

Reflections on Hong Kong Issue**The China/Hong Kong Crisis: Toward a Creative Dialogue with
Human Rights at Its Core**

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Certain conditions continue to exist in our society, which must be condemned as vigorously as we condemn riots. But in the final analysis, a riot is the language of the unheard.... Social justice and progress are the absolute guarantors of riot prevention- Rev. Dr. Martin Luther King

Whoever fights monsters should see to it that in the process he does not become a monster. And if you gaze long enough into an abyss, the abyss will gaze back into you. – Frederick Nietzsche

It is not uncommon in regard to United Nations implementation mechanisms, such as the Universal Periodic Review, recommendations by special rapporteurs and monitoring committees for human rights conventions, also referred to as covenants, or international treaties, which a country has ratified to engage in what can be called a “creative dialogue” to move toward the resolution of human rights violations. However, some may argue it is a “scolding” or “lambasting” of a country’s failure to live up to its commitments. A case in point was when I attended the first hearing of the United States of America before the United Nations human rights monitoring committee for the International Convention on Civil and Political Rights (ICCPR) back in 1996, which the USA ratified two years earlier. That document, which has the status of international treaty and according to the US Constitution’s Article 6, commonly referred to as the Supremacy Clause, when ratified shall become “law of the land... and the judges bound thereby.” The committee for that convention had a rather broad reading of that document thus urging *inter alia* (among other things) that hate speech should be raised to the level of an obscenity, the abolishment of the death penalty, and that no child shall live in poverty, all problems which existed at that time, but still exist today. When asked about hate speech in the USA, it responded that indeed hate speech is the “cancer of the soul,” but that the country had a rather liberal and broad interpretation of freedom of speech. Regarding the death penalty, which existed in many states, the US response was that it was up to the states, rather than the federal government to make their own rules in that regard. Regarding childhood poverty, the commission wondered about such a serious omission in its report to the human rights committee. Whereas it may seem that the committee was scolding a disobedient child, it repeatedly thanked the USA for its report and engaging with them in a “creative dialogue,” looking forward to further reports and the progress made on recommendations. It is true that hate speech, the death penalty, and childhood poverty still exist in the USA in 2020, and some would argue about the inefficacy of implementation mechanisms of the UN system. Nevertheless, the UN gave an open forum to engage in discussion and debate, which ultimately is a creative dialogue with independent experts in order to move toward the adherence of fundamental human rights principles, which I

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would like to refer to as the creation of a human rights culture, which can be defined as a “lived awareness” of human rights principles in our minds and hearts and integrated into our everyday lives and thus a country’s socially just policies. Indeed, abiding by human rights standards may seem like a daunting task, but the words of Confucius are especially poignant here: “The wise person keeps on trying, even though he [or she] knows it is useless.”

The China/Hong Kong Crisis: Initial Comments and Etymological Roots

This essay, however, deals with China, more specifically, the China/Hong Kong crisis. The above example was only for illustrative examples of the difficulty of implementing human rights and one that is from my country of origin. The Chinese word for crisis is 危机, meaning “danger” and “opportunity.” Thus, this crisis can either lead into a plummeting further into the abyss of despair and the frustration of human needs or to the heights and the fulfillment of human needs and human potential. Certainly, there appears to be a problem related to the one country two systems approach roughly of “communism with Chinese characteristics” in the mainland and the capitalist legacy of British colonial rule in Hong Kong. Indeed, for example, the poverty rate in the mainland is roughly 2% in 2020 and in Hong Kong is 20%. Furthermore, [the disparity between the rich and the poor](#) in Hong Kong is the greatest since 45 years ago. However, in the final analysis, I do not want to take sides regarding who is right or wrong, here, but simply to illustrate by way of example how United Nations human rights forums can serve as conduits for governmental and civil society’s viewpoints as a preemptive strategy in order that voices are heard and riots are prevented as the quote above by Dr. King illustrates. I understand that protestors in Hong Kong do not like the media portraying their protests as riots. Call the protests and clashes with the police, what you will, but at least in the West one does see bloodshed, such as the alleged sympathizer with mainland China attacked and bleeding at the Hong Kong airport, giving a stark reality to Nietzsche’s quote above that we should be weary of become a monster when fighting perceived monsters. Later, the protestors, however, allowed a medical team to bring the alleged sympathizer to the hospital acknowledging that whatever one’s political opinion he/she still had a basic human right to health care. Thus, there was certainly violence. And whenever there is violence, it is obvious that there is a problem that is not being addressed.

