Hong Kong: Caught between a rock and a hard place

By: Christine Loh

Political transitions are never easy. The past 26 years has been a roller coaster for Hong Kong. It was unplugged from the British colonial system and reattached to a new experiment as a special administrative region of the People's Republic of China.

The romance in the West about Hong Kong is what a pity it had to revert to Chinese rule in 1997. Seen from China's perspective, Hong Kong was snatched away by a colonial power in the 19th century and its reunification with the motherland represented the restoration of historical justice. To the West, Hong Kong has lost its lustre. To Beijing, Hong Kong operates under the special policy of "one country, two systems", it enjoys "a high degree of autonomy" and has a bright future as a part of China.

Tectonic shifts are taking place between the "collective West" and "Global South". As China becomes strong economically and technologically, its global influence rises and the West sees it as a challenger of its long-held premier status in global decision-making, which they refer to as "the international global order". The Global South prefers the emergence of a multipolar world of which China is a part, and their aim is to have a larger say in world affairs. The Russian-Ukrainian war that started in 2022 is accelerating geopolitical realignments.

Hong Kong, as China's international finance centre, lies on a sensitive fault line and must cope with continuous rumblings as there is no escape from the rough and tumble of fractious geopolitics. In the words of Singapore diplomat, Kishore Mahbubani, Hong Kong should be prepared to be "kicked around" like a "football" amid sanctions and other challenges over the next decade.¹

This essay discusses Hong Kong's predicament and local developments that affect the lives of its people. The authorities in Beijing are also learning how to govern Hong Kong in a challenging era of global reset.

Chinese sovereignty and elections

The fear among ordinary Hong Kong people prior to 1997 was that they would lose their relatively free personal lifestyle and wealth under Chinese sovereignty. While colonial rule was far from democratic, Hong Kong people had gotten used to English common law that provides a reliable system of justice. It was thought that electoral democracy of the local government in Hong Kong could ensure that the promised "high degree of autonomy" would be observed by Beijing under the "one country, two systems" principle. Hong Kong people have pushed for democracy since the early 1980s.

National unity is China's most important policy – "one country" is the precondition to the existence of "two systems". For Beijing, the caveat in allowing elections in Hong Kong is that the results must not lead to electing politicians who do not support Chinese unity and sovereignty, which includes the national regime. It cannot be emphasised enough how

¹ Speech by Kishore Mahbubani at a forum organised by the Singapore Chamber of Commerce, 12 May 2023.

important unity is in China's political psyche derived from its history with many periods of "chaos" and instability. As such, Beijing was cautious about allowing universal suffrage in Hong Kong.

Alongside electoral reform, Beijing repeatedly emphasized "patriotism" – a patriot is someone "who respects the Chinese nation, sincerely supports the motherland's resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong's prosperity and stability ... We don't demand that they be in favour of China's socialist system; we only ask them to love the motherland and Hong Kong." This definition of patriotism could be said to be Beijing's version of the British concept of 'the loyal opposition'.

At the same time, Beijing also stressed the need for Hong Kong to fulfil Article 23 of the Basic Law, a national law, which operates as the city's local constitution. Article 23 provides that the HKSAR shall pass local laws:

"... to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies".

Patriotism and national security

Local politics in Hong Kong from 1997 to 2014 had much to do with the pace and direction of electoral reform. The "pro-democracy camp" wanted a faster pace and the "establishment camp" essentially represented Beijing's caution. Yet, in 2014, Beijing put forward a proposal that Hong Kong could elect its head of government by universal suffrage in 2017 under a system whereby there would be a nomination committee to vet candidates to ensure they were "patriotic" and that two to three patriotic candidates could then compete by standing for universal suffrage election.

The nomination committee would effectively act as a filter. Beijing could accept different domestic policies from the candidates, and for Hong Kong voters to decide whom they preferred, provided the candidates were all "patriotic".

Prior to putting forward the electoral proposal, Beijing issued a White Paper in June 2014 emphasising Beijing has "comprehensive jurisdiction" over Hong Kong.³ Beijing wanted to make clear that no one should think Hong Kong was a totally autonomous polity – that was never on the cards and never promised by Beijing – electoral reform had to be seen within the context of national interests.

