Multilateral and Multilayered: The Development of Investment Treaty-Making in ASEAN and its Implications for the Future of Investor-State Dispute Settlement in Asia

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The Regional Comprehensive Economic Partnership (RCEP) was signed in November 2020. At the core of RCEP is the 10-member bloc of the Association of Southeast Asian Nations (ASEAN), which has free trade agreements (FTAs) with China (ACFTA), India (AIFTA), Japan (AJCEP), Korea (AKFTA), and Australia and New Zealand (AANZFTA). These so-called "ASEAN+1" FTAs form the basis for establishing the RCEP, which involves the ten ASEAN countries and these six treaty partners (minus India which pulled out of negotiations in 2019).

The RCEP has an investment chapter. At the same time, the ASEAN Comprehensive Investment Agreement (ACIA) is one of the key multilateral instruments enabling the ASEAN Economic Community (AEC). The RCEP and the ACIA, however, co-exist with intra-ASEAN bilateral investment treaties (BITs) that remain in force, BITs between ASEAN members and RCEP members, along with the "ASEAN+1" FTAs mentioned above.
The RCEP notably does not contain investor-State dispute settlement (ISDS) provisions, providing only for State-to-State dispute settlement. Case-by-case ISDS consent reservations in the texts of the aforementioned ASEAN+1 FTAs, along with the absence of an ISDS provision in ASEAN's most recently concluded FTA with Hong Kong, point to a policy shift in the region with respect to ISDS. This has implications not just for investment within the region, but also for the evolution of ISDS more generally. ISDS is undergoing a phase of serious reform internationally, and the developments in ASEAN and Asia will impact the future development of ISDS.

This paper will examine the history of international investment agreements (IIAs) in the region to trace the development of the multilayered IIA regime described above, with a view to establishing areas of overlap, potential areas of conflict, and the implications of this multilateral and multilayered treaty regime on ISDS in Asia and beyond.

Med-Arb Development: The Impacts of China's Practice upon Other Jurisdictions

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In light of China's remarkable economic growth over the past few decades, a number of commercial disputes have emerged. The emergent need to resolve disputes efficiently, coupled with China's tradition of mediation, have created the opportunity for China's hybrid system of mediation and arbitration (hereinafter referred as med-arb). The concept of med-arb is not unique to China, and variations of the practice have been used in other jurisdictions, but it is much less accepted and much less common in the past. The biggest concern about med-arb is the neutrality of the arbitral tribunal because a same person acts as both arbitrator and mediator in the med-arb proceedings. As med-arb becomes more refined and effective in China, other jurisdictions have become more confident in the benefits of med-arb and it may become easier to enforce med-arb decisions.

This paper in particular discusses the evolution of med-arb in other jurisdictions under the influence of the legal practice of med-arb in China.

As two typical common law jurisdictions, Hong Kong and Singapore have been skeptical of med-arb in the past because they attach great importance to settlement privileges during the arbitration proceedings to ensure the procedural justice. By contrast, The Chinese System of Laws emphasizes on the substantial justice and efficiency. Med-arb reflects the pursuit of efficiency and the neutrality of arbitrator and mediator during med-arb proceedings has drawn much criticism because the information disclosed during the mediation might influence the arbitration award and might be in conflict with some privilege rules. However, Hong Kong and Singapore have accommodated their attitudes towards the development of med-arb in recent years. The Hong Kong Arbitration Ordinance (Cap 609) [1] and Singapore International Arbitration Act (Cap 143A) [2]are two examples of legislative efforts to confirm the validity of med-arb and regulate med-arb. As for precedent, in December, 2011, the High Court of Hong Kong demonstrated its growing confidence in med-arb when it affirmed an award by the Xian Arbitration Commission despite alleged misconduct during med-arb.[3] Besides, in October 2013, the Singapore Court of Appeal upheld a multi-tiered dispute resolution clause which set the mediation as precondition as arbitration.[4]

In the United States and United Kingdom, currently, even though med-arb is gaining popularity, legislation and precedent take the view that arbitration and mediation should be kept separate in order to maintain the neutrality of the proceedings and ensure the procedural justice.

It is reasonable to believe that the conflict and arguments between Chinese substantial-oriented legal culture and Anglo-Saxons procedural oriented legal culture would continue. However, there is no doubt that the prosperity of med-arb in China would enhance their confidence and influence worldwide alongside with Chinese outbound investment expansion.

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[1] The Hong Kong Arbitration Ordinance (2011), div2, §32 & 33.

