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A New Management System, for a New Type of Conflict? Singapore's Possible Role in Managing Grey Zone Conflict in International Commerce

Chris Honeyman
Convenor Conflict Management

Rachel Tan Xi'En
Singapore Institute of Legal Education

A NEW MANAGEMENT SYSTEM FOR A NEW TYPE OF CONFLICT? SINGAPORE'S POSSIBLE ROLE IN MANAGING GREY ZONE CONFLICT IN INTERNATIONAL COMMERCE

CHRIS HONEYMAN* AND RACHEL TAN XI'EN◊

Abstract

The history of conflict management as a multifaceted field is replete with examples of tailor-made systems and tools designed to address very different kinds of conflicts. They range from the hyper-local and industry-specific, such as the mediation and arbitration system of the Antwerp Diamond Bourse, to some that are vast and diverse, such as the United Nations' conflict resolution functions. This article argues that the rapid rise of grey zone conflict, also known as hybrid warfare, poses an increasing threat to international commerce, requiring the development of a new system specifically designed to manage its commercial aspects.

The establishment of such a novel system is proposed to be based in Singapore, because of that jurisdiction's particular history and existing international conflict mitigation mechanisms. Drawing from Article 33 of Chapter VI of the United Nations Charter and assessing the relative utility in these circumstances of a variety of conflict resolution mechanisms such as good offices, convening, mediation, conciliation, arbitration, litigation and ombudsman mechanisms, the article proposes steps toward a new way of addressing grey zone conflicts.

* Chris Honeyman is Managing Partner of Convenor Conflict Management (www.convenor.com). Chris writes here in his individual capacity, the views expressed in this article are his own and shall not be attributed to any project or institution he works for. The authors thank Mariam Gotsiridze, Andrea Kupfer Schneider and Calvin Chrustie for their helpful comments on an earlier version of this article. Our errors, however, are our own.

◊ Rachel Tan Xi'En is Executive Director at the Singapore Institute of Legal Education. She was previously Principal Research Associate and Research and Development Lead at the Singapore International Dispute Resolution Academy at the Yong Pung How School of Law.

I INTRODUCTION: A WORLD OF FORUMS

Conflict management as a field has created so many systems and tools for addressing conflict that few people are really conscious of their overall scope. Some are highly specific to an industry and a locale, such as the mediation and arbitration system of the Antwerp Diamond Bourse.[1] Some are extremely large and diverse, with the United Nations ('UN') conflict resolution functions an obvious example, with many specialised units housed in many countries. And some are in between, such as the procedures for handling labour-management conflict within a given national or subnational jurisdiction. What they have in common is that each was created for a specific set of reasons.

We believe there is reason today for the creation of a new system, designed to address the commercial aspects of grey zone conflict (also known as hybrid warfare), a type of conflict which is proliferating and which constitutes a growing threat to international commerce. There is even a case for the creation of a suite of such tools, and for locating it specifically in Singapore. We will make that case here, beginning with a brief overview of the current state of hybrid warfare, followed by a discussion of Singapore's unique status and its possible uses in helping to reduce some of the tensions.

II GREY ZONE CONFLICT, OR HYBRID WARFARE, IN INTERNATIONAL COMMERCE

'Grey zone conflict' and 'hybrid warfare' are just two among several terms currently used to depict the same thing: assaults against a nation and its private enterprises, as well as public and non-governmental organisation ('NGO') sectors.[2] These attacks may or may not involve a military component and may be executed by entities seemingly unconnected to another country's national security framework. A scant five years ago, 'hybrid warfare' was still an obscure enough concept that when contacted by one of the authors during the fall of 2019, hardly any among dozens of conflict management veterans admitted to having even heard the term before. But now it is increasingly recognised as a matter of public concern; for example, a November 2023 daylong public event on the subject, organised by London's Imperial War

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1 See Sebastian Henn and Eric Laureys, 'Bridging Ruptures: The Re-Emergence of the Antwerp Diamond District after World War II and the Role of Strategic Action' in Dirk Fornahl et al, *Emerging Clusters: Theoretical, Empirical and Political Perspectives on the Initial Stage of Cluster Evolution* (Edward Elgar Publishing, 2010) and Ersoy Zirhlioglu, 'The Diamond Industry and the Industry's Dispute Resolution Mechanisms' (2013) 30(3) *Arizona Journal of International and Comparative Law* 477.

2 Hybrid warfare is still a new enough topic that many audiences require a basic explanation. This section has been adapted for the present venue from prior related publications designed for other audiences. See eg Chris Honeyman and Andrea Kupfer Schneider, 'Hybrid Warfare: Fighting Back with Whole-of-Society Tactics' (2023) 30 *On Track* 6 (for a Canadian military audience); Chris Honeyman and Andrea Kupfer Schneider, 'Introduction: Negotiation Strategies for War by Other Means' (2023) 24(3) *Cardozo Journal of Conflict Resolution* 487 (in an American legal and dispute resolution context.)

Museum, sold out.[3] The United Kingdom ('UK') Ministry of Defence's pithy quote on the flyer for that event read: 'The international consensus on hybrid warfare is clear; no one understands it, but everyone agrees it is a problem'. This article hopes to shed light on attacks targeting entities beyond national governments for several reasons.

First, campaigns of grey zone conflict/hybrid warfare frequently alter tactics, coordinate activities among private, government and nonprofit entities, and utilise cyber tools, public or commercial corruption, transnational organised crime, disinformation campaigns and various other methods.[4] Denial and deception are standard components of this conflict type as well.[5] Additionally, it is evident that Western intelligence, military and other security agencies are not (yet) effectively organised to respond strategically or coherently to such actions in the private sector.[6]

Responses from the targeted entities are often unhelpful and ineffectual, ranging from threats of retaliation to denying the occurrence of any attack, or proposing increasing defence expenditures at the government level or severing all dealings with countries responsible for these attacks.[7] However, none of these responses has proven generally effective. Thus, it is imperative to develop a comprehensive approach so that ambiguous zone conflicts can be better comprehended as a category and managed on an overarching level, apart from countermeasures that are overtly retaliatory on a military scale.

Second, in a globalised economy, 'business and NGO executives, and critically, their lawyers, are routinely engaged in negotiations of all kinds, with suppliers, customers, municipalities, potential merger partners and more. These dealings do not have to be visibly cross-border transactions to have hybrid warfare connotations.'[8] For instance, if a seemingly 'domestic' company with which a city government is contracting for water or other utilities, transportation, communication networks or a myriad of other services, is covertly influenced by a government, the city might become a target without recognising the opponent's intention or even its existence.[9] Dealings with innocent third parties can have the same effect in the private sector. A conspicuous example was the NotPetya virus, which was used by Russia in a cyberattack on Ukraine in 2017—and which was so over-effective that it spread to thousands of companies that were not targets at all. In the

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3 '*From Sniper to Smartphone: Hybrid Warfare and the New Face of Conflict*' *Imperial War Museum* (Web Page) <www.iwm.org.uk/events/from-sniper-to-smartphone>.

