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HUMAN RIGHTS IN HONG KONG – INTERNATIONAL CONTEXT

ABSTRACT Human rights in international relations are defined by the boundaries between individual states and regions, as well as the most important theories of international relations. The assumption of their universal character often finds no reflection in the foreign policy of states, especially the strongest ones. The most important players and theories do not question the existence of human rights as such, however, their role and place in international relations are interpreted differently. Human rights in Hong Kong, the meeting place of the West and Confucianism in the context of globalization, may become the litmus test of the intentions of the world powers and their vision of a World Order in regard to human rights.

Keywords: human rights, World Order, geopolitics

INTRODUCTION

Human rights are an expression of respect for human dignity. At the same time, they are a political concept: they constitute the denominator of the shared values, and their interpretation and hierarchy result from historical and cultural circumstances. Their objective use in foreign policy leads in the long run to a weakening of the purpose for which they were introduced into international relations: strengthening international and global security. Competition between the two strongest powers, the United States and China, poses a contemporary challenge to the security and stability of the World Order. Their attitude to human rights and the role and place of these rights in such an order have become one of the principles that organize this order.

World politics in the context of human rights seems to be focused on Hong Kong, an autonomous region under the rule of China, with a colonial past and dependence on the Western state of Great Britain. Examination of the attitudes of the two most important powers towards human rights implemented on the island, with its specific cultural, social and political context, will allow for extrapolation of the principles guiding China and the United States in East Asia, in other regions of the world and at the global level.

The paper consists of six parts. Methodology of research and conceptual framework give the theoretical basis for further considerations; Hong Kong as a link between the West and East Asia and Human Rights as a tool to maintain influence in Hong Kong are to explain the problem and to verify the hypothesis. The literature of the subject is rich and consists of academic articles, monographs, documents, and international agreements.

METHODOLOGY OF RESEARCH

Human rights are an important reference in any theory of IR. In international relations, a far-reaching simplification is often used, saying that realism relates mainly to power, and liberalism to human rights,¹ and their implementation is closely related to level of democracy and the rule of law. This does not mean that there is no place for human rights in realism; on the contrary, they are one of the elements of the implementation of the state's foreign policy, but in the event of their collision with the state's interests, the latter take precedence. In constructivism, the interests of the state derive from identity and values, and in the light of this, Western states will naturally promote human rights.² China, or Hong Kong, a Confucianist, should emphasize collectivism as well as the regional specificity of the approach to human rights and undermine the assumed universal nature of human rights enumerated in the Universal Declaration of Human Rights.

¹ M. Doyle, *Ways of War and Peace: Realism, Liberalism, and Socialism*, New York 1997, p. 206.

² T. Dunne, M. Hanson, "Human Rights in International Relations", in M. Goodhart (ed.), *Human Rights: Politics and Practice*, Oxford 2009, p. 65.

When talking about human rights, one should also take into account the English School, and in particular its division into pluralists and solidarists. Referring to the international community, the former emphasize that this concept is not the same as the universal community of humanity. States remain separate and sovereign entities, and the differences between them, also in terms of HR interpretation, are a welcome phenomenon. Solidarists, on the other hand, promote the assumption that human rights are universal. They deny that human rights, as a product of Western civilization, are used instrumentally to maintain and strengthen its own domination. On the contrary, because they are equal, they strengthen the position of all states.³

However, when considering the international context of human rights in Hong Kong, realism will be the leading theory on the world map, which is extremely important both geopolitically and geoeconomically. The acceptance of the importance of human rights in international politics and in the liberal order created after World War II results largely from political pragmatism. China does not deny human rights as part of the international landscape, but offers its own interpretation of them. For the United States, human rights are not only a moral value, but are one of the foundations of a world order based on their values. They are also a pillar of international security. This does not mean that the US avoids politicizing them; researchers point out many inconsistencies in the foreign policy of this state and a rather tactical use of human rights for the implementation of its particular and immediate goals.

The theories of international relations in the paper are necessary to consider not only the meaning of human rights in international relations, but also to characterize the environment in which states build their power. For the analysis of the international context of human rights in Hong Kong, the most important are the actions taken by two competing powers: the United States and China. While the former aims to maintain the World Order it has designed, the latter aims to redefine and reconstruct it. Therefore, the relations between them that take place on a global level and focus in Hong Kong as in lens will be considered in terms of the theory of realism and structural realism. The starting point for considerations will be the foreign policy of great powers based mainly on power, which is constituted by their material resources, and the role of values and identity is often criticized. Since states operate in a specific system, their capabilities will depend not only on these resources, but also on the ability to transform the structure of the system, or to change their position in an unchanged system.

CONCEPTUAL FRAMEWORK AND RESEARCH REVIEW

The above considerations may lead to a dichotomous division of the world, in which we are dealing, on the one hand, with the West, represented by the US, and with the Rest of the World, which might be represented by China. The order in this

³ B. Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation*, Cambridge–New York 2004, p. 46.

context would be based not on individual states, but on the powers around which blocks of influence have developed or have been created. Such a structure may resemble the Cold War Order, and the West in such a system will cease to be the center of globalism.⁴ The actions of the USA and China in relation to Hong Kong can be translated through the prism of geopolitics and geoeconomics, as concepts of such geostrategic competition.

