

(REVISED)

Statement for EU Parliament debate re: censorship in Hong Kong

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20 March 2024

Contagion – exporting self-censorship from Hong Kong

Importance of the Hong Kong art market. Owing to the ease of financial transfers, low tax and customs-free imports Hong Kong is an important centre for the art trade, with significant sales volumes. It also reaches clients in the Chinese market who are otherwise not easily accessed owing to restrictions on the art business in China as well as currency and customs restrictions. It continues to operate as a classic meeting point for trade.

It is however less of a meeting point for cultural exchange and expression of ideas. Restricting and controlling expression has been a major concern of the Hong Kong government since mid-2020. Restrictions were initially undertaken through a combination of existing laws against sedition which had been dormant since the British colonial period, combined with the National Security Law promulgated by the Beijing central government in June 2020. Most recently, a further strengthening of control is being imposed through the enactment of Article 23 to Hong Kong's Basic Law.

Taken together, these laws align Hong Kong more closely with China's comprehensive security approach. These not only prohibit acts of protest but also restrict free expression by criminalizing speech judged to have seditious intent. This includes criticisms deemed to create 'hatred or contempt' for the Chinese system of government, thereby giving **blanket protection not only for government officials but shielding from critique the policies and historical actions of the Chinese Communist Party.** Punishments are being increased and legal safeguards regarding bail and access to legal representation are being diminished.

In the arts, this has initially led to censorship by government, typically carried out in museums, libraries or in public places. Books with 'bad ideologies' and cartoons that mocked the government or Party have already been removed from public libraries and new ones simply won't be bought. Prominent public artworks, such as Jens Galschiøt's 'Pillar of Shame', have been removed and museum collections have been re-hung. Memorials pertaining to Tiananmen or local protests have ceased. There is an ongoing turnover of the personnel in universities and public arts bodies, placing decision-making in the hands of 'patriots.' Any remaining censorship now occurs discreetly behind closed doors, devoid of formal procedures and avenues for appeal. There remains a bit of noise in public when writers in the loyalist press find something to draw attention to, which typically is followed up by police investigation or harassment by government agencies responsible for health and safety, tax or other bureaucratic matters.

The objective of Article 23's stringent measures is to instil a pervasive atmosphere of fear and to internalize censorship throughout the society. Artists in Hong Kong, much like

elsewhere in China, will now refrain from producing works that might attract unwanted attention from authorities. Art fairs, dealers, auctions and collectors will avoid controversial pieces to sidestep potential repercussions. Writers, art critics and researchers will avoid topics that could be interpreted as seditious. Organisations, such as the local branch of International Association of Art Critics (AICA), will not speak up to question acts of censorship for fear of the organisation being banned by the Secretary for Security. **The unclear red lines of what is deemed forbidden will encourage excessive caution**, so that keeping up to date on what is no longer acceptable will require some attention to the changing landscape. The Hong Kong elite will have discreet exchanges, passing along warnings to galleries and auction houses, or drawing their attention to an item in the loyalist press. Clients will also reflect their concerns to dealers and auction houses, as they do not wish to associate with a firm that might create embarrassment for them with either the Hong Kong or Chinese authorities. **It will look like sound business to self-censor; and this can be done without public attention.** Traces of this are already discussed in private circles. For instance, I have recently learned of refusals by auction houses to take on Chinese paintings from the 1990s and later that mock Mao. These were formerly transacted without difficulty.

It is hard for the art market to give up Hong Kong. The government also actively promotes the city as a culture and events hub. To that end they have smoothed the way for the art trade, providing a HK\$15 million grant to the major art fair, Art Basel Hong Kong for 2024. The grant for this and other events are contingent upon organizers ensuring participants comply with national security concerns. As with much self-censorship, it is unclear whether the fair has made any decisions to exclude particular artists or galleries. Galleries that seek to join the fair would understand what to avoid and have the same concern about the consequences of potential violations. In any case, at Art Basel Hong Kong one will not find the kinds of discussions of society, collective memory or political repression that the government wishes to erase. There will be no funny pictures of Xin Jinping.

Awful as this is for free expression in Hong Kong it extends beyond its borders. Article 23 demonises vaguely defined association with 'external forces,' encompassing both governmental and non-governmental entities, and asserts broad extraterritorial jurisdiction. It aims to apply to anyone, regardless of citizenship, who engages in sedition relating to Hong Kong matters in any place in the world. In practice, this will be difficult to enforce, and many countries have suspended extradition treaties with Hong Kong. However, when galleries, museums or auction houses undertake business in Hong Kong their global business will be directly exposed.

Hong Kong's restrictions on free expression are poised to be contagious, entangling other markets. Galleries and auction houses may self-censor their offerings globally to mitigate legal risks in Hong Kong. And as this comes with the financial clout of a major market, it will tend to be accepted as the cost of doing business. Similarly, museums have opportunities for grants and sponsorships in Hong Kong and China, and for sales of merchandise in the Hong Kong and Chinese markets. And while they are already very selective in what they bring to these places they will also be tempted to 'avoid trouble' by consulting with partners. To the extent that the Hong Kong and Chinese authorities are able to vet and control topics of interest, either formally or informally, this has the potential to become routine. They will see this as their privilege. This will also be exacerbated by herd behaviour, and the

appreciation that if one organisation's exhibition causes offence there will always be others to take their place.

Neither private businesses nor museums are legally bound to respect international covenants on human rights and free expression. Concern for these is the responsibility of governments, while museums, arts organisations and businesses will argue that they are helpless, obeying local laws, or acting with respect to local conditions. Corporate codes of conduct are inadequate to address this. Where galleries, museums and auction houses have CRS policies they have typically been drafted with a view to operating in European and American society, with concerns for such matters as inclusion, intersectionality and prohibitions of hate speech, but without the need to articulate basic protection for freedom of expression.

Going forward, our concern must be that in acquiescing to ongoing repression in Hong Kong, art businesses and organisations will cause the global art ecosystem to be undermined, allowing authoritarian influences to distort worldviews. All of us will be the poorer for the consequences.

What can be done? Arts organisations in Europe need to be protected so that they will not be pushed into global self-censorship with Chinese characteristics. Funding and revenues for public institutions should be transparent so that funds from Chinese or Hong Kong entities or businesses can be monitored and do not become a convenient backdoor to censorship. Arts organisations and businesses should also be supported in pushing back requests from Hong Kong and China as regards their activities abroad. At the most basic level, they need to be supported by government and civil society when they argue that they reserve the right to exhibit or sell Hong Kong or Chinese censored art in other markets where it is legally allowed.

This approach is not without hazards. In claiming protection within Europe, this makes use of the 'local interpretation' approach that now prevails in Hong Kong and China as regards human rights. This has the potential to diminish respect for international covenants on human rights to which China is also a signatory. So while insisting on respect for EU law, at the same time one must make the point that this derives from international covenants that are globally applicable, not accepting the Chinese view that human rights are merely whatever is allowed by a local government.

In addition, there should be support for academics and critics who assist in calling for a more complete picture of the art and culture of Hong Kong and China, especially in respect to those topics that discomfort the regimes or involve the work of dissidents.