4 Mark Galeotti, *The Weaponization of Everything: A Field Guide to the New Way of War* (Yale University Press, 2023).

5 Christopher A Corpora, 'How to Undermine a Nation-State in 120 Days: Mediation and Negotiation in a Hybrid Warfare World' (2023) 24(3) *Cardozo Journal of Conflict Resolution* 503.

6 Scott Tait, 'Hybrid Warfare: The New Face of Global Competition' *Financial Times* (Web Page, 14 October 2019) <https://www.ft.com/content/ffe7771e-e5bb-11e9-9743-db5a370481bc>.

7 Galeotti (n 4).

8 Chris Honeyman and Andrea Kupfer Schneider, 'Introduction: Negotiation Strategies for War by Other Means' (2023) 24(3) *Cardozo Journal of Conflict Resolution* 487.

9 See the discussion of the SolarWinds attack in Anne Leslie, 'Redefining Contours of "Business as Usual" and the Potential Role of the Military' (2023) 30 *On Track* 28.

most startling result, the infection of a single computer at a Ukrainian branch office of Maersk, the world's largest shipping firm, spread throughout the firm's internal networks and resulted in the entire company effectively shutting down for an extended period.[10]

Third, there is compelling evidence that the private and nonprofit sectors *are* significant target areas in ambiguous zone conflict.[11] However, they are even less prepared for this than governments.

Efforts to respond to hybrid warfare at the strategic level are ongoing, with recent events, particularly the Russian invasion of Ukraine, elevating their prominence. However, the critically important tactical and operational responses often occur in widely dispersed corporate boardrooms, law offices, municipal government or university offices etc. Many who are unwittingly involved in an ambiguous zone conflict have little or no understanding of the phenomenon, and even those aware of an attack are often poorly informed about what actions they can take.[12]

III NEUTRALITY AND OBJECTIVITY

It is necessary to be objective, but not necessarily neutral, in these matters to think ahead about the need for better mechanisms for resolving the resulting conflicts. We should note here that at least one of the authors is definitely not neutral. Project Seshat was a multinational, multidisciplinary group of some 50 scholars and practitioners concerned particularly with designing responses to hybrid warfare as it affects the private and nonprofit sectors. Chris Honeyman served as its principal investigator and chaired its steering committee throughout, and now serves as an advisor to a group that is working to establish a more sustainable successor.[13]

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10 Daniel E Capano, 'Throwback Attack: How NotPetya Accidentally Took Down Global Shipping Giant Maersk', *Industrial Cybersecurity Pulse* (Web Page, 30 September 2021) <https://www.industrialcybersecuritypulse.com/threats-vulnerabilities/throwback-attack-how-notpetya-accidentally-took-down-global-shipping-giant-maersk/#:~:text=This%20was%20all%20NotPetya%20needed,ships%20to%20avoid%20capsizing%20them>.

11 In case after case the evidence has accumulated in recent years. For those still inclined to treat the stories as anecdotal, we can recommend Qiao Liang and Wang Xiangsui, *Unrestricted Warfare* (People's Liberation Army Publishing House, 1999). There is no more authoritative source than these two Chinese army colonels, who originally set forth what has since transparently become China's strategy for hybrid warfare against the West. A selection of short phrases from Qiao and Wang (as used by an artist who created a series of weavings to illustrate hybrid warfare) will give the general idea: 'erode economic strength', 'this war is not a war', 'a borderless battlefield', 'this information is not information', 'undermine the legitimacy of key institutions', 'remember your future', 'paralyze decision making', 'encourage social discord', 'delay recognition an attack is underway', and last but not least, 'some morning you may awake to find that the gentle and kind things around you have begun to have lethal and offensive characteristics'. See also Rachel Parish, 'Gentle and Kind Things' (Blog Post) <https://rachelparish.com/projects/gentle-and-kind-things/>.

12 Calvin Chrustie, 'Mind the Hybrid Warfare Gap' (2023) 30 *On Track* 12

13 This article, however, is in no way a group product of Project Seshat, or its successor if established, and it should not be assumed that any of its members agree with Chris's conclusions. See also (n 1).

There is a long history, however, of creation of new conflict management tools and institutions, and we believe a study of the history of many of them would reveal that central roles in their creation were often held by people who were not neutral as to the outcome of the conflicts to be submitted to the new mechanism.[14] Not only is the existence and importance of a stream of conflict likely to be more visible to those who are active participants than to most others, but those are also the most likely to have an incentive to act. At the same time, as the saying goes, it takes two to tango. We hope that other players, perhaps including some who do not affiliate with Western interests in international commercial conflict, will want to engage with these matters. This would help make any resulting mechanisms viable.

IV CONFLICT MANAGEMENT ROLES AND FUNCTIONS

Article 33 of Chapter VI of the United Nations Charter sets out various dispute resolution mechanisms, namely: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional agencies or arrangements.[15] Other such mechanisms, such as good offices, facilities for dialogue and ombudsman mechanisms, are also often used to facilitate the resolution of disputes. We will briefly note some features of some of these mechanisms to provide context.

A *Good offices*

Good offices are a diplomatic means for the settlement of disputes, in a mode which requires the least involvement of a third party.[16] In international law and international relations, the party exercising 'good offices' is typically a third country, a neutral person of high standing such as the UN Secretary-General, or a neutral institution which brings parties to the negotiating table.[17]

B *Convening*

Similar to 'good offices' in that it exists largely to find out what specific process might be helpful, but more assertive, is the role of a convenor. This is an office

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[14] In international affairs this is particularly so. Everyone affiliates to one country or another. Yet even when a proposed intervention is as direct as mediation, while a biased international mediator is likely a fact of life, mediation has still proved both acceptable and useful to many parties under many circumstances. See William P Smith, 'Effectiveness of the Biased Mediator' (1985) 1(4) *Negotiation Journal* 363; Christopher Honeyman, 'Patterns of Bias in Mediation' (1985) *Journal of Dispute Resolution* 141; Christopher Honeyman, 'Bias and Mediators' Ethics' (1986) 2(2) *Negotiation Journal* 175.

[15] *Charter of the United Nations* Article 33.

[16] 'Good Offices' *Oxford Public International* Law (Web Page, December 2006) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e31>.

[17] 'Good Offices' *Federal Department of Foreign Affairs FDFA* (Web Page, 25 July 2023) <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/human-rights/peace/switzerland-s-good-offices.html>.

or individual that undertakes 'to carry out tasks that ensure the chosen resolution process proceeds smoothly, such as: assess the conflict situation, identify key stakeholders and participants, introduce options for a resolution process, distinguish resource needs and funding sources, and choose an appropriate venue.' [18] In certain domains, notably United States ('US') environmental and other public policy disputes, convening is a highly-developed practice. Internationally, convening is an apt description of many actions undertaken by such officials as the UN Secretary-General, whether or not that term is used. But as the work can be time-consuming, in international affairs a convenor is more likely in practice to be a highly experienced professional *designated by* a high-level official.