Geopolitics is one of the great theories of IR. Mackinder's definition not only launched a geopolitical debate, but provided the core of several of the most important foreign policy concepts in history, including the Doctrine of Containment and unilateralism of the US in the early 2000s.⁵ According to this author, geopolitics is a political process based on the assumption that the world is permanently divided into individual zones, each of which has a different function.⁶ Also the geopolitical concept of Nicholas John Spykman,⁷ the author of the rimland theory, according to which control over this area is a condition of domination in Eurasia, which in turn translates into global hegemony. Both seem to be applicable in international relations, in particular in the search for an explanation of the US and China's policy towards Hong Kong. It combines three elements: geography (the human factor in the form of ethnic relations, location, and access to resources), history (the specificity of political, cultural, and economic relations, as well as the approach to foreign policy) and strategy (goals, means, and consistency of own and the others' national actions).⁸ Geoeconomics is treated as a result of geopolitical development and its extension to international economic relations. Conflicts between states, apart from political goals, began to be concerned with the access to markets, distribution of national and international goods.⁹

The race between the US and China takes place in the conditions of progressing globalization, which some call westernization. Globalization is a process that strengthens the interdependence between states and non-state actors, such as individuals, firms, international corporations, and international organizations, and leads to the strengthening and intensification of relations between them. Relations in the sphere of economy, culture, and politics are intensified as a result of dynamic changes in communication, transport, technology, and the flow of means of production.¹⁰ Globalization seems to mirror the principles characteristic of the West and creates conditions in which Western states have a privileged position. In practice,

⁴ B. Buzan, G. Lawson, "Capitalism and the Emergent World Order", *International Affairs*, vol. 90, no. 1 (2014), p. 71.

⁵ O. Rosenboim, *The Emergence of Globalism: Visions of World Order in Britain and the United States, 1939-1950*, Princeton–Oxford 2017, p. 63.

⁶ H.J. Mackinder, "The Geographical Pivot of History (1904)", *The Geographical Journal*, vol. 170, no. 4 (2004), pp. 298-321.

⁷ N.J. Spykman, *The Geography of the Peace*, New York 1944, p. 43.

⁸ G. Sloan, *Geopolitics, Geography and Strategic History*, Abingdon–New York 2017, p. 5.

⁹ E. Luttwak, *The Endangered American Dream*, New York 1993, p. 400.

¹⁰ B.J. Christensen, C. Kowalczyk, "Introduction to Globalization: Strategies and Effects", in eidem (eds.), *Globalization: Strategies and Effects*, Berlin 2017, pp. 1-2.

non-Western states use the mechanisms of globalization to build their own position. Trade liberalization creates opportunities for each of them. Norms, rules, and institutions accompanying globalization regulate relations not only on a global but also on a regional level.¹¹

Human rights not only represent moral principles, but being built on principles and values, they form the basis of the World Order created under the leadership of the United States after World War II. The World Order can be defined as a reflection of the social order in which we see such a distribution of the components that allows the implementation of the most important values for a given community and at the same time prevents the implementation of those that would be harmful to the order.¹² In the definition of World Order by Kissinger, an advocate of realism in international relations, such principles and values represented by a given entity (power, region, civilization) can be incorporated on a global level. Its implementation would be guaranteed by standards, rules, and institutions or a balance of power at times of crisis.¹³

Human rights are an expression of respect for human dignity. At the same time, they are a political concept; they constitute the denominator of the shared values, and their interpretation and hierarchy result from historical and cultural conditions. Defined universally, they can be found in many documents, including the United Nations Charter and the 1948 Universal Declaration of Human Rights. They are divided into three generations: political and personal, economic, social and cultural, and solidarity ones. They function as norms of international law, and states are obliged to create conditions and mechanisms for their implementation in regard to their citizens.¹⁴ Human rights are also implemented in the perspective of regional concepts, which are thought to complement the universal concept. The Asian concept of human rights differs from the Western one. Moreover, one cannot talk about an Asian civilization, but rather about many of them. According to Samuel Huntington, the societies of East Asia emphasize their own uniqueness and superiority not only in relation to the West, but also in relation to the values of the societies in other parts of the continent.¹⁵

Human rights research in Hong Kong focuses on specific issues, such as corruption and the rights of sexual minorities, but also on Hong Kong as a place where there is acceptance of universal values with a simultaneous attachment to Chinese traditions.

¹¹ J.G. Ikenberry, "State Power and International Institutions: America and the Logic of Economic and Security Multilateralism", in D. Bourantonis, K. Ifantis, P. Tsakonas (eds.), *Multilateralism and Security Institutions in an Era of Globalization*, London–New York 2008, p. 24.

¹² H. Bull, *The Anarchical Society. A Study of Order in World Politics*, Basingstoke–New York 2012, p. 4.

¹³ H. Kissinger, *World Order: Reflections on the Character of Nations and the Course of History*, New York 2014, p. 9.

¹⁴ *Universal Declaration of Human Rights*, United Nations, at <<https://www.un.org/en/universal-declaration-human-rights/>>, 12 September 2019.

¹⁵ S. Huntington, *The Clash of Civilizations and the Remaking of World Order*, London–New Delhi 1996, p. 104.

The problem of human rights in Hong Kong became important especially after June 4, 1989, when mass student demonstrations to express support for their fellow-students in Beijing took place. The human rights issue has become the subject of public debate, mainly in the context of Hong Kong's incorporation into China. Susanne Weigelin-Schwiedrzik¹⁶ points to several factors that made human rights an integral part of the identity of the Hong Kong people. Being first a Chinese city under colonial influences and then an international (global) city under Chinese influence, Western values are easily assimilated, while maintaining strong ties with Chinese culture and tradition, the primacy of the social over the individual. Lack of significant social conflicts and antagonisms as well as homogeneity and focus on getting rich meant that the people of Hong Kong did not pay too much attention to human rights in the past. Eliza Lee¹⁷ notes that autonomy and pluralism do not contradict collective values, they protect the basic community, i.e. the family, from excessive state interference, and she points out that this, and the wrongly dichotomous juxtaposition of Confucianism and the West, is key to understanding the problem.

The author of this paper assumes that human rights in Hong Kong have become part of the world political and economic game that leads either to maintain the existing liberal order or to create a new one in which human rights will play a different role. The analysis is limited to presenting the needs, interests, and goals of the two powers, however, this does not mean that they are the only entities striving for hegemony at the global level.

