

# HONG KONG AND CHINA: BUILDING BRIDGES BETWEEN TWO SYSTEMS IN ONE COUNTRY

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## I. INTRODUCTION

In 1984, Britain and China negotiated an agreement that resulted in Hong Kong's reunification<sup>1</sup> with China over one hundred years after it was surrendered to Britain<sup>2</sup> following the Opium War.<sup>3</sup> The Sino-British Joint Declaration stipulated that although China would exercise territorial sovereignty over Hong Kong, Hong Kong would still maintain a high degree of autonomy until the year 2047. This meant that Hong Kong would have independent executive, legislative, and judicial powers while maintaining its capitalist system and way of life.<sup>4</sup> However, these promises—despite codification in the Basic Law<sup>5</sup>, which is a quasi-Constitution—do not escape the inherent contradiction in “one country, two systems”: the aspirations for “Western-style” liberal democracy, like universal suffrage and an independent

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<sup>1</sup> Jermain Lam, *THE FUTURE OF HONG KONG UNDER COMMUNIST CHINA*, 10 THE J. OF EAST ASIAN AFFAIRS 116 (1996).

<sup>2</sup> Jen Kirby, *9 questions about the Hong Kong protests you were too embarrassed to ask*, VOX (Nov. 26, 2019), <https://www.vox.com/world/2019/8/22/20804294/hong-kong-protests-9-questions>.

<sup>3</sup> The Opium Wars were two armed conflicts between China and Britain, the first of which resulted in the Treaty of Nanjing. As per the treaty, China agreed to cede Hong Kong island to Britain as well as control over five ports. Kenneth Pletcher, *Opium Wars*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/Opium-Wars#ref326270> (last updated Feb. 5, 2020).

<sup>4</sup> Eleanor Albert, *Democracy in Hong Kong*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounder/democracy-hong-kong> (last updated Sept. 30, 2019).

<sup>5</sup> Mike Ives, *What Is Hong Kong's Extradition Bill?*, N.Y. TIMES (Jun. 10, 2019), <https://www.nytimes.com/2019/06/10/world/asia/hong-kong-extradition-bill.html?searchResultPosition=186>.

judiciary, are struggling to coexist with the limits set by the very different system in China.<sup>6</sup>

Over time, Hong Kong citizens developed a deep lack of trust for both the Chinese and Hong Kong governments, expressing their dissatisfactions through protests and civil unrest.<sup>7</sup> This sort of sociopolitical conflict, however, may be addressed through a variety of approaches that incorporate some unique elements. This paper will explore several such ideas and approaches that might benefit Hong Kong and China in their current conflict. First, The Divided Community Project at The Ohio State University Moritz School of Law is a group of dispute resolution practitioners who share their experience and insight in managing communities torn apart by tensions, unrest, and civil discord.<sup>8</sup> Together, these practitioners and scholars have developed an outline of strategies to address intra-state conflict by emphasizing empathetic communication and rebuilding trust.<sup>9</sup> Second, using The Divided Community Project as a foundation, it can then be possible to apply Robert Putnam's two-level game diplomacy.<sup>10</sup> Two-level game diplomacy is a political theory which argues that domestic and international issues impact state actions, and that resolving incongruencies between those issues involves expanding the range of desirable agreements for domestic and international parties.<sup>11</sup> Applied to the Hong Kong protests, this theory may help confirm core interests for Hong Kong and China and reveal other interests that may offset the weight of core interests. Lastly, the Fermeda

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<sup>6</sup> Albert H.Y. Chen, *Hong Kong's internal contradiction of "one country, two systems"*, THE ECONOMIST (Oct. 11, 2019), <https://www.economist.com/open-future/2019/10/11/hong-kongs-internal-contradiction-of-one-country-two-systems>.

<sup>7</sup> *Id.*

<sup>8</sup> DIVIDED COMMUNITY PROJECT, KEY CONSIDERATIONS FOR COMMUNITY LEADERS FACING CIVIL UNREST: EFFECTIVE PROBLEM-SOLVING STRATEGIES THAT HAVE BEEN USED IN OTHER COMMUNITIES 14 (2016), <https://moritzlaw.osu.edu/dividedcommunityproject/wp-content/uploads/sites/101/2016/05/Key-Considerations-January-2016.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (Summer, 1988); Herbert C. Kelman, *The Problem-Solving Workshop in Conflict Resolution*, in INT'L DISPUTE RESOL. 277 (Carrie Menkel-Meadow ed., 2012).

<sup>11</sup> Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (Summer, 1988).

Workshop and controlled communication experiments reveal how the context and environment of dialogue impact its success or failure.<sup>12</sup> If Hong Kong and Beijing were to establish controls for where the dialogues take place and who gives official statements reporting on those dialogues, this can provide clarity and transparency for the Hong Kong public and contribute to de-escalated protests with minimal violence. By incorporating these ideas and approaches, Hong Kong and China can work together to identify the most pressing issues, the stakeholders, reasonable means towards reconciliation, and potential plans for mutually beneficial resolution. Even if there is no mutually desirable resolution in the immediate future, by creating a forum for meaningful dialogue and discussion, mediation can lay important foundations for future resolution.

## II. BACKGROUND

### A. *British Rule and The Handover*

Hong Kong was formerly a British territory that China had surrendered to the British Empire in 1842 as per the Treaty of Nanking.<sup>13</sup> Though it had enjoyed a formal status as a Crown Colony, under British colonial rule, Hong Kong developed its own nationalist movement and advanced towards self-government.<sup>14</sup> Over one hundred years later, the Sino-British Joint Declaration in 1984 provided for China to resume territorial sovereignty over Hong Kong, effective July 1, 1997.<sup>15</sup> This reunification process, however, has been wrought with obstacles. The differences between Hong Kong and China by that point in time ran the gamut from the sociocultural to the political spheres.<sup>16</sup> Hong Kong enjoyed a wide range of freedoms, typical of democratic governments, whereas China endured stricter governmental control.<sup>17</sup> Despite the nearly identical ethnic composition of Hong

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<sup>12</sup> Herbert C. Kelman, *The Problem-Solving Workshop in Conflict Resolution*, in INT'L DISPUTE RESOL. 277 (Carrie Menkel-Meadow ed., 2012).

<sup>13</sup> William Roger Louis, *Hong Kong: The Critical Phase, 1945-1949*, 102 THE AM. HIST. REV. 1052 (Oct. 1997).

<sup>14</sup> *Id.*

<sup>15</sup> T.L. Tsim, *China-Hong Kong Relations*, CHINA REV. 8.1, 8.3 (1991).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Kong and China, the contrasting political differences suggest a complex reunification process.<sup>18</sup> To accommodate the differences, then Premier of China, Deng Xiaoping, developed a national unification policy known as “one country, two systems”, with the intention of reintegrating Taiwan, Hong Kong, and Macau with China while preserving their unique political and economic systems.<sup>19</sup>

### *B. One Country, Two Systems*

During the negotiations for the Sino-British Joint Declaration, China promised to establish a Hong Kong Special Administrative Region which would enjoy a “high degree of autonomy.”<sup>20</sup> Moreover, China promised that the social and economic systems in Hong Kong would remain unchanged, and that rights and freedoms would be ensured by law in the Hong Kong Special Administrative Region.<sup>21</sup> The National People’s Congress of China codified these promises and declarations into the Basic Law of the Hong Kong Special Administrative Region, and ensured they would remain unchanged for fifty years from 1997 to 2047.<sup>22</sup> These fifty years were essentially a transitional period for Hong Kong to be fully integrated with China, while also allowing China sufficient time to modernize and narrow the economic gap.<sup>23</sup> In spite of Hong Kong’s high degree of autonomy, China currently exercises considerable influence over the region through loyalists who dominate its political sphere, and maintains the authority to interpret Hong Kong’s Basic Law, which has been used only a number of times since the handover.<sup>24</sup>

For some time, China’s leniency in its political control<sup>25</sup> over Hong Kong was largely due to its role as a medium for direct

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<sup>18</sup> *Id.*

<sup>19</sup> Chen, *supra* note 6.

<sup>20</sup> Tsim, *supra* note 10, at 8.1, 8.4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8.5

<sup>23</sup> Chien-Min Chao, “One Country, Two Systems”: A Theoretical Analysis, 14 ASIAN AFFAIRS: AN AM. REV. 107, 112 (1987).