The proposal was a substantial concession when seen from a historical perspective – it would be the first time that universal suffrage would be allowed at this level in a major part of China. Beijing was willing to take a risk to bridge the Chinese system with election systems elsewhere using Hong Kong as experiment albeit with a patriotism filter mechanism. Hong Kong's civil society groups and legislators in the pro-democracy camp rejected the vetting system as non-

² This definition of patriotism was articulated by Deng Xiaoping in June 1984.

³ Information Office of the State Council, Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region, June 2014,

http://english.www.gov.cn/archive/white paper/2014/08/23/content 281474982986578.htm.

democratic and against the spirit of free and fair election. In other words, the proposal was not good enough compared to election systems elsewhere. The proposal failed to garner the required number of votes in the Hong Kong legislature.

From the Beijing perspective, it made a reasonable offer and it was rejected – Hong Kong should leave electoral reform for another time and focus on livelihood issues instead. The democrats wanted to revive discussions for reform, but the moment had passed, and the opportunity lost.

Frustration and conflicts continued in the legislature. The pro-democracy legislators finetuned filibustering methods that slowed and stopped the passage of many laws and expenditure items between 2015 and 2018, leading to widening tension between the political factions in Hong Kong. The Hong Kong administration was also vexed as many public projects and expenditures had to be set aside.

The 2019 watershed

The local government proposed in February 2019 to establish an extradition mechanism for the transfer of fugitives to over 170 jurisdictions that included Mainland China, Macao, and Taiwan. Previously, Hong Kong had a relatively small number of extradition arrangements with various jurisdictions. It was an issue the Hong Kong administration had wanted to address. The administration saw the opportunity to pass a law after a Hong Kong man murdered his Hong Kong girlfriend while they were in Taiwan. He was arrested after he returned to Hong Kong. He was willing to return to Taiwan to stand trial but could not do so because there was no extradition mechanism, and Taiwan rejected any kind of one-off arrangement.

Poor crisis management and communication on the part of the local government failed to dispel fears that such a mechanism might be abused and lead to people being put on trial in Mainland China. This resulted in massive protests in June 2019 in Hong Kong, which led the local government to suspending and eventually withdrawing the extradition bill. Yet, protests escalated into riots lasting through to year-end with increasing violence mixed in with actions challenging the authorities, such as delegitimising the local government and police, waving foreign flags, calling upon foreign powers to support the protesters-rioters in Hong Kong, promoting a local anthem, and defacing national symbols.⁴

Beijing believed that foreign forces were behind the protests. In July 2019, China's Ministry for Foreign Affairs said at a press conference that the United States was influencing the protests in Hong Kong.⁵ The protests eased at year end and attention shifted with the emergence of the COVID-19 pandemic in early 2020. Nevertheless, the dye had been cast.

The Administrative Region National Security Law (NSL) was passed in Beijing on 30 June 2020, as a national law applied to Hong Kong. It established the crimes of secession, subversion, terrorism, and collusion with foreign organisations plus an apparatus for its enforcement in Hong Kong. The NSL covers aspects of disruptions related to 2019 but not all parts of Article

⁴ Protesters made 5 demands – withdraw the bill, stop labelling the protests as "riots", drop charges against protesters, hold an independent inquiry into police actions, and implement free election. The events of the whole period of the protests are greatly contested as to what really happened. The purpose of this essay is not to go into details of what happened. Readers could look at both sides from existing literature.

⁵ Ben Westcott, 'China is blaming the US for the Hong Kong protests. Can that really be true?', CNN, 31 July 2019, https://www.cnn.com/2019/07/31/asia/us-china-hong-kong-interference-intl-hnk/index.html.