Basing on the above, the author proposes the following hypotheses:

- I. Hong Kong is the link between the West and East Asia, and due to geopolitical and economic conditions, friction between the United States and China has focused there, which is particularly visible in the perception of human rights.
- II. Human rights are one of the tools of influence in Hong Kong used by both the US and China.

The verification of the above hypotheses requires answers to the following research questions:

1. What is the role of human rights in US global politics (with particular emphasis on Hong Kong)?
2. What role do human rights play in China's world politics (with particular emphasis on Hong Kong)?
3. What are the differences between the Western and East Asian concepts of human rights?
4. How important are the social protests for human rights in Hong Kong for world politics?

¹⁶ S. Weigelin-Schwiedrzik, "Reflections on the Hong Kong Discourse on Human Rights", in R. Ash et al. (eds.), *Hong Kong in Transition. The Handover Years*, Basingstoke–New York 2000, p. 213.

¹⁷ E. Lee, "Human Rights and Non-Western Values", in M.C. Davis (ed.), *Human Rights and Chinese Values*, Hong Kong–Oxford 1995, pp. 83–84.

HONG KONG AS A LINK BETWEEN THE WEST AND EAST ASIA

Hong Kong, along with Taiwan, Singapore, and South Korea, is included in the group of *Asian tigers* – economies that are intensively developing, while rejecting the principles of development rigidly controlled by state. This model did not result from historical and cultural, but geopolitical and geoeconomic conditions. It was more pragmatic than ideological, focused largely on resilience and durability, and did not resemble the Asian and Western versions in a similar degree.¹⁸

In the case of Hong Kong, the US priority is to preserve the autonomy of the region, and for China, it is to prevent foreign influence. Human rights are part of the geopolitical and geoeconomic game, part of the US policy towards China and vice versa. The preservation of the Western hub in this part of Asia is in the interest of the US. Due to the high level of development and welfare of the people of Hong Kong and the place that the region occupies in the global economy, there is no need to defend the human rights of the second generation. This is in line with the American vision of human rights, in which first-generation personal and political rights and freedoms are of utmost importance. China fears the loss of Hong Kong as a result of the actions of a social movement relying on external support. As a hybrid of East and West and at the same time a link between them, the region is attractive to both sides, and the picture of global competition is focused here as in a lens. This is both a threat and a challenge for the two powers.¹⁹

The status of Hong Kong, taken over from Great Britain in 1997, was set out in the Sino-British Joint Declaration and the Basic Law from 1984. In Article 3(2) of this document, the parties agreed that *The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defense affairs which are the responsibilities of the Central People's Government.*²⁰ The human rights arising from this provision are developed in Appendix I to this agreement.²¹ The Basic Law of 1990,²² enacted by China, set up the rules of operation of Hong Kong after its takeover from Great Britain. It guaranteed that the capitalist system and the way of life of its residents would remain unchanged for the next 50 years. Hong Kong's economy has survived the

¹⁸ S.S.C. Tay, "The Asian Model of Development: From Crises to Transformation", in B. Currie-Alder et al. (eds.), *International Development: Ideas, Experience, and Prospects*, Oxford 2014, p. 637.

¹⁹ A. Cheung, "How Hong Kong and Beijing Can Pick Up the Pieces after Months of Tumult", *South China Morning Post*, 13 October 2020, at <https://www.scmp.com/comment/opinion/article/3105134/how-hong-kong-and-beijing-can-pick-pieces-after-months-tumult?utm_content=article&utm_medium=Social&utm_source=Facebook&fbclid=IwAR3iIY1uX-rPI2CbBZAMrm-rDIROZBhWLP3wKKRLX9iifdxLWTDVHJLty-gA#Echobox=1602552222>, 17 October 2020.

²⁰ *Sino-British Joint Declaration on the Question of Hong Kong*, United Nations Treaty Collection, at <<https://treaties.un.org/doc/Publication/UNTS/Volume%201399/v1399.pdf>>, 6 X 2020.

²¹ Ibid.

²² *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, at <<https://www.basiclaw.gov.hk/en/basiclawtext/index.html>>, 7 October 2020.

Asian and global crises unscathed, and the financial sector remains the third strongest globally, after London and New York. It is not only prosperity but cultural development that makes its global citizens take up the fight, aware of their rights.²³

In particular, issues of cultural rights remain in the area of friction between the US and China. The latter took steps to promote Chinese values in schools and universities. Mainland China's economic and social transformations may blur the differences in value, if we assume that globalization is largely westernization. China is trying to control the process of building a network society as well. Policy towards Hong Kong cannot be viewed in isolation from changes in the Global Order. It is part of the US broader strategy, not only towards China but to reduce an imperial overstretch²⁴. This dichotomous and at the same time simplified perception of decisions and actions is applied to China, and to other authoritarian states, depending on their place in US foreign policy. Since 1997, human rights in Hong Kong have guaranteed that this region belongs to the Western world. The rights became a "hostage" of political arrangements and the takeover of the island from Great Britain. The commonality of values is the basis of the globalization of US foreign policy after World War II. Sharing these values by various states was to make the international environment more predictable. The US has rarely fought against a particular state, but rather against hostile values, such as communism, imperialism, which is an element of American exceptionalism. In the case of Hong Kong, the US is not fighting as much against China as for the rule of law and respect for human rights.