C *Mediation and conciliation*

The Singapore Convention on Mediation defines mediation as a 'process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons lacking the authority to impose a solution upon the parties to the dispute.' [19] It is a consensual and non-binding process. In the same vein, conciliation is a voluntary process which allows disputing parties to identify disputed issues, develop options and consider alternatives with the help of a third party. Whilst a conciliator, like a mediator, has no determinative role on the content of the dispute or the outcome, the conciliator may advise on or determine the process of conciliation, make suggestions for terms of settlement and encourage parties to reach an agreement. [20] In this sense, conciliation is a more 'active' mechanism than mediation in that the conciliator may at times take on a more interventionist role. [21]

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[18] Brad Spangler, 'Convening Process' *Beyond Intractability* (Blog Post, October 2003) <https://www.beyondintractability.org/essay/convening_processes#:~:text=It%20is%20the%20convener's%20(organizer's,funding%20sources%2C%20and%20choose%20an>; see also citations therein.

[19] *Singapore Convention on Mediation* Article 2, Definitions, #3.

[20] 'Conciliation Process Model' *Administrative Appeals Tribunal* (Web Page) <https://www.aat.gov.au/AAT/media/AAT/Files/ADR/Conciliation-process-model.pdf>.

[21] We are distinguishing mediation from conciliation here in accordance with the general usage of these terms in international political affairs. But it is worth noting that this distinction is not always observed in other dispute domains, where 'mediation' often encompasses both functions. See *UNCITRAL Model Law on International Commercial Conciliation* (opened for signature 24 June 2002, entered into force 19 November 2002) as amended by *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation* (opened for signature 20 December 2018, entered into force 12 September 2020). See Article 1.3 and particularly its footnote 2.

D *Arbitration and litigation*

Arbitration [22] and litigation [23] are binding forms of dispute resolution, as opposed to mediation, conciliation and good offices. A third party—an arbitrator or a judge—evaluates the factual and legal matrix and makes a binding decision that would be enforceable. This takes the decision-making out of the parties' hands and typically involves formal processes such as set timelines for pleadings as well as oral (or written) arguments. This is in contrast to the more flexible procedures allowed in conciliation and mediation.[24]

E *Ombudsman mechanisms*

Ombudsman mechanisms involve a person or entity that investigates, reports on and helps settle complaints.[25] Some ombudsmen are responsible within a single organisation, such as a university or a newspaper. For example, in the UN, the Ombudsman is an organisational ombudsman whose role is to provide conflict resolution services to UN offices and their personnel worldwide.[26] In another context, this role seems likely to be increasingly used in preventing and managing international investment disputes, following its formal enactment in South Korea and Brazil, though not all offices set up for this purpose use the specific term 'ombudsman' to describe it.[27] But from the origin of the term, and in a major continuing use of the role in some countries (particularly in Scandinavian ones), an ombudsman can be a very senior public official charged largely with investigating allegations of misconduct by other public bodies or officials. On the spectrum, ombudsman mechanisms fall closer to mediation and conciliation as they typically involve more listening and non-decision-making procedures than formal reporting or finding-making.[28]

F *Regional/Multilateral entities*

Countries that are a part of a geographical association may also facilitate the resolution of disputes. An example with some resonance in the present

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[22] A general description of arbitration is given at (Web Page) <https://www.jamsadr.com/arbitration-defined/>.

[23] Litigation procedures vary widely by country and/or court system. A (US-derived) general description is at (Web Page) <https://www.law.cornell.edu/wex/litigation>.

[24] See eg Lon L Fuller, 'Mediation—Its Forms and Functions' in Art Hinshaw, Andrea Kupfer Schneider and Sarah Rudolph Cole (eds), *Discussions in Dispute Resolution* (Oxford University Press, 2021) 3-37.

[25] See eg (Web Page) <https://www.ombudsassociation.org/>.

[26] See (Web Page) <https://www.un.org/ombudsman/>.

[27] International Institute for Sustainable Development, *Investment Dispute Prevention and Management Agencies* (Report, January 2022) <https://www.iisd.org/system/files/2021-10/investment-dispute-prevention-management-agencies-policy-discussion.pdf>.

[28] 'Frequently Asked Questions', *United Nations Ombudsman and Mediation Services* (Web Page) <https://www.un.org/ombudsman/resources/faq>.

context is the Association of Southeast Asian Countries ('ASEAN').[29] While a key tenet of ASEAN is the principle of non-interference in member states' affairs,[30] ASEAN states nevertheless are able to resolve disputes arising from ASEAN economic agreements via the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.[31]

V WHY SINGAPORE?

Obviously, we are proposing here not merely the creation of a new facility, or a suite of new facilities, but also a specific venue. As a matter of principle, we would be pleased to see such facilities created in a wide variety of places. As a matter of practicality, Singapore has unusual advantages for this purpose.

A *Singapore's position in the world, in general diplomatic terms*

Singapore participates in all major multilateral forums and international institutions, and is a founding member of ASEAN:

> It is also an initiator of various informal multilateral groupings such as the Forum of Small States, the Asia-Europe Meeting, and the Global Governance Group… Its diplomats have chaired UN conferences such as the UN Conference on the Law of the Sea and the UN Conference on Environment and Development.[32] [Yeo goes on to list a variety of other roles Singapore has taken on.][33]

Finally, there is experience in Singapore in the kinds of informal, 'track two diplomacy'[34] or similar arrangements that may need to be developed in an environment where at least one main player will likely deny the fact of any attack warranting an open discussion. An example is 'golf diplomacy', which helped ease tensions in the wake of a harsh punishment issued in Singapore in the mid-1990s to an American teenager (four months in jail, six strokes of the cane, and a fine of $3500, for vandalising and committing acts of mischief

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29 'ASEAN was founded in 1967 to enable the smaller states of Southeast Asia to have a semblance of autonomy and not become proxies of great power games. It also provided a platform for confidence building amongst the member states – much needed in view of the different colonial histories and different trajectories in gaining independence': Yeo Lay Hwee, 'Diplomacy, International Relations and Singapore's Foreign Policy' in Yeo Lay Hwee, Peggy Kek, Gillian Koh and Chang Li Lin (eds), *Tommy Koh: Serving Singapore and the World* (World Scientific Publishing, 2017) 3.