<sup>24</sup> Chen, *supra* note 6.

<sup>25</sup> C.C., *Has “one country two systems” been a success for Hong Kong?*, THE ECONOMIST (Jun. 29, 2017),

foreign investment into China and as a means for Chinese money to flow out into the global economy.<sup>26</sup> However, in light of China's rapid modernization making Hong Kong increasingly less important to the overall economy, the Chinese government has begun to take an increasingly assertive stance by treating Hong Kong as a political threat, reaffirming China's sovereignty over Hong Kong, and China's power to interpret the Basic Law.<sup>27</sup> The fragility of "one country, two systems" has become increasingly obvious in light of the violent protests that have erupted since the introduction of an extradition bill that commonly referred to as the "fugitives bill."<sup>28</sup> Although Hong Kong is currently under no obligation to repatriate anyone to China, the enactment of the fugitives bill would have allowed extradition to China and other countries, which is in direct contradiction to the judicial independence granted to Hong Kong in the Basic Law.<sup>29</sup> Now, in light of the violent riots and incidents of police brutality, Carrie Lam, Hong Kong's Chief Executive, formally withdrew the controversial extradition bill.<sup>30</sup> Despite this, many of the protestors declare that the bill's formal withdrawal is "too little, too late"<sup>31</sup>, meeting only one of their five demands.<sup>32</sup> The other four demands are: for the protests not to be characterized as a "riot"; amnesty for arrested protestors; an independent inquiry into alleged police brutality; and implementation of complete universal suffrage.<sup>33</sup> After weeks of unrest and serious distrust since the onset of the protests in June 2019, the chaos continued, which set in motion a plan by China's leadership to remove Carrie Lam and

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<https://www.economist.com/the-economist-explains/2017/06/28/has-one-country-two-systems-been-a-success-for-hong-kong>

<sup>26</sup> Ben Bland, *Hong Kong: is 'one country, two systems' under threat?*, FINANCIAL TIMES (Dec. 2, 2018), <https://www.ft.com/content/43a34a48-f16e-11e8-9623-d7f9881e729f>.

<sup>27</sup> *Id.*

<sup>28</sup> Niki J.P. Alford, *Hong Kong: why the 'one country, two systems' model is on its last legs*, THE CONVERSATION (Jun. 19, 2019, 7:15 AM), <https://theconversation.com/hong-kong-why-the-one-country-two-systems-model-is-on-its-last-legs-118960>.

<sup>29</sup> *Id.*

<sup>30</sup> *Hong Kong formally scraps extradition bill that sparked protests*, BBC NEWS (Oct. 23, 2019), <https://www.bbc.com/news/world-asia-china-50150853>.

<sup>31</sup> Jen Kirby, *supra* note 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

install an interim chief executive.<sup>34</sup> Despite the present standoff, the violence and persistence of these protests lead many to speculate whether Beijing would use its paramilitary forces to quell the protests, reminiscent of the protests in Tiananmen Square in 1989.<sup>35</sup>

### III. THE CURRENT SITUATION

#### A. *The Present Issues*

##### 1. Hong Kong's "Democracy" Has an Expiration Date

Many of the Hong Kong protestors have demanded democracy from Beijing, as though it was something promised to them in the Basic Law.<sup>36</sup> A closer look at the Basic Law and the Joint Declaration, which created the Basic Law, however, suggests that Hong Kong's political status after 2047 is at best uncertain, if not certain to be subsumed into the Chinese Communist Party system.<sup>37</sup> Despite language clearly stating that Hong Kong will enjoy a "high degree of autonomy," maintain its capitalist system, and retain independent judicial power, Article 3 of the Joint Declaration introduces a caveat, stating that the foregoing policies "will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region . . . and will remain unchanged for 50 years."<sup>38</sup> There are areas in the Basic Law that are clear indicators of Hong Kong's status as a democracy, enumerating rights for its citizens including the right to vote and the right to stand for election.<sup>39</sup> However, no matter what the Basic Law states, there is

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<sup>34</sup> Melinda Liu, *Hong Kong's Future: Police State or Mob State?*, FOREIGN POLICY (Oct. 25, 2019, 5:49 PM), <https://foreignpolicy.com/2019/10/25/hong-kong-protests-future-china-police-mob/>.

<sup>35</sup> Jude Blanchette, *How Close Is Hong Kong to a Second Tiananmen?*, FOREIGN POLICY (Aug. 14, 2019, 11:33 AM), <https://foreignpolicy.com/2019/08/14/how-close-is-hong-kong-to-a-second-tiananmen/>.

<sup>36</sup> *Fact check: Was Hong Kong ever promised democracy?*, RMIT ABC FACT CHECK, <https://www.abc.net.au/news/2014-12-16/was-hong-kong-ever-promised-democracy-fact-check/5809964> (last updated Dec. 16, 2014, 3:11 AM).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

no escaping a critical provision in Article 158, the so-called interpretation clause, which does no more than let local Hong Kong courts seek clarification from China's highest judicial body.<sup>40</sup> In short, it states that, "the National People's Congress Standing Committee (NPCSC)—China's rubber-stamp parliament—holds the ultimate 'power of interpretation' of the law."<sup>41</sup> To illustrate that this power is not merely nominal, the NPCSC has acted five times to interpret the law since the handover in 1997.<sup>42</sup> Moreover, the NPCSC retains the power to approve the Chief Executive of Hong Kong, while also retaining strong influence over Hong Kong's defense and foreign affairs.<sup>43</sup> Additionally, China demonstrates its influence over Hong Kong by stationing 5,000 permanent soldiers there, ready to intervene in Hong Kong if Beijing were to declare a state of emergency or to assure the "maintenance of public order and in disaster relief."<sup>44</sup> The Basic Law ultimately prevents Hong Kong citizens from amending their own constitution outright, and it would seem that the Basic Law was never designed to truly grant any permanent democratic freedoms.<sup>45</sup>

## 2. Police Brutality Undermines Hong Kong Citizens' Faith in The Local Government

The Hong Kong protests were initially peaceful at their inception in June 2019, but turned violent and disruptive for nearly six months before de-escalating as a result of the November District Council Election, which saw record voter turnout and landslide victories for pro-democratic candidates.<sup>46</sup> The violence

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<sup>40</sup> Ronald Chiu, *Hong Kong's Basic Law is a constitution with Chinese characteristics, and not meant to lead to democracy*, SOUTH CHINA MORNING POST (Nov. 3, 2018, 3:30 PM), <https://www.scmp.com/comment/insight-opinion/hong-kong/article/2171262/hong-kongs-basic-law-constitution-chinese>.

<sup>41</sup> *Hong Kong: What is the Basic Law and how does it work?*, BBC NEWS (Nov. 20, 2019), <https://www.bbc.com/news/world-asia-china-49633862>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Chiu, *supra* note 35.

<sup>46</sup> Emma Graham-Harrison and Verna Yu, *Hong Kong voters deliver landslide victory for pro-democracy campaigners*, THE GUARDIAN (Nov. 25, 2019, 3:04 PM), <https://www.theguardian.com/world/2019/nov/24/hong-kong-residents-turn-up-for-local-elections-in-record-numbers>; Rosemarie Ho, *The Hong*

was marked by police officers beating compliant arrestees with batons, alleged sexual assault of detained protestors,<sup>47</sup> as well as mass tear gassings of Hong Kong’s business district and protestors setting on fire a man shouting pro-Beijing slogans.<sup>48</sup> There have been other, more graphic incidents of police brutality against protestors including: police officers pinning down protestors and shining lasers into their eyes, threats to electrocute a detained protestor’s genitals, and beating down fleeing protestors to the ground such that bones are fractured or broken.<sup>49</sup> Many of the worst abuses were “typically carried out by anti-riot police and members of the Special Tactical Squad (STS), the latter of whom commonly known as “raptors”.<sup>50</sup> Although the police have had reasonable basis to arrest some protestors—namely those who have thrown bricks, bottles, and Molotov cocktails at the police—under international human rights law and standards, the police are permitted to use force only when absolutely necessary and that force must be proportionate to the objective the police are trying to achieve.<sup>51</sup> Police brutality was not limited to violent means of arresting and detaining protestors, it also degraded their detainees: in one incident, a female officer forced a woman to strip completely and endure a full body search because the woman talked back to the officer.<sup>52</sup> Throughout the entire ordeal, the female officer allegedly mocked and belittled the woman.<sup>53</sup>

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*Kongers Building a Case Against the Police*, THE NATION (Nov. 27, 2019), <https://www.thenation.com/article/hong-kong-police-brutality>; Brian Wong, *Hong Kong’s Protests Amid COVID-19: A Dying Movement or a Halted War?*, THE DIPLOMAT (Apr. 10, 2020), <https://thediplomat.com/2020/04/hong-kongs-protests-amid-covid-19-a-dying-movement-or-a-halted-war>.