By promoting its own vision of the Global Order, China not only undermines the existing liberal system, but also criticizes the Westphalian system. The Chinese model of Global Order, *tianxia*, proposes to eliminate differences between states by accepting them. You should start by looking at the constituent parts (state) from the perspective of the whole (world) and then try to connect them together. What is international should be treated as global.²⁵ *Tianxia* also criticizes democracy, which is perceived as largely based on the wishes of individuals who are manipulated by the election campaign process or by public opinion polls. It is not a suitable way of expressing the will of the people, which should instead be determined by observing social processes. The level at which democracy functions is also important: while it can work as a systemic solution for individual states, it cannot be an organizing principle for the global order. *Tianxia* proposes to create a new order and a universal institution that reflects new values. While Western institutions are built on the levels: individual-community-state, the Chinese proposal is to build on the division: *tianxia*-state-family.²⁶

²³ K.W. Tong, *Playing a Long Game on Hong Kong*, at <<https://www.brookings.edu/articles/playing-a-long-game-on-hong-kong/>>, 7 October 2020.

²⁴ See: P.M. Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000*, London 1989.

²⁵ C. Zhao Yuan, Tingyang 趙汀陽, *A Possible World of All-under-the-Heaven System: The World Order in the Past and for the Future* 天下的當代性：世界秩序的實踐和想像, Beijing 2018, p. 148.

²⁶ W.A. Callahan, "Chinese Vision of World Order: Post-Hegemonic or a New Hegemony", *International Studies Review*, no. 10 (2008), p. 752.

The preview of China's proposed global solution is visible in Hong Kong despite the preservation of a different political and economic system, a strong civil society that was built and established in the times of British dependence, and a very strong social support for democracy and universal human rights, expressed among others in the form of protests within the Umbrella Movement. "One country, two systems" solution seems to be fragile and temporary. Initially the West hoped that human rights and prosperity would spread from Hong Kong to China, but the exact opposite is happening. In the Chinese Communist Party, there is concern that liberal patterns will be readily welcome by the people of mainland China. In the US, there are voices in favor of active support for the Umbrella Movement; a support that should not be only unilateral but multilateral on the part of liberal states. The US Congress in particular is cited as an entity supporting democratic activities both in Hong Kong and in China itself.²⁷

In the United States-Hong Kong Policy Act (1992), the US defined the importance of human rights in this policy in the following words: *the human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong. A fully successful transition in the exercise of sovereignty over Hong Kong must safeguard human rights in and of themselves. Human rights also serve as a basis for Hong Kong's continued economic prosperity.*²⁸ The promotion of democracy and human rights in Hong Kong was to be carried out with the allies involved in the region and belonging to the West: the United Kingdom, Australia, Canada, Japan, and the Republic of Korea, which was repeated in the revised version of the Act in 2019.²⁹ In the recommendations on US-China relations to Congress, it was recommended in the case of Hong Kong, among other things, to amend the 1992 Agreement in such a way as to guarantee the province's independence from China. It was also recommended that members of Congress express their support for human rights such as freedom of expression and the rule of law in meetings with officials, legislators, civil society, and business representatives.³⁰

Hong Kong occupies a strategic place in the US policy not only towards China and the Far East, but also in the context of the changes in the World Order and HR are an important element of this policy. This is confirmed by domestic and international documents that have been concluded or passed by the United States. However,

²⁷ M.P. Lagon, *The Umbrella Movement: A Pivotal Moment for Democracy in Hong Kong* (statement before the Congressional-Executive Commission on China, 2nd Session, 113th Congress, Hearing on *The Future of Democracy in Hong Kong*, 20 November 2014), at <https://cdn.cft.org/sites/default/files/pdf/2014/11/2014_11_20_Lagon%20CECC%20Testimony%20As%20Submitted%20111814.pdf>, 25 February 2021.

²⁸ *United States-Hong Kong Policy Act of 1992*, at <<https://www.govinfo.gov/content/pkg/STAT-UTE-106/pdf/STATUTE-106-Pg1448.pdf>>, 5 October 2020.

²⁹ *Hong Kong Human Rights and Democracy Act of 2019*, at <<https://www.congress.gov/bill/116th-congress/senate-bill/1838/text>>, 13 October 2020.

³⁰ *2019 Report to Congress of the U.S.-China Economic and Security Review Commission (Executive Summary and Recommendations*, One Hundred Sixteenth Congress, First Session, November 2019), at <<https://www.uscc.gov/sites/default/files/2019-11/2019%20Annual%20Report%20to%20Congress.pdf>>, 25 February 2021.

the question remains whether their enforcement is a priority. After the tragic events in Tiananmen Square, the US has made human rights a priority only once. On May 28, 1993, President Clinton made the extension of the most favored nation trade clause with China dependent on the country's progress in human rights. China's negative reaction and the threat of sanctions forced the American leader to withdraw. Interestingly, the Chinese efforts were effective thanks to the support of business circles both in the US and in Hong Kong. The US policy towards Hong Kong is clearly divided into conflicting issues of security and economy on the one hand, and democracy and human rights on the other.³¹ This runs counter to the idea that human rights are for security.

In response to violent events in Hong Kong in fall 2014, Daniel Russel, Assistant Secretary for East Asian and Pacific Affairs of US Department of State, emphasized in the US Senate committee that their bilateral relations are based on three pillars: common values, economic and cultural relations, and interpersonal ties. Apart from the freedoms that are typical for the West, implemented in Hong Kong, the main focus of the speech was economic interests. The region has a receptive, albeit small, market for sales and investments of American companies, a strong position in the Asian financial market, is a member and a loyal partner in such multilateral institutions as APEC and WTO. In line with the aforementioned "one country, two systems" principle, it has commercial and judicial subjectivity separate from China. Despite the lack of a separate foreign and defense policy, it is free to build cooperation with the US in the field of export control, combating terrorism and weapons proliferation, money laundering, and anticorruption measures. The strength of the relationship may also be demonstrated by the intensity of travel, exchange of students, lecturers and journalists.³² An open society and the rule of law is a condition for the continuation of this cooperation, and therefore the US decided to support Hong Kong and the postulates of universal suffrage. Interestingly, American politicians stated that the intended talks should include not only the Chinese and Hong Kong authorities, but also the protest movements. At the same time, allegations that the US participated in initiating the protests were denied.

