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An analytical investigation into the background, reasons, and distinguishing features of legal conflicts in the Guangdong-Hong Kong-Macao Greater Bay Area of China

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Abstract

The primary objective of the Greater Bay Area, which encompasses Guangdong, Hong Kong, and Macao, is to enhance collaboration among the three administrative regions. This includes fostering market integration within the Bay Area, adhering to international market regulations of high standards, expediting the establishment of a new open economic system, and creating a comprehensive framework for increased openness. This paper examines the underlying causes and unique features of legal conflicts within a specific region in order to establish a basis for resolving these disputes.

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Keywords

Guangdong-Hong Kong-Macao Greater Bay Area, regional legal conflicts, bay area, inter-regional cooperation, legal system, jurisdictions.

Introduction

The Guangdong-Hong Kong-Macao Greater Bay Area encompasses Guangdong Province, the Hong Kong Special Administrative Region, and the Macao Special Administrative Region. This area involves distinct administrative and legal systems, which may result in regional legal conflicts. The conflicts primarily arise in the areas of jurisdiction and law application, disparities in legal systems, economic cooperation and financial regulation, and business operation and taxation policies. Inasmuch as the construction of the Greater Bay Area has progressed, inter-regional legal system conflicts have grown in prominence and complexity, resulting in an increase in disputes that substantially impede the region's economic development and integration. In order to address inter-regional legal disputes in the Guangdong-Hong Kong-Macao Greater Bay Area, it is imperative to originate by establishing a clear definition of such disputes, including their origins, attributes, and causes. As a result, the primary objective of this paper is to analyze the actual causes of inter-regional legal conflicts in the Greater Bay Area and their distinctive characteristics so as to provide a foundation for the resolution of such disputes.

Background of the study conflict of laws in the Greater Bay Area of Guangdong-Hong Kong-Macao and its significance

Former Premier of the State Council, Li Keqiang formally introduced the Guangdong-Hong Kong-Macao Greater Bay Area (GHMGBA) concept as a national strategy in his government work report in March 2017. *Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area*, jointly issued by the State Council and the Central Committee of the Communist Party of China (CPC), was published on 18 February 2019. This document provides clarification regarding the GHMGBA's scope, redesignating it as the nine cities in the Pearl River Delta (PRD), Hong Kong Special Administrative Region (HKSAR), and Macao Special Administrative Region (MSAR). The GHMGBA's regional development is primarily driven by the four central cities of Hong Kong, Macao, Guangzhou, and Shenzhen. In addition, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, and Zhaoqing are assisted in maximizing their respective strengths and constructing a city cluster of international caliber.

In conjunction with the concept of the scope of the GHMGBA, the following insights can be drawn:

1. In terms of regional spatial demarcation, the three administrative regions of Guangdong, Hong Kong and Macao have gone through the process of moving from the smallest of the three Special Economic Zones (SEZs) to the largest of the Pan-Pearl River Delta (Pan-PRD), and on to the new 9+2 cities of the new 9+2 cities of the GHMGBA. This illustrates that the three regions of Guangdong, Hong Kong and Macao, as the frontiers of China's reform and opening up, have always been the regions that the state focuses on and focuses on promoting development [Berke, 1983].

2. In terms of regional functional positioning, the three administrative regions within Guangdong, Hong Kong and Macao have experienced the Special Economic Zone - Pearl River Delta Coastal Economic Open Area – Pearl River Delta Economic Zone (Pearl River Delta Region) – Greater Pearl River Delta Regional Co-operation -Pan-Pearl River Delta Regional Co-operation -New National Level Zones – Free Trade Zones – GHMGBA.

3. In terms of the approach to regional development, it has undergone a shift from point to point, from within the three administrative regions of Guangdong, Hong Kong, and Macao to outside the

region, and from vertical administration to horizontal regional governance.