<sup>47</sup> Rosemarie Ho, *The Hong Kongers Building a Case Against the Police*, THE NATION (Nov. 27, 2019), <https://www.thenation.com/article/hong-kong-police-brutality>.

<sup>48</sup> James Palmer, *Hong Kong’s Violence Will Get Worse*, FOREIGN POLICY (Nov. 11, 2019, 3:09 PM), <https://foreignpolicy.com/2019/11/11/police-killing-protests-beijing-lam-xi-hong-kong-violence-will-get-worse>.

<sup>49</sup> *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, AMNESTY INT’L (Sep. 19, 2019, 17:01 UTC), <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Unfortunately, incidents like the foregoing were not unique, and many others have spoken out alleging sexual assault upon detainment.<sup>54</sup>

One factor that may have contributed to the escalating violence is when former Hong Kong Police Commissioner Stephen Lo Wai-Chung, on June 12, 2019, called the clash between police and protestors a “riot,” a charge that in Hong Kong, can land arrested protestors in jail for up to a decade. In response, vast swathes of Hong Kong citizens protested, staging the largest protest ever with an estimated 2 million people participating.<sup>55</sup> Further exacerbating the situation, on July 21, 2019, a mob reportedly linked to the triads—organized crime groups in Hong Kong—assaulted protestors and passersby at a railway station injuring 45 people.<sup>56</sup> The delayed arrival of the police led many to speculate that the police were colluding with gangs to intimidate the protestors.<sup>57</sup> In addition, the protest movement in Hong Kong is “deeply decentralized, and protest leaders—who have repeatedly called for a commitment to nonviolence—have no power to control or discipline individual extremists,” making it more difficult to manage.<sup>58</sup> There is also the ideological factor of Hong Kong nationalism that may be fomenting strife:<sup>59</sup> “The early days of new nations, even ones that may never materialize, are always bloody” and the divide between Hong Kongers and Chinese mainlanders remains wide.<sup>60</sup>

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<sup>54</sup> Christy Leung, *New Hong Kong police chief Chris Tang tells residents: the force cannot end the protests alone*, SOUTH CHINA MORNING POST (Nov. 19, 2019, 7:00 AM),

<https://www.scmp.com/news/hong-kong/law-and-crime/article/3038305/incoming-police-chief-chris-tang-tells-hongkongers>.

<sup>55</sup> Ho, *supra* note 42.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Palmer, *supra* note 43.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

## B. *Mediation*

### 1. Mediation is Flexible and Accommodating

International mediation involves the intervention of an individual, group or organization into a dispute between two or more actors, and it is non-coercive, non-violent, and non-binding.<sup>61</sup> The standoff between the protestors and the Chinese government is indicative of the overwhelming distrust that Hong Kong citizens have not only of their local police force, and their local government, but also of anyone else with close ties to Beijing.<sup>62</sup> Moreover, the mounting violence resulting from the protests and the anger that only one out of their five demands were met<sup>63</sup> suggest that even negotiation between the protestors and the government may no longer be a viable option to restore peace and potentially reach compromise.<sup>64</sup> However, the nonbinding nature of mediation and the broad role of a mediator may be the best alternative to ensure not only that Hong Kongers are heard but that their objectives are considered.<sup>65</sup> Mediators can identify the objectives, the relevant stakeholders and parties who ought to be involved, and engage in joint problem solving and settlement.<sup>66</sup> Moreover, mediation seeks meetings with the parties in order to adequately understand the issues, facts, and positions of the parties involved.<sup>67</sup> The neutrality of mediators also helps to bring “parties out of a zero-sum mindset and into an integrative bargaining framework.”<sup>68</sup> Mediators are not advocates for any of the parties, thus remaining neutral and unaffected by how a settlement agreement may disfavor a particular party; they are committed to

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<sup>61</sup> STUDIES IN INTERNATIONAL MEDIATION: ESSAYS IN HONOR OF JEFFREY Z. RUBIN 5 (Jacob Bercovitch, ed., 2002).

<sup>62</sup> Daniel Victor & Mike Ives, *What’s Happening With the Hong Kong Protests?*, N.Y. TIMES (Oct. 15, 2019), <https://www.nytimes.com/2019/10/15/world/asia/what-are-hong-kong-protests-about.html>.

<sup>63</sup> *Id.*

<sup>64</sup> SARAH COLE ET AL., MEDIATION: LAW, POLICY & PRACTICE §4:3 (2018).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> ROBIN C. LARNER & THOMAS SMITH, OHIO JURISPRUDENCE ALTERNATIVE DISPUTE RESOLUTION §76 (3rd ed. 2019).

<sup>68</sup> COLE ET AL., *supra* note at 59, at §15:10.

reaching the resolution.<sup>69</sup> Mediation can also accommodate the broad range of interests of parties<sup>70</sup> thereby encouraging dialogue and discussion to come to some sort of agreement.

## 2. Mediation Can Encourage Reconciliation and Create a Forum

In addition to the formal withdrawal of the extradition bill, the protestors' four other demands<sup>71</sup> reflect the deeper desire of the protestors to retain their democratic freedoms of speech, assembly, and petition, which conflict with the Communist Party's values of loyalty and devotion to the ruling party.<sup>72</sup> Through mediation, there can be facilitated dialogue between Hong Kong citizens and the ruling Communist Party about how to sustain "one country, two systems" such that deeply held values of both sides are honored.<sup>73</sup> Moreover, open lines of communication can temporarily halt the violence between protestors and Hong Kong police, diminishing the demonization<sup>74</sup> of either side.<sup>75</sup> Thus, by discussing these value differences and confronting them directly, even if beliefs are not altered, it creates an opportunity for concession or compromise.<sup>76</sup> Addressing this conflict in Hong Kong has at least two key components: the police brutality against protestors and the fate of Hong Kong's democratic style of government after 2047.<sup>77</sup> Though clearly this is an intrastate conflict, arguably it is one with international ramifications because China's approach to Hong Kong can affect its status as an international financial center, either slowing or enhancing foreign investment and weakening or strengthening global commerce.<sup>78</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> COLE ET AL., *supra* note at 59, at §3:7.

<sup>71</sup> *See supra* note 2.

<sup>72</sup> Tsim, *supra* note 10.

<sup>73</sup> Lawrence Susskind, *RECONCILIATION vs. RESOLUTION*, 17 No. 2 DISP. RESOL. MAG., Winter 2011, at 26.

<sup>74</sup> Douglas M. McLeod, *ADDING FUEL TO THE FIRE*, 13 No. 4 DISP. RESOL. MAG., Summer 2007, at 6.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Kirby, *supra* note 2.

<sup>78</sup> Michelle Toh, *These global businesses are feeling the heat from Hong Kong's protests*, CNN (Aug. 9, 2019)

The United Nations has experience intervening in intrastate conflicts and is sensitive to matters of global consequence because of its nature as an international organization.<sup>79</sup> Together, these qualities may make the United Nations an appropriate mediator for the Hong Kong protests.

### 3. The United Nations as Mediator

The United Nations (“UN”) is a unique actor in international conflict management because it is an organization without the leverage and resources that its individual member states possess.<sup>80</sup> However, its international status as a global organization and the legitimacy it garners from this status combined with the cohesion and mediation experience of its members contributes to its ability to manage conflict situations.<sup>81</sup> Though the UN’s intervention in conflict situations can often lead to a stalemate between two countries or between two competing factions within a country—as seen the conflict between Yemen and Saudi Arabia, in which two UN mediators have vacated their posts, resulting in continued war in Yemen<sup>82</sup>—such an arrangement can eventually lead to settlements or formal agreements, whereas unilateral intervention by outside powers typically has the effect of gaining a clear victory for one side.<sup>83</sup>

#### C. *Ideas to Address the Stalemate*

##### 1. The Divided Community Project

The Divided Community Project is the collaborative product of city officials, police chiefs, civil rights organization leaders, and mediators throughout the country who have shared

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<https://www.cnn.com/2019/08/09/business/hong-kong-economy-protests-business/index.html>.