23. The Hong Kong government is expected to put forward legislation within 2023 to fill the gaps.

The priority of national security

After the passage of the NSL, the United States declared an emergency with respect to the situation in Hong Kong and imposed sanctions on 11 officials in Hong Kong and Mainland China "for undermining Hong Kong's autonomy and restricting the freedom of expression or assembly". ⁶ Furthermore, in December 2020, sanctions were imposed on the 14 vice chairpersons of the National People's Congress of China (the national legislature that passed the NSL) for "undermining Hong Kong's autonomy and restricting the freedom of expression or assembly". ⁷ China retaliated by imposing sanctions on American officials related to Hong Kong. ⁸

Hong Kong has become a part of the overall tussle between the United States and China, which has extended to G7 countries. China's perspective is that the "collective West" is looking to constrain and contain its development because China is seen by them as the only country with the economic, diplomatic, military, and technological power to challenge their influence. The G7's sentiment with respect to Hong Kong could be seen from its statement in May 2023:

"...We stand together as G7 partners ... which underpin our respective relations with China ... We will keep voicing our concerns about the human rights ... We call on China to honour its commitments under the Sino-British Joint Declaration and the Basic Law, which enshrine rights, freedoms and a high degree of autonomy for Hong Kong.¹¹

As a British colony, Hong Kong was viewed as a part of the West in the East. Now that it is a part of China, Hong Kong is in the firing line. From Beijing's and the HKSAR Government's perspectives, their efforts were needed to protect national security. From the perspective of the collective West, those efforts reduced Hong Kong's autonomy and limited freedoms of the people. The collective West will likely continue to harp on Hong Kong's loss of autonomy and freedoms and use it as a sword to complain about China. This is why Mahbubani predicted Hong Kong would be "kicked around" like a "football" in the fractious geopolitical arena.

Aftermath of 2019 and NSL

The events of 2019 caused enormous disruptions, violence, and damage. Laws were broken and serious crimes committed. Some pro-democracy politicians and activists left Hong Kong to avoid arrests and prosecution. Reports noted that 10,279 people were arrested for breaches of existing laws (not NSL offences) between June 2019 – October 2022 in protest-related cases, and 2,899 of them had been prosecuted, some expressed regret and pleaded guilty, including

⁶ The emergency was by the President's Executive Order on Hong Kong on 14 July 2020, and the sanctions were imposed by the Department of Treasury.

⁷ US Office on Foreign Assets Control, Sanctions on Hong Kong-related designations, 7 December 2020, https://ofac.treasury.gov/recent-actions/20201207.

⁸ China imposes sanctions on US officials, BBC, 23 July 2021, https://www.bbc.com/news/world-asia-china-57950720.

⁹ G7 countries consist of the United States, United Kingdom, Germany, France, Italy, Canada, and Japan. The European Union also attends G7 meetings.

¹⁰ Antony Blinken, Secretary of State, spelt out in a speech on the position of how the collective West view China, 26 May 2022, https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/. ¹¹ G7 Hiroshima Leaders' Communique, 20 May 2023, 100506878.pdf (mofa.go.jp).

765 charged with rioting (of which 56 were acquitted).¹² In time, researchers will be able to go through the evidence produced in court and court judgments to develop a fuller picture of what happened on the ground.

The NSL is designed to curb future provocations from Beijing's perspective. Although the NSL is not retroactive, activists feared that new investigations could reach into the past to build prosecution cases. The pro-democracy camp shrunk further after the passage of the NSL. Pro-democracy parties decided to dissolve. Civil society groups at the forefront of organising protests decided to disband because they saw they had little room to manoeuvre, including connecting with overseas groups and raising funds. Up until the end of March 2023, 250 people had been arrested over NSL offences and 151 had been prosecuted. Some pleaded guilty. In the 71 cases already completed, all the defendants were found guilty. ¹³

Beijing and the Hong Kong authorities see the NSL as restoring order and stability. Human rights groups assert that the freedoms, especially of expression, assembly, and association, have been "erased" in Hong Kong and that "... the NSL is an integral part of Beijing's larger efforts to reshape Hong Kong's institutions and society, transforming a mostly free city into one dominated by Chinese Communist Party oppression". ¹⁴ The evidence produced in court and court judgments will enable researchers to follow how the NSL evolves in Hong Kong.

The most high-profile NSL case to date is that of media publisher Jimmy Lai who is scheduled to face trial in September 2023 for three NSL offenses involving alleged collusion with foreign forces. ¹⁵ An early legal issue that was decided in May 2023 dealt with whether Lai could be represented by a UK-based barrister for his NSL defence. This was refused on the grounds that it was contrary to the interests of national security.