On October 3, 2020, in an immediate response to mass detentions of protesters in Hong Kong, Morgan Ortagus, the US Department of State spokesperson, stated that the region's stability and development was directly dependent on respect for human rights. Breaking them violates the principle of autonomy.³³ In response, a representative of the Hong Kong government pointed to the need to maintain order, protect citizens and enforce the law, while the United States was accused of applying double standards. It was emphasized that the situation in Hong Kong belonged to the internal affairs of

³¹ R.C. Bush, *Hong Kong in the Shadow of China: Living with the Leviathan*, Washington 2016, pp. 243-75.

³² D.R. Russel, *Evaluating the Impact of the "Umbrella Movement"* (hearing before the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, United States Senate, 3 December 2014), at <<https://2009-2017.state.gov/p/eap/rls/rm/2014/12/234630.htm>>, 13 October 2020.

³³ *On the Arrests of Hong Kong Protestors* (Press Statement of Morgan Ortagus, US Department of State Spokesperson), at <<https://hk.usconsulate.gov/n-2020100301/>>, 14 October 2020.

China. On October 7, the US offered the repressed people the refugee status, which was very badly received in China. Not only the US, but the West as a whole was put to criticism.³⁴ Interestingly, the state that stands up most strongly for human rights in Hong Kong is not the United States, but Canada. Justin Trudeau, its prime minister, criticizes China for coercive diplomacy and disrespect for HR. He announced that he would take leadership among the states that shared this opinion.³⁵

Assuming that human rights are universal and reflect values of all mankind, some differences in their interpretation will exist between the two powers. In particular, civil and political human rights are understood differently, and these differences are due to contrasting cultural backgrounds, not just divergent current policy goals. The US is of the opinion that they are universal in nature, which may, in part, result from American exceptionalism. China, on the other hand, argues that they are regional in nature and should be defined by individual states depending on their level of development, and the use of force in the event of social opposition should be allowed. An additional postulate appears to prioritize individual generations of human rights on two main levels: favoring the economic, social and cultural at the expense of the civil, and of political and collective at the expense of the individual.³⁶

HUMAN RIGHTS AS A TOOL TO MAINTAIN INFLUENCE IN HONG KONG

The West's strongly individualistic concept of human rights has not found understanding in Asia, where more emphasis is placed on collectivism. At the World Conference of Human Rights in Vienna in 1993, according to The Bangkok Declaration³⁷ of the same year, the delegation of Asian states presented its position on the above differences through the mouth of the head of the Chinese delegation, Liu Huaqui. The level of implementation of human rights results from social, political and cultural conditions, history and values. Therefore, the assumption that human rights are universal is wrong. The realization of human rights in Asia depends on the independence, development as well as state sovereignty, and not the other way around; therefore development aid

³⁴ J. Lam, "Hong Kong Government Hits Back at US over Accusations of National Day Repression, Using Police for 'Political Purposes'", *South China Morning Post*, no. 4, October 2020, at <https://www.scmp.com/news/hong-kong/politics/article/3104091/us-condemns-hong-kong-national-day-arrests-and-accuses?fbclid=IwAR07eCNscFZDAqy6XQUKnnV5Vd3d5z6e_g_ReBdtvjWnMnKx-WbBafy3E0>, 5 October 2020.

³⁵ "Canada's Trudeau Hits China on Human Rights, 'Coercive Diplomacy'", *Aljazeera*, 14 October 2020, at <<https://www.aljazeera.com/news/2020/10/14/canadas-trudeau-hits-china-on-human-rights-coercive-diplomacy>>, 17 October 2020.

³⁶ L. Butenhoff, "East Meets West: Human Rights in Hong Kong", in P. Van Ness (ed.), *Debating Human Rights. Critical Essays from the United States and Asia*, New York 2003, p. 104.

³⁷ *The Bangkok Declaration (FINAL DECLARATION OF THE REGIONAL MEETING FOR ASIA OF THE WORLD CONFERENCE ON HUMAN RIGHTS)*, at <<https://www.ru.nl/publish/pages/688605/bangkok-eng.pdf>>, 17 February 2010.

cannot be made dependent on the level of implementation and attitude towards HR. The speech also included a straightforward statement about the superiority of values related to the state and society (community) over those related to the individual, as well as the fear of using human rights for the purposes of violating the principle of sovereignty and their politicization.³⁸

On the other hand, there were many voices in Asia, especially among human rights activists, that criticism of the West and the Western concept of HR, and in particular the accusations of imperialist actions, are only an excuse for the lack of action in this regard by Asian politicians.³⁹ These attitudes are expressed in the 1998 Asian Human Rights Charter, which reflects the universal concept of human rights, presented in such documents as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Historical and cultural conditions exist, but they must not disturb the fundamental principle of human rights, where the very fact of being a human being becomes the source of dignity. At the same time, it was emphasized that the main reason for the lack of HR implementation in Asia is poverty (also in developed countries), and fighting it should be the starting point for building a system for the protection of human dignity. From the point of view of the subject of this paper, one of the most significant provisions in the discussed document concerns the experience of colonialism and the indication of democracy and civil society as an important element in achieving the goal assumed in the document: *the Asian struggle for rights and freedoms has deep historical roots, in the fight against oppression in civil society and the political oppression of colonialism, and subsequently for the establishment or restoration of democracy. The reaffirmation of rights is necessary now more than ever before. Asia is passing through a period of rapid change, which affects social structures, political institutions and the economy. Traditional values are under threat from new forms of development and technologies, as well as political authorities and economic organizations that manage these changes.*⁴⁰

Adopting the Charter in this form was in contradiction with the Bangkok Declaration. Considered the embodiment of Asian values, it was largely pushed through by the Chinese. Importantly, non-governmental organizations participating in the discussion reported the need to treat human rights in a universal, not regional perspective. Chinese intellectuals also support the universal concept.⁴¹ The contemporary debate

³⁸ "Speech by Liu Huaqiu, Head of the Chinese Delegation at the World Conference on Human Rights in Vienna" (15 June 1993), in M.C. Davis, "Human Rights in Asia: China and the Bangkok Declaration", *Buffalo Journal of International Law*, vol. 2, no. 2 (1996), pp. 226-227.

