedom expressions and opinions that exist in Hong Kong with implementation *Hong Kong National Security Law* which has a number of chapter rubber that can result in the party who owns different opinion _ from government China for arrested with accusation subversion or overthrow state power . In Thing this , in charge answer in case this is officials Mainland China like NPCSC members and pro-Beijing Hong Kong officials who they create and support made *Hong Kong National Security Law* is full of will chapter threatening rubber _

freedom opinion in Hong Kong. This in tune with regulations governing _ about
Where is *International Responsibility* ? the country must responsible answer on all
action officials and their organs that carry out error international .

International Responsibility that can carried out by the government China like
To do revision to *Hongkong National Security Law* to conform with *Sino-British*
Joint Declaration good from side formulation nor contents from Constitution that .
Besides that , China should also honor difference opinion from Hong Kong
residents and not forcing for all Hongkongers for _ agree all issued policies _ for
Hong Kong with threat subversion or treason if no agree or no one voice with Hong
Kong and Chinese governments .

III. CLOSING

A. Conclusion

Based on studies that have been done and based on opinion expert as well as
theories that have been put forward , then could drawn something conclusion that
China violate contents from *The Sino-British Joint Declaration* that protects principle
Freedom of Speech in Hong Kong with endorsement *Hong Kong National Security*
Law which affects the parties who have different opinion _ from government China
and Hong Kong can arrested with accusation subversion , treason , or terrorism though
party the only criticize government China and Hong Kong. Offenses committed by
China _ the harmful Hong Kong residents who later evacuate to other countries and
muddy diplomatic relations between China with England .

Opinion that China no have obligation for bow down to agreement the because
agreement the shaped declaration no could accepted . Because , chapters 7 and 8 of
Sino-British Joint Declaration itself arrange about tied up second split parties
(English and Chinese) against agreement that and the agreement the alone already
registered to the United Nations and considered as binding agreement _ so that if occur
violation to agreement that , then the party who did error the must To do *International*
Responsibility for redeem error that .



By theory , China must To do *International Responsibility* for repair the mistake the because China violate his obligations in *Sino-British Joint Declaration* for guard freedom expressions and opinions that exist in Hong Kong with implementation *Hong Kong National Security Law* which has a number of chapter rubber that can result in the party who owns different opinion _ from government China for arrested .

B. Suggestion

Based on the conclusion above , then writer give advice as following , the government China must To do *International Responsibility* with To do revision to the Hong Kong National Security Law is good by substance (for avoid articles rubber like Article 29 point 5) as well as the manufacturing process from Constitution the for follow procedure making laws in force in Hong Kong.

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