

**Security Autonomy: A New Perspective for Understanding the Practice of “One
Country, Two Systems” in Hong Kong**

by

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A Thesis Submitted to
The Education University of Hong Kong
in Partial Fulfillment of the Requirements for
the Degree of Doctor of Philosophy

May 2017

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Statement of Originality

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Abstract

This research proposes a security autonomy perspective to understand the practice of “one country, two systems” in Hong Kong when it comes to security issues. Under the “one country, two systems” framework, Hong Kong can exercise security autonomy to protect its identity and society. Based on Copenhagen School’s securitization theory, security autonomy refers to the autonomy Hong Kong can exercise either as a securitizing actor to securitize issues as security threats or as audience to respond to other securitizing actor’s securitizations. Specifically, Hong Kong can securitize threats from mainland to its identity and society and adopt exceptional measures to fence off such threats. When the Central Government in Beijing securitizes issues in Hong Kong as threats to Chinese sovereignty, Hong Kong has the autonomy to take or reject such securitizations. Internationally, Hong Kong has security autonomy to respond to international securitization of terrorism and adopt its own anti-terrorism law and policy. Hong Kong’s security autonomy is generally found at the societal level, political level and international level. Security autonomy can be applied to other levels under certain conditions.

Security autonomy is not an abstract power; it is embedded in the high degree of autonomy Hong Kong already enjoys. Security autonomy provides a framework for Hong Kong to exercise its legislative autonomy, external autonomy and other related autonomy. Hong Kong’s exercise of security autonomy is an interactive process in which Beijing-Hong Kong relations unfold in a special way.

A comparison between Hong Kong and Macao is made. Macao case is used to show the uniqueness of Hong Kong’s security autonomy. Under “one country, two systems,” Hong Kong not only has security autonomy but also can exercise its security autonomy at more levels than Macao. Hong Kong’s security autonomy is higher than

Macao's security autonomy.

The degree of security autonomy at the three levels are different. Hong Kong has higher security autonomy at the societal level and lower security autonomy at the political level and international level. Three major factors explain such differences. First, Hong Kong's vibrant civil society is vital to the exercise of security autonomy. Second, Hong Kong has its own interests and considerations to decide when to securitize what issues as security threats. Third, Beijing has strategic interests to support or tolerate Hong Kong's exercise of security autonomy.

Acknowledgment

PhD study is more than academic research. It is about how a person understands life, society and people. I learned a lot from my supervisors and friends when I studied for my PhD at the Education University of Hong Kong.

Professor Sonny, Shiu Hing Lo is my principal supervisor. He is also my best friend. He trained me to become an experienced scholar. He taught me how to survive in the academic world and how to develop and sharpen my academic skills. He always encourages me and gives me all sorts of support I need to become a good scholar. No words can express my gratitude to him.

I would like to thank my associate supervisor, Dr. Gregory Fairbrother for his great support and help. I will never forget his valuable help in my final stages of PhD study.

My thesis examination committee gave critical but constructive comments to my thesis. Professor Ming Chan is a respectable expert in Hong Kong study. I owe him a lot. His encouragement and support will always be remembered. Professor Beatrice Leung is a very nice scholar. I thank Prof. Leung for her constructive and stimulating comments. Dr. Yu offered insightful comments on my thesis. I thank Dr. Yu for his support and encouragement.

I would like to thank friends in the Department of Social Sciences and Center for Greater China Studies.

My wife, Xiaoyan, offers me endless love and support. She took care of everything at home while I was doing my study in Hong Kong.

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List of Abbreviations

AMCM	Macao Monetary Authority
APG	Asia Pacific Group
BDA	Banco Delta Asia
BOC	Bank of China
CFA	Court of Final Appeal
CPG	Central People's Government
DPRK	Democratic People's Republic of Korea
EU	European Union
FATF	Financial Action Task Force
GWOT	Global War on Terror
HKSAR	Hong Kong Special Administrative Region
IVS	Individual Visit Scheme
LegCo	Legislative Council
NPCSC	National People's Congress Standing Committee
NSC	National Security Commission
OCM	Occupy Central Movement
OCTS	One country, two systems
PBC	People's Bank of China
PLA	People's Liberation Army
PRC	People's Republic of China
SAR	Special Administrative Region
UN	United Nations
UNSC	United Nations Security Council

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Chapter 1 Introduction

1.1 Introduction

On July 1, 2015, China enacted its new National Security Law. The law not only significantly broadens the scope of national security but also for the first time stresses Hong Kong and Macao's responsibility to protect Chinese sovereignty and national security. Article 11 of the new National Security Law says, "safeguarding China's sovereignty and territorial integrity is the common obligation of all Chinese people, including those in Hong Kong and Macau as well as Taiwan." This obligation is highlighted again in Article 40, which states "the Special Administrative Regions of Hong Kong and Macau must fulfill their responsibility to safeguard national security." The Hong Kong and Macao provisions in China's new National Security Law immediately generated widespread concerns and worries in Hong Kong society despite the clarifications made by the National People's Congress Standing Committee (NPCSC) and the Hong Kong Special Administrative Region (SAR or HKSAR) government that the new law will not be enforced in Hong Kong and Hong Kong has the autonomy to enact its own national security law as required by Article 23 of the Basic Law of Hong Kong.

From a legal perspective, it seems that Beijing has imposed new national security obligations on Hong Kong and Macao. But from a security perspective, the new provisions on Hong Kong and Macao simply reemphasized Beijing's securitization mindset that has already been institutionalized in Article 23 of the Hong Kong Basic Law and Macao Basic Law. Hong Kong's autonomy to enact its own national security law under such securitization mindset is indicative of how Hong Kong

exercise its security autonomy at the political level. In fact, under the “one country, two systems” (OCTS) framework, Hong Kong has exercised this kind of security autonomy not only at the political level, but also at the societal level and the international level.

The Hong Kong and Macao provisions in China’s new National Security Law indicate that how Hong Kong and Macao exercise its autonomy on security issues concern national security, Chinese sovereignty and development interest. It also shows that any research on the practice of “one country, two systems” in Hong Kong should not treat Beijing and Hong Kong as isolation, rather, their dynamic interactions offers more in-depth insights. The practice of “one country, two systems” in Hong Kong should not be examined alone but should be placed in the context of central-local relations and in the context of Hong Kong’s role in the world. This research offers a new perspective to understand the practice of “one country, two systems” in Hong Kong.

1.2 Research questions

This research examines how Hong Kong exercise its security autonomy under the “one country, two systems” arrangement at the societal, international and, political levels. Specifically, this research aims to answer the following three research questions:

- (1) What is Hong Kong’s security autonomy under the “one country, two systems” arrangement?
- (2) How has Hong Kong exercised its security autonomy?
- (3) What are the factors that explain Hong Kong’s exercise of its security autonomy?

Since 2012, Beijing’s concept of national security has been expanded to many areas far beyond the national security concept illustrated in Article 23 of the Hong Kong Basic

Law (Xi 2014, 222),¹ this research will examine how Hong Kong defines and handles security issues at the societal level, political level and international level. In fact, Hong Kong and Macao (even Taiwan) have already been included in the concept of “a holistic view of national security” articulated by Xi Jinping (2014, 221) and their obligations institutionalized in the new National Security Law. How Hong Kong and Macao exercise security autonomy have important bearings on Beijing-SAR relations. The politics of “one country, two systems” in Hong Kong and Macao have been shaped by their exercise of security autonomy.

Based on the answers to the three research questions raised above, this research explores the implications of Hong Kong’s security autonomy for Beijing-Hong Kong relations. The focus is on Hong Kong because under the same OCTS policy, Beijing-Hong Kong relations receive far more attention than Beijing-Macao relations. Macao’s security autonomy will be reviewed as a comparison and contrast to Hong Kong’s security autonomy. In addition to the study of Beijing-Hong Kong relations, this research will shed light on how to come up with a comprehensive framework to understand the relations between “one country” and “two systems.”

1.3 Research background and existing literature

Since 1997, how Hong Kong exercises its “high degree of autonomy” under Chinese sovereignty has evolved into a dynamic research field. This part examines the dynamics

¹ Article 3 of the National Security Law, “National security efforts shall adhere to a comprehensive understanding of national security, make the security of the People their goal, political security their basis and economic security their foundation; make military, cultural and social security their safeguard and advance international security to protect national security in all areas, build a national security system and follow a path of national security with Chinese characteristics.” English translation from China Law Translate, available at <http://www.chinalawtranslate.com/2015nsl/?lang=en>, accessed May 8, 2016.

of security, autonomy and sovereignty under the OCTS framework.

1.3.1 The development of OCTS in Hong Kong

On July 1, 1997, China resumed the exercise of sovereignty over the former British colony of Hong Kong based on a constitutional framework known as “one country, two systems.” “One country” settled the sovereignty issue by declaring that Hong Kong is “an inalienable part of the People’s Republic of China”² (PRC) and Hong Kong is a Special Administrative Region directly under the Central Government.³ “Two systems” means the socialist system and policies in mainland China will not be practiced in the Hong Kong Special Administrative Region, and Hong Kong can keep its capitalist system and way of life for, at least, fifty years.⁴ The OCTS arrangement allows Hong Kong to “exercise a high degree of autonomy and enjoy executive, legislative and judicial power, including that of final adjudication”⁵ without significantly compromising its prosperity and stability after the handover. It is said the autonomy that Hong Kong enjoys is higher than any other autonomous arrangements in mainland China and around the world (Gittings 2013, 17). Nevertheless, the veneer of statehood Hong Kong acquires from OCTS has brought many unexpected challenges to Beijing-Hong Kong relations in the post-1997 years.

Beijing-Hong Kong relations are more complicated than the constitutional principles set out in the Hong Kong Basic Law.⁶ It does not fit into traditional Chinese central-local relations. It is not usual central-local relations in mainland China context

² Hong Kong Basic Law, Article 1.

³ Hong Kong Basic Law, Article 12.

⁴ Hong Kong Basic Law, Article 5.

⁵ Hong Kong Basic Law, Article 2.

⁶ See, Hong Kong Basic Law, Chapter II: Relationship between the Central Authorities and the Hong Kong Special Administrative Region.

or under federal arrangements found in many countries. Nor can analogy be made with relations between sovereign states because Hong Kong is a non-sovereign, subnational identity. Beijing-Hong Kong relations has its own distinct features. It is important to consider the special characteristics of Hong Kong under the “one country, two systems” framework. This research seeks to interpret Beijing-Hong relations from three perspectives, including societal interactions between Hong Kong and the mainland, political relations between Hong Kong and Beijing, and Beijing-Hong Kong relations in Hong Kong’s external affairs.

Beijing-Hong Kong relations have been the subject of ongoing debate since China took back Hong Kong in 1997. Although amity and harmony is the theme of the two-decade of facilitated engagements and exchanges between two parts of the country, there are frictions and sometimes confrontations due to the incompatibilities in political, economic and social institutions and way of life. Before the handover in 1997, Professor Ming Chan has already predicted the potential tensions after 1997. He said, “even after the colonial veneer is removed, the differences in mentalities, institutions, procedures, assumptions, objectives and values between the people of Hong Kong and their mainland compatriots are so significant that the much heralded “one country, two systems” formula devised by Beijing will be put to serious test (Chan 1997, xvi).”

Although the historic application of OCTS in 1997 successfully solved Hong Kong’s sovereignty issue, how OCTS unfolds in Hong Kong after handover is the real test of the viability of this policy as suggested by Ming Chan. The key question here is how Hong Kong exercises its “high degree of autonomy.” In the past two decades following Hong Kong’s return to China in 1997, there has been much controversy related to how Hong Kong exercises its autonomy under Chinese sovereignty. The most difficult part is how Hong Kong and Beijing deals with security threats that endanger

Hong Kong's societal interests or Chinese sovereignty interests in Hong Kong. Such threats may come outside Hong Kong that affect the prosperity and stability of Hong Kong, such as transnational crimes and international terrorism, or may originate from Hong Kong to threaten Chinese sovereignty, such as the so-called "subversive forces" or, in some cases, from mainland to affect the stability and prosperity in Hong Kong, such as the influx of mainland immigrations and tourists. In recent years, Hong Kong-mainland societal conflicts and disputes over Hong Kong's political development have increasingly risen to be defining themes in Beijing-Hong Kong relations. All these threats directly or indirectly affect the implementation of OCTS in Hong Kong and thus affect Beijing-Hong Kong relations. Over the years, the HKSAR government and Central Government in Beijing have addressed the most serious threats to Hong Kong society and Chinese sovereignty in Hong Kong.

As Hong Kong is about to start its third decade as a SAR of China, defining its relations with Beijing is still a challenging endeavor. The major debate within Hong Kong political studies concerns Beijing's "interference" into Hong Kong internal affairs and Hong Kong's resistance to Beijing "hegemony (Cheung 2012)." In the post-handover years, Beijing-Hong Kong relations are, more often than not, constructed in security terms. However, such security construction is largely ignored in Hong Kong political studies.⁷

This research is concerned with how to understand Hong Kong's exercise of its autonomy when there are needs to deal with security threats to Hong Kong under the OCTS framework. It is important to add the qualification "under the OCTS framework" because any discussions of Beijing-Hong Kong relations may not reflect past and

⁷ Agnes S. Ku examines Hong Kong's response to the "right of abode" case in 1997 from a constructive perspective. See Agnes S. Ku's "Hegemonic construction, negotiation and displacement: The struggle over right of abode in Hong Kong, *International Journal of Cultural Studies*, Volume 4, issue 3, pp. 259-278.

current political reality and cannot make constructive contributions to the literature without this context. In fact, many misconceptions about Beijing-Hong Kong relations directly or indirectly resulted from the intentional or unintentional ignorance of the fact that Hong Kong is legally and politically part of China and Hong Kong must exercise its autonomy authorized in the Basic Law. Hence, any understanding of Hong Kong's "high degree of autonomy" would become unprecise, or even misguided without taking into consideration the fact that Hong Kong is a SAR of China. Similarly, any perspective of Beijing-Hong Kong relations would be uninformative without taking into consideration the "high degree of autonomy" Hong Kong enjoys, *de jure* or *de facto*.

Under the OCTS formula, it seems contradictory to safeguard China's national security while allow the SAR to exercise a "high degree of autonomy." This dichotomy raise the concern that the "one country, two systems" arrangement is a threat to Beijing.⁸ It is a challenging job to satisfy China's utmost desire to safeguard its sovereignty while allowing the SAR to enjoy a "high degree of autonomy." Under the OCTS arrangement, however, security issues are narrowly defined. In fact, how to understand security and respond to security threats is a grey area. It neither fit into the jurisdiction of Central Government, nor belong to the SAR's "high degree of autonomy." There is little or no research to examine Hong Kong politics from a security perspective and this is especially true in exploring the practices of OCTS in Hong Kong.⁹ Previous research on Hong Kong's autonomy either focuses on what kind of autonomy Hong Kong should have but does not have, or devotes to argue how Hong Kong's autonomy has been compromised by the "interference" from Central Government in Beijing.

⁸ One of the reviewer of this thesis raised this concern.

⁹ Daniel Garrett's unpublished PhD thesis entitled "*China's Securitization of Hong Kong, Hongkongers and 'One Country, Two Systems': Enemy Images, Moral Panic and Political Warfare*" is an important contribution to Beijing-Hong Kong relations research from a security perspective.

1.3.2 Hong Kong's security legislations

Security legislations in Hong Kong under the framework of OCTS are security issues. Under the Basic Law of Hong Kong, security legislations can be categorized into two types. First, legislations to implement Article 23 of the Basic Law of Hong Kong. Second, legislations to implement the United Nations Security Council (UNSC) resolutions as instructed by the Ministry of Foreign Affairs of the Central Government. Unlike Article 23, this power is not explicitly listed in the Basic Law, it is indicated in China's report to the UNSC Counter-Terrorism Committee.¹⁰ The first type concerns national security issues in the SAR and the second type concerns international security issues. Although the two types of security legislations deal with different issues, they have one thing in common. They are about how the HKSAR handles international and national security issues under the OCTS framework. Specifically, it is about how Hong Kong perceives security threats to its society and how Hong Kong respond to such security threats with security legislations on its own. Such security legislations, or as they are called ordinance in Hong Kong's legal system, are Hong Kong's responses to security threats, be it real or self-constructed.

Since 1997, Hong Kong has made two distinctive but closely related legislative initiatives to respond to international and national security issues. The first one was the United Nations (Anti-terrorism) Measures Ordinance enacted in 2002 to implement the UNSC resolution 1373. The second one was the attempt to enact national security law in 2003 as required by Article 23 of the Basic Law of Hong Kong. These two security

¹⁰ Article 13 of the Hong Kong Basic Law says, "The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region. The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Hong Kong to deal with foreign affairs. The Central People's Government authorizes the Hong Kong Special Administrative Region to conduct relevant external affairs on its own in accordance with this Law."

legislations, one was successfully passed and one was indefinitely postponed, shares much similarities but with different fates. As Simon Young notes, “it was very much the same group of officials responsible for implementing both initiatives” and both legislations are “external imposition without internal need.” The anti-terrorism law passed without much objection in Hong Kong society but the national security law met with strong resistance and the government was forced to shelf the legislation proposal. It is true that both security legislations are externally imposed on Hong Kong, but they are not unimportant to Hong Kong society.

The dynamic of how Hong Kong exercises its autonomy to consolidate or expand its power territory has largely been ignored in the literature. How Hong Kong makes proper use of the objectives and protection afforded in the OCTS framework to safeguard its core interests received little attention. Few people working within Hong Kong political studies would think about the legislations of Article 23 of the Basic Law as a security issue, although they all know the law is for the sake of China’s national security. Nor would they consider using security theory to explore the dynamics of Article 23 legislation. In addition, other legislative work that is explicitly addressing international security issues has also largely been neglected in political studies in Hong Kong, such as the legislation exercises to implement the UNSC resolutions in Hong Kong. Taking together, both Article 23 legislation and the implementation of the UNSC resolutions in Hong Kong are security issues and their dynamics can best be revealed by security theory.

This research builds on securitization theory developed by the Copenhagen School to develop a security autonomy framework and to examine how such security autonomy is exercised in Hong Kong. This research shows that the Buzan, Wæver and de Wilde’s securitization framework provides a useful basis for analyzing how Hong

Kong perceives security issues and responds to security threats. Using securitization theory as a tool for thinking about territorial autonomy is rare and this research will fill this research gap. Here “security” does not mean local law and order issues, and “autonomy” does not indicate unrestrained power. Security autonomy is a more appropriate framework to capture the dynamics of Beijing-Hong Kong relations under the OCTS framework.

1.3.3 Hong Kong’s constitutional foundations to handle security issues

In Copenhagen School’s understanding of security, security issues normally concern relations with other entities. For this reason, Hong Kong’s constitutional capacity in conducting its external affairs is more related to answer the research questions raised in this research. Over the past two decades, three overarching concepts have emerged concerning Hong Kong’s external relations capacity: Hong Kong as a “quasi-state,” Hong Kong’s international legal personality and Hong Kong’s international legal sovereignty.

In *Quasi-States: Sovereignty, International Relations, and the Third World*, political scientist Robert Jackson (1990) uses the term “quasi states” to refer to the state of “statehood” of Third World nations after the Second World War. Jackson argues these “quasi-states” possess more “juridical statehood” than “empirical statehood.” That is, “quasi-states” attained their statehood not because of the abilities and efforts of their own governments and peoples but primarily as a consequence of a shift in “the international rules of the game concerning the obligation to be a colony and the right to be a sovereign state (12,21).” For Jackson, these “quasi states” possess more “negative sovereignty,” a formal-legal condition, defined as freedom from outside interference than “positive sovereignty,” a substantive condition, refers to not only the rights of

nonintervention and other international immunities but also the ability to provide political goods for its citizen, collaborate with other governments in international arrangements and reciprocate in international commerce and finance (Jackson 1990, 29).

James Tang (1993) is the first scholar to apply Jackson's conceptualizations in understanding Hong Kong's international status (209-211). In his article entitled *Hong Kong's International Status* published in 1993, several years before the handover, he has concluded that Hong Kong is well-qualified to be a reversed version of Jackson's "quasi-state" because Hong Kong is more capable of administering its own affairs and providing political goods to its citizen than some other sovereign states although Hong Kong lacks of sovereignty (Tang 1993, 209). Byron Weng (1997, 49-52), Roda Mushkat (1997, 12), James McCall Smith (2001, 112), Miguel Santos Neves (2000, 272-273), Yash Ghai (1998, 458), Sonny Shiu Hing Lo and Herbert S. Yee (2005, 52) shared with James Tang's opinion about Hong Kong's international status as a "quasi-state" in their discussions.

If Jackson's analytical distinctions between "negative sovereignty" (juridical statehood) and "positive sovereignty" (empirical statehood) suggest that the terms "quasi-states" can be used to refer to a form of deficient and defective statehood (Jackson 1990, 168), then Hong Kong's "factual 'stately' attributes (Mushkat 1997, 4)" qualified it to be a "quasi state" under the current "one country, two systems" framework in that Hong Kong lacks of "juridical statehood" (negative sovereignty) but possesses "empirical statehood" (positive sovereignty). As is suggested by James Tang, this form of "quasi-state" is not the Jackson version, but a reversed one. However, "quasi-states" can develop into "real" states because Jackson argues that "since states are never at rest owing to cultural transformation, scientific and technological

innovation, and ultimately the passage of time positive sovereignty is a relative and changing rather than an absolute condition, unlike negative sovereignty (Jackson 1990, 29).” Under the “one country, two systems” framework, Hong Kong will never attain statehood because “Hong Kong’s (and Macau’) autonomy is a transitional arrangement to prepare them for full incorporation into the state, an eventuality which militates against the strengthening of autonomy (Ghai, *Hong Kong’s Autonomy: Dialects of Power and Institutions* 2013).” Whether Hong Kong is an original form of “quasi-state” or a reversed form of “quasi-state,” the Chinese government will not allow it to evolve into full statehood. Therefore, using “quasi-state” theory to explain Beijing-Hong Kong relations will cause more problems than it intends to solve.¹¹

Roda Mushkat, a law professor at the Hong Kong University Faculty of Law, in her book *One Country, Two International Legal Personalities: the Case of Hong Kong* discusses Hong Kong’s status in international system from a legal perspective. According to Roda Mushkat, “international legal personality denotes the ability to act (exercise rights, bear duties) within the system of international law; entities possessing international legal personality are ‘subjects’ of international law.” Roda Mushkat argues that Hong Kong possess international legal personality. Therefore, Hong Kong has the capacity to enter into bilateral agreements with foreign states and participate extensively in international organizations (Lim and Mushkat 2011, 78).

James Smith also argues “under international law, the HKSAR enjoys a personality or identity that is distinct from that of the PRC (Smith 2001, 107).” This distinctive international legal personality enables Hong Kong to forge international agreements and to participate independently in international organizations and

¹¹ It seems that James Tang has dropped the term “quasi-state” for Hong Kong’s international status in his writings after the handover. See, (Cummings and Tang 2008).

conferences under the name “Hong Kong, China (Smith 2001, 107)”.

In an important discussion of sovereignty, Stephen Krasner writes: “the term sovereignty has been commonly used in at least four different ways, domestic sovereignty, referring to the organization of public authority within a state and to the level of effective control exercised by those holding authority; interdependence sovereignty, referring to the ability of public authorities to control transborder movements; international legal sovereignty, referring to the mutual recognition of states or other entities; and Westphalian sovereignty, referring to the exclusion of external actors from domestic authority configurations (Krasner 1999, 9).”

For Krasner, international legal sovereignty involves the status of a political entity in the international system. An international legal sovereign can enter into agreements with other entities (Krasner 2001, 9). The institutional arrangements established in Hong Kong under the framework of “one country, two systems,” as Krasner argues, are inconsistent with the conventional notion of international legal sovereignty. In order to ensure Hong Kong’s continued stability and prosperity, China compromised its own international legal sovereignty by providing Hong Kong the specific authority to forge international agreements and participate independently in international organizations and conferences under the name of “Hong Kong, China (Krasner 2001, 17-19).”

Despite Hong Kong’s strong capacity as an actor to conduct its own external affairs, how Hong Kong exercise its autonomy is inadequately addressed in the existing literature. Security issues in Hong Kong receives some attentions. But the research attention is concentrated on Hong Kong’s security legislations, such as Article 23 legislation and anti-terrorism legislation. The attention is unbalanced with too much research on Article 23 legislation and few focus on anti-terrorism legislation. It is no

exaggeration to say that all social sciences research concerning Hong Kong's social, legal, and political developments after 2003 has in one way or another touch on the Article 23 issue. But research specifically focuses on Hong Kong's anti-terrorism legislation is rare. Despite the numerous academic research focusing on strong public resistance to Article 23 legislation, few researches explain why anti-terrorism legislation met with fewer objections. Also, there has been no theoretically grounded works specifically focusing on comparison of the two legislations.¹²

1.3.4 Beijing-Hong Kong relations

Beijing-Hong Kong relations have been approached from some perspectives. Sonny Lo examines the dynamics of Beijing-Hong Kong relations from “a modified form of patron-clientelism” perspective (Lo 2008). Lo argues that “under the umbrella of the ‘one country, two systems,’ Beijing is the powerful patron distributing political rewards to its clients, friends, and followers in Hong Kong (7).” Lo’s patron-clientelism is useful in comprehending how Beijing handles Beijing-Hong Kong relations. This top-down perspective is insufficient to explain Hong Kong’s interests and Hong Kong’s autonomy under the OCTS arrangement. Bruce Kwong also applies the patron-clientelism framework to analyze Hong Kong Legislative Council elections and Chief Executive elections (Kwong 2010). But his analysis is limited to Hong Kong, not very much related to Beijing-Hong Kong relations. In his review of the changing relations between Beijing and HKSAR since 1997, Peter Cheung finds that Hong Kong enjoys a high degree of autonomy in socio-economic and external affairs, in political and constitutional issues, Hong Kong’s autonomy more often than not subjected to the

¹² Simon Young’s work is probably the only research on Hong Kong’s security legislations.

control of Central Government (Cheung 2011).

Since 1997, any discussion of Hong Kong's autonomy cannot be comprehensive without reference to the role of Central Government. However, Chinese influence in Hong Kong affairs is often exaggerated based on speculated assumptions. It has often been speculated in the news media that the Central Government plays decisive roles handling security issues in Hong Kong and Hong Kong is losing its autonomy. But these discussions largely ignored how Hong Kong perceive and frame security issues on its own. The SAR's independent role in these issues cannot be simply reduced to as subsumed under China's decisions. Instead, it is the autonomy Hong Kong exercises that defines the Beijing-Hong Kong relations.

1.4 Significance of research

In the past two decades since 1997, it has almost become a conventional wisdom in Hong Kong society to argue that Beijing's increasingly hardline, top-down approach to OCTS has greatly damaged Hong Kong's "high degree of autonomy." It is said that Hong Kong is losing its autonomy and Hong Kong society is forced to take action to defend Hong Kong from Beijing's "intervention" in Hong Kong affairs. But empirical evidence in this research belies such perceptions. An often ignored fact is that it is Hong Kong's autonomy in managing the conflicts between Beijing and Hong Kong that enables Hong Kong to survive as a vibrant society.

Under the OCTS framework, security issues in Hong Kong is more complicated than what has already been stipulated in the Basic Law. Despite the "high degree of autonomy" Hong Kong enjoys, no consideration has been given to the exercise of autonomy when Hong Kong has to deal with international and national security threats to its society. This research proposes a security autonomy perspective to fill this

literature gap. Specifically, this research use security autonomy framework to examine three types of interactions between Hong Kong and Beijing.

This research aims to explore how Hong Kong exercises its security autonomy under the OCTS framework by drawing concepts and novel theories from international security studies. The security autonomy framework proposed in this chapter is useful in understanding how Hong Kong exercises its autonomy under OCTS. It can also contribute to the development of OCTS theory. Alvin So (2011, 100) argues that “the most fruitful way to examine the “one country, two systems” policy is to examine it in a crisis situation and trace how it changes.” It is also useful for the research of other territorial autonomy issues in other parts of the world.

1.5 Organization of the dissertation

There are eight chapters in this thesis. This part provides a summary of the contents of each chapter.

Chapter 1 is an introduction. This chapter provides the background of this research and raises the research questions this research seeks to answer based on a review of current literature. Last part sets out the significance of research.

Chapter 2 is the theoretical framework of this research. Copenhagen School’s securitization theory is introduced as a starting point to the development a security autonomy framework. The methodology used in this research is explained.

Chapter 3 examines Hong Kong’s security autonomy at the societal level. Three cases are analyzed, right of abode crisis, anti-mainland movement and anti-national education movement. The three cases show that Hong Kong has a high degree of security autonomy in the capacity as a securitizing actor to securitize threats from mainland to Hong Kong as security threats. The three cases also show that exceptional

measures have been taken to protect Hong Kong interests with the support from Central Government.

Chapter 4 discusses Hong Kong's security autonomy at the international level. Hong Kong's involvement in the US-led "Global War on Terror" is analyzed. In this sector, Hong Kong's role as audience to the international securitization of terrorism indicates that Hong Kong can choose its own measures to react to terrorism. Although Hong Kong is not a securitizing actor, Hong Kong can exercise significant security autonomy to make its own laws.

Chapter 5 is about how Hong Kong exercise security autonomy at the political level. Two case are examined, Article 23 legislation and election of Chief Executive by universal suffrage. At the political level, Hong Kong's security autonomy is limited. Hong Kong is in a passive position to accept or reject Central Government's securitization.

Chapter 6 is a comparison with Macao. Macao's security autonomy at the political level and international level are discussed. There is not case to show Macao's security autonomy at the societal level and security autonomy at the societal level is not included. In terms of security autonomy at the political level, Macao's position is the same as Hong Kong, either accept or reject Central Government's securitization. Macao selected to accept Central Government's securitization. But it does not mean Macao has no security autonomy at the political level. At the international level, Macao's accept of international securitization of terrorism is quite slow. Nevertheless, it still shows that Macao has security autonomy at the international level.

Chapter 7 explains why Hong Kong can exercise security autonomy at the three levels. Factors at each level are introduced. Based on the factors at each level, three prevalent factors at all the three levels are specially addressed.

Chapter 8 is conclusion. This chapter gives answers to the research question raised in Chapter 1 and restates the factors that lead to Hong Kong's security autonomy. The difference between Hong Kong and Macao on security autonomy are summarized. The implications of Hong Kong's security autonomy for Beijing-Hong Kong relations are discussed with some words on future research direction.

Chapter 2 Security Autonomy: An Analytical Framework

2.1 Introduction

Copenhagen School's securitization framework is adopted as a starting point to develop this research's theoretical framework. This research proposes a security autonomy approach that builds on Copenhagen School's securitization theory to develop a new perspective to understand Beijing-Hong Kong relations when it comes to security issues. Specifically, security autonomy framework is used to analyze how Hong Kong exercises its autonomy either in the capacity of a securitizing actor or as audience in the securitization of issues under the OCTS arrangement.

2.2 Security and securitization theory

Securitization theory, developed by Buzan, Wæver and de Wilde (1998) in their book, *Security: A New framework for Analysis* in 1998, is a theory about how issues are rhetorically framed as security threats and therefore justifying the securitizing actor to use exceptional measures to handle the existential threats. According to Buzan, Wæver and de Wilde (1998), "when a securitizing actor uses a rhetoric of existential threat and thereby take an issue out of what under those conditions is 'normal politics,' we have a case of securitization (24-25)." In a case of securitization, the securitizing actor can break free of procedures or rules that the actor would be bound by utilizing an argument about the priority and urgency of an existential threat (25). Since the authors of this theory all based at the Copenhagen Peace Research Institute in Copenhagen, Denmark, when they developed this theory, their securitization theory and their understanding of security are also called the "Copenhagen School" (Mcsweeney 1996).

A key component of the Copenhagen School theory is its understanding of

security. According to securitization theory, security is a “self-referential practice.” (Buzan, Wæver and de Wilde 1998, 24) That is, an issue become a security issue not because the issue is a real existential threat but because the issue is presented as a threat. Security is “the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics.” (23) Through security discourse, the Copenhagen School argues that by labeling an issue as security, the actor claims a need for a right to treat it by extraordinary means. They call the process of securitization as “speech act,” (26) that is, “it is not interesting as a sign referring to something more real; it is the utterance itself that is the act. By saying the words, something is done (like betting, giving a promise, naming a ship).” (26) For example, in the Iraq War, the Bush Administration justified its war in the name of Saddam Hussein’s possession of weapons of mass destruction posing threats the US and world peace. Bush “speaks” security threats and Saddam Hussein became a security threat to the US even though the US did not find weapons of mass of destruction in Iraq War (Donnelly 2013).

For analysts to find securitization act, the Copenhagen School suggests that analysts do not need to “assess some objective threats that ‘really endanger some objects to be defended or secured.” Instead, analysts should focus on the “process of constructing a shared understating of what is to be considered and collectively responded as a theat.” (Buzan, Wæver and de Wilde 1998, 26)

The Copenhagen school’s securitization theory points out that any analysis of security issue must make a distinction among three type of units involved in security analysis, including referent objects, securitizing actors and functional actors. Referent objects are “things that are seen to be existentially threatened and that have a legitimate claim to survival.” (36) The referent objects are normally state and nation although the

securitizing actor can construct anything as referent object in principle. Securitizing actors are “actors who securitize issues by declaring something—a referent object—existentially threatened.” (36) Political leaders, bureaucracies, governments, lobbyists and pressure groups are the typical securitizing actors (40). Some scholars point out in a securitization process, civil society can also become securitizing actor (Gromes and Bonacker 2007, 11; Emmers 2016, 171). Functional actors are those “actors who affect the dynamics of a sector.” Functional actors are neither referent objects nor securitizing actors (36).

However, Copenhagen School reminds that securitization is an intersubjective process and security issues are socially constructed. In fact, the securitizing actor itself cannot decide the fate of securitization. Buzan, Wæver and de Wilde (1998) have made it very clear that “a discourse that takes the form of presenting something as an existential threat to a referent object does not by itself create securitization—this is a *securitizing move* (italics in original), but the issue is securitized only if and when the audience accepts it as such.” (25) The audience decide whether they accept or reject securitizing actor’s securitization. Securitizing actors need the audience to support and tolerate their exceptional measures in order to make their securitization successful (31).

The Copenhagen School has expanded the scope of security from the traditional state-centric approach to five sectors, including military sector, environmental sector, economic sector, societal sector and political sector. Each sector has its own special characteristics and securitization logics. For the purpose of this research, the securitization logics in societal sector and political sector are introduced here. Military sector, economic sector and environment sector are not relevant to this research. Because military issue in Hong Kong is the sole responsibility of Central Government

in Beijing.¹³ In economic sector, both Hong Kong and Beijing show no sign of securitizing economic issues in Hong Kong, even when facing Asian economic crisis in 1997 and 2008. In environment sector, no issue has been securitized since the handover in 1997.

2.2.1 Societal security

For the Copenhagen School, security is no longer a state-centric concept and society has become a referent object of security in its own right (119). In societal sector, Buzan, Wæver and de Wilde argue the “organizing concept is identity” and “societal security is about large, self-sustaining identity groups,” (119) but not necessary about nations. In the societal security sector, the referent object is identity. It is “whatever large groups carry the loyalties and devotion of subjects in a form and to a degree that can create a socially powerful argument that this ‘we’ is threatened.” (123) They continue to point out that “given the conservative nature of ‘identity,’ it is always possible to paint challenges and changes as threats to identity, because ‘we will no longer be us,’ no longer the way we were or the way we ought to be true to our ‘identity.’” (23) But it does not mean every challenges or changes to identity will be constructed as security threats. They said, “whether migrants or rival identities are securitized depends upon whether the holders of the collective identity take a relatively closed-minded or a relatively open-minded view of how their identity is constituted and maintained.” (23) Generally speaking, in the minds of the Copenhagen School, the abilities of a society to “maintain and reproduce a language, a set of behavioral customs, or a conception of

¹³ Article 14 of the Hong Kong Basic Law, “The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region.” The US navy port call to Hong Kong is a noticeable military issue in Hong Kong but it is the Central Government in Beijing that determines the acceptance or rejections of the US navy port call.

ethnic purity can all be cast in terms of survival.” (23)

A societal insecurity happens when “communities of whatever kind define a development or potentiality as a threat to their survival as a community.” (119) Societal security is about collective identities, not about individual security. The extraordinary measures that take in an emergency is to defend such “we” identities, not personal safety (120). For the Copenhagen School, societal security and the security of social groups are two different matters. Paul Roe (2005) suggests that “societal security is concerned with the security of society as a whole, but not the security of groups in society (social groups).” (217)

The Copenhagen School names three major security threats to societies, including migration, horizontal competition, and vertical competition. Migration means the composition the population of a society will be “overrun or diluted” by the influx of immigrants. The inflow of mainlanders from China to Hong Kong can be regarded as security threat to Hong Kong society in this sense. Horizontal competition means local people’s way of life will change because of the “overriding cultural and linguistic influence from neighboring culture.” (121) The most common examples of this type of threat are the “Quebecois fears of Anglophone Canada” or “Canadian fears of Americanization.” (Buzan, Wæver and de Wilde 1998, 121) For Hong Kong, however, mainland culture and Putonghua may not be viewed as threats to Hong Kong society or identity (Tam 2012; Lai 2001).¹⁴ Vertical competition refers to the impact of integration or secessionist drive on identity. This kind if competition may have significant impact on societal security, since

¹⁴ Putonghua (or Mandarin) and simplified Chinese character are viewed by some people in Hong Kong as threats to their culture and identity.

people will stop seeing themselves as X, because there is either an integrating project (e.g., Yugoslavia, the EU) or a secessionist - 'regionalist' project (e.g. Quebec, Catalonia, Kurdistan) that pulls them toward either wider or narrower identities. Whereas one of these projects is centripetal and the other centrifugal, they are both instances of vertical competition in the sense that the struggle is over how wide the circles should be drawn or rather—since there are always numerous concentric circles of identity—to which to give the main emphasis (Buzan, Wæver and de Wilde 1998, 121).