³⁹ S. Chiam, "Asia's Experience in the Quest for a Regional Human Rights Mechanism", in D. Shelton, P.G. Carozza (eds.), *Regional Protection of Human Rights*, vol. 1, New York 2013, p. 98.

⁴⁰ *ASIAN HUMAN RIGHTS CHARTER. A PEOPLES' CHARTER DECLARED IN KWANGJU, SOUTH KOREA ON 17 MAY 1998. On the Occasion of the 50th Anniversary of the Universal Declaration of Human Rights*, at <<https://www.refworld.org/pdfid/452678304.pdf>>, 17 February 2010.

⁴¹ See: *Our Voice: Bangkok NGOs' Declaration on Human Rights: Reports of the Asia Pacific NGO Conference on Human Rights and NGOs' Statements to the Asian Regional Meeting*, Bangkok 1993.

on Asian values is largely related to the colonial past. Those states that have achieved a high level of development are looking for ways to maintain this status for longer. These attempts result in forming innovative links between the principles of capitalism, the state and society. Responsibility and subordination of an individual to the community, the role of family ties as well as respect for law and order are of decisive importance here and are presented in contrast with individualistic and at the same time supposed destructive attitudes dominating in the West. Simultaneously, there is an awareness that development is opening the way to democracy, and that this process would be based on collectivism as a system.⁴²

In Asia, we see with the lowest activity towards ratifying international human rights agreements. China in particular takes the view that these issues are within the scope of each state internal decisions,⁴³ and *the Communist Party of China has been holding high the banner of democracy and human rights*.⁴⁴ It is important to underline China's ambivalence towards international agreements, which is partly based on historical experience. In the 19th century, the Opium Wars and a series of "unequal" treaties, including the Nanking Treaty of 1842 handing over Chinese Hong Kong to Britain, became a cause of distrust of international law. In the People's Republic of China, this distrust has become an instrument of foreign policy and part of the national ideology (especially due to the problem of Taiwan in 1949-71).⁴⁵ The economic situation in China and the level of development compared to 1993, the dates of the Bangkok Declaration and the Vienna Conference, have improved dramatically, which has not translated into a general improvement in the protection of human rights: only certain groups can take advantage of new opportunities. The votes regarding the effectiveness of the so-called 'policy of shaming' are divided. Pressures from outside must go hand in hand with internal pressures.⁴⁶ Hong Kong's human rights may be considered an example of the latter by Beijing.

Tradition does not exclude neither democracy nor human rights in China. In the 20th century, some political rights were recognized for their contribution to building and strengthening national unity. These were not the rights that involve citizens in the decision-making process, but, for example, the freedom of the press that allowed them to fight corruption and thus work for the public good.⁴⁷

⁴² B.K.H.P.S. Kausikan, "An East Asian Approach to Human Rights", *Buffalo Journal of International Law*, vol. 2, no. 2 (1996), p. 278.

⁴³ K. Boyle, "Stock-taking on Human Rights: The World Conference on Human Rights, Vienna 1993", *Political Studies*, no. 43 (1995), p. 85.

⁴⁴ *Human Rights in China* (White Papers of the Government), at <<https://www.fmprc.gov.cn/ce/celt/eng/zt/zfbps/t125236.htm#3>>, 18 February 2021.

⁴⁵ S. Chesterman, "Asia's Ambivalence about International Law", in S. Chesterman, H. Owada, B. Saul (eds.), *The Oxford Handbook of International Law in Asia and the Pacific*, Oxford 2019, p. 21.

⁴⁶ A.M. Wachman, "Does the Diplomacy of Shame Promote Human Rights in China?", *Third World Quarterly*, vol. 22, no. 2 (2001), p. 276.

⁴⁷ D.A. Bell, "The East Asian Challenge to Human Rights: Reflections on an East West Dialogue", *Human Rights Quarterly*, vol. 18, no. 3 (1996), pp. 656-657.

Asian, and especially East Asian, values are often equated with Confucianism (as opposed to South Asia with its long tradition of tolerance and respect).⁴⁸ Confucianism has been presented as the most important element of the Chinese tradition and the starting point for negating human rights in the Western version (foreign and imperial). However, it should be noticed that philosophy itself, especially from the mid-1960s to the mid-1970s, during the Cultural Revolution, met with heated criticism from the authorities. A return to Confucianism only resulted from subsequent liberal aspirations, especially after the events on Tienanmen Square. Its values, especially the demands of harmony and social discipline, were used as an antithesis of personal freedoms and political rights of the first generation.⁴⁹ Joseph Chan⁵⁰ argues that the basic reasons why Confucianism is viewed as a philosophy that contradicts the universal concept of human rights stem more from their interpretation than essence. Thus, the idea of a community based on family ties does not exclude the individualistic character of human rights, as long as this concept is not treated as a synonym of "selfish." Moreover, according to the author, hierarchy and paternalism do not mean total subordination, but rather relations based on *ren*: respect and human dignity. Confucianism assumes that man is a social being and this is the source of his dignity, not the mere fact of being born a human. On the other hand, it does not collide with the fact that people play different roles in society and differ in various ways.

