

**國立政治大學亞太研究英語碩士學位學程**  
**International Master's Program in Asia-Pacific Studies**  
**College of Social Sciences**  
**National Chengchi University**

**碩士論文**

**Master's Thesis**

淺析簽署海峽兩岸共同打擊犯罪及司法互助協議之影響

**The Study of Consequences of Signing “the  
Agreement on Cross-Strait Cooperation in  
Combating Crimes and Mutual Legal Assistance  
between Taiwan and China”**

**Student: Yu-kuang Tung 董裕光**

**Advisor: Dr. Lu-huei Chen 陳陸輝博士**

中華民國九十九年七月

**July, 2010**

淺析簽署海峽兩岸共同打擊犯罪及司法互助協議之影響  
The Study of Consequences of Signing “the Agreement on  
Cross-Strait Cooperation in Combating Crimes and Mutual  
Legal Assistance between Taiwan and China”

研究生：董裕光 Student: Yu-kuang Tung

指導教授：陳陸輝博士 Advisor: Dr. Lu-huei Chen

國立政治大學

亞太研究英語碩士學位學程

碩士論文

A Thesis

Submitted to International Master's Program in Asia-Pacific Studies

National Chengchi University

In partial fulfillment of the Requirement

For the degree of Master in China Studies

中華民國九十九年七月

July 2010

## Abstract

This study focuses on the impact of signing " the Agreement on cross-Strait cooperation in combating crimes and mutual legal assistance" between Taiwan and mainland China. It intends to explore motivation and necessity of signing this agreement, the legal issues and operational process of this agreement, the history of cross-Strait cooperation of fighting against crimes and mutual legal assistance, and current status and problems.

There are three major parts in this thesis. First, this study defines cross-Strait mutual legal assistance and of cross-Strait crime, confirms its meaning and scope, and then introduces judicial mutual assistance and cooperation in the international society of both sides. It analyzes the situation and trend of cross-Strait crimes, history of cross-Strait cooperation in combating crimes, the existing legal provisions on mutual legal assistance, and difficulties before the signing of the agreement. Secondly, this study introduces the content and effects of this agreement, includes the provisions, the actual operation, the laws related to it, the impact, and follow-up legislation as well as negative criticism. Finally, this study compares the situation before and after the signing of the agreement, understands the real benefits and finding the existing problems, and make evaluations on this agreement.

**Keyword: cross-Strait cooperation in combating crimes, mutual legal assistance.**

## TABLE OF CONTENTS

<b>1. INTRODUCTION.....</b>	<b>1</b>
<i>1.1 Background.....</i>	<i>1</i>
<i>1.2 Motivation and Purpose.....</i>	<i>5</i>
<i>1.3 Literature Review.....</i>	<i>7</i>
<i>1.4 Research Approaches and Methods.....</i>	<i>12</i>
<i>1.5 Research Hypotheses.....</i>	<i>12</i>
<i>1.6 Research Scope and Limitations.....</i>	<i>13</i>
<b>2. EXPLORATION OF MUTUAL LEGAL ASSISTANCE AND CROSS-STRAIT CRIMES.....</b>	<b>15</b>
<i>2.1 Implications of International Mutual Legal Assistance in Criminal Matters....</i>	<i>15</i>
<i>2.2 Scope of Mutual Legal Assistance and Basic Principles.....</i>	<i>16</i>
<i>2.3 Characteristics and Legal Status of Cross-Strait Mutual Legal Assistance.....</i>	<i>20</i>
<i>2.4 Implications of Cross-Strait Crimes.....</i>	<i>23</i>
<b>3. HISTORY OF PARTICIPATING IN INTERNATIONAL MUTUAL LEGAL ASSISTANCE OF TAIWAN AND MAINLAND CHINA.....</b>	<b>26</b>
<i>3.1 International Mutual Legal Assistance of Taiwan.....</i>	<i>26</i>
<i>3.2 International Mutual Legal Assistance of Mainland China.....</i>	<i>32</i>
<b>4. CROSS-STRAIT COOPERATION IN COMBATING CRIMES AND MUTUAL LEGAL ASSISTANCE BEFORE SIGNING "NANJING AGREEMENT".....</b>	<b>37</b>
<i>4.1 Patterns of Cross-Strait Crimes.....</i>	<i>37</i>
<i>4.2 Review of Cross-Strait Mutual Legal Assistance.....</i>	<i>47</i>

4.3 Laws Related to Cross-Strait Mutual Legal Assistance.....	52
4.4 Cross-Strait Cooperation in Combating Crimes.....	56
<b>5. CONTENTS AND IMPACTS OF "NANJING AGREEMENT" .....</b>	<b>64</b>
5.1 Main Contents and the Actual Operational Processes.....	64
5.2 Characteristics and Legal Status .....	70
5.3 Impacts of "Nanjing Agreement".....	72
5.4 Follow-up Legislation.....	74
5.5 Negative Comments.....	75
<b>6. ACHIEVEMENT AND EXISTING PROBLEMS.....</b>	<b>79</b>
6.1 Achievement of Cooperation in Combating Crimes.....	79
6.2 Achievement of Mutual Legal Assistance.....	80
6.3 Existing Problems.....	83
<b>7. CONCLUSION.....</b>	<b>87</b>
<b>REFERENCES.....</b>	<b>90</b>
<b>APPENDIX.....</b>	<b>95</b>

# 1. INTRODUCTION

## 1.1 Background

China has been divided into two political entities since 1949, and the two parts are governed by ROC (Republic of China) and PRC (People's Republic of China) separately. The ROC rules Taiwan, Penghu, Kinmen and Matsu, and the ROC is the one who has real governing power over mainland China. Both sides of the Taiwan Strait were in a state of confrontation and isolation for almost 40 years, from 1949 to 1987.