In order to examine the GHMGBA, it is essential to establish the initial point of reference for the Bay Area. The Bay Area is an embodiment of the region. Hence, to elucidate the notion of the Bay Area, it is imperative to initially examine the definition of a region. Various disciplines have presented different interpretations of the concept of region. The field of geography was the first to focus on the study of regions. Regions can be primarily classified into differentiation (homogeneity) and cohesion based on variations in their intrinsic nature and performance. The concept of differentiation is defined by the American geographer R. Hartshorn, who posited that a "region" is a distinct geographical area that deviates in some manner from other areas and is delimited by the extent to which this deviation persists. Cohesion, as defined by British geographer Dickinson, refers to the study of how specific areas of the Earth's surface, encompassing various phenomena such as physical, biological, and human aspects, tend to combine into complexes. This combination will imbue these areas with distinctive characteristics that set them apart from the surrounding areas. The user's text is not provided. These complexes consist of a central core and peripheral areas that exhibit a gradient of change with varying levels of clarity. From an economic standpoint, a region can be defined as an economic-territorial entity that has full authority, a distinct purpose, and a high level of unity. From a political science standpoint, it can refer to either the administrative division of State governance within a sovereign State or the physical area occupied by the sovereign State itself, as well as the area formed by multiple sovereign States in any type of association or cooperation. From a jurisprudential standpoint, a region governed by the rule of law is an area where a well-established legal framework has been established through the application of the 'rule of law' principles. This encompasses the integration of legislation, law enforcement, compliance with the law, and the promotion of the rule of law concept, all of which serve the purposes and ideals of the legal system. It is evident that various fields have developed distinct definitions of regions based on their individual research perspectives. According to Bruce M. Russett, analysts have varying definitions and criteria for regions [Russett, 1967]. It is impossible to find two identical defining criteria, and a single criterion cannot adequately address complex and diverse requirements.

According to the Encyclopedia Britannica, a bay is a curved area along the coast that forms due to the movement of an ocean or lake. A bay, in this context, refers to a distinct geographical area with a unique shape. According to certain scholars, a location with a bay does not automatically qualify as a bay area. Instead, a bay area carries a distinct meaning in the context of regional economics. It refers to a network of cities that emerge from strong economic connections and intense economic activities within small- and medium-sized bays. This network forms a regional economy characterized by shared production, lifestyle, and international interaction. Regional theory and practice primarily emphasize collaboration within the regional economic domain, specifically within a specific geographic area. Regional cooperation initially focuses on economic collaboration and gradually expands to include social cooperation, political cooperation, and ultimately integration. Hence, it is imperative to prioritize research on the Bay Area economy, which is a distinct type of regional economy. The fundamental context of the Bay Area that we are discussing pertains primarily to the growth of the Bay Area economy, serving as a foundational premise for our discussion. The Bay Area, being an economic region, serves as a logical and appropriate starting point for studying the Bay Area. Devoid of this essential logical foundation, the examination of the conflict of laws in the GHMGBA would become entangled in a complex web of theoretical and practical complexities.

The practical reasons for the legal conflicts in the Guangdong-Hong Kong-Macao Greater Bay Area inter-regional cooperation

The legal systems of various jurisdictions vary significantly in terms of their legal origins, legal structures, legislative techniques, legislative procedures, litigation procedures, and law enforcement methods. The consequence of these differing approaches is a web of structures, which are related to each other and sometimes in conflict. Following the reunification of Hong Kong and Macao, the two regions have adhered to the principles of "one country, two systems" and the Basic Laws of Hong Kong and Macao. They have preserved their existing social systems without any alterations, and their legal systems have maintained the distinct features of the common law and civil law systems, respectively. Hong Kong and Macao have autonomous jurisdiction over legislative, judicial, and ultimate adjudicatory powers. The Legislative Council of Hong Kong and Macao is mandated to enact legislation that conforms to the Hong Kong and Macao Basic Laws promulgated by the National People's Congress. Subsequently, these laws will be rigorously implemented. On the other hand, Guangdong functions within a socialist legal framework that enforces stringent constraints on its legislative authority.

