

UNITED NATIONS  NATIONS UNIES

Options for Action on **Hong Kong** at the United Nations: A Briefing

OPTIONS FOR ACTION ON HONG KONG AT THE UNITED NATIONS

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EXECUTIVE SUMMARY

Over recent years, and especially since the imposition of the draconian National Security Law on Hong Kong, human rights, basic freedoms, the rule of law and autonomy have been dismantled in Hong Kong, in violation of an international treaty, the Sino-British Joint Declaration, which is registered at the United Nations, and in breach of Hong Kong's own mini-constitution, the Basic Law.

It is vital that the international community closely monitor developments in Hong Kong and pursue mechanisms to hold the government of the People's Republic of China (PRC) and the Hong Kong Special Administrative Region (SAR) to account. While governments may take some unilateral actions, such as providing life boat schemes to assist Hong Kongers needing or wishing to leave Hong Kong, or imposing sanctions, there is a need for a coordinated, multilateral international response, particularly to protect the international rules-based system.

There are various arenas and fora through which coordinated multilateral actions can be taken. The G7, coordinated action among members of the “Five Eyes” security and intelligence alliance, and the “Summit of Democracies” initiated by US President Joe Biden all provide opportunities to address the situation in Hong Kong, and several of these alliances have already done so. But one of the most important institutions which offers a range of mechanisms is the United Nations.

In 2024, China’s human rights record will be subjected to the UN Human Rights Council’s ‘Universal Periodic Review’. Ahead of that process, taking into consideration other mechanisms that could be deployed within the UN, this briefing provides an introduction to the options, for activists and advocates to recommend and for policy-makers, Parliamentarians, think-tanks, academics, media and Non-Governmental Organisations (NGOs) to consider further.

From the United Nations Secretary General through to the General Assembly or the Human Rights Council, there is more that could be done in every significant United Nations forum in order to strengthen the response to the deteriorating situation in Hong Kong. Our briefing elaborates on a range of recommendations, from strengthening action by existing United Nations bodies through to the creation of a Hong Kong or China-specific Special Rapporteur.

The importance of mobilizing action at the United Nations lies in the fact that the United Nations continues to carry significant soft power and moral force. Human rights lawyers and experts at the United Nations are recognised as the leading specialists worldwide and Hong Kong and Chinese government officials are required to respond to their evidence and recommendations. The events in Hong Kong must not be normalised as acceptable, and it is critical that global experts continue to underline where the Hong Kong government and Beijing are in breach of their international human rights commitments. China spends millions on strengthening its influence at the United Nations, and so it is time for democratic allies to counteract these influence strategies by investing resources themselves.

RECOMMENDATIONS

Hong Kong Watch makes the following recommendations for action at the United Nations:

- The United Nations should establish a UN Special Rapporteur on the situation of human rights in Hong Kong (or China as a whole), or another appropriate human rights-focused mechanism within the UN Special Procedures, potentially alongside a UN Special Envoy of the Secretary General.
- The United Nations Secretary General must increase his focus on Hong Kong, using opportunities to raise concerns with the Chinese Government and potentially issue a “Call for Action” to strengthen a coordinated UN response to the situation. Democratic allies should use their influence to encourage him to raise his voice.
- Democratic allies must continue to raise the severity of the situation in Hong Kong through resolutions and statements at the United Nations General Assembly and at the Human Rights Council, working together to persuade non-aligned countries of the importance of building a coalition in support of human rights.
- Democratic allies must prioritise raising concerns about Hong Kong in the next round of China’s Universal Periodic Review (2023-4), working together to persuade non-aligned countries of the damage done to the international rules-based order of Beijing’s actions in Hong Kong and the importance of underlining this in the UPR process.
- UN Special Procedures should continue to shine a spotlight on trends in Hong Kong, providing authoritative commentary when the actions of Beijing in Hong Kong breach international human rights law.
- Further action should be taken by the UN High Commissioner for Human Rights and the Office of the High Commissioner for Human Rights (OHCHR) on Hong Kong, including establishing an initiative to monitor and report on the situation in Hong Kong, raising awareness across the UN system and proposing mechanisms for prevention of human rights violations and accountability.
- Continued attention must be placed on Hong Kong by the UN Treaty bodies, especially the Human Rights Committee, to monitor the implementation of Hong Kong’s obligations as a party to the International Covenant on Civil and Political Rights (ICCPR).
- UK Parliamentarians, NGOs, and activists, should continue to put pressure on the UK Government to introduce and chair an International Contact Group to coordinate policies and actions at the UN in response to the human rights crisis in Hong Kong.

INTRODUCTION: WHY MULTILATERALISM IS NEEDED

Ever since Hong Kong Watch was founded in 2017, we have always advocated strengthening international co-ordination and, wherever possible, taking a multilateral approach in response to the erosion and dismantling of Hong Kong's freedoms, autonomy and the rule of law.