For the three types of security threats, it should be noted here that no matter how analytically distinct, in practice, they can overlap, mix or be combined (121). For example, migration can be part of an integration program for social, economic or political purposes (121). Vertical competition is a major concern for Hong Kong because of the ongoing economic integration between the two parts of the country.

As for the actions society can take to react to threats, Buzan, Wæver and de Wilde give two options. One option is “through activities carried out by the community itself.” (122) The other is “trying to move the issue to the political sector by having the threat placed on the state agenda.” (122) State-centered actions are most commonly found in immigration issues, where threats can be addressed through policy changes and border control measures. In Hong Kong, many anti-mainland activities started with the first option but ultimately their objective is to force the government to take action to deal with the threats. This bottom-up approach to resist the so-called mainland threat to Hong Kong society is not always effective to persuade government to take legislative

action. In the cases of “anti-mainland” legislation, it is hard to tell whether the legislation is a result of anti-mainland movement or out of consideration to maintain the long-term stability of Hong Kong society and the integrity of “one country, two systems.”

2.2.2 Political security

According to Buzan, Wæver and de Wilde, political security is about “the organizational stability of states, systems of government, and the ideologies that give governments and states their legitimacy.” (119) Ultimately, political security is about the survival of sovereignty because sovereignty is what makes the state a state (150).

Political threats, Buzan points out:

are aimed at the organizational stability of the state. Their purpose may range from pressuring the government on a particular policy, through overthrowing the government, to fomenting secessionism, and disrupting the political fabric of the state so as to weaken it prior to military attack. The idea of the state, particularly its national identity and organizing ideology, and the institutions which express it are the normal target of political threats. Since the state is an essentially political entity, political threats may be as much feared as military ones (Quoted in Buzan, Wæver and de Wilde 1998, 142).

In the political security sector, generally speaking, the government is the securitizing

actor who can speak about the survival of sovereignty (146). In other words, the sovereign state as represented by its government can define any violations of sovereignty as security threats, even a minor one (150). Since the Copenhagen School adopts a speech-act approach to security, the focus of how the government defends state sovereignty is on its security argument (151).

2.2.3 Macrosecuritization

In the societal sector and political sector, the referent object of securitization is either individual society, nation or state. What if the referent object is larger than these units? Buzan and Wæver (2009) expanded their securitization theory to explain the securitization dynamics of larger referent objects in their article entitled “*Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory.*” According to Buzan and Wæver,

Macrosecritizations are defined by the same rules that apply to other securitization: identification of an existential threat to a valued referent object and the call for exceptional measures. The key difference is that they are on a larger scale than the mainstream collectivities at the middle level (states, nations) and seek to package together securitizations from that level into a ‘higher’ and larger order (257).

The US-led “Global War on Terror” is an example of macrosecritization used in Buzan and Wæver’s article to show how high-level securitization is constructed. In the GWOT case, Buzan and Wæver point out that the referent object of macrosecritization is the

“whole of the ‘civilized world’ (that is, the West and its hangers-on), and its principles of freedom, democracy, the market and openness.” (260) But Buzan and Wæver also admit that the US securitization of terrorism is a very loose macrosecuritization in that the “referent object, existential threats and the relations between threats and countermeasures are not well defined.” (266) They argue that in a macrosecuritization, a certain degree of vagueness is necessary, especially when the threat is not obvious and not imminent. This vagueness leads to an easy and convenient way to construct security threats. That is, any issue that is linked to terrorism becomes a security issue without the need to justify.

Macrosecuritization makes a security issue an international one. For example, when the US declared its GWOT, the Bush administration asked in the aftermath of the 9/11,

We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime (White House 2001).

For other countries and the case in this research, Hong Kong, their attitudes towards to the US macrosecuritization become an international political issue. But Buzan and Wæver acknowledge that countries can accept the US securitization but have their own agenda in the name of anti-terrorism. Sovereign states are not a problem here; the

question is how a non-sovereign entity with extensive international connections responds to the US macrosecuritization. Under the “one country, two systems” arrangement, China, Hong Kong and Macao enacted their own anti-terrorism legislations as responses to the US macrosecuritization and there are great differences among anti-terrorism legislations in three jurisdictions.

Over the past several decades, securitization theory has been applied to quite a number of social, political issues in different empirical contexts, including organized crime (Stritzel 2012), global health (Lo and Thomas 2010), immigration policies (Ilgit and Klotz 2014), tourism studies (Lisle 2013). Securitization theory has been used to study China politics and international relations (Wishnick 2010; Vuori 2006). However, securitization in Chinese politics and securitization under the OCTS framework are two different matters. Since the inception of the securitization theory, it has not been used to analysis security issues under the OCTS policy. This research is among the first applications of securitization framework to research Beijing-Hong Kong relations.

The Copenhagen School’s securitization theory provides a new perspective to understand security. It is usually applied to middle level and higher level referent objects. But the application of theory to research subnational, non-sovereign entities is rare. How such entities construct their security threats and respond to another actor’s securitization are not sufficiently researched. This research will fill this gap. This research will only investigate a special kind of non-sovereign, subnational entity, the SAR under the OCTS arrangement. Other such entities are not covered in this research. Under the OCTS framework, the power a SAR can exercise is collectively referred as “autonomy” or “high degree of autonomy.” The theoretical framework this research seeks to develop is called “security autonomy.”

Under OCTS, military sector is the sole responsibility of the Central

Government and environmental sector is the business of the SAR. Economic sector is important to Beijing-SAR relations but it needs more space to address and it is not possible to be included in this research. The security autonomy framework developed in this research is mainly based on the logic of securitization in the societal sector and political sector and macrosecuritization. The security autonomy has the potential to explain Beijing-SAR relations in other security sectors.

2.3 Security autonomy under “one country, two systems”

Securitization theory is an international relations theory but it can provide helpful analytical guidance in the examination of the role of the SAR’s autonomy in Beijing-SAR relations.

2.3.1 Defining autonomy

A definition of autonomy is necessary. This research understands autonomy from a constructive perspective. It neither agree the isolative definitions of autonomy nor does it follow the authoritarian definitions of autonomy. In the isolative definition of autonomy, commonly found in the legal study of Hong Kong’s autonomy, autonomy is defined as a power in its own right. In the authoritarian definition of autonomy, autonomy is defined as a power authorized by the Central Government in Beijing. None of them captures the essence or whole picture of autonomy under the “one country, two systems” arrangements. Such definition is not for the understanding of autonomy per se but for the understanding of security autonomy. In the Chinese context, autonomy does not mean absolute power, it only reflects the dynamic of central-local relations. Whether it is for SAR or other regions in China, the difference lies only in degree of

autonomy, not the essence of the power. This research understands autonomy within the “security autonomy” framework. It does not seek to give a separate definition of autonomy because such isolative understanding of autonomy may not be helpful to understand the “high degree of autonomy” under the “one country, two systems” arrangement. Instead, this research put the examination of Hong Kong’s autonomy under specific context. Since no single definition of autonomy can be applied to the Hong Kong case, a contextual understanding of autonomy is more useful than a generalized definition.

2.3.2 Security autonomy

A SAR’s security autonomy can be analyzed from two perspectives. The first perspective is the SAR’s role as a securitizing actor because the starting point in the securitization theory is who can securitize what. The second perspective is to find out the SAR’s role as audience in another actor’s securitization. Under OCTS, the Central Government in Beijing is an important securitizing actor in Beijing-SAR relations. That is, how the SAR exercises its autonomy when an issue is securitized by other actors as security issue and the exceptional countermeasures affects the SAR.

Theoretically, a SAR can be a securitizing actor to securitize any issues as threats to its society and take any exceptional measures it prefers to defend its interests. In practice, due to the special constitutional limitations, the SAR’s capacity as securitizing actor is constrained. The SAR cannot securitize threats to state sovereignty and the SAR is not able to do macrosecuritization. Under such situations, the SAR is more often than not as the audience of national and international construction of security issues.

As will be discussed in the following chapters, the SAR neither has the authority

to construct international security issues, nor has the power to define national security threats. Despite its limited capacity as securitizing actor under the OCTS framework, the SAR's role as audiences is unrestricted in any sense. For example, the SAR is allowed to enact its own national security law and the SAR can implement the United Nations Security Council (UNSC) resolutions on its own with authorization from the Central Government. The focus of security autonomy is thus on how the SAR securitize threats to its identity and how the SAR perceives and interprets other actor's securitizing moves.

The autonomy to handle security issues by the SAR is not simple legislation autonomy criminalizing certain acts against Chinese sovereignty or other valued referent objects. Instead of viewing Hong Kong's autonomy as a rigid concept, this research agrees with Alvin So (2011)'s argument that a dynamic view of the "one country, two systems" policy is needed and the policy should be viewed as "constantly evolving and subject to change." (100) It is security autonomy that enables the SAR to respond to external security threats. The power to handle security issues, including national security issues and international security issues, is usually reserved to central government in territorial autonomy arrangements. However, under the OCTS framework, the SAR, enjoy significant autonomy in addressing issues concerning national security and international security. For example, Hong Kong's autonomy to respond to national security threats is pervasively summarized by Albert Chen (2005),

What is interesting about Article 23 is that it does not directly prohibit treason, sedition, subversion, and related actions, nor does it define the precise meaning of these words. Instead, it empowers and mandates the SAR — in practice its legislature

— to enact laws to define and penalize such actions. This is an important aspect of the autonomy of the SAR under the concept of “one country, two systems”, which demonstrates respect for the existing social, economic, and legal systems in Hong Kong at the time of the handover and ensures that mainland laws and practices will not be imposed on Hong Kong (95).

Security autonomy can be broadly defined as the autonomy to handle security threats. It is not a new form of autonomy a SAR enjoys. Security autonomy has to be exercised in conjunction with other autonomous power, such as legislative autonomy, external autonomy. It is evident that security autonomy builds on other autonomy power. Without external autonomy, the SAR cannot deal with international security issues. Without the power to enact national security law “on its own,” the SAR cannot make choices in handling Article 23 legislation. To some extent, it is a way to understand the SAR’s autonomy and how the SAR exercises such autonomy when it deals with security issues.

What makes security autonomy unique? The significant difference between security autonomy and other autonomous power is that the core of security autonomy lies in how to understand and define security. If autonomy to the SAR is what sovereignty to Central Government, then it could be argued that the ways to attain security through securitization is both means and ends to the SAR. The SAR’s security autonomy lies in how they construct issues as security issues. Are such constructions free from external influence or are they the result of external forces upon the SAR? Can the SAR select to construct security threats?

The SAR’s security autonomy includes two interrelated parts, first, as a

securitizing actor to securitize “existential threats” to a valued referent in the SAR. second, as an audience to Central Government’s securitization or other actor’s securitization. In its audience capacity, the SAR’s autonomy lies in the degree of freedom to make a choice to accept or reject other actor’s securitization.

The exercise of security autonomy can reveal the dynamics of Beijing-Hong Kong relations, though sometimes in a delicate way. In this sense, the SAR’s security autonomy is not so much about the nature and characteristics of external threats but concerns to what extent the SAR can exercise its autonomy. In the years after the handover, Beijing adopted a hands-off non-interference policy toward Hong Kong (Chan 2008, 10; So 2011, 108). But after 2003, it is generally agreed Beijing has more involvement in Hong Kong politics. Whether China’s role in the SAR politics is understood as positive or negative, it is less relevant under the security autonomy framework.

Security autonomy concerns the SAR’s capacity and role at the societal level, the political level and in the case of international security issue, the international level. For the societal level, it is mainly because the SAR is allowed under the Basic Law to take reasonable means to deal with threats to its society. Under the OCTS arrangement, the SAR has been enjoying a “high degree of autonomy” in managing its own affairs except for foreign affairs and defense. The issue areas the SAR is allowed to exercise its autonomy range from cultural and economic activities to criminal justice cooperation with foreign states. At the political level, it is mainly because the SAR’s unique status in China’s constitutional system. In order to keep the OCTS policy working, the Central Government has to allow the SAR to enact national security law on its own. At the international level, it is mainly because the SAR’s role in the post-9/11 global counter-terrorism efforts. Constrained by the constitutional arrangements

under OCTS, the SAR can hardly become a securitizing actor to freely construct any issues as existential threats on its own. It is the “solutions and available methods do, to some extent, define the problems: solutions had been devised before problems had been defined.” (Amicelle 2007, 64) Although the SAR enjoys extensive autonomy external affairs, the power in relation to international security issues is contingent on Central Government’s authorization.

Security autonomy is the autonomy to discursive construction of an issue into a security threat and use exceptional measures to respond to such threats. Except for military security and political security, the SAR can exercise such autonomy to address societal, economic and environmental security issues. Admittedly, security autonomy is subjected to certain constrains under the “one country, two systems” framework. The selected case studies in this research exemplify discourses that link sovereignty, autonomy and security in different but related ways. Security autonomy does not stand by itself and its exercise has to be based on other autonomy that the SAR has already enjoyed.

The SAR’s security autonomy is a derivative power because it originates from sovereign power. But it is not secondary to sovereign power. It has its own dynamics. Security is an intersubjective construction. The SAR’s security autonomy can best be captured by its role in the securitization process. Under most situations, the SAR is audience. But the SAR can be securitizing actor too. In terms of national security and international security, the SAR’s role is better understood as audience than as securitizing actor but when it comes to societal security, Hong Kong and Macao are capable of being securitizing actor.

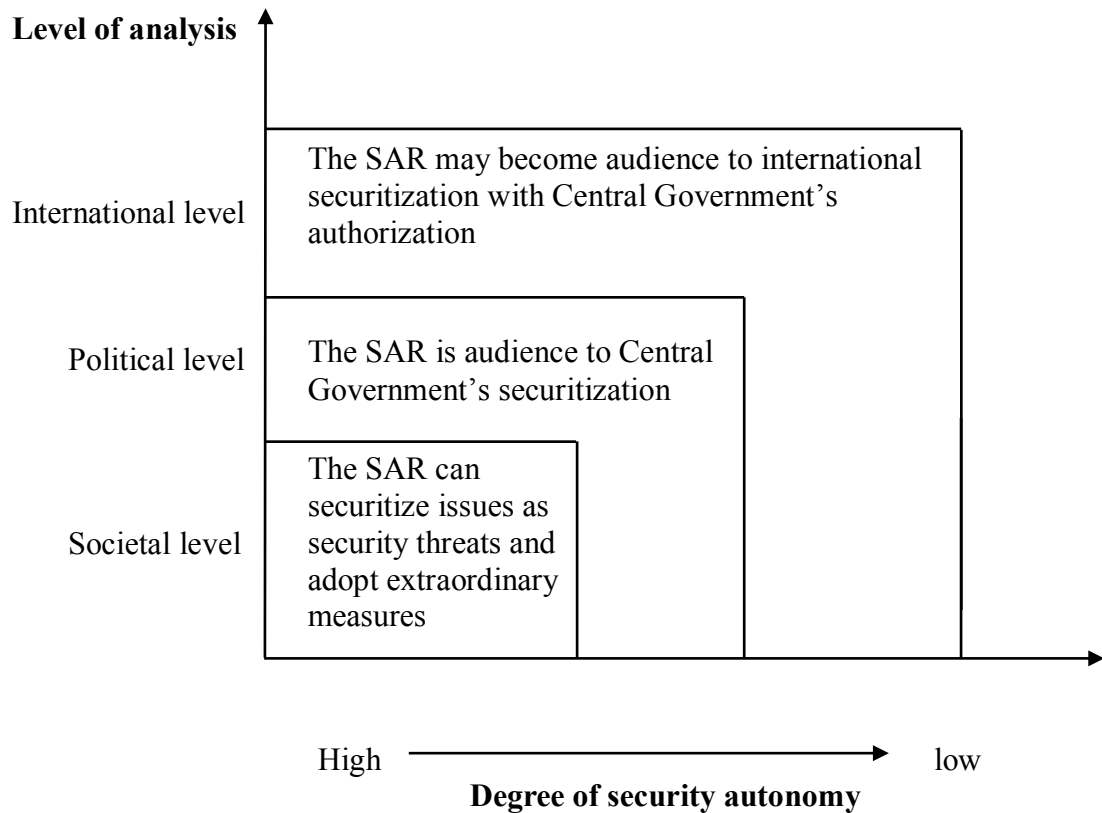
The application of securitization theory to study security autonomy in the SAR is appropriate because a majority of literature on the practice of securitization has

focused on political systems that can be considered more or less democratic. Hong Kong is not a democracy, but the territory is democratic to some extent. More accurately, the Hong Kong society is liberal but not democratic. Hong Kong is often considered as “semi-democracy” (Overholt 2001) or having “indigenous democracy.” (Lo 2015) There are rule of law, freedom of information, freedom of speech, but there is no universal suffrage, the head of government, Chief Executive, and legislators are not fully elected by universal suffrage. For political actors in Hong Kong, security autonomy provides an alternative approach to define and respond to issues that threat Hong Kong society. For political analysis, security autonomy is a way to understand how autonomy is unfolded in Hong Kong when handling security issues.

External autonomy and security autonomy may overlap at certain point (Xu and Wilson 2000; Cummings and Tang 2008). They cut cross existing conceptual, policy and organizational boundaries. Under the Basic Law, the SAR may conduct certain external affairs on their own. This paves the way for the SAR to deal with certain international security issues. However, external autonomy only allows the SAR to manage external affairs to which Hong Kong either has the authority to act or authorized by the Central Government to act. When it comes issues that are not fall within the normal realm of external autonomy, such as involvement in the US-led “Global War on Terror,” external autonomy become insufficient to explain. Indeed, in terms of international security issues, the boundary between external autonomy and security autonomy is hard to tell. It is the external autonomy that the SAR enjoys that makes its security autonomy possible. But security autonomy expands external autonomy to the extent that blurs the boundary between autonomy and sovereignty. Security autonomy is how the SAR exercises its legislative autonomy to respond to security issues. There are two key points to understand this definition, first, how to

understand security issues, and, second, how the SAR perceives such security issues and their responses.

Figure 2.1 SAR’s security autonomy under “one country, two system”



The degree of security the SAR can exercise depends on the role the SAR plays in a securitization process (see Figure 2.1). If it is the SAR that securitizes an issue as existential threats to a valued referent object in the SAR and calls on the use of exceptional countermeasures, the SAR can be viewed as having a high degree of autonomy even though the issues the SAR can securitize is limited to societal sector. In this situation, the SAR has the autonomy to define what is threat to the SAR and how to deal with such threats. If the SAR is the audience to Central Government's securitization of threats to sovereignty in the SAR and the SAR is only left with the

option of either accept or reject Central Government's securitization, the security autonomy the SAR can exercise in this case is low because the SAR neither can define security threats nor has alternative options. When the SAR is audience to the international securitizations with Central Government's authorization, such as the SAR takes legislative measures to counter terrorism threats on its own. Here, the SAR can be regarded as having very low level of security autonomy even if the SAR can make its own decision as to what measures to take and when such measures should be taken. Such situations are rare and the SAR cannot securitize threats to international security. The SAR is only authorized on a de facto basis to make its own decision. However, it should be noted that the three levels of security autonomy are a very rough assessment, careful comparisons are needed to delineate the level of security autonomy a SAR can exercise in each sector.

2.4 Methodology and research limitations

The Copenhagen school's method of studying security is to "Observe How Others Advocate!" (Eriksson 1999, 314) That is to say, according to Paul Roe, "security is the property of actors, not of analysts: actors and audience intersubjectively establish threats, analysts trace the subsequent security dynamics." (Roe 2005, 54) In order to know "when and how something is established by whom as a security threat," (Buzan, Wæver and de Wilde 1998, 176) discourse analysis is the best method for analysts to find "arguments that take the rhetorical and logical form defined here as security." (176) This research will use discourse analysis method to locate securitizing actor's "speech act." Since such "speech act" is usually made to the public, this research will rely on political leaders' speeches, government news releases, official documents, newspapers and internet to do discourse analysis.

However, discourse analysis is not helpful in finding “underlying motives, hidden agenda.” (176) Since the current research focuses on security autonomy itself and its impacts on Beijing-Hong Kong relations, not on the causes behind such dynamic, discourse analysis method is an appropriate method. But such heavy reliance on discourse analysis of government documents, official statements and publicly open information is not without its limitations. It would make the theory and research findings more convincing if other data collection methods were also utilized, such as personal interview. Due to time limit and other constraining factors, this research use discourse analysis method to demonstrate Hong Kong’s security autonomy and to interpret and explain its implications for Beijing-Hong Kong relations.

Beijing-Hong Kong relations has been explored in different historical period from colonial time to handover to China (Chan and Young 1994). In this research, for the Hong Kong case, the focus is on Beijing-Hong Kong relations since China resumed the exercise of sovereignty over Hong Kong on July 1, 1997. For the Macao case, the research period is from China resumed the exercise of sovereignty over Macao on December 20, 1999.

Under the OCTS arrangement, military is the sole responsibility of the Central Government in Beijing. National defense is not a Beijing-Hong Kong relations issue. Environment protection is Hong Kong’s internal affair and it does not significantly involve Beijing-Hong Kong relations. Although there is enormous economic cooperation between Hong Kong and mainland, this research will not include economic sector because economic activities are generally not constructed as security issues in Beijing-Hong Kong relations. There are economic elements at the societal level, but such elements are viewed from a societal security perspective, not viewed as pure economic activities. Hence, this research mainly focuses on the societal level and

political level. As an important stakeholder in global financial market, Hong Kong has played more and more important role in international money-laundering and counter terrorism financing cooperation. This research also reviews Hong Kong's response to international security issues, especially Hong Kong's response to international terrorism financing.

This research use case study method to demonstrate how Hong Kong exercises security autonomy at societal, political and international levels because case study method enables researchers to carry out "in-depth study of a single unit." (Gerring 2004, 341) The cases selected in this research are all events that have significant impact on Beijing-Hong Kong relations. In fact, all the cases studied in this research can be regarded as milestones in Beijing-Hong Kong relations since 1997. Based on the nature of Beijing-Hong Kong relations each case demonstrates, they are examined at three levels, namely, societal level, political level and international level. Based on the study of these cases, this research hopes to offer a new perspective to understand Beijing-Hong Kong relations.

Since Hong Kong is a subnational, non-sovereign entity (Hsiung 2009; Yahuda 1996) without clearly formulated security policies, its security legislations can be viewed as the exercise of "security autonomy," at the political level and international level, this research will focus on Hong Kong's security legislations and measures in the post-handover years. Two security legislations are examined. The first security legislation is the legal measures to implement the UNSC resolution 1373 in the wake of the 9/11 terrorist attacks, which gives rise to anti-terrorism legislations in Hong Kong. The SAR government enacted laws to implement the UNSC sanctions with the authorization from Central Government. Hong Kong is part of China, but it is allowed (or required) to implement the UNSC resolutions on its own and Hong Kong's

compliance with the UNSC resolutions are reported separately to the relevant UN committee. This special form of implementation can best be explained by Hong Kong's security autonomy. The second security legislation is the national security law as required by Article 23 of the Basic Law of Hong Kong. In this case, Hong Kong has made unsuccessful attempts to enact national security law in 2003. The focus is not on the law *per se*, but on the political haggling during the legislation process. Locally and internationally, Hong Kong's security legislations have been viewed as more political sensitive issue and have generated more debates and such security legislations have significant impacts on Beijing-Hong Kong relations. Apart from the two security legislations, in the societal sector, Hong Kong has extensive autonomy. Such autonomy is examined through cases such as, right of abode, anti-mainland movement and anti-national education movement.

2.5 Chapter summary

This chapter provide an overview of the securitization theory and outline the theoretical framework of this research. The research method is introduced together with potential limitation of the research method and theoretical framework.

Chapter 3 Hong Kong's Security Autonomy at the Societal Level

3.1 Introduction

This chapter examines how Hong Kong exercises its security autonomy at the societal level. According to Copenhagen School's societal security theory, Hong Kong can securitize threats to its society and identity. At the societal level, three cases are discussed, that is, the right of abode crisis in 1999, anti-mainland movement in 2012 and anti-national education movement in 2012. In the three cases, Hong Kong has securitized mainland immigrants, tourists, values and ideologies as existential threats to Hong Kong society and identity. In the three cases studied in this Chapter, securitizing actors in Hong Kong mobilize in the name of Hong Kong's way of life, autonomy and identity. They "speak" these referent objects are under mainland threats and demanded the government to adopt exceptional measures.

3.2 Right of abode crisis and the first NPCSC interpretation of Basic Law

Under the OCTS arrangement, there are established mechanisms to control unregulated migration from mainland to Hong Kong. According to the Hong Kong Basic Law, Hong Kong enjoys autonomy in its own immigration and border control and the Central Government retains the right to regulate the movement of people from mainland to Hong Kong. According to Article 22 of the Hong Kong Basic Law, mainland people must apply for approval from mainland authorities before they enter the HKSAR. In the post-1997 years, the large number mainland immigrants from mainland to Hong Kong and the problems they caused to Hong Kong society largely due to the judicial challenges in Hong Kong's Court of Final Appeals to this "division of labor," which was originally designed to insulate Hong Kong society from the influx of mainland

people.

After the handover in 1997, cross-border migration from mainland to Hong Kong is not a political sensitive and highly debated issue in Hong Kong until the *Ng Ka Ling* case in 1999.¹⁵ The year, 1999, proved to be a watershed year in the practice of the OCTS policy in Hong Kong. On January 29, 1999, the Hong Kong Court of Final Appeals judgment on *Ng Ka Ling* case affirmed that mainland born children of Hong Kong permanent resident have the right of abode in Hong Kong based on a liberal understanding of Article 24 of the Basic Law (Tam 2013, 78).¹⁶

Ng Ka Ling judgement has far-reaching implications for Hong Kong's "constitutional-political and the socio-economic domains (Chen and Cheung 2004, 251)." The implications of *Ng Ka Ling* case on Hong Kong society is multifaceted, but the most prominent impact to the Hong Kong society is that the CFA judgment triggered an imminent immigration crisis that the new HKSAR government was barely able to handle. According to the surveys and statistical researches conducted by the Hong Kong

¹⁵ Immigration from mainland to Hong Kong is a complicated issue before and after the handover in 1997. There are many researches on the immigration issue before 1997. See, John P. Burns, Immigration from China and the future of Hong Kong, *Asian Survey*, Vol. 27, No. 6 (June, 1987), pp. 661-682; Albert H. Y. Chen, The Development of Immigration Law and Policy: The Hong Kong Experience, *McGill Law Journal*, Volume 33, No 4, 1988, pp. 631-675.

¹⁶ Article 24 of the Hong Kong Basic Law, "Residents of the Hong Kong Special Administrative Region ('Hong Kong residents') shall include permanent residents and non-permanent residents. The permanent residents of the Hong Kong Special Administrative Region shall be: (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region; (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region; (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2); (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region; (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only. The above-mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode. The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode."

government to estimate the number of mainland children eligible to move to Hong Kong as a result of the CFA judgement on *Ng Ka Ling* case, 1.67 million people would come to Hong Kong if the CFA judgement were to be implemented (Chan, Fu and Ghai 2000, 274-287).

In Hong Kong, there is a trend of persistent framing of mainland immigrants in relation to unemployment, competition for social welfare. Hong Kong's perceptions of immigrants does not fit with common views of immigrants in Western countries, where new immigrants are generally associated with social stability, law and order, crime, and national security (Bigo 2002; Ceyhan and Tsoukala 2002; Huysmans 2006). Lahav and Courtemanche (2012)'s research shows, in Western countries, the immigration issue is increasingly "transformed from a traditional economic or cultural threat of the post-WWII era to a predominant framework of physical and national security characteristic of the post-Cold War (478)." Concerns of immigrants in Hong Kong, however, are always resolved around the abuses of welfare provisions and social services by mainland immigrants.

Since 1997, mainland immigration has increasingly been portrayed as a threat to Hong Kong society. For some Hong Kong people, right of abode seekers from mainland are equal to welfare system abusers. Before the *Ng Ka Ling* judgment, according to Nicole Newendorp (2008), the prevalent view in Hong Kong society is that "immigrants from the mainland to Hong Kong have long been seen as a security threat to the region, not only because of Hong Kong's rather precarious physical status in relation to the substantially larger mainland, but also because Hong Kong has historically been the receiving point of large influxes of mainland immigrants." (32-33)

Court of Final Appeals' *Ng Ka Ling* judgement can be regarded as a critical juncture in and a major accelerant of the process of securitizing immigration in Hong

Kong. Tung Chee-hwa, the first Chief Executive of Hong Kong, in his report to the State Council concerning the right of abode issue on May 18, 1999, securitized the 1.67 million mainland immigrants as existential threats to Hong Kong society at large and Hong Kong's welfare system in particular. His report states,

The statistical surveys conducted by the HKSARG show that, under the CFA's rulings, the number of mainland people who are eligible for the right of abode in Hong Kong would be increased by at least 1.67 million (about 690,000 are in the first generation; and, after those persons have ordinarily resided in Hong Kong for a continuous period of not less than seven years, about 980,000 people in the second generation will acquire the right of abode). The assessment of the HKSARG is that the admission of these additional people would create enormous pressure on Hong Kong. Hong Kong's land and social resources would not be capable of coping with the demands of such a large number of new arrivals for education, housing, medical and health services, social welfare and other needs. This would trigger social problems and lead to consequences which would have a serious and adverse effect on the stability and prosperity of Hong Kong, and which we would not be able to bear (Chan, Fu and Ghai 2000, 476).

Tung Chee-hwa's securitizing "speech-act" was effective in mobilizing public support for exceptional measures. According to Tung, the Hong Kong people was

“overwhelmingly in favour of an early resolution” of the right of abode issue. Nevertheless, under the OCTS arrangement, “the control of entry of mainland residents into Hong Kong has a bearing on the relationship between the Central Authorities and the HKSAR, the HKSAR is no longer capable of resolving the problem on its own (Chan, Fu and Ghai 2000, 476).” The urgent nature of the issue and the lack of competence on Hong Kong side to stop the influx of mainland immigrants compelled the HKSAR government to securitize the right of abode issue and to use National People’s Congress Standing Committee (NPCSC) interpretation of the Basic Law as an extraordinary measure to stop mainland immigrants from acquiring right of abode in Hong Kong.

Despite the potential negative impact, right of abode issue was probably the only Hong Kong government action concerning the Beijing-Hong Kong relations that was not result in large-scale local resistance. In her speech in the motion debate on the interpretation of the Basic Law in the Legislative Council on May 26, 1999, shortly after the Hong Kong government made the request to Central Government to interpret the Basic Law on May 20, 1999, the then Secretary for Justice, Elsie Leung, reminded legislators that “there is overwhelming public support for steps to be taken to prevent the influx of possibly 1.67 million people within the next ten years (Chan, Fu and Ghai 2000, 343).” Although the SAR government did not need the formal support of the Legislative Council, without the endorsement of the Legislative Council, the legitimacy gained from the interpretation of the Basic Law would be compromised. Secretary for Justice defended Chief Executive’s decision to seek NPCSC interpretation of Basic Law in front of members of the Legislative Council:

Just as the courts must abide by any new law or amendment of

any local laws enacted by this Council, the effect of which may be to reverse an earlier judgment, an NPCSC interpretation, made in accordance with the Basic Law, would be an authoritative statement of the law which judges would be duty-bound to follow (Chan, Fu and Ghai 2000, 345).

For many people in Hong Kong, no matter how the Tung Chee-hwa government has justified its decision to seek NPCSC interpretation of the Hong Kong Basic Law, the extraordinary measures actually have damaged Hong Kong's judicial independence and rule of law. The Democratic Party, Hong Kong Bar Association, human rights organizations, other political parties and individuals openly expressed their objections or concerns over Hong Kong government's move to seek NPCSC interpretation of the Basic Law (Chan, Fu and Ghai 2000, 348-407). The question is, in the right of abode crisis, why Hong Kong people chose to tolerate Hong Kong government's use of the interpretation of the Basic Law by the NPCSC to overturn the judgment of CFA. Tung Chee-hwa's securitization strategy has convinced Hong Kong people to support their government's extraordinary measure to stop the influx of 1.67 million mainland immigrants by sacrificing their core values, the rule of law and the judicial independence. It seems that, to Hong Kong people, those moral values are expendable if their way of life is threatened. Susan Henders' analysis clearly explains why Hong Kong people chose to support Tung's securitization. Susan Henders (2010, 215) points out:

In Hong Kong, most people are themselves descendants of Mainland Chinese migrants. Yet, the newer arrivals, especially poorer individuals, have been represented by government and

the media as culturally inferior and threats to Hong Kong economic values and so a drain on taxpayers. These representations helped make the Hong Kong public more accepting of the interference of HKSAR and state institutions in the autonomy of Hong Kong Court of Final Appeal in the context of the right-of-abode case.

The securitization of mainland immigration was a successful case of security autonomy exercise. Although there was evidence that the anti-immigration sentiment had been particularly evident before and during the “right of abode” controversy and Hong Kong people has a negative stereotyping of mainlanders, it can be argued here that the elites in the SAR government played a defining role in mobilizing public support to their securitizing moves (Cornell 2002, 252-255). Without such elite securitizing moves, the general public cannot mount sufficient pressure to persuade the government to solve this crisis in a swift and decisive manner.

There was more support than objection in seeking NPCSC interpretation fully illustrates that Hong Kong has the security autonomy to defend its society. It is not the charisma of Tung Chee-hwa, or other senior government officials that make the general public accept the encroachment on Hong Kong’s judicial autonomy in exchange for societal security. It is Hong Kong people’s rational choice at work here.

In the right of abode crisis, Hong Kong’s autonomy was reduced to judicial autonomy and misunderstood as only concerning judicial autonomy. Hong Kong government’s efforts to safeguard Hong Kong’s fundamental interests is largely ignored. On the contrary, Hong Kong government’s responses to the crisis is widely regarded as surrendering Hong Kong’s judicial autonomy to NPCSC. As a

counterfactual, if Hong Kong were an independent political unit when the right of abode cases occurs, Hong Kong government would do the same. Robert Morris (2004, 253) argues that “much of the right-of-abode tempest would never have occurred if the body charged with providing the ‘interpretation’ of the Basic Law had been the elected Hong Kong Legislative Council itself—even if it had come down with the same result as the NPCSC.”

Since the first NPCSC interpretation of the Basic Law in the wake of the Hong Kong CFA’s judgment of the *Ng Ka Ling* case, NPCSC interpretation of the Basic Law has been developed into an “institutionalized” response to immigration controversies raised from different understanding of Article 24 of the Hong Kong Basic Law. However, not all right of abode cases resulted in the interpretation of the Basic Law by the NPCSC. The fact that not all cases have been securitized as threats to Hong Kong society explains why NPCSC interpretation of the Basic Law happened in *Ng Ka Ling* case but not in the other two cases. The impact of mainland immigration to Hong Kong as a result of the *Ng Ka Ling* judgment is not necessarily greater than children born in Hong Kong to mainland pregnant women as a result of the *Chong Fung Yuen* judgement. The different approaches Hong Kong government has adopted to the right of abode issues indicate that it is a matter of choice on the Hong Kong side to deal with such threats to Hong Kong society. That is, Hong Kong retains full autonomy in handling the right of abode issues. Admittedly, compare to *Ng Ka Ling* case, *Chong Fung Yuen* case is totally Hong Kong’s internal affairs and the judgment does not concern the interest of mainland (Chen 2001, 186). Indeed, how Hong Kong reacts towards right of abode judgments is dependent on whether the issues are perceived as threatening or less threatening to the Hong Kong society. This explains why the SAR government sought NPCSC interpretation in *Ng Ka Ling* case but not in the *Chong Fung Yuen* case.

Hong Kong government's approach to deal with the right of abode issues in *Ng Ka Ling* judgment and the first NPCSC interpretation of Basic Law has significant bearing on the right of abode judgment of foreign domestic helpers. Like *Ng Ka Ling* cases, if all foreign domestic helpers in Hong Kong had the right of abode, Hong Kong would face enormous pressure to accommodate them. In the foreign domestic helper case, the Hong Kong government securitized foreign domestic helpers as security threat to Hong Kong and requested the CFA to seek NPCSC interpretation of the Basic Law before the court deliver its judgment. Finally, the CFA rejected foreign domestic worker's right of abode claims and Hong Kong government's request for a second NPCSC interpretation of the Basic Law on March 25, 2013 (Chiu and Moy 2013). Although the NPCSC interpretation of Basic Law as an exceptional measure was rejected by the court, it is obvious public fear of immigration generated by government's securitizing moves would very likely to influence the CFA's final decision.

Hong Kong elites can use securitization logic to mobilize public support to their policies. However, audience acceptance of elite securitizing moves is conditioned on the referent object the securitizing moves intends to protect. If Hong Kong interest is protected, they will embrace the securitizing move. Sometimes even at the expense of Hong Kong autonomy when Hong Kong interests are at stake. In normal politics, the SAR should not seek NPC Standing committee to interpret the Basic Law, but since the entry of millions of mainland immigrants might destroy Hong Kong society. The SAR government had to exercise its security autonomy to seek NPC interpretation. Although this move might erode Hong Kong's judicial autonomy, in such extreme situations, the extraordinary measures that can protect Hong Kong society are more important than judicial autonomy.