Thus, my argument here is that if we paid more attention to concerns of the international community *vis a vis* the UN implementation mechanisms and publicized these concerns, asking for civil society’s, if not other governments’ feedback, there would be a better chance to prevent violence in the first place. Progress toward meeting those goals also ought to be transparent, not opaque. Whereas it may be fashionable in policy circles to offer the “carrot or the stick” i.e. a reward or punishment to change behavior, probably the best policy instrument is one where “we, the people” have access to the facts and then are able to scrutinize and debate them, make up our own minds and act accordingly. After all, only chosen values endure and one cannot force a human rights culture on anyone. Such a culture must be chosen.

Certainly, these implementation mechanisms are not the “silver bullet” to slay the evil werewolf, so to speak. However, they would be able to provide a good opportunity to move toward socially just policies in the spirit of a creative dialogue. Noteworthy also is that the word “creative” is from the Latin *creare* meaning “to beget, produce,” thus a creative dialogue (from the Greek *dia* [meaning] and *logo* [word], in essence a “flow of meaning”) should produce an outcome, hopefully one that is positive and enduring. That way also, the voices of the unheard will be made visible,

and hopefully listened to, an obvious proactive strategy to prevent violence.

Finally, the word “core” is from the French *coeur* meaning “heart.” The social construct “human rights,” which arose from the ashes of World War II, in large measure after the failures of the Conferences of Evian (1938) and Bermuda (1944) to stop the abuses of Germany’s Third Reich, eventually found its way into the UN Charter, but only after much government reluctance. Attendees at those conferences did not want to bring attention to abuses in their own countries, such as public lynchings in the USA, concentration camps for political dissidents in the Soviet Union, and reports of torture and excessive taxation in Europe’s vast colonial empire. To be sure, government reluctance exists today and certainly governments have an *a la carte* approach to abiding by human rights principles. Yet, after the horrors of World War II, such as its horrific concentration camps and the atomic bombings of Hiroshima and Nagasaki, the UN was formed in 1945, rubber stamping the importance of human rights in the world community, calling for international accountability and which ought to be at the core socially just policies and social actions to achieve them.

The Human Rights Triptych

Before discussing UN implementation mechanisms as pertaining to the China/Hong Kong crisis, mention needs to be made about the Human Rights Triptych. This Triptych consists of the Universal Declaration of Human Rights (UDHR), the authoritative definition of human rights standards at its center; guiding principles, declarations and conventions which elaborate upon the UDHR on the right; and implementation mechanisms on the left, the primary focus of this essay. Briefly, the UDHR, is an historical-philosophical-theological compromise increasingly referred to as *customary international law*, by which all nations must abide. It consists of five crucial notions: (1) human dignity in Article 1, reflecting substantively the Judaic-Christian-Islamic tradition; (2) non-discrimination in Article 2 on the basis of such characteristics as race, gender, national origin, or political opinion integral to those traditions; (3) civil and political rights in Articles 2–21, such as freedoms of speech, the press, worship, and peaceful assembly reminiscent of the Age of Enlightenment; (4) economic, social, and cultural rights, in Articles 22–27 as rights to meaningful and gainful employment, rest and leisure, medical care, security in old age, social protection for the family, special protection for motherhood and children, education, and participation in cultural life, evoking the Age of Industrialization; and (5) solidarity rights in Articles 28–30 calling for a “just social and international order,” intergovernmental cooperation, duties, and limitations of rights, which have given sustenance to rights to peace, a clean environment, humanitarian disaster relief, development, self-determination, global distributive justice, preservation of the common and cultural heritages of humanity, like the oceans, space, and cultural landmarks. China signed it in 1948. That rights are interdependent and indivisible is integral to human rights discourse. What is freedom of speech, after all, to a person who is homeless and lives in a world at war?

On the right there are *inter alia* nine major international conventions, considered also international treaties: Civil and Political Rights (ICCPR); Economic, Social, and Cultural Rights (ICESCR); the Elimination of Discrimination Against Women (CEDAW); the Elimination of All Forms of Racial Discrimination (CERD); the Rights of the Child (CRC); the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); the Rights of Persons with Disabilities (CRPD); the Convention Against Torture (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearances (CED).