Due to its historical relationship and legal obligations as a signatory to the Sino-British Joint Declaration, the United Kingdom has a special responsibility towards Hong Kong. The Joint Declaration promises that Hong Kong would enjoy "a high degree of autonomy", including "executive, legislative and independent judicial power", and that "rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief" will be ensured by law, and that Hong Kong's way of life and these basic rights will "remain unchanged for 50 years".¹

But Hong Kong's story is not only a British concern. The city is an international financial hub which remains a vital capital conduit between China and the wider world.² The collapse of freedoms and the rule of law compromises the city's capacity to serve this function.

Furthermore, the Sino-British Joint Declaration is an international treaty lodged at the United Nations and therefore Beijing's flagrant violation of the treaty should be a matter of concern beyond the United Kingdom and China. While there is no agreed mechanism in place to deal with a breach of this treaty, and China has declared that it regards the Sino-British Joint Declaration as "a historical document, no longer has any practical significance, and it is not at all binding for the central government's management over Hong Kong",³ the Chinese government's assault on Hong Kong's promised freedoms and autonomy remains a flagrant violation of that international treaty and, as such, a direct threat to the international rules-based order. The UK Foreign Secretary has said that China is in "a state of ongoing non-compliance" with the Sino-British Joint Declaration.⁴

In this briefing we outline what steps could be taken at the United Nations.

¹ 'The Joint Declaration'. Constitutional and Mainland Affairs Bureau, Government of the Hong Kong Special Administrative Region of the People's Republic of China. 1984.
<https://www.cmab.gov.hk/en/issues/joint.htm>

² 'New report explains why China still relies on Hong Kong as a financial hub.' Hong Kong Watch. 2020.
<https://www.hongkongwatch.org/all-posts/2020/2/26/new-report-explains-why-china-still-relies-on-hong-kong-as-a-financial-hub>

³ 'China says Sino-British Joint Declaration on Hong Kong no longer has meaning.' Reuters. 30 June 2017 <https://www.reuters.com/article/us-hongkong-anniversary-china-idUSKBN19L1J1>

⁴ 'Six monthly report on Hong Kong July-December 2020'. Foreign, Commonwealth and Development Office. 10 June 2021. <https://www.gov.uk/government/publications/six-monthly-report-on-hong-kong-july-to-december-2020>

UNITED NATIONS

Within the United Nations system, there are several current and potential mechanisms which could be used by member states to ensure that the human rights situation in Hong Kong receives increased and regular scrutiny and attention. These include engagement by the Secretary-General, the General Assembly, the Human Rights Council, the High Commissioner for Human Rights, the Special Procedures, treaty bodies and the potential for the establishment of a new mechanism.

This section outlines some of the options to consider for action within the United Nations. The value of UN action lies primarily in the moral force of unified resolutions by the international community. It is not sufficient alone but must be part of a coherent and coordinated international strategy to respond to the erosion of freedom in Hong Kong. There are considerable barriers to effective action in some of these cases due to China's influence at the United Nations.

CALLING ON THE SECRETARY GENERAL TO SPEAK OUT

The UN Secretary-General has considerable moral authority and political influence, and an opportunity to speak out, mobilise and lead the UN to pay more active attention to the deteriorating crisis in Hong Kong. The Secretary-General could, for example, issue a "Call to Action" to strengthen a coordinated UN response to the situation. The current Secretary-General has in the past issued a "Call to Action" for human rights, in 2020, setting out seven thematic areas of focus.⁵ Member states should therefore encourage and urge the Secretary-General to give the crisis in Hong Kong more visible attention and use his good offices to speak out.

As the official UN description of the role of the Secretary-General puts it:

"Equal parts diplomat and advocate, civil servant and CEO, the Secretary-General is a symbol of United Nations ideals and a spokesperson for the interests of the world's peoples, in particular the poor and vulnerable among them. ... One of the most vital roles played by the Secretary-General is the use of their "good offices" -- steps taken publicly and in private, drawing upon their independence, impartiality and integrity, to prevent international disputes from arising, escalating or spreading."⁶

The current Secretary General Antonio Guterres has been conspicuously silent on the issue of Hong Kong. In the face of the rapid decline of freedom, individual liberty, and the rule of law, the UN Secretary General's silence when it comes to Hong Kong is palpable. Despite a steady flurry of press statements from his office criticising human rights abuses all over the world,

⁵'Secretary-General's Call for Action for Human Rights'. UN Secretary General. 2020.

<https://www.un.org/en/content/action-for-human-rights/index.shtml>

⁶'UN Secretary-General.' UN.org. 2021. <https://www.un.org/sg/en/content/the-role-of-the-secretary-general>

Guterres has failed to muster even the most basic condemnation of a draconian law that not only breaches basic rights, but an international treaty lodged at the UN.

There are several possible reasons for this. Unlike the USA and UK, China offered early, clear, and explicit support amongst the permanent members of the UN Security Council for Mr Guterres's candidacy to take up the mantle of UN Secretary General in 2016. The Chinese led the calls for his re-election in 2021. They have also increased their contribution to the central United Nations budget. Mr Guterres has eagerly welcomed the financial and political support.⁷

These factors do not excuse his silence. It is of paramount importance that democratic nations start to increase the pressure on the Secretary General to raise his voice about the unjust treatment of Hong Kongers.