When dealing with situations that involve multiple regions, it is necessary to ascertain which region's laws are relevant. Legal systems and regulations can differ across different regions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is applicable to both the mainland and the Hong Kong Special Region. The first paragraph of Article 1 of the CISG clearly defines the scope of application of the convention:

"1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State".

Presently, the prevailing perspective is that the CISG does not encompass transactions involving the sale of goods between parties situated in mainland and Hong Kong, unless there is a specific agreement between the parties stating otherwise. According to the *Joint Declaration of the Government Of The United Kingdom of Great Britain And Northern Ireland And the Government of The People's Republic of China On The Question of Hong Kong* (19 December 1984), the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (4 April 1990), the *Joint Declaration of the Government of the People's Republic of China and The Government of the Republic of Portugal on the question of Macao* (26 March 1987), and the *Basic Law of the Macao Special Administrative Regions of the People's Republic of China* (20 December 1999), Hong Kong and Macao have the authority to enter into agreements with other countries and regions in the areas of finance, trade, science and technology, culture, and shipping. They can also participate in exchanges and seek to join international treaties, using the designations "Hong Kong, China" and "Macao, China". Nevertheless, it is unclear whether the personal decision of the parties will definitely be applicable to the particular situation. Hence, it is evident that the matter of law application in the GHMGBA is a contributing factor to the conflict of laws in the region.

According to Article 17 of the Hong Kong Basic Law, "The Hong Kong Special Administrative Region shall be vested with legislative power". The legislation enacted by the governing body of the special administrative region must be presented to the Standing Committee of the National People's Congress, without undermining the authority of the law. Simultaneously, Article 18 of the

aforementioned Fundamental Law stipulates, "The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region. National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region". The legislative system in the mainland is characterized by central unification, as well as a certain degree of division, multi-level coexistence, and multi-class integration. Guangdong province, as a local administrative area, has the power to create local regulations and government regulations, but it does not have the authority to enact innovative legislation. In contrast, Hong Kong has the right to create its own laws. It can be seen that conflicts at the legislative level in Guangdong Hong Kong and Macao are cross-regional horizontal conflicts and cannot be dealt with in accordance with the principle of superior law over inferior law.

The characteristics of legal conflicts in the Guangdong-Hong Kong-Macao Greater Bay Area

From the perspective of the legal manifestations of inter-regional legal conflicts, the inter-regional legal conflicts in the GHMGBA refer to the legal conflicts between the Guangdong Province and the nine cities in the Pearl River Delta as part of the mainland legal domain, and Hong Kong and Macao within the Greater Bay Area. This includes conflicts between the national laws applicable in Guangdong Province, local regulations and government rules formulated by the Guangdong Province and the nine cities in the Pearl River Delta, as well as conflicts between Hong Kong and Macao laws. It also encompasses inter-regional legal conflicts within Guangdong Province, including conflicts between the national laws applicable in Guangdong Province and the local regulations and government rules formulated by Guangdong Province and its nine cities in the Pearl River Delta, conflicts between Guangdong Province and the nine cities in the Pearl River Delta, and conflicts between the nine cities in the Pearl River Delta. In terms of China's international legal conflicts, some scholars believe that it includes two levels: the conflicts between local regulations of provinces, autonomous regions, and municipalities directly under the central government and between these regulations and the laws of Hong Kong, Macao, and Taiwan at this level; and conflicts between the unified laws applicable in mainland China and the laws of Hong Kong, Macao, and Taiwan. It is believed that the inter-regional legal conflicts at the first level are often considered the subordinate aspect of China's international legal conflicts, and conflicts between local regulations in mainland China may be regarded as inter-regional conflicts within the mainland, which are adjusted by the mainland itself and may not be included in international conflict norms. The author believes that, as a region, the concept of inter-jurisdiction in the GHMGBA should not only consider the mainland as a legal system parallel to Hong Kong and Macao, but also should not overlook the fact that Guangdong Province and the nine cities in the Pearl River Delta are the main body of the Greater Bay Area. At the same time, as a part of the legal system of the mainland, the national laws, local regulations, and rules applicable in Guangdong Province and the nine cities in the Pearl River Delta will conflict with the laws of Hong Kong and Macao. Therefore, the conflicts between local regulations and government rules formulated by Guangdong Province and the nine cities in the Pearl River Delta, as well as their conflicts with the laws of Hong Kong and Macao, are important aspects of inter-jurisdictional legal conflicts in the Greater Bay Area.