3.3 Anti-mainland movement

Since the handover, the fast pace of economic integration process between mainland and Hong Kong has put Hong Kong in a difficult position. Integration, according to Alvin So (2011), means “the economic, social and cultural aspects of the process of bring Hong Kong back to the mainland.” (100) To some Hong Kong people, Hong Kong’s integration with mainland will risk turning Hong Kong into “just another Chinese city” and lose Hong Kong’s distinctiveness. Anthony Cheung (2008) explains how Hong Kong’s uniqueness can be threatened. He points out:

Despite its various shortfalls and “borrowed place, borrowed time” mentality, Hong Kong had made tremendous progress in the final decade of British rule. It had succeeded in building an international city not only known for economic vibrancy, but also the respect for freedom, rule of law, integrity, professionalism, fair play, and in recent years, transparency, accountability and human rights. Any erosion of these core values and institutions is tantamount to taking away Hong Kong’s *raison d’etre* (xiii).

The core values and institutions Cheung mentioned are what makes Hong Kong a unique existence under OCTS. Any issues that undermine Hong Kong’s core values and institutions will be viewed as threats to Hong Kong society. Since handover, mainland immigrants, mainland visitors and mainland values and ideologies are the three major types of threats identified in the past two decades as threats to “Hong

Kong's raison d'être." When such threats become imminent and threatening, actors in Hong Kong society utilize its security autonomy to react.

For the past two decades, the fear of mainland influence on Hong Kong's distinct way of life has become a hotly-debated issue in Hong Kong society. The attitudes towards increasingly closer mainland-Hong Kong interactions in the forms of cross-border flows of people, money and other social, cultural, and political elements from mainland to Hong Kong because of such cautious mindset has been gradually developed into the "mainlandization" of Hong Kong argument. According to Sonny Lo (2007),

mainlandization is the HKSAR government's policy of making Hong Kong politically more dependent on and similar to Beijing, economically more reliant on the mainland's support, socially more patriotic toward the motherland, and legally more reliant on the interpretation of the Basic Law by the Standing Committee of the National People's Congress (186).

Carol Jones (2014) also notices the "mainlandization" of Hong Kong, but from a slightly different perspective. His "mainlandization" argument includes,

HKSAR's increased economic dependence upon the PRC; the undermining of its core freedoms, rights and values, and interference with the rule of law; the subordination of its culture; the weakening of its political institutions; and the deterioration of everyday life.

The “mainlandization” arguments implies possible mainland threats to Hong Kong, albeit they may, intentionally or otherwise, exaggerate the mainland influence. Although Lo’s and Jones’ arguments may not be a true and comprehensive reflection of Beijing-Hong Kong relations since the handover, the perceived “mainlandization” of Hong Kong arguably has led to the buildup of tensions and eruption of anti-mainland sentiments and activities. To some Hong Kong people, “mainlandization” has already damaged their high degree of autonomy, their way of life and their much valued Hong Kong identity.

“Mainlandization” threatens Hong Kong’s identity by threatening autonomy in Hong Kong. Markku Suksi (2011, 35), in his lengthy comparative research of territorial autonomy entities around the world, suggests that “in spite of the fact that the ethnicity of the population of Hong Kong is the same as in the adjacent areas of Mainland China, it is clear that the population of Hong Kong has developed its own identity which is distinct from the identity of the population in Mainland China.” In recent years, Hong Kong people’s allegiance are increasingly expressed to Hong Kong as a society rather than to Hong Kong as a SAR of China. The autonomy Hong Kong enjoys is the safeguard of Hong Kong identity in a society without unique ethnic characteristics.

This part explores how Hong Kong exercises its security autonomy to manage Hong Kong-mainland societal conflicts as a result of the so-called “mainlandization.” of Hong Kong. “Mainlandization” may not be totally bad to Hong Kong. Arguably, Hong Kong’s close relation with mainland may not necessarily threatens Hong Kong society, instead, in various forms, it contributes to Hong Kong’s development and

prosperity.¹⁷ Specifically, this part examines how different actors in Hong Kong securitize or attempt to securitize perceived threats to Hong Kong society and how the HKSAR government and Central Government respond to such securitization. This part focuses on conflicts between mainland society and Hong Kong society. Conflict between Chinese state and Hong Kong society will be addressed in Chapter 5.

This part use Hong Kong's anti-mainland movement as the second case to study Hong Kong's security autonomy in societal sector. In this part, anti-mainland movement only refers to how Hong Kong deals with the impact of mainland tourists on Hong Kong society, including birth tourism and shopping in Hong Kong. The so-called Central Government's "interference" into Hong Kong's political development is not covered in this chapter although. Understandably, it is not easy to make definite separation between societal issue and political issues. Societal issues are often politicalized and political issues have their societal roots. As the Copenhagen School suggests, "societal security is closely related to, but nonetheless distinct from political security (Buzan, Wæver and de Wilde 1998, 119)." As will be argued in Chapter 5, if Hong Kong and mainland already perceive each other in security terms in democracy and political development, any issues concerning mainland Hong Kong relations is more likely to develop into societal insecurity in Hong Kong (Buzan, Wæver and de Wilde 1998, 127).

Since 2003, cross-border movement of people, money from mainland to Hong Kong as a result of a relaxation of travel control has become another major concern in Hong Kong society. In recent years, such concerns have increasingly been constructed

¹⁷ See, Information Office of the State Council, the People's Republic of China, "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region," Foreign Languages Press, 2014, Chapter III, Comprehensive Progress Made in Various Undertakings in the HKSAR and Chapter IV, Efforts Made by the Central Government to Ensure the Prosperity and Development of the HKSAR.

as threats to Hong Kong society. In 2003, as a direct result of the Closer Economic Partnership Arrangement after the SARS crisis,¹⁸ Hong Kong and mainland introduced the Individual Visit Scheme (IVS), “a less restrictive policy on Mainland tourism (Dumbaugh 2008, 182).” Individual Visit Scheme is a tourism policy intended to boost Hong Kong economy initiated by the Donald Tsang government and supported by Beijing in 2003 (Lo 2015, 110). Under the IVS arrangement, mainland visitors from selected cities can visit Hong Kong on individual basis without the need to join tourist group or apply for business visa.¹⁹ Due to geographic proximity and the introduction of IVS, Hong Kong soon became a prime travel and shopping destination for mainland travelers. Like Chinese tourists to other regions and countries, shopping is the concentration of travel activities in Hong Kong. Despite the enormous monetary contributions mainland tourists have made to Hong Kong’s tourism and retailing industries, mainland tourists have received more complaints and criticisms than welcomes. Mainland people are often accused of disturbing Hong Kong people’s way of life, pushing up real estate prices and competing for living and education resources with Hong Kong people.

Birth tourism is another issue that has caused tensions between Hong Kong people and mainland people. Thanks to the convenience of travel to Hong Kong and the right of abode for child born to mainland parents in Hong Kong as affirmed in the

¹⁸ SARS epidemic is a serious threat to Hong Kong society in 2003 but the threat is mainly to individuals in Hong Kong society and it has not reach the extent to breakdown Hong Kong society. The most damaging impact of SARS was on Hong Kong’s tourist industry but the damage was soon compensated by the introduction of Individual Visit Scheme. Thus, the Hong Kong government did not construct SARS as a security threats to Hong Kong despite the emergency measures in fighting SARS in 2003.

¹⁹ The Individual Visit Scheme was first introduced in four Guangdong cities (Dongguan, Zhongshan, Jiangmen, Foshan) on 28 July 2003. The coverage of the Scheme has expanded since implementation. The Scheme is now implemented in 49 Mainland cities. See, Tourism Commission, Commerce and Economic Development Bureau, The Government of the Hong Kong Special Administrative Region, http://www.tourism.gov.hk/english/visitors/visitors_ind.html, accessed May 17, 2016.

Chong Fung Yuen case, many mainland parents travel to Hong Kong to give birth since 2003. This problem is called “double negative pregnant women” because neither husband nor wife is Hong Kong resident and their babies are called “double negative children” in Hong Kong media and society. In fact, the rise of mainland “double negative” issue can be viewed as a self-inflicted nightmare. The influx of the so-called “double negative” mainland pregnant women giving birth in Hong Kong was widely attributed to the CFA’s decision in *Chong Fung Yuen* case that affirmed the right of abode of Chinese nationals born in Hong Kong. The relax of travel restrictions on mainland people to Hong Kong facilitates mainland parents’ desire to give birth in Hong Kong for their children to get right of abode.

Despite the enormous dissatisfaction with Mainland’s “interference” with Hong Kong affairs after 1997, Hong Kong people’s attitudes towards mainlanders in Hong Kong remain tolerant until the broke out of anti-mainland movement in 2012. From labeling mainlanders in Hong Kong as “locusts” battling for resources with Hong Kongers to violently assaulting mainland tourists in large shopping malls, a widespread wave of anti-mainland movement has captured media and academic attention since 2012. As Hong Kong is fighting for its universal suffrage from the central government, the rise of anti-mainland movement is not unusual. An article in *The Economist* says it is just “old division find a new expression”.²⁰ What surprised Hong Kong and mainland is the way Hong Kong government responded to such overt expressions of hostility towards mainlanders. Contrary to the common anti-xenophobia policies generally adopted in democratic societies, Hong Kong government enacted laws and took protective measures to restrict mainland tourists shopping in Hong Kong and entry into

²⁰ “Hong Kong and mainland, dogs and locusts, old divisions find a new expression,” *The Economist*, Feb. 4th, 2012.

Hong Kong.

If xenophobia is understood as the generalized dislike foreigners, then Hong Kong's anti-mainland movement is bordering xenophobia because the target of xenophobia is Chinese on mainland, not foreigners. The resurgence of anti-mainland or xenophobia has emerged as a major political concern in Hong Kong

To the Hong Kong people who are extremely attentive to their identity and way of life, the closer ties between mainland and Hong Kong are perceived more as threat than as benefit. As a highly politically divided society, Hong Kong is the hot bed to breed political issues. Since 2012, the complaints to mainland visitors have gradually evolved into an anti-mainland movement in Hong Kong. Waves of anti-mainland activities have taken place in Hong Kong demanding a complete stop of engagement between the two sides. On February 1, 2012, a Hong Kong newspaper, *Apply Daily* published a full-page color advertisement showing a locust looking at the Hong Kong skyline. The accompanying words in the advertisement outlined Hong Kong people's growing angry towards mainland visitors, accusing mainland visitors of battling for resources in Hong Kong, demanding the HKSAR government to revise the Basic Law Article 24 and stopping mainland pregnant women from giving birth in Hong Kong. Below is an translation of words accompanying the locust picture.

Are you willing to allow Hong Kong spend 1,000,000 Hong Kong dollars for every eighteen minutes rearing "double negative" children? Hongkongers, we have tolerated enough! Because we know you are harmed by poisonous baby formula, we tolerate you to scramble for ours. Because we know you cannot travel freely, we treat you to Individual Visit Scheme.

Because we know your education is backward, we share our education resources with you. Because we know you do not understand traditional Chinese, we use simplified Chinese below. “In Hong Kong, please respect our culture. Without Hong Kong, you are all finished.” Strongly demand government to amend Article 24 of the Basic Law! Block unlimited mainland “double negative” pregnant women from invading Hong Kong (The advertisement is in Chinese and this is author’s translation).

While insulting mainland tourists and degrading their contributions to Hong Kong tourism development, the locust advertisement reflected an escalating tension between some Hong Kong people and mainland tourists. The locust overlooking Hong Kong signifies that Hong Kong is under existential threat. The advertisement called on the HKSAR government to seek NPCSC interpretation of Basic Law to stop the invasion of mainland pregnant women giving birth in Hong Kong. The locust advertisement can be viewed as a strong “speech act.” It not only sent a clear image of mainland threat to Hong Kong society but also made explicit policy demand to the SAR government.

The locust advertisement securitized “mainlanders” through a demonizing strategy of depiction (Agius 2013; Hansen 2011). The locust image itself does not necessarily have political significance although the term has already been widely used in Hong Kong to humiliate mainland visitors. It is the accompanying text below the image that make the locust image more threatening. The text linked the locust threat to large collective subjects, that is, Hong Kong society and Hong Kong identity. The locust

advertisement provides a rallying point for people who have been already disaffected with mainland immigrants and tourists.

Hong Kong's anti-mainland movement is very hard to define because the enormous targets this movement directs at. It ranges from concrete targets such as individual mainland tourists to more abstract policies, such as economic integration and Individual Visit Scheme. Generally speaking, anti-mainland movement in Hong Kong is considered as a reaction to the perceived mainlandization of Hong Kong's political, economic, and legal systems. For anti-mainland activists, "mainlandization" threatens Hong Kong's way of life, society and distinctive identity.

However persuasive the securitizing move, it cannot warrant a new interpretation of Basic Law. The birth tourism issue was finally solved by Chief Executive Leung Chun-ying's "zero quota" policy. Hong Kong government's "zero quota" policy requires that "all public hospitals will not accept any bookings by non-local pregnant women for delivery in Hong Kong from January 1, 2013 onwards." (Hong Kong Government 2012) Private hospitals, according to Hong Kong government, also agreed to enforce the same "zero quota" policy. In addition, immigration and other law enforcement departments have taken assertive measures to stop mainland pregnant women from giving birth in Hong Kong (Ibid). The zero-quota policy, although lack proper legal basis as Regina Ip, a legislator of Hong Kong's Legislative Council, indicated, greatly reduced the impact of *Chong Fung Yuen* case without again seek NPCSC to interpret the Basic Law (Hong Kong Government 2013).

For the baby milk formula shortage problems caused by mainlander shopping in Hong Kong as a result of the Individual Visit Scheme, the SAR government adopted a two stage strategy. First, the Hong Kong government placed restrictions on the quantity of baby milk formula each visitor can purchase and take out of Hong Kong.

This is the so-called two-can baby milk formula policy (Customs and Excise Department 2013). Violations of the law can lead to a fine of 500,000 Hong Kong dollars and to a 2-year imprisonment. (Ibid) But this export limit policy that was designed to restrict mainlanders from purchasing baby milk formula in Hong Kong backfired because Hong Kong residents are also affected. The move that finally affect Beijing-Hong Kong relations is the policy change made to Individual Visit Scheme for Shenzhen residents who can travel to Hong Kong on multi-entry Individual Visitor Scheme visas. Second, at the request of Hong Kong government, on April 13, 2015, the Central Government restricted Shenzhen residents' multi-entry visa to one-entry per week visa in the hope that such modification can reduce the number of visitors on Individual Visit Scheme to Hong Kong (Xinhuanet.com 2015).

Assertiveness and radicalness such activities may look like, they have nonetheless been endorsed and supported by the HKSAR government's emergency legislations to limit mainland tourists' entrance into and consumption in Hong Kong. As a SAR of China enjoying "high degree of autonomy" to govern its internal affairs, Hong Kong government's actions fit with the Basic Law. Since Hong Kong government seldom take measures to restrict normal cross-border activities, this unusual move has attracted much media and academic attention.

Anti-mainland movement "take on a security dimension" because they are argued in terms of the survival of Hong Kong. With the buildup of tensions and conflicts between mainland tourists and some Hong Kong residents, the security approach to cross-border flows has found greater favor with policymakers. This directly leads to the adoption of laws to restrict mainland travelers from purchasing baby milk formula and the number of entries into Hong Kong. To some extent, Hong Kong's restriction on mainland tourist maybe seen as a concession to paranoid nativism. Since

the mass demonstration in 2003, Hong Kong has evolved into a strong civil society with a weak government (Ma 2007, 229; Lo 2015, 113).

The objective of anti-mainland movement is to pressure the government to adopt exceptional measures to protect Hong Kong's special way of life from being weakened by the increasing integration with mainland China. Anti-mainland is not a precise term to describe the indigenous resistance to mainlanders coming to Hong Kong to battle for resources. It is widely accepted and used simply because the motivation and targets of the movement are undesirable mainland elements. Over the past several years, however, the anti-mainland movement is making steady headway in generating hostile sentiments towards mainlanders in Hong Kong, and in influencing the Hong Kong government policies toward mainland.

First, as Hong Kong is increasingly mainlandized, any move to resist the mainlandization trend must be urgent enough to reverse the integration policy, such as Individual Visit Scheme. Therefore, by overstating mainland related issue to the threatening level, desired changes to current policies can be made. For example, the baby milk power issue and the IVS issue.

Second, as stated in the previous section, local politics need play the mainland card to gain political advantages. The purpose of securitization is to legitimate emergency measures to address existential threats. For the Hong Kong case, the government is inherently unable to take up the securitizing actor role it is supposed to be in securitization theory due to the fact that Hong Kong SAR government cannot openly resist integration policy it designed. The actual securitizing moves are implemented by a composite of individuals and groups. They are not necessarily in a position of authority but they are in possess of great social capital to mobilize Hong Kong people and to pressure the Hong Kong government.

The increasing cross-border flow of people and capital from mainland to Hong Kong endangers Hong Kong people's entitlements, social justice and much-valued rule of law. It should be noted that the influx of mainland tourists and immigrants to Hong Kong is a huge test to the SAR government and the society at large. But by designating the normal cross-border migratory flows as threat to Hong Kong only complicates the problem. In fact, as this chapter argues, the process of framing mainland threat and the calling for the use of emergency countermeasures is a strategy exploited by some anti-mainland groups and politicians, consciously or unconsciously, to achieve their own political objectives and agendas. In this process, mainlanders are becoming scapegoat to remedy chaotic local politics. Democratization is more than anti-mainland, but for those actively involved in the democratization movement who want to progress within the sandwich politics in Hong Kong (Lo 2015, 113), anti-mainland is often a useful weapon and thus the conflict between democrats and mainlanders is to some extent inevitable. For some Hong Kong interest groups, anti-mainland may be a cover for a more general inability to respond to the increasingly demanding Hong Kong society.

3.4 Anti-national education movement

If right of abode of mainland children and mainland visitors only affect Hong Kong people's material wellbeing, the introduction of national education curriculum in Hong Kong schools may have direct impact on the minds and hearts of Hong Kong's next generation. Yam Shui-Yin (2016) argued, the Central Government in Beijing turned to national education as a means to increase Hong Kong people's Chinese identification when economic integration met with fierce resistance in 2012 (42). As a society that has embraced a sophisticated citizenry with multiple allegiances and a constitutional culture of limited Central Government power in Hong Kong, anything that is viewed

as preaching mainland communist ideology in Hong Kong schools will be perceived as threatening to Hong Kong society.

Hong Kong government's plan to introduce national education curriculum as a mandatory subject is widely attributed to China's President, Hu Jintao's talk given by his visit to Hong Kong in 2007. In the then Chief Executive, Donald Tsang's 2007-2008 policy address, Tsang recalled that Hu Jintao said,

we should put more emphasis on national education for the youth in Hong Kong and promote exchanges between them and the young people of the Mainland so that they will carry forward the Hong Kong people's great tradition of loving the motherland and loving Hong Kong (Hong Kong Government 2007).

President Hu Jintao's advice was soon turned into concrete actions in Hong Kong. But it was not until April 2012 that the Curriculum Development Council released the *Moral and National Education Curriculum Guide*. In June 2012, *The China Model*, a national education teaching handbook was published which give a positive presentation of China's political and economic systems. The *China Model* book was not acceptable to most students and parents after its release. They called the book "brainwashing." According to Lauren Bialystok, "if something taught in public schools is perceived as a form of 'brainwashing,' it is a challenge not only to the individual teachers or administrators involved, but also to the integrity of the system that claims to deliver an essential public good." (Bialystok 2014) Accordingly, Hong Kong student and their parents securitized national education as existential threats to Hong Kong society. They

demanded the Hong Kong government to withdraw the curriculum. In September 2012, a day before the Legislative Council election, the Chief Executive announced the government agreed to withdraw the curriculum.

Hong Kong people's resistance to National Education curriculum in 2012 looks like what they have done in 2003 with national security legislation. At a cursory look, the two movements have achieved the same results. That is, the government withdrew its unpopular law and policy. But the security logic behind the two cases are different. Anti-national education movement shows again that members in the Hong Kong civil society can be securitizing actors. They can speak security and they have the right to demand government to react. This is the uniqueness of Hong Kong's security autonomy at the societal level.

3.5 Summary

This chapter shows how Hong Kong exercises its security autonomy at the societal level. At the societal level, Hong Kong can securitize unwelcomed mainland elements as existential threats to Hong Kong society. In the cases discussed in this chapter, the role of securitizing actor is played by the SAR government and members of the civil society. In the right of abode case, the SAR government is the securitizing actor and the audience is the Hong Kong people and Central Government in Beijing. The securitization is successful and extraordinary measures were taken to protect Hong Kong society from the threat of mainland immigrants. In the anti-mainland movement and the anti-national education movement, the securitizing actor is not the SAR government. Members in the civil society are the securitizing actors and the Hong Kong government is the audience. In the anti-mainland movement, although the SAR government cannot be the securitizing actor to "speak" security, the SAR government

adopted policies to protect Hong Kong society. Such policies are not the exactly demanded extraordinary measures but they can be viewed as exceptional measures in the context of economic integration between mainland and Hong Kong. In the anti-national education movement, the securitizing actor is students and parents. They “speak” security and their demands was satisfied with the withdrawal of national education curriculum (see Table 3.1).

Table 3.1 Hong Kong’s security autonomy at the societal level

	Right of abode	Anti-mainland movement	Anti-national education movement
Securitizing actor	Hong Kong government	Members of civil society	Members of civil society
Existential threat	1.67 million mainland people	Mainlandization	National education curriculum brainwashing Hong Kong students
Referent object	Hong Kong stability and prosperity	Hong Kong way of life	Hong Kong identity
Extraordinary measures	NPCSC interpretation of the Basic Law	Changes made to custom, immigration and medical service policies	Withdrawal of national education curriculum
Audience	Hong Kong people	Hong Kong government	Hong Kong government

In Hong Kong, the SAR government may not have incentives to act as securitizing actor under certain situations. As the cases of anti-mainland movement and anti-national education movements have shown above, Members or groups in the civil society can be securitizing actors when it was not appropriate for the SAR government to securitize threats to Hong Kong society.

At the societal level, Hong Kong has a high degree of security autonomy. This is demonstrated in the policies of zero quota for mainland pregnant women giving birth in Hong Kong and restriction on export of milk formula. This two cases indicates that such matters are Hong Kong internal affairs and they are not primarily Hong Kong-Beijing relations issues. However, in the right of abode issues as a result of *Ng Ka Ling* judgement and the changes made to mainland tourists' Individual Visit Scheme to Hong Kong, Hong Kong needs Beijing's support. At this point, Hong Kong-Beijing relations are the major concern. The Hong Kong government turned the right of abode issues resulting from *Ng Ka Ling* case from its internal affairs into an issue concerning Hong Kong-Beijing relations because of the NPCSC interpretation of Basic Law in 1999. In the Individual Visit Scheme issue, Hong Kong government again turned the issue into a Hong Kong-Beijing relations matter. Compare with other right of abode issues and other measures Hong Kong has adopted to manage mainland impact on Hong Kong society, it is evident that Hong Kong not only has the autonomy to manage threats to its society on its own resources, but also can utilize Central Government to protect Hong Kong interests. The three cases in this chapter show that although there are many securitizing moves at the societal level, such moves normally cannot materially affect Beijing-Hong Kong relations. Only those existentially threats that may breakdown Hong Kong society will lead to changes to Beijing-Hong relations.

Chapter 4 Hong Kong's Security Autonomy at the International Level

4.1 Introduction

Despite the extensive autonomy to conduct external affairs, Hong Kong does not show an active involvement in international security issues.²¹ According to Article 151 of the Basic Law, Hong Kong's role as an international actor is generally found in "economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields."²² In the wake of 9/11 terrorist attacks, however, in Simon Shen (2016)'s words, Hong Kong's "independence of action" was extended to "sensitive issues such as security and foreign policy (vii)." Hong Kong was dragged into the United States-led "Global War on Terror (GWOT)" when it was instructed by the Central Government to implement the United Nations Security Council (UNSC) resolution 1373 (Legislative Council 2008). The UNSC resolution 1373 calls on all member states to take legal measures to counter terrorism and terrorist financing. As a SAR of China, Hong Kong was allowed by the Central Government to implement UNSC resolution 1373 on its own. In July 2002, the United Nations (Anti-Terrorism Measures) Ordinance was enacted by a vote of 32 to 18 in the Legislative Council (Xinhuanet.com 2002) without generating the kind of mass objections happened in the Basic Law Article 23 legislation in 2003 despite the considerable legal restraints placed on personal freedom and human rights.

²¹ Simon Shen's 2016 book entitled "Hong Kong in the World: Implications to Geopolitics and Competitiveness" offers a very informative review of the practice of Hong Kong's external affairs. See, Simon Shen, *Hong Kong in the World: Implications to Geopolitics and Competitiveness*, Imperial College Press, 2016, London.

²² Article 151, The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

Hong Kong's involvement in the GWOT provides a good case to study its security autonomy at the international level. This chapter introduces how Hong Kong exercises its security autonomy as a responsible stakeholder in the international anti-terrorism campaigns. The UNSC resolution 1373 is singled out as a case to study Hong Kong's security autonomy because other UN resolutions implemented in Hong Kong are no different to their implementation in mainland. Anti-terrorism legislation is the first legislation that Hong Kong separately enacted to implement an important UN resolution. Another factor is that the logics underpinning such legislations by Beijing and Hong Kong are different. Anti-terrorism is probably the only place where Hong Kong and Beijing seem to share the same security threats and have to take the same counter-terrorism measures as required by the UNSC resolution 1373. However, as is discussed below, Hong Kong and Beijing adopted different approaches to terrorism and counter-terrorism measures.

This chapter argues Hong Kong has autonomy in defining international security issues in its internal legislation and taking appropriate measures. In fact, in enacting its anti-terrorism law, Hong Kong has reacted proactively to the US-led GWOT and showed significant distance from China's anti-terrorism legislation. As a territory with no terrorist threats, Hong Kong has been proved to be a good implementer of the UNSC resolution 1373 although Hong Kong itself is not a sovereign entity in international society.

4.2 The international securitizations of terrorism

Terrorism as a security threat has been securitized by a series of actors through different speech acts. Three internationally sponsored speech act constructs terrorism as existential threat, the US-led GWOT, the UNSC resolution 1373, and Financial Action

Task Force (FATF)'s counter terrorist financing recommendations (see Table 4.1).

First, the US macrosecuritization of terrorism is an important construction of terrorism as security threat to the whole civilized world. In the wake of 9/11, the US has taken a lead in the global construction of terrorism as an “existential threat” both to the world and to individual states. As has been discussed in Chapter 2, the US President George W. Bush’s speech at the White House after the 9/11 attacks securitized terrorism as an existential threat to the world. Bush’s “either you are with us, or you are with the terrorists” doctrine forced governments around the world to join the US-led GWOT.

Second, the UNSC resolution 1373 passed under Chapter VII of the UN Charter, imposed a general legal obligation on member states to criminalize “terrorist acts” in their domestic law. In the preamble of resolution 1373, the UN Security Council “speaks” that “such acts, like any act of international terrorism, constitute a threat to international peace and security” and calls on all member states to “work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism.” The UNSC also recognized the “need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism.”²³ This is a “speech act” that set out the guiding principles by which the document should be interpreted (Crick 2012, 409). The UNSC “speaks” security through its resolution 1373 but it is always rational choice of the actors in international society to decide their degree of compliance.

²³ United Nations, Security Council, resolution 1373 (2001), Adopted by the Security Council at its 4385th meeting, on 28 September 2001, available at [http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20\(2001\).pdf](http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20(2001).pdf), accessed October 24, 2016.

Third, in October 2001, shortly after 9/11, the Financial Action Task Force (FATF), an inter-governmental body established in 1989 with objectives to “set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system,” issued eight recommendations that specifically focus on targeting the terrorist financing.²⁴

- (1) Ratification and implementation of UN instruments
- (2) Criminalising the financing of terrorism and associated money laundering
- (3) Freezing and confiscating terrorist assets
- (4) Reporting suspicious transactions related to terrorism
- (5) International Co-operation
- (6) Alternative Remittance
- (7) Wire transfers
- (8) Non-profit organisations²⁵

The FATF securitized financing of terrorism or as William Vlcek (2015) called it “securitizing money” as a security threat and thus adopted exceptional measures to deal with such threats.

²⁴ Hong Kong is a member of the FATF since 1991.

²⁵ The FATF Recommendations, available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>, accessed June 3, 2016.

Table 4.1 International securitization of terrorism

Securitizing actor	US	UN	FATF
Referent object	The whole civilized world	International peace and security	International financial system
Existential threat	Terrorism	Terrorism	Financing of terrorism
Extraordinary measures	GWOT	UNSC resolution 1373	FATF recommendations
Audience	Hong Kong		Hong Kong

Hong Kong's role as audience in the three securitizations is not identical. In the US construction of terrorism as security threats, Hong Kong and China are equal targets of terrorism and both governments have to take anti-terrorism measures as a response to the US GWOT. In the implementation of the UNSC resolution 1373, Hong Kong must get authorization from the Central Government in Beijing before it can take actions like other sovereign states. As an independent member of FATF, Hong Kong and China are both audience of the "securitization of money" and Hong Kong can make its own compliance decisions independent from Beijing.²⁶

4.3 Hong Kong's translation of the international securitizations of terrorism into its internal legislation

Hong Kong's response to terrorism happened in the international security context of a post-9/11 world. After 9/11, whether for international responsibility or for parochial

²⁶ China is a member of the FATF since 2007.

domestic agendas, Hong Kong's draconian measures against terrorism, real or otherwise, are in one way or another, produced as responses to the US securitization of terrorism (Buzan and Wæver 2009). In a sense, the Hong Kong case is a manifestation of how Hong Kong translates and localizes such US securitization (Stritzel 2014). This is what Morten Kelstrup (2004) says that the "securitization move' by the American government was followed by most other state leaders and other important representatives in most societies (112)." The development of the 'Self/Other' dichotomy in the course of securitization of terrorism, to some extent, forced Hong Kong to accept the international securitization of terrorism.

In the international securitization of terrorism, Hong Kong as an audience, not only accept terrorism as an existential threat to its own security, but also feel mandatory to act to target terrorist financing. As Regina Ip, the Secretary of Security in the first HKSAR government said to the legislators when Hong Kong's anti-terrorism law was under second reading in the Legislative Council, "this is a global effort so we're trying to do it as soon as possible (Daily News 2002)." Contrary to the argument that Hong Kong enjoys "a neutral position away from the controversy of the GWOT (Ho 2013, 104), Hong Kong actually has played an important role due to its unique geopolitical position and international financial hub status. As argued before, Hong Kong's role in the US-led GWOT is equal to Chinese government, but Beijing has its own agendas and considerations as suggested by some commenters (Buzan and Wæver 2009, 266).

Hong Kong's anti-terrorism measures is not mechanically copy the UNSC resolution, but is reflective of its own security considerations. The first step for the Hong Kong government was to persuade Hong Kong people to accept international terrorism as "existential threat" to Hong Kong. If security means survival in the face of existential threats, what are existential threats to Hong Kong in the post-9/11 world?

Before 9/11, terrorism is not a security concern in Hong Kong. It could be argued that Hong Kong's post-9/11 understanding of terrorism mainly comes from external sources. The autonomy Hong Kong has exercised in implementing the UNSC resolution 1373 can be viewed as a non-sovereign entity's acceptance of international securitization of terrorism by international organizations and the United States. In Hong Kong society, there was agreement on the necessity of performing Hong Kong's international responsibility to take legal and political measures to counter terrorism and terrorist financing. Hong Kong Bar Association and other human rights groups only voiced their concerns about the urgency of such legislations and measures and the potential impacts on personal freedom and human rights (Young 2003).

Whether to criminalize or to securitize, Hong Kong, as a part of China, has to implement the UNSC resolution 1373 and the FATF's anti-terrorism recommendations. This does not in any sense mean Hong Kong was left no choice to respond to the international securitization of terrorism because the Copenhagen School indicates "securitization can never be imposed, there is some need to argue one's case (Buzan, Wæver and de Wilde 1998, 25)." International legal obligations aside, the prevailing discourse of the US-led GWOT could be regarded as the most important factor in Hong Kong's understanding of security threats.

Hong Kong held the rotating chairmanship of FATF when 9/11 terrorist attacks happened. Hong Kong as an audience to the FATF securitization, accepted the emergency measures. Hong Kong's adoption of the FATF recommendations on terrorism financing should not be simply viewed as a member state performing its responsibility. Rather, it should be viewed as an acceptance of FATF securitization of terrorism financing although the result of non-compliance is only "reputational" consequences. Admittedly, as the only non-sovereign member of the FATF, Hong Kong

must take into consideration the “reputational” consequences.

As the Copenhagen School suggests, “existential threat can only be understood in relation to the particular character of the referent object in question (Buzan, Wæver and de Wilde 1998, 21).” As such, it is necessary to find out the referent object, and the character of the referent object that makes it vulnerable to potential threats. Facing international terrorism, Hong Kong is undoubtedly the referent object, “the thing to secured (Collins 2007, 2).” More accurately, Hong Kong is an important part of a larger referent object. But as an important international financial center and one of the safest major cities in the world, Hong Kong is more vulnerable to be used by terrorists to raise funds or remit funds for terrorist attacks elsewhere than physical terrorist threats.

Due to the symbiotic relationship between terrorism and terrorist financing, the SAR government translated terrorist financing, rather than terrorism generally, as an existential threat to the integrity of Hong Kong’s financial system. Regina Ip argues that “as a financial hub, we can’t rule out the possibility of terrorist funds flowing in..., of course we haven’t found any evidence of this but we can’t guarantee it won’t happen in the future (China Daily 2002).” The elevation of terrorist financing as an existential threat does not minimize the importance of Hong Kong as the target of terrorism attacks. It only makes Hong Kong more focused on its responses to international terrorism.

In the translation of international securitization of terrorism into its internal legislation, the securitizing actor is the Hong Kong SAR government represented by Secretary of Security, Regina Ip. Although a securitizing actor could be any “political leaders, bureaucracies, governments, lobbyists, and pressure groups (Buzan, Wæver and de Wilde 1998, 40),” and in principal the Copenhagen School does not exclude anybody as a securitizing actor, in anti-terrorism measures, ‘security professionals’ are more likely to be the securitizing actor (Karyotis 2007, 274).

Although the securitization theory implies that the securitizing actor can take whatever means it deems necessary to respond to existential threats to referent objects, Hong Kong's anti-terrorism legislation is more in line with established international norms, principles and standards than based on Hong Kong's own needs and interests. The international incentives for domestic legislation is partly due to the homogeneity of the post-9/11 responses to terrorist attacks, however, the more important reason is for justifying the anti-terrorism legislation to minimize potential resistance from the general public and the Legislative Council.

4.4 The United Nations (Anti-Terrorism Measures) Ordinance

Before 9/11, Hong Kong implemented the UNSC resolutions in an "exceptional" manner. The legal basis for Hong Kong to implement the UNSC resolutions is the United Nations Sanctions Ordinance, which gives the Chief Executive a lawmaking power (using subsidiary legislation) for the purpose of implementing sanctions made under Chapter VII of the UN Charter (Young 2005, 369). The "exceptionalness" of this power is, according to Simon Young (2005), "regulations made under this power, unlike normal subsidiary legislation, were not subject to scrutiny by the Legislative Council (370)." Obviously, subsidiary legislation is not political issues open to public contestation from a wide variety of viewpoints. This mode of legislation fits neatly with what the Copenhagen School defines exceptional measures, that is, "actions outside the normal bounds of political procedure (Buzan, Wæver and de Wilde 1998, 24)."

However, unlike the previous UNSC resolutions that Hong Kong has implemented, which are usually targeted sanctions against "a place outside the People's

Republic of China,”²⁷ the UNSC resolution 1373 is applied universally, including China and Hong Kong. In other words, Hong Kong has to take legal measures to counter terrorism on its territory. The difference between implementing UNSC resolution 1373 and previous UNSC resolutions in Hong Kong is termed as “place anomaly (Cheng 2008, 88).” The Hong Kong government cannot use subsidiary legislation to bypass “public scrutiny and the checks and balances of the legislative process (Young 2005, 371)” but to return to ordinary legislation. The UNSC resolution 1373 was said to be the first UNSC resolution implemented by “normal” legislation. The reversal of the legislative process from “exceptional” to “normal” does not in any way affect the production of the “exceptional measures” in Hong Kong. Since terrorism has already been constructed as a security issue, even the “normal” procedure of legislation Hong Kong has to take is taken out of normal politics to a realm above politics. First, in this process, Hong Kong general public are not the audience to be convinced with because no public consultation was conducted. Explicating the importance of the ordinance, Regina Ip said at Legislative Council that due to the urgent nature of the legislation, no public consultation exercise was necessary, as in the practice of many overseas countries (Xinhuanet.com 2002). Second, the legislation process is exceptional. As can be seen from the discussions followed, the Hong Kong government take several meaningful steps to convince the Legislative Council and got the bill passed without much resistance.