Recommendation: The United Nations Secretary General must increase his focus on Hong Kong, using opportunities to raise concerns with the Chinese Government and potentially issue a "Call for Action" to strengthen a coordinated UN response to the situation. Democratic allies should use their influence to encourage him to raise his voice.

GENERAL ASSEMBLY AND HUMAN RIGHTS COUNCIL

The General Assembly and the Human Rights Council both provide scope for discussions, debates, statements and resolutions. There is the potential to raise Hong Kong, either as an issue or within relevant, related themes, in sessions of the General Assembly in New York or in sessions of the 47-member Human Rights Council in Geneva.

For example, the United Kingdom issued a joint statement on 30 June 2020 signed by 27 countries in the UN Human Rights Council on China's human rights violations against the Uyghurs and in Hong Kong.⁸

On 6 October 2020, Germany led a cross-regional group of 39 countries⁹ in issuing a joint statement at the UN General Assembly Third Committee, on the Chinese government's human rights violations in Xinjiang and Hong Kong. The governments echoed concerns of the

⁷ 'China's influence at the UN has ensured a conspiracy of silence when it comes to Hong Kong.' Hong Kong Watch. 2021. <https://www.hongkongwatch.org/all-posts/2021/2/22/chinas-influence-at-the-un-has-ensured-a-conspiracy-of-silence-when-it-comes-to-hong-kong>

⁸ This statement was supported by Albania, Australia, Austria, Belgium, Belize, Canada, Denmark, Estonia, Finland, France, Iceland, Ireland, Germany, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of the Marshall Islands, the Kingdom of the Netherlands, New Zealand, Norway, Palau, Slovakia, Slovenia, Sweden, Switzerland, and the United Kingdom: <https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang>

⁹ Albania, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Denmark, Estonia, Finland, France, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of the Marshall Islands, Monaco, Nauru, the Kingdom of the Netherlands, New Zealand, North Macedonia, Norway, Palau, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United States and Germany: <https://new-york-un.diplo.de/un-en/news-corner/201006-heusgen-china/2402648>

UN Special Procedures in their call for “decisive action” on China; called for access for the High Commissioner; and implementation of China’s human rights obligations.

This was repeated on 22 June 2021, when Canada led 44 member states in a joint statement at the 47th Session of the Human Rights Council on the human rights situation in Xinjiang, which also stated: “We continue to be deeply concerned about the deterioration of fundamental freedoms in Hong Kong under the National Security Law.”¹⁰

Statements and resolutions by the General Assembly and Human Rights Council are not legally binding, unlike those passed by the Security Council, and so are of limited effect, but nevertheless they serve two important purposes: they express the concern, condemnation and recommendations of the international community, and as such are certainly preferable to silence, and they provide a valuable foundation on which to build, directing member states’ attention to the wording of such statements and resolutions and thereby encouraging them to act.

It is worth noting that recent statements at the United Nations have been undermined by the Chinese Government’s ability to garner larger statements endorsing their actions in both Hong Kong and Xinjiang. In June 2021, 69 countries issued a statement underlining that Hong Kong, Xinjiang and Tibet were ‘internal affairs’ of the Chinese communist party which ‘brook no external interference’. There is considerable work for democratic partners to undertake in order to win over non-aligned countries who currently side with China in debates like these.¹¹

Recommendation: Democratic allies must continue to raise the severity of the situation in Hong Kong on the floor of the United Nations General Assembly and the Human Rights Council, working together to persuade non-aligned countries of the importance of building a coalition in support of human rights.

UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review (UPR), under the auspices of the Human Rights Council, provides an opportunity every four-and-a-half years for consideration of the human rights situation in every member state. In the Third Cycle of the UPR for China in 2018, recommendations concerning Hong Kong were included for the first time, made by Australia, Canada, Croatia, France and the Philippines.¹²

¹⁰ ‘Joint statement on human rights situation in Xinjiang at 47th Session of UN Human Rights Council’. 22 June 2021. https://www.international.gc.ca/world-monde/international_relations-relations_internationales/un-onu/statements-declarations/2021-06-22-statement-declaration.aspx?lang=eng

¹¹ ‘Joint Statement of 69 countries’. China’s Permanent Mission to the UN. 2021. <http://www.china-un.ch/eng/dbdt/t1886467.htm>

¹² UPR Third Cycle 2018. OHCHR.org. 2018. <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CNindex.aspx>

Follow-up monitoring to determine whether these recommendations are being implemented – and whether they were sufficient to ensure rights protection in the region – is critical. China’s next UPR in the Fourth Cycle will be in 2023-2024. These recommendations, and the continued violations of human rights in Hong Kong, should be raised in the Fourth Cycle UPR by 2024. Hong Kong Watch and other human rights organisations can provide detailed briefing to member states, with recommendations, in addition to our own submissions, in preparation for the UPR.

