Viewing the "Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region" as a Window onto the New Legal Hubs

Written by Matthew S. Erie, Associate Professor of Modern Chinese Studies and Fellow at St. Cross College, University of Oxford

On April 2, 2019, the Government of the Hong Kong Special Administrative Region ("HKSAR") and the Supreme People's Court of the People's Republic of China" ("Supreme People's Court") signed an Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR (hereinafter, "the Arrangement Concerning Mutual Assistance," see English translation here). This is a momentous development in the growth of international commercial arbitration in both mainland China (also, the "PRC") and Hong Kong as it is the first time that such a mechanism has been put in place to allow Chinese courts to render interim relief to support arbitrations seated outside of the PRC.

Historically, non-Chinese parties have been concerned about doing business with Chinese parties given the lack of the ability to ensure that the status quo of the assets of the Chinese party in question is not altered pending the outcome of the arbitration and the tribunal's issuance of the final award. As a result of the Arrangement Concerning Mutual Assistance, foreign parties will have more comfort in entering into such agreements with Chinese parties; further, the attractiveness of both Hong Kong as a seat of arbitration and the PRC will be

enhanced. More generally, the Arrangement Concerning Mutual Assistance demonstrates the close cooperation between legal, judicial, and arbitral authorities in the PRC and Hong Kong. The Arrangement Concerning Mutual Assistance builds on such soft law sources as the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR Pursuant to the Choice of Court Agreements Between Parties Concerned, signed on July 14, 2006, and the Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the HKSAR, signed on June 21, 1999. These sources of soft law position Hong Kong as a major legal hub for Chinese companies investing outside of mainland China. This is particularly so in the context of the Belt and Road Initiative, a multi-trillion dollar project affecting some two-thirds of the world's population, announced by PRC President Xi Jinping in 2013, to connect mainland China's economy with those of states throughout Eurasia.

Mainland China's soft law agreements with Hong Kong are not surprising given that Hong Kong is a "special administrative region" of the PRC, a relationship often summarized as "one country two systems." Nor is it surprising that Hong Kong should function as a legal hub for Chinese companies. Yet Hong Kong is just one of many such hubs emerging throughout a number of jurisdictions across the Eurasian landmass that are jockeying to provide legal services, and particularly dispute resolution services, to not just Chinese companies but also Japanese, Indian, and those of GCC and ASEAN states. The diversity of parties notwithstanding, with some of the largest multi-national companies in the world backed by strong central government support, China is the dominant economy of the region. China is not only creating soft law with other jurisdictions but also onshoring disputes by building its own NLHs in Shanghai and Shenzhen. As a consequence, emergent economies in Asia are accounting for an ever-larger number of cross-border commercial disputes, and jurisdictions in Asia are building capacity to handle those disputes. Soft law, international arbitration houses, international commercial courts, business mediation, transplanted English common law procedural rules, English language, and lawtech—these are all constitutive elements of what I call "new legal hubs" ("NLHs"), one-stop shops for cross-border commercial dispute resolution, in financial centers, promoted as an official policy by nondemocratic or hybrid regimes.

Over the course of two years, I conducted ethnographic fieldwork on six NLHs in

four countries, including in Hong Kong, Singapore, Dubai, Kazakhstan, and China. The result of my research, "The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution" (see here), is forthcoming in the *Virginia Journal of International Law*. The article analyses NLHs at two levels: their impact on the host states in which they are embedded and interhub connections as a form of transnational ordering. This article finds that, first, legal hubs are engines of doctrinal, procedural, and technological experimentation, but they have had limited impact on the reform of the wider jurisdictions within which they are embedded. Second, through relationships of competition and complementarity, legal hubs function to enhance normative settlement. However, many of the innovations (e.g., intrahub cross-institutional mechanisms between courts and arbitration institutions and interhub soft law such as memoranda of understanding) are untested, vulnerable to state politics, or even unlawful. Consequently, NLHs demonstrate the potential and fragility of "rule of law" in nondemocratic states that promote globalization against trends in the West.

The article begins with an introduction that defines NLHs, identifies their significance as jurisdictional carve-outs to otherwise weak legal systems of host states, and proposes an anthropology of legal hubs. Part I sets the analysis of NLHs against the backdrop of a partially deglobalizing Euro-American liberal legal order and a globalizing "Inter-Asian" one. Part II describes the methodology of "para-ethnography." Part III provides a theory of NLHs. Part IV builds on this theory to generate a continuum of NLHs. Part V assesses how NLHs and their host states affect each other, including hubs' positive spillover effects and host state pushback. Part VI examines the possibilities for interhub ordering.