<sup>79</sup> STUDIES IN INTERNATIONAL MEDIATION: ESSAYS IN HONOR OF JEFFREY Z. RUBIN 98-104 (Jacob Bercovitch, ed., 2002).

<sup>80</sup> *Id.* at 98.

<sup>81</sup> *Id.*

<sup>82</sup> Rick Gladstone, *U.N. Mediator for Yemen Conflict Leaving Post*, N.Y. TIMES (Jan. 22, 2018),

<https://www.nytimes.com/2018/01/22/world/middleeast/yemen-un-envoy.html>.

<sup>83</sup> *Id.* at 101.

knowledge, experience, and insight about dealing with civil unrest in communities.<sup>84</sup> The strategies set forth by the Divided Community Project are a helpful model because they broadly discuss violent conflicts within communities that often involve a distrust of local law enforcement<sup>85</sup>, much like the Hong Kong protests.<sup>86</sup> Moreover, the project also offers strategies and elements to consider, many of which parallel the conflict in Hong Kong including: identify intervenors, identifying stakeholders, rebuilding trust especially between the public and local law enforcement, handling media and communications, and defining the issues.<sup>87</sup> Broadly applied to the Hong Kong protests, the parties involved would be the Hong Kong police force, the Hong Kong local government, the Chinese Community Party leaders, and the Hong Kong protestors.<sup>88</sup>

## 2. Two-Level Game Diplomacy

A two-level game is a model by which to understand the politics of international negotiations.<sup>89</sup> In the national or domestic arena, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and in the international arena, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments.<sup>90</sup> Each arena can be conceived as a game board and each national political leader appears at both boards.<sup>91</sup> At the international game board are the national political leader's foreign counterparts, along with his diplomats and foreign affairs advisors.<sup>92</sup> At the domestic game board, there are party and parliamentary figures, spokespersons for

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<sup>84</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 5.

<sup>85</sup> *Id.* at 8.

<sup>86</sup> Suzanne Sataline, *Four months into protests, Hong Kongers' distrust runs deep*, THE CHRISTIAN SCIENCE MONITOR (Oct. 23, 2019), <https://www.csmonitor.com/World/Asia-Pacific/2019/1023/Four-months-into-protests-Hong-Kongers-distrust-runs-deep>.

<sup>87</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8.

<sup>88</sup> Jen Kirby, *supra* note 2.

<sup>89</sup> Putnam, *supra* note 11, at 434.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

domestic agencies, representatives of key interest groups, and the national political leader's own domestic policy advisors.<sup>93</sup> The complexity of two-level games is that moves that may be considered rational at one board may be “impolitic” for that same national political leader at the other board.<sup>94</sup> To analyze the negotiation process for various national political leaders playing at their respective game boards, it is convenient to decompose the foregoing process into two stages: (1) bargaining between the negotiators, leading to a tentative agreement—call that Level I; and (2) separate discussions within each group of constituents about whether to ratify the agreement—call that Level II.<sup>95</sup> Given these categories, Robert Putnam, the theorist of two-level game diplomacy, defines a “win-set” for a given Level II constituency as “the set of all possible Level I agreements that would ‘win’—that is, gain the necessary majority among the constituents—when simply voted up or down.”<sup>96</sup> Larger win-sets make agreement more likely, and in fact, agreement is possible only if the Level I win-set and Level II win-set overlap.<sup>97</sup> Therefore, the larger each win-set, the greater the likelihood for agreement and conversely, the smaller each win-set, the greater the risk that negotiations will fall through.<sup>98</sup>

As it stands, China appears to be playing a two-level game as it seeks to assume a key role in major global issues at the international level while reinforcing and consolidating its domestic reform program.<sup>99</sup> China has become increasingly integrated with the global economy and this has led its domestic economic policy—especially its monetary, financial and trade policies—to come under the international spotlight.<sup>100</sup> In recent years, Premier Xi Jinping announced The Belt and Road Initiative, which is China's new economic development strategy to boost global economic links to its western regions, secure long-term energy

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 436.

<sup>96</sup> *Id.* at 437.

<sup>97</sup> *Id.* at 437-38.

<sup>98</sup> *Id.* at 438.

<sup>99</sup> Lijuan Zhang, *Chinese policy and the ‘Two-Level Game’*, CHINA.ORG.CN (Dec. 10, 2009),

[http://www.china.org.cn/opinion/2009-12/10/content\\_19042578.htm](http://www.china.org.cn/opinion/2009-12/10/content_19042578.htm).

<sup>100</sup> *Id.*

supplies from Central Asia and the Middle East, and improve China's image among its geopolitical neighbors.<sup>101</sup> However, the massive investment in this undertaking seems to be yielding far smaller returns than anticipated.<sup>102</sup> Separate reports indicate that none of the Indian Ocean port projects have much hope of financial success and that nearly 300 of the infrastructure projects have been put on hold because of issues with practicality or financial viability.<sup>103</sup> Furthermore, the Belt and Road initiative may not be improving China's global image as much as it had hoped in light of criticisms from Malaysia's prime minister, Mahathir bin Mohamad—who alleged the Belt and Road initiative was overpriced—and mass protests in Kazakhstan over the Chinese government's treatment of Uighurs in Xinjiang Province.<sup>104</sup> This suggests that perhaps Hong Kong can use the struggling Belt and Road Initiative, which would be Level II, as leverage to accomplish its own domestic goals of political and economic freedoms, which would be Level I.<sup>105</sup> By applying the two-level game framework, it may help in identifying what comprises China's "win-sets" to better understand its interests and conceive possible solutions.

### 3. Isolation and Confrontation, Problem-Solving Approaches

The problem-solving approach emphasizes face-to-face communication among parties in conflict and often in a context other than diplomatic negotiations.<sup>106</sup> Notable examples of different approaches include one led by John Burton, who dubbed his approach "controlled communication" and another led by Leonard Dobb, known as the Fermeda Workshop.<sup>107</sup> Both of the

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<sup>101</sup> Andrew Chatzky & James McBride, *China's Massive Belt and Road Initiative*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative> (last updated May 21, 2019).

<sup>102</sup> Tanner Greer, Opinion, *One Belt, One Road, One Big Mistake*, FOREIGN POLICY (Dec. 6, 2018), <https://foreignpolicy.com/2018/12/06/bri-china-belt-road-initiative-blunder>.

<sup>103</sup> *Id.*

<sup>104</sup> Andrew Chatzky & James McBride, *supra* note 99.

<sup>105</sup> Putnam, *supra* note 11, at 436.

<sup>106</sup> Kelman, *supra* note 12.

<sup>107</sup> *Id.*

aforementioned approaches “are designed to bring together representatives of nations or national (ethnic) communities involved in an active conflict, for face-to-face communication in a relatively isolated setting, free from governmental and diplomatic protocol.”<sup>108</sup> Furthermore, “[t]he talks are designed to produce changes in the participants’ perceptions and attitudes and thus to facilitate creative problem-solving.”<sup>109</sup>

To briefly summarize the Burton “controlled communication” approach, this workshop took place in a university setting in London and dealt with the conflict between the Greek and Turkish communities in Cyprus.<sup>110</sup> In these discussions, there were four Cypriots and six social scientists who participated.<sup>111</sup> The discussions were roughly in three phases: (1) the conflicting parties presented their respective views of the conflict; (2) the social scientists presented various models of conflict; (3) the parties considered various approaches to resolving the conflict.<sup>112</sup> The social scientists contributed to the third phase in two ways: (1) by bringing in relevant experiences from the resolution of other international or intercommunal conflicts, and by systematically attempting to explain why solutions that seemed very reasonable to one party caused anxiety and rejection in the other.<sup>113</sup> It is important to note that the social scientists did not propose solutions, and they also did not convey the expectation that an agreed-upon solution was to be found.<sup>114</sup> The assumption was that through the discussion, new insights would inform new ideas for its resolution from the participants themselves, and perhaps influence the negotiation process.<sup>115</sup>

To summarize the Fermeda Workshop, this approach took place in a hotel in the mountains of South Tyrol, and focused on the border dispute in the horn of Africa between Somalia and its two neighbors, Ethiopia and Kenya.<sup>116</sup> This two-week workshop

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 279.