30 Sanae Suzuki, 'Why is ASEAN not Intrusive? Non-Interference Meets State Strength' (2019) 8(2) *Journal of Contemporary East Asia Studies 157.*

31 Hao Duy Phan, 'Towards a Rules-Based ASEAN: The Protocol to the ASEAN Charter on Dispute Settlement Mechanisms' (2013) 5(14) *Arbitration Law Review* 254; Nattpat Limsiritong, 'How to Apply Protocol to the ASEAN Charter on Dispute Settlement Mechanisms 2010 in Case of ASEAN Charter Interpretation' (2017) 1(1) *Asian Political Science Review 8.*

32 Yeo Lay Hwee (n 29) 3, 4.

33 Ibid 7-8.

34 Informal diplomatic work, typically conducted by professionals who are however not acting directly on behalf of a government. See generally (Web Page) <https://www.imtd.org/>. For a thorough account of a long-term case see John W McDonald and Christel G McDonald, 'A New Future for Kashmir?' in Chris Honeyman and Andrea Kupfer Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017) ch 89.

by spray-painting a wall and throwing eggs at several cars.) After this incident, Singapore found it difficult to arrange a state visit to the US, and there were other indicia of unusually frozen relations. The ice was eventually thawed with the aid of a series of golf games: relations only improved after the then-President Bill Clinton invited the then-Prime Minister Goh Chok Tong for a golf game in Vancouver during the 1997 APEC summit. This golf game was also a signal from President Clinton to Singapore that the US was ready to put the episode behind it and move forward in improving relations. According to Goh,[35] it was Clinton's way of 'bypassing his gatekeepers', which showed that Clinton was ready to mend relations despite possible objections from his advisors. In turn, Goh invited Clinton for a golf game in Brunei during the 2000 APEC summit… and by 2003, the US and Singapore had negotiated the US-Singapore Free Trade Agreement, which has been in force ever since.[36]

B *Singapore's commercial history: Between East and West*

Singapore has a wide-ranging commercial relationship with both East and West. As of October 2021, Singapore is the US' largest trading partner in Southeast Asia, and the US is the largest foreign investor in Singapore, with about $270 billion in accumulated direct investments.[37] Singapore is also party to 15 bilateral and 12 regional Free-Trade Agreements, including the EU-Singapore Free Trade Agreement[38] as well as some of the largest combined trade agreements, such as those between ASEAN and China, ASEAN and India, ASEAN and Hong Kong, the Trans-Pacific Strategic Economic Partnership and the Regional Comprehensive Economic Partnership.[39]

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35 Goh Chok Tong, 'The Practice of Foreign Policy for Sustained Growth – The Singapore Experience' (S Rajaratnam Lecture, Ministry of Foreign Affairs, 17 October 2014) <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2014/10/MFA-Press-Release-Transcript-of-speech-by-Emeritus-Senior-Minister-Goh-Chok-Tong-at-S-Rajaratnam-Lec> cited in Sean Chan and Mark Brooke, '"Gimme Diplomacy": A Critical Discourse Analysis on Golf Diplomacy Between Singapore and the United States' (2019) 22(12) *Sport in Society* 2171.

36 Ibid.

37 'US Relations with Singapore' *US Department of State* (Web Page, 1 October 2021) <https://www.state.gov/u-s-relations-with-singapore/>.

38 'EU-Singapore Free Trade Agreement' *European Commission* (Web Page) <https://trade.ec.europa.eu/access-to-markets/en/content/eu-singapore-free-trade-agreement>.

39 'Singapore's International Free Trade Agreements', *ASEAN Briefing* (Web Page) <https://www.aseanbriefing.com/doing-business-guide/singapore/why-singapore/singapore-s-international-free-trade-and-tax-agreements>; 'All You Need to Know About Singapore's Free Trade Agreements and Digital Economy Agreements', *Ministry of Trade and Industry Singapore* (Booklet, October 2020) <https://www.mti.gov.sg/Trade/Free-Trade-Agreements>.

C *Singapore's standing as an international commercial conflict management hub*

The mechanisms we are considering are by no means simple either to create or to administer. Thus it matters whether a possible venue has, among others, these things:

- a location which inherently encourages getting interested in the problem presented;
- existing working relationships with the major likely parties;
- an institutional knowledge base built up over decades of related and responsible work;
- robust courts and other 'backdrop' institutions with a strong reputation for probity; and
- a large body of experienced and highly trained professionals in the many specialties likely to be needed by the parties and by neutral bodies alike.

Consider, first, the level of investment that such obvious players as the US and China have put into Singapore: statistics indicate that in 2022, the US was the top investor in terms of foreign direct investment ('FDI'), followed by Japan, the UK, Hong Kong and Mainland China. US FDI was just under S$35 billion. However, the total Chinese FDI (including from Hong Kong) was still significant, at just under S$20 billion.[40] It is clear that both East and West have major investments, literally, in Singapore—a measure of joint confidence in its economic and legal structures.

The institutional knowledge base for handling international commercial conflict, meanwhile, involves not merely commercial lawyers but many other specialties. Not many jurisdictions in the world have the necessary array of specialised expertise as handy as Singapore's Bar and its panoply of consulting firms and the like, including many foreign experts who have found Singapore an attractive place to work. But even more difficult to replicate would be the existing structures of commercial dispute management which already operate in Singapore at a high level, partly because these in turn arose from long and deep cultural roots:

> Mediation has its roots in Asian culture and has been practiced since the early days of Singapore's history. Traditional forms of mediation often involved the intervention of respected community leaders bringing disputants together to talk out their differences and counselling them along the way. For example, disputes within the Chinese community were generally settled according to Chinese rules and customs and at times, would be conducted in Chinese clan associations. Akin to the Chinese, the Malays in Singapore value personal relationships and trust, preferring non-confrontational solutions that are consistent with Islamic principles, and the informality of mediation conducted in accordance with customary standards and etiquettes of social interaction. Disputes were also amicably settled by panchayat or community council of the Indian communities, and anecdotal

[40] Department of Statistics Singapore, *Singapore's Inward Direct Investment Flows* (Report, 2022) <https://www.singstat.gov.sg/-/media/files/news/fdiinflows2022.ashx>.

> evidence further suggests that mediations have also taken place in Hindu temples.[41]

As to the courts and other 'backdrop' institutional arrangements, the popularity of Singapore as a venue for general international commercial arbitration and mediation signals widespread confidence in the integrity of the systems which make those functions work, and also reflects the strong support for alternative dispute resolution ('ADR') by local courts, as well as their reputation for integrity. The interplay between such different systems is not always obvious. But one of the authors, writing then in the context of labour-management disputes, has analysed how arbitration, mediation, factory-level negotiation and the courts—very different processes, and often staffed by people with very different training who might not understand each other's roles very well—actually depended heavily upon each other if the whole system was to function properly, and concluded: 'the various processes of dispute resolution thus form an intricate ecology, in which each process depends on the others for the success of the whole.' [42]

We believe international commercial dispute resolution mechanisms are no less dependent on their surrounding institutions than American labour-management dispute resolution mechanisms, and perhaps even more so.