From the perspective of the rights and capabilities of the principal participants in the GHMGBA, Guangdong Province and the nine cities in the Pearl River Delta are not at the same level as Hong Kong

and Macao. They lack the capacity of principal participants in resolving inter-regional legal conflicts. When discussing China's inter-regional legal conflicts, scholars such as Han Depi and Huang Jin represent the mainland as an independent legal domain to explore legal conflicts with Hong Kong and Macao [Huang, 1988]. In countries with multiple legal domains, discussions on inter-regional legal conflicts are basically conflicts between different legal domains of equal participants at the same level, such as legal conflicts between states in the United States and between Quebec and other provinces in Canada. Compared with Hong Kong and Macao, Guangdong Province is a provincial-level administrative region subordinate to the central government, while Hong Kong and Macao are special administrative regions. Although nominally, provincial-level administrative regions and special administrative regions are both provincial-level administrative regions subordinate to the central government, there is a significant difference in their rights and capabilities. Hong Kong and Macao implement a high degree of autonomy, enjoy administrative management, legislative, independent judicial, and final adjudication powers, their authority is even greater than that of the states in the United States. As a provincial-level administrative region, Guangdong Province has limited powers in legislation, judiciary, and many other aspects compared to Hong Kong and Macao. Many issues, including legal conflicts, cannot be resolved independently and must be coordinated and resolved through the central government. As for the nine cities in the Pearl River Delta, although they have certain local legislative powers, their legal effectiveness is lower than that of Guangdong Province, and they are in a disadvantaged position when it comes to resolving legal conflicts with Hong Kong and Macao.

From the perspective of the content of the inter-regional legal conflicts in the GHMGBA, it includes not only legal conflicts in the field of civil and commercial law, but also conflicts in the field of criminal and administrative law in the public law domain. Domestic scholars generally believe that in the field of civil and commercial law, due to the recognition of the legal effectiveness of foreign laws by each legal domain, inter-regional legal conflicts should be referred to as inter-regional conflicts of civil and commercial law or inter-regional conflicts of private law. In the public law domain, since each legal domain fundamentally does not recognize the extraterritorial effectiveness of foreign laws in its own legal domain, although there are also legal conflict issues, such conflicts do not involve the application of foreign laws but are only a kind of latent or virtual conflict. Regarding this matter, the author believes that although the proposed Greater Bay Area of Guangdong, Hong Kong, and Macao has not been around for a long time, the years of cooperation between Guangdong, Hong Kong, and Macao have already transformed the legal conflicts in the field of public law in the Greater Bay Area from latent or virtual conflicts into explicit or real conflicts. As some scholars have pointed out, the legal conflict issues in the construction of the Greater Bay Area are no longer confined to the private law significance of inter-regional civil and commercial legal conflict issues, but further manifest as deep-seated conflict issues in the legislative, judicial, administrative, and economic management legal systems of the three regions. According to Huang Jin's proposal, the key issue here lies in the recognition of the extraterritorial effect of Mainland public law applicable in Guangdong Province and the public law of Hong Kong and Macao. It is necessary to examine this issue from the perspective of the inter-regional conflict law that needs to be addressed in the GHMGBA. Hong Kong conflict law governs international factors in civil and commercial legal relationships, mainly addressing jurisdiction, choice of law, and judicial assistance issues. These three questions are not only the problems of inter-regional legal conflicts to be solved by the GHMGBA in the field of private law, but also the problems of inter-regional legal conflicts to be solved by the Greater Bay Area in the field of public law. Taking judicial assistance as an example, Article 95 of the Basic Law of the Hong Kong Special Administrative Region and Article 93 of the Basic Law of the Macao Special Administrative