<sup>111</sup> *Id.* at 280.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 280-81.

<sup>114</sup> *Id.* at 281.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

included six Somalis, six Ethiopians, and six Kenyans.<sup>117</sup> During the first few days of the workshop—which comprised the first phase—the meetings between the different groups did not deal with the substantive issues relating to the border disputes.<sup>118</sup> During the second phase, the workshop then turned specifically to the border disputes in the following manner: participants met in their three separate national groups; each group was asked to list its own grievances and the grievances of the other two national groups, as they perceived them, and to present these lists to the total group.<sup>119</sup> This procedure was unsuccessful as two of the groups failed to engage in the requested role reversal.<sup>120</sup> Ultimately, the workshop closed without achieving the goal of developing a joint proposal supported by the total group<sup>121</sup> of six Somalis, six Ethiopians, and six Kenyans<sup>122</sup>; however, the workshop did yield some positive outcomes.<sup>123</sup> In a questionnaire distributed to the participants, as a whole, they responded “that they had acquired new knowledge about the cultures and problems of the other countries, that they had gained a better understanding of the other countries’ views of the disputes, and that they were somewhat more open now to alternative solutions.”<sup>124</sup>

As Herbert Kelman<sup>125</sup> argues in his article, the context of the workshops helps overcome some of the barriers to communication that are prevalent in conflict situations.<sup>126</sup> Setting the stage is important not only at the beginning, but continuously throughout the proceedings.<sup>127</sup> By selecting an isolated and private location for the mediation, the participants in a mediation with Hong Kong, China, and other relevant parties may feel encouraged to express sentiments that have not previously been acknowledged in public statements.<sup>128</sup> These expressions would add depth to all

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<sup>117</sup> *Id.* at 282.

<sup>118</sup> *Id.* at 283.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 282.

<sup>123</sup> *Id.* at 283.

<sup>124</sup> *Id.*

<sup>125</sup> Kelman, *supra* note 12.

<sup>126</sup> *Id.* at 299.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 301.

participating parties' understanding of the other side's position, as well as increase the probability that others will be receptive to them, to the extent that a degree of openness and mutual trust has developed.<sup>129</sup> Instead of social scientists, here, a mediator could "contribute to the transmission and reception of this type of information by creating an atmosphere in which there is greater openness to new information and setting a task around which trust can be built."<sup>130</sup> "Moreover, when new information is introduced, the [mediator] can call attention to it and make it a focus for discussion. They can encourage the participants to confront the information, making sure that it is neither avoided nor distorted and that its implications are duly drawn."<sup>131</sup> Through continued interactions, gradually, the participants may intermittently illustrate some of the underlying dynamics of the conflict between the parties they represent.<sup>132</sup> In other words, in our case, the behavior of the parties—for example, Hong Kong and mainland Chinese officials—may reflect the nature of the relationship between Hong Kong citizens protesting for permanent democracy and the pro-Beijing executives influencing Hong Kong's government towards unification, as well as that of the Hong Kong citizen victims of police brutality and the Hong Kong police force. Similarly to the two workshops that Kelman discusses, such interactions do not guarantee a clear outcome and may struggle to achieve any aim.<sup>133</sup> Nevertheless, by creating an opportunity for direct, face-to-face communication among the conflicting parties, it allows for new information to potentially arise that can add depth to the other parties' understanding and perception of the issue and perhaps spontaneously give rise to new approaches to address the conflict.<sup>134</sup>

#### IV. PROPOSAL

This proposal attempts to use the strategies of The Divided Community Project as a model and incorporate the concept of

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 302.

<sup>133</sup> *Id.* at 281, 283.

<sup>134</sup> *Id.* at 285.

“win-sets” from two-level game diplomacy and the isolated and guided communication approaches from the John Burton and Fermeda workshops. Here, the main intervenor would mediate the conflict while proposing possible solutions to encourage both party’s willingness to cooperate—in other words, expand their respective “win-sets.”<sup>135</sup> To achieve optimal cooperation between the parties and widen their respective “win-sets,” the entire mediation would take place in a neutral location that is isolated from societal pressures, allowing the parties to focus on communication with minimal distraction—thereby incorporating elements from the Fermeda and controlled communication workshops.<sup>136</sup> These initial steps begin the process of mediation, but given the public nature of the conflict in Hong Kong, there must also be a means to relay any updates and progress about the mediation to the Hong Kong public. Moreover, having a means to relay information from a single source without distortion and preclude pervasion of false rumors and misinformation would be critical to maintaining the integrity of the mediation process. To manage this, there would be a press briefing room similar to the White House Press Briefing Room acting as an intermediary between the parties involved in mediation and the general public.<sup>137</sup> Through this iterative process of mediation and public announcement, the scope of the mediation may expand beyond the five demands that the protestors have made<sup>138</sup> and other issues and interests may arise including: financial interests of Hong Kong, Hong Kong as an economic entryway into commercial relationships with mainland China, and how China’s engagement with Hong Kongers may undermine its stance against its citizens in Xinjiang and Tibet.<sup>139</sup> All these elements together can work to establish a flexible mediation process that is capably equipped to address the different elements of the conflict in Hong Kong and carry it forward to 2047 and beyond.

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<sup>135</sup> Putnam, *supra* note 11, at 434.

<sup>136</sup> Kelman, *supra* note 12.

<sup>137</sup> James A. Jacobs, *The President, the Press, and Proximity*, THE WHITE HOUSE HISTORICAL ASSOCIATION (2015), <https://www.whitehousehistory.org/the-president-the-press-and-proximity>.

<sup>138</sup> *See supra* note 2.

<sup>139</sup> COLE ET AL., *supra* note at 59, at §3:7.

A. *The Divided Community Project, Modified*

1. Mediators and Win-Sets

Inviting intervenors, or mediators, with experience in unstable community or intra-regional conflicts and conflict resolution will help to begin discussions with stakeholders on viable processes for resolving issues.<sup>140</sup> The intervenor can assist local leaders develop a process to address acts of violence and develop safe alternatives for people to express their views.<sup>141</sup> These intervenors are able to consider the situation more broadly and pinpoint obstacles that could hamper successful mediation.<sup>142</sup> For example, in the shooting of Trayvon Martin in 2012, many African-American residents of Sanford, Florida were incensed by the racial injustice in that area.<sup>143</sup> While some city officials were optimistic that the community as a whole would be able to move past the tragedy, one intervenor, Andrew Thomas, continued to consider why the community may struggle to do so.<sup>144</sup> Thomas knew that although community was indeed upset about Trayvon Martin's shooting, their distress also involved deeper concerns about racial injustice.<sup>145</sup> To facilitate conversation without inciting hostile reactions, Thomas brought in other mediators to build relationships with Sanford's clergymen, whom the communities of Sanford trusted.<sup>146</sup>

As discussed earlier, The UN is an organization without any leverage or resources of its own but derives its leverage from its universality and from its membership's support and cohesiveness.<sup>147</sup> In the UN, there are nine categories of mediators according to their position and rank, and for this particular conflict in Hong Kong, the Secretary-General may be the most effective.<sup>148</sup> Briefly, the position of UN Secretary-General is a multi-functional role, requiring one to act as advocate, diplomat, civil servant, and

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<sup>140</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 9.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 10.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 10-11.

<sup>147</sup> STUDIES IN INTERNATIONAL MEDIATION, *supra* note 59, at 114.

<sup>148</sup> *Id.* at 115.

CEO, representing the United Nations ideals and giving a voice to the world's peoples, especially the poor and vulnerable among them.<sup>149</sup> Moreover, while it is typical for UN mediators to engage disputes in response to directives by the Security Council, the UN Secretary-General can independently offer to mediate a dispute.<sup>150</sup> Thus, although other lower-ranking UN mediators may be sufficient, having the incumbent UN Secretary-General mediate the dispute himself may give the mediation greater weight and wider international attention.