In spite of recommendations made in 2018, the Chinese government has subsequently cracked down hard in Hong Kong. It is therefore vital that a larger number of countries raise concerns about Hong Kong in the next reporting cycle. China also has multiple allies in the United Nations who use the UPR as an opportunity to provide their endorsement for China’s approach to authoritarian government and development programmes. In 2018, there were more than 50 recommendations along these lines.¹³ If the overriding message sent by the UPR process is that the international community – aside from a few Western powers – is ambivalent towards the situation in Hong Kong or Xinjiang, then the process is in danger of providing Beijing with vindication of their recent strategies. It is critical that democratic governments coordinate to ensure that the UPR does not whitewash this flagrant breach of international law.

Recommendation: Democratic allies must prioritise raising concerns about Hong Kong in the next round of China’s Universal Periodic Review, working together to persuade non-aligned countries of the damage done to the international rules-based order by Beijing’s actions in Hong Kong and the importance of underlining this in the UPR process.

THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR) AND TREATY BODIES INCLUDING THE UN HUMAN RIGHTS COMMITTEE

The High Commissioner for Human Rights and the Office of the High Commissioner for Human Rights (OHCHR) have already made regular statements about the deterioration of human rights and the rule of law in Hong Kong, including commenting on police brutality during the protests and the fact that the offence of subversion has been used to ‘detain individuals for exercising legitimate rights to participate in political and public life.’¹⁴

The UN Treaty Bodies provide a valuable opportunity for review, recommendations, and influence. These include the UN Committee on Economic, Social and Cultural Rights (CESCR),

¹³ Cuba: ‘Continue efforts to achieve socialist modernization by 2035’; India, ‘Ensure the well-being of all its people, based on inclusive development’; Iran, ‘Continue its efforts to eliminate absolute poverty by 2020 and share best practice in poverty alleviation with other countries’; Laos, ‘Continue to carry out the new development concept and build a modern economic system’; Namibia, ‘Continue sharing experiences and best practices in implementing people’s right to development’, etc.

¹⁴ ‘Comment by UN Human Rights Office on Hong Kong.’ OHCHR. January 2021. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26640&LangID=E>, ‘Press briefing note on Hong Kong, China.’ OHCHR. August 2019. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24888&LangID=E>

which reviews implementation of obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), by its State Parties.¹⁵ This also includes the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT) and the Committee on the Rights of the Child (CRC), among others.

Hong Kong Watch has made submissions to the treaty body reviews of Hong Kong's obligations under the ICCPR and the ICESCR.

Hong Kong, as a party to the ICCPR, was reviewed in 2020 and 2022. The 'List of Issues' published in July 2020 highlights the introduction of the new National Security Law in Hong Kong and the implications for Hong Kong's obligations under the ICCPR.¹⁶ In 2022, the treaty body urged the Hong Kong government to repeal the draconian National Security Law (NSL) and refrain from applying it.

The report, which concludes the Human Rights Committee's periodic review of Hong Kong, noted that since its enactment in 2020, the NSL has reportedly led to the arrests of over 200 people, including 12 children. The Committee concluded that there was a lack of clarity over the definition of the term "national security", an "overly broad interpretation" of the new law, and the risk that cases could be transferred for investigation, prosecution, trial and execution of penalties to mainland China, which is not a State party to the ICCPR. The NSL, the Committee also noted, was imposed by the National People's Congress of China without consultation with the Hong Kong public.

The closure of an "excessive number of civil society organisations, such as trade unions and student unions" since the NSL was enacted was raised as a concern. The Committee called on the Hong Kong authorities to refrain from any action to curb freedom of association and ensure that anyone who participated in the UN review will not be prosecuted under the NSL.

The Committee also urged Hong Kong to establish an independent national human rights institution with a mandate and powers to promote and protect human rights, and to "take concrete measures to effectively prevent and eliminate all forms of excessive use of force by law enforcement officers".

In particular, it called for a thorough, impartial investigation into police brutality during the protests between July and November 2019 and to ensure that those responsible are prosecuted.

¹⁵ For more on the UN Human Rights Committee, see - <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>

¹⁶ UN Human Rights Committee. 'List of Issues'. 26 August 2020. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr2bAznTlRtkyo4FUNHETCRSirzSD1mbmreZBrqliD8LqwuT9Llo7WQqtU6VwHvHWBGuKgyYJN7giddsxOwA9K%2fwlgvjUNDHKy2pKhmogdMGMNzVnX3fKNfkcD%2bm1G6oxw%3d%3d>

The Committee also urged the Hong Kong authorities to “immediately stop censoring books and materials in the public libraries, including school libraries and reinstate those books and materials that have been removed for allegedly breaching the National Security Law”.

Significantly, the Committee also called on the authorities in Hong Kong to “take concrete steps, with a clear timeline, to introduce universal suffrage”.

The interventions by the OHCHR and the Human Rights Council are to be welcomed as important interventions from the world’s leading bodies on human rights. However, both bodies could be further encouraged to speak out about the erosion of Hong Kong’s freedoms.