The Republic of China executed martial law in November of 1949. With the passing of time, hostilities have gradually eased across the Taiwan Strait. The Republic of China repealed martial law in July 1987. "National Unification Guidelines" were activated in March 1991, and the announcement of the end of Period of Communist Rebellion was made in May 1991. The possibility of using force to deal with the issue of national reunification was officially ruled out.<sup>1</sup>

In June of 1983, Deng Xiaoping submitted six programs for the peaceful reunification of mainland China and Taiwan, and announced 2 basic principles of future cross-Strait relations--"one country, two systems" and "peaceful reunification".<sup>2</sup> Taiwan allowed people to visit their relatives in mainland China on November 2, 1987. After 1988, Taiwan adopted other measures, allowing some mainland residents to visit Taiwan, and the barriers of Taiwan Strait were broken down. People living on different sides of the Taiwan Strait started interacting, and cross-Strait

---

<sup>1</sup> Zhong De-Xun(2003), *Research of Cooperation on Criminal and Judicial Issues and the Cooperation in Combating Crimes across the Strait*, master's thesis of National Institute of Public Administration, Dong Hwa University, p. 1

<sup>2</sup> Editorial Committee of the CPC Central Committee documents(1993), *Selected Works of Deng Xiaoping*, Beijing People's Publishing House, p.p.58-61

relative-visiting, travel and economic, cultural and academic activities were increasing. At the same time, cross-Strait crimes frequently occurred, especially hijacking, piracy, illegal immigration, and smuggling. Some of these cross-Strait crimes are the result of collusion between criminals on both sides of the Taiwan Strait. Sometimes, people commit crimes on one side and later on flee to the other. Some people the other side illegally. To solve these problems, both sides must construct a proper mechanism to reduce these criminal activities, protect the common interests of the people on both sides, and promote development of cross-Strait relations. Since the two sides belong to different jurisdictions, and since there is no mutual legal assistance mechanism, investigation and prosecution of cross-Strait crimes and arresting of fugitives fleeing to the other side are all difficult assignments.

To resolve the problem of mutual repatriation of offenders, Red Cross representatives from both sides went to Kimen and signed the "Kimen Accord" on September 12, 1990. The "Kimen Accord" set the mode of repatriation operations, sending criminals back to their home country between Matsu and Mawei, or between Kinmen and Xiamen. Criminals who are repatriated are mostly illegal immigrants coming from the mainland to Taiwan, and Taiwanese who have committed crimes and then fled to the mainland. According to this accord, Taiwan and China executed their first repatriation in the same year on Oct. 13.<sup>3</sup>

The Kinmen agreement is not a formal official agreement. Neither side can be punished for violating the agreement. There is no real binding force. Actually, there are a large number of illegal immigrants coming from mainland China to Taiwan, and repatriations have to be made once about every three months. But in practice,

---

<sup>3</sup> Jia Qing-Jun(2008), "Study on Mutual Legal Assistance on Criminal Matters Related to Taiwan", *Journal of Beijing's People Police College*, No. 4, p. 44

repatriation can not be carried out, because bilateral talk between the two Red Cross groups was sometimes stopped. For example, repatriation was interrupted for half a year in April of 1998.<sup>4</sup>

Furthermore, mainland China investigates cases requested by Taiwan very slowly, especially in areas outside of Fujian Province. Also, the "Kinmen agreement" content is limited to the repatriation of criminals; it does not include cooperation in combating crimes, assistant investigations, service of document-sending, evidence collection, or other items of mutual legal assistance. In other words, the effect of the "Kinmen agreement" for fighting cross-Strait crimes is quite limited.

In April 1993, the Straits Exchange Foundation, which is authorized by the Taiwan Government, and its counterpart, the Association for Relations Across the Taiwan Strait, held the first "Koo-Wang talks" in Singapore, and signed the "Koo-Wang agreement". Several agreements were made in "Koo-Wang agreement". The first one, "this year's negotiation issues", stipulated the following: the two sides would negotiate on these issues this year, including "repatriation of illegal immigrants", "fighting against marine smuggling, robbery and other criminal activities", "negotiation of intellectual property rights (IPR Protection)", "cross-Strait mutual assistance in the judiciary (the cross-Strait links between the courts)" and other topics for consultations. However, the consensus of the talks has not yet translated into real action, and attempts at cooperation in combating crimes between two sides of the Taiwan Strait are still in vain.<sup>5</sup>

In May 2008, the KMT returned to power. Unlike the Democratic Progressive Party administration, which adopted a rivalry policy towards China, the KMT

---

<sup>4</sup> United Daily News(October 12,1998), p.13

<sup>5</sup> Aforementioned footnote 1, p.3



government re-established good relations with China and contributed to the meeting of “Straits Exchange Foundation” (SEF) Chairman Chiang Pin-Kung and mainland China Association for Relations Across the Taiwan Straits (ARATS) chairman Chen Yun-Lin. They negotiated a number of bilateral agreements. Cross-Strait relations developed rapidly.

In March 2009, the Ministry of Justice Attorney Director Chen Wenqi discreetly flew to the mainland twice, to consult with the relevant authorities on combating crime, and on drafting articles. In mid-April, ARATS vice chairman Zheng Lizhong visited Taiwan, and did final text scrutiny with his Taiwanese counterpart.

On April 26, 2009, Chiang Pin-Kung and Chen Yun-Lin, representing SEF and ARATS respectively, signed "Agreement on Cross-Strait Cooperation in Combating Crimes and Mutual Legal Assistance" (hereinafter referred to as the “Nanjing Agreement”) in Nanjing. The “Nanjing Agreement” took effect on June 25, opening the new era for cross-Strait mutual legal assistance.<sup>6</sup>

Taiwan and China successfully signed the "Nanjing Agreement". People of two sides anticipate that action against cross-Strait crimes and repatriation of criminals could progress smoothly from now on. But some are still highly suspicious of the motive behind the signing of the "Nanjing Agreement", giving a negative assessment of this agreement. What is more, so far some notorious Taiwanese fugitives who have fled to mainland China have not been repatriated yet. Cross-Strait criminality is still rampant. As a result, people still pay attention to the achievement of “Nanjing Agreement” over combating cross-Strait crimes.