VI OTHER POSSIBLE VENUES

Some attention is due to other possible locations for the processes we envision below (see the section below titled 'Possible tools / institutional mechanisms'). However, we have no doubt that others are better qualified than we are to write in detail about the relative strengths and weaknesses of the likely contenders for such a role. So we will merely sketch here what we see as problems that some of Singapore's natural competitors might logically have in establishing themselves as venues for the disposition of such conflicts. If the resulting illustration is 'in pencil' and impressionist rather than definitive, we refer the reader to a note in this paper concerning the value of humility in our sprawling subject (see the section below titled 'How would comparable tools actually work in the present context?').

Hong Kong, as the most conspicuous point of comparison, was long seen as a place where East and West could safely do business, and where there was real sophistication in the arbitration of international commercial matters. Yet that whole structure has more recently come into question. A recent *The Economist* column sketches this picture efficiently:

> The imposition of a draconian national-security law in 2020 marked the obvious break in Hong Kong's trajectory. The law ended any prospect of more representative government and curtailed the space for civic expression. Dozens of activists, lawyers and politicians are in jail… Some 200,000 expatriates have left

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41 Teh Hwee Hwee, 'Mediation Practices in ASEAN: The Singapore Experience' (Speeches, 11th ASEAN Law Association General Assembly Conference, February 2012) 1-2.

42 See Chris Honeyman, 'Using Ambiguity' in Chris Honeyman and Andrea Kupfer Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017). Emphasis in original.

> Hong Kong in the past three years, along with even more Hong Kongers. By contrast, in 2022 the number of foreign professionals in Singapore grew by 16%, Banyan among them. [43]

Moreover, the viability of Hong Kong for the purposes discussed here depends on the image as well as the reality of Hong Kong's courts. And while the court system may have maintained its sense of probity internally, its external image has arguably suffered significantly from the central government's imposition of greater and greater control over Hong Kong affairs: international confidence in future potential rulings by the Hong Kong courts could be tainted by the central government's requirement that the courts enforce the recent sweeping and vague security legislation. We believe that Hong Kong's judges, even though blameless as to the origins of these issues, may in future have to labour against perceptions they did not create and, perhaps, will have little ability to influence.

Two other venues that seem at least potentially viable are Indonesia and Vietnam. For Indonesia:

> Under Yudhoyono's leadership, Indonesia restructured its orientation toward the Pacific by demonstrating a meaningful foreign policy toward a region it had long considered as its 'backyard'. Yudhoyono used the magic words 'connectivity' and 'identity' to undertake numerous measures to improve bilateral and multilateral relationships with countries in this region. His successor, the current President Joko Widodo, has sustained the efforts of his predecessor… It is evident that President Widodo employs culture as a means beyond traditional hard power tools to approach Indonesia's eastern neighbours.[44]

With the largest economy in Southeast Asia, the world's fourth largest population and a recently rapid rate of growth, Indonesia will clearly have increasing influence in international commerce; like Vietnam, it is also one of the countries benefiting from a shift of manufacturing away from China. However, its widespread poverty, severe climate-change challenges and sheer size[45] militate against its being able to move very quickly into a competitive position for sophisticated conflict management work specifically.

As to Vietnam:

> Vietnam has long declared a foreign policy goal of 'willing to become a friend and reliable partner of all countries in the world community, striving for peace, independence and development'. However, it was only recently that Vietnam placed greater emphasis on the goal of proactive contribution to international peace and security. Directive No. 25 CT/TW of the Secretariat of the Party Central Committee (issued on 8 August 2018) on enhancing the role of multilateral diplomacy stated that the country would need to shift from merely 'attending' to

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[43] Banyan is the *nom de plume* of *The Economist's* Far East correspondent. 'A winner has emerged in the old rivalry between Singapore and Hong Kong', *The Economist* (Web Page, 11 May 2023) <https://www.economist.com/asia/2023/05/11/a-winner-has-emerged-in-the-old-rivalry-between-singapore-and-hong-kong>.

[44] Baiq Wardhani, 'From Jakarta to Oceania: Indonesia's Cultural Diplomacy with the South Pacific' (2023) 10(1) *Journal of Asian Security and International Affairs* 47, 48.

[45] See generally (Web Page) <https://www.worldbank.org/en/country/indonesia/overview>.

> 'actively participating' and 'actively contributing' to multilateral institutions, accelerating efforts to play a 'leading or mediatory role in multilateral organizations and forums having strategic importance to the country' in accordance with the specific capabilities and conditions of the country. Vietnamese leaders have repeatedly used the phrase 'hoa giai' (translated as either reconciliation or mediation in English) in their public speeches, and stated that Vietnam should gradually promote the role of mediation in regional and global issues. [46] … In the contemporary period, Vietnam has established high-level partnership frameworks with all its former foes – France, the United States, and China…[47]

As with Indonesia, Vietnam's development rate has been impressive, and its efforts to rebuild relations with former foes are promising for its future as a diplomatic venue. But although its difficulties for purposes of a possible role in resolving grey zone conflicts are not the same as Indonesia's, they are also formidable, in this case centring on the continuing dominance of the Communist Party and the resulting lack of confidence-inspiring 'backdrop' institutions, such as robust courts. *The Economist*'s recent description of To Lam, Vietnam's new leader at the time of writing, as having 'cut his teeth in the fearsome Ministry of Public Security' underlines this institutional weakness.[48]

Thus, it appears clear that both Vietnam and Indonesia are working to improve their stature in international affairs, and that each has strengths which may result in its providing real competition for Singapore as a base for international conflict management—in the future. Yet in each case their real-world current state suggests this is a possibility *for* the future, not a near-term probability.

Scan an atlas for other possible locations where East and West both have enough interests to make grey zone commercial conflict management viable, and the picture changes, but does not really improve. What, for two more examples, is the general level of international commercial confidence in the court and other relevant 'backdrop' systems in Thailand or Dubai? Dubai in particular has many commercial advantages these days—but in view of its hospitality to Russian billionaires evading sanctions,[49] what would be its public image for this particular purpose? Moreover, Doha might well be motivated to assert itself in this area[50] if Dubai made a serious bid for it,

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46 Hoang Oanh, 'Vietnam's Role in Regional Peace and Mediation' (2021) 6 *ISEAS Perspective* 1, 4.

47 Ibid 5.

48 'Vietnam's New Ruler: Hardman, Capitalist, Hedonist' (Web Page) <https://www.economist.com/asia/2024/08/21/vietnams-new-ruler-hardman-capitalist-hedonist>.

49 See eg Natasha Turak, 'Villas by the Sea: Rich Russians Fleeing Sanctions are Pumping up Dubai's Property Sector' *CNBC Online* (Web Page, 8 July 2022) <https://www.cnbc.com/2022/07/07/rich-russians-fleeing-sanctions-are-pumping-up-dubais-property-sector.html> .