Thus, the UDHR urges “special care and assistance” for motherhood and children (Article 25). CEDAW elaborates that such protections “should be accorded to mothers during a reasonable period before and after childbirth ... wherein working mothers should be accorded paid leave or leave with adequate social security benefits” (Article 10). As of July 2020, China has ratified CERD, CEDAW, CRC, CAT, CESCRC and CPD. (In contradistinction the USA has ratified only CERD, CAT, and ICCPR) Thus, just knowing that China has supported the principles of the UDHR and has apparently placed an emphasis upon some sets of rights over others can be grist for discussion and debate, thus a non-violent creative dialogue.

The left panel consists of implementation measures requiring, *inter alia* countries to : (1) file periodic reports, roughly every five years, on progress toward compliance with ratified documents; (2) engage with the Human Rights Council concerning human rights violations vis a vis the Universal Periodic Review roughly every four years; and (3) allow as needed special rapporteurs to comment upon, if not investigate, a particular country’s violations. Similarly, those mechanisms can be fodder for a creative dialogue. For the sake of brevity, if not relevance, I have chosen below to discuss most recent UN human rights documents (2018-2020), making particular note of select concerns regarding Hong Kong and which can serve as a basis for a creative dialogue between governments and civil society in both China and Hong Kong.

A Look at Concluding Observations of China’s Report to the Monitoring Committee to CERD (August 2018)

The monitoring committee began by making the positive statement regarding the situation of Hong Kong, China writing that it “welcomes the community outreach programs aimed at ethnic minorities and the implementation of the Chinese Language Curriculum /Second Language Learning Framework in primary and secondary schools”. Later, however, it lists a number of concerns and recommendations regarding Hong Kong urging China “to amend its domestic laws to expressly define and criminalize all forms of racial discrimination in full conformity with Article 1 of the Convention and expressly prohibit both direct and indirect racial discrimination in all fields of public life, including law enforcement and other government powers.”

The Committee was also concerned about the absence of formal national human rights institutions in China and Hong Kong, China. Whereas there is an Equal Opportunities Commission, the committee expressed concern that it was given a C rating by the Global Alliance of National Human Rights Institutions and recommended independent national human rights institutions with “sufficient structural independence.” It also expressed concern about the lack of comprehensive statistics, surveys and administrative records regarding racial discrimination in public and private life in Hong Kong and the statement of Hong Kong that “racial discrimination is not a prevalent or serious problem there.” It also recommended that Hong Kong provide training sessions for government officials and civil servants, including law enforcement officials on anti-racial discrimination laws. It also expressed concern by reports from Hong Kong of “negative portrayals and hostile statements in traditional and social media targeting ethnic minorities in particular South Asians” and the absence of statistics, administrative records “disaggregated by ethnic origin and national origin of the victims” provided by Hong Kong on sanctions imposed for acts of racist hate speech.

Regarding poverty in Hong Kong the committee expressed concern about the “percentage of ethnic minorities living in poverty has risen in recent years and that the poverty rates of South Asians

overall and Pakistanis specifically are disproportionately high.” It encouraged Hong Kong to continue its poverty reduction programs to “ensure the inclusion of human rights in its people-centered approach to development, leaving no one behind” and in its next report to reveal the “enjoyment of economic, social and cultural rights and the effectiveness of measures taken, including under the National Human Rights Action Plan (2016-2020)”

Regarding education, the committee urged the “smooth integration of non-Chinese speaking students” in Hong into the education system and to ensure that “all ethnicities enjoy their right to inclusive and Chinese-language education,” as well as, “the historical presence and contributions of ethnic minorities” in Hong Kong. It also noted how foreign domestic workers, are especially vulnerable to abuse, particularly noting the “live in requirement.” It recommended the monitoring of their employment and living conditions and their access to education and affordable health care. Regarding employment, there was concern that ethnic minorities in Hong Kong “face discrimination in job advertisements and recruitment processes” urging Hong Kong to “prevent, detect and where appropriate to sanction racial discrimination” in that regard.

Regarding trafficking in persons, the committee expressed concern of a “comprehensive law criminalizing all forms of trafficking” and... “the low number of prosecutions and convictions for trafficking in persons to or from Hong Kong.” It also expressed concern that in Hong Kong does not adequately address refugee and asylum concerns urging Hong Kong to adopt comprehensive laws on refugee status in conformity with the 1951 Convention relating to the Status of Refugees.