---

<sup>6</sup> Chen Wen-Qi(2009), *Opening a New Era of Cross-Strait Mutual Legal Assistance-- Brief Introduction of Cross-Strait Cooperation in Combating Crimes and Mutual Legal Assistance Agreement*, October 30, 2009, speech in Investigation Bureau, Taipei.

## *1.2 Motivation and Purpose*

I have been working in government for the judiciary for more than 10 years. I have participated in cross-Strait repatriation several times. I am very curious about different views of this agreement. As a result, I hope to know more about this agreement and the effect of it.

According to “Nanjing Agreement”, important criminal cases, including murder, robbery, kidnapping, smuggling, drug trafficking, hijacking airplanes and ships, terrorist activities and economic crimes, such as corruption, encroachment, breach of trust, fraud, money laundering, forgery or altering the currency, are the focus of cross-Strait cooperation in combating crimes. In addition to cooperation in combating various types of crime, mechanisms for cooperation on surveillance, information exchange, repatriation of prisoners, civil and criminal legal assistance and other cooperation mechanisms would be all normalized. People who hold a positive view of the agreement would expect it to improve Taiwan's security and reduce economic and financial crimes, so that the judiciary is able to arrest fleeing mainland criminals and bring them to justice.<sup>7</sup>

Under the agreement, Ministry of Justice is the only conduit between Taiwan and China. On the other hand, China has four different means of contacting Taiwan, including public security, the prosecutorial system, courts and judicial administration.

In the past, because there were no legalized cross-Strait mutual assistance channels, many intelligence agencies had to find their own ways to solve their problems of fighting cross-Strait crimes. Like the Bureau of Investigation, Coast

---

<sup>7</sup> Liu Ming-Te(2009),  
[http://www.cdnews.com.tw/cdnews\\_site/docDetail.jsp?coluid=110&docid=100749661](http://www.cdnews.com.tw/cdnews_site/docDetail.jsp?coluid=110&docid=100749661), Central Network News. Date of logging on: Mar/30/2011.

Guard, National Police Administration, over the years they built their own pipelines with mainland public security and armed police, contacting in private in order to bridge the private channels, hoping that they would help arrest wanted persons. But since they are all one-way operations using non-official channels, there is no integration. Sometimes on important cases, two or three units are in the hunt. Both time and manpower are wasted.

For example, many years ago someone nicknamed "Pangolin" Chan Lung-Lan, was arrested in Yunnan. Because of poor integration, the Chinese public security forces almost refused to turn him over to Taiwan.

Chan Lung-Lan was arrested and has been working heavily through various channels to get release, even with money. At the same time, the Criminal Investigation Bureau (CIB) of Taiwan had negotiated with the China's authorities several times, hoping that China would return Chan Lung-Lan to Taiwan as soon as possible. Finally China's authorities agreed to send Chan to Macao International Airport, and then CIB could take him back. But CIB Secretary General Kau Chen-shen worried about whether or not CIB officers could arrive in Macao on time, so he asked Macao police to detain Chan before CIB officers arrive.

Unexpectedly, Macao the police officer immediately reported this to his boss, PRC Ministry of Public Security, and then Ministry of Public Security notified the ARATS; as the ARATS knew nothing about this case in advance, they refused the repatriation. This repatriation almost failed.<sup>8</sup>

Former SEF Secretary-General You Ying-Lung quoted polling data that more than 70 percent of people agree that the mainland China is "paradise of Taiwan

---

<sup>8</sup> Yang Su-Min, Zhang Xiao-Yi(2009), Times Weekly, May 11, 2009.

criminals", saying that China takes a "selective" arrest policy towards Taiwan criminals; another statistics says 96 percent of people think that the two sides should sign an agreement to combat crime, and 80 percent of people think that cross-Strait relations would be affected if China does not crack down on cross-Strait crimes.<sup>9</sup>

Although Taiwan and China successfully signed the "Nanjing Agreement", not everybody takes positive viewpoint towards this agreement. The Democratic Progressive Party believes that the quality of the cross-Strait judicial system and culture are very different. According to the agreement, if Taiwan businessmen face lawsuits in China, and they have to oppose Chinese authorities in court, they often become lambs to the slaughter. If this agreement is implemented, the Chinese court's decision will also have res judicata (legal example of judgment) in Taiwan. Taiwan court must recognize the China court's judgments, and then Taiwanese courts may become "Executive Office" of China courts. Taiwan would help China prosecute Taiwan businessman.<sup>10</sup> In addition, the most notorious Taiwan fugitives hiding in mainland China, such as former Tuntex Group President Chen Yu-Hao, and former Legislative Yuan speaker Liu Sung-Fan, have not been extradited. The DPP questioned the sincerity of China and the necessity of signing this agreement.

### *1.3 Literature Review*

Because the "Nanjing Agreement" has existed for just over a year so far, not too much literature discussing this agreement is available. Most discussions of

---

<sup>9</sup> Hsieh Li-Kung(2008), "the Establishment of the Mechanism of Cross-Strait Cooperation in Combating Crimes and Amendment of Kinmen Agreement", *Police Science and Security Management Seminar*, p. 385.

<sup>10</sup> Available at: <http://www.libertytimes.com.tw/2009/new/apr/30/today-p4.htm>. Date of logging on: Mar/30/2011.

cross-Strait mutual legal assistance focus on possible models. National Taiwan University Law professor Tsai Tun-Ming, National Police University Professor Hsieh Li-Kung, Taiwan Police College president Liu Qin-Zhang, have all written some articles about the possible cross-Strait mutual legal assistance model according to status quo of cross-Strait relations. They all mentioned that we need to create a fuzzy space to national identity issues, shelving sovereignty disputes, avoiding the use of any sensitive words relevant to transnational affairs. That is the only way to sign the agreement.