50 A recent David Ignatius column in the Washington Post detailed an apparently sophisticated Qatari mediation effort in the Israel-Hamas war. While political rather than commercial, this is a reminder that Dubai does not have a monopoly on potential 'mediative' activity in the

potentially creating a confusing and debilitating Gulf rivalry. And so on, down a laundry list of venues which may have many grounds for expecting a larger role in international commerce over time, but may yet endure great difficulty trying to replicate, any time soon, Singapore's success in setting up the institutions, facilities and skills needed for the particular purposes we envision here.

VII EXISTING PRECURSORS TO THE TOOLS NEEDED

A wide array of institutions providing dispute resolution services already exists in Singapore. The Singapore courts and particularly the Singapore International Commercial Court ('SICC') are forums for cross-border litigation; the SICC has a bench that includes a former judge of the Supreme Court of New South Wales, a former judge in the UK Commercial Court, a former Chief Justice of Australia, a former Justice of the UK Supreme Court and the former Chief Justice of Canada, among other major international legal figures.[51] The Singapore International Arbitration Centre, meanwhile, is renowned and has seen its case load increase year-on-year, with Singapore consistently ranked as a 'most preferred' seat of arbitration alongside London.[52] Similarly, the Singapore International Mediation Centre and Singapore Mediation Centre were established to facilitate the mediation of disputes.

A relatively recent development has underlined Singapore's expanding role in this latter domain. Minister Edwin Tong SC, in his foreword to *Mediation in Singapore – A Practical Guide*, describes it thus:

> Mediation is not a new concept, especially in our Asian Context. Various ethnic and racial groups have customarily settled their differences through negotiations facilitated by their clan elders, village heads, or community leaders… While mediation is still more commonly used in community disputes than in commercial disputes, especially international commercial disputes, this is set to change with the United Nations Convention on International Settlement Agreements Resulting from Mediation (also known as the Singapore Convention on Mediation) which entered into force on 12 September 2020.[53]

As of the date of writing, the Singapore Convention on Mediation now has 57 signatories and 18 state parties, with Costa Rica being the most recent country to ratify the Convention. It is an international treaty of the UN that

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region. See David Ignatius, 'In Qatar, Secret Diplomacy on Gaza Yields a First Small Step Forward' *The Washington Post Online* (Web Page, 9 November 2023) <https://www.washingtonpost.com/opinions/2023/11/09/qatar-gaza-israel-diplomacy-pause-hostages/>.

51 'Judges' *Singapore International Commercial Court* (Web Page) <https://www.sicc.gov.sg/about-the-sicc/judges>.

52 Queen Mary University of London, *2021 International Arbitration Survey: Adapting Arbitration to a Changing World* (Report, 2021) 2 <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/#:~:text=The%20five%20most%20preferred%20seats,Hong%20Kong%2C%20Paris%20and%20Geneva>.

53 George Lim and Danny McFadden, *Mediation in Singapore – A Practical Guide* (Sweet & Maxwell, 3rd ed, 2021) v.

was negotiated by experts all over the world, and provides an international framework for mediated settlement agreements. Put simply, it is the mediation equivalent of what the New York Convention of 1958 is to international arbitration and will facilitate mediation as a mechanism for resolving cross-border disputes.

A *How would comparable tools actually work in the present context?*

A consistent theme of the discussions within Project Seshat (described above) over several years was humility: if we do not recognise the need for humility from the start, our subject is one which will teach it to us. There are many reasons, but two prominent ones are that a) this essentially Western group of professionals at least perceived itself as primarily in a mode of response to and defence against attacks from elsewhere, while it is axiomatic that on the defending side it is very difficult to know the scope and even the true purpose of an attack; and b) hybrid warfare is essentially as creative as an attacker can make it, so that what worked as a response in an ostensibly similar situation last time may be completely ineffective next time.[54] And when it comes to predicting the exact forms of conflict management mechanisms which might be most appropriate, specifically *for* grey zone conflict and *in* Singapore, humility is particularly called for, because those mechanisms cannot be expected to enjoy the confidence of the key parties unless those parties are involved in their creation. We can, however, offer some observations as to possibilities, and note some predictable difficulties in their implementation.

B *Possible tools / institutional mechanisms*

We believe that among the array of conflict management methods noted above, some could be more readily adapted than others. Thus, for instance, such nonjudgmental and non-proof-bound tools as 'good offices' and the invocation of regional groups and bodies may serve as 'low-hanging fruit' that can be employed ad hoc, without any expensive or complex ongoing mechanism being required. These kinds of interventions also forestall a party which is reluctant to admit any involvement from being able to use the evidentiary or procedural standards and practices associated with law or arbitration to frustrate any conflict management activity at all. Yet such actors' reputational interests may be strong enough for the moral suasion possible in these types of intervention to have some effect. [55] For those seeking more process alternatives, we will note that a 2023 article by Honeyman and Parker recently reviewed a slate of other tools for 'thinking ahead' about conflict, at

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[54] Chrustie (n 12).

[55] See Catherine H Tinsley, Jack J Cambria and Andrea Kupfer Schneider, 'Reputation in Negotiation' in Chris Honeyman and Andrea Kupfer Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017) vol 1, 249.

least some of which have been used before in other contexts, and which may have potential for adaptation for use in grey zone conflict/hybrid warfare. [56]

Among the tools mentioned above, the role of a convenor may be particularly promising. While nominally not as powerful in compelling a result as arbitration or litigation, a convenor's role does carry what in England is sometimes called 'a bit of stick'. This is because while a hybrid warfare actor normally has every incentive to deny any involvement in any such thing, to refuse a convenor's request to show up for a discussion involves the risk that the field of discussion will be left entirely to their opponents. Yet once a party is engaged, the tools of investigation, negotiation and mediation can at least potentially be invoked. The evidence from other domains is replete that in skilled hands, these processes can resolve more disputes than not.[57]

Beyond this, it seems worth speculating that over time, as the admitted limitations of 'good offices' and the like are felt, parties who have bought in to the concept of *some* kind of intervention in Singapore might be induced to engage in more explicit negotiation or mediation. The world of commerce is thoroughly familiar with negotiations in which a party never admits wrongdoing, yet agrees to some form of compensation for harm suffered, or to a settlement before an agency such as the US Securities and Exchange Commission ('SEC').[58]

In turn, when such a process has been completed, it is common practice in some settings for the company or other entity that was accused to be allowed to continue to assert its innocence—but with the caveat that the company now signs an explicit undertaking that 'We Will Not…' do anything like it in future.[59] Later enforcement of such an express obligation may be a little easier, if needed, because the settlement may also include other provisions that expose more facts in future. It is also possible to construct a settlement without the customary level of confidentiality as long as parties

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56 Chris Honeyman and Ellen Parker 'Thinking Ahead in the Grey Zone' (2023) 24(3) *Cardozo Journal of Conflict Resolution* 617.