Since the UNSC resolution 1373 made no attempts to define terrorism, Hong Kong builds its definition of terrorism on other common law countries. Kent Roach notes, “the British Terrorism Act 2000 played an important a role in the crafting of post-9/11 anti-terrorism laws in Hong Kong (Roach 2011, 389).” Helen Duffy points out that

²⁷ Section 2 (1) of the United Nations Sanction Ordinance

“it has been noted that some national terrorism laws have had considerable impact on definition adopted in other states, as have international or regional initiatives, of course, leading to some similarity of approaches and language across different states (Duffy 2007, 63).” In this borrowing and adapting process, Hong Kong government share the “we” feeling with common law countries to fight their common “other,” international terrorism, albeit with different purposes to enact counter terrorism laws.

To reduce potential resistance in the Legislative Council, the Hong Kong government made several concessions in its anti-terrorism law. Kent Roach explains the sources of such concessions and what implications they have for Hong Kong. First, Kent Roach (2011) notes, “the Hong Kong bill also contained a Canadian-style exemption for advocacy, protest, dissent, or industrial action (391).”²⁸ Second, he continues, “Hong Kong’s expansion of the exemption for protests and strikes reflects a political culture in which protests are very important and serve as a substitute for direct democracy (391).” The concessions Hong Kong government made is not an indication that the SAR government is more tolerant to protests and strikes. It is simply because the target of protection is Hong Kong’s international financial hub status. For the HKSAR government, certain concessions would be conducive to the acceptance of exceptional measures when the terrorist attacks are not manifest and material in Hong

²⁸ The exemption is found in the definition of terrorism act. In the ordinance, terrorist act is defined as “(a) subject to paragraph (b), means the use or threat of action where—(i) the action is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of— (Amended 21 of 2004 s. 3) (A) causing serious violence against a person; (B) causing serious damage to property; (C) endangering a person’s life, other than that of the person committing the action; (D) creating a serious risk to the health or safety of the public or a section of the public; (E) seriously interfering with or seriously disrupting an electronic system; or (F) seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private; and (Amended 21 of 2004 s. 3) (ii) the use or threat is—(A) intended to compel the Government or an international organization or to intimidate the public or a section of the public; and (Amended 20 of 2012 s. 3) (B) made for the purpose of advancing a political, religious or ideological cause; (b) in the case of paragraph (a)(i)(D), (E) or (F), does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action.” Available at <https://www.elegislation.gov.hk/hk/cap575!en@2012-08-02T00:00:00>, accessed June 14, 2016.

Kong. The concessions Hong Kong government has made also “belies claims that anti-terrorism laws in the East would inevitably be more draconian than those in the West (Roach 2011, 391).”

Hong Kong faithfully implemented the UNSC resolution 1373. At the same time, Hong Kong did not use anti-terrorism measures to serve national security purposes. Like Chinese government, Hong Kong could use anti-terrorism law to criminalize all forms of threats to national security, such as political dissent and protest. This shows Hong Kong’s autonomy in its response to international security threats.

In implementing resolution 1373 and the FATF recommendations, the Hong Kong government adopted a two-stage strategy. In the first stage, the “essential elements” of resolution 1373 was enacted in the United Nations (Anti-Terrorism) Ordinance. In the second stage, less urgent “non-mandatory elements” of the resolution 1373, some of the FATF recommendations and other international anti-terrorism conventions were implemented through amendments to the above ordinance. This process lasts a decade since the enactment of the ordinance in 2002. Regina Ip’s two-stage legislation strategy not only enables the passage of anti-terrorism legislation in the first stage but also made a platform for further legislation and amendments. This strategy is exactly what the Copenhagen School has suggested, “the existential threat has to be argued and just gain enough resonance for a platform to be made from which it is possible to legitimize emergency measures or other steps that would not have been possible had the discourse not taken the form of existential threats, point of no return, and necessity (Buzan, Wæver and de Wilde 1998, 25).” The second stage of anti-terrorism legislation proceeds smoothly due to the securitization of terrorism financing in the first stage legislation (Young 2005, 389). Ralf Emmers’s observation also support Hong Kong’s two-stage strategy, Ralf Emmers notes, “securitization injects urgency

into an issue and leads to sustained mobilization of political support and deployment of resources. It also creates to kind of political momentum necessary for the adoption of additional and emergency measures (Emmers 2013, 135).” Paul Roe also argues the same logic, Paul Roe writes, “a previously successful securitization may legitimize a further series of measures over a given period of time (Roe 2008, 618).” Hong Kong government’s strategy have been proven to be a successful approach to implement the anti-terrorism measures.

Hong Kong government’s high profile support of the international securitization of terrorism, however, does not equate to the same level of support from its people and the Legislative Council. Before 9/11, terrorism was not a serious security concern in Hong Kong and “Hong Kong did not have any anti-terrorism legislation of general application before 2002 (Young 2012, 370).” After 9/11, Hong Kong resonated strongly to the US global war on terrorism as an audience. Hong Kong’s acceptance of the US securitization of terrorism helps to construct terrorism as security threat to Hong Kong. But such acceptance of the US securitization does not automatically turn into expedient legislation. The SAR government still needs to communicate terrorism to domestic constituents to convince them to accept possible restraints on their personal freedom and much-valued human rights. As Buzan, Wæver & de Wilde (1998) clearly note, “securitization is not decided by the securitizer but by the audience of the security speech act (31).” The only audience and also the most important audience to be convinced is the Legislative Council. Nevertheless, Regina Ip strived to convince as broad an audience as possible. In her speech delivered to the luncheon meeting of the Rotary Club of Hong Kong on May 14, 2002. Regina Ip detailed why Hong Kong needs

anti-terrorism legislation and how the legislation will affect public life.²⁹

Unlike states and regions beset by terrorism threats, Hong Kong is one of the safest major cities in the world with low or no risk of terrorist attacks (Ho 2013, 104). It could be argued that Hong Kong's active involvement in the "global legislation (Roach 2011, 1)" or "international legislation (Koskenniemi 2005, 61)" of terrorism is more out of international legal and political considerations than for serving its domestic needs. In order to implement the USC resolution 1373, the Hong Kong government articulated terrorism as a security threat and therefore claims a special right to use exceptional measures to handle the issue. It is the securitization approach that Hong Kong utilized enables the enactment of anti-terrorism legislation in a society with no imminent and materialized terrorist attacks.

According to the Copenhagen School, to present an issue as an existential threat is to say, "If we do not tackle this problem, everything else will be irrelevant (because we will not be here or will not be free to deal with it in our own way) (Buzan, Wæver and de Wilde 1998, 24)". On July 11, 2002, in her speech addressed to the legislators before the second reading of the bill, Regina Ip reminded, "If we don't have the law, Hong Kong will become the weakest link in the international community. (Hong Kong) would become a sanctuary for terrorists to keep their funds (Kyodo News 2002)."

Although it appears that the US-led GWOT is "more to do with particular US goals and interests in the Middle East than with some higher concern about a threat to Western Civilization (Buzan and Wæver 2009, 258)", Regina Ip, in her securitizing moves, linked terrorism to Hong Kong's way of life. That is, in Buzan and Wæver's

²⁹ Regina Ip, "The New Terrorism: The Threat And Our Response," speech at at the luncheon meeting of the Rotary Club of Hong Kong (May 14, 2002), available at <http://www.info.gov.hk/gia/general/200205/14/0514180.htm>, accessed June 23, 2016.

words, “it becomes an aim in itself to be able to form one’s security agenda under the heading of terrorism, whatever its actual content is (Barry Buzan and Ole Wæver 2009, 267).” Regina Ip said at the luncheon meeting of the Rotary Club of Hong Kong on May 14 ,2002,

Economic damage apart, perhaps the greatest lesson learned from the unimaginable attacks of September 11 is the profound impact such attacks could have on confidence, and on the free and open way of life that we have known. One of the goals of terrorism is to undermine the confidence we have in our way of life and in ourselves, in matters large and small. To keep the upper hand on terrorism, all countries and territories, large and small, must work together to ensure that the spectre of terrorism does not deflect us from our collective or individual plans and projects to better our lives (Hong Kong Government 2002).

It is often argued that a subtle but more important reason for the implementation of UNSCR 1373 in Hong Kong is to show solidarity with the US-led GWOT (Shen 2007, 323). In the months following 9/11, counter-terrorism legislations enacted by major states around the world, albeit in the heading of implementing UNSC resolution 1373, are generally either “designed to reassure a public after large-scale terrorism attacks, including harsh legislation designed to impose large-scale detentions (Roach 2011, 2),” such as the US Patriot Act, or aims to counter ostensible and potential terrorist attacks, such as legislations in the European countries, or used instrumentally to serve domestic

politics, such as China and Russia.³⁰ More accurately, Hong Kong's passage of anti-terrorism legislation can be viewed as a response to the US counter terrorism strategy under the traditional UN legal framework.

4.5 Hong Kong's security autonomy at the international level

Hong Kong's response to the UNSC resolution 1373 and the US securitization of terrorism was made in a single legislation, the United Nations (Anti-Terrorism) Measures Ordinance. The degree of autonomy can be accessed by the degree of compliance with the international law or with the US securitization. It can be reflected by the approach Hong Kong adapted to security legislation, whether it is a "minimum approach" or a full compliance. At this point, it is useful to compare international legal obligation as set out in the UNSC resolutions and Hong Kong's security legislation.

It would be too simple to argue that Hong Kong's implementation of UN resolution 1373 is solely out of following Central Government's instruction. Simon Young's suggestion that Hong Kong's decision to enact anti-terrorism law was imposed upon by Central Government is problematic (Young 2005, 391). In terms of implementing the UNSC resolutions, Central Government instructions are not always get prompt responses from Hong Kong government. For example, in the implementation of the UN sanctions against Iran in 2011, the SAR government did not make any reaction for seven months since the Chief Executive received Central Government instructions (Legislative Council 2011). It can hardly rule out the egotistical interests Hong Kong will take into consideration when the SAR government implements the UNSC resolutions. Whether in principle or in practice, the international

³⁰ Many countries use terrorism as an excuse to serve domestic political aims. See (Scheppelle 2013).

legal personality Hong Kong has made it been treated by other members in the international community as independent entity. Therefore, the international legal obligation Hong Kong undertakes is an important force that drives Hong Kong to enact anti-terrorism laws.

Securitizing actors and their securitizations remains essentially egotistical and self-centered (Buzan and Wæver 2009, 256). Nevertheless, international obligation is, but not the most sufficient force to push Hong Kong to join the global legislation of terrorism. It is the legitimacy of the securitizing actor, the referent object, and the consequences of non-compliance that drive Hong Kong to accept international terrorism as an existential threat and take legal measures to respond.

4.6 US port calls in Hong Kong

US navy port call to Hong Kong concerns Hong Kong's role in international relations. The acceptance or denial of the US navy port call sometimes reflects the situation of Sino-US relations. According to Hong Kong Basic Law Article 126, "with the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region." This article indicates that US port call in Hong Kong is foreign affairs that falls into the responsibility of Central People's Government. Since the US navy port call in Hong Kong is a foreign affair issue, Hong Kong does not have the autonomy to handle the US request.

4.7 Summary

This chapter examines how Hong Kong accept the international securitization of terrorism and how Hong Kong translate terrorism as an existential threat to Hong Kong and how Hong Kong adopted legislative measures as a response. Analytically, the legislative process is consisted of two distinctive but closely related stages. To maintain global engagement, Hong Kong accepted the international securitization of terrorism when presenting terrorism to its people, and followed the practices of former Commonwealth jurisdictions, such as UK and Canada, when designing its exceptional measures. Although it seems that such two-stage arrangements are inconsistent, this strategy turned out to be effective in realizing Hong Kong's international legal and political objectives and significantly diffused domestic resistance to the proposed security legislation.

Hong Kong's speedy passage of the anti-terrorism legislation to give effect to the UNSC Resolution 1373 has positive impact on Hong Kong's autonomy. Contrary to the allegations that China (Buzan and Wæver 2009, 266; deLisle 2010, 399; Kelstrup 2004, 113), among other countries, took advantage of the US-led GWOT to advance its own policy objectives, Hong Kong has been praised by the US as a "strong" partner for its "excellent support" in the war on international terrorism (U.S. Department of State 2004).

Although Hong Kong joined the international efforts of anti-terrorism by way of enacting security legislation to fulfill China and Hong Kong's international obligations, the legislation *per se* is an indication of Hong Kong's security autonomy in managing security matters. Apart from the instructions from Central Government, Hong Kong controlled the whole legislative process. Being an active audience of the international securitization of terrorism, Hong Kong widens its autonomy through

performing its international responsibilities, especially Hong Kong's external autonomy. This has everything to do with the securitization approach Hong Kong adopted. Indeed, this is conforming to Central Government's strategy although China's anti-terrorism has often been criticized as advocating its own domestic agenda in the name of counter terrorism. In instructing Hong Kong to take legal measures to implement the UNSC resolution, China does not intervene in any way into Hong Kong's internal legislation, nor did China require Hong Kong to sanction its own list of terrorists. Hong Kong enacted anti-terrorism legislation under the direction of the Central Government may not affect its autonomy. Instead, the vague languages defining Hong Kong-Beijing relations in the Basic Law may enable the territory to exercise de facto powers well beyond those granted in the mini-constitution and cement Hong Kong's role in the US global war on terror, threatening "one country, two systems". Admittedly, as suggested by Anne-Marie Slaughter and William Burke-White, Hong Kong may co-opt the force of international securitization of terrorism to serve its own objectives although this is widely regarded as negative to national government (Slaughter and William 2007, 128). At least, Hong Kong's security autonomy has been significantly strengthened in this legislation process. The obligation to implement UNSC resolution 1373 gives rise to exercise security autonomy. The involvement in international security issues in the long run strengthens Hong Kong's high degree of autonomy.

Although the global legislation give rise to Hong Kong's anti-terrorism legislation, it is Hong Kong's perception of the GWOT that determines the level of compliance with the US macrosecuritization of terrorism. As a SAR, Hong Kong's interaction with the US can only be made through law enforcement cooperation and internal criminalization of terrorism in addition to moral support to US. Hong Kong's

anti-terrorism legislation illustrates how the SAR government exercises its autonomy when it comes to international security issues. Hong Kong's anti-terrorism started from the responsibility to implement the UNSC resolution 1373, but ends up with acceptance of the US macro-securitization of terrorism. Indeed, Hong Kong's anti-terrorism legislation demonstrated a close alignment with the UNSC resolutions 1373 and the Special Recommendations of the FATF. Since the US is behind the UNSC resolution 1373 and the FATF, alignment with resolution 1373 and the Special Recommendations is full acceptance of the US macrosecuritization of terrorism. Hong Kong's response to international terrorism provides a good case to study how Hong Kong exercises its security autonomy to address international security issues. In this case, Hong Kong's security autonomy can be understood as acceptance of international securitization of terrorism and then exercise legislative autonomy to respond.

The degree of Hong Kong's security autonomy in external sector is rated as medium. As a non-sovereign, subnational entity, if it were not for the international securitization of terrorism, Hong Kong would not have the opportunity to exercise its security autonomy in external sector. Hong Kong's involvement in the GWOT can be regarded as a milestone in Hong Kong's external affairs. Hong Kong's security autonomy in external sector can be attributed to the following factors.

First, Beijing supports Hong Kong's involvement in the US-led GWOT. Beijing's instructions to Hong Kong Chief Executive to implement the UN resolution 1373 opens the door for Hong Kong to join the GWOT. On September 26, 2002, Hong Kong's joined the US "Container Security Initiative" and Beijing showed no objection to Hong Kong's cooperation with the US. Simon Shen (2007) argues "it is basically due to Hong Kong and PRC leaders' consideration that Hong Kong should remain international and open, that Hong Kong should collaborate with the U.S. in

implementing measures against terrorism after 9/11 (323).” Ting Wai (2008) suggests that no interference from Beijing shows the “goodwill of the central authorities prevails” in Hong Kong’s autonomy (204).

Second, Hong Kong has the constitutional capacity as an international actor to exercise its security autonomy. It seems that Hong Kong’s responses to international terrorism is a mixed exercise of its external autonomy and security autonomy. Admittedly, external autonomy played an important role in the exercise of security autonomy. But it is security autonomy that enables Hong Kong to fulfill its international responsibility. Compliance with international counter-terrorism regime will sure to strengthen Hong Kong’s international status and enhance its capacity in external relations. Hong Kong balanced the domestication of UNSC resolution 1373, FATF recommendations and the US GWOT in designing its counter-terrorism legislation.

Third, Hong Kong’s willingness cannot be ignored. It is undeniable that the autonomy Hong Kong enjoys in addressing international security issues come from the needs to enact separate legislations to implement the UN resolution 1373, but how the SAR government exercised such power depends not exclusively on the requirements of resolution 1373 but on how Hong Kong perceives terrorism threats and their degree of acceptance of the US securitization of terrorism as an immediate threat to Hong Kong. The implementation of UNSC resolutions in Hong Kong did not start from resolution 1373, but it is the implementation of resolution 1373 that enables Hong Kong to fully exercise their security autonomy in international security issues.

Hong Kong’s post 9/11 responses to terrorism was less about terrorist threats and more about supporting the US securitization of terrorism. Hong Kong’s acceptance of US GWOT indicates that it has autonomy in addressing international security issues. Legally speaking, Hong Kong’s autonomy can be found in a comparison of its anti-

terrorism law with mainland anti-terrorism law. Politically speaking, Hong Kong supports US-led GWOT despite the fact that the US anti-terrorism measures under the cover of UN resolution are not fully endorsed by the Central Government in Beijing although Hong Kong joined the US GWOT at a time when China US relations were very cordial (Garver 2016, 659). Hong Kong's anti-terrorism measures are more in line with the US-led Global War on Terror than following the Central Government's counter-terrorism strategies.

Fourth, international support and positive evaluation are also important for Hong Kong to exercise its security autonomy. The US never hesitate to praise Hong Kong for its support in the GWOT. But Hong Kong's deep involvement in the US "Global War on Terror" gives the US government more excuses and incentives to intervene into Hong Kong affairs. This will undoubtedly strain Beijing-Hong Kong relations. Apparently, Hong Kong's exercise of security autonomy in the international fight against terrorism has no significant bearing on Beijing-Hong Kong relations. Hong Kong's participation in the "war on terror" performed and strengthened its identity externally. Hong Kong's autonomy in international security will not only strengthen Hong Kong's international presence, but also solidify the international aspect of Hong Kong identity. This will benefit "two systems" but may harm "one country."

Chapter 5 Hong Kong's Security Autonomy at the Political Level

5.1 Introduction

At the political level, the target of security threats is state sovereignty (Buzan , Wæver and de Wilde 1998, 141). Since the Central Government is responsible for the safety of Chinese sovereignty, Hong Kong's security autonomy at the political level is contingent on Beijing's definition of security threats to Chinese sovereignty in Hong Kong. For Central Government, threats to Chinese sovereignty in Hong Kong have everything to do with Hong Kong's distinctiveness and its special international status. According to Gordon Mathews, Eric Kit-wai Ma and Tai-lok Lui (2008),

Hong Kong, because of its openness, its connections with worldwide political organizations of different persuasions, and people's support for democracy, was perceived as a potential source of political instability. This tension between China and Hong Kong over political openness, civil liberty, and democracy, was never settled, and continues to have an impact on the course of political development in the Hong Kong-China relationship (47).

The OCTS framework itself also has the potential to undermine Chinese sovereignty in Hong Kong. This self-imposed constraint on Chinese sovereignty makes Hong Kong vulnerable to internal and external political threats. The democracy movement in Hong Kong has been argued by many commentators as major threats to Chinese sovereignty.

For example, Sonny Lo (2007) argues, “the PRC is deeply concerned that its (Hong Kong) democratic progress threatens the interest of the ‘one country’” (361). In addition, the threat of “foreign influence” in Hong Kong’s democratic development has made Beijing more concerned with national security in Hong Kong (Zweig 2015).

Although Hong Kong is part of China and Beijing as the sovereign master has the exclusive power to determine what amounts to threats to its sovereignty, the Central Government generally refrains from direct intervention into Hong Kong affairs when it has to deal with political threats to Chinese sovereignty. As will be shown in the case studies in this chapter, Beijing securitizes threats to Chinese sovereignty in Hong Kong and justifies its “intervention” by imposing extraordinary measures on Hong Kong. Admittedly, justified intervention is still intervention but with a good excuse.

The history of the past two decades shows that the Central Government is very careful in “speaking” security threats originated from Hong Kong to Chinese sovereignty. That is, not every minor violation of Chinese sovereignty is constructed as security threats. Only two issues have been constructed as security threats to Chinese sovereignty. First, subversion and secession activities are constructed as security threats to Chinese sovereignty. But Article 23 of the Basic Law allows Hong Kong to have the final say as to when and how to enact national security law. The second important place where sovereignty interests may be undermined is Hong Kong’s gradual democratization toward the election of Chief Executive and all members of Legislative Council by universal suffrage as promised in the Basic Law. Any disagreements between Beijing and Hong Kong on the election of Chief Executive and legislators by universal suffrage are matters that can be perceived by Beijing as security threats to Chinese sovereignty. In these two places Hong Kong can exercise its security autonomy. Although the “Occupy Central” movement (or “Umbrella Movement”) in 2014 is

viewed by some scholars as security threat to Chinese sovereignty (Lo 2015, 114-117), strictly speaking, there is no sign to indicate that the “Occupy Central” movement has been securitized by the Central Government. In fact, as will be discussed in this chapter, it was dealt with by the Hong Kong government as an ordinary law and order issue.

This chapter discusses how Beijing securitizes threats to Chinese sovereignty and how Hong Kong responds to such securitizations. In addition, this chapter uses the security autonomy framework to explain why the SAR government was successful in anti-terrorism legislation but failed in the national security legislation. This chapter argues that Hong Kong can exercise its security autonomy to resist Central Government’s securitization strategy and resist Beijing’s “intervention” into Hong Kong politics. Compare to Hong Kong’s security autonomy at the societal level, its security autonomy at the political level is low because at the political level Beijing has the exclusive power to define security issues and Hong Kong can only react passively (see Table 5.1).

Table 5.1 Hong Kong’s security autonomy at the political level

	Article 23	Constitutional reform
Securitizing actor	Central Government	Central Government
Existential threat	Opposition force	Non-patriots
Referent object	Chinese sovereignty in Hong Kong	Chinese sovereignty in Hong Kong
Extraordinary measure	National security law	NPCSC August 3, 2014 decision
Audience	Hong Kong people	Hong Kong people

5.2 Security threats in the colonial Hong Kong

During the cold war, Hong Kong has been used by external forces.³¹ In the past two decades since 1997, external forces still use cold war mentality to create instability in Hong Kong.³² In colonial Hong Kong, especially after the foundation of PRC in 1949, containing communism is the theme in Hong Kong politics. The legacy of Cold War can still be felt in Hong Kong politics.

The reason that Hong Kong has not historically threatened the security of its colonial power is that Beijing did not take back Hong Kong after 1949 and Beijing planned for the long-term use of Hong Kong (长期打算，充分利用). During the cold war, Beijing often refers to Hong Kong as its “window” to the western world.³³ The 1967 disturbance is a threat to the British rule in Hong Kong. But, according to Ming K. Chan, “The 1967 disturbances marked a crucial turning point in the colonial state’s development of a relatively more enlightened social policy with greater concern for the grassroots, such as labour legislation and official measures for industrial welfare as well as vast programs for public housing, compulsory education and recreational facilities. These undertakings also had the effect of toning down vigorous unionism and radical collective actions that might be disruptive to social stability and economic prosperity.”³⁴

In the colonial era, there are definitely security threats to mainland in Hong Kong, but such security threats are tolerable to Beijing because the plan for the long-

³¹ Prof. Ming K. Chan suggested this point to the author. See, also 刘兆佳，一国两制在香港的实践，商务印书馆，2015，第20页。

³² Yang Sheng, “New Cold War mentality,” China Daily (Hong Kong), 24 Apr 2013, accessed May 6, 2017, <http://www.pressreader.com/china/china-daily-hong-kong/20130424/281797101485751>

³³ Michael Yahuda, “A Catalyst for Change? The Hong Kong Special Administrative Region and Chinese Politics” in Hong Kong SAR: In Pursuit of Domestic and International Order, edited by Beatrice Leung and Joseph Cheng, The Chinese University Press, 1997, p. 34, pp. 25-36.

³⁴ Ming K. Chan, “Hong Kong Workers toward 1997: Unionisation, Labour Activism and Political Participation under the China Factor,” Australian Journal of Politics and History: Volume 47, Number 1, 2001, pp.61-84, p. 63.

term use policy Beijing adopted. It seems that there is a strategic balance between Beijing and London over Hong Kong before Christopher Patten's democratic reform in Hong Kong.

Christopher Patten's democratic reforms broke the balance between Beijing and London over Hong Kong. If it were not for Patten's constitutional reforms, Hong Kong's democratic development would be in a different situation.

5.3 Beijing's securitization of Hong Kong's opposition force and Article 23 of the Basic Law

For a long time, especially since China resumed the exercise of sovereignty over Hong Kong in 1997, the Central Government has gone to great lengths to construct "opposition force"³⁵ and their activities as existential threats to Chinese sovereignty in Hong Kong. As was shown in national security legislation in 2003 and later in the constitutional reform debates starting from 2013, for Beijing, political threats to Chinese sovereignty mainly comes from the opposition force. But opposition force *per se* is not Beijing's primary concern. In fact, opposition force is, to some extent, tolerated in Hong Kong (Pomfret 2014). What Beijing perceives as security threats are the forces behind Hong Kong's opposition force and the Western interference such forces may bring into Hong Kong politics, such as the United States, Britain and European Union's interventions into China's internal affairs. Because, in most cases, "foreign interference in domestic politics has a special significance in China (Roach 2005, 132)."

Under the OCTS framework, the Central Government does not have direct

³⁵ There is no accepted definition of the "opposition force" in Hong Kong. This research will not define the term but use it as it is generally discussed in Sonny Lo's research. Lo argues that Hong Kong's relatively strong opposition force can be divided into radical hardliners who refuse to negotiate with Beijing and moderate softliners who are willing to negotiate with Beijing and the HKSAR government over the pace, scope and content of political reforms. See, (Lo 2015, 27-28).

authority to deal with threats from Hong Kong's opposition force to Chinese sovereignty. First, Chinese sovereignty exercised in Hong Kong is not full sovereignty but with substantial self-imposed restrictions. In Stephen Krasner (2001)'s words, Chinese sovereignty in Hong Kong is "problematic sovereignty" although it is the best alternative China can choose to have "both juridical control over and international recognition for Hong Kong" (viii). Second, Hong Kong enjoys a high degree of autonomy in managing its own affairs. As such, the Central Government has to utilize securitization strategy to deal with such political threats to Chinese sovereignty.

5.3.1 Deng Xiaoping's securitizing "speech act"

As the designer of "one country, two systems" arrangement, Deng Xiaoping has already foreseen the security threats to Chinese sovereignty in Hong Kong long before the handover in 1997. Deng Xiaoping's remarks addressed to Hong Kong members of the Basic Law Drafting Committee in 1987 can be considered as the application of securitization strategy by the Central Government to justify its "interference" into Hong Kong affairs after 1997. Deng asked his audience,

But isn't it possible that something could happen in the region that might jeopardize the fundamental interests of the country? Couldn't such a situation arise? If that happened, should Beijing intervene or not? Isn't it possible that something could happen there that would jeopardize the fundamental interests of Hong Kong itself? Can anyone imagine that there are in Hong Kong no forces that might engage in obstruction or sabotage? I see no grounds for taking comfort in that notion. If the Central

Government were to abandon all its power, there might be turmoil that would damage Hong Kong's interests. Therefore, it is to Hong Kong's advantage, not its disadvantage, for the Central Government to retain some power there.... But what if something did happen? I should like to ask you to think this over and take it into consideration when drafting the basic law. You should also consider a few other things. For example, after 1997 we shall still allow people in Hong Kong to attack the Chinese Communist Party and China verbally, but what if they should turn their words into action, trying to convert Hong Kong into a base of opposition to the mainland under the pretext of "democracy"? Then we would have no choice but to intervene (Deng Xiaoping April 16, 1987).

Deng's talk can be viewed as "speech act." He discursively constructed "forces that might engage in obstruction or sabotage" as existential threats to Chinese sovereignty. But when it comes to extraordinary measures, in Deng's mind, "two systems" will give Hong Kong the autonomy to act first, not the Central Government to intervene directly. Deng reassured his audiences,

first, the administrative body in Hong Kong should intervene; mainland troops stationed there would not necessarily be used. They would only be used if there were disturbances, serious disturbances. Anyway, intervention of some sort would be necessary (Deng Xiaoping April 16, 1987)!

It is evident that the autonomy Deng allows Hong Kong to have under such situations is based on his realist mindset and backed by his confidence in the People's Liberation Army troops stationed in Hong Kong.³⁶ Deng's concern about the threats to Chinese sovereignty and his proposed responses to such threats are reflected in the Article 23 of the Basic Law.

Deng's concern about opposition forces in Hong Kong was believed to be the origin of Article 23 in Hong Kong's Basic Law and his remarks also explain why Article 23 must be inserted into Hong Kong Basic Law as a legal obligation for Hong Kong to enact national security (Wang and Tu 2014, 132). In fact, it is Deng Xiaoping's securitization arguments that legitimize a draconian national security provision in Hong Kong's Basic Law. Article 23 is thus viewed "more as a political message than a legal provision (Li 1999)." It is an exceptional measure that is used to target potential threats to Chinese sovereignty in Hong Kong. The large scale anti-Beijing demonstration after the Tiananmen incident is believed to be the direct cause to include Article 23 in the Basic Law (So 2011, 107-108).

In this security construction process, Hong Kong is not excluded. Hong Kong is allowed to play a structural role in the securitization process, that is, Hong Kong is treated as audience to the Central Government's securitizing moves. Although the Central Government dominates the construction of threats to Chinese sovereignty in Hong Kong, Hong Kong has the final say as to whether, when, and how to accept such securitizing move. Because under the OCTS framework, Beijing, for various reasons,

³⁶ Article 14 of the Hong Kong Basic Law outlines the role of People's Liberation Army in Hong Kong. "Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief."

has chosen not to enforce its national security legislations in Hong Kong and Hong Kong has the autonomy to enact national security law on its own. This securitization mindset was institutionalized in Article 23 of the Hong Kong Basic Law. Basic Law Article 23 mandates Hong Kong to

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.

In Article 23, it seems that it is the activities enumerated in the legal provision that are constructed as “existential threats” to the valued referent object, Chinese sovereignty in Hong Kong. From a criminal law perspective, the target should be these activities. Fu Hualing (2005)'s “connecting door” argument captured the criminal law aspect of this securitization process. Fu Hualing argues that “events occurring between Hong Kong and mainland China since the Reunification have created a number of ‘connecting doors’ through which the jurisdiction of Chinese criminal law may be extended to Hong Kong directly or indirectly. The National Security (Legislative Provisions) Bill would have created another such connecting door in the most sensitive area of criminal law (63).” But from a political perspective, the Central Government fears the person who may commit such offences. The aim is to “prevent foreign and local entities from seriously attacking the basic political order in Hong Kong or

usurping the Central People's Government (CPG) in Beijing (Fu and Cullen 2002, 186).”

Article 23 could be understood as an extraordinary measure that seeks to integrate Beijing's securitization mindset that are widely viewed as incompatible with Hong Kong's liberal rule of law tradition into Hong Kong's political system. Article 23 is the only provision in the Basic Law that concerns political threats to Chinese sovereignty in Hong Kong. Indeed, the aim of Article 23 is to target political threats to the organization stability of the OCTS policy in Hong Kong. In the consultation document entitled “Proposal to Implement Article 23 of the Basic Law” released on September 24, 2002, the Hong Kong government made it clear that “the intent of Article 23 is to prohibit by law acts that would undermine the sovereignty, territorial integrity, unity and national security of our country (Hong Kong Government 2002).” Article 23 seeks to legitimate actions that go beyond Hong Kong's liberal-democratic practices of law-making.

It is evident that Article 23 imposes permanent and general legal obligations on Hong Kong to protect Chinese sovereignty (Chen 2005, 95). But from a security perspective, it could be argued that Article 23 imposes a Chinese conceptualization of security on Hong Kong. For Beijing, Chinese sovereignty in Hong Kong can only be secure when Hong Kong has implemented Article 23 to enact national security law. It is a move to strengthen the protection of “one country” in Hong Kong. However, the securitization logic behind Article 23 is not aim to bring about the suspension of normal politics in Hong Kong but to make measures to implement Article 23 as normal as possible to Hong Kong people.

5.3.2 National security legislation in 2003

In 2003, the Hong Kong SAR government made its first attempt to implement Article 23 of the Basic Law. This is the first time Hong Kong “audience” can express their views toward Beijing’s securitization. In this case, Hong Kong government is not the audience, rather, it is the representative of the securitizing actor, or the Hong Kong government can be seen as a securitizing actor in the sense that the SAR government translated Beijing’s securitization and proposed the national security bill to the Legislative Council. Hong Kong people, particularly, the legislators and electorate, can be regarded as an “audience” to China’s securitizing moves, having flexible choices to implement the national security provision on its own. The audience is Hong Kong people in a whole. Any disintegration is not helpful. The real audience is the Hong Kong people because the law will affect their rights and they will decide the fate of the proposed national security bill. Legislators in the Legislative Council, though not fully democratically elected, are audience too. The July 1, 2003 mass demonstration has fully demonstrated that it is the Hong Kong people, be it legislators or general public, that rejected the Chinese securitization. On September 5, 2003, the Chief Executive of Hong Kong announced that Article 23 legislation would be withdrawn, that it would be reintroduced only after popular consultations, and that there was no timetable for its reintroduction.

It is hard to tell who has played a leading role in the rejection of Beijing’s securitizing move because the mutually reinforcing effect between pan-democrat politician’s advocacy and the general public’s support. Here, the focus is not about real “existential threats” to Chinese sovereignty in Hong Kong (although they are important concerns), but how such threats are framed by the Hong Kong government and how they are perceived by the Hong Kong public. The failure of national security legislation

in 2003 indicates that Beijing's securitizing move was not acceptable to Hong Kong people.

Article 23 is a special provision in the Basic Law, in that it is a statement of political aspirations that was converted into legal obligations but with limited legal weight. If "the intersubjective establishment of an existential threat with a saliency sufficient to have substantial political effects" is achieved, that is, Hong Kong accept the Central Government's securitization, then it is very likely Hong Kong will enact national security law. Otherwise, national security legislation will unlikely to pass in Hong Kong. Undoubtedly, the failure of Article 23 legislation in 2003 was largely due to a different understanding of the Chinese-style national security embedded in the Basic Law.

In 2003, the Central People's Government's "securitizing move" was at best temporarily contested, at worst permanently rejected by the Hong Kong audience, including both the general public and the legislators. The mass demonstration against Article 23 on July 1, 2003 indicated that, at least, the legitimacy of securitizing actor (Central Government) and referent object (Chinese sovereignty) are not acceptable to Hong Kong people.

According to the security autonomy framework proposed in this research, it is not quite useful to speculate whether the Central Government interfered into Hong Kong legislative process on Article 23 as suggested by Simon Young (2012) and Wong Yiu-Chung (2006). It is quite natural for the Central Government to take care of sovereignty issues in Hong Kong. Any threats to Chinese sovereignty in Hong Kong should be the legitimate concern of the Central Government. Hong Kong's security autonomy cannot exclude the Central Government on sovereignty matters. The key point lies in how Hong Kong responds to such securitization.

5.3.3 Why Article 23 legislation failed in 2003

According to securitization theory, the controversy over Article 23 legislation can be interpreted as focusing on three core issues. First, is the Chinese sovereignty a valued referent object which survival is a priority in Hong Kong? Second, are the activities listed in Article 23 existential threats to Chinese sovereignty? Third, are the exceptional measures proposed in the 2003 National Security Bill acceptable to Hong Kong people? Next three parts aim to answer the above three questions based on the debates over Article 23 legislation from 2002-2003 and afterwards.

Hong Kong's executive-legislative relations are an important factor in evaluating the case of Article 23 legislation in 2003. The increasingly competitive, uncooperative, or even adversarial executive-legislative relations may explain why Article 23 legislation was withdrawn from the Legislative Council for voting in 2003 (Lam 2013, 77). However, it should be noted that it was in such a political context that the anti-terrorism legislation was passed in 2002. As such, how security threats were constructed and perceived can be argued as the key factor in the Article 23 legislation process. The option of not accepting a securitizing move is available to Hong Kong audience. Apparently, Article 23 legislation was not successful because of audience resistance. But the resistance itself, although in an unprecedented scale, cannot offer a satisfactory explanation to the failure of Chinese securitization because "every securitizing move creates resistance on the part of the citizens (Eroukhmanoff 2016, 371)."

The first problem with Article 23 legislation is that the referent object (Chinese sovereignty) cannot establish security legitimacy in its own right in Hong Kong. Buzan, Wæver and de Wilde (1998) argue convincingly that "referent objects must establish security legitimacy in terms of a claim to survival (39)." In the 2003 Article 23

legislation, despite Hong Kong government's great efforts to push the legislation, it seems that Hong Kong people does not consent to the elevation of Chinese sovereignty as a valued referent object that needs special protection. Because security construction always involves a reference to a "we" identity and it is always "a social construct operative in the interaction among people (Buzan and Wæver 2009, 255)." If the Chinese sovereignty as a valued referent object is not accepted, it is less possible for Hong Kong people to sacrifice their personal freedom to defend a sovereignty that is not really in danger compared to the case of terrorism threats. Martin Jacques, the author of *When China Rules the World: The End of the Western World and the Birth of a New Global Order* argues Hong Kong people "preferred – up to a point – to identify with westerners rather than mainlanders, not because of democracy (the British had never allowed them any) but primarily because of money and the status that went with it (Jacques 2014)." For the relatively small minority, especially pan-democratic, who have never really accepted the fact that Hong Kong is part of China, Chinese sovereignty is perceived as a threat to Hong Kong's rule of law, human right and democracy, rather than a valued referent object under threat. In Hong Kong, Chinese sovereignty and Hong Kong society are generally considered separate mutually contradictory regimes. This distinction has already been demonstrated in the process of Hong Kong's anti-terrorism law in 2002.