By attracting a wider global gaze, this may incentivize the Chinese ruling party to participate in a mediation with Hong Kong in order to show its international partners that when disputes arise,<sup>151</sup> they are not loath to engage in dialogue. Furthermore, as stated above, the UN has no leverage of its own, and it is empowered entirely by the resources of its member nations, of which China is an influential one, given its economic strength and permanent seat on the UN Security Council.<sup>152</sup> These factors together may work to encourage the Chinese ruling party to participate, while not threatening it. To Hong Kong citizens, having a UN mediator that ultimately cannot hold China accountable to any agreements, seems to be counterproductive to their aims of gaining democratic freedoms. However, though the UN Secretary-General may not be able to hold China accountable, given that the UN relies on the support of its most powerful members states to give weight to their resolutions, the UN Secretary-General can counterbalance the benefits to China by appealing to the other large members states for sanctions or concessions.<sup>153</sup> This sort of carrot and stick power may be able to help Hong Kong achieve its aims, in exchange for concessions to China internationally. Further, this carrot and stick power is critical in expanding China's win-set to overlap with that of Hong

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<sup>149</sup> *The role of the Secretary-General*, THE UNITED NATIONS, <https://www.un.org/sg/en/content/role-secretary-general>.

<sup>150</sup> STUDIES IN INTERNATIONAL MEDIATION, *supra* note 59, at 115, 118.

<sup>151</sup> Reid Standish, *China's Path Forward Is Getting Bumpy*, THE ATLANTIC (Oct. 1, 2019), <https://www.theatlantic.com/international/archive/2019/10/china-belt-road-initiative-problems-kazakhstan/597853/>

<sup>152</sup> *Is China contributing to the United Nations' mission?*, CHINAPOWER, <https://chinapower.csis.org/china-un-mission> (last updated Jan. 24, 2020).

<sup>153</sup> STUDIES IN INTERNATIONAL MEDIATION, *supra* note 59, at 119.

Kong's vis-à-vis the basic structure of two-level game diplomacy.<sup>154</sup>

Given that a win-set is that it is the set of all possible agreements that would be agreed upon, if that set is narrow or small, agreement is unlikely.<sup>155</sup> As it stands, it is unclear how much larger China's win-set might need to expand to come to an agreement with Hong Kong, but China's global ambitions may provide an indication. In 2013, President Xi Jinping announced The Belt and Road Initiative (BRI), which is a massive infrastructure project that purports to create a vast network of railways, energy pipelines, highways, and streamlined border crossings westward, through the former Soviet republics, and southward, to Pakistan, India, and Southeast Asia.<sup>156</sup> Through this immense undertaking, China hopes to boost global economic links to its western regions and assert a greater presence on the global stage.<sup>157</sup> However, the project has recently experienced roadblocks, as the Malaysian prime minister, in 2018, objected to the exorbitant investment required for the BRI projects and mass protests against the construction of Chinese factories swept Kazakhstan.<sup>158</sup> Furthermore, some countries like Kenya and Zambia are wary of signing on and BRI investment had slowed.<sup>159</sup> If the UN Secretary-General were to take an active role in the mediation and succeed in convincing some of its influential member states in Eurasia to offer a "carrot" in the form of financial investment to the BRI, and expedite its completion, China's win-set may expand sufficiently such that it may be amenable to Hong Kong's interests.

## 2. Location

As discussed earlier, the context for mediation is important in achieving the relevant ends. A possible location for the mediation to take place could be Singapore. Singapore is an increasingly important seat of arbitration in the Asia-Pacific

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<sup>154</sup> Putnam, *supra* note 11.

<sup>155</sup> *Id.* at 437-38.

<sup>156</sup> Andrew Chatzky & James McBride, *supra* note 99.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

region<sup>160</sup>, especially as many foreign banks and companies have established branches or subsidiaries in Singapore.<sup>161</sup> Singapore is also beginning to challenge established centers for arbitration like London, Paris, and Stockholm as case filings at the Singapore International Arbitration Centre (SIAC) have increased from 58 cases in 2000 to 271 cases in 2015 while the London Court of Arbitration had 326 cases in 2015.<sup>162</sup> Though arbitration and mediation are not identical,<sup>163</sup> their similarities suggest that a location like Singapore, which has a strong basis in arbitration, can be better suited to manage the mediation process and assist it towards resolution. Moreover, the proximity of Singapore to Hong Kong and Beijing allows for easier transportation than if the mediation were held in Europe or the Americas. While it may be better to conduct the mediation in a completely different location, the involvement of multiple stakeholders prioritizes a closer location so that all parties involved can more easily participate.

### 3. Stakeholders

Identifying the relevant stakeholders can be challenging, but in general, the collective group should comprised of persons who (1) understand the key groups' fundamental concerns; (2) know whose voices need to be heard to avoid conflict escalation; and (3) are key community leaders who can bind the community together.<sup>164</sup> Similarly to how Andrew Thomas—the mediator in Sanford after the shooting of Trayvon Martin—built relationships with the community clergy, the intervenor for the Hong Kong protests must be able to understand the social fabric of Hong Kong society and which leaders are influential and trusted.<sup>165</sup> In addition,

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<sup>160</sup> Michael Pryles, *Singapore: The Hub of Arbitration in Asia*, SINGAPORE INTERNATIONAL ARBITRATION CENTRE, <https://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/198-singapore-the-hub-of-arbitration-in-asia>.

<sup>161</sup> *Id.*

<sup>162</sup> Jane Croft, *Singapore is becoming a world leader in arbitration*, THE FINANCIAL TIMES (Jun. 2, 2016), <https://www.ft.com/content/704c5458-e79a-11e5-a09b-1f8b0d268c39>.

<sup>163</sup> FINRA, *Arbitration & Mediation*, FINRA, <https://www.finra.org/arbitration-mediation/overview>.

<sup>164</sup> *Id.* at 11.

<sup>165</sup> *Id.*

even upon identification of the relevant stakeholders, as the process moves forward, there may arise more stakeholders who can be a resource in developing and implementing solutions.<sup>166</sup>

As an initial list, the stakeholders to begin the mediation should include Hong Kong's Chief Executive, Carrie Lam,<sup>167</sup> Hong Kong Chief of Police, Chris Tang,<sup>168</sup> and some ranking members of the Chinese ruling party in Beijing. Carrie Lam's and Chris Tang's involvement are important not only for working towards resolution, but also for rebuilding trust between Hong Kongers and their local officials. Lam and Tang broke that trust by attempting to force passage of the fugitives' bill<sup>169</sup> and refraining from opening an independent inquiry into allegations of police misconduct,<sup>170</sup> respectively. By first rebuilding trust between Hong Kong's local government officials and its citizens, it may then be easier to address Hong Kongers' desire for democratic freedoms. It may also be important to have some ranking members of the Chinese ruling party in Beijing participate not only that China's interests can be disclosed, but also that the mediation can be further legitimized, especially in the eyes of Hong Kongers.

As for Hong Kong community leaders who should participate, there is potentially a wide array of relevant stakeholders, but of particular importance are young Hong Kongers because it is their futures that are more likely to be severely impacted as opposed to that of older Hong Kongers.<sup>171</sup> Such community leaders would include Hong Kong's young activist-cum-politicians such as Nathan Law, Sixtus Leung, Yau Wai-ching, and Cheung Chung-tai<sup>172</sup> as well as Joshua Wong of the Umbrella Movement in 2014.

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<sup>166</sup> *Id.*

<sup>167</sup> Kirby, *supra* note 2.

<sup>168</sup> Leung, *supra* note 52.

<sup>169</sup> Kirby, *supra* note 2.

<sup>170</sup> Leung, *supra* note 52.

<sup>171</sup> James Griffiths, *Why Hong Kong's young protestors feel they're running out of time in fight for democracy*, CNN (Jul. 25, 2019), <https://www.cnn.com/2019/07/25/asia/hong-kong-china-2047-protests-intl-hnk/index.html>.

<sup>172</sup> Tom Phillips & Eric Cheung, *Hong Kong election: who are the young activists elected to the council?*, THE GUARDIAN (Sep. 5, 2016), <https://www.theguardian.com/world/2016/sep/05/hong-kong-election-who-are-the-young-activists-elected-to-the-council>.