Liu Qin-Zhang published the article "cross-Strait mechanism of cross-functional analysis of crime prevention" in "Police Studies and Security Management 2008 Conference". He asserts that the "cross-Strait crime prevention mechanism" in the justice field should include cooperation in the whole procedure of investigation and trial; namely, the mechanism should be broad-sense mutual assistance in criminal justice. There are 3 different ways to set up mutual legal assistance between the two sides of Taiwan Strait. Negotiation enforced by civil institutions commissioned by the governments would be more accessible. After that, the agreement should be put into legislation.<sup>11</sup>

---

<sup>11</sup> Liu Qin-Zhang(2009), "Functional Analysis on Cross-Strait Crime Prevention- Study on the re-Construction of Cross-Strait Mutual Legal Assistance in Criminal Matters", *2008 Police Studies and Security Management Seminar*, p. 379.

**Table 1: different ways of constructing cross-Strait mutual legal assistance**

Type of criminal justice authority	Way				Upper structure
	No	Negotiator	Effective way	Executor	
social power (not relevant to sovereignty)	1	Representative institution of legal jurisdictions	No need for legislation	Criminal justice	Both sides are required to modify one's own current domestic and international legal structure, so that "mutual legal assistance in criminal matters" will escape from the scope of the national rule
governmental power (sovereignty as the source)	2	Representative institution of governments	Official agreement turned into law	Representative institution of governments	Signed a treaty on the basis of cross-strait relations, so that relationship between the two governments would be clear
	3	Private sector commissioned by governments	Private agreement turned into law	Private sector commissioned by governments	Legal relationship between two governments should not be clear

Hsieh Li-Kung wrote the article "Blue Print of Cross-Strait Mutual Legal Assistance —Draft of Agreement on Mutual Legal Assistance".<sup>12</sup> Actually, the draft

<sup>12</sup> Hsieh Li-Kung(2003), " Blue Print of Cross-Strait Mutual Legal Assistance —Draft of Agreement on Mutual Legal Assistance ", *Exploration of Regional Criminal Judicial Assistance in China*, Beijing: Publishing House of Chinese People's Public Security University, p.p.287-293.

he proposed is very similar to the “Nanjing Agreement”. He asserts that the broad mutual legal assistance, including the transfer of criminal legal claim and foreign enforcement of criminal judgments, are long-term goals of both institutions of justice. Concerning the atmosphere of cross-Strait relations, the short term prospects of signing the agreement with broad mutual legal assistance is not easy. If the two sides of the Taiwan Strait can sign an agreement which stipulates narrow mutual legal assistance, such as helping the other side searching evidence, sending documents and intelligence exchange, it will be more accessible.

Hsieh also wrote another article "Establishing the Mechanism of Cross-Strait Cooperation in Fighting Crimes - On the Kinmen Agreement Amendment" in the "2008 Police Studies and Security Management Seminar". He announced that the “Kinmen Agreement” provides only repatriation of criminal suspects. It is like an international extradition treaty. Because extradition to some extent means the concession of jurisdiction, the “Kinmen Agreement” has deeper legal implications than agreements with only investigation, document delivery and evidence collection. In theory, both sides of Taiwan Strait should be able to sign an agreement with narrow mutual legal assistance agreement.<sup>13</sup>

In "Study on Mutual Legal Assistance between Taiwan Strait", Jian Jian-Zhang points out that if the two sides can sign an agreement on a specific criminal issue, such as agreement on fighting drug crime, and gradually extend the scope of the criminal legal assistance, then establishment two-way of the "quasi-international mutual assistance in criminal justice" model is just around the corner.<sup>14</sup>

---

<sup>13</sup> Aforementioned footnote 9, p. 390.

<sup>14</sup> Jian Jian-Zhang(2001), "Study on Mutual Legal Assistance between Taiwan Strait", *Police Science Series*, Vol. 32, No.1, p. 189.

Many mainland China scholars discuss the issue of cross-Strait mutual legal assistance, but they all insist on "one China" framework of the negotiations. In "Cross-Strait Cooperation in Fighting Crime Problems and Countermeasures", Liu Dao-Lun asserts that cross-Strait mutual legal assistance in criminal matters is different from international ones. He says that in the negotiations, both sides of the Taiwan Strait should insist on the one-China principle and the "1992 Consensus" under the premise of protecting the fundamental interests of the Chinese people and safeguarding the legitimate interests of compatriots on both sides.<sup>15</sup>

Huang Shao-Ze wrote in the article "Police Cooperation across the Taiwan Strait and Hong Kong and Macao" that cross-Strait police cooperation system must be established on a one-country basis. He asserts that we should not treat this as transnational affairs;<sup>16</sup> Jia Qing-Jun asserts in "Study on Mutual Legal Assistance on Criminal Matters Related to Taiwan" that the cross-Strait police cooperation must follow the interests and the principle of safeguarding national sovereignty, that is, "one country, two systems" is the only and most important principle to resolve the Taiwan-related issue.<sup>17</sup> We can see from the above articles that for mainland China scholars, the "one China" principle takes precedence over real content of mutual legal assistance agreement. Due to the insistence of issue of sovereignty in both sides, cross-Strait agreement on mutual legal assistance is very hard to create. On the other hand, we know that there is substantial concession coming from mainland China because the "Nanjing Agreement" has been signed. China does not insist on their "principles" in this agreement.

---

<sup>15</sup> Liu Dao-Lun(2009) , "Cross-Strait Cooperation in Fighting Crime Problems and Countermeasures", *Fujian Laws*, No. 1, overall No. 97, p. 64.

<sup>16</sup> Huang Shao-Ze(2008) , "Police Cooperation across the Taiwan Strait and Hong Kong and Macao", *People's Procuratorate Semimonthly*, No.19, p. 58.