It is obvious that Article 23 legislation will encroach on Hong Kong people's constitutional rights. If Hong Kong people's objection to the legislation follows this line of argument, the disputes over national security legislation would not be a controversial issue in Hong Kong's political development. It is not because Article 23 legislation encroaches on personal rights (any security legislation will restrict personal liberties), but because it intends to protect Chinese sovereignty.

Second, the low acceptance of Chinese sovereignty among the general public directly leads to questions on the activities listed in Article 23. To some Hong Kong people, the Chinese sovereignty exercised in Hong Kong is limited to defense and foreign affairs. Military threats to Hong Kong are existential to Chinese sovereignty and threats related to foreign affairs are also considered as existential to Chinese sovereignty. Other threats to Chinese sovereignty are highly disputable. How Hong Kong government and public perceive these activities directly affect the outcome of the security legislation. If these activities were accepted as existential threats to Hong Kong, national security legislation will have a higher chance to be enacted. The question is, again, are the activities *per se* unacceptable to Hong Kong people or simply because the Chinese sovereignty are under threat? The Copenhagen School has made it clear that “sovereignty can be existentially threatened by anything that questions recognition, legitimacy, or governing authority (Buzan , Wæver and de Wilde 1998, 22).” Whether activities listed in Article 23 are accepted as existential threats to Chinese sovereignty largely depend upon the degree of the acceptance of Chinese sovereignty as referent object. For Hong Kong people, the acts listed in Article 23 may threaten Chinese sovereignty, but they may not be perceived as threatening to Hong Kong society. As Albert Chen (2005) noted, “nothing had happened in Hong Kong since the handover that came close to the kind of activities to be proscribed under Article 23. There was therefore no sense of urgency about legislation to implement Article 23 (95).” Fu Hualing and Richard Cullen (2002) also suggest that “there is no evidence of any threats to the national security of the PRC based in Hong Kong. The ‘enemies of the state’ have not developed a base of any sort in the HKSAR (229-230).” The list of activities in Article 23 is, in some sense, a reflection of Hong Kong’s freedom of information, freedom of speech and openness and international characteristics. Hong Kong may not

be Hong Kong if these freedoms are taken away.

Admittedly, terrorism is also a socially constructed threat, but to Hong Kong people, terrorism act is more “real” and “objective” and thus, more acceptable than the activities listed in Article 23. Since “actors and their securitizations remain essentially egotistical and self-centred (Buzan and Wæver 2009, 256),” how can Hong Kong accepts acts listed in the Article 23 as security threats to Chinese sovereignty in Hong Kong. They need strong motivations like what they have demonstrated in the anti-terrorism legislation.

Securitization theory assumes that audience will accept extraordinary measures when they feel the existential threats. If they don't accept the extraordinary measures, the very possible reason is that the threat is not existential. But the Hong Kong case shows that the Hong Kong audience's acceptance of extraordinary measures may not necessarily based on the seriousness of the situation. They may select to accept based on the referent objects and the securitizing actors. They may reject securitization if they do not like the securitizing actors and if they do not have interest in the referent objects despite they are really under threat. As such, who has the competence to define security threats becomes the key factor to understand what can become acceptable existential threats to Hong Kong people.

Third, like what Hong Kong has done in the anti-terrorism legislation, the legal mechanisms that the Hong Kong government has employed to address the categories of threats enumerated in Article 23 of the Basic Law to national security need appropriate justification. Public opinion could influence Legislative Council's decision to support or veto the Article 23 bill. The failure of Article 23 legislation in 2003 is widely attributed to the mass demonstration on July 1, 2003. However, why a demonstration can force government to withdraw its legislative proposal is a largely

unattended topic. Many commentators argue it is the faulty procedure the government adopted in proposing the legislation, rather than the contents of legislation bill that triggered the mass resistance. Since it is the same group of government officials in the anti-terrorism legislation that introduced the national security bill, the best way to explain why national security legislation failed is not to exclusively focus on how the government pushes the Article 23 legislative process. Instead, the attention should be paid to examining what are the similarities and differences between national security legislation and anti-terrorism legislation.

In any society, be it democratic or less democratic, it is not easy to pass legislations that aim to restrict personal rights and freedom. Not to mention the passage of legislation to protect the national interests that barely exist in the minds of common people in Hong Kong. This is the embarrassing context of Article 23 legislation. To Hong Kong people, terrorism is more imminent threat than the so-called threats to Chinese sovereignty. That is why they can tolerate anti-terrorism law. Threats to Chinese sovereignty, be it real or not, are not concerns to Hong Kong people. Despite the potential threats to national security, Hong Kong has no capacity to construct such threats as security issues because of the duality of sovereignty and societal security. Without real or constructed threats to Hong Kong society, it is barely possible to convince Hong Kong people to accept a national security legislation that is intends to restrict their human rights and preserves the security of the sovereign that they showed no interest to protect.

For the pro-democratic camp, Hong Kong should frame its survival not so much on Chinese sovereignty and integration with the mainland than on its separateness, openness and, in what Roda Mushkat (1997) terms as “international legal personality.” Hong Kong should be situated between international society and Chinese sovereignty.

In other words, Hong Kong is an active member of international society under Chinese sovereignty. In a sense, Hong Kong is defined more by its international dimensions than its Chinese characteristics despite the fact that Hong Kong is increasingly becoming integrated with China in a process called “mainlandization (Lo 2007, 186)”. It is not surprising to see that Hong Kong responds more actively when its openness and international status is in danger than the threats to Chinese sovereignty.

In the more challenging Article 23 legislation, the SAR government should have securitized the threat to sovereignty to get public support for the bill because this time it is the personal liberties that will be sacrificed not the interest of Hong Kong society at large. Maybe the SAR government, especially Regina Ip was content with their success in the terrorism legislation, they did not securitize too much the national security threats. This led to their failure. In the promotion of national security bill, although Regina Ip alluded to the security rhetoric, but her arguments were not strong enough to make Hong Kong public to feel the immediacy of threats. Therefore, her weak securitizing move failed to generate sufficient resonance from the public to support her bill and to give up their personal liberties. Article 23 crisis indicates that no matter how autonomy is defined in the Basic Law, Hong Kong people use their actions to define and redefine autonomy to respond to security threats to “one country.”

The driving force for Hong Kong to enact security legislation comes from outside. However, external reasons should not be confused with external imposition because security issues can never be imposed (Buzan , Wæver and de Wilde 1998, 34). Under the framework of security autonomy, it is always a matter of perception, interpretation and acceptance. Simon Young (2012)’s argument that security legislations are “external imposition without internal need (384)” is simplistic and reductive. For the national security legislation, Hong Kong, theoretically speaking, is

free to choose the time it deems proper to legislate.

Hong Kong's national security legislation is believed to be modeled on its anti-terrorism legislation (Roach, Old and New Visions of Security: Article 23 Compared to Post-September 11 Security Laws 2005). In the anti-terrorism legislation, the SAR government officials successfully utilized a securitization approach to handle international terrorism by securitizing the threat Hong Kong may face and by convincing Hong Kong people that extraordinary measures are needed to deal with the security threat. In the national security legislation case, the lack of, or insufficient use of the securitization logic in the process failed to convince the general public that the bill should be enacted. It may be even more difficult, or not possible to pass national security legislation in Hong Kong because the failed Article 23 legislation has driven up Hong Kong people's expectations and they may demand more excuses to allow their constitutional rights to be violated. In addition, Macao's passage of national security law under a liberal implementation of Article 23 will definitely have positive impact on Hong Kong's future legislation. Roach et al (2012) point out that "attempts in Hong Kong to enact a new security law in 2003 foundered both because of human rights concerns and because of a desire not to be dictated to by Mainland China (15)."

It is the lack of sufficient securitizing logic that failed to persuade the general public to accept Article 23 bill. These two cases indicate that Hong Kong is capable of using security autonomy to safeguard its own interests and when the exercise of such autonomy does not fit Hong Kong interest, the audience in Hong Kong can block such undesired exercise. The same securitizing actor and the same audience but with different referent objects, one is the Hong Kong society and the other is the Chinese sovereignty. Hong Kong people choose to support securitizing move that aims to protect Hong Kong but rejected measures that was intended to safeguard Chinese

sovereignty. This is how security autonomy works. This fully supports the argument that Hong Kong has security autonomy to decide the best way to maximize its interest. The irony demonstrated in these two cases also indicates that Hong Kong's security autonomy is defined by how Hong Kong perceives security threats and how the audience in Hong Kong responds to such threat constructions.

Article 23 legislation is an “either/or” matter. Either Hong Kong enacts national security legislation or Hong Kong rejects Chinese securitization. In addition, Article 23 is a permanent “securitizing move”, that is, it never expires, at least from its inception till 2047. Although Article 23 is a permanent securitizing move, the withdrawal of national security bill from legislature in 2003 indicates that Article 23 is a failed securitization.

Article 23 concerns not only legislative issues but is also closely related to the political developments in Hong Kong, particularly after the 2003 legislation failure. Sonny Lo (2004) argues,

the debate over Article 23 was not simply concerned with outlawing subversion, sedition, treason and secession but was also connected to the broader issues of identity politics, patriotism and the prospects for democratization in both Hong Kong and the People's Republic of China (2).

In the long run, Hong Kong does not have much choice at its hand and the SAR government has to find out a way to make this securitization successful. Since 2003, national security legislation has become a politically sensitive and highly debated issue in Hong Kong politics. Previous and current research are focusing on how the

legislation failure has transformed Hong Kong's democracy, rule of law and autonomy, the nature and purpose of the legislation as a security law has largely been neglected. This chapter argues that Article 23 legislation is not an ordinary criminal legislation issue. Instead, it should be approached as a security issue. The security autonomy Hong Kong has exercised not only can explain why Article 23 legislation was not acceptable to Hong Kong people in 2003, but can also be a useful framework to exam future national security legislation in Hong Kong. From a legal perspective, Hong Kong has legal obligations to enact national security law. But from a security autonomy perspective, Article 23 is the extraordinary measures of Beijing's securitization, Hong Kong as audience of such securitization has the right to make its own decision. That means Hong Kong can choose to accept, delay, or even reject Beijing's securitization.

5.4 "Patriots" governing Hong Kong and the election of Chief Executive by universal suffrage

Despite the rule of law and civil liberties that mirror those in Western liberal democracies (Rezvani 2012, 96), Hong Kong is not a democracy. Unlike its treatment of Macao's future political development, the Central Government promised Hong Kong a path of gradual and stable democracy in the Basic Law due largely to Hong Kong people's fight for democracy before handover (Chen 2014, 6). The objective of Hong Kong's constitutional reform is to select its Chief Executive through universal suffrage.

Basic Law Article 45 stipulates that

the method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection

of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

On December 2007, The NPCSC decided that

the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage... Appropriate amendments conforming to the principle of gradual and orderly progress may be made to the specific method for selecting the fourth Chief Executive of the Hong Kong Special Administrative Region in the year 2012 and the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 in accordance with the provisions of Articles 45 and 68, and those of Article 7 of Annex I and Article III of Annex II to the Basic Law.

The NPCSC decision also stipulated that

The bills on the amendments to the method for selecting the Chief Executive and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; such

amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive.³⁷

The 2007 NPCSC decision on the election of Chief Executive by universal suffrage was implemented in 2014. In the 2014 constitutional reform, the amendment of the current method of selection followed a five-step constitutional reform process. First step, the Chief Executive need to submit a report to the NPCSC as to whether there is a need to change the method of Chief Executive election and Legislative Council election; second step is the NPCSC makes its decision to the amendments to two elections; third step is the HKSAR submit its proposal for Legislative majority vote; fourth step is the Chief Executive consent to Legislative approval; and fifth step is the NPCSC approval and record (Hong Kong Government 2014). It is in this five-step process Beijing made new securitization and Hong Kong exercised its security autonomy.

In Hong Kong's constitutional reform, Beijing's interests and priority differs from that of Hong Kong society expectations. For Hong Kong, pro-democracy advocates and their supporters hope the amendment can lead Hong Kong to Western-style liberal constitutional democracy because a genuine "Hong Kong people rule Hong Kong" and "high degree of autonomy" can keep Hong Kong's most valued things as it used to be. But for Beijing, universal suffrage is a matter concerns Chinese sovereignty and security. The objective of constitutional reform is to strengthen the executive-led political system rather than change to a western political system with the separation of

³⁷ <http://www.legco.gov.hk/yr07-08/english/panels/ca/papers/ca0121-ppr071229-e.pdf>, accessed August 20, 2016.

power between executive, legislative and judicial branches. For the Central Government, a democratically elected Chief Executive by universal suffrage may be more accountable to Hong Kong people than to the Central Government. Allowing Hong Kong to become more democratic does not mean that Beijing can tolerate the sacrifice of sovereignty interests.³⁸ After all, Hong Kong is part of China, not a political unit that enjoys full sovereignty.

When Hong Kong's constitutional reform does not fit with Beijing's strategic goal, Beijing invokes the security discourse to justify its decisions. In a white paper entitled *The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region* released in June 2014, the Central People's Government warns that Hong Kong's constitutional development should be conducive to safeguarding national sovereignty, security and development interests (Information Office of the State Council 2014). Elevating Hong Kong's democratization to China's national security has a far-reaching impact on the democracy development in Hong Kong, and even in mainland China. David Zweig (2015) argues "for its part, Beijing fears that allowing universal suffrage, with no restrictions on the selection of candidates, could create an opportunity for foreign forces to exploit the CE election in order to undermine China's sovereignty and national security."

If targeting opposition forces is the negative way to protect Chinese sovereignty, then selecting "patriots" to govern Hong Kong is the positive aspect to safeguard Hong Kong's political security. Under the OCTS arrangement, the Chief Executive is

³⁸ Even in western countries, territorial autonomy cannot threaten state sovereignty interests. For example, in the case of Åland Islands in Finland, "The Governor of the Åland Islands shall be nominated by the President of the Finnish Republic in agreement with the president of the Landsting of the Åland Islands. If an agreement cannot be reached, the President of the Republic shall choose the Governor from a list of five candidates nominated by the Landsting, possessing the qualifications necessary for the good administration of the Islands and the security of the State." See, (Suksi 2011, 151).

accountable to both Central Government and Hong Kong. As have been shown in Chapter three, in the conflicts between mainland and Hong Kong, the Chief Executive has made significant efforts in the “negotiation of relationships between the centre and the region (Ghai 2003, xvi)” in societal security issues. When it comes to conflicts between sovereignty and society, however, the Central Government and Hong Kong have different expectations and interpretations. For the Central Government, the overarching principle is that “Hong Kong people ruling Hong Kong” but they must be patriots. For Hong Kong, as argued by Yash Ghai (2003),

the “maintenance of autonomy requires that such negotiations (between Beijing and Hong Kong) be conducted by leaders who truly command the support of the people of the region and who can be trusted to speak on their behalf—in other words a democratic order in the region (xvi).

Ghai’s remark only shows Hong Kong’s consideration of the role of Chief Executive under the OCTS framework. Long before Hong Kong’s return to China, Deng Xiaoping has made it explicit what the principle “Hong Kong people ruling Hong Kong” means, that is, Hong Kong should be governed by patriots. Deng said,

Respects the Chinese nation, sincerely supports the motherland’s resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong’s prosperity and stability... Those who meet these requirements are patriots, whether they believe in capitalism or feudalism or even slavery. We don’t

demand that they be in favour of China's socialist system; we only ask them to love the motherland and Hong Kong.

Deng Xiaoping only outlines the criteria for "patriots." He did not mention the threats to Chinese sovereignty if the people ruling Hong Kong is not "patriots." That is, he did not securitize "non-patriots" as he has done in the opposition forces. The securitization of "non-patriots" was articulated in the 2014 constitutional reform.

Central government's securitizing moves are made public in two official documents. But before the two official documents, several Beijing officials and scholars had conveyed such securitizing signals to Hong Kong in various forms. The first official document is the White Paper published by the State Council in June 2014. The White Paper (Information Office of the State Council 2014) makes it clear that in order to fully and accurately understand and implement the policy of OCTS in Hong Kong, all the Hong Kong people who govern Hong Kong should above all be patriots,

There are lines and criteria to be observed in implementing "Hong Kong people governing Hong Kong," that is what Deng Xiaoping stressed, Hong Kong must be governed by the Hong Kong people with patriots as the mainstay, as loyalty to one's country is the minimum political ethic for political figures. Under the policy of "one country, two systems," all those who administrate Hong Kong, including the chief executive, principle officials, members of the Executive Council and Legislative Council, judges of the courts at different levels and other judicial personnel, have on their shoulders the

responsibility of safeguarding the country's sovereignty, security and development interests, and of ensuring the long-term prosperity and stability of Hong Kong. In a word, loving the country is the basic political requirement for Hong Kong's administrators. If they are not consisted of by patriots as the mainstay or they cannot be loyal to the country and the HKSAR, the practice of "one country, two systems" in the HKSAR will deviate from its right direction, making it difficult to uphold the country's sovereignty, security and development interests, and putting Hong Kong's stability and prosperity and the wellbeing of its people in serious jeopardy (46-47).

In the white paper, the three terms "sovereignty," "security" and "development interests" are used synonymously. Actually, it has already been an established trend for Beijing to synonymously use "sovereignty" with "security" (Sow 2013, 155).

The second official document is the NPCSC decision on August 31, 2014. The NPCSC (National People's Congress Standing Committee 2014) decision says,

The Session is of the view that since the Chief Executive of the Hong Kong Special Administrative Region shall be accountable to both the Hong Kong Special Administrative Region and the Central People's Government in accordance with the provisions of the *Hong Kong Basic Law*, the principle that the Chief Executive has to be a person who loves the country and loves Hong Kong must be upheld. This is a basic

requirement of the policy of “one country, two systems”. It is determined by the legal status as well as important functions and duties of the Chief Executive, and is called for by the actual need to maintain long-term prosperity and stability of Hong Kong and uphold the sovereignty, security and development interests of the country. The method for selecting the Chief Executive by universal suffrage must provide corresponding institutional safeguards for this purpose.

After the NPCSC decision on Hong Kong’s constitutional reform, senior officials from Central Government were sent to Hong Kong to further elaborate on Central Government’s securitizing move. Li Fei, in his meeting with Hong Kong government officials, said,

unwilling to accept the fact that the PRC has resumed the exercise of sovereignty over Hong Kong, and are unwilling to accept the governing power of the central authority over Hong Kong; they adopt an ‘alternative interpretation’ of ‘One Country, Two Systems’ and the provisions of the Basic Law; they make use of foreign forces, continuously stir up political disputes, pointing their fingers at the central government, and attempt to turn Hong Kong into an independent political entity. On the issue of universal suffrage, their views and demands may be summarized in one sentence: let their representative become the Chief Executive. This, of course, cannot be permitted. If they

are allowed to become the Chief Executive, this would necessarily prejudice the central government's governing power over the HKSAR, prejudice our country's sovereignty, security and developmental interests, and damage the stability and prosperity of Hong Kong ... If we understand the political nature of the question of universal suffrage, we see that the question involves matters of fundamental principles on which there can be no compromise. ... Those who insist in being confrontational towards the central government cannot be the Chief Executive, whether in the past, present or future.”
(Quoted from Chen 2016, 196).³⁹

It is clear from Central Government's securitizing move that only “non-patriots and those “confrontational” pan-democrats are constructed as security threats. The “Occupy Central” movement and its organizers and supporters are not regarded as threats to sovereignty.

In Hong Kong's constitutional reform, Central Government's securitization strategy can fence off threats to Chinese sovereignty even without Hong Kong audience support. Throughout the universal suffrage debate, Central Government's focus is on methods of selecting “patriots” to govern Hong Kong, be it democratic or undemocratic. In fact, the Central Government does not care too much whether the Legislative Council approves the amendment to the method of selecting Chief Executive through universal suffrage. If the Legislative Council approves the amendment, the new universal

³⁹ Li Fei's speech is in Chinese, see (The Commissioner's Office of China's Foreign Ministry in the Hong Kong SAR 2014). This is Professor Albert Chen's translation.

suffrage method can ensure “patriots” be elected as Chief Executive. In the case the Legislative Council rejects the amendment, the current method can still produce a patriot Chief Executive. In this case, securitization was tactically employed to defend Chinese sovereignty interests in Hong Kong’s constitutional reform (Buzan , Wæver and de Wilde 1998, 29).

The NPC decision has to go through Legislative Council deliberation. Legislative Council is the audience in the securitization process. The success or failure of the securitization process largely depends on the results of Legislative Council voting. According to the Basic Law, constitutional reform proposal needs two-thirds majority votes in the Legislative Council to pass. But before Hong Kong government submitted the constitutional reform proposal to the Legislative Council for voting, there has been fierce resistance to Central Government’s securitizing moves. “Occupy Central” (or “Umbrella Movement”) was viewed as a response to Beijing’s broken promises (Davis 2015). On June 18, 2015, after a day of debate, Hong Kong government’ motion on amendment to the method for the selection of the Chief Executive was vetoed in the Legislative Council. Although Central Government’s securitizing move was rejected by the Hong Kong audience, the objectives of invoking security discourses were indirectly realised because the 2017 Chief Executive will still follow the old method of election which can guarantee “patriots” be elected as Chief Executive.

In this securitization process, Hong Kong has the autonomy to reject Central Government’s construction of threats, but Hong Kong paid a big price for its exercise of security autonomy. Despite the so-called achievement of “Occupy Central” movement on Hong Kong’s democracy development, Hong Kong lost a golden opportunity to realize universal suffrage. On June 18, 2015, in his remarks at a media session, Chief Executive, C Y Leung said, “LegCo members voted against the wishes

of the majority of the Hong Kong people, and denied them their democratic right to elect the Chief Executive in the next election. Universal suffrage for the Chief Executive election has now been blocked. Universal suffrage to elect all members of LegCo has also become uncertain. I, the Government and millions of Hong Kong people are naturally disappointed (Hong Kong Government 2015).” Albert Chen has explained his concern of such a lose-lose situation long before 2015. Chen notes,

Given the provisions on democratization in the Basic Law and the demands for democratization from civil society in Hong Kong, the central government and the Hong Kong government have been willing to introduce moderate measures in the direction of democratization. The pan-democrats, in reliance on their power of veto, may seek to bargain for a better deal. However, whether they succeed or not depends on whether there is a sufficient incentive and will on the part of the central government and the Hong Kong government to make a deal and to move Hong Kong forward on the path of democratization. In case the bargaining fails and no deal is reached, there would be no forward movement at all and the status quo of the political system would be maintained. In this case, both the pan democrats and the government would be losers, assuming that the interests of both the pan-democrats and the government would be served by a movement towards democratization (Chen 2014, 15).

If Article 23 only concerns Hong Kong people's personal freedoms, constitutional reform concerns Hong Kong people's fundamental right to free and fair election of their Chief Executive. A more serious consequence than the restrictions placed on their democratic rights is that constitutional reform will affect the future possibility of Article 23 legislation. If Hong Kong people can select Chief Executive in their desired way, the elected Chief Executive can be held accountable to them and the issue of Article 23 legislation may be postponed indefinitely, or even abandoned completely.

In Beijing's mind, opposition forces' ultimate aim is to challenge Chinese sovereignty in Hong Kong. That is, in Li Fei's words, they are contesting the right to governance (The Commissioner's Office of China's Foreign Ministry in the Hong Kong SAR 2014). In fact, such challenges amount to "a reestablishment of sovereignty on a new political basis (Buzan , Wæver and de Wilde 1998, 150)."

5.5 Occupy Central Movement

On September 28, 2014, the Occupy Central Movement was jointly launched by Hong Kong University law professor Benny Tai, Chinese University of Hong Kong professor Chan Kin-man and priest Chu Yiu-ming. Since yellow umbrellas were widely used in the protest to defend police tear gas attack, the movement was also called "Umbrella Revolution" by foreign media. The movement ended in mid-December 2014 when the public was getting increasingly unhappy about the chaos caused by the occupy activities.⁴⁰

There is no clear information to show the "Occupy Central" movement has been

⁴⁰ For a chronology of the events in the "Occupy Central Movement" in 2014, see Sonny Lo (2015), pp. 105-107.

securitized as existential threat to Chinese sovereignty. Instead, as later implied in Xi Jinping's meeting with Obama during the Asia-Pacific Economic Meeting in mid-November 2014, "Occupy Central" was treated as Hong Kong's internal "law and order" issue. Xi said,

In my talks with President Obama I also pointed out that the Occupy Central is an illegal movement in Hong Kong. We are firmly supportive of the efforts of the Hong Kong Special Administrative Region Government to handle the situation according to law so as to maintain social stability in Hong Kong and protect the life and the property of the Hong Kong residents. Hong Kong affairs are exclusively China's internal affairs, and foreign countries should not interfere in those affairs in any form or fashion. And we will protect the lawful rights and interests of foreign citizens and business organizations in Hong Kong, as well. And I think it goes without saying that law and order must be maintained according to law in any place, not just in Hong Kong, but also elsewhere in the world (The White House Office of the Press Secretary 2014).

Xi also said the Central Government firmly support the HKSAR government's handling measures (The White House, Office of the Press Secretary 2014). Judging from Xi's remarks, it seems that "Occupy Central" has not been constructed by Beijing as a security threat and Beijing has not taken any exceptional measures to tackle the issue.

This is what (Lim and Ping 2015) called a “hands-off approach (21).” From Central Government to the HKSAR government, “Occupy Central” is only a law and order issue, not a security issue. If “Occupy Central” is not a security issue, security autonomy is no exercised and the whole issue is dealt with Hong Kong’s autonomy to managing its internal law and order. Hong Kong police’s use of tear gas is not the exceptional measures usually found in security issue because it is a normal practice to use tear gas to disperse protestors, even in democratic countries.

Professor Sonny Lo argued that “Occupy Central” has been constructed by the top leaders as security issues. Lo (2015) pointed out that,

the PRC views an assertive civil society in the HKSAR as a threat to the legitimacy and authority of the HKSAR. Compounding this PRC perception of the active civil society groups in the HKSAR was the formation of the mainland’s National Security Commission (NSC) in 2013, as the new Chinese leader Xi Jinping was eager to consolidate his power base and tackle any terrorist and separatist forces in China with a determined and hardline approach. As such, the emergence of the OCM was seen as a real menace to the national security of the PRC (113).

But no information available has show that the “occupy central movement” was securitized. If there is no exceptional measures adopted, it is hard to argue a issue has been securitized. The ordinary police reponses to protestors cannot be viewed as exceptional measures under the security autonomy framework.

For the “Occupy Central” issue, the Central Government has its own consideration to not to define the nature of the movement as security issue. As the

Copenhagen School notes, “actors can choose to handle a major challenge in other ways and thus not securitize it. The use of a specific conceptualization is always a choice-it is politics, it is not possible to decide by investigating the threat scientifically (Buzan , Wæver and de Wilde 1998, 32).”

5.6 Securitizing Hong Kong’s independence activities

After the “Occupy Central Movement,” Beijing and Hong Kong government began criticizing “independence” activities carried out by some young people in Hong Kong. If the so-called “independence” activities are just “a slogan articulated by the nativists to argue for a “genuinely” high degree of autonomy for the HKSAR,” Beijing will not securitize such slogan or any conceptually weak separation sentiments. However, the election of localist legislators in Hong Kong’s Legislative Council in 2016 and their pro-independence behaviours at the oath-taking ceremony shortly after their election triggered a new wave of strong reactions from Hong Kong government and Beijing authority. Beijing securitized such “independence” activities and took emergency measures in the form of interpretation of Article 104 of the Hong Kong Basic Law.

On October 12, 2016, two pro-independence legislators, Sixtus Leung and Yau Wai-ching, displayed “Hong Kong is not China” banner and used insulting words in their oath during the oath-taking ceremony. Their oath was declared invalid by the Legislative Council Chairman and the Chief Executive asked Hong Kong court to disqualify the two legislators on October 18, 2016.

Since pro-democratic legislators often use the oath-taking ceremony as a platform to show their protests, the Hong Kong government asked the NPCSC to interpret Hong Kong Basic Law article 104 concerning the proper way to make the oath as member of the Legislative Council. Article 104 of the Hong Kong Basic Law is about

how public officials take oath in Hong Kong.

When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

After the oath-taking controversy, the NPCSC delivered an interpretation on November 7, 2016. NPCSC explained the meaning of “to uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” and to bear “allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China” as they “are not only the legal content which must be included in the oath prescribed by the Article, but also the legal requirements and preconditions for standing for election in respect of or taking up the public office specified in the Article.”

In addition, the NPCSC points out that “when assuming office”, the relevant public officers “must, in accordance with law, swear” bear the following meaning:

(1) Oath taking is the legal prerequisite and required procedure for public officers specified in the Article to assume office. No public office shall be assumed, no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed by anyone who fails to lawfully and validly take the oath or who declines to take the oath.

(2) Oath taking must comply with the legal requirements in respect of its form

and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law, the content of which includes “will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China”.

(3) An oath taker is disqualified forthwith from assuming the public office specified in the Article if he or she declines to take the oath. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article.

(4) The oath must be taken before the person authorized by law to administer the oath. The person administering the oath has the duty to ensure that the oath is taken in a lawful manner. He or she shall determine that an oath taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is valid, and that an oath which is not taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is invalid. If the oath taken is determined as invalid, no arrangement shall be made for retaking the oath.

The last point in the NPCSC interpretation states that “The taking of the oath stipulated by Article 104 of the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* is a legal pledge made by the public officers specified in the Article to the People’s Republic of China and its Hong Kong Special Administrative Region, and is legally binding. The oath taker must sincerely believe in and strictly abide by the relevant oath prescribed by law. An oath taker who makes a

false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with law.”⁴¹

The NPCSC interpretation as an emergency measure took effect immediately. On November 15, 2016, the High Court ruled that Sixtus Leung and Yau Wai-ching should lose their seats in the Legislative Council because they failed to properly take their oath as interpreted by the NPCSC. In this process of securitization of “independence” activities, although it seems that Beijing uses the interpretation of the Basic Law to target two young legislators, it in fact sends a strong warning to potential “independence” or “self-determination” forces in Hong Kong. Hong Kong government welcome and support Beijing’s securitization move. In his last policy address delivered on January 18, 2017 as Chief Executive, C. Y. Leung states “Hong Kong is an inalienable part of our country. There is absolutely no room for independence or any form of separation. Under “one country, two systems”, every one of us has the obligation to fully comply with the Basic Law and safeguard national sovereignty, security and territorial integrity.”⁴²

5.7 Summary

Compare to security autonomy at the societal level and international level, Hong Kong does not show a strong performance at the political level. At the political level, the Central Government securitized issues and developments in Hong Kong as existential threats to Chinese sovereignty. In the securitization process, Hong Kong was left with

⁴¹ The lengthy quotation is from the NPCSC interpretation of Hong Kong Basic Law. http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc25.pdf, accessed March 23, 2017.

⁴² The 2017 Policy Address, “Make Best Use of Opportunities Develop the Economy Improve People’s Livelihood Build an Inclusive Society” available at <http://www.policyaddress.gov.hk/2017/eng/pdf/PA2017.pdf>, accessed March 21, 2017.

two options to select from, accept or reject. Although Hong Kong's rejection of Central Government's securitization indicates Hong Kong's autonomy, the autonomy is low. Although Hong Kong's security autonomy at the political level is low, it is still higher than that at the international level because at least Hong Kong can play an important role in the construction of threat and Hong Kong has the final say as to the adoption of exceptional measures.

The degree of Hong Kong's security autonomy in political sector is rated as low in the two cases examined in this research. For the Article 23 issue, since the SAR government has the constitutional obligation to enact national security law, the rejection of Central Government securitization in 2003 cannot stop the securitization because the exceptional measures have been institutionalized as Article 23 in the Basic Law. No matter how many times Hong Kong rejects such securitization, the security autonomy exercised here is always passive. For the universal suffrage of Chief Executive, Hong Kong's response to Central Government securitization is an indication of its low security autonomy because Hong Kong is only audience in this process. Hong Kong has no right to change the constitutional reform.

Two reasons can explain this. First, Hong Kong's security autonomy at the political level can only be exercised passively because it is an audience response to Central government's securitization. Second, passive as it is, Hong Kong does not have many opportunities to exercise such autonomy because the Central Government seldom securitize issues as security threats to sovereignty in Hong Kong. Despite the low autonomy at the political level, this passive autonomy is an important component and indication of Hong Kong's security autonomy.

Due to significant political, social, legal and cultural differences between mainland and Hong Kong, the logic of security in political sector cannot be simply

imposed on Hong Kong. There is some need to argue the cases with Hong Kong people. This is especially true in the national security legislation. If the Central Government centralize the power to enact national security law or implements China's national security law in Hong Kong, Hong Kong may not have security autonomy in Article 23 legislation. Therefore, Hong Kong can exercise security autonomy partly thanks to Beijing's strategic consideration to keep Hong Kong stable, like in the societal sector.

But when it comes to the universal suffrage issue, Beijing's securitization logic is different from that of national security legislation. In the constitutional reform case, Beijing aims to use securitization strategy to ensure the method of selection of future Chief Executive does not undermine Chinese sovereignty interests. In this case, Hong Kong's acceptance or rejection of Beijing securitization does not matter too much because Chinese sovereignty will not be existentially threatened in the two situations.

The two cases illustrate that the Central Government has exhibited a tendency to dominate Hong Kong's political development by securitizing destabilizing issues otherwise regarded as acceptable under liberal democracies. The constructed security threats to Chinese sovereignty in the two case studies in this chapter are different. But, arguably, these two types of threats are connected. The subversive forces are non-patriot and the non-patriot forces can become subversive. Hong Kong's exercise of security autonomy in political sector may not negatively affect Beijing-Hong Kong relations. In its veto of national security bill and constitutional reform amendment, pan-democrats in the Legislative Council's autonomy only amounts to passive resistance. They cannot make active moves to realize their agendas. Now that Hong Kong's security autonomy cannot change the course of Hong Kong political development and threaten Chinese sovereignty, Central Government is willing to let Hong Kong exercise such autonomy on security issues.

There must be Central Government securitization of threats to Chinese sovereignty before Hong Kong exercises its security autonomy in political sector. For national security legislation, since Central Government's securitization has been institutionalized in Article 23 of the Basic Law, theoretically speaking, Hong Kong may exercise its security autonomy every time national security legislation is proposed. Arguably, the failure of Article 23 legislation in 2003 has rendered the future exercise of security autonomy on this matter impossible because Beijing may not push the SAR government again for national security legislation. In the constitutional reform case, the rejection of constitutional reform proposal in 2015 has also made it very unlikely to start new reform in the near future. In fact, after the rejection of Central Government securitization in 2014, Hong Kong's security autonomy in political sector has become into a "dormant" autonomy, only to be exercised when there are new Central Government securitizations. This fully shows security autonomy is a passive power conditioned on Central Government's securitizing moves.

It is also possible for Hong Kong to securitize issues as security threats to Chinese sovereignty. But such scenario is unlikely to happen in the current political climate. Even if something like this occurred one day in Hong Kong, Central Government's authorization and support cannot be ruled out. Taken things together, in political sector, central government has the interest and incentives to securitize threats to Hong Kong as security issues and Hong Kong can exercise its security autonomy in such securitization process.

Third, popular support is necessary for the exercise of security autonomy in political sector. From national security legislation crisis in 2003 to the veto of Central Government securitization in 2015, popular support for Hong Kong's exercise of security autonomy undoubtedly is key to the success of Hong Kong's resistance to

Central Government's exceptional measures. The July 1 2003 fifty million people march and the "Occupy Central" movement in 2014 are two noticeable cases to show popular support for the rejection of Beijing's securitizing moves. In political sector, audience to Central Government's securitization can be very broad in Hong Kong. But it is the Legislators in the Legislative Council has the direct veto power to reject Beijing's securitization. But without popular support, they may not make such decisions. In both cases, there are also significant support for Central Government in Hong Kong. It can be argued that popular support strength Hong Kong's security autonomy. It is useful to compare public attitudes in the right of abode issue in 1999 and anti-terrorism legislation in 2002. There was strong public support for NPCSC interpretation of Basic Law in the right of abode case and there was no strong objection in the anti-terrorism legislation case. The three cases show that public support for Hong Kong's security autonomy center on the fight for Hong Kong interests. Hong Kong people has chosen to sacrifice (excessive or to a lesser degree) their civil liberties in the anti-terrorism legislation but not the in the national security legislation shows a comparative dynamic of security autonomy.