The High Commissioner could consider how to maximise his mandate, perhaps by establishing an initiative to monitor and report on the situation in Hong Kong, through direct engagement with governments and civil society organisations, by raising awareness across the UN system, proposing mechanisms for prevention of further violations and/or accountability, and seeking opportunities for visits on the ground, both by the High Commissioner himself and senior and technical experts from the OHCHR.

Recommendation: Further action should be taken by the UN High Commissioner for Human Rights and the Office of the High Commissioner for Human Rights (OHCHR) on Hong Kong, including establishing an initiative to monitor and report on the situation in Hong Kong, raising awareness across the UN system and proposing mechanisms for prevention of human rights violations and accountability.

Recommendation: Continued attention must be placed on Hong Kong by the UN Treaty bodies, especially the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), to monitor the implementation of Hong Kong’s obligations as a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Future reviews under the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT) and the Committee on the Rights of the Child (CRC), among others, will be very important to engage with.

SPECIAL PROCEDURES

Existing thematic Special Procedures of the Human Rights Council should be encouraged to increase their engagement, especially by monitoring and reporting on the situation in Hong Kong and informing the international community, particularly by (though not limited to) the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Working Group on the issue of human rights and transnational corporations and other business enterprises and, as the situation further deteriorates, the Special Rapporteurs on freedom of expression, freedom of peaceful assembly and association, on the independence of judges and lawyers, on the fundamental freedoms while countering terrorism, on torture and other cruel, inhuman or degrading treatment or punishment, on the right of everyone to the enjoyment of the highest attainable standard of

physical and mental health and others, on the right to privacy and on freedom of religion or belief.

A strong foundation has already been laid by the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and association, on the situation of human rights defenders, on the independence of judges and lawyers, on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on torture and other cruel, inhuman or degrading treatment or punishment, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and others.¹⁷

Several special procedures have already engaged with the situation in Hong Kong in recent years, including the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the right to freedom of peaceful assembly and association, who published their concerns in January 2020 about the “inappropriate use of chemical agents” including tear gas, pepper spray, pepper balls and other chemical agents against protestors, journalists, human rights defenders, social workers, volunteer medics and other humanitarian workers during the protests in Hong Kong from June–December 2019.¹⁸

The Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to freedom of peaceful assembly and association, the Special Rapporteur on the right to privacy and the Working Group on Arbitrary Detention similarly published their concerns in February 2020 about the harassment, intimidation and arrest of healthcare workers in Hong Kong during the 2019 protests, including “the misuse of healthcare transport, facilities and confidential information”.¹⁹ They noted reports that “large numbers of healthcare workers have been arrested and hand-cuffed with zip-cords”, healthcare staff at public hospitals were hindered by the police from performing their legitimate duties, and hospitals were “often patrolled by police units in full riot gear, bearing shields, batons and fire-arms loaded with beanbag rounds and rubber bullets”. All these acts, they argued, “contravene article 3 of the Universal Declaration of Human Rights (UDHR) which guarantees the right of every individual to life, liberty and security” and violate the right to peaceful assembly set out in article 20 of the UDHR and the right to the highest attainable standard of physical and mental health guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights, which China has ratified.

In September 2020, 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

¹⁷ Full list of Special Procedures available here:

<https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en>

¹⁸ Statement accessed here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25048>

¹⁹ Statement accessed here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25054>

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 communicated their concerns about the introduction of the National Security Law in Hong Kong.²⁰ They wrote: “We express concern that the measures adopted in the National Security Law do not conform with ... international legal obligations, in particular the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Specifically, we are concerned that the law lacks precision in key respects, infringes on certain fundamental rights and may not meet the required thresholds of necessity, proportionality and non-discrimination under international law. We recommend review and reconsideration of this legislation to ensure that the law is in compliance with China’s international human rights obligations with respect to the HKSAR.” Similar statements had been made by Special Procedures in communications with the government of China on 23 April 2020 and 19 June 2020.

The benefit of these interventions by Special Procedures is found in the fact that they provide the definitive and authoritative statement on international human rights norms and are therefore able to underline the extent of the deterioration. Although in practice, the Hong Kong government and their counterparts in Beijing have ignored these interventions to date, other governments are forced to take note.

However, the Special Procedures have such a diverse mandate that they are unable to focus specifically on Hong Kong alone. With this in mind, and given the severity of the crisis, Hong Kong Watch has led international calls for the establishment of a United Nations mechanism to address the human rights crisis in Hong Kong, either through the creation of a Special Rapporteur on the situation of human rights in Hong Kong (or China as a whole) or a Special Envoy, or both.²¹ This has been in parallel with a wider initiative led by Human Rights Watch and others to call for an international independent monitoring mechanism for China.²²

Recommendation: UN Special Procedures should continue to shine a spotlight on trends in Hong Kong, providing authoritative commentary when the actions of Beijing in Hong Kong breach international human rights law.