<sup>17</sup> Aforementioned footnote 3, p. 43



#### *1.4 Research Approaches and Methods*

This study adopts a historical approach and a legal research approach on the "Nanjing Agreement". The historical approach will include the history of signing the agreement on mutual legal assistance of China and Taiwan, and mutual legal assistance between the two sides and history of cooperation in combating crimes. The legal research approach is analysis of the legal context of the provisions of "Nanjing Agreement", trying to know the impact of provision of cross-Strait mutual legal assistance and cooperation in combating crimes.

This study employs the literature review method, researching the quality of cross-Strait mutual legal assistance and the "Nanjing Agreement"; also, this study will compare the "Nanjing Agreement" with other legal assistant agreements signed by Taiwan and China in the past. Moreover, this study explores the differences of cooperation in combating crimes and mutual legal assistance related to "Nanjing Agreement", so that the real influence brought by the agreement will be found.

#### *1.5 Research Hypotheses*

The evaluation of the "Nanjing Agreement" is bi-polarized. Positive evaluation announces that the agreement will contribute to the fight against cross-Strait crime; meanwhile those who hold negative views think that the "Nanjing Agreement" is only on paper. China will not follow the rules, and it has no real binding force, but Taiwan is probably dwarfed to an executive department because civil judgments made by China courts should be recognized by Taiwan Courts. Because of different views on all sides, the research hypotheses are set as follows: Taiwan and China signed the

“Nanjing Agreement” because cross-Strait crimes between the two sides are rampant. Both governments will benefit from the signing of this agreement. Neither Taiwan nor China would be dwarfed, and Taiwanese businessmen working in China would not be persecuted due to the “Nanjing Agreement”.

### *1.6 Research Scope and Limitations*

After reviewing the literature related to "cross-Strait cooperation in fighting crime strategies and operations", we can find that:

1. There is not too much literature discussing the "Nanjing Agreement"

The "Nanjing Agreement" took effect on 25, June, 2009. That was only one year ago. So research discussing cross-Strait cooperation in combating crimes and cross-Strait mutual legal assistance agreements were mainly written before the "Nanjing Agreement" was signed. Literature analyzing the "Nanjing Agreement" is very rare.

2. There is little literature discussing strategy and practice of cross-Strait cooperation in combating crime.

Most literature written by scholars of mainland China focuses on political ideology when discussing cross-Strait cooperation in combating crimes. Most Taiwan scholars focus on analysis of legal systems when they discuss this issue. They both lack analysis of practical implementation.

3. Taiwan administrations of judicial police do not have integrated data on cross-Strait cooperation in combating crimes

Before the signing of "Nanjing Agreement", the Red Cross was the authorized window of cross-Strait cooperation. But actually, data for cross-Strait cooperation in combating crime and mutual repatriation of criminals is not complete. Our judiciary police administrations, including National Police Agency, Investigation Bureau and Coast Guard, do not have mechanisms for cooperation with Chinese counterparts to combat crime. They can only seek cooperation in their own way. As a result, the data for cross-Strait cooperation in combating crime and the repatriation has not been integrated. We can only obtain a fragmented one.

4. Mainland China's data is incomplete

Most Taiwanese criminals fleeing to China do not use official channels to enter mainland; instead, they enter mainland China illegally. This way, they will not have entry and exit information, and statistics of the accurate number of offenders living in China cannot be obtained. Moreover, data on Taiwanese who are sentenced and detained in mainland jails is not provided by China. It has also been a problem for statistics.

## 2. CROSS-STRAIT CRIMES AND INTERNATIONAL MUTUAL LEGAL ASSISTANCE

Before discussing the content and effect of the “Nanjing Agreement”, this study will clear the meanings and definitions of different terms of cross-Strait affairs related to legal issues, such as “cross-Strait mutual legal assistance” and “cross-Strait crimes”. We will look deep into the characteristics of different kinds of mutual legal assistance, knowing the relations of mutual legal assistance between the two sides of Taiwan Strait. After doing that, we can make sure which kind of agreement the “Nanjing Agreement” should be considered with, confirming why some articles of this agreement are stipulated in certain ways, and avoiding unnecessary disputes over it.

### 2.1 Implications of Mutual Legal Assistance

Mutual legal assistance refers to courts or other judiciary institutions of different jurisdiction that provide assistance with each other or conduct cooperation. In other words, mutual legal assistance in criminal matters means one jurisdiction executes some judicial behavior in criminal matters in order to fight against crime. There are two premises of mutual legal assistance in criminal matters. First, there are at least two different jurisdictions. Second, each one has the need for striking crimes.<sup>18</sup>

International mutual legal assistance in criminal matters happens among different countries. Extradition is its first thing to occur. "Peace Treaty", signed in 1280 BC in Egypt for repatriation of criminals, is the world's first treaty on extradition. In AD 1624 Grotius put forward the judicial principle "extradition or punishment" to

---

<sup>18</sup> Mu Hong-Yu(2003), “ Thesis of the Nature and Content of Criminal Judicial Assistance in China”, *Exploration of Regional Criminal Judicial Assistance in China*, Beijing: Publishing House of Chinese People's Public Security University, p.40.

international crimes in his book "War and Peace". It set up the theoretical basis for modern mutual legal assistance in criminal matters. When it comes to China, in the Zhou Dynasty, extradition of fugitive offenders between feudal countries was very common. Extradition of fugitives at that time (mainly politicians) was political deal between the princes. In the Tang Dynasty, the law clearly stated in specific provisions relating to punishment of foreigners, including extradition, deportation and other compulsory acts.<sup>19</sup> Before the Middle Ages, most forms of mutual legal assistance were focused on extradition, both in China and other countries.<sup>20</sup> Some scholars believe that international mutual legal assistance in criminal matters means according to bilateral treaties or multilateral conventions, different countries provide reciprocal assistance to each other and help each other execute mutual assistance in criminal proceedings on behalf of the other party, such as arrest, extradition of fugitives, service of judicial documents, calling witnesses, collection and transfer of evidence, providing intelligence, recognition and enforcement of foreign criminal judgments.<sup>21</sup>

## *2.2 Scope and Principles of International Mutual Legal Assistance in Criminal Matters*

There are several types of international mutual legal assistance in criminal matters. They include the following:

1. Extradition: prisoners transferred from one country to another to face trial.

---

<sup>19</sup> Hsieh Li-Kung(2002), "Study on Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan and it's Impact to Anti-Transnational Crime", *Journal of Border Police*, Central Police University, No. 1, p. 4.