57 One measure of this success is that by roughly 25 years into the 'modern' ADR period in the US, some scholars had become concerned about one of its effects—a radical reduction in the number of actual trials. A line of scholarship known as 'vanishing trial' research was well under way by then. See eg (2006) 1 *Journal of Dispute Resolution* 'Vanishing Trial Symposium' (Web Page) <https://scholarship.law.missouri.edu/jdr/vol2006/iss1/> including Marc Galanter, 'A World without Trials' and Christopher Honeyman, 'Worlds in a Small Room'.

58 Even a recent 2021 limitation on the SEC's longstanding practice in this area was notable for its own limitation: admissions would be required in future only in 'certain cases where heightened accountability and acceptance of responsibility are in the public trust.' Dan Chaudoin et al, 'The SEC's New Approach to Neither-Admit-Nor-Deny Policy May Not Be So New After All' *New York Law Journal* (Web Page) <https://www.law.com/newyorklawjournal/2021/12/03/the-secs-new-approach-to-neither-admit-nor-deny-policy-may-not-be-so-new-after-all/>.

59 See eg Form NLRB-4758, a standard notice used by the US National Labor Relations Board to inform employees of a company's 'We Will Not…' commitments in the wake of an informally-settled case. See also the discussion of informal settlements, sec. 10146 et seq in 'Revisions to ULP Manual', National Labor Relations Board (Digital Manual, 2020) <https://www.nlrb.gov/sites/default/files/attachments/pages/node-174/ulp-manual-september-2020.pdf> 105-12.

consent, such that claims of violation of the *settlement*, never mind the original and murkier claims and defences, become much more provable in court or arbitration than the original case would have been. Thus, we would re-emphasise that in conflict management, the whole 'ecology' of processes must be considered for their mutually supportive effects to be employed to the best effect.

Some may be tempted to reply that all this is a pipe dream and that hybrid warfare is not negotiable by its nature. One response is that in the roughly 40-year history of dispute resolution as a broad field (beyond, that is, such previous and specialised domains as labor-management mediation or traditional diplomacy) professionals in one field of conflict after another have made essentially the same argument that in *their* domain, negotiation/mediation/another process will never work… only to find themselves, a decade or two later, busily engaged in just those processes.[60] More trenchantly, we now have evidence[61] that the effectiveness of such tools operates far beyond the domains most people know about. A particularly stark example is provided in two book chapters which analyse negotiations as they occur *within the professional boxing ring.*[62] Perhaps to underline the authority of these analyses, it is enough to note that their co-authors include a Las Vegas referee with experience adjudicating title fights, and others who have served respectively as the president of the fight doctors' association, and as auditor and even president of the World Boxing Association. We look forward to anyone's effort to assert that *their* world is more conflictual and less subject to negotiation than the professional boxing ring—the attempt should, at least, be entertaining.

VIII PREDICTABLE DIFFICULTIES

As we have noted already, one key issue is that problems of proof in grey zone conflict are severe. For example, disinformation campaigns alone use

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60 A signal moment in that trend occurred when then-US Attorney General Janet Reno ordered negotiation training to be implemented for all 6000 civil litigators employed by the US Dept of Justice, the US's largest litigation organization. A speech by the acting assistant attorney general a few years later summarized the results: Daniel Marcus, 'ADR and the Federal Government: Not Such Strange Bedfellows After All' Earl F Nelson Memorial Lecture, University of Missouri Law School (Web Page, 9 November 2000) <https://www.justice.gov/archive/aag/speeches/2000/dan_speech1.htm>. The attitudes of some of the attorneys being trained are noted in Jeffrey Senger and Christopher Honeyman, 'Cracking the Hard-Boiled Student: Some Ways to Turn Research Findings into Effective Training Exercises' in *The Conflict Resolution Practitioner* (Monograph, Office of Dispute Resolution, Georgia Supreme Court, 2001). See endnote 2, (Web Page) <https://convenor.com/wp-content/uploads/2024/04/hard-boiled_student.pdf>.

61 See eg Leonard L Lira, 'Negotiation in the Military' in Chris Honeyman and Andrea Kupfer Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017) vol 2, 327-353.

62 See Habib Chamoun-Nicolas et al, 'Negotiation in Professional Boxing' in Christopher Honeyman, James Coben and Andrew Wei-Min Lee (eds), *Educating Negotiators for a Connected World* (DRI Press, 2013) 367; Habib Chamoun-Nicolas et al, 'Negotiation and Professional Boxing: The Ringside Physician' in Chris Honeyman and Andrea Kupfer Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017) vol 2, 283.

sophisticated and diverse tactics, including hidden financing of apparently 'domestic' pressure groups. In a Chinese-Australian (and US and Canadian) case context:

> States also funnel disinformation through, and fund, third parties to slow and undermine legitimate, private economic activities that are perceived to threaten the interests of the Hybrid War aggressor. This type of information warfare provides resources to existing, small interest groups, amplifying and exaggerating their minority concerns to slow these private economic activities. This type of gambit often also includes a litigation track to further slow and reinforce false claims asserted through the surrogate organizations. Recent reports of these CCP (Chinese Communist Party) hybrid war actions against private mining companies and large-scale infrastructure activities show that they seek to slow economic and public policy progress in adversary states, lending to the large destabilizing effects sought by the CCP against their adversaries. The push to develop non-Chinese sources of 'rare earths' (critical minerals in which China currently controls the vast majority of the world's supply) has particularly suffered from this type of campaign. [citations omitted][63]

Similarly, a Russian campaign used a variety of stooges to target Canadian firms perceived as supporting Ukraine:

> During the course of the current Russia/Ukraine war, Russian government-affiliated cyber threat actors have targeted Canadian businesses suspected of supporting Ukraine. Extortion for ransom, and subsequent negotiations between business leaders, various law firms, U.S. and Canadian government entities and cyber companies were ongoing. Thus, the conflict between Ukraine and Russia spilled into the corporate and law offices of Canadian cities, and the resolution was expected through negotiations and ransom payments. Again, the power imbalance dynamics were stark: a Russian state-affiliated cyber gang against Canadian business leaders and their legal representatives, who were confined by law and rules in their negotiation process, while the Russian networks used extortion and intimidation, disregarded any privacy laws, and likely had insider insight into various entities among the Canadian parties in negotiations. This was just one of thousands of likely cyber incidents requiring negotiations with the threat actors, including with all stakeholders and even with other nations, e.g. the United States' FBI.[64]

An absence of proof, however, at least of the kind and degree acceptable under even the most minimal standard in court, does not always preclude effective conflict management. The entire practice of hostage negotiation, for example, has contended not only with hostage takers who often deny that they are responsible, but also with national and other bodies which believe that to be seen negotiating with hostage-takers merely encourages that behaviour, so they in turn often deny that any negotiation is taking place. Yet a sophisticated practice in this area has not only developed, but has also begun to be teachable to others.[65]

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63 Corpora (n 5) 507-8.