²⁰ Statement accessed here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>

²¹ ‘Hong Kong Watch leads calls for establishment of a UN Special Envoy for Hong Kong’. Hong Kong Watch. 29 May 2021 - <https://www.hongkongwatch.org/all-posts/2020/5/29/hong-kong-watch-leads-calls-for-establishment-of-a-un-special-envoy-for-hong-kong>

²² ‘Global Call for International Human Rights Monitoring Mechanisms on China.’ Human Rights Watch. 9 September 2020 - <https://www.hrw.org/news/2020/09/09/global-call-international-human-rights-monitoring-mechanisms-china>

PROPOSAL FOR A NEW SPECIAL MECHANISM FOR HONG KONG

On 29 May 2020, the last Governor of Hong Kong Lord Patten of Barnes, the Director of the International Bar Association's Human Rights Institute Baroness Helena Kennedy KC, Sir Geoffrey Nice KC (chief prosecutor in the trial of Slobodan Milosevic) and Lord Alton of Liverpool, Vice-Chair of the UK Parliament's All Party Parliamentary Group (APPG) on Hong Kong led calls for the creation of a UN Special Envoy and/or Special Rapporteur for Hong Kong.²³

The then chair of the UK House of Commons Foreign Affairs Committee, Tom Tugendhat MP, together with his counterparts from the Australian, New Zealand and Canadian Parliaments, on 2 June 2020 wrote to the Prime Ministers of their respective countries and to the UN Secretary-General Antonio Guterres, calling for the creation of a UN Special Envoy or Special Rapporteur.²⁴

The former UN High Commissioner for Human Rights Zeid Ra'ad al Hussein and eight former UN Special Rapporteurs released a statement on 25 June 2020 calling for the creation of a UN Special Envoy and Special Rapporteur.

On 26 June 2020, 51 UN Special Rapporteurs signed a statement calling on the UN "to act with a sense of urgency to take all appropriate measures to monitor Chinese human rights practices" and recommended "the establishment of an impartial and independent UN mechanism", such as a UN Special Rapporteur, a Panel of Experts or a Special Envoy appointed by the Secretary-General.²⁵ The broad, coordinated and historic consensus of a majority of the Special Procedures system indicates the severe and systematic nature of Chinese human rights violations, including their reach extra-territorially in Hong Kong and beyond.

The European Parliament has now passed three joint-resolutions on Hong Kong (in June 2020, January 2021 and July 2021), in which MEPs have unanimously backed the creation of a UN Special Rapporteur/Envoy for Hong Kong.²⁶

Hong Kong Watch would fully support the creation of a UN Special Rapporteur for China as a whole, to include Hong Kong, as an alternative to a specific mechanism focused on Hong Kong, recognising that the human rights crisis in China, especially but not limited to Xinjiang, is in

²³ 'Hong Kong Watch leads calls for establishment of a UN Special Envoy for Hong Kong'. Op. cit.

²⁴ 'Chairs of Foreign Affairs Committees from 4 countries call for a UN Special Envoy and UN Special Rapporteur on Hong Kong'. Hong Kong Watch. 10 June 2020 - <https://www.hongkongwatch.org/all-posts/2020/6/22/chairs-of-foreign-affairs-committees-from-4-countries-calls-for-a-un-special-envoy-and-un-special-rapporteur-on-hong-kong>

²⁵ '51 UN Special Rapporteurs, Former UN High Commissioner for Human Rights call for UN Mechanism on Hong Kong.' Hong Kong Watch. 26 June 2020 - <https://www.hongkongwatch.org/all-posts/2020/6/26/49-un-special-rapporteurs-former-un-high-commissioner-for-human-rights-call-for-un-mechanism-on-hong-kong>

²⁶ 'Briefing: Calls for a UN Special Mechanism are gaining momentum.' Hong Kong Watch. <https://www.hongkongwatch.org/all-posts/2020/7/3/briefing-calls-for-a-un-special-mechanism-on-hong-kong-are-gaining-momentum>

urgent need of a special mechanism. One mechanism could be established to cover all human rights issues in China, including Hong Kong, or separate mechanisms could be created for specific aspects, such as Xinjiang, Tibet, human rights in mainland China and Hong Kong.

What would the scope and work of a UN Special Rapporteur and/or UN Special Envoy for Hong Kong be?

To be clear, the two roles – of Special Rapporteur on the situation of human rights in Hong Kong and Special Envoy for Hong Kong – are different. The first would be mandated by the UN Human Rights Council and would have a clear and specific focus solely on monitoring and reporting on the human rights situation. The second would be appointed by the UN Secretary-General and would have a more diplomatic and political focus. There is potential for both roles, but in this section we will focus primarily on the role of the Special Rapporteur, which is more urgently needed and more likely to make a difference because the current priority is ensuring that there is concerted scrutiny on the deteriorating human rights situation as Beijing appear unlikely to accept any forms of diplomatic mediation.