A colonial legacy in Hong Kong is that litigants, including the government, sometimes employ UK-based barristers to represent them in court. For NSL cases, the risk is that the barrister may acquire sensitive information that could fall within the realm of "state secrets" or about police operations. A foreign intelligence agency could seek to extract the information from the barrister once he leaves Hong Kong. Lai would have to choose a barrister legally qualified to practice in Hong Kong, who may be a local or foreign national, but not one who is based overseas. Critics of the NSL ignore how the right of appearance in all cases of whatever nature is confined to locally qualified lawyers in almost all overseas jurisdiction, including America and Britain.

Transition conflicts

The legal area illustrates the many challenges for Hong Kong. The fact that UK-based barristers can represent clients in litigation in Hong Kong at all is a colonial legacy. Even with NSL cases, the system allows such representation if the Chief Executive decides that there is no national

¹² Peter Lee, *Hong Kong Free Press*, 7 April 2023, https://hongkongfp.com/2023/04/07/data-analysis-how-hong-kong-convicted-200-people-for-rioting-during-the-2019-protests-and-unrest/.

¹³ *The Standard*, 13 April 2023, https://www.thestandard.com.hk/breaking-news/section/4/202536/Only-71-people-convicted-under-national-security-law-in-three-years,-says-Chris-Tang.

¹⁴ An example is *Human Rights Watch*, 'Dismantling a Free Society: Hong Kong One Year after the National Security Law', https://www.hrw.org/feature/2021/06/25/dismantling-free-society/hong-kong-one-year-after-national-security-law.

¹⁵ Jimmy Lai is currently serving a jail sentence for fraud related to misuse of property held under a particular contract.

security risk in a particular case.¹⁶ Moreover, non-permanent foreign judges from common law jurisdictions (such as Britain, Australia, and Canada) could serve on the Court of Final Appeal – the highest local court. This was seen as a positive arrangement for the rule of law until western politicians and NGOs lobbied for the non-permanent foreign judges to resign to show they did not support the NSL.

While the common law is the foundation of Hong Kong's legal system, Mainland China has a civil law system. The values and culture of the common law is considered liberal in orientation, while the roots of Chinese legal thinking may be said to be influenced by the Great Qing Code and "socialism with Chinese characteristics". The two legal systems are underpinned by different history, culture, practices, and procedures. It is not easy to create a new hybrid system in Hong Kong that is universally accepted.

The issue of freedom is a point of contention in Hong Kong. The people in general have adopted common law values although many also accept China has legitimate security concerns and it is not unreasonable for Beijing to demand that the opposition should nevertheless be loyal. For China, freedoms must have limits – advocacy for secession or challenging the regime are red lines. Prior to 1997, the concept of "national security" was seen from the perspective of the United Kingdom, whereas after 1997, it is seen from the perspective of China, which differs from how the British viewed security in Hong Kong.

Instilling patriotism in politics

For Beijing, two important aspects of Hong Kong needed changing to manage security risks – elections and education.

Beijing's view is that those who do not support Chinese sovereignty and national unity have no place in Hong Kong politics. Reform was achieved through overhauling electoral arrangements for the Legislative Council elections in 2021 and the upcoming District Council elections taking place at the end of 2023 to ensure "patriots ruling Hong Kong". A new requirement is national security vetting for candidates to filter out aspirants without a clean record. Critics see elections as less legitimate than before with the opposition effectively unable to participate. From the government's perspective, legislative and district business gets done and politicians can exercise their watchdog role without theatrical antics, common in the legislature and District Councils up until 2020.

Many students were involved in the 2019 protests. Some 4,000 of those arrested were students and over 1,000 had been prosecuted. Basic Law and NSL courses are now being taught at schools to instil patriotism, and from 2023-24 new teachers in publicly funded schools must be tested on their knowledge in those areas. These requirements have caused concerns among teachers and parents for fear that students would be "brainwashed", which has been a driver for teachers to resign before retirement age, and for parents to send their children to study

¹⁶ Legal Practitioners (Amendment) Ordinance 2023.