64 Chrustie (n 12) 22-3.

65 See, eg, Jayne Seminare Docherty and Calvin Chrustie, 'Teaching Three-Dimensional Negotiation to Graduate Students' in Christopher Honeyman, James Coben and Andrew Wei-

Beyond the predictable difficulties of proof and the consequences for the types of mechanisms most likely to prove viable in our context, creating *any* new conflict management system anywhere is likely to encounter several typical difficulties. These include the need for a 'labouring oar', or person or institution that takes it on themselves to make something *move*; resources, particularly financial, which can be difficult or at least slow to marshal; and naysayers of various kinds, such as the lawyers who fought the institutionalisation of mediation decades ago—sometimes on imagined principle, sometimes for cynical reasons, capsulised by the redefinition of ADR by some of them as 'Alarming Drop In Revenue'.[66] But these concerns should not be overblown. Self-evidently, every existing conflict management system has surmounted these and similar difficulties.

Yet, hybrid warfare or grey zone conflict does introduce some new twists of its own. Top of the list is the fact that the perpetrator is, ultimately, a government, by definition. And it is a government which, by standard practice, denies having had anything to do with anything of the sort. A second difficulty is that the commercial enterprises which *benefit* from grey zone conflict (eg by being handed the fruits of intelligence services' harvesting of competing firms' intellectual property) have every incentive to disguise the origins of their sudden ability to accelerate what they will blandly describe as their own research and development, while the national courts in their home jurisdiction are unlikely to enforce subpoenas for the evidence that would prove the contrary.[67] Meanwhile, the data thieves may well have been able to destroy evidence of their raids on their way out. Again, proof, under these circumstances, is likely not to meet typical legal standards.

In consequence, we believe that mechanisms which *depend* on proof, or which must rely on national courts for enforcement, are not likely to be immediately effective in this context. However, these are not the only mechanisms available for reducing conflict.[68] And there are many conflict

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Min Lee (eds), *Educating Negotiators for a Connected World* (DRI Press, 2013) 443. See also, Maria Volpe et al, 'Negotiating with the Unknown' in Christopher Honeyman and Andrea K Schneider (eds), *The Negotiator's Desk Reference* (DRI Press, 2017) vol 2, 297; Rachel Parish and Jack J Cambria, *The Other Side of the Door: The Art of Compassion in Policing* (DRI Press, 2020).

66 See Marcus (n 60).

67 Even in less charged circumstances, skepticism is common as to the fairness of resolving an international commercial dispute within one party's home courts. See eg Hilary Heilbron, 'Should International Arbitration be the Dispute Resolution Method of Choice for International Companies?' *Financier Worldwide* (Expert Briefing, December 2017) <https://www.financierworldwide.com/should-international-arbitration-be-the-dispute-resolution-method-of-choice>: 'the national court of a contractual party is unlikely to be a venue acceptable to the other party to resolve its dispute'.

68 An early review of the pluses and minuses of different dispute resolution processes is in Frank EA Sander and Stephen B Goldberg, 'Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure' (1994) 10(1) *Negotiation Journal* 49. While new procedures have been invented since, *Fitting the Forum to the Fuss* is still a classic source, helping a reader think through the various motivations that might govern the choice of one forum or another. Perhaps it will be equally useful in thinking through the conditions for creation of a new forum entirely.

management systems throughout the world whose preferred tools depend on other criteria valuable to a company, such as reputation,[69] the offering or withholding of facilities, or even the 'right to retaliate' which characterise certain remedies before the World Trade Organisation.[70]

Perhaps there will come a time when suitable versions of the more proof-oriented, directly enforceable mechanisms will be devised for hybrid warfare. We at least know that in our sprawling field, new tools, and modified applications of old ones, are themselves nothing new.[71] For now, the above considerations suggest that for practical purposes, the less proof-dependent forms of influence and conflict management may be easier both to mount and to sustain. These may at first seem too delicate or even feeble a set of mechanisms to be of use toward ameliorating a phenomenon as robust and crafty as hybrid warfare. Yet the power of custom, moral suasion and reputation[72] should not be entirely discounted. It has often been said casually that 'if most people were not honest, nobody could do business.'[73]

We do not claim to be experts in most of the more likely mechanisms. That said, we know that they exist and have often proved useful elsewhere. We also know that our field has regularly required new inventions or perspectives to meet new conditions. So we invite others, with the specific expertise we lack, to engage with these issues, to improve this discussion accordingly and enlarge the scope of possible action.

IX CONCLUSION

Only a few years ago, 'grey zone conflict' was at best a vague concept even among lawyers and most other practitioners in conflict management, while its near-synonym 'hybrid warfare' was downright obscure. This was even more true in commerce than in government circles.

That has changed, and across much of the world, news stories describing one attack after another in hybrid warfare terms are becoming common. Two

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69 Tinsley, Cambria and Schneider (n 55).

70 Jide Nzelibe, 'The Credibility Imperative: The Political Dynamics of Retaliation in the World Trade Organization's Dispute Resolution Mechanism' (Working Paper No 55, University of Chicago Public Law & Legal Theory, January 2004) <https://chicagounbound.uchicago.edu/public_law_and_legal_theory/303/>.

71 One of the authors was confronted with the need for this at an early career stage, issuing a case decision that seemed essential in the circumstances—but one that, based on caselaw, he had every reason to believe would be reversed on appeal. When the decision was upheld, this led to the notion that the whole field's doctrines might be more adaptable than he had been told; and that realization, by degrees, has led to a great deal of further inquiry, including the present one. See *Troy Area Landfill vs. Town of East Troy*, Case No 3-84-01 (Wis Waste Facility Siting Board, 1984) (Web Page) <https://convenor.com/pub-dec/>. This obscure case's import is discussed in Christopher Honeyman, 'A Sort of Career' in Nancy A Welsh and Howard Gadlin (eds), *Evolution of a Field: Personal Histories in Conflict Resolution* (DRI Press, 2020) 171.

72 Tinsley, Cambria and Schneider (n 57).

73 For a more precise account of the forces involved see Daniel Rose, 'Ulysses and Business Negotiation' in Andrea Kupfer Schneider and Christopher Honeyman (eds), *The Negotiator's Fieldbook* (American Bar Association, 2006) 711.

forms of ‘next steps’ are clearly implicated: developing better methods for defending firms, nonprofits, local governments, hospitals, universities and more against such attacks, and developing systems and structures for handling the conflicts that will predictably ensue. Failure to enact such mechanisms will predictably leave the field to those whose reactions are less constructive, whether because they tend towards overreaction or inertia.

We have here argued that in responding to the need for new conflict handling mechanisms, the fact that it will take numerous forms of expertise and points of view to define exactly what these mechanisms should look like is more a ‘feature’ than a ‘bug’. At the same time, we have argued that there is a much clearer point of focus on where they should be centred. For the reasons stated, we believe that Singapore is, by a significant margin, the most logical and attractive such venue.

We look forward to helping expand the discussion on this theme.