Prof. Wu Teh Yao participated in the work on the Universal Declaration of Human Rights, which is largely an emanation of Western values of the Enlightenment, supporting the building of an order in which human dignity is the basis of political activities in the world. Both visions of human rights are not mutually exclusive, but require dialogue. However, the danger comes from the use of one or the other for authoritarian or neocolonial practices. Confucianism, present in East Asia, functions in the ethical sphere, not competing with such Enlightenment values as competitiveness, empiricism, pragmatism, and rationality, which are best exemplified in Hong Kong.⁵¹ In essence, human rights should serve to protect an individual from state violence, and this protection should not conflict with the principle of sovereignty. The Bangkok Declaration can be viewed in terms of tactical measures of Asian countries instead of a system of human rights protection. It is the result of the politicization of human rights, which Western states, especially the United States, are often accused of.⁵²

⁴⁸ A. Sen, *Human Rights and Asian Values*, New York 1997, pp. 13-14.

⁴⁹ W.T. De Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective*, Cambridge-London 1998, p. 6.

⁵⁰ J. Chan, "A Confucian Perspective on Human Rights for Contemporary China", in J.R. Bauer, D.A. Bell (eds.), *The East Asian Challenge for Human Rights*, Cambridge-New York 1999, pp. 212-237.

⁵¹ T. Wei-Ming, "A Confucian Perspective on Human Right", in S.K. Wong (ed.), *Confucianism, Chinese History and Society*, Singapore 2012, pp. 1-22.

⁵² A. Føllesdal, "Human Rights and Relativism", in A. Føllesdal, T. Pogge (eds.), *Real World Justice: Grounds, Principles, Human Rights Standards and Institutions*, Berlin 2005, p. 282.

Along with globalization, the Fourth Technological Revolution, the emergence of a New Information Order, as well as changes in the World Order in the 21st century, the environment in which human rights are perceived, interpreted and implemented is transforming. The decline in the importance of states in favor of micro-entities⁵³ has far-reaching consequences for HR themselves and for international relations. These changes should be viewed as a challenge rather than a threat. On the one hand, they create opportunities for areas where human rights are not respected and result in the activity of grassroots social movements supported virtually by social media users. At the same time, their massive character, often underestimated by the powers, in the context of the transformation of the World Order may lead to chaos and create conditions for the growing importance of non-transparent non-state entities. Here you can list the Arab Spring, Euromaidan in Ukraine, Sunflower Movement in Taiwan, and the Yellow Umbrella Movement in Hong Kong.⁵⁴ The Umbrella Movement, as a grassroots social movement aimed at fighting for the postulate of the full implementation of universal suffrage in Hong Kong, has gained both local and global support. Thanks to the coverage in social media, democratization postulates, a common identity based on human rights, freedom of speech, and respect for diversity have been heard and supported by citizens all over the world.⁵⁵

Another wave of protests in Hong Kong, launched in March 2019, was triggered by plans to change the Fugitive Offenders Ordinance to legalize extradition to China. The April protests were attended by 130,000 people, the largest number since the 2014 Umbrella Movement for universal suffrage. Despite these numbers, demonstrations did not attract China's attention until June, and there has been a US response since July.⁵⁶ Hong Kong head of administration Carrie Lam announced in August that the extradition treaty would be withdrawn from the vote, but protesters expressed concern that this could be blocked by a pro-Chinese majority in the Legislative Council.⁵⁷ At the same time, during a Regular Press Conference on July 23, 2019 Foreign Ministry Spokesperson Hua Chunying accused the US of inspiring, coordinating and even actively organizing the protests. She also explicitly stated that since Hong Kong belonged to China, Beijing would not tolerate interference in its internal affairs.

⁵³ L. Floridi, *The Fourth Revolution. How the Infosphere is Reshaping Human Reality*, Oxford 2014, pp. 175-177.

⁵⁴ L. Chen, "Introduction", in M.S. McDougal, H.D. Lasswell, L. Chen (eds.), *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity*, Oxford 2018, p. LVIII.

⁵⁵ P.S.N. Lee, C.Y.K. So, L. Leung, "Social Media and Umbrella Movement: Insurgent Public Sphere in Formation", *Chinese Journal of Communication*, vol. 8, no. 4 (2015), p. 372.

⁵⁶ K. Tsung-gan, "Hong Kong 2019 Demonstrations and Arrests", *Medium*, 20 July 2019, at <<https://medium.com/@KongTsungGan/hong-kong-anti-extradition-demonstrations-and-arrests-8079613e5688>>, 14 October 2020.

⁵⁷ H. Chan, "Hong Kong's Carrie Lam Says 'No Voting' on Extradition Bill Withdrawal, but Police Probe Faces Criticism", *Hong Kong Free Press*, 5 September 2019, at <<https://hongkongfp.com/2019/09/05/hong-kongs-carrie-lam-says-no-voting-extradition-bill-withdrawal-police-probe-faces-criticism/>>, 17 October 2020.

There were also harsh words that US should *withdraw its dirty hands from Hong Kong as soon as possible*.⁵⁸

In the opinion of human rights monitoring organizations in the world, Xi Jinping's China is characterized by increasing brutality in combating internal elements acting for respect for human rights throughout the country, not only in Hong Kong. Street protests in many countries, including Algeria, Sudan, Lebanon, Iraq, Bolivia, Russia, and Belarus in 2020, did not receive clear and unequivocal support from the Western states. This attitude seems to confirm the Chinese position that human rights are not only a matter for internal state decisions, but are more of a political tactic than a universal principle.⁵⁹

According to a report by Amnesty International, Hong Kong experienced a sharp decline in respect for human rights in 2019. It mainly concerned the right to assembly and freedom of expression. The authors of the report saw the reasons for this in the attempt to apply the concept of national security adopted in mainland China. The aforementioned Extradition Bill (Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation Bill) would mean the application of Chinese criminal law to the people of Hong Kong. Massive and violent protests were met with police brutality.⁶⁰ Signatories of an open letter to the Hong Kong authorities, sent by independent civil society activists in February 2020, called for compliance with international human rights law and an end to repression of protesters. The letter mentioned the use of torture against, among others, media representatives and independent observers.⁶¹

In the Hong Kong Special Administrative Region, decisions beyond its autonomy are made by the Basic Law Committee, the advisory body of China's most important legislative body: the National People's Congress.⁶² This is a situation typical of authoritarian regimes in which the control mechanisms of the rule of law do not exist or are dysfunctional.⁶³ As a result of the above interpretation of national security applied by China, human rights and their implementation constitute a threat to security rather than its condition as in the liberal order. The events in China provoked protests not only from the US and Western countries, but also the United Nations and a body of experts.