Briefly, the Umbrella Movement in 2014 was a sort of predecessor to the more recent Hong Kong protests of 2019.<sup>173</sup> While the protests that began in 2019 were ignited because of the controversial extradition bill, the Umbrella Movement arose because it seemed that Hong Kongers would obtain what was promised to them in the Basic Law: universal suffrage to elect Hong Kong's chief executive.<sup>174</sup> On August 31, 2014, the ruling party in Beijing proposed that all eligible voters could vote in 2017, "but only for two or three candidates who had been nominated by more than half of a 1,200 person nominating committee," which is disproportionately comprised of business elites and other groups closely linked to the Chinese ruling party in Beijing.<sup>175</sup> On the night of this proposal, Hong Kongers started protesting by setting up tents and occupying the streets.<sup>176</sup> Then in September of 2014, Joshua Wong led protestors in occupying a forecourt outside government headquarters.<sup>177</sup> Wong and those with him were arrested the following day.<sup>178</sup> Wong's arrest galvanized the other protestors and he emerged as a de facto leader of the protest movement in 2014.<sup>179</sup> Collectively, the aforementioned stakeholders understand the fundamental issues of the conflict, know whose voices need to be heard to avoid escalation, and may be able to bind Hong Kong and China.

#### 4. Trust Between Citizens and Police

In the midst of volatile conflict, trust between the aggrieved communities and the local law enforcement and government officials is fragile.<sup>180</sup> Before mediation can even begin, the conflict must be de-escalated so that communities can begin to feel

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<sup>173</sup> Tripti Lahiri, *A refresher course on Hong Kong's 2014 Umbrella Movement*, QUARTZ (Sep. 27, 2019), <https://qz.com/1714897/what-was-hong-kongs-umbrella-movement-about/>.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Joshua Wong, the poster boy for Hong Kong protests*, BBC NEWS (Jun. 25, 2019), <https://www.bbc.com/news/world-asia-29457900>.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 13.

that they can trust their leaders.<sup>181</sup> Rather than characterizing the conflict as an “us versus them”<sup>182</sup> situation or remaining silent, leaders must demonstrate that they are also impacted by the conflict in a manner that resonates with the aggrieved communities.<sup>183</sup> Leaders must be wary of their actions and approach their communities from a position of compassion and of understanding the broader issues that ignited the conflict.<sup>184</sup>

Given that much of Hong Kongers’ distrust of the government stems from the incidents of police brutality against protestors,<sup>185</sup> this strategy of establishing protocols between law enforcement and other local officials is critical.<sup>186</sup> Cooperation and coordination between law enforcement and local officials is paramount to de-escalation and effective management of further violent protests.<sup>187</sup> Although in the Hong Kong protests law enforcement has contributed to the escalating violence, it remains critical that they remain involved as stakeholders and problem-solvers<sup>188</sup>—albeit with more critical oversight and new protocols dictating when to engage protestors; what kinds of tools can and cannot be used against them; and how to deal with protestors who are especially violent and aggressive.<sup>189</sup> Additionally, part of these protocols could be the establishment of a Community Relations Service that acts as an intermediary between law enforcement and the community.<sup>190</sup>

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 14.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Shibani Mahtani, Timothy McLaughlin, Tiffany Liang, & Ryan Ho Kilpatrick, *In Hong Kong crackdown, police repeatedly broke their own rules – and faced no consequences*, THE WASHINGTON POST (Dec. 24, 2019), <https://www.washingtonpost.com/graphics/2019/world/hong-kong-protests-excessive-force>.

<sup>186</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 16.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Shibani Mahtani, *supra* note 183.

<sup>190</sup> DEPARTMENT OF JUSTICE, *Community Relations Service, Police-Community Conflicts* (2015), <https://www.justice.gov/crs/file/627821/download>.

## 5. Media and Communications

Rapidly spreading images and video clips of police brutality against protestors could counteract any efforts toward resolution.<sup>191</sup> Hence the importance of having a media and communications strategy not only as a means of being transparent to the public, but also as a means of controlling the narrative to the actual steps being taken toward resolution and the progress that may have been made.<sup>192</sup> The intervenor and stakeholders should collaborate and determine who decides what will be said, who should speak to the media, how to address and control false information, which audiences need to be reached, whether there should be a social media team, etc.<sup>193</sup> By establishing communications protocols, there is the additional benefit of maintaining public integration in the mediation.<sup>194</sup> In this way, the public can remain informed throughout the entire process and may also be able to share input regarding their views on the mediation and whether they believe it may be successful.<sup>195</sup>

A practical way to establish communications protocols, such that information can be accurately relayed to the public without distortion is to create a Hong Kong Press Briefing Room, similar to the White House Press Briefing Room.<sup>196</sup> The importance of having a single source of information updating the public on the mediation process cannot be understated. Without such a system in place, the parties involved could resort to their own means of spreading information, whether it is accurate or not and potentially spark further conflict. For example, social media was seen as a pathway to democracy for protestors of the Arab Spring in 2011.<sup>197</sup> Social media and the Internet were means by which protestors shared and disseminated information and the means by which they organized.<sup>198</sup> However, just as social media

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<sup>191</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 18.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 19.

<sup>194</sup> *Id.* at 26.

<sup>195</sup> *Id.* at 27.

<sup>196</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 26.

<sup>197</sup> Jessi Hempel, *Social Media Made the Arab Spring, But Couldn't Save It*, WIRED (Jan. 26, 2016), <https://www.wired.com/2016/01/social-media-made-the-arab-spring-but-couldnt-save-it/>.

<sup>198</sup> *Id.*

and the Internet can empower protestors, it can make those protestors far easier to target.<sup>199</sup> Every post and upload can contribute to an aggregate of data about who the protestors are, their religious beliefs, political views, and other intimate details about their personal lives.<sup>200</sup> If there is no mechanism to rein in unbridled social media activism, its absence can undermine the mediation process. Moreover, the widespread use of social media is beneficial in that it allows many more people to engage and participate, but the pervasiveness of the medium has a tendency to make such activist movements leaderless.<sup>201</sup> The danger in leaderless movements the decentralization causes activists to form smaller groups that coordinate protest actions independently that may not be aligned with the aims of the movement.<sup>202</sup> For example, there are suspicions that some of the initial violent protests in Hong Kong involved members of the Triads, a Hong Kong mafia group, and it remains unclear whether they seek to join the protests or have other motives.<sup>203</sup> Thus, by having a uniform source of information from which the public can receive accurate information, the mediation process would not only be strengthened, but also be transparent, allowing Hong Kongers an opportunity to respond to the mediation.

## 6. Issue Definition

Parties involved must endeavor to identify the full range of factors that resulted in violent conflict.<sup>204</sup> This in and of itself is an immense undertaking, but to start, the root cause of the protests is the principle of “one country, two systems” that is embedded into Hong Kong’s basic law and set to expire in 2047.<sup>205</sup> Once the

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<sup>199</sup> Manal Al-Sharif, Opinion, *The Dangers of Digital Activism*, N.Y. TIMES (Sep. 16, 2018), <https://www.nytimes.com/2018/09/16/opinion/politics/the-dangers-of-digital-activism.html>.

<sup>200</sup> *Id.*

<sup>201</sup> Gideon Rachman et al., *Leaderless rebellion: how social media enables global protests*, THE FINANCIAL TIMES (Oct. 25, 2019), <https://www.ft.com/content/19dc5dfe-f67b-11e9-a79c-bc9acae3b654>.

<sup>202</sup> *Id.*

<sup>203</sup> *Hong Kong protests: Were triads involved in the attacks?*, BBC NEWS (Jul. 22, 2019), <https://www.bbc.com/news/world-asia-china-49071502>.

<sup>204</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 22.