<sup>20</sup> Zhao Yong-Chen(1994), *International Criminal Law and Mutual Legal Assistance*, Beijing: Legal Publishing House, p.p. 159-160

<sup>21</sup> André Bossard(1990), *Transnational Crime and Criminal Law*, The University of Illinois, p.142.

2. Narrow-sense mutual legal assistance. It may be called a small mutual legal assistance. It refers to assistance such as interrogation of witnesses, experts, the implementation of search, seizure, validation, transfer of evidence, service of documents, and providing intelligence.<sup>22</sup>

3. Transfer of criminal indictment: also known as the transfer of jurisdiction of criminal lawsuit. This means that a state entrusts another state to conduct a criminal lawsuit, which should be the jurisdiction of the original state.<sup>23</sup> It refers to the state transfer the case to another jurisdiction because it can not conduct the criminal lawsuit.<sup>24</sup> For example, the criminal with nationality of A state commits a crime in B state, and then flees to C state. B state can make the request to A state or C state, to indict or sentence the criminal.<sup>25</sup> The essence of meaning is the requester gives up jurisdiction over criminal cases, totally trusting the requested one and approving punishment on the absconded made by the requested party. But the requesting State has to give up the right to pursue judicial appeal in such a cooperation model. Generally, few countries adopt this method.

4. Recognition and enforcement of foreign criminal judgments. That means the recognition and enforcement of criminal judgments made by other countries.

The former two can be collectively referred to as generalized mutual legal assistance. If the assistance includes all four types, it is the broadest sense of mutual legal assistance. Extradition and narrow-sense mutual legal assistance are preliminary types of mutual legal assistance, so they are called classical types of mutual legal

---

<sup>22</sup> Wu Jing-Fang(1998)," Practice of Cooperation in Combating Crimes of Taiwan and China — Facilitation for the Interregional Mutual Legal Assistance in Criminal Matters between the Two Sides ," *Chung-Shing Monthly of Law* ", No. 44, p. 32.

<sup>23</sup> Aforementioned footnote 20, p. 273

<sup>24</sup> Zhang Zhi-Hui(1999), *International Criminal Law Theory (supplement)* ,Beijing: Publishing House of China University of Politics and Law, p. 369.

<sup>25</sup> Aforementioned footnote 22

assistance. Because in such mutual legal assistance, the implementation of investigation and trial will still be implemented by the requesting state, and the requested state provides assistance only. So it is called the second-time mutual legal assistance.

Regardless of whether legal assistance is in civil, criminal, or commercial matters, equality, mutual benefit, and national sovereignty are basic principles. Also, there are still other principles adopted in narrow-sense mutual legal assistance, such as the “dual criminality” principle, the “to prosecute or extradite” principle and other specific principles.<sup>26</sup>

1. Principle of national sovereignty: the sovereignty of justice is an important part of national sovereignty. A country's judicial institution should carry out mutual legal assistance activities independently in its territory, and also respect foreign jurisdiction. Without the consent of the other state, he can not intervene in the foreign jurisdiction. When implementing mutual legal assistance, one country should provide assistance to the other based on her criminal law, but she must also consider each other's legal system, legal relationship between the two sides for a compromise and the elimination of conflict of laws, as well as conducting some compromise over diplomatic relations. The principle of national sovereignty, in fact, is the basic principle highlighted by international criminal law - principle of sovereign equality. Sovereign equality is the first principle in the Charter of the United Nation. The meaning is: all states are legally equal; states have sovereign power internally; national personality, territorial integrity, political independence should be respected;

---

<sup>26</sup>Zhao Yong-Chen(2000), *Countermeasure for Transnational Crimes*, Jilin People's Publishing House, p.p. 344-350

states must respect international law, and be faithful to their international obligations.<sup>27</sup>

2. Principle of equality and mutual benefit: this means every country has the same legal rights and obligations. Judicial authorities of both sides, according to the provisions of the treaty or by equal consultations, have the same rights and convenience over activities and specific requirements of cooperation. However, this principle does not mean that the two sides must be exactly the same on mutual legal assistance issues. Different states have different legal systems. If one state is forced by international standards to achieve the same standard, respect for the law would be undermined, and the judicial sovereignty would face intervention.

3. Dual criminality: this principle refers to eclectic dual criminality principle of the mutual legal assistance. If the requesting state and the requested state both consider an act as criminal behavior, the requested state can provide mutual legal assistance. If the behavior is not considered as a crime in requested state, then no judicial assistance would be provided. The principle of dual criminality was originally a principle for extradition. As time goes by, this principle has been a common one in many different agreements of mutual legal assistance.<sup>28</sup>

4. Prosecution or extradition: this principle is one of the most important in international mutual legal assistance in criminal matters. It is used to prevent, suppress and punish international crime, and has been widely used in the relevant international conventions. According to the requirements of this principle, each state has her obligation that if she does not extradite the criminal to the requesting country,

---

<sup>27</sup>Clause 1, article 2, Charter of United Nation ; Liu Ya-Ping(1992) · *Science of International Criminal Law*, Beijing, China Political and Legal Publishing House, p.83