Chapter 6 Macao's Security Autonomy: Comparisons and Contrasts

6.1 Introduction

The Macao Special Administrative Region exercises its security autonomy under different security dynamics. Although the OCTS policy is a one-size-fits-all approach to two SAR with “sharp differences in history and polity, demographic and territorial size, economic, geopolitical and strategic importance (Chan 2003, 493),” there are sharp differences as to how security autonomy has been exercised in the two SAR. At the societal level, international level and political level reviewed in the Hong Kong case, Macao's security autonomy is found more at the international level than at the societal level and political level. It is simply because the kind of mainland-SAR societal conflicts found in the Hong Kong case are not strongly felt in Macao. Another possible reason to explain Macao's less active exercise of security autonomy at the societal level is that potential societal conflicts between Macao and mainland are not securitized. Such societal conflicts may have been solved through normal approaches, neither politicized no securitized. Security autonomy cannot be examined if there are no securitizations. Therefore, in this chapter, the focus is on the examination of Macao's security autonomy at the international level and the political level, not at the societal level.

In this chapter, however, the missing component of Macao's security autonomy at the societal level do not prevent the Macao case from being used as a candidate for comparison. As argued earlier, security autonomy is not a static power that the SAR have in law, but is an ability to construct issues as security threats and, under certain circumstances, respond to securitizations. Therefore, a comparison between how Hong Kong and Macao exercise security autonomy at the international level and the political

level can also be useful to show the similarities and differences between the two SAR on security autonomy.

6.2 Security autonomy at the international level and Macao's anti-terrorism legislation

Since Macao was instructed by the Central Government to implement the UNSC resolution 1373, it took the SAR government more than a decade's time to enact anti-terrorism laws. Unlike Hong Kong's comprehensive, proactive and prompt anti-terrorism legislation, Macao has been struggling with compliance with international counter-terrorism regime for more than a decade since 9/11 terrorist attacks in 2001. Macao first implemented the UNSC resolution 1373 by amending its existing laws. It is interesting to note that the Central Government used the same legislative approach to implement the UNSC resolution 1373 in the wake of 9/11 (Fu 2012, 336).

Like many jurisdictions with no terrorist incidents, Macao's response to terrorism seems to have less domestic roots than under external pressure. Macao's post 9/11 developments in anti-terrorism legislations can better be understood in the context of past historical legacies and current geopolitical constraints. Such pressure is not primarily from compliance with international counter-terrorism regime, but from the US financial sanctions against North Korea. This can best be illustrated by the timing of Macao's anti-terrorism legislations. In 2006, the Macao Legislative Assembly passed Law No. 3/2006, *Prevention and Suppression of the Crimes of Terrorism*, shortly after the US Department of Treasury designated a small Macao bank, Banco Delta Asia, as a "primary money laundering concern" for North Korea illicit activities (Zhao 2014). In 2016, in the wake of the UNSC toughest sanctions against North Korea, the Macao government enacted its first terrorism asset freezing law.

Compared to Hong Kong's comprehensive counter terrorism legislation,

Macao's anti-terrorism legislation is characterized by a distribution of discrete laws. From 2002 to 2016, Macao enacted three anti-terrorism legislations. Each legislation deals with a specific aspect of counter-terrorism measures and every legislation was produced with uncoordinated haste. Despite its continuous efforts spent on counter-terrorism legislations, none of the legislations have attempted to respond terrorism in a comprehensive manner. Instead, Macao's anti-terrorism legislations show that the SAR government takes a segmental or piecemeal approach to terrorism lawmaking. Although Macao's response to terrorism is a reflection of its own particular histories and legal, political, and social cultures (Roach 2011, 1), this chapter argues that how Macao perceives security threat to Macao is the key factor. Macao's unabated enthusiasm for anti-terrorism legislations makes it a theoretically interesting case to study how security autonomy is exercised in a SAR with different legal, political context from that of Hong Kong.

Macao's response to international security issues can be best captured by its involvement in the US-led GWOT. In the US-led GWOT, Macao's role differs significantly from that of China and Hong Kong. China is widely viewed as a "player" and Hong Kong is praised by the US as an important "partner" in the international counter-terrorism efforts. Due to its insignificance, Macao is neither a "player" nor a "partner" in the GWOT, but Macao's anti-terrorism legislations are greatly affected by the US national security concerns in Northeast Asia.

While Macao passed anti-terrorism legislations in the name of counter terrorism threat, the real drive behind such legislations is beyond the terrorist threats to Macao. In terms of counter-terrorism issues, Macao lives in the shadow of the US-China engagement over North Korea nuclear weapons program. Macao's anti-terrorism legislations are not shaped by terrorism threats, but rather shaped by the US sanctions

against North Korea.

One would expect Macao to have a high level of compliance with the US-led GWOT because Macao-US relations and the increasing US investment interests since the Macao government liberalized its casino in 2002. As the US Consul General noted, “trade and security are pillars of the U.S.-Macau relationship (Keith 2004).” While enjoying virtually identical autonomy as that of Hong Kong in managing international security threats, Macao’s anti-terrorism legislations were enacted in a pattern distinct from that of Hong Kong. Like the case of Hong Kong, Macao was instructed by the Central Government to take measures on its own to implement the UNSC resolution 1373 in 2002. However, unlike Hong Kong’s legislation, and as a territory with low or no terrorist threat concerns, Macao’s anti-terrorism legislations are understood more as compliance with international requirements than following the US-led GWOT. In enacting its anti-terrorism legislations, Macao did not seize the US anti-terrorism rhetoric, but mobilize in the heading of implementing the UN Security Council resolution 1373. Another feature of Macao’s anti-terrorism legislation is the Chinese influence, which has significantly affected Macao’s legislation process. However, this does not mean China controlled Macao’s legislation. Anyway, it could be argued that Macao identifies more with Beijing than with the US in its anti-terrorism legislations.

In the months following 9/11, counter-terrorism legislations enacted by major states around the world, albeit in the heading of implementing the UNSC resolution 1373, are generally either “designed to reassure a public after large-scale terrorism attacks, including harsh legislation designed to impose large-scale detentions (Roach 2011, 2),” such as the US Patriot Act, or aims to counter ostensible and potential terrorist attacks, such as legislations in the European countries, or used instrumentally to serve domestic politics, such as China and Russia. Macao’s role in international

security is defined by different actors in different contexts. However, compare to Hong Kong's preemptive responses to terrorism, Macao's perception of international security threats is more painful and the cost is too high. Macao was forced to join the US-led GWOT. It was coerced to accept the US macrosecuritization of terrorism.

Although Macao's approach to terrorism legislation can be partly attribute to the fact that "piecemeal strategy at the international level caused national legislatures to also take a piecemeal approach to issues of terrorism (Nuotio 2006, 1003)," this chapter argues that it is Macao's perception of the threats arising from international terrorism that explains Macao's response to terrorism. Macao's anti-terrorism legislations are the results of Macao's responses to the US securitization of North Korea's weapons of mass destruction threat. This chapter will also explain what lead to Macao's piecemeal response to international terrorism.

Since Macao's anti-terrorism legislation does not aim to strength government power and limit civil liberty, there was no significant opposition to such legislations from civil society. All the three legislations passed in the Legislative Assembly without much resistance.

6.2.1 UNSC Resolution 1373 and the enactment of Compliance with Certain Acts of International Law

In the wake of the events of September 11, 2001, when anti-terrorism legislation was an aim in itself in the post-9/11 world politics, Macao did not share the sense of urgency of other jurisdictions in anti-terrorism legislations. Instead, Macao adopted a minimum approach to implement the UNSC resolutions 1373. On February 26, 2002, Law 4/2002, *Compliance with Certain Acts of International Law* was passed by the Macao Legislative Assembly to implement the UNSC resolution 1373 (Xinhuanet.com 2002).

Although the law was specifically enacted to implement the UNSC resolution 1373, it is not an anti-terrorism law in the strict sense. Law 4/2002 is a general enabling law to implement all UNSC resolutions that need further actions from the jurisdictions.

Sanction measures prescribed in the UNSC resolutions cannot be automatically enforced in member states. They need to be incorporated into member states' domestic legislation to take effect. Although national governments vary considerably when incorporating the UNSC resolutions into their national legal framework, the following three ways are generally adopted. First, enabling legislations directly related to sanctions implementation; second, legislations not designed for sanctions implementation; and third, *ad hoc* legislations in response to specific sanctions resolutions or situations.⁴³

Enabling legislation is designed to give legal effect to decisions passed by the UNSC in domestic legal order by conferring legislative powers to executive branch to promulgate subsidiary legislation for the enforcement of UNSC resolutions. When a UNSC resolution imposes sanctions, the member states' executive branches will enact regulations under their "United Nations enabling act" to implement specific sanctions in their domestic legal order.⁴⁴ In the Chinese legal system, there is no such enabling legislation, but in China's Hong Kong Special Administrative Region, enabling legislation entitled the "United Nations Sanctions Ordinance" is the primary legal mechanism for implementing UNSC resolutions.⁴⁵ Although regarded as the "most

⁴³ Vera Gowlland-Debbas, Concluding Remarks, in: Vera Gowlland-Debbas (ed.), National Implementation of

United Nations Sanctions: A Comparative Study (Leiden: M. Nijhoff, 2004), 645-46.

⁴⁴ United Nations Act (Canada), available at http://www.international.gc.ca/sanctions/un_act-loi_nu.aspx?lang=eng, accessed August 12, 2014.

⁴⁵ In accordance with the "one country, two systems" principle, China's central government is responsible for foreign affairs related to defense of the Hong Kong and Macao Special Administrative Regions, while the two Regions enjoy executive, legislative and independent judicial power, including that of final adjudication. For that reason, the Hong Kong and Macao Special Administrative Regions will draw up their own laws and regulations following the notification of the central government for the purpose of implementing UN Security Council resolutions. For a comprehensive review of the

expedient means of implementation”, enabling legislation are only adopted by a handful of states.⁴⁶

Without enabling laws, the majority of states have been able to honor their obligations under the UN Charter through reliance on existing legislations which are not directly related to UNSC resolutions.⁴⁷ Currently, the Chinese government mainly uses existing legislations not designed for sanction implementation to enforce sanction measures in a variety of UNSC resolutions, including arms embargoes, travel and aviation restrictions, assets freeze, commodity sanctions, trade sanctions and other mandatory measures decided by the UNSC. The procedure for the enforcement of UNSC sanctions in China is regulated on the basis of existing relevant legislation applicable in the area of these sanctions concerned, such as trade laws,⁴⁸ laws regulating exportation of war materials, including control of problematic dual-use goods,⁴⁹ licensing systems requiring authorizations to trade on a case-by-case basis,⁵⁰ customs

implementation of UNSC resolutions in Hong Kong, see Cheng Yan Ki Bonnie, Implementing Security Council Resolutions in Hong Kong: An Examination of the United Nations Sanctions Ordinance, *Chinese Journal of International Law* (2008), Vol. 7, No. 1, 65–98. Also see Simon N.M. Young, Security Laws in Hong Kong in Victor V. Ramraj, Michael Hor, Kent Roach and George Williams (eds.), *Global Anti-Terrorism Law and Policy*, Second edition (Cambridge University Press, 2012), 357-89.

⁴⁶ For example, the United Nations Act 1985 of Canada, the United Nations Act 1946 of New Zealand, the United Nations Act of 1946 of United Kingdom, the United Nations Act 2001 of Singapore.

⁴⁷ National Implementation of United Nations Sanctions: A Comparative Study, 43.

⁴⁸ Foreign Trade Law of the People’s Republic of China.

⁴⁹ Regulations of the People’s Republic of China on the Control of Nuclear Export; Regulations of the People’s Republic of China on the Control of Nuclear Dual-Use Items and Related Technologies Export; Measures on the Administration of, Approval for Transfer and Transit of Nuclear Items (for Trial Implementation); Regulations of the People’s Republic of China on Export Control of Dual-Use Biological Agents and Related Equipment and Technologies; Regulations of the People’s Republic of China on the Administration of the Controlled Chemicals; Controlled Chemicals List; Detailed Rules for the Implementation of the Regulations of the People’s Republic of China on the Administration of the Controlled Chemicals; Measures on Export Control of Certain Chemicals and Related Equipment and Technologies; Regulations of the People’s Republic of China on Export Control of Missiles and Missile-related Items and Technologies; Regulations of the People’s Republic of China on the Administration of Arms Export; Measures on the Administration of Export Registration for Sensitive Items and Technologies; Measures for Administration of Import and Export Licensing of Dual-Use Items and Technologies; Administrative List for Import and Export Licensing of Dual-Use Items and Technologies.

⁵⁰ Regulations of the People’s Republic of China on the Import and Export Control of Technologies; Regulations of the People’s Republic of China on the Import and Export Control of Goods.

and immigration control.⁵¹

Under certain circumstances, it may be necessary to make adjustment to particular existing legislations in order to get the resolutions implemented because with the advent of targeted sanctions, enabling legislation or existing legislation has become insufficient to fully cover the range of measures in the Security Council's sanction toolbox.⁵² As Gowlland-Debbas points out, "sanctions...which include specifically targeted measures, in particular financial restrictions, may require particularly tailed legislation directed at financial and banking operation."⁵³ After 9/11, for example, resolution 1373 (2001) requires member states to "criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts."⁵⁴ Accordingly, China enacted particularly tailored legislation directed at financial institutions to implement financial restrictions contained in the smart sanctions or more targeted sanctions directed at terrorist organizations. On December 29, 2001, China amended its criminal law to criminalize the financing of terrorism by explicitly "prohibiting the provision of any material facilities or services to terrorists and terrorist organizations, or to conduct any transactions on their behalf" to respond to the UN Security Council Resolution 1373 (2001).⁵⁵ As such, China makes the "financing of international terrorism" a distinct

⁵¹ Customs Law of the People's Republic of China; Law of the People's Republic of China on the Entry and Exit of Aliens.

⁵² Clara Potela, National Implementation of United Nations Sanctions: Towards Fragmentation, *International Journal*, Winter 2009-10, 18.

⁵³ National Implementation of United Nations Sanctions: A Comparative Study, 647.

⁵⁴ S/RES/1373 (2001)

⁵⁵ Article 120 of Criminal Law of China: "any individual who financially supports a terrorist organization or an individual that commits terrorist activities shall be sentenced to fixed-term imprisonment of no more than five years, criminal detention, public surveillance, or be deprived of political rights and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of no less than five years, and shall also be fined or be sentenced to confiscation of property." "Where an entity commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for

criminal offence in the form of a modification of the criminal law instead of creating new legislation.⁵⁶

If no such applicable legislation exists in the area to be covered, the issue has to be dealt with on a case by case basis through enacting *ad hoc* legislation to implement a particular UNSC resolution. For example, the Hong Kong legislature passed the United Nations Anti-Terrorism Measures Ordinance on July 12, 2002 to implement resolution 1373 related to measures for the prevention of terrorist acts.⁵⁷ In order to carry out the assets freeze measures and other related provisions in the UNSC anti-terrorism resolutions, China's top legislature, the National People's Congress, passed the Decision of the Standing Committee of the National People's Congress on Strengthening Counter-Terrorism Work in the form of *ad hoc* legislations as an interim response to terrorism threats.⁵⁸ Currently, China is drafting new legislation concerning the freezing of terrorism assets.⁵⁹

Apart from "passive" implementation of the resolutions adopted by the UNSC, China also seeks to actively comply with and fulfill the preventive intent of the relevant

the crime shall be punished in accordance with the provisions in the preceding paragraph." For the details of these amendments, see the Amendment to the Criminal Law of the People's Republic of China (Third Amendment) (Adopted by the Standing Committee of the National People's Congress on 29 December 2001), available at http://www.npc.gov.cn/npc/flsyywd/xingfa/2004-10/20/content_337787.htm, accessed August 12, 2014. See also, Fu Hualing, Responses to terrorism in China, in Victor V. Ramraj, Michael Hor, Kent Roach and George Williams (eds.), *Global Anti-Terrorism Law and Policy*, Second edition (Cambridge University Press, 2012), 336.

⁵⁶ Andrea Bianchi, Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion, *the European journal of international law*, vol. 17, no 5, 893.

⁵⁷ Implementing Security Council Resolutions in Hong Kong: An Examination of the United Nations Sanctions Ordinance, 85-86.

⁵⁸ Decision of the Standing Committee of the National People's Congress on Strengthening Counter-Terrorism Work, adopted at the 23rd Meeting of the Standing Committee of the Eleventh National People's Congress on October 29, 2011. Article V. When publishing lists of designated terrorist organizations and terrorists, the public security authority under the State Council shall simultaneously make a decision to freeze the fund or other assets related to the listed organizations and individuals. Financial institutions and designated non-financial businesses and professions shall freeze immediately any fund or other asset related to terrorist organizations or terrorists on the published lists, and report timely in accordance with relevant provisions to the public security authority and state security authority under the State Council and the competent authority in charge of anti-money laundering under the State Council.

⁵⁹ Available at http://guoqing.china.com.cn/2013-05/23/content_28911886.htm, accessed July 8, 2014.

UNSC resolutions, especially with regard to anti-terrorism measures. On September 11, 2002, at the request of China and other countries, the UN designated Eastern Turkistan Islamic Movement⁶⁰ as a terrorist organization under UNSC resolutions 1267 and 1390.⁶¹

Implementing UN sanctions also requires extensive efforts from different government agencies. The effective enforcement of the decisions of the Security Council within the domestic order requires the concerted efforts from national legislative, executive, administrative and judicial bodies in accordance with each state's constitutional and legal requirements. In China, the Ministry of Foreign Affairs, which is responsible for the UN and international aspects of sanctions, gives instructions to all ministries in the central government, all provincial governments and two Special Administrative Regions (Hong Kong and Macao) to implement UNSC resolutions in the form of circulars. Upon receiving the instructions from the Ministry of Foreign Affairs, the relevant authorities will then give effect to the instruction by issuing circular to respective governments or entities to carry out the requirements of UN resolutions. For example, when China implemented the UNSC anti-terrorism sanctions, the People's Bank of China (China's central bank) under the instruction of Ministry of Foreign Affairs, issued the "Circular of the People's Bank of China on Implementing the Circular of Ministry of Foreign Affairs on Implementing Relevant Resolutions of UN Security Council" to all financial institutions around China to implement relevant UNSC sanctions.⁶²

⁶⁰ Eastern Turkistan Islamic Movement is a major terrorist organization in China.

⁶¹ China Daily, Police Salute UN Rule on ETIM, September 21, 2002, available at <http://www.china.org.cn/english/2002/Sep/43703.htm>, accessed June 28, 2014.

⁶² the Circular of the People's Bank of China on Implementing the Circular of Ministry of Foreign Affairs on Implementing Relevant Resolutions of UN Security Council, PBC Doc. No.[2010] 165 (PBC Circular 165) (26 May 2010), available at http://www.kpmg.com.hk/external/2010/eNewsletter/FS/regulation_alert_bank/issue2/Appendix_2.pdf, accessed May 21, 2014.

Contrary to the international practice to make the definition of terrorism as a fundamental part of the response to terrorism, Law 4/2002 neither defines terrorism nor has any provision on terrorist asset freezing as required by the UNSC resolution 1373 and the FATF recommendations. In a sense, the enabling legislation only paid lip service to implement the UNSC resolutions. Despite these deficiencies, in introducing the law to the Legislative Assembly, the then Secretary for Administration and Justice, Florinda Chan, regarded the law as an important link in the global response to terrorism (Legislative Assembly 2002). In its response to terrorism, it seems that Macao has separated the UNSC resolution 1373 and the US-led GWOT, intentionally or unintentionally. This is reflected by its lack of a definition of terrorism and the absence of counter terrorist financing measures.

Although it was the Central Government that instructed Macao to implement resolution 1373, the Ministry of Foreign Affairs did not set the standard of compliance. That is, the Macao government has the autonomy to decide the degree of compliance with the UNSC resolutions. Macao's perfunctory implementation of resolution 1373 indicates that terrorism has not been identified as a security threat that warrant extraordinary legal measures. In terms of implementing the UNSC resolution 1373, Macao's internal legislation is not inadequate if compares with the general level of compliance with the UNSC resolutions in other jurisdictions. With regard to the US-led GWOT, Macao's response is not enough since Macao showed limited cooperation with the US-led GWOT. Since there are gaps between compliance with the UNSC resolution 1373 and the acceptance of US macrosecuritization of terrorism in many parts of the world, the US government still regarded Macao's new legislation as a positive step towards counter terrorism (U.S. Department of State 2003).

The relations between Macao's perception of terrorism and the anti-terrorism

measures adopted after 9/11 reflects that Macao lacks agreement with the US-led GWOT. As Avery Goldstein (2003) has observed, “believing that the terrorist attacks of September 11 so transformed the post–Cold War world that they have heralded the beginning of an age whose only defining feature will be the global struggle against terrorism would be a mistake. For this realignment to occur, the international community would need to present a united front among almost all states and mute their disagreements on less pressing matters (32).”

Security autonomy is not determined by whether the anti-terrorism measures are strong or weak, but determined whether the decision to take such measures are made on Macao’s own mind. At present, no evidence to suggest that the Central Government has placed undue pressure on Macao to implement resolution 1373 in such a manner. Law 4/2002 fulfilled Macao’s international responsibility. Despite its incompleteness, this legislative initiative is largely motivated by Macao’s own security considerations.

The capacity to comply with international laws or to accept the US securitization of terrorism is an important factor that should not be neglected. Given Macao’s weak capacity in law making and law enforcement, it is unrealistic to expect Macao to achieve the level of compliance with international securitization of terrorism that Hong Kong can make.

The American diplomats often urged Macao to fully implement resolution 1373. On April 23, 2004, the US Consul General James Keith, in his speech delivered at the University of Macau, hoped “the Macau government will soon take the next step and pass supplementary legislation so that Macau’s law fully implements United Nations Security Council Resolution 1373 (Keith 2004).” On September 15, 2005, US Consul General James Cunningham, at a reception hosted by the US Consulate General in Macao, called on Macao to “pass money laundering legislation and fully implement

United Nations Security Council Resolution 1373 (Consulate General of the United States Hong Kong & Macau 2005).”

However, the US pressure for Macao to fully implement resolution 1373 is not just through rhetoric. The American used domestic law to force Macao’s compliance with international counter-terrorism efforts. Macao’s slow response to terrorism was later proved to have profound consequences on Macao in the 2005 Banco Delta Asia affairs. But everything has two sides. It is this consequence that gave Macao the opportunity to fully demonstrate its security autonomy to the world.

6.2.2 Banco Delta Asia case and the enactment of anti-terrorism law

Macao accelerated its anti-terrorism legislation in 2006 after the United States Department of Treasury sanctioned a small Macao bank, Banco Delta Asia (BDA) on September 15, 2005 (Zhao 2011). Banco Delta Asia case marked a turning point in Macao’s response to terrorism. Although Macao’s position as a major international gambling center makes it a potential site for money laundering and terrorist financing activities, it is not the vulnerability of its casinos that triggered the legislative response to terrorism. Rather, it is the United States financial sanctions against North Korea that push the Macao government to finalize its anti-terrorism legislation. The consequences of Macao’s lax control of money laundering and financing of terrorism triggered the US regulatory action in 2005, the Banco Delta Asia sanction.

Before the US Treasury’s sanctions on BDA, Macao had been used as a global center by North Korean government agencies and front companies to carry out money laundering, nuclear weapons transfer programs and other “illegal” activities (Lo 2009, 143-145). The US Patriot Act Section 311 is one of the most powerful sanction tools the US government can use to target threats to international financial systems. The

Patriot Act's Section 311 of deals with "Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern." Under Section 311, the US Secretary of Treasury is authorized to impose any of the five regulatory restrictions, known as "special measures", individually, jointly, in any combination and in any sequence upon finding that a foreign jurisdiction, financial institution, or any certain transaction or account is "of primary money laundering concern." These five types of special measures include requiring: (1) recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts.

These special measures range from enhanced record keeping or reporting obligations to a requirement to terminate correspondent banking relations with the designated entity. Four of them impose information-gathering or record-keeping requirements on US financial institutions dealing either directly with the jurisdiction designated as "primary money laundering concern", or dealing with those having direct dealings with the designated jurisdiction. Under the fifth special measure, a US financial institution may be prohibited from opening or maintaining in the US a correspondent or payable-through account for a foreign financial institution if the account involves the designee. Taken as a whole, these measures are meant to provide the US Treasury Department with a range of options to bring additional pressure on institutions that pose specific money laundering threats (Doyle 2001).

The process of imposing special measures under Section 311 is divided into four stages including: "Finding" stage, "Proposed Rulemaking" stage, "Final Rule"

stage and “Rescind” stage. In the “Finding” stage of the Section 311 sanction process, the US Treasury Department makes a finding to designate a foreign jurisdiction or a foreign financial institution “of primary money laundering concern.” Prior to making such a finding, the Treasury Secretary must consult with the US Secretary of State and the US Attorney General and consider certain factors relating to the foreign jurisdiction or the particular institution targeted. The second stage is the “Proposed Rulemaking” stage. In this stage, the Treasury Department proposes to make a rule and to impose “special measures” against the designated foreign jurisdictions or foreign financial institutions. Not all the rules are finalized even if the “Notice of Proposed Rulemaking” is issued. In the “Final Rule” stage, the Treasury Department determines whether to finalize or rescind a proposed rule by reviewing written comments and sometimes meeting with the interested parties. The final rule may prohibit the opening or maintaining of correspondent or payable-through accounts by any US financial institutions for or on behalf of foreign financial institutions found to be of primary money laundering concern. The orders implementing the special measures are not necessarily permanent. In the “Rescind” stage, the Treasury may rescind the “Notice” or the “Special Measure Order” if it is determined that the circumstances justifying the original designation as a “primary money laundering concern” no longer exists.

Greenburg et al. (2007) notes that the special measures of Section 311 are generally applied to three types of situations. The first type has been used in assisting the US in fulfilling its obligations in the multilateral body responsible for setting international anti-money laundering standards, such as the Financial Action Task Force. In the second situation, the Treasury Department has used Section 311 as a classic anti-money laundering control measure. Such use fulfills the original and the most fundamental purpose underlying Section 311, with which it has enabled the Treasury

Department to close loopholes that allowed “bad” foreign banks access to the US financial system through correspondent accounts in US banks. The third situation involves the imposition of Section 311 sanctions to further US foreign policy goals. Unlike the other Section 311 cases in which the US government simply intended to realize one purpose at a time (Greenburg, Roth & Sawyer, 2007), the BDA case, as discussed below, not only fulfilled the purported fundamental purpose of Section 311 to crack down on money laundering, but, more importantly, successfully furthered US foreign policy objectives at that point.

The US government attempted to justify the financial sanctions by linking the targeted regimes to terrorism. By Patriot Act, “the United States arrogates to itself the right to attack others on grounds of suspicion of links with terrorists (Buzan 2006, 1112).” In the BDA sanction, the US government issued a mixture of implicit threats backed by explicit financial measures. There are two implicit objectives of the US sanctions: restricting North Korea’s access to international financial system and influencing the large banks in mainland China.

In the BDA sanctions, the US sought to achieve two major objectives: restricting North Korea’s access to international financial system and forcing China into cooperation with US policy over North Korea’s nuclear issues. In terms of restricting North Korea’s access to international financial system, the US apparently made some progress toward their desired direction. First, the BDA sanctions not only successfully blocked one of North Korea’s important conduits for laundering profits from its “illegal” activities but also greatly disrupted North Korea’s international transactions and trade at least in the short term. Since the end of the Korean War, the US has been applying economic pressure on North Korea. It has imposed arms embargo, economic sanctions, restrictions on trade and travel, bans on dealing with North Korean companies and even

a ban on US citizens owning or operating ships flying North Korean flags. Most of these measures have led to some economic pain, but nothing seems to have hit North Korea seriously.

Second, there seemed to be both qualitative and quantitative improvement in the cooperation between the PRC government and the US government after the BDA sanctions. The White House Spokesman, Tony Snow, publicly confirmed on July 26th, 2006 that the PRC took other, much more significant actions against North Korean “illicit” funds in Macau by freezing significant sums of money not only in BDA but elsewhere in Macau. In July 2006, China continued to work with the US to check any “illicit” North Korean behavior by freezing North Korean assets at the Macau branch of Bank of China (BOC) because of the charges that Pyongyang “counterfeited” not only US\$100 bills, but also Chinese *yuan* as well.⁶³ On October 31, 2006, China passed its first ever anti-money laundering law and the law came into effect on January 1, 2007. It remains unclear whether these moves happened coincidentally or as a direct result of the BDA sanctions. The move might be due to the PRC need to control domestic money laundering activities, but it was perhaps a move intentionally or unintentionally to respond to the US complaints about the alleged North Korean money laundering activities in Macau and mainland China. Interestingly, the US sanctions on North Korea in the BDA case were actually just a US warning followed by a Chinese regulatory action, which seemed to indicate active or coincidental Chinese cooperation with the US.⁶⁴

Despite the seemingly impressive progress the US made over its crackdown on

⁶³ Kirk, D. (2006) ‘At southeast Asia gathering, bid to engage North Korea’, Christian Science Monitor; available at <http://www.iht.com/articles/2006/07/26/news/web.0726boc.php>, accessed 20 March, 2014.

⁶⁴ Snyder, S. (2006) “China–Korea relations: Kim Jong-il pays tribute to Beijing – in his own way,” Comparative Connections, The Asia Foundation/Pacific Forum CSIS, June 1; available at http://www.csis.org/images/stories/pacfor/0601qchina_skorea.pdf, accessed March 20, 2014.

North Korea's "illicit" financial activities, Washington failed to achieve its desired foreign policy objectives to pressure Pyongyang to give up its nuclear weapons program. North Korea did not yield to the Bush administration's financial pressure. Pyongyang angrily boycotted the six-party talks and conditioned their return to the talks only after US government lifted sanction on BDA and agreed to unfrozen the North Korean funds held at BDA. In October 2006, North Korea launched a Taepodong-2 long-range missile and conducted its first nuclear test. The Bush administration's stated goal was the complete, verifiable, and irreversible elimination of North Korea's nuclear weapons program. Regime change was also a primary goal for the Bush administration. However, North Korea's detonation of a nuclear device in October 2006 further complicated President Bush's foreign policy, which focused on "preventing the terrorists and regimes who seek chemical, biological, or nuclear weapons from threatening the United States and the world."⁶⁵ The nuclear test was also regarded as a product of more than two decades of diplomatic failure lasting from the Clinton administration to the Bush regime.⁶⁶ On May 7, 2007, North Korea agreed to shut down its nuclear reactors immediately pending the release of frozen funds held in BDA. This was a result of a series of three-way talks initiated by the US and including China. The US agreed to unfreeze the North Korean funds to win North Korea's promise to start dismantling its nuclear weapons programs.⁶⁷ Clearly, the US made concessions and the BDA sanctions were arguably insufficient in achieving the US foreign policy objectives.

China's willingness to sign the UN Resolution 1718 to condemn North Korea's nuclear test was regarded as a historic development by the US government. The UN

⁶⁵ President Delivers State of the Union Address, available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>. The White House. January 29, 2002, accessed May 30, 2015.

⁶⁶ David E. Sanger, Test follows warning from U.N., October 9, 2006, *New York Times*.

⁶⁷ Fox News, "North Korea Ready to Shut Down Reactor 'Immediately,'" March 20, 2007.

Resolution 1718 specifically “requires all Member States, in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent the procurement of missiles or missile related-items, materials, goods and technology from the DPRK, and the transfer of any financial resources in relation to DPRK’s missile or WMD (Weapons of Mass Destruction) programs.”⁶⁸ However, it remained unclear whether the PRC’s support was a direct result of the BDA sanction or whether the Chinese action was based on its own decision without any external influence. It can be argued that, however, the US financial sanctions alone could not shape North Korea’s nuclear weapons program, for China’s participation and cooperation were necessary.

The BDA sanctions did not represent a simple law enforcement action to crack down on money laundering and counterfeiting activities. Instead, BDA sanctions illustrated how the US employed financial penalties to achieve its foreign policy objectives. Drawing from the North Korea and Chinese reactions to BDA sanctions, we can conclude that BDA-type financial sanctions can inflict some degree of economic pain on the target but its overall effectiveness is short-term and limited. Its effectiveness is inherently constrained by the support of other countries and, in the BDA case, China’s half-hearted cooperation arguably limited such impacts. Most importantly, North Korea appeared to adapt to the US sanctions and shifted its economic transaction base from Macau to Zhuhai. If so, the target state’s adaptability and the cooperation of the third country have become the key factors shaping the effectiveness of the US financial sanctions against North Korea.

Since 2006, the UNSC has passed resolutions 1718 (2006), 1874 (2009), 2087

⁶⁸ UN Resolution 1718, available at <http://www.un.org/News/Press/docs/2006/sc8853.doc.htm>, accessed time: May 29, 2015.

(2013) and 2094 (2013) to sanction North Korea for its nuclear tests and ballistic missile launches. The sanction measures against North Korea adopted in UNSC resolutions follow the standard model of targeted sanctions or smart sanctions which include an arms embargo supplemented with financial and travel restrictions. In addition, in order to further counter North Korea's proliferation activities, expanded sanction measures were adopted to ban the export of luxury goods from member states to North Korea and to freeze the assets of designated persons and entities.

Despite the close but uncomfortable relationship between China and North Korea, China implemented the UNSC sanctions. The reports Chinese government submitted to 1718 Committee⁶⁹ are the primary sources of information to learn China's implementation of UN sanctions in China, albeit that most of the member states' reports are perfunctory.⁷⁰ According to China's two reports on the implementation of resolution 1718 and 1874, after the UNSC had imposed sanctions on North Korea, China's Ministry of Foreign Affairs had issued circulars containing the relevant resolutions and related information to all ministries, all provincial governments, and Hong Kong and Macao Special Administrative Regions, requesting them to implement the resolutions conscientiously in accordance with Chinese laws. As has been discussed in the previous section, China has relied either on a wide range of measures based on pre-existing legislation not specifically designed for the purpose of implementing Security Council decisions, such as trade, customs, financial and criminal laws, or on *ad hoc* legislation for particular sanction situations.

⁶⁹ In order to oversee the relevant sanctions measures and to undertake the tasks set out in paragraph 12 of resolution 1718, a Security Council Committee was established pursuant to resolution 1718 (2006) on 14 October 2006. Paragraph 11 of resolution 1718 (2006), paragraph 22 of resolution 1874 (2009) and paragraph 25 of resolution 2094 (2013) all call upon all member states to report to the Security Council within thirty days of the adoption of this resolution on the steps they have taken with a view to implementing effectively the provisions of paragraph 8 of resolution 1718.

⁷⁰ E. Carisch & L. Rickard-martin, Global threats and the role of United Nations sanctions, International policy analysis, FES New York, 6, available at <http://library.fes.de/pdf-files/iez/08819.pdf>, accessed July 13, 2014.

In the UN resolutions 1718 and 1874, the Security Council imposed two set of measures directly related to North Korea's proliferation activities. First, "an arms embargo, which also encompasses a ban on related financial transactions, technical training or services." Second, "a nuclear, ballistic missiles and other weapons of mass destruction programs-related embargo."

China has adopted and enforced a comprehensive system of export-control laws and regulations to "prevent the direct or indirect supply, sale or transfer to the DPRK" of conventional weapons and weapons of mass destruction. The vessels and aircrafts with Chinese flags are all prohibited to be used to carry out proliferation activities for North Korea.⁷¹ As indicated in the reports to the 1718 committee, these laws and regulations are either "substantially the same as that of established international practice" or "consistent with that outlined in documents S/2006/814, S/2006/815 and S/2006/853." Indeed, China has made considerable progress in counter proliferation through "commitments to multilateral nonproliferation regimes, promulgation of expanded export controls, and strengthened oversight mechanisms" over the past decade.⁷² The concern over China's proliferation activities has largely shifted from the actions of Chinese government to that of individual Chinese companies and citizens because of China's stricter export control measures and greater compliance with international nonproliferation rules and norms.⁷³

The relevant UNSC resolutions against North Korea contain specific financial sanctions and general anti-proliferation measures which must be implemented in

⁷¹ The Ministry of Transport is responsible for monitoring the activities of vessels and aircrafts with Chinese flags, available at <http://www.mot.gov.cn/zizhan/siju/guojisi/tongzhigonggao/>, accessed June 26, 2014.

⁷² Bates Gill and Melissa Murphy, China's evolving approach to counterterrorism, *Harvard Asia Quarterly*, Winter/Spring 2005, 22.

⁷³ *Ibid.*

conjunction with subsequent financial provisions in order to give them effect.⁷⁴ In a guidance issued to its member states, the Financial Action Task Force divided these financial sanctions into five categories: targeted financial sanction, activity-based financial prohibition, vigilance measure, other financial provision, or general anti-proliferation provision.⁷⁵ Targeted financial sanctions mainly focus on assets freeze on designated persons and entities.⁷⁶ The other four categories of financial measures are general anti-proliferation provisions.⁷⁷

China implements assets freeze measures and other general anti-proliferation provisions only with respect to a narrow interpretation of national anti-money-laundering laws and anti-terrorisms laws.⁷⁸ In November 2009, the People's Bank of China (PBC), which is the central bank of China and responsible for implementing financial measures in the UNSC sanctions, established, on its official website, a column entitled "Financial Sanctions and Risk Notifications" under the title of anti-money laundering work. One of the purposes of this move is to provide financial institutions with information on the designated persons and entities which are published by other jurisdictions, international organizations, such as the United Nations or FATF, and

⁷⁴ Financial Actions Task Force, The implementation of financial provisions of United Nations Security Council resolutions to counter the proliferation of weapons of mass destruction, June 2013, 37, available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-UNSCRS-Prolif-WMD.pdf>, accessed June 24, 2014.

⁷⁵ Ibid.