<sup>205</sup> Jen Kirby, *supra* note 2.

basic law expires, Hong Kong would be formally integrated into China's political regime, which may seem to some Hong Kongers as dissolving any ambitious aims and dreams of more expansive democratic reforms including universal suffrage.<sup>206</sup> Universal suffrage aside, Hong Kongers may also fear losing nearly democratic freedoms as seen in the Xinjiang re-education camps.<sup>207</sup> Under an official policy of curbing terrorism and separatism, the Chinese government arrests Uighur individuals and detains them in camps to provide instruction against such thinking and behavior.<sup>208</sup> Hong Kongers may fear that they will suffer a similar fate as that of the Uighurs in Xinjiang if they do not resist. Thus, intervenors and mediators cannot be myopic and address only the recent conflict or precipitating incident, otherwise they may miss the heart of the issue and leave the aggrieved communities embittered.<sup>209</sup> Moreover, defining the issues facilitates problem-solving by clarifying whether those issues can be resolved and if so, what means are necessary to achieve those ends.<sup>210</sup>

Throughout the mediation, the UN Secretary-General would take an active role engaging the parties and encouraging dialogue while also presenting possible solutions. The possible solutions should be the result of issues that have been identified before the parties and agreed upon by the parties to be the issues. Regarding the conflict in Hong Kong, there are two apparent issues—the incidents of police brutality sparking violent protests and the issue of Hong Kong's political status after 2047—but the mediation process may be forced to address additional issues as time progresses and in light of new developments. For example, since the emergence of the coronavirus in late 2019, Hong Kongers' distrust of their local government as well as that of China

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<sup>206</sup> *Id.*

<sup>207</sup> *Data leak reveals how China 'brainwashes' Uighurs in prison camps*, BBC NEWS (Nov. 24, 2019), <https://www.bbc.com/news/world-asia-china-50511063>.

<sup>208</sup> Austin Ramzy, *How China Tracked Detainees and Their Families*, THE NEW YORK TIMES (Feb. 17, 2020), <https://www.nytimes.com/2020/02/17/world/asia/china-reeducation-camps-leaked.html>.

<sup>209</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 22.

<sup>210</sup> *Id.*

have only broadened, as Hong Kongers fear for their lives.<sup>211</sup> It remains to be seen how further developments involving the coronavirus will impact the Hong Kong protests in general, as well as the Hong Kong public's sentiments towards their local government and the Chinese ruling party in Beijing. However, the flexibility of the framework and its emphasis on open, undisturbed communication can still allow for resolution of novel issues.

## *B. Weaknesses*

### 1. Hong Kongers' Persisting Distrust of Their Legal System

Although the proposed framework can effectively address the conflict between the Hong Kong protestors and the Chinese government, there are still some lingering issues that may hinder resolution, one of which is a persisting lack of public trust in the legal system.<sup>212</sup> In the present case, Hong Kongers have arguably never trusted their legal system since the inception of the Basic Law in 1997 because the promises of maintaining a high degree of autonomy are temporary until the fifty year transitional period ends.<sup>213</sup> With such a lack of trust, it remains to be seen whether any promises made by the Hong Kong government or by Beijing would be enough to satisfy the protestors' demands. However, public distrust of the government is not unique to Hong Kong, as there is governmental distrust present in other countries as well, like the United States.<sup>214</sup> Thus, Hong Kongers' may always be some level of public distrust in the legal system, but perhaps not enough to preclude successful mediation. Moreover, as the

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<sup>211</sup> Sarah Wu, *Coronavirus widens Hong Kong anger at government, China*, REUTERS (Feb. 20, 2020), <https://www.reuters.com/article/us-china-health-hongkong-protests-insigh/coronavirus-widens-hong-kong-anger-at-government-china-idUSKBN20F0E3>.

<sup>212</sup> Steven Austermiller, *Mediation in Bosnia and Herzegovina: A Second Application*, 9 YALE HUM. RTS. & DEV. L. J. 132, 145 (2006).

<sup>213</sup> Timothy Ka-ying Wong & Shirley Po-san Wan, *THE CHINA FACTOR IN THE HONG KONG PUBLIC'S CHANGING PERCEPTIONS OF "ONE COUNTRY, TWO SYSTEMS"*, 31 ASIAN PERSPECTIVE 127, 128 (2007).

<sup>214</sup> Lee Rainie and Andrew Perrin, *Key findings about Americans' declining trust in government and each other*, PEW RESEARCH CENTER (Jul. 22, 2019), <https://www.pewresearch.org/fact-tank/2019/07/22/key-findings-about-americans-declining-trust-in-government-and-each-other/>.

mediation is in process, the deliberate efforts for meaningful dialogue, which tend to work towards rebuilding trust through empathy and understanding, may see noticeable impact on Hong Kongers' trust in the government.<sup>215</sup>

## 2. China Might Still Not Agree to Mediation

Another concern is that there may be no credible threat of effective enforcement of the mediated settlement.<sup>216</sup> Without an effective means of enforcement, the efforts placed into the mediation may be to no avail, which is an issue in the present case. Although the UN is involved to provide legitimacy and grant weight to the mediation, China may perceive that to be too much international oversight in their affairs. Moreover, from an administrative perspective, it might be threatening to their status quo to create a modified political system in Hong Kong, while continuing to enforce its authoritarian policies in other regions. China has a long history of neglecting the discontent of its people despite its many human rights abuses, including harassment of activists and dissidents, persecution of those with religious beliefs, and discrimination against ethnic minorities, most notably the Uighurs of Xinjiang Province.<sup>217</sup>

## 3. Externalities vis-à-vis the 2019 Novel Coronavirus

In December 2019, the World Health Organization's China office heard the first reports of a previously-unknown virus linked to a number of pneumonia cases in Wuhan, China.<sup>218</sup> Since then, the disease has affected approximately 78,000 people in mainland China, killing 2,710.<sup>219</sup> The coronavirus was later detected in Hong Kong on January 22, 2020 and there have been 62 confirmed

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<sup>215</sup> DIVIDED COMMUNITY PROJECT, *supra* note 8, at 14.

<sup>216</sup> Austermilller, *supra* note 210.

<sup>217</sup> Camila Ruz, *Human Rights: What is China accused of?*, BBC NEWS (Oct. 21, 2015), <https://www.bbc.com/news/magazine-34592336>.

<sup>218</sup> Matt Reynolds, *What is coronavirus and how close is it to becoming a pandemic?*, WIRED (Feb. 26, 2020), <https://www.wired.co.uk/article/china-coronavirus>.

<sup>219</sup> *Id.*

cases since.<sup>220</sup> Although the numbers are far lower in Hong Kong than in mainland China, Hong Kong still carries memories of Severe Acute Respiratory Syndrome (SARS) outbreak in 2003,<sup>221</sup> of which it was the epicenter.<sup>222</sup> These lingering memories of SARS, the growing anti-China sentiment, and the Chinese government's struggle to contain and resolve the outbreak has now inspired protestors to close the borders to China.<sup>223</sup> Though it seems that the coronavirus has halted the protests, a series of arrests and strict national security policies may revive the protests, as the coronavirus infection rates stabilize and social distancing measures ease.<sup>224</sup> Thus, the potential for the protests to resume in spite of the pandemic emphasizes the importance of mediation in reaching resolution.

## V. CONCLUSION

This proposal attempts to stop the protests and the ensuing violence, and open lines of communication between the relevant groups with the goal of discussion and, ideally, agreement on issues piecemeal. The outcome of all the interventions discussed here may yield no different result or modification of Hong Kong's current political system; however, the creation of forums for confrontation and open expression of viewpoints on the conflict and for discussing ideas of what the possible solutions are, can cultivate deeper understanding between the parties. Mutual understanding and empathy may not yield much in the short term, but they can pave the way for future resolution. Hong Kong and China may not reach a resolution by the time the Basic Law

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<sup>220</sup> Jessie Yeung, *In Hong Kong, the coronavirus outbreak is deepening the political divide from the 2019 protests*, CNN (Feb. 19, 2020), <https://www.cnn.com/2020/02/18/asia/hong-kong-coronavirus-protests-intl-hnk/index.html>.

<sup>221</sup> *Id.*

<sup>222</sup> Laignee Barron, *The Coronavirus Has Brought Out the Ugly Side of Hong Kong's Protest Movement*, TIME (Feb. 19, 2020), <https://time.com/5784258/hong-kong-democracy-separatism-coronavirus-covid-19/>.

<sup>223</sup> Yeung, *supra* note 218.

<sup>224</sup> Austin Ramzy and Elaine Yu, *Under Cover of Coronavirus, Hong Kong Cracks Down on Protest Movement*, THE NEW YORK TIMES (Apr. 21, 2020), <https://www.nytimes.com/2020/04/21/world/asia/coronavirus-hong-kong-protests.html>.

expires in 2047, but perhaps they will be able to agree on many more viewpoints, moving closer towards unity, and everyone wins.