Finally, the committee recommended that China and Hong Kong increase its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination.

Recommendations under the [Universal Periodic Review\(UPR\) for China](#), as Pertaining to Hong Kong (March 2019)

The UPR process is somewhat different from the monitoring committees for ratified conventions. In this case, as mentioned all countries who are members of the United Nations must go before the Human Rights Council roughly every four years and any country can provide input into a country’s report. In this section, I will make mention of the country providing input, its recommendation, and China’s “position,” whether it supports it or simply notes it. All recommendations relate particularly to what is called here the “Special Administrative Region” (SAR) of Hong Kong.

Country	Making Recommendation	Recommendation	China’s Response
Croatia		Hong Kong introduce internal legislation to implement the Convention on the Rights of the Child	Supported
France		Remove obstacles to freedom of information on the Internet, in particular for human rights defenders	Supported
Australia		Uphold the rights, freedoms and rule of law embodied in the one country, two systems framework	Supported
Canada		Ensure the right of Hong Kong people to take part in government without distinction of any kind	Supported
Philippines		Enhance monitoring of the implementation of the Standard	Supported

		Employment Contract, particularly for migrant domestic workers	
Niger,	the	Consider ratifying the International Convention on the	Noted
Philippines,	and	Protection of the Rights of All Migrant Workers and	
Indonesia		Members of Their Families and establishing a national human rights institution in accordance with the Paris Principles and including for Hong Kong	

Statement by UN Experts, Consisting Largely of Special Rapporteurs Calling for Decisive Measures to Protect Fundamental Freedoms in Hong Kong (2020, June 26)

This statement below obviously came after many of the protests beginning in the summer of 2019 came to a head as the summer of 2020 approached. Thus, it is not necessarily a proactive measure as I had argued some of the other UN implementation measures were. However, getting the word out that human rights violations in Hong Kong (SAR) are occurring, exacerbated perhaps by the complications of COVID-19, let alone the National Security Act might, nevertheless, help prevent the violence from spiraling even further out of control. This group of UN experts thus, “denounced the repression of protest and democracy advocacy in Hong Kong Special Administrative Region (SAR), impunity for excessive use of force by police, the alleged use of chemical agents against protesters, the alleged sexual harassment and assault of women protesters in police stations and the alleged harassment of health care workers.” They also expressed worry about “anti-terrorism and sedition laws applicable in Hong Kong” Another concern was the decision to draft a national security law for Hong Kong “without meaningful consultation with the people of Hong Kong -which would if adopted, violate China’s international legal obligations and impose severe restrictions on civil and political rights in the autonomous regions.... [and] would introduce poorly defined crimes that would easily be subject to abuse and repression.”

That National Security Law, which came into effect, on July 1 appears to have realized those experts’ concerns undermining “the right to a fair trial and presage a sharp rise in arbitrary detention and prosecution of peaceful human rights defenders” [as well as undermining] “the ability of businesses operating in Hong Kong to discharge their responsibility to respect human rights in line with the UN Guiding Principles on Business and Human Rights.”

They concluded by urging the Human Rights Council to act with a “sense of urgency,” such as a “special session to evaluate the range of violations indicated in this statement” and an “impartial and independent UN mechanism... to closely monitor, analyze and report annually on the human rights situation in China, particularly in view of the urgency of the situation in Hong Kong.”

Conclusion: A Call for Humility

I would like to conclude by saying that whereas the crisis (the danger and opportunity it poses) in China/Hong Kong is a serious one, it is necessary for countries to have humility when calling another country to the floor for human rights violations. In my own country, the USA, for example, the recent killing of George Floyd and numerous other African and Native Americans in instances of police brutality, to mention only a couple of examples, illustrates that modern day public lynchings are still a reality. Furthermore, if a fundamental human right is the right to life, the USA with its patchwork of medical facilities has “succeeded” in having the highest rate of victims of the Coronavirus in the world. No country is perfect and no one has a monopoly on truth. The best hope,

however, is to engage in a creative dialogue with each other cognizant of our weaknesses and strengths and the UN can provide hope and an open forum for doing so. Perhaps Matthew 7:3 sums the need for humility quite well to “examine the log in one’s own eye, before plucking the speck from another.”

Reference:

Wronka, J. (2017). [*Human rights and social justice: Social action and service for the helping and health professions*](#). (2nd ed.). Los Angeles: Sage.