

HONG KONG'S PARTICIPATION IN INTERNATIONAL DISPUTE SETTLEMENT: DEVIATIONS FROM CONVENTIONAL SOVEREIGNTY

*Julien Chaisse & Xueliang Ji**

ABSTRACT

In the background of deteriorating economic, diplomatic, and geopolitical relations between China and the United States of America (hereinafter "US"), the Hong Kong Special Administrative Region (hereinafter "HKSAR") has emerged as a significant battleground. In light of the rapid changes in the legal regime that has secured HKSAR's unique status for decades and the apparent spill-over effects of the US-China trade war, HKSAR's legal standing before international courts and tribunals has gained new practical and theoretical meanings which this article assesses. This article analyses Hong Kong's participation in international trade, investment and taxation dispute settlement and delves into how Hong Kong may more actively utilize the World Trade Organization (WTO) dispute settlement regime, Investor-State Dispute Settlement (ISDS) in

* Julien Chaisse is Professor, School of Law, City University of Hong Kong and Advisory Board Member, Asian Academy of International Law (Email: julien.chaisse@cityu.edu.hk). This research was supported by the General Research Fund (GRF) Project No. 11606820 of the Hong Kong SAR Research Grants Council (RGC). The authors wish to thank Threcy Joboy Lawrence and Akshat Kothari for research assistance. The author also thanks Sir William Blair, Professor Stavros Brekoulakis, Professor Georgios Dimitropoulos, Sir Rupert Jackson, Ishita Mishra, Dr Kehinde Olaoye, Dr Xu Qian, and Professor Catherine A. Rogers for helpful comments on an earlier draft, as well as workshop attendees at Hamad Bin Khalifa University (November 2020) and the City University of Hong Kong School of Law (January 2022). The views expressed herein by Authors are their own personal ones; Xueliang Ji is Ph.D. Researcher, Faculty of Law, The Chinese University of Hong Kong (CUHK), and Research Fellow, Asia Pacific FDI Network (Email: xueliang.ji@link.cuhk.edu.hk).

investment areas and dispute resolution mechanisms under double tax treaties to protect its legitimate interests in the future. Among the many facets of shared sovereignty, this article explores Hong Kong's participation in international dispute settlement to assess the extent to which shared sovereignty has allowed/allows Hong Kong to "expand" its international existence parallel to China's sovereignty. More fundamentally, this article reflects on and addresses the specific question as to whether HKSAR is ready to accept adjudicative methods of dispute settlement (rather than diplomatic means) when considering that the merits of doing so would exceed the economic and political costs. This article provides a comprehensive overview of HKSAR's involvement in international trade, investment, and taxation-related dispute resolution since its handover to mainland China in 1997.

KEYWORDS: *HKSAR, WTO, ISDS, MAP*