<sup>28</sup>Ker Ger-Zhuang(1999), *Study on Foreign and Hong Kong, Macao and Taiwan Criminal Law*, Publishing House of Shanghai Social Science College, p. 56



she should prosecute the criminal domestically. This principle can be said to take the principle of concept of universal jurisdiction. No matter where the crime occurs and what kind of right the crime is against, crimes stipulated in relevant international conventions shall be regarded as a hazard for all mankind, regardless of the nationality of the perpetrator. Regardless of which country the perpetrator is in, each country has to execute criminal jurisdiction.<sup>29</sup> But this principle is usually subject to certain restrictions; political prisoners, military prisoners, and nationals are not extraditable. Moreover, if the crime is related to religion, nationality and other factors, or the suspects will face unfair trial, torture, or inhumane treatment, the requested country may refuse to extradite.<sup>30</sup>

5. Specific principles: the requesting country can only sentence or punish the defendant in terms of the reasons for extradition after the requested country extradites the fugitive. This principle is meant to guarantee absolute implementation of "the principle of dual criminality", to prevent the extradition of the other country used in political persecution on non-ordinary criminal or those who are not in accordance to dual criminality. For example, Switzerland insists that evidence, documents and intelligence acquired by mutual legal assistance may not be used as evidence for accusing crimes other than those stated in the request in mutual legal assistance.

### *2.3 Characteristics and Legal status of Cross-Strait Mutual Legal Assistance*

---

<sup>29</sup> Zhao Shi-Chen(1996), "Study on International Mutual Legal Assistance in Criminal Matters", *Research on Mutual Legal Assistance*, Beijing, Legal Publishing House, p.95

<sup>30</sup> Article 4 and 5, Model Treaty on Extradition, Convention of United Nations, resolution no. 45/116, 14/12/1990

When mutual legal assistance in criminal matters occurs between different states, it is known as "International Mutual Assistance in Criminal Matters". If it occurs in the same country but between different jurisdictions, it is called "Interregional Mutual Legal Assistance in Criminal Matters".<sup>31</sup> The former one happens between countries, and it is also executed according to the provisions of international treaties or bilateral reciprocity, directly under the coordination of international organizations.<sup>32</sup> The latter one refers to the different jurisdictions in one country that execute criminal justice cooperation and mutual legal assistance.<sup>33</sup> In order to prevent and punish common crimes, each region must perform on behalf of judicial behavior within its jurisdiction and satisfy the requested region.<sup>34</sup>

This study claims that from the legal point of view of Taiwan, cross-Strait mutual legal assistance in criminal matters is not simply "international mutual legal assistance in criminal matters" or simply the "interregional mutual legal assistance in criminal matters." Some scholars believe that cross-Strait mutual legal assistance should be considered an international issue.<sup>35</sup> However, Article 11 of "Constitutional Amendments" states: "relations of rights and obligations of people between free area and the mainland area should be handled on the basis of other specific laws." Also, the "Act Governing Relations between the People of the Taiwan Area and the Mainland Area" to some extent has adopted "Interregional Legislation" as a solution

---

<sup>31</sup> Wang Zhi-Wen(1996), "Theory of International Civil Legal Assistance and Regional One", *Hua Gang Law Monthly*, No. 24, p. 243.

<sup>32</sup> Ma Jin-Bao(1996), *International Crime and International Criminal Judicial Assistance*, Beijing: Legal Publishing House, p. 4.

<sup>33</sup> Mu Hong-Yu(2003), "Thesis of the Nature and Content of Criminal Judicial Assistance in China", *Exploration of Regional Criminal Judicial Assistance in China*, Beijing: Publishing House of Chinese People's Public Security University, p. 40.

<sup>34</sup> Gao Ming-Xuan, Wang Xiu-Mei(2000), "Discussion on Content of Conflict over Interregional Jurisdiction of Criminal Matters and Principles of Resolution in China", *Research on Chinese Regional Criminal Law and Criminal Mutual Legal Assistance*, Beijing: Legal Publishing House, p. 22.

<sup>35</sup> Wang Tai-Quan, Chen Yueh-Duan(2000), *Laws Related to Cross-Strait Relation*, Taipei: The Chinese Book Co. Ltd., p.p. 96-97.

for relevant legal issues. Therefore, according to legal status quo, the mutual legal assistance across the Taiwan Strait is not just "international criminal legal assistance." Some scholars consider mutual legal assistance across the Straits as "interregional and mutual legal assistance". For instance, mainland China scholars stick to the "one country, two systems" principle. They all think of cross-Strait mutual legal assistance as interregional, regardless of the partition and separation of the two sides of Taiwan Strait. Some Taiwan scholars think "Act Governing Relations between the People of the Taiwan Area and the Mainland Area" has adopted "one country, two zones" theory, so they agree with the notion of mainland China scholars. Actually, that is not totally correct. We argue that the "Act Governing Relations between the People of the Taiwan Area and the Mainland Area" has adopted "one country, two zones" theory, but the legislators do not acknowledge that the legal relations across the Straits are fully recognized interregional ones. They only adopted the way of "interregional legal relation" to solve cross-Strait legal issues. For example, article 41 of "Act Governing Relations between the People of the Taiwan Area and the Mainland Area" states: "Civil matters between the people of the Taiwan Area and the Mainland Area shall be subject to the laws of the Taiwan Area except otherwise provided for in this Act. Civil matters between different residents of the Mainland Area, and between residents of the Mainland Area and any foreign national, shall be subject to the provisions of the Mainland Area except otherwise provided for in this Act." When it mentions Taiwan laws, it uses the term "law"; when it comes to mainland China, then it is "provision". You can see the difference between them, and it seems to violate the principle of equality in interregional law relation. This status quo of legal relationship between the Taiwan Area and the Mainland Area is absolutely different from that between general states; and the relationship is different from the "one country, two laws" phenomenon of interregional legal relation. Above all, cross-Strait mutual legal assistance in

criminal matters should be considered a special interregional one.<sup>36</sup> To sum up, cross-Strait mutual legal assistance in criminal matters has its own characteristics. It has both the "international" and "interregional" features. So we are supposed to be "inclusive" rather than just use a single "international" or "interregional" point of view to consider this issue.