⁵⁸ Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on July 23, 2019, at <https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1682741.shtml>, 5 October 2020.

⁵⁹ Human Rights Watch, *World Report 2020. China's Global Threat to Human Rights*, at <<https://www.hrw.org/world-report/2020/country-chapters/global#d7e5fc>>, 18 February 2021.

⁶⁰ Amnesty International, *Human Rights in Asia-Pacific. Review of 2019*, at <<https://reliefweb.int/sites/reliefweb.int/files/resources/ASA0113542020ENGLISH.PDF>>, 22 February 2021.

⁶¹ *Joint Open Letter – Arrest of Human Rights Monitors in Breach of the Hong Kong Government's International Human Rights Obligations*, 11 February 2020, at <<https://www.forum-asia.org/?p=30946>>, 22 February 2021.

⁶² *The National People's Congress of the People's Republic of China*, at <<http://www.npc.gov.cn/englishnpc/index.shtml>>, 19 February 2021.

⁶³ M.C. Davis, "Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values", *Harvard Human Rights Journal*, no. 11 (1998), pp. 135-136.

The criticism concerns the compliance of the law made by China regarding HKSAR with the International Covenant on Civil and Political Rights. The allegations also concern the lack of specifying which activities threatening national security may be penalized. This applies in particular to terrorist activities and the activities of foreign entities that interfere with Hong Kong's internal affairs. Too broad an understanding of the above may result in limitations of fundamental personal and political rights and freedoms. Experts express outright concern that the National Security Law will harm the rights and activities of civil society organizations, including human rights defenders.⁶⁴ Hong Kong NGOs have also submitted a proposal to revise the provisions of the ICCPR based on the experience of the protests in the Region.⁶⁵ On July 3, 2020, the Office of the High Commissioner for Human Rights (UN Human Rights) expressed concern over a series of arrests of demonstrators. Spokesperson Rupert Colville drew attention to article 29 of the National Security Law, which punishes *collusion with a foreign country or with external elements to endanger national security*.⁶⁶

Entering into a polemic with entities criticizing the above article, the Department of Justice of The Government of the Hong Kong Special Administrative Region cites examples of actions that are subject to penalization, such as the use of violence, participation in hostile activities against China, and disrupting the implementation of HK-SAR policy. The reference to *provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the HKSAR government which is likely to cause serious consequences*⁶⁷ gives the impression that it refers directly to the previously discussed threat to China's influence in Hong Kong more through internal than external elements. China pays special attention to students from China and Hong Kong. It has been noted that those studying at universities in the United States are subject to intimidation and repression and have limited freedom of speech. Control and repression also apply to Internet activity, especially in social media. Public expression of views conflicting with the position of the Chinese Communist Party causes repression,

⁶⁴ *Mandates of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; and the Special Rapporteur on Minority Issues*, at <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25354>>, 22 February 2021.

⁶⁵ *Joint Submission of Hong Kong NGOs on the Revised Draft of the General Comment No. 37 (Right to Peaceful Assembly) of the International Covenant on Civil and Political Rights Prepared by the Rapporteur, Mr. Christof Heyns*, February 2020, at <https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CCPR/GCArticle21/NGO_HongKong.docx&action=default&DefaultItemOpen=1>, 22 February 2021.

⁶⁶ *Press Briefing Note on China / Hong Kong SAR*, Spokesperson for the UN High Commissioner for Human Rights: Rupert Colville, Geneva, 3 July 2020, at <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26033&LangID=E>>, 22 February 2021.

⁶⁷ *By the Secretary for Justice*, Article 29 of National Security Law, at <https://www.doj.gov.hk/en/community_engagement/speeches/20210202_sj1.html>, 22 February 2021.

and China also plans to limit the number of international research projects and the possibility of higher education for its citizens in the US.⁶⁸

CONCLUSIONS

In China's policy towards Hong Kong, we are dealing with a situation where the constructivist assumption that the interests of the state derive from the identity of values have been reversed. Based on its interests, the state has reinterpreted the values, stressing these that are convenient for it. Thus, the split between Asian and Confucian on the one hand and Western and liberal on the other hand has become more dramatic.

The pragmatic foundations of Hong Kong's development gave its inhabitants a space to formulate and articulate needs away from ideological restraints. This is especially true for students to whom trauma of Tiananmen Square has highlighted a sensitivity to human rights as a symbol of the island's freedom. The high level of economic development and the quality of life have strengthened civil society and resulted in a sense of distance and independence. Confucianism in its essence is not seen as contrary to but supportive of human rights. Neither does tradition exclude democracy in East Asia.

China and the USA do politicize human rights because these rights have become the carrier of the vision of the world and of the values on which the World Order has been built or will be rebuilt. The tactical and strategic use of human rights by Western states as well only strengthens the Chinese message that they belong to the sphere of internal and sovereign decisions of each country. China uses this rhetoric not only with regard to the discussed autonomous region of Hong Kong and supplements it with strict control or decomposition of the rule of law mechanisms. The activities of activists and non-governmental organizations working to respect human rights are included in the category of 'external pressure,' which in turn is perceived as a threat to Chinese control over Hong Kong.

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⁶⁸ Congressional-Executive Commission on China. Annual Report 2020, at <<https://www.ecoi.net/en/file/local/2043668/2020+ANNUAL+REPORT+FINAL+1223.pdf>>, 22 February 2021.

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