¹⁷ The phrase "patriots governing Hong Kong" and "patriots administering Hong Kong" have appeared in China's official documents, see a speech on 3 December 2021,

overseas.¹⁸ Books and publications by pro-democracy authors, such as those by former pro-democracy politicians, have been removed from public libraries. These events have happened alongside the British government's new emigration scheme for holders of British National (Overseas) passports¹⁹ after the passage of the NSL, some 144,500 people have left Hong Kong for Britain by end-January 2023.²⁰ Canada and Australia have also relaxed their emigration rules for Hong Kong people. Migrants leaving has created a "brain drain". The Hong Kong government is countering the loss with various worldwide schemes to recruit talent to relocate to Hong Kong with some success.²¹

Concluding observations

Transitions have long been a part of Hong Kong's turbulent experience. Migration is a part of Hong Kong's DNA. Chinese families hold memories of wars, civil wars, revolutions, extreme poverty, and China's rise. Migration increased during uncomfortable times. Many Hong Kong people left prior to 1997 because they were unsure about life under Chinese sovereignty. The current wave after the passage of the NSL in 2020 could be seen as part of the city's experience with migration.

Hong Kong remains the home for over seven million people. Tough public order and security laws are not uncommon around the world. Hong Kong migrants have relocated to countries that all have national security laws. Countries in the "liberal" West criminalise treason, sedition, public disorder, official secrets, insurrection, and some jurisdictions outlaw secession. Notable examples include Britain, which tightened its public order laws to give the police greater powers to deal with protesters. In the United States, the authorities are continuing to pursue cases related to the "insurrection" on 6 January 2020 having charged over 1,000 with many more still under investigation,²² and the courts have handed down tough sentences for those who were violent, with 14 years being the longest prison term so far.²³

Hong Kong is often compared with Singapore, a competitor to Hong Kong for international investments. Its Internal Security Act is among the toughest in the world - it grants powers to

¹⁸ 12,000 teachers have left Hong Kong according to Young Post, *South China Morning Post*, 1 May 2023, https://www.scmp.com/yp/discover/news/hong-kong/article/3219093/33600-students-quit-hong-kong-schools-last-academic-year-amid-emigration-wave-10-cent-more-2020-21.

¹⁹ These passports have been issued to people who held a form of British nationality that did not provide the right of abode in the United Kingdom. They can register as a British national (overseas) before 1 July 1997 and receive a BNO passport, which also did not confer the right of abode but could be used as a travel document.

²⁰ Hong Kong Free Press, 1 February 2023, https://hongkongfp.com/2023/02/01/over-144000-hongkongers-move-to-uk-in-2-years-since-launch-of-bno-visa-scheme/.

²¹ The government noted 84,000 people had applied for its worker admission scheme as of the end of May 2023 and 49,000 had been approved, *South China Morning Post*, 20 June 2023, <u>Hong Kong's got talent: John Lee says 84,000 people have applied to worker admission schemes, city is 'value-added super-connector' | South China Morning Post (scmp.com).</u>

²² Over 1,000 people have been charged with many more still under investigation, *NPR*, 25 March 2023, <a href="https://www.npr.org/2023/03/25/1165022885/1000-defendants-january-6-capitol-riot#:~:text=Nick%20McMillan-,1%2C000%20people%20have%20been%20charged%20for%20the%20Capitol,Here's%20where%20their%20cases%20stand&text=Department%20of%20Justice-,A%20selection%20of%20the%201000%20people%20who%20have%20been%20charged,the%20U.S.%20Capitol%20in%202021.

²³ The heaviest sentence up until April 2023 was 14 years, *AP News*, 6 May 2023, https://apnews.com/article/jan-6-capitol-peter-schwartz-insurrection-9176bad22fff2bafaea5c32ce06bb772.

the authorities to enforce preventive detention, prevent subversion, suppress organised violence against persons and property, and do other things incidental to the internal security of Singapore.