⁷⁶ UNSC resolution 1718 (2006) 8 (d) All Member States shall, in accordance with their respective legal processes, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of the adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons or entities designated by the Committee or by the Security Council as being engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of such persons or entities.

⁷⁷ For detailed information, see The implementation of financial provisions of United Nations Security Council resolutions to counter the proliferation of weapons of mass destruction, 37.

⁷⁸ Global threats and the role of United Nations sanctions, 16.

approved by the Chinese government.⁷⁹ This new column includes: the terrorist sanctions list, the weapons of mass destruction sanctions list, other sanctions and a risk warning. Under the weapons of mass destruction sanctions list, the PBC informs financial institutions and others of, among other things, persons and entities designated by the UNSC against North Korea.⁸⁰ Until the time of this writing, there is no available information about the actions Chinese financial institutions have taken to implement the UN sanctions. It was reported that certain Chinese banks have closed accounts of key North Korean banks and some banks have stopped money transfer to North Korea.⁸¹

UNSC resolution 1718 includes a provision requiring states not to transfer luxury goods to North Korea.⁸² But the responsibility to set forth definition of luxury goods and publish item list is left to member states. Without a broad agreement about the definition of luxury goods, the effectiveness of these sanctions, however, is questionable. Resolutions 1718 (2006) provides that the relevant Committee shall promulgate guidelines which may be necessary to facilitate the implementation of the measures imposed by these resolutions. In March 7, 2013, the UNSC 1718 Committee published a list of additional items and luxury goods pursuant to Committee decision of 16 July 2009 (S/2009/364) and resolution 2094 (2013). For the first time, the committee issued a list of luxury goods. They include: 1. Jewelry: a) jewelry with pearls b) gems c) precious and semi-precious stones (including diamonds, sapphires, rubies,

⁷⁹ FATF, Mutual Evaluation 8th Follow-up Report, China, 17 February 2012, 49.

⁸⁰ Available at <http://www.pbc.gov.cn/publish/fanxiqianju/2837/index.html>, accessed June 23, 2014.

⁸¹ Reuters, Bank of China closes account of key North Korean bank, May 7, 2013, available at <http://www.reuters.com/article/2013/05/07/us-korea-north-china-bank-idUSBRE9460CX20130507>, accessed June 23, 2014; The Asahi Shimbun, 4 major Chinese banks halt money transfers to North Korea, May 10, 2013, available at <http://ajw.asahi.com/article/asia/china/AJ201305100083>, June 23, 2014.

⁸² UNSC resolution 1718 (2006) 8 (a) (iii) Decides that: (a) all Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of: (iii) luxury goods.

and emeralds) d) jewelry of precious metal or of metal clad with precious metal 2. Transportation items, as follows: a) Yachts b) Luxury automobiles (and motor vehicles): automobiles and other motor vehicles to transport people (other than public transport), including station wagons c) Racing cars. On June 25, 2013, in order to assist member states to carry out the luxury goods ban, the 1718 Committee approved and issued guidelines for the implementation of measures regarding luxury goods, in which the sanction committee encourages member States to take into account the following principles and factors concerning the application of controls on “luxury goods” as set forth in resolution 1718 (2006) and 2094 (2013).

China does not publish any such Luxury goods sanctions list. According to the research conducted by the US Congressional Research Service, China does not appear to meaningfully enforce the provision.⁸³ For China, implementation of UNSC resolution does not mean a complete halts of the normal trade between the two countries.⁸⁴ Most of items in the luxury goods list designated by the US and other countries are usually general trade items which are highly demanded in North Korea.⁸⁵

The UNSC resolution 1718 imposed a travel ban on individuals responsible for North Korea’s programs of weapons of mass destruction but no persons were designated at that time.⁸⁶ The travel ban obliges member states to prevent the entry or transit through their territories of individuals (except their own nationals) subject to

⁸³ Congressional Research Service, Implementation of UN Security Council Resolution 1874, October 8, 2010, available at <http://fpc.state.gov/documents/organization/152630.pdf>, p. 2, accessed May 25, 2015.

⁸⁴ Available at <http://finance.china.com.cn/news/20130610/1543656.shtml>, accessed July 2, 2014.

⁸⁵ Mary Beth Nikitin, Mark E. Manyin, Emma Chanlett-Avery, Dick K. Nanto, *North Korea’s Second Nuclear Test: Implications of U.N. Security Council Resolution 1874*, Congressional Research Service, 7-5700, R 40684, April 15, 2010.

⁸⁶ Paragraph 8 (e) of resolution 1718 (2006): All Member States shall take the necessary steps to prevent the entry into or transit through their territories of the persons designated by the Committee or by the Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to the DPRK’s nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, provided that nothing in this paragraph shall oblige a state to refuse its own nationals entry into its territory.

travel restrictions. On July 16, 2009, the 1718 Committee issued a list of five designated individuals to be subject to the measures imposed in paragraph 8 of resolution 1718.⁸⁷ Till March 7, 2013, a total number of twelve individuals are on the travel ban list.⁸⁸

In the report submitted to the 1718 Committee in 2006, China responded that “once the Committee passes the list, the relevant Ministries of the Chinese Government will include those persons on the list of persons to be denied entry into China, in order to prevent persons responsible for, including through supporting or promoting, DPRK policies in relation to the DPRK’s nuclear-related, weapons of mass destruction-related and ballistic-missile related programs, together with their family members, from entry into or transit through Chinese territory.”⁸⁹ In the report submitted to the 1718 Committee on the implementation of Security Council resolution 1874 (2009) on August 3, 2009, shortly after the release of list of individuals subjected to travel ban, the Chinese government responded that “the competent Chinese authorities will also include such persons on the list of persons to be denied entry into China in order to prevent their entry into or transit through its national territory.” In Chinese legal system, the legal basis for the Chinese government to enforce travel ban is the Law of the People’s Republic of China on the Entry and Exit of Aliens and the Ministry of Public Security is responsible for enforcing such sanction measures. In implementing the travel ban on Eastern Turkistan Islamic Movement terrorists, the Ministry of Public Security made public the terrorist list on its website, but not the list of individuals in the North Korea sanctions.⁹⁰

⁸⁷ Press release, Security council committee determines entities, goods, individuals subject to measures imposed on Democratic People’s Republic of Korea by resolutions 1718 (2006), available at <http://www.un.org/News/Press/docs/2009/sc9708.doc.htm>, accessed May 2014.

⁸⁸ Consolidated list of entities and individuals, available at http://www.un.org/sc/committees/1718/pdf/List_Entities_and_Individuals.pdf, accessed June 1, 2014.

⁸⁹ Report of China on implementation of United Nations Security Council resolution 1718 (2006), S/AC.49/2006/21, p. 3;

⁹⁰ Ministry of Public Security, available at <http://www.mps.gov.cn/n16/n983040/n1988498/index.html>, accessed June 1, 2014.

For the past decade, China has made great efforts to enact new laws and amend existing legislation to implement the Security Council resolutions targeting threats from international terrorism and the proliferation of weapons of mass destruction. In contrast to the legal challenge China faced when carrying out the UNSC sanctions against international terrorism, China has a complete and comprehensive legal framework at its disposal to implement the anti-proliferation sanctions. But this does adequacy of legal measures does not mean that there are no obstacles which prevent China from enforcing the UN resolutions to the “letter and spirit of the sanctions.”

While relying on the existing mechanisms, China is able to comply with its international obligations. However, it is evident that a fragmented legal framework for the Security Council resolutions implementation has resulted in important gaps in the enforcement of UN sanctions which has significantly impacted China’s role as a key stakeholder in the settlement of North Korea nuclear crisis.

As a SAR of China, Macao would not have the incentives and needs to join the GWOT if had not for the US sanction on BDA. Macao’s response to the US-led GWOT is significantly shaped by the controversies over North Korea’s nuclear weapons program. Although Macao has implemented the UNSC resolution 1373 as instructed by the Ministry of Foreign Affairs to meet its share of international responsibility, the responses to the US Banco Delta Asia sanction could be argued as Macao’s major exercise of security autonomy in dealing with international security issues. Unlike in China and Hong Kong, 9/11 did not trigger a substantial shift in security definition and priorities in Macao. Macao’s anti-terrorism legislation has less to do with the implementation of the UNSC resolution 1373, and more to do with the US sanction against Banco Delta Asia.

The US designation of Banco Delta Asia prompted a series of reaction in Macao

about its money laundering and terrorism financing legislations. It is of interest to note that the Macao government enacted its first anti-terrorism legislation in 2006 along with other money laundering law and regulations shortly after the Banco Delta Asia sanction. As a result of the US regulatory action, Macao's anti-terrorism efforts experienced a sharp transformation from passive response to active legislation. Macao's rush into anti-terrorism legislation indicates that the SAR government does not have a coordinated approach to terrorism. Nevertheless, it can be argued that such significant change has everything to do with the Macao government's changing perceptions of international terrorism as a security threat, whether it was out of instrumental considerations or coerced into it. Since the US has linked global terrorism and rouge states and Patriot Act Section 311 is the major anti-terrorism legislation, Macao had to enact counter-terrorism laws in addition to the existing anti-money laundering laws.

Although this is in sharp contrast with Hong Kong's proactive approach, Macao's responses to international terrorism are indicative of the territory's own perception and actions to security threats. Specifically, Macao's counter terrorism measures, especially the anti-terrorism legislation passed after the US BDA sanction, are positive perceptions and acceptance of terrorism as a constructed threat by the US. This shows Macao's anti-terrorism efforts are indicative of a different mode of security autonomy from that of Hong Kong.

Although what makes BDA susceptible to the US crackdown might be the Macao bank's poor compliance with money laundering laws and regulations, it should be noted that the lack of such laws and regulations before the BDA sanction is a key factor leading to the US action. In the wake of the BDA sanction, the Macao government took some initial steps toward a more robust counter-terrorism policy. With the passing of anti-terrorism law and administrative regulations, the Macao government

has placed high priority on implementation of the measures required by the UNSC resolution 1373.

Law 3/2006 is the new counter terrorism law. As a special criminal law, Law 3/2006 prevails over ordinary criminal law but ordinary criminal law is still applicable in a subsidiary manner if it is expressly repealed. In the legislative process, the European law, particularly Portuguese law, became leading sources for Macao's legislators to make a comparative assessment of different legal systems on anti-terrorism (Ferreira 2009, 186). Macao has its own distinct definition of terrorism. Article 4 of the *Prevention and Suppression of the Crimes of Terrorism Law* defines terrorism as "two or more people who commit a broad array of harms in order to impede, alter or subvert, by means of violence, the operation of the political, economic or social system" of the Macao Special Administrative Region. This definition of terrorism indicates that the Macao government relies on criminalization of subversion and secession as part of its anti-terrorism efforts. It is undeniable that the inclusion of subversion and secession crimes in anti-terrorism law would undermine the credibility of Macao's autonomy in its counter terrorism efforts because China defines subversion as a form of terrorism (Roach 2015, 43). In addition, Article 3 of Macao's anti-terrorism law uses the "nationality criteria for the "residence criteria (Ferreira 2009, 186)" to establish the principle of extraterritorial jurisdiction towards any acts committed against China. National security crimes dressed up in anti-terrorism law only leads to misconception and confusion about Macao's autonomy in anti-terrorism legislations.

The international community has generally remained positive on Macao's development. In its annual report on Macao, the European Commission praised the Macao SAR government for passing legislation against money laundering and

financing of terrorism. The US Consulate General in Hong Kong and Macao was also pleased to see Macao's significant progresses (Consulate General of the United States Hong Kong & Macau 2012).

Macao passed anti-terrorism legislation out of fear of the US sanctions. Since the BDA sanction, Macao has been more and more yielding to the US pressure to avoid BDA-type of sanctions. This indicates that Macao's reaction to the US-led GWOT is not controlled by China but is heavily influenced by China's attitudes and behavior. This point will be fully demonstrated by the Macao's adoption of asset-freezing measures when China agreed to approve and enforce the strongest sanction against North Korea in 2016. Despite the devastating impact of BDA sanction on Macao, it seems that Macao has no sense of urgency to fully comply with international anti-terrorism requirements.

6.2.3 The UNSC financial sanction against North Korea in 2016 and the passage of asset-freezing legislation

Although Macao has taken appropriate actions to implement the UNSC resolution 1373, it has been long criticized for not having a terrorism asset-freezing mechanism in place. In the 2006 Asia Pacific Group (APG) on Money Laundering (a FATF-style regional body) Mutual Evaluation on Macau, the following deficiencies were noted:

Macao lacked asset freezing provisional measures in cases of suspected money laundering; Macao was unable to respond to foreign requests on freezing orders; Macao lacked legal authorities to effectively implement UN Security Council Resolutions 1267 and 1373 on the financing of terrorism

(Asia/Pacific Group on Money Laundering and Offshore Group of Banking Supervisors (OGBS) 2007).

Macao did not take legislative measures to address its deficiencies on terrorism financing until early 2016 when the US was proposing new sanctions against North Korea in the UNSC with China's support (Charbonneau and Nichols 2016). On February 25, 2016, the Macao government proposed an asset-freezing mechanism to the Legislative Assembly. In introducing the asset-freezing bill to the Legislative assembly, the Secretary for Administration and Justice, Sonia Chan, said,

The Central Government has been extending to Macau the implementation of several United Nations Security Council resolution on tackling terrorism and proliferation of weapons of mass destruction. In addition, in 2007 the Asia Pacific Group and the Group of International Finance Centre Supervisors drafted a Mutual Evaluation Report on the fight against money laundering and terrorism financing in the SAR, which mentions that the SAR lacks a law to enforce asset freeze (Macaomagazine.net 2016).

On March 2, 2016, the UNSC adopted the toughest sanction against North Korea, which imposes new financial sanctions targeting DPRK banks and assets. The resolution broadens the scope of financial sanctions by imposing a freeze on North Korean assets and by banning new financial channels to and from North Korea (Snyder 2016). On March 21, the asset-freezing law was unanimously approved in the Legislative

assembly in its first reading and the law was finally enacted on August 12, 2016 (Macao Daily 2016). This belated law will make Macao's compliance with international counter-terrorism regime to a new level.

Surprisingly enough, the fact that asset-freezing measures assumed new urgency in Macao after so many years of the passage of UNSC resolution 1373 on counter-terrorism gives rise to new evidence to the US influence in Macao's anti-terrorism legislation. Macao government tabled the asset-freezing law to its Legislative Assembly immediately before the UNSC passage of toughest sanction on North Korea is no coincidence. Given the increasing US concern over North Korea's financial activities in Macao, prospects that the US will utilize BDA-type sanctions against Macao appear likely. Past experience with the US financial sanction is relevant to the perception of future risk, let alone China fully approve and support the UN sanction against North Korea. Again, Macao's anti-terrorism legislations may at first seem to be about implementing the UNSC resolution 1373, but they are better understood as responses to the United States financial sanctions against North Korea.

However, although past experience is important in inducing Macao's continued compliance with UN resolutions, it is China's attitude on sanctioning North Korea that matters most. Another possible factor contributing to Macao's asset-freezing law is the pending APG mutual evaluation in 2016. It is possible to argue that Macao's drive to enact asset-freezing law comes more from security concerns than the formally acknowledged reason to implement the UNSC resolutions. This again suggests that Macao's anti-terrorism legislations are reflective of its own perceptions of international security threats.

As a tiny economy relies heavily on casino capitalism, any actions to affect the free flow of capital are catastrophic to Macao. As Jorge Godinho argues, Macao's

financial system is “characterized by the free movement of capital. Although not exactly a tax haven (there is income tax) or an international financial center of well-known reputation, Macao does have attractive aspects (Godinho 2013).” Enacting asset-freezing measures in the name of counter-terrorism can effectively justify and legitimate the government actions.

In fact, before enacting asset-freezing law, Macao has strengthened law enforcement cooperation with Mainland and other countries. In August 2015, Macao and China signed a landmark agreement to significantly increase cooperation and improve the implementation of suggestions by the FATF. The new cooperation agreement took the form of a memorandum of understanding between the Macao Monetary Authority (AMCM) and the People’s Bank of China. Macao’s Financial Intelligence Office (the government office responsible for combating money laundering) signed anti-money laundering cooperation protocols with the U.S. Financial Crimes Enforcement Network, the Russian Federal Financial Monitoring Service, and the Financial Intelligence Unit of the UK. Macao has previously signed protocols of cooperation with Portugal, Hong Kong, South Korea, Indonesia, the Philippines, Thailand, Japan, Malaysia, Singapore, Fiji Islands and Australia (European Commission, High Representative of the Union for Foreign Affairs and Security Policy 2016, 7).

The legislation process of the three anti-terrorism law suggests Macao’s approach to the international securitization of terrorism. Despite Macao’s passive reaction to international terrorism threats, Macao’s anti-terrorism legislations testify its security autonomy at the international level. If judged by Hong Kong’s security autonomy at the international level, Macao’s security autonomy at the international level is low because Macao’s exercise of security autonomy is heavily influenced by

China's attitudes in the US-North Korea disputes over nuclear weapons.

6.3 Security autonomy at the political level and Article 23 legislation

In Macao, national security legislation is probably the only issue that may provide opportunity for Macao to exercise its security autonomy at the political level. Since no such issue as election of Chief Executive and members of Legislative Assembly by universal suffrage in Macao's political development (Mendes 2013, 87), in the Macao case, the examination of security autonomy at the political level only focuses on Article 23 legislation. In 2009, Macao passed its national security law without strong resistance from Macao people. It seems that security legislations in Macao has generated less controversies than those in Hong Kong. The "peacefulness" demonstrated in Macao's national security legislation process is, but another way to show how the SAR responds to Beijing's securitization.

6.3.1 Article 23 of the Macao Basic Law

Despite the existence of a "loyal opposition" in Macao (Yu and Chin 2012), China's national security concerns in Macao follows the same logic as those in Hong Kong. It is the same Article 23 in Hong Kong's Basic Law that is replicated in Macao's Basic Law. That is, Article 23 of the Macao Basic Law has the same wording as in the Hong Kong Basic Law:

The Macao 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.

While Macao was believed to become a “half liberated area (Clayton 2012)” long before China resumed sovereignty in 1999, China’s paranoia about potential threats to Chinese sovereignty in Macao shows no sign of abating. China’s securitization of opposition force is not only valid in Hong Kong, but also in Macao. As a SAR of China under the same OCTS policy, Macao has the same constitutional responsibility as Hong Kong to enact national security law to protect Chinese sovereignty.

Although the wording of Article 23 in Hong Kong and Macao is identical, they have different implications in the two SAR. The logic behind Article 23 in the two SAR is different and this directly leads to different implementations in Hong Kong and Macao. It would not be an exaggeration to argue that Chinese sovereignty is more secure in Macao than in Hong Kong. In fact, as Ming Chan (2003) points out, on one hand, “Chinese sovereignty was never lost over Macau,” and on the other hand, “in sharp contrast to the strains and stresses in Sino–British entanglements over HK, Portugal’s acknowledgement of PRC sovereignty over Macau in 1979 removed the bone of contention and helped pave a relatively quick, smooth, and straight path toward settling Macau’s future (500).” Unlike the fate of Article 23 in Hong Kong, Macao successfully passed national security law in 2009.

6.3.2 Article 23 legislation in 2009

The Macao government originally planned to propose a national security bill to its Legislative Assembly in 2003 (Xinhuanet.com 2002). However, it was not until

October 22, 2008 that the Macao government submitted national security bill to its Legislative Assembly. It is rumored that Hong Kong's failure in Article 23 legislation in 2003 delayed Macao's legislative process. In February 2009, Macao's Legislative Assembly passed national security legislation to implement Article 23 of the Basic Law without generated much controversy.

Macao adopted a minimalist approach to Article 23 legislation. In terms of the number of provisions and their restrictions of civil rights, Macao's national security law is not as draconian as Hong Kong's failed 2003 national security bill. As Suzanne Pepper (2009) described Macao's acceptance of Central Government's securitization as "go first with a toned down "lite" version of the legislation." She believed that the enforcement of the national security law will also be "lite" at first in order to set a good example for Hong Kong and thus seeks to convince Hong Kong that civil liberties will not be restricted (Pepper 2009).

Macao's successful passage of national security law indicates that Beijing's securitization is widely accepted in Macao. In fact, the Macao government made great effort to "sell" its national security bill. For example, in the consultation document, the Macao government use "emotional" words to persuade Macao people to accept national security bill. The consultation document says,

Love to the Motherland and love to Macau, of body and soul, have been a tradition by excellence of the residents of the Region. After the return to the Motherland, the spirit of this love has transformed itself into a driving force in building and developing the Region, and shaping a common notion under which it is for the Macau SAR to perform the mission of

defending national security (Godinho 2008).

Although the statement of patriotism in the Article 23 consultation document was criticized as “emotional (Godinho 2008)”, it reflects, at least, a certain aspect of Macao public attitude towards national security.

It could be argued that it is the Macao’s sharing of Chinese construction of security threat and referent object that led to the passage of Article 23 legislation in Macao because “the audience must agree both that the referent object is a thing of value and that it is (existentially) threatened in the way that the securitizing agent claims (Hayes 2009, 982)” In Macao, Article 23 measures are generally understood as compatible with Macao’s social, legal and political system. The Chinese securitizing move is acceptable to the Macao audience. In addition, Sonny Lo (2009) points out “the size, scale and magnitude of Macau, its population, economic and strategic significance were much less than HK, hence the room for greater flexibility.” Unlike Hong Kong, civil society has not been a significant factor in Macao’s political development. Macao remains a weak civil society with strong government. But there seems to be recognition among Macao government and society that national security issues should transcend political division (Yee 2001, 33). The emergency measures are also acceptable to the public in Macao.

6.4 Implications for Beijing-Macao relations

Article 23 legislation will not eradicate political opposition. After the passage of national security law, the Macao government continues its efforts to educate its youth with Chinese history and culture (Macao Daily 2015). Although local liberals and pro-democracy activists are in the minority and on the defensive, Macao’s apolitical culture

does not make the Central Government lose its control on opposition forces. Since 2014, Macao is experiencing political awakening (Sant 2014). Beijing often warns that Macao should be alert about external interference. The source of such interference is more likely be Hong Kong because Hong Kong has not enacted its own national security law and the opposition forces may cause trouble in Macao.

Macao's national security legislation is considered as a model for Hong Kong. It may serve to reassure Hong Kong people that national security legislation will not encroach on their liberal rights. However reasonable are such arguments, they are ill-founded. As long as Hong Kong's trust in the Communist Party and acceptance of Chinese sovereignty remains low, national security legislation in Hong Kong will not likely to pass in the Legislative Council.

Simon Marsden (2014) explains the role of audience acceptance in the difference between Article 23 legislation in Hong Kong and Macao. Marsden suggests,

The approach of the HKSAR in waiting until support for the PRC has grown before implementing such a law is very different to the Macau SAR, which has the same constitutional status as Hong Kong and a Basic Law in almost identical terms. Article 23 was therefore implemented in the Macau SAR without objection, reflecting much greater support for, or lack of opposition to, the CPG (90).

Simon Young also agrees that “the February 2009 passage of Macau's Article 23 legislation under very different conditions has added to the pressure on Hong Kong to re-introduce proposals (S. Young 2015).” Indeed, the Macao law has set a benchmark

for future Hong Kong legislation. However, the future Hong Kong legislation will not follow the high degree of ambiguity Macao national legislation showed.

If judged by Hong Kong's mode of security autonomy in Article 23 legislation, Macao does not have any autonomy in its Article 23 legislation because Macao completely accepted Central Government securitization without raise any objections. But as is argued earlier in this research, autonomy does not necessarily mean the SAR must be different in every issues with the Central Government. In this sense, if there is no evidence to indicate that Macao was forced by the Central Government to pass national security legislation, Macao do have the autonomy to accept what amounts threats to Chinese sovereignty in Macao and what measures are necessary to take. This is Macao's mode of security autonomy.

Given the already good relations between Beijing and Macao, Macao's exercise of security autonomy in Article 23 legislation only consolidate Beijing-Macao relations. But Beijing-Hong Kong relations may be affected because opposition forces in Hong Kong may use Macao's national security law to blame Central Government for compromise Hong Kong's autonomy because they may think Macao's experience will set a bad example for Hong Kong and the Central Government will use Macao to pressure Hong Kong.

6.5 Summary

In this chapter, Macao is used to compare and contrast Hong Kong's security autonomy. At the international level, Macao exercised security autonomy in a quite different way. Hong Kong reacted to the international securitization of terrorism in a very active manner but Macao in a passive way. Hong Kong has a higher degree of security autonomy than Macao in handling international security issues.

At the political sector, Macao accepted Central Government's securitization. If by the Hong Kong standard that rejection means higher autonomy, Macao does not have security autonomy at political level at all. But if the acceptance of Central Government's securitization is based on Macao's own calculations, then Macao has the same low security autonomy as Hong Kong because Macao also cannot change Central Government's securitization.

It should be noted here that this comparison is not without its limitations. Due to the differences between the two SAR, any comparative attempt is problematic. Therefore, this chapter only serves as a contrast to show the dynamics of Hong Kong's security autonomy. Autonomy does not mean there must be differences in every aspect between Central Government and the SAR and security autonomy is used to defend the interests of SAR. In the Macao case, the close relations between Beijing and Macao have already reduced the chances of conflicts and thus there is fewer opportunities for Macao to exercise security autonomy.

Autonomy does not necessarily exclude compliance or alignment with the decision from Central Government. Autonomy does not always mean there must be difference on every matters with the Central Government (Richard 1997, 85). Autonomy also does not always mean confrontation, rejection. Acceptance and compliance may also become demonstrated features of autonomy. The SAR situates between Western approach to security and Chinese approach to security. How the SAR responds to Article 23 legislations and GWOT depends on how they interpret and accept either mode of security. If a SAR finds western approach to security is more acceptable, then it will become more willing to join the GWOT than taking measures to defend national security. If a SAR finds Chinese approach to security is more important to its situation, then it will put national security as a priority than international

terrorism. Here, Chinese approach to security includes its worldview on national security and terrorism. In counter terrorism policies, China shows a different understanding and has a different agenda. International security issues concern China's national defense and foreign policy. But contrary to the understanding that "even Hong Kong and Macau, two special administrative regions under the 'one country, two systems' arrangement, are required to respect the central government's authority in foreign policy and national security (M. Li 2017)," Hong Kong and Macao has significant autonomy when dealing with international security issues as reflected in their counter-terrorism measures.

Chapter 7 Explaining Hong Kong's Security Autonomy

7.1 Introduction

Case studies in the previous chapters have shown how Hong Kong exercised its security autonomy at societal, political and international levels and the dynamics of Beijing-Hong Kong relations from a security autonomy perspective. A comparative research is also made between Hong Kong and Macao. This chapter explains why Hong Kong exercised its security autonomy. That is, what considerations motivated Hong Kong to exercise its security autonomy? What are Beijing's considerations when Hong Kong exercises its security autonomy? Why are the same issues securitized in Hong Kong but not in Macao? Since this research focuses on how security autonomy has been exercised in Hong Kong, the motivations, considerations, reasons, and logic behind such exercises are only briefly examined in this chapter. Indeed, both securitization theory and security autonomy framework developed in this research aim to show the process of security construction and they are not good at explaining causal mechanisms (Guzzini 2011). The discussions in this chapter could be clues for future research.

The previous chapters have shown that there are constitutional foundations for Hong Kong to exercise its security autonomy. The constitutional foundations can explain why the degree of security autonomy at societal level is higher than that at the political level or the international level. However, such constitutional foundations alone are insufficient to explain why Hong Kong exercises its security autonomy at the three levels. Because under the same constitutional foundations, Macao does not demonstrate the same active exercise of security autonomy as those found in Hong Kong. This

chapter answers the questions raised above based on understandings of Hong Kong's uniqueness and its special considerations and Beijing's strategic considerations. First, Hong Kong's vibrant civil society is vital to the exercise of security autonomy. Second, Hong Kong has its own interests and considerations to decide when to securitize what issues as security threats. Third, Beijing has strategic interests to support or tolerate Hong Kong's exercise of security autonomy. Fourth, a strong Chinese influence in Macao makes the exercise of security autonomy either impossible or insignificant. Admittedly, the factors that can explain Hong Kong's security autonomy are multifold and the factors singled out here are major ones but not all the contributing factors.

7.2 Hong Kong's strong civil society

In the cases discussed at the three levels, it is evident that Hong Kong's strong civil society has played two important roles in the exercise of security autonomy. When the Central Government or Hong Kong government securitize issues, civil society is the major audience. When Hong Kong's interests were under threat and the SAR government chose not to securitize the issue as security threat, civil society took up the role of securitizing actor. As Table 7.1 shows, in the past two decades, civil society has acted as securitizing actor in two cases and audience in the other four cases.

First, as securitizing actor, Hong Kong's civil society can securitize issues as security threats and calls on the SAR government to adopt extraordinary measures. Under the OCTS framework, Hong Kong's "high degree of autonomy" is generally exercised by the SAR government. Viewing from the security autonomy perspective, however, civil society exercises autonomy when the SAR government is unwilling to exercise its autonomy to deal with threats from mainland to Hong Kong society. Under OCTS, it is obvious that Hong Kong government may not be the appropriate

securitizing actor in all cases. In the right of abode case, the Hong Kong government securitized mainland immigrants as security threats to Hong Kong but when Hong Kong society is greatly affected by the Individual Visit Scheme, the Hong Kong government did not make any move to reduce such mainland influence until the outbreak of anti-mainland movement. Similarly, in anti-national education movement, it is the SAR government that introduced the threat to Hong Kong society. Under these two occasions, the Hong Kong civil society took up the role of securitizing actor and constructed mainland visitors and national education curriculum as existential threats to Hong Kong identity. These cases suggest, at least, in Hong Kong, civil society is complementary securitizing actor when the government is not able to securitize threats to its society due to constitutional constraints and influence from Beijing. It is very likely that the SAR government is unprepared for regional integration (Lui 2015, 406) and unprepared for the conflicts emerged from the fast integration process. The civil society's securitization was tolerated because the SAR government also needs an excuse to make adjustments to the integration between Hong Kong and mainland.

In this way, the civil society actually expands the scope of security autonomy Hong Kong can exercise. They are complement to the SAR government's role as securitizing actor. Civil society's role as securitizing actor may not equal to Hong Kong government's role as securitizing actor because civil society has to rely on the government to take exceptional measures to handle the threat they intend to securitize.

Second, as audience, civil society has the freedom to accept or reject government securitizations. Hong Kong's civil society supported the SAR government's securitization of mainland immigrants and securitization of terrorism but rejected Central Government's securitization in Article 23 and NPCSC August 31, 2014 decisions on Hong Kong's constitutional reform. The case studies show that civil

society does not always confront government, they choose to accept or tolerate government securitizations when they find out that government actions meet their expectations. In the right of abode case, particularly, although there was protests when the HKSAR government decided to seek NPCSC interpretation of the Basic Law, the protests were not strong and the protests only lasted for a short time and the government action ultimately won substantial public support (Ku 2001, 260). Hong Kong civil society's rejections of Central Government securitizations are more meaningful than their support for Hong Kong government's securitizations. It is civil society's resistance to Beijing's extraordinary measures that make it possible or strengthen Hong Kong's security autonomy at the political level. Without civil society's strong support, such as the July 1 mass demonstration in 2003 and the "Occupy Central" movement in 2014, pro-democrat politicians may not reject Central Government's securitizations in the Legislative Council in an assertive manner.

Table 7.1 The role of civil society in the exercise of security autonomy

	Audience		Securitizing actor
	Support	Reject	
Right of abode	X		
Anti-terrorism legislation	X		
Article 23 legislation		X	
Anti-mainland movement			X
Anti-national education movement			X
Constitutional reform		X	

Despite the two important roles civil society has played in the exercise of security autonomy, considerations that has motivated Hong Kong's civil society to act in those cases are more complicated than their actions. Securitization is an intersubjective process and in this process, Beijing and Hong Kong government's role and their considerations are also crucial to understand Hong Kong's exercise of security autonomy. Therefore, it is necessary to explore the motivations from both Hong Kong side and Beijing side.

7.3 Hong Kong's considerations

Hong Kong's strong civil society is important but only a strong civil society cannot explain the security autonomy demonstrated at three different levels. At the three levels of engagement between Beijing and Hong Kong, it is evident that Hong Kong has its own considerations. Despite the fast integration trend with mainland, Hong Kong is not a passive recipient of Beijing's ideas and arrangements. This part will discuss Hong Kong's considerations from three aspects, namely, public interest considerations, ideological considerations and pragmatic considerations. It should be noted that this is not an exhaustive list of the possible reasons that motivate Hong Kong to exercise its security autonomy.

7.3.1 Public interest considerations

It seems that there are strong public interest considerations when Hong Kong exercised security autonomy at the societal level than at the political level and international level. For example, in the case of mainland immigrants as a result of *Ng Ka Ling* judgement,

the HKSAR government resorted to NPCSC interpretation of the Basic Law when the judgement generated considerable public interest concern in 1999 (Ling 1999, 8). In this case, the HKSAR government mobilized public support in the name of the “hegemonic values of prosperity and stability that were embodied in the sense of Hong Kong identity (vis-à-vis the mainlanders) (Ku 2008, 57).” The first interpretation of the Basic Law can be argued mainly out of public interest considerations because the 1.67 million new mainland immigrants could destroy the Hong Kong society. At this moment, rule of law and judicial independence have to yield to public interest considerations. In the case of mainland pregnant women giving birth in Hong Kong as a result of *Chung Fung Yuen* judgement, the threat to Hong Kong society is not as disastrous as the situations in *Ng Ka Ling* case. The HKSAR government chose not to seek NPCSC interpretation of Basic Law can also be argued as out of public interest consideration because this time the government puts Hong Kong’s judicial independence as priority. For Hong Kong government and Hong Kong people, the survival of Hong Kong society and judicial independence are all public interest that should be taken into consideration when the government made its decisions. In *Ng Ka Ling* case Hong Kong’s survival is priority but in *Chong Fung Yuen* case, judicial independence seems more important than immigration issues.

The public interest consideration is not only found in the government actions; the civil society also take public interest into consideration when they act. In the right of abode case for foreign domestic helpers, when lawyers from the Civic Party represented foreign domestic helpers in CFA’s judicial review, a Facebook group named “Caring Hong Kong Power” accused the Civic Party for “putting the minority needs of Filipino maids before the broader public interest (Yew and Kwong 2013, 182).” The CFA’s final decision to refuse to grant right of abode to foreign domestic helpers

in 2013 may very likely be made under public interest pressure.

In principle, Hong Kong government's extraordinary measures are taken primarily out of public interest considerations. But under certain circumstances, some measures are taken more as concessions to populism than out of public interest considerations at the first place. The first so-called "populist policy" is the "zero quota" policy for mainland pregnant women giving birth in Hong Kong. Although this policy is the result of concessions made to civil society's securitization of mainland threats, the "zero quota" policy in the end effectively protected Hong Kong public interest by reducing the number of mainland pregnant women to an acceptable level. The second "populist policy" is the restrictions put on the quantity of baby milk formula mainland visitors are allowed to buy for each visit. The two-can-limit policy is definitely for public interest but in this case it can be argued that the SAR government was bowed to populism to defend Hong Kong public interest because it is believed many factors contribute to the shortage of baby milk formula. The third "populist policy" is the changes made to Individual Visit Scheme. It is still debatable whether this tourism policy change will benefit Hong Kong public interest or harm Hong Kong's economic development. But it is clear the policy change in 2015 again shows how Hong Kong government placate populist demands by the possible sacrifice of economic development. In the anti-mainland movement, Hong Kong government's role was negatively portrayed as yielding to populist demands, but not examined in terms of its autonomy in internal issues. The three policies show under the OCTS arrangement Hong Kong government and the Central Government have the flexibility to accommodate Hong Kong public interest considerations even at the expenses of other more valued rules and principles.

7.3.2 Pragmatic motivations

At the societal level, Hong Kong people's pragmatic motivations can explain why they accept government securitizations and support exceptional measures. The pragmatic motivations can also explain why civil society become securitizing actors when there are threats to Hong Kong society from mainland and the SAR government is not a competent actor to securitize such issues as security threats. Pragmatic motivations do not mean Hong Kong people or the civil society do not care about public interest. They may speak security for their own interests or they may speak security in the name of public interest but in most times they act on behalf of their own interests.

First, when the SAR government securitize issues as security threats, the audience is Hong Kong people and they are generally motivated by their pragmatic considerations to accept the government securitization. This pragmatic mindset is best illustrated in Hong Kong people's support for the interpretation of the Basic Law in the right of abode cases. As Kuan Hsin-chi and Lau Siu-kai (2000, 89) point out "the outcome of the right of abode issue sadly epitomizes the fragility of more fundamental values at the expedient mercy of populist, materialistic values in Hong Kong." Sonny Lo argues that most Hong Kong people are pragmatists and they put Hong Kong's societal interest above rule of law and human rights when they are facing the prospect of the influx of 1.67 million mainland immigrants (Lo 2008, 106).

Second, Hong Kong's civil society is motivated more by pragmatic considerations than public interest considerations when they securitize mainland threats. The locust advertisement is a good reflection of Hong Kong people's pragmatic considerations. Hong Kong civil society securitize mainland immigrants, tourists and

students because they fear mainlanders will take away their employment, medical care and educational resources. They construct mainlanders as threats to their survival in order to make their pragmatic considerations elevated to public interest level and then force government to make policy changes. In the context of mainland-Hong Kong economic integration, Hong Kong people's pragmatic considerations may not in line with government policy orientations. Only by invoking security rhetoric can such pragmatic motivations be accepted by the SAR government or even the Central Government.