[2] Singapore International Arbitration Act (2012), §17.

[3] *Gao Haiyan v Keeneye Holdings Ltd* (noting the high court's decision to affirm the award, while analyzing the lower courts initial decision not to enforce the award).

[4] *International Research Corp PLC v. Lufthansa Systems Asia Pacific Pte Ltd*（noting the Singapore Court of Appeal confirm the validity of med-arb clause in the contract）

Panacea or Poison?
Charting the Evolution of Judicial Attitudes towards International Arbitration in Vietnam and China

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The role of international arbitration as a driver of investment and economic growth in Asia is well-recognised. Foreign investors unfamiliar with (or even wary of) Asian legal systems find reassurance in the promise of fair, impartial and binding adjudication of disputes by experienced arbitrators.

International arbitration in its current form owes its existence to New York Convention (the "**Convention**"). The Convention provides the two "Pillars of Enforceability" upon which modern international arbitration rests: the enforceability of arbitration agreements and the enforceability of arbitral awards.

It would, however, be erroneous to assume that the scope and content of these two pillars are settled. Member states have considerable latitude in interpreting and giving effect to arbitration agreements; the Convention also gives member states a litany of exceptions to refuse enforcement of arbitral awards, the most notorious of which is the public policy exception.

Further, the success of international arbitration cannot be taken for granted. International arbitration, much like its cousin investment arbitration, has attracted criticism for being a neocolonial institution that is perceived as unfair.

It is thus timeous to study of how Asian judiciaries has strengthened, or weakened, the two pillars of arbitration over time i.e. how courts have interpreted arbitration agreements and the exceptions to enforceability of arbitral awards, with a particular focus on the public policy exception.

Given the number of countries in Asia and the limited scope of this paper, we have specially selected two economic powerhouses in East Asia - Vietnam and China. Where appropriate, comparisons will also be made to Singapore, a country well-known for its pro-arbitration attitude. More fundamentally, we hope that this study would reveal broader trends in judicial attitudes towards concepts of state sovereignty, coloniality and economic development.

New Developments of One-Stop Commercial Dispute Resolution Mechanism in China: China's Interaction with Transnational Standards

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This paper examines the recent developments of China's one-stop commercial dispute resolution mechanism that integrates litigation, mediation and arbitration. It aims to illustrate China's adaptions towards transnational standards and responses to the COVID-19, as a result of the constant interplay between the *stare decisis* in common law jurisdictions and the civil law tradition in China, predictable regulation and flexible practice in China's amicable dispute settlement, and the clashes between the increasingly cosmopolitan professional culture in the arbitration community and deeply rooted demands of national culture. In order to make China a more appealing hub of dispute resolution, various stakeholder have made rigorous legal reforms to bring the law and practice of dispute resolution in China more in line with transnational standards, including but not limited to the establishment of the China International Commercial Courts (CICC), reform of guiding cases in People's Courts, signature to the Singapore Convention and legal innovations in Free Trade Zones. On the other hand, China is also taking an active role in shaping international norms, in particular the establishment of the CICC. Further, China's deeply rooted tradition of amicable means of dispute resolution may be of value to other jurisdictions. The paper is structured as follows. Section II looks in more detail at the reforms of civil litigation in People's Courts — the reform of guiding cases, internet courts and the development of the CICC. Section III explores the adaptations of arbitration towards transnational standards in Shanghai Free Trade Zone and impacts on international arbitration practice. Section IV examines the tradition of mediation in China. Section V explore China's one-stop dispute resolution mechanism integrating litigation, mediation and arbitration, which may be of value to the hybrid processes or mixed mode dispute resolution in other jurisdictions. Section VI concludes the paper.

History and Development of the Law on Dispute Resolution Mechanisms in Vietnam's International Judiciary

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A civil case involving foreign factors usually occurs where two or more jurisdiction agencies of different countries have their own authorities, which will lead to a conflict of jurisdiction. Conflicts of jurisdiction also results in a multi-judgment or a judgment or decision issued by the National court assets that may not be recognized and enforced in a country requiringits recognition and enforcementdue toits own nation'sseparate jurisdiction. Therefore, many countries often make efforts to sign international treaties to resolve jurisdiction conflicts or createtheir national legal systems to deal with this phenomenon. The article presents the development process of Vietnam's laws on the competence of resolving civil cases related to foreign factors and how to deal with jurisdiction conflicts in the international judiciary of Vietnam. Based on the results achieved, the article shows the shortcomings and orientation to improve the current laws in accordance with the present international law development context.