Region provide that the Hong Kong and Macao Special Administrative Regions may, through consultation, establish judicial contacts and provide mutual assistance with the judicial organs of other parts of the country in accordance with the law. Here, the judicial organs of other parts of the country refer to the broad sense of judicial organs, including domestic public security organs, courts, procuratorates, and judicial administrative organs. In Hong Kong and Macao, these organs include police departments, courts, procuratorates (Department of Justice), and the Independent Commission Against Corruption, which perform judicial functions. In terms of judicial assistance, in principle, the Mainland and Hong Kong/Macao are necessary to establish contacts and provide mutual assistance in a wide range of business areas. The recognition and implementation of rulings from foreign jurisdictions in the Macao Special Administrative Region (SAR) and issues related to the "private rights" are explicitly stipulated in Article 1199 of the *Civil Procedure Code* (8 October 1999)¹. However, the practical experience of the Macao SAR courts since the return to China shows that in certain specific cases, the courts are able to recognize and enforce administrative decisions made by foreign governmental entities (rather than courts) outside their jurisdiction. Upon repatriation, Macao has sanctioned three administrative decrees for divorce endorsed by the Chinese mainland, as well as administrative decrees for adoption authorised by the Shanghai Civil Affairs Bureau. As a result of *Legislation Law of the People's Republic of China* (13 March 2023), in Guangdong Province, prefecture-level cities with district status now possess specific legislative authority. Conflicts are bound to arise in the field of public law due to the local legislation of the nine cities in the Pearl River Delta region. Hence, the inter-regional legal conflicts within the Greater Bay Area encompass legal disputes in the realm of public law, arising from the Basic Laws of Hong Kong and Macao, as well as legislative and judicial practices in Guangdong, Hong Kong, and Macao.

Conclusion

In conclusion, the Greater Bay Area of Guangdong-Hong Kong-Macao (GHMGBA) is a significant national strategy aimed at promoting closer cooperation and development between the mainland and the two special administrative regions. The GHMGBA's regional development is driven by the four central cities of Hong Kong, Macao, Guangzhou, and Shenzhen, with other cities in the area also playing a role. However, the legal systems of these regions differ, leading to potential conflicts in the interpretation and application of laws, as well as jurisdictional issues. In order to comprehend the causes and characteristics of legal conflicts in GHMGBA, it is imperative to establish a cohesive legal framework, and subsequently introduce novel approaches to enhance the level of governance.

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¹Article 1199 The necessity of review: 1. Judgments of foreign courts or arbitrators concerning private rights, after review and confirmation, shall be effective in Macao, but shall not apply to international conventions applicable to Macao, agreements in the field of judicial assistance, or special laws with different provisions. 2. If the aforementioned judgment is solely cited as evidence in a case pending before a Macao court and the evidence must be examined by the entity handling the trial, then the judgment does not need to be reviewed.

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Аналитическое исследование предпосылок, причин и отличительных особенностей юридических конфликтов в районе Большого залива Гуандун-Гонконг-Макао в Китае

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Аннотация

Основная задача Большой зоны залива, включающей Гуандун, Гонконг и Макао, заключается в укреплении сотрудничества между тремя административными регионами. Это включает в себя содействие рыночной интеграции в зоне залива, соблюдение высоких стандартов регулирования международного рынка, ускорение создания новой открытой экономической системы и создание всеобъемлющей основы для повышения открытости. В

данной работе рассматриваются основные причины и уникальные особенности правовых конфликтов в данном регионе, предложены пути их разрешения.

Для цитирования в научных исследованиях

Вань Сюэ. Аналитическое исследование предпосылок, причин и отличительных особенностей юридических конфликтов в районе Большого залива Гуандун-Гонконг-Макао в Китае // Вопросы российского и международного права. 2024. Том 14. № 7А. С. 506-514.

Ключевые слова

Большая зона залива Гуандун-Гонконг-Макао, региональные правовые конфликты, район залива, межрегиональное сотрудничество, правовая система, юрисдикция.

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