

The Return of High Policing in Hong Kong

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Three issues explored

- 1) the circumstances leading to the return of the high policing (=national security policing) in Hong Kong;
- 2) the major features of the high policing that the NSL has created in Hong Kong, which are explained by means of an analysis of the text of the NSL;
- 3) a possible equilibrium between Chinese high policing and Hong Kong's liberal rule of law.

The Structure of our chapter

- Introduction
- I. The Prehistory of the NSL
- II. The National Security Policing under the NSL
 - *a. It is political*
 - *b. It is preventive*
 - *b. It is controlled by the Central*
- III. Riding the Tiger of the NSL
- IV. Conclusion

the political circumstances leading to the return of the high policing

- The CPG's demand for a national security law in Hong Kong and the latter's reluctance to deliver it had a long and tortured history.
- The longer Hong Kong's delay (from 1997 until 2020) was in enacting "on its own" a national security law, the less the CPG's trust in Hong Kong became, the harder it was for national security matters to be left alone to Hong Kong.

Continued: the political circumstances leading to the return of the high policing

- 1. The radicalization of street politics: protests, civil disobedience, disorder, violence, riots;
- 2. Localism, independence movement;
- 3. The popular and international sympathy and support;
- 4. China's rise facing a hostile international community ;
- 5. Hong Kong government's indifference to, and incompetence to tackle, national security threats;
- 6. Repeated warnings of CPG to no avail;
- Hong Kong: from an asset to a liability: a subversive basis to destabilize China.
- The CPG's patience has run out: 30/06/2020.

Three major features of the high policing of the NSL

- The NSL has made national security in Hong Kong the top priority of the CPG's governance of the SAR.
- High Policing has returned in HK.

It is Political

- Political crimes, and overthrowing the government.
- The NSL as an enemy criminal law
- The implications:
 - 1) reduced and minimized protection: art 41 (4) on secret trial; art 42 (2) on no bail; art 46 (1) on trial without a jury; art 43 (6) on interception of communications and covert surveillance.
 - 2) the policification of the NSL

It is preventive

- High policing, absorbent policing, intelligence gathering, preventive of potential NS risks, pre-empting. Preventing and Stopping in articles 1, 3(2), 5, 8, 9, 42(1).
- 1. the net is cast wide: legitimate dissent vs activities endangering the NS;
- 2. reduced accountability : art. 12.
- 3. the fusion of intelligence gathering and criminal investigation
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It is controlled by the central

- CSNC: the secretary-general (art. 13 (2)); the NS adviser (art. 15); art. 12; art. 53.
- DSNS: art. 17; art. 16 (3).
- OSNS: art. 55.
- The IRONY:

A Possible Equilibrium between Chinese High Policing and Hong Kong's Liberal Rule of Law

- The gravitas of NS in HK has shifted from HK to Beijing.
- The NSL shall prevail.
- The NSL as a member of Chinese legal system.

- Chinese high policing: total & pervasive policing;
- Chinese total policing in Hong Kong?

An alternative prospect

- 1. OCTS, Hong Kong's distinctive strengths;
- 2. the NSL as a Hong Kong Law; Articles 4 and 5.
- 3. the liberal society in HK: a different infrastructure.

Conclusion

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