To visit (when possible) and report on Hong Kong and engage with the Hong Kong/Chinese Government:

- The UN Special Rapporteur would be tasked with reporting regularly to the Human Rights Council (and/or UN General Assembly) on recent events or trends, including arrests, censorship of the press and internet, curbs on freedom of expression, freedom of religion or belief, and the state of the rule of law, and assessing their compliance with China's and Hong Kong's international human rights obligations and commitments.
- The UN Special Rapporteur would also be requested to undertake visits to the city to engage in dialogue with the Hong Kong and Chinese Governments; as is currently the practice, they could hold end-of-mission press conferences on their findings and recommendations.
- If they are unable to visit due to a refusal on the part of the Chinese authorities to invite them or permit them to do so, the UN Special Rapporteur should engage with Hong Kong individuals and groups in exile. There are precedents for this, as in the case of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK), and at times the Special Rapporteur on the situation of human rights in Myanmar, who have been unable to visit the country but have had access to exiles outside the country.

To act on individual cases:

- The UN Special Rapporteur would be given a mandate to act on cases of individuals arrested and currently awaiting trial under the National Security Law and concerns of a broader deterioration of human rights in the city.
- The UN Special Rapporteur would receive information on specific allegations of human rights violations in Hong Kong and send communications (urgent appeals, allegations and other letters) to the Hong Kong and Chinese Governments asking for clarification and action.

To commission and conduct expert consultations and studies on the human rights situation:

- The UN Special Rapporteur would be tasked with conducting studies and convening expert consultations on the deterioration of human rights in the city and provide recommendations on how Hong Kong can be brought back up to international human rights standards.

To raise awareness and mobilise action internationally:

- The UN Special Rapporteur would also engage in advocacy and raising public awareness internationally on the crisis in Hong Kong.
- Organise consultations with a wide range of actors at national, regional, and international level on the crisis in Hong Kong.
- Providing advice for technical cooperation between the international community and the Hong Kong and Chinese Government in addressing the human rights situation in the city.

Examples of UN Special Procedures experts appointed by the Human Rights Council:

Special Rapporteur on Belarus (established in 2012 and extended in 2020).

Special Rapporteur on Cambodia (established in 1993 and extended in 2019).

Independent Expert (IE) on Central African Republic (established in 2013 and extended in 2020).

Special Rapporteur on the Democratic People's Republic of Korea (DPRK) (established in 2004 and extended in 2020).

Special Rapporteur on Eritrea (established in 2012 and extended in 2020).

Special Rapporteur on Islamic Republic of Iran (established in 2011 and extended in 2020).

Special Rapporteur on Mali (established in 2013 and extended in 2020).

Special Rapporteur on Myanmar (established in 1992 and extended in 2020).

Special Rapporteur on the Occupied Palestinian Territories (established in 1993).

Independent Expert on Somalia (established in 1993 and extended in 2020).

Special Rapporteur on Syrian Arab Republic (established in 2011).

Examples of UN Special Envoys:

The UN Secretary-General has the capacity and authority to appoint a Special Envoy, Personal Envoy, Special Representative or Special Advisor, usually working within the UN's Department of Political and Peace-building Affairs. Currently these positions have been created in regard to Mozambique, Western Sahara, Cyprus, Burundi, Myanmar, Syria, the Great Lakes Region, the Horn of Africa and Yemen.²⁷

A Special Envoy role tends to be a more diplomatic, political and peace-building role than a human rights-focused mandate, and therefore more appropriate for an active conflict situation. The advantage of a Special Envoy is that they are mandated by and report to the Secretary-General, but the disadvantage is that a focus on the human rights situation can be downplayed or even lost, as diplomacy, engagement and dialogue are pursued.

Isn't a vote on a UN Special Rapporteur/or other expert mechanism likely to fail with China a member of the UN Human Rights Council?

Not necessarily. The current membership includes a number of countries from around the world who have already signed statements of concern over the human rights situation in Hong Kong and would be supportive of the proposition.²⁸ In addition, there may be countries who have until now been more neutral but who may wish to support such an initiative or at least be persuaded to abstain. A number of countries currently on the Council also have previously voted in favour of the creation of special rapporteurs or envoys for other countries.

A vote should not be forced unless and until member states leading the proposal are confident that they can secure a majority, but equally, a majority will only be achieved if momentum is developed, the idea discussed and attempts to persuade member states are made. It is unlikely to be achieved quickly, but sympathetic member states should begin the process of working towards it.

Recommendation: The United Nations should establish a United Nations Special Rapporteur on the situation of human rights in Hong Kong (or China as a whole), or another appropriate human rights-focused mechanism within the UN Special Procedures, potentially alongside a UN Special Envoy of the Secretary-General.