Such pragmatic considerations may not benefit Hong Kong's rule of law and democracy in the long run. That is, in the mainland-Hong Kong societal conflicts, Hong Kong people mainly concerns their social welfare and living resources even at the expenses of their much valued rule of law and judicial independence. For some Hong Kong people, rule of law and judicial independence are all rhetoric. The core of Hong Kong's "high degree of autonomy" is to safeguard their pragmatic interests. The above mentioned "populist policy" largely is driven by Hong Kong people's pragmatic motivations. Securitization will produce emergency measures and there is a trend to indicate Hong Kong civil society is inclined to construct every mainland issue as threat to Hong Kong society for their pragmatic needs and in the name of public interest. When "populist pragmatism" (Jamison and Eyerman 1994, 7) overrides public interest considerations, it can hardly say Hong Kong's mainland policy is for the public interest of Hong Kong. This trend not only is detrimental to Hong Kong society but also further strains Beijing-Hong Kong relations.

7.3.3 Ideological factors

Strong civil society will not automatically motivate Hong Kong people to securitize

mainland threats and resist Beijing's securitizations despite Hong Kong people's pragmatic considerations. Sometimes, ideology matters. Here, ideological reasons can be discussed from two sides. On one hand, Hong Kong people's distance from Chinese ideology. Ma Ngok (2015, 42) has stressed that few Hong Kong people had "a strong identification with the government of People's Republic of China or the Communist ideology." On the other hand, there is a strong inclination to western liberal ideology among many "liberal-minded Hong Kong intellectuals and professionals (Lo 2008, 43)."

The ideology factor can be found at the political level, for example, in national security legislation in 2003. Although Article 23 only requires instrumental commitment to China's securitization, it is clear that broad ideological agreement is not excluded, albeit not required in the legislative process. Kelly Loper argues, "the inclusion of secession in Article 23, whatever the language used in any provisions ultimately passed in Hong Kong, reflects the Central Government's priorities and essentially introduces, or reinforces, mainland notions of sovereignty in Hong Kong (Loper 2005, 190)." The mainland approach to sovereignty is a reflection of the Community ideology which puts regime survival above all other considerations. Obviously, Hong Kong people will not accept such Community ideology embedded in Article 23 of the Basic Law.

The fact that Hong Kong is more amendable to international securitization of terrorism than Chinese securitization of sedition reflects the power of western influence in Hong Kong and Hong Kong's keen aspiration to continue to be part of western world. As a counterfactual, it could be argued that if the intended national security legislation in 2003 were to protect British interest, not Communist China, there would be fewer objections to the legislation. If Article 23 legislation had protected the national security of the Great Britain and the Queen rather than communist China, it beggars belief to

think that the legislation would still have been shelved as it did simply on the basis of potential human rights violations or other technical issues (Lo 2008, 154).

Ideology factor also manifested in Hong Kong's resistance to national education. Facing two major mainland influences in Hong Kong's schools, Hong Kong parents and students choose to tolerate Putonghua curriculum than National Education curriculum indicates pragmatism prevails if their core interests are not threatened. When Hong Kong government imposed the national education curriculum that aims to integrate Hong Kong identity with Chinese political ideology, they rejected national education curriculum because of their disagreements with the Chinese ideology and values.

In 2014, Hong Kong's fight for universal suffrage in the "Occupy Central" movement shows a stronger ideological commitment to democratic election than democracy movements in the days after 2003 demonstration. Stephan Ortmann (2015) praised the "Umbrella Movement" signifies Hong Kong has departed from simple economic concerns to the "rejection of materialism."

7.4 Beijing's strategic considerations

In explaining why Hong Kong's strong civil society has not turned Hong Kong into a democratic society, Ma Ngok (2007, 199) pointed out the huge power imbalance between Beijing and Hong Kong's civil society is the major obstacle to Hong Kong's democratization. Ma's understanding of "China factor" is convincing in examining civil society's role in democratisation. But in security autonomy, civil society has successfully either securitized mainland threats or resisted Beijing's securitizations. If Ma's power imbalance argument is still valid here, Beijing's concessions to Hong Kong civil society's moves are probably the only reasonable explanation. In addition, the

exercise of security autonomy is an intersubjective process and Hong Kong needs Beijing's explicit or implicit support under certain circumstances.

Long before the establishment of the HKSAR, Deng Xiaoping has expressed his view that Beijing must support the practice of OCTS in Hong Kong. In his meeting with the members of the drafting committee of the Hong Kong Basic Law, Deng has made it clear that "it is the policy of the Central Government that the interests of Hong Kong should not be harmed, and we also hope that nothing will happen in Hong Kong itself that will harm its interests or the interests of the country as a whole (Deng Xiaoping 1987)." Beijing has played various roles in Hong Kong's exercise of security autonomy at the three levels.

It should be noted here that Beijing's bottom line is Hong Kong's political security. That is, Beijing can tolerate Hong Kong's exercise of security autonomy at the societal level and international level, but not the political level. Although Beijing is increasingly incorporating Hong Kong into its national development strategy, such as Five Year Plan and "one belt, one road" strategy, there is no changes to Beijing's focus on Hong Kong. Political governance remains Beijing's priority.⁹¹

7.4.1 Hong Kong's societal stability

Beijing has its own interests to keep Hong Kong's stability and prosperity. This explains why Beijing supported Hong Kong's exceptional measures in some securitizations but not in others. In the right of abode crisis, at the request of the HKSAR government, the NPCSC interpreted the Basic Law to reduce the impact of mass immigration on Hong Kong society although it seems that the NPCSC interpretation of the Hong Kong Basic

⁹¹ See, 阎小骏, 香港治与乱: 2047 的政治想像, 三联书店 (香港) 有限公司, 2015, 220-222. Joint Publishing (H.K.) Co., Ltd.

Law is an encroachment on Hong Kong's autonomy. In this case, Beijing obviously placed Hong Kong's stability and prosperity above respect for Hong Kong's judicial independence when the Central Government agreed to ask for the interpretation on Hong Kong's behalf. Hong Kong SAR government seeking help from the Central Government testified its autonomy. Beijing agreed to interpret the Basic Law shows Beijing's concern over Hong Kong's stability and prosperity. As for the encroachment on Hong Kong's autonomy, Albert Chen (2009, 759) suggests that "in the legal domain, the most controversial act was the reference in 1999 of some provisions of the Basic Law on the right of abode to Beijing for interpretation, but this was again entirely the act of the HK government and not a result of Beijing intervention." Benny Tai (2012, 77) also agrees that "the right of abode controversy did not involve any conflict between the sovereignty and the high degree of autonomy of the HKSAR." In this crisis, Benny Tai (2012, 77) notes, "it was the HKSAR government that opened the back door and invited an interpretation from the SCNPC."

Not every right of abode judgement triggers NPCSC interpretation of the Basic Law and Beijing may not support every interpretation request. In *Chong Fung Yuen* case, Albert Chen (2001, 186) argues that "even though the Beijing side disagreed with the CFA's handling of the matter, it did not intervene to overrule the CFA's interpretation. It exercised self-restraint in the interests of the autonomy of Hong Kong and the Rule of Law therein." Chen's argument is made from a legal perspective. From a political perspective, in Beijing's eyes, the immigration issues caused by *Chong Fung Yuen* case is not serious enough to warrant a second interpretation. Hong Kong government did not securitize *Chong Fung Yuen* case indicates that on one hand the immigration issue has not reach the disastrous level and on the other hand, Beijing may not support a second interpretation of the Basic Law.

Mainland tourists to Hong Kong is another important issue that can affect Hong Kong's stability and prosperity. When Beijing found this policy has caused strong resistance in Hong Kong since the outbreak of the anti-mainland movement, the Central Government modified its tourism policy at the request of the HKSAR government. Beijing's flexibility on the tourism policy may not be a concession to anti-mainland movement or may not necessary for the best interest of Hong Kong people (Lo 2008, 48), but the policy change at least, indicates that Hong Kong's stability and prosperity is Beijing's major concern.

7.4.2 Hong Kong's political stability

Under Hong Kong's executive dominated political system, who governs Hong Kong is vital to Hong Kong's political stability. Beijing has adopted securitization strategy to ensure "patriots" govern Hong Kong. On one hand, Beijing uses Article 23 to target opposition forces. On the other hand, Beijing links universal suffrage with national security to control the direction of Hong Kong's democratization. In both measures, although Beijing uses securitization to justify its intervention into Hong Kong politics, the Central Government let Hong Kong to make the final decision as to the fate of Article 23 and the universal suffrage of Chief Executive. This point can be clearly found in the Article 23 legislation. In 2003, the HKSAR government withdrew the national security bill in the face of strong public resistance and the bill has been shelved since then. Although national security legislation is raised by different people at different time after 2003, there is no sign to indicate that the Central Government in Beijing has agenda to make new legislation to implement Article 23. In the constitutional reform issue, Beijing used securitization strategy to justify its decision on universal suffrage but allowed Hong Kong legislature to make the final decision. In both securitizations,

Hong Kong did play a passive role and all Hong Kong can do is to reject the Central Government's securitizing moves. The outcome of security autonomy however, has generated more political instability than stability. This result may not be what the Central Government had expected, but it in fact maintained the kind of political stability Beijing wants. That is, no change are made to the rules of election of Chief Executive and Hong Kong will continue to be ruled by Beijing-trusted Chief Executive.

Due to significant political, social, legal and cultural differences between mainland and Hong Kong, the logic of security at the political level cannot be simply imposed on Hong Kong. There is some need to argue the cases with Hong Kong people. This is especially true in the national security legislation. If the Central Government centralize the power to enact national security law or implements China's national security law in Hong Kong, Hong Kong may not have security autonomy in Article 23 legislation. Therefore, Hong Kong can exercise security autonomy partly thanks to Beijing's strategic consideration to keep Hong Kong stable, like at the societal level.

But when it comes to the universal suffrage issue, Beijing's securitization logic is different from that of national security legislation. In the constitutional reform case, Beijing aims to use securitization strategy to ensure the method of selection of future Chief Executive does not undermine Chinese sovereignty interests. In this case, Hong Kong's acceptance or rejection of Beijing securitization does not matter too much because Chinese sovereignty will not be existentially threatened in the two situations.

The two cases illustrate that the Central Government has exhibited a tendency to dominate Hong Kong's political development by securitizing destabilizing issues otherwise regarded as acceptable under liberal democracies. The constructed security threats to Chinese sovereignty in the two case studies in this research are different. But, arguably, these two types of threats are connected. The subversive forces are un-patriot

and the un-patriot forces can become subversive. Hong Kong's exercise of security autonomy at the political level may not negatively affect Beijing-Hong Kong relations. In its veto of national security bill and constitutional reform amendment, actions of the pan-democrats in the Legislative Council only amount to passive resistance. They cannot make active moves to realize their agendas. Now that Hong Kong's security autonomy cannot change the course of Hong Kong political development and threaten Chinese sovereignty, the Central Government is willing to let Hong Kong exercise such autonomy on security issues.

7.4.3 Hong Kong's international status

Although the Basic Law has carefully limited Hong Kong's international space to non-sensitive fields, Beijing has to extend such authorizations or endorsement to security issues in the wake of 9/11. China supports Hong Kong's involvement into international security issues for the following reasons. First, Hong Kong's involvement in the GWOT is for the best interest of Hong Kong. As an important international financial center, Hong Kong can proactively protect the integrity of international financial system from being abused by terrorists (Garver 2016, 659-660). Simon Shen (2007, 323) argues "it is basically due to Hong Kong and PRC leaders' consideration that Hong Kong should remain international and open, that Hong Kong should collaborate with the U.S. in implementing measures against terrorism after 9/11." Second, Hong Kong's involvement in the US-led GWOT is for the best interest of Beijing. By allowing Hong Kong to participate in the US-led GWOT, Beijing secured the US designation of Xinjiang East Turkistan Islamic Movement as an international terrorist group (Garver 2016, 660). In this sense, Hong Kong has become a "domestic source of China's foreign policy (Lai 2010)."

7.4.4 From a model for national reunification to an important component of Chinese dream

Hong Kong under the OCTS has been widely regarded as a prototype of Taiwan for national unification (Yuen 2014). Whether unifying Taiwan under the current Hong Kong model or under Zhu Guobin (2012)'s "composite state of China under 'one country, two systems' model, the practice of OCTS in Hong Kong is important for China's national unification drive. It remains unknown how attractive the Hong Kong model is for Taiwan people. The term "a model for Taiwan" itself is problematic because it conveys the meaning that Hong Kong is only used instrumentally by Beijing and the special treatment Hong Kong has only serves to sell the OCTS policy to Taiwan. Thus, Hong Kong people may not feel the need to join China's national unification strategy. In 2012, when Xi Jinping came to power, he used his "Chinese dream" framework to rephrase Hong Kong's role in China's current and future development, including the unification with Taiwan. The White Paper (State Council 2014, 41) points out "continuously enriching and developing the practice of "one country, two systems" in the HKSAR and maintaining long-term prosperity and stability in the region are integral part of the Chinese dream." From the Chinese dream perspective, Hong Kong's dream of western democracy is "incorrect dream" (Nordin 2016, 117). If Hong Kong still dreams its "incorrect dream," Hong Kong's uniqueness features and separateness from mainland may pose great challenges to Xi's "Chinese dream" (Farrer 2014). As Simon Shen (2016, 312) argues, Xi may use his "Chinese dream" strategy to tighten its control over Hong Kong. In the "Chinese dream" era, Hong Kong is expected to play a greater role rather than just a model for Taiwan.

7.5 A strong Chinese influence in Macao

In the Hong Kong case, security autonomy is exercised to handle disagreements between Beijing and Hong Kong on issues at the societal, political and international levels. It can be argued that it is such disagreements that make the exercise of security autonomy necessary and possible. In the Macao case, due to the “state-society partnership” in Macao society and friendly Beijing-Macao relations (Lo 2007, 368), there has been virtually no large-scale mainland-Macao societal conflicts happened since the handover in 1999.

Due to the harmonious relations between Beijing and Macao before and after handover, the security autonomy Macao has exercised demonstrates some different characteristics. Macao does not exercise security autonomy at the societal level because Macao does not view Mainland immigrants, visitors and Beijing’s integration measures as threatening. Instead, Macao’s casino capitalism relies heavily on mainland visitors (Lo 2014, 79). At the political level, Macao has a high acceptance of Chinese sovereignty. The successful passage of national security law in 2009 without met with strong resistance from Macao society fully reveals Macao’s high acceptance of Beijing’s securitization. At the international level, Macao generally follows Beijing’s foreign policy objectives and its role is complementary and its international performance is low profile (Matias 2014, 332).

7.5.1 1966 riots, 1974 Portuguese revolution and a contrast with Hong Kong’s 1967 disturbance

The December 3, 1966 riots in Macao has different political meanings and

consequences to Macao and China. The riots are called 123 incidents in Chinese, not riots. This indicates that the same historical event has received different evaluations under different context. It is generally agreed that the 1966 riots provide the pro-China activists a dominant role in Macao's social, political life and paved the way for smooth relations between the colony and Beijing government (Leung 2010; Chan 2014). Since the 1966 riots, Macao was regarded as a "semi-liberated zone" directly under Chinese influence.

In 1974, the Carnation Revolution broke out in Portugal and the new democratic regime in Lisbon sought to end colonial rule in Macao and Macao was turned into a Chinese territory under Portuguese administration. The 1974 Portuguese revolution also paved the way for diplomatic relations between Beijing and Lisbon and the Sino-Portuguese talks on Macao's handover. Building on the good social and political foundations because of the 1966 riots, the normalized Beijing-Lisbon relations significantly strengthened Beijing's influence in Macao and Macao people's support for China.

Although Hong Kong's 1967 disturbance and Macao's 1966 riots can both be traced back to the spillover of radical politics in 1960 in China, they have completely different impact on the two former colonies. The Macao 1966 riots pushed Macao closer to Chinese rule but the Hong Kong 1967 disturbance drive Hong Kong away from Beijing's influence. They are both turning points in the two colonies' relations with Beijing and they both offer important historical explanations for the different degree of security autonomy exercised in Hong Kong and Macao.

7.5.2 Macao's role in China's relations with Portuguese speaking counties

Beijing's support for Macao's international status principally for enriching and

consolidating China's connections with Lusophone countries. For example, San Tome and Principe are two Portuguese speaking countries with diplomatic ties with Taiwan. Macao's friendly relations with these two countries is believed to serve Beijing's long term foreign policy objectives (Mendes 2014, 229). The Forum for Economic Cooperation and Trade between China and the Portuguese Speaking Countries (Known as Forum Macao) established in 2003 and headquartered in Macao has been a bridge between China and eight Portuguese speaking countries. On October 10 to 12, 2016, Chinese Premier Li Keqiang went to Macao to attend the 5th Ministerial Conference of the Forum Macao. He praised Macao as a place that has successfully implemented the OCTS policy (Fraser 2016). Macao's role in the China-US relations is more complicated. Macao's reluctant anti-terrorism legislation implies that Macao is more in line with Beijing's foreign policy than following the US-led GWOT. Macao's international status under OCTS gives the Central Government more flexibility when handling the United States security concerns over North Korea. One scholar calls Macao's special status in the China-US relations as a "buffer" zone (Hou 2011, 195).

7.6 The role of People's Liberation Army in Hong Kong and Macao

The People's Liberation Army stationed in Hong Kong and Macao is responsible for national defence. The military forces in Hong Kong and Macao will not get involved into SAR internal affairs until they are invited by the SAR governments to help maintain public security and disaster relief. Under the security autonomy framework, military forces in the SAR can be used as emergency measures when Central Government securitize threats to Chinese sovereignty in Hong Kong and Macao. In the past two decades, Central Government has never used PLA in Hong Kong and Macao to safeguard China's sovereignty and security. But this does not mean the presence of

PLA in Hong Kong and Macao is only for symbolic purpose. In fact, during the “Occupy Central Movement” in late 2014, there were rumors that Beijing might use PLA to maintain social order and stability if the protest lost control. In this sense, PLA stationed in Hong Kong and Macao is important deterring force for potential security threats to China and Hong Kong.

7.7 Summary

This chapter briefly reviewed factors that can explain Hong Kong’s exercise of security autonomy. With the benefit of hindsight, this chapter subjectively selected factors that can be viewed as powerful explanations from cases of Hong Kong’s past exercise of security autonomy. The explaining force of the above-mentioned factors may be reduced by new factors in the future development of Beijing-Hong Kong relations. In order to further understand the factors behind Hong Kong’s exercise of security autonomy, one needs to pay closer attention to the political development in Hong Kong.

Chapter 8 Conclusion

8.1 Hong Kong's security autonomy

Building on the seminal securitization theory developed by Barry Buzan, Ole Wæver and Jaap de Wilde of the Copenhagen School, this research proposes the security autonomy framework as a new perspective to understand Beijing-Hong Kong relations under the OCTS arrangement. Security autonomy is the autonomy to securitize issues as security threats to Hong Kong and then take exceptional measures to handle the security threats. Specifically, Hong Kong can exercise its security autonomy either as a securitizing actor to securitize issues as security threats or as audience to respond to other securitizing actor's securitizations. As a securitizing actor, Hong Kong can securitize threats from mainland as security threats to Hong Kong society and adopt extraordinary measures to protect its interests. As audience to Beijing's securitizations, Hong Kong can exercise its security autonomy to resist Beijing's intervention into Hong Kong affairs. Under the security autonomy framework, security threats refer to issues or developments that are securitized as security threats and are responded to with extraordinary measures within the OCTS framework. Therefore, not any threats to Hong Kong will be regarded as security threats. An issue becomes security threat to Hong Kong only when it is constructed by the securitizing actor in Hong Kong as such.

Security autonomy is a special political process under the OCTS framework and it is not specific power existing in the Basic Law. One cannot find it in normal politics, but only in emergency situations. It is exceptional reaction when Hong Kong is under

mainland threat or Central Government intervention into its internal affairs. Security autonomy can be viewed as fluid concept, referring more to a process than to a static power. “Process,” according to Buzan and Little (Buzan and Little 2000, 442), means the interactions that take place among units.

Security autonomy embedded in the “high degree of autonomy” Hong Kong already has. Security autonomy provides a framework for Hong Kong to exercise its legislative autonomy, external autonomy and other autonomy. Security autonomy depends on other autonomy that Hong Kong already enjoys, such as legislative autonomy and external autonomy. Without these important power, Hong Kong cannot exercise security autonomy.

Security autonomy is a dynamic balance of power between Beijing and Hong Kong. It is not a static division of power. It indicates how SAR and Central Government interact under the OCTS formula. Security autonomy is an intersubjective process in which Beijing-Hong Kong relations unfold in a special way. It means Hong Kong cannot manage security threats completely on its own, nor can it exclude the so-called “instruction” or “interference” from Beijing. Instead, this research argues that Hong Kong exercises security autonomy in its interaction with the Central Government when issues are securitized. At least for security autonomy, Hong Kong’s autonomy is not completely “subject to the level of the central leadership’s authorization” as argued in the 2014 White Paper.

The post-handover years have shown that Hong Kong has exercised its security autonomy at the societal level, political level and international level. At the societal level, in the right of abode crisis, anti-mainland movement and anti-national education movement, Hong Kong has securitized threats from mainland to its identity and society and adopted exceptional measures to handle such threats. At the political level, in the

Article 23 legislation controversy and constitutional reform debate, Hong Kong has exercised its security autonomy to resist Central Government's "intervention" into Hong Kong affairs in the name of national security. At the international level, in anti-terrorism legislation, Hong Kong has exercised its security autonomy to respond to international securitization of terrorism and adopted its own anti-terrorism law and policy.

This research examines Hong Kong's security autonomy from the above three levels, but it should be noted that Hong Kong's security autonomy at the three levels is not completely independent from each other; they overlap and are mutual reinforcing. Security autonomy at the societal level can consolidate Hong Kong identity and society and a strengthened Hong Kong identity and society can make Hong Kong more assertive in its resistance to Central Government's intervention through securitization strategy. Security autonomy at the international level can reinforce Hong Kong's already strong international status. This will also give Hong Kong people more courage to resist Beijing's intervention. Security autonomy at the political level collide with Beijing's interests but it will not negatively affect Hong Kong's security autonomy at the societal level and international level.

At the three levels, the degree of Hong Kong's security autonomy varies greatly from level to level. At the societal level, Hong Kong has the highest security autonomy. Under OCTS, Hong Kong's "high degree of autonomy" concentrates on managing its affairs as a society. Since security autonomy relies on other autonomy that Hong Kong already has, Hong Kong at the societal level, theoretically speaking, can construct any threats to its society as security threats and take exceptional measures. But in practice, Hong Kong only securitize issues that have the potential to breakdown Hong Kong society. Apart from Hong Kong's own capacities and considerations, Beijing has the

highest tolerance of Hong Kong's security autonomy at the societal level although some exceptional measures greatly undermine Beijing's integration strategy. At the political level and international level, Hong Kong's security autonomy is low because at both levels, Hong Kong does not have the capacity or incentives to securitize issues as security threats to sovereignty or to higher referent objects due to Hong Kong's limited role in Chinese politics and international politics. Nevertheless, Hong Kong's security autonomy at the political level is still higher than its security autonomy at the international level. At the political level, Hong Kong has the choice to reject Beijing's securitizations. Case studies in this research have testified that Hong Kong's veto power has the potential to reduce the impact of Beijing's interference into Hong Kong affairs but it cannot stop Beijing's further intervention initiatives. In fact, more resistance from Hong Kong side will invite more intervention from Beijing, but security autonomy at the political level can at least provide Hong Kong an option to resist Beijing's interventions. At the international level, in the face of international securitizations, Hong Kong has few options but to accept the US macrosecuritization of terrorism and take appropriate measures to counter terrorism. Although counter-terrorism meets Hong Kong's own policy orientations, Hong Kong as well as Macao, does not have other alternatives. At the international level, Hong Kong's security autonomy is constrained by Beijing and International laws and rules. Taken together, Hong Kong's high degree of security autonomy at the societal level and low security autonomy at the international level neatly fit within the OCTS design.

This research shows that, contrary to the prevailing view that Hong Kong is losing its autonomy under the OCTS framework, Hong Kong has actively exercised its security autonomy in managing society-state conflicts between Hong Kong and Beijing. This research shows that Beijing has strategic interests to keep Hong Kong's autonomy

at work. This can explain why Hong Kong's bottom-up resistance to the so-called Beijing hegemony can succeed. While it is true Beijing has tightened its control over Hong Kong's democratisation, such control in fact has been reduced by Hong Kong's security autonomy. This research demonstrates that it would be more fruitful if Hong Kong's autonomy were understood from a security perspective. This perspective does not concern what kind of autonomy Hong Kong should have but does not have according to the Basic Law. Nor does it concern how the autonomy has been compromised by the Central Government. Instead, the concern is how Hong Kong exercises its security autonomy under the OCTS framework and how such security autonomy has been entrenched during the security construction process.

8.2 Hong Kong has higher security autonomy than Macao

This research focuses on how Hong Kong exercises its security autonomy and how to understand Beijing-Hong Kong relations from a security autonomy perspective. The Macao case is used to compare and contrast the security autonomy Hong Kong has exercised. This is not a strict comparative study because the two SARs differ on many aspects although they are under the same constitutional framework. Hong Kong and Macao are compared at the political level and international level because the two SARs are both required to make security legislations on national security and international security issues. No comparison is made between the two SARs at the societal level because there are not cases in Macao to indicate that Macao has exercised its security autonomy at the societal level. As argued before, the absence of security autonomy at the societal level in Macao implies that there are either no fierce societal conflicts between mainland and Macao or the societal conflicts have been handled in a "peaceful" manner. Security autonomy is only exercised when Hong Kong or Macao society is under threat. If

Macao does not perceive mainland elements in Macao as threat, there is no need to exercise security autonomy. Frequent exercise of security autonomy may not benefit Hong Kong society or Macao society. From this perspective, it can be argued that Hong Kong has higher security autonomy than Macao at the societal level.

At the political level and international level, Hong Kong's security autonomy and Macao's security autonomy are all demonstrated by their security legislations, including their responses to China's national security concerns and international security threats. Their responses to international terrorism originated from the UNSC resolution 1373 in the wake of the 9/11 attacks. Indeed, it can be argued that their reactions to resolution 1373 are in one way or another reaction to the US macrosecuritization of terrorism. The different approaches the two SAR adopted show their different understanding of terrorism threat or different degree of their acceptance of the US securitization of terrorism. In addition, their manner of responses to resolution 1373 and the US securitization fully indicate that they have the security autonomy to decide their own security laws and policies.

At the international level, Hong Kong and Macao display different levels of compliance with international rules and norms. Hong Kong takes a more active approach to counterterrorism than Macao in the wake of 9/11 indicates that the two SAR have different perceptions of terrorism threats. Due to the special constitutional arrangements under the OCTS, there is no unified response to terrorism within China. Furthermore, there is an uneven perception of the threat of terrorism between Hong Kong and Macao. This uneven perception can be found in the implementation of resolution 1373 and in the response to the US-led GWOT. In response to international security threats, Hong Kong and Macao's security autonomy can be evaluated by the distances from China's strategy. Because Hong Kong is more willing to play by

international rules than Macao and Macao is more willing to play by Chinese rules than Hong Kong. Both Hong Kong and Macao exercised security autonomy, but to varying degrees. As is discussed in Chapter 6, Macao's approach to anti-terrorism legislation is closer to China's than Hong Kong and this closeness has significantly reduced Macao's autonomy. In this sense, Macao's security autonomy at the international level is lower than that of Hong Kong. But if there are no evidence to prove that Macao's response to international terrorism was made under China's influence and the manner Macao exercised its security autonomy was mainly out of consideration of its own social, legal and economic situations, one cannot say Macao's security autonomy is low.

At the political level, Hong Kong and Macao responded to Beijing's securitization in a completely different manner. Hong Kong rejected Beijing's securitization and Macao accepted Beijing's securitization years after Hong Kong's rejection. If only judged from the results of their responses to Beijing's securitization, Hong Kong has higher degree of security autonomy than Macao. But the degree of security autonomy Macao can exercise cannot only be evaluated by Hong Kong's decisions on national security legislation. If the acceptance of Beijing's securitization was made based on Macao's own perception of national security threats, one cannot argue Macao has lower security autonomy than Hong Kong. Again, at the political level, the standard is still not clear.

Security autonomy framework concerns the SAR's own considerations when they make their decisions as to whether construct issues as security threats. Their degree of security autonomy cannot be solely judged from the closeness of relations between the SAR and Central Government. Convergence between the Central Government and the SAR may not undermine or reduce the SAR's security autonomy given that security autonomy is usually exercised under emergency situations and under such unexpected

situations the SAR can be motivated by its own survival considerations to exercise security autonomy and Beijing may support the SAR's demands. On the other hand, divergence between the Central Government and the SAR does not imply higher security autonomy in Hong Kong and Macao because the exercise of security autonomy relies on Beijing's support and without such support, the SAR may not effectively deal with security threats.

To sum up, despite the lack of an objective evaluation standard and the subjective nature of security issues, it can be argued Hong Kong still has higher security autonomy than Macao at the three levels examined in this research. Again, it should be noted that the purpose of this research is to use cases to illustrate how Hong Kong and Macao exercise their security autonomy. Comparing their degree of autonomy is necessary but may not be very objective due to the lack of comparable cases and standard.

8.3 Security autonomy as a perspective to understand Beijing-Hong Kong relations

Security autonomy is not only another approach to understand Hong Kong's "high degree of autonomy" under OCTS, but also a new perspective to understand the conflicts in Beijing-Hong Kong relations. In fact, Hong Kong's exercise of security autonomy itself has intensified the tensions between "one country" and "two systems" when interactions between mainland and Hong Kong are securitized. The implications of Hong Kong's security autonomy for Beijing-Hong relations can be discussed at the societal level, political level and international level.

First, at the societal level, Hong Kong can exercise security autonomy to construct issues as threats to Hong Kong society and take necessary measures to defend Hong Kong society. Even such securitization may not be acceptable to Beijing and

Beijing has to support Hong Kong's emergency measures due to its strategic considerations, such as interpretation of the Basic Law in the right of abode crisis and revisions made to the Individual Visit Scheme. Hong Kong's high security autonomy at the societal level and Beijing's tolerance of Hong Kong's demands undoubtedly has given rise to an even stronger Hong Kong identity because Hong Kong mobilizes in the name of its unique identity to deal with mainland threats. A strong Hong Kong identity may lead to more assertiveness in demanding separation from mainland society. Hong Kong's strong security autonomy at the societal level is crucial to preserve Hong Kong's uniqueness. Since the key to the policy of OCTS in Hong Kong is to keep Hong Kong as a society distinct from mainland, Hong Kong's exercise of its security autonomy is good for the practice of OCTS. As long as there are differences between mainland and Hong Kong and there are interactions between the two part of the country, Hong Kong will use its security autonomy at the societal level to protect its interests. Beijing has to tolerate such security autonomy and support Hong Kong's exceptional measures.

Second, Hong Kong's security autonomy at the political level has strained Beijing-Hong Kong relations. It will definitely affect future Beijing-Hong Kong relations if Beijing make no concessions to Hong Kong's democratization. Hong Kong is very likely to exercise its security autonomy to veto future Article 23 legislation and reform proposals to the universal suffrage of Chief Executive and legislators. Since Hong Kong's security autonomy at the political level is a passive power, how the Central Government in Beijing securitize issues in Hong Kong will definitely shape future Beijing-Hong Kong relations. If Beijing cannot tolerate Hong Kong's demand for western-style liberal democracy, Beijing will continue its securitization strategy, and Hong Kong will continue to exercise its security autonomy to reject Beijing's

securitization. But if Beijing can make concessions to Hong Kong's demands for the sake of social stability and prosperity, Hong Kong may not need to exercise its security autonomy to veto Beijing's securitizations. If the disputes over Hong Kong's democratization can be resolved, Hong Kong may also not exercise its security autonomy in Article 23 legislation. However, if Beijing only use the securitization strategy to stall Hong Kong's democratic reform, Hong Kong's exercise of security autonomy gives Beijing a good excuse for not granting Hong Kong the so-called "genuine universal suffrage." In any case, Hong Kong's security autonomy at the political level, though not high enough to change to course of political development in Hong Kong, pose a challenge to Beijing-Hong Kong relations.

Third, at the international level, Hong Kong's security autonomy is weak and the frequency of exercise is low. Beijing is tolerant of Hong Kong's proactive mode of anti-terrorism legislations and Macao's passive anti-terrorism legislations. At least, both SAR's involvement into international security issue proves Beijing's support for the OCTS policy. At the international level, Hong Kong's security autonomy will not affect Beijing-Hong Kong relations negatively. Actually, not many people notice Hong Kong's exercise of security autonomy at the international level.

Fourth, Under the OCTS arrangement, Hong Kong's exercise of security autonomy cannot avoid security dilemma between conflicting interests. Although the conflicts between mainland society and Hong Kong society seem to be increasingly intensified, the potential area that will develop, or has already developed security dilemma is the society-state conflicts between Hong Kong and Beijing. The dynamics of security dilemma between Hong Kong and Beijing, therefore, unfolded in such a different way. Although the measures Hong Kong government has adopted to protect Hong Kong society from mainland influence are different from threats from opposition

force in Hong Kong to Chinese sovereignty, they are sometimes mutual reinforcing. The opposition force can benefit from a strong Hong Kong identity because they also mobilized in the name of identity. That is, the more Hong Kong exercise its security autonomy to protect its interests, the more such measures will consolidate Hong Kong identity. An increasingly strong Hong Kong identity will in turn foster strong demands for democracy. Hong Kong's unceasing quest for western liberal democracy will definitely make the Central Government unlikely to allow true democracy in Hong Kong. As such, a vicious cycle will continue unendingly until a compromise can be reached between Beijing and Hong Kong. The real security dilemma is between opposition forces and Central Government, not between Hong Kong society as a whole and Central Government. But due to the strong popular support for pan-democrats in Hong Kong, it is hard to make a distinction between threats from opposition forces and Hong Kong society as a whole. It seems that Hong Kong's security autonomy has given rise to a security dilemma in Hong Kong-Beijing relations. The more Hong Kong concerns its societal security; the more anti-mainland sentiments will such concerns produce. This will in turn force the Central Government in Beijing to adopt more coercive measures in Hong Kong's constitutional reform. In the end, Hong Kong will feel more threats to its society from mainland and more interference in its democratic reform.

The fact that Hong Kong can exercise security autonomy to defend its core interests fully demonstrates that the "high degree of autonomy" under the OCTS framework is not façade. It is real power authorized by the Central Government. Hong Kong cannot choose their fate, but the SAR can defense and defeat any imposed choice on its head. Whether Hong Kong securitizes mainland threats to its identity, or Central Government securitizes opposition forces or their quest for western liberal democracy

as threats to Chinese sovereignty, or Hong Kong as an audience to the US securitization of terrorism, they are all framed within the inherent tension between “one country” and “two systems.” Hong Kong’s future is not optimistic if Hong Kong strategically exercises its security autonomy. The way Hong Kong exercises its security autonomy in addressing security issues can be argued as an “autonomy-building process (Zapata-Barrero 2012).” Hong Kong’s security autonomy is limited, but not completely determined by Central Government on security issues. The asymmetrical interdependence between China and Hong Kong limits, but does not negate, Hong Kong’s security autonomy.

8.4 Is the “one country, two systems” model a threat to Beijing

The history of past two decades has shown that “one country, two systems” model and its practice in Hong Kong and Macao is a success. Despite the enormous success, there are problems. As has shown in the previous chapters, the practice of “one country, two systems” in Hong Kong is more problematic in Hong Kong than in Macao. Generally speaking, “one country, two systems” model is not a threat to Chinese sovereignty. If the practice of “one country, two systems” is consistent with the Basic Law, neither Hong Kong nor Macao threatens Chinese sovereignty. If the practice of “one country, two systems” in Hong Kong and Macao deviates from the Basic Law, Hong Kong and Macao might be a threat to Beijing. This is especially true after the “Occupy Central Movement” in Hong Kong and the rise of “independence” forces in Hong Kong. The practice of “one country, two systems” in Macao will not threaten Chinese sovereignty due to the good relations between Macao and Beijing.

8.5 Directions for future research

Security autonomy is a new perspective to examine how Hong Kong exercises its autonomy and how Beijing-Hong Kong relations unfold under the OCTS arrangement. This research only studied security autonomy at the societal level, political level and international level. Security autonomy has the potentials to explain security dynamic at other levels. In addition, security autonomy can be applied to the Macao case. This research only touch on two small cases in Macao. Other aspects of Beijing-Macao relations can also be reviewed from a security autonomy perspective. Security autonomy perspective, if fully developed, can be used to observe security relations in other subnational entities. Security autonomy framework is not well developed to explore the motivations and incentives behind actor's securitizations. Further research can add analytical force to this aspect.

Hong Kong's security autonomy is provisional. The prospect of further integration between mainland and Hong Kong will make such autonomy unimportant or even unnecessary. But it is also possible for Hong Kong to enjoy greater security autonomy when the integration process is interrupted or delayed and the central government in Beijing feels the needs to allow greater security autonomy for Hong Kong.

Another important issue is Hong Kong's role in China's "one belt, one road" initiative. Future research should pay attention to the impact of "one belt, one road" on Hong Kong's security autonomy because "one belt, one road" is not only an economic development plan, but also an avenue to expand China's influence in the world.

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