The presence of tough security law is likely not what truly drives people out of Hong Kong. It is probably not even the quality of justice. The latest World Justice Project Index 2022 shows Hong Kong is ranked 22nd out of 140 jurisdictions, ahead of the United States (26th) and Italy (32nd). Britain is ranked 15th, and Singapore 17th. ²⁴

The real concern probably has to do with how they feel about "China" and not wanting to be a part of it. The detention of people commemorating Tiananmen 1989 in Hong Kong - a longstanding annual remembrance - on 4 June 2023 was the sort of event that confirmed to those concerned about civil and political rights that their freedoms have been compromised.²⁵

For international business and overseas talent, the real concern is likely not that they wish to disturb Hong Kong's or Mainland China's security interests, but that it is becoming ever harder to navigate US-China conflicts in an era where the United States' "de-risking" actions against China are affecting business and investments. Beijing is on high alert that the United States wishes to raise tensions with respect to Taiwan in order to provoke China. Moreover, the collective West continues to use the Russian-Ukraine war to create a narrative that Taiwan would soon become China's Ukraine.

Hong Kong used to look to North America and Europe for commercial opportunities and ideas, including education. Likewise, North America and Europe used the British colony of Hong Kong as the foothold for China and East Asia. This is changing as Hong Kong is regarded by the collective West as less autonomous and less "free" than before (read: being less convenient for Western powers).

While there are concerns with the NSL and its impact on education, Hong Kong has many degree-granting tertiary institutions, and several of them are highly ranked internationally. Many of them teach in English and welcome foreign students. These institutions are attractive and affordable to the growing pool of students from the Global South.

Overall, Hong Kong must spread it wings to engage the Global South, and encourage those countries to see how well Hong Kong can be used to connect with Mainland China, as geopolitical realignment takes place in a multipolar world.

Kishore Mahbubani's advice to young people in Hong Kong is that they should prepare for "Geopolitics, Global Governance and Good Governance" so that they can cope with the US-

²⁴ The World Justice Project and 2022 rankings, see https://worldjusticeproject.org/about-us.

²⁵ One arrest and 23 people detained, 'Hong Kong police arrest woman, detain 23 others as security tightened at park that once hosted June 4 anniversary of Tiananmen Square crackdown', South China Morning Post, 4 June 2023, https://www.scmp.com/news/hong-kong/politics/article/3222895/hong-kong-police-step-security-victoria-park-june-4-anniversary-former-vigil-organiser-goes-hunger.

²⁶ This may be said to be an era of sanctions. Francisco Rodriguez, 'The Human Consequences of Economic Sanctions', Centre for Policy Research, shows 27% of countries are subject to some form of sanctions imposed by the US, EU or UN, May 2023, <u>The Human Consequences of Economic Sanctions (cepr.net)</u>.

China conflict, embrace globalization, and change the current mindset relating to sovereignty.²⁷

Plans for Hong Kong's development involve strengthening connectivity with its neighbourhood, known as the Greater Bay Area (GBA), which includes Hong Kong, Macao, and the most economically vibrant part of Guangdong Province. The GBA is the home to many hi-tech and advanced manufacturing industries, which together with Hong Kong's capabilities as an international finance centre, is being supported by national policies to further scale its capacities, including green innovations, as China aims to achieve carbon peak by 2030 and achieve carbon neutrality by 2060. It is noteworthy that Hong Kong is slated to be an international centre for the arts and cultural exchange, which requires a high degree of tolerance for different ideas. In other words, Hong Kong will have to find ways to enable the exchange of ideas and deliberation for a multipolar world.

Hong Kong's future is tied to China's development in an era of choppy geopolitics. It is a part of China but in many ways, it continues to function outside the Mainland Chinese system and thus remains a place of convenience for many purposes and interests.

Hong Kong's predicament pushes it to find and create new openings to connect people, ideas, and capital. It must develop a new narrative that is compelling as geopolitical realignment takes place. The authorities in Beijing can learn to relax after it has established the laws and structures in Hong Kong to thwart challenges to national security. The pendulum will likely swing backand-forth but will hopefully settle down in the foreseeable future. Hong Kong will find its way.

A shorter version of this essay was originally written for LIMES, Italian Review of Geopolitics, to be published in Italian.

_

²⁷ Kishore Mahbubani, A Dialogue with Young People in Hong Kong, 26 April 2023, https://www.ycyw-edu.com/en/article/news/a-dialogue-with-young-students-in-hong-kong-with-professor-kishore-mahbubani-on-the-challenges-young-people-face-in-the-21st-century.