²⁷ UN DPPA website: https://dppa.un.org/sites/default/files/dppa_ousg_4561_r11_jan21.pdf

²⁸ The UN Human Rights Council's membership is balanced by geographic region. Its membership currently includes:

Argentina, Armenia, Austria, Bahamas, Bahrain, Bangladesh, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Côte d'Ivoire, Cuba, Czechia, Denmark, Eritrea, Fiji, France, Gabon, Germany, India, Indonesia, Italy, Japan, Libya, Malawi, Marshall Islands, Mauritania, Mexico, Namibia, Nepal, Netherlands, Pakistan, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Togo, Ukraine, United Kingdom, Uruguay, Uzbekistan, Venezuela

AN INTERNATIONAL CONTACT GROUP FOR HONG KONG

Multilateral action at the United Nations carries significant strengths. The UN is a forum which draws together all the countries of the world which means that statements from the UN carry great authority when carried with scores of countries. Furthermore, the moral force carried by the United Nations, and particularly the human rights experts, mean that statements issued from the UN carry weight as authoritative judgments on the human rights situation. With all of this in mind, it is vital that the UN continues to give proper attention to the deteriorating rights situation. Beijing puts great resources into persuading other countries to side with them at the UN, and therefore it is critical that democratic allies counteract this influence and invest sufficient resources to ensure that the situation in Hong Kong is not neglected.

In order to co-ordinate the actions of like-minded member states at the UN, it would be worthwhile considering the establishment of an International Contact Group for Hong Kong.

International Contact Groups are defined as “informal, non-permanent international bodies that are created ad hoc, with the purpose of coordinating international actors in their aim of managing a peace and security crisis in a specific state or region (single-issue). They are founded and formed out of by states and/or International Organizations/Regional Organizations. They do not have own administrative structures, but are officially announced and meet periodically.”²⁹ Since 1977, at least 27 ICGs have been formed. In most cases they are in response to conflict situations, and include the International Contact Groups on, respectively, Liberia, Libya, the Mano River Basin, Somalia, as well as the Friends of Syria Group and the Contact Group (Balkans).

While Hong Kong is not a conflict situation, it is a political crisis and has been described by Amnesty International as a “human rights emergency”,³⁰ a view echoed by Human Rights Watch which has described the imposition and application of the National Security Law as “dismantling a free society”.³¹

If the other arenas outlined in this paper are not further engaged and if an alliance of democracies is not further developed, the establishment of an International Contact Group bringing together the UK, the United States, Canada, Australia, New Zealand, the European Union, Japan, Korea, India, Indonesia and other actors in the Asia-Pacific to coordinate action should be considered.

²⁹ Ingo Henneberg. ‘International contact groups: Ad hoc coordination in international conflict management.’ South African Journal of International Affairs. Volume 27, 2020 - <https://www.tandfonline.com/doi/abs/10.1080/10220461.2020.1877190>

³⁰ ‘Hong Kong: National Security Law has created a human rights emergency.’ Amnesty International. 30 June 2021 - <https://www.amnesty.org/en/latest/news/2021/06/hong-kong-national-security-law-has-created-a-human-rights-emergency/>

³¹ ‘Hong Kong: Beijing Dismantles a Free Society.’ Human Rights Watch. 25 June 2021 - <https://www.hrw.org/news/2021/06/25/hong-kong-beijing-dismantles-free-society>

Evaluation

Following the introduction of the National Security Law, seven former UK foreign secretaries wrote to the UK Prime Minister calling for the creation of an International Contact Group to monitor the human rights situation and coordinate policies regarding Hong Kong.³²

This call has been reiterated by the European Parliament which has passed three joint-resolutions on Hong Kong in the last year, which include calls for EU Member States to join an International Contact Group on Hong Kong.

Recommendation:

UK Parliamentarians, NGOs, and activists should continue to put pressure on the Government to introduce and chair an International Contact Group to coordinate policies in response to the human rights crisis in Hong Kong.

³² '7 former foreign secretaries urge UK to take the lead on Hong Kong.' Guardian. June 2020.
<https://www.theguardian.com/world/2020/jun/01/seven-former-foreign-secretaries-urge-uk-to-take-lead-on-hong-kong>

CONCLUSIONS

Formal and informal co-ordination of policy along multilateral lines should be pursued as much as possible.

Beijing's strategies for influence at the United Nations must be countered, with coordination on Hong Kong, Xinjiang and other issues a first priority. The United Nations human rights mechanisms continue to provide an authoritative voice and special procedures and OHCHR should be encouraged to intervene more regularly. The United Nations is also a forum where the views of the international community at large are expressed. Democratic allies should be coordinating together to ensure that non-aligned voices recognize why Hong Kong is important and ought to be a priority. The creation of a Special Rapporteur on Hong Kong (or China) would be a significant and important step.

Outside of the United Nations, democratic allies should be making use of all international fora to coordinate joint actions. A foundation has been laid for this through a succession of joint statements in 2019 and 2020 from the foreign ministers of the United Kingdom, the United States, Canada, Australia and New Zealand, and through discussion in and statements from the G7 in 2020 and 2021 and the Five Eyes. But it is vital that these joint statements are now accompanied by action. Whether it is in imposing sanctions, reforming supply chains, reducing strategic dependency on China, developing lifeboat schemes to help Hong Kongers find sanctuary or initiating diplomatic pressure on China, there is a higher chance of success if democracies work together in tandem, rather than in disparate, uncoordinated ways.