#### *2.4 Implications of Cross-Strait Crime*

Because of the impact of globalization, different countries, regions and people become closer and closer. Transnational crimes, cross-border crimes and interregional crimes happen frequently. What kind of crime is cross-Strait crime? How can we sort it out? Its outcome will determine the legal status of the "Nanjing Agreement". So we have to confirm the definition of cross-strait crime before further discussion.

##### 1. Transnational crime

Transnational crime means crime across national borders. The so-called transnational crime means the behavior, the result of crime, or the perpetrator is involved in different countries.<sup>37</sup> Former Secretary-General of Interpol, André Bossard pointed out: "The so-called transnational crime is an anti-social behavior. The preparation, implementation or result crosses at least two or more national borders, making at least two or more countries have rights to carry out their criminal punishment on it."<sup>38</sup> According to Clause 2, Article 3 of "the United Nations Convention against Transnational Organized Crime", organized and transnational

---

<sup>36</sup> Aforementioned footnote 18, p. 176

<sup>37</sup> Qi Wen-Yuan and Liu Dai-Hua (2004), *Research on International Crime and Transnational Crime*, Beijing University Publishing House, p. 66

<sup>38</sup> Aforementioned footnote 21, p.142

crime are these types as follow: 1. implemented in more than one country; 2. implemented in one country, but its preparation, planning, command or control occurs in another country; 3. committed in one country but involves in more than one country; 4. committed in one country but has a significant impact in another country.<sup>39</sup>

## 2. Interregional Crime

Interregional crime means that the crime's preparation, implementation or results of criminal behavior is beyond two or more different jurisdictions in one country; this makes two or more courts of different jurisdictions conduct their legal penalties on the perpetrator respectively.<sup>40</sup> From China's domestic legal scholars' point of view, China's territory includes mainland China, Hong Kong, Macao and Taiwan, and they are four different regions (or jurisdiction). So they say China has "one country (China), two systems (capitalist and the socialist system), three legal systems (Hong Kong adopts common law system, Taiwan and Macao adopt Euro legal system, and China adopts socialist legal system), four jurisdictions."

## 3. Cross-border Crime

Cross-border crime refers to preparation, implementation or results of criminal behavior that is across national or regional borders, meaning at least two or more countries or regions can impose criminal penalties for the behavior. In other words, the offender has crossed at least one border of the state or region in the duration of crime. The pattern can be divided into narrow one and broad one. If any one of the subjects, behavior, objects, and results cross the border, it is called a narrow

---

<sup>39</sup> Aforementioned footnote 11, p. 380

<sup>40</sup> Zhao Bin-Chi, Qian, Yi, and He Shin-Wan(1996), *Punishment and Prevention of Transnational and Regional Crime* , Beijing: China Founder Publishing House, p.p. 3-4

cross-border crime. Broad cross-border has a narrower definition, in which perpetrators commit s crime in one place and later on flee to another place. Cross-border crime has a broader range. It can refer to crossing a national border, provincial border, or regional border. So transnational crime and interregional crime should be included.<sup>41</sup>To sum up, if "cross-border crime" refers to cross-Strait crime, its connotation would be the "broad cross-border crime ". That would be acceptable to both sides of Taiwan Strait.

Actually, signing the “Nanjing Agreement” is very difficult for both sides of Taiwan Strait. As this study mentioned above, both sides have their own principles, and have to make some concessions. After that, the “Nanjing Agreement” can be signed. For both sides of Taiwan Strait, signing “Nanjing Agreement” can facilitate measures of combating cross-Strait crimes, and combating crimes is much more important than sticking to some rules. We can say that “Nanjing Agreement” is the fruit of compromise of Taiwan and mainland China, and this agreement is the evidence that both sides of the Taiwan Strait have adopted a pragmatic way for solving cross-Strait crimes.

---

<sup>41</sup> Aforementioned footnote 9, p.p. 385-386

### **3. HISTORY OF PARTICIPATING IN INTERNATIONAL MUTUAL LEGAL ASSISTANCE OF TAIWAN AND MAINLAND CHINA**

Globalization makes every country connect and cooperate with each other, and transnational cooperation against crimes is very important for all countries, including Taiwan and mainland China. In this chapter we will explore the situation and history of signing different agreements and treaties with different countries of Taiwan and mainland China, knowing the trend of aspiration of global cooperation over mutual legal assistance. After exploring the whole situation, we will know the similarities and differences between those agreements and the “Nanjing Agreement”. In later chapters, we can discuss the content of “Nanjing Agreement” article by article.

#### *3.1 International Mutual Legal Assistance of Taiwan*

Taiwan is also affected by globalization, and has to face the invasion of transnational crime. Therefore, Taiwan has to seek necessary international cooperation against crime. However, due to international pressure from China, many countries are not willing to take the risk of offending the Chinese by signing any treaty with Taiwan, or let Taiwan join the multilateral judicial cooperation mechanisms. As a result, Taiwan always fails to participate in international judicial cooperation mechanisms.

At present, the achievements of Taiwan in cooperation in combating crimes and international mutual legal assistance are stated separately as follows:

1. International Criminal Police Organization (Interpol): Interpol was founded in 1923, and Taiwan was former member of the organization. In 1984, during the 53rd annual meeting held in Luxembourg, Taiwan was forced to change its name to "China Taiwan" and become a non-member participant because of China's accession. Taiwan's international status and interests in Interpol were replaced by China. Although Taiwan still keeps in touch with Interpol, Taiwan is no longer a formal member. Taiwan receives much less intelligence than formal members do.

## 2. Mutual Legal Assistance Agreement:

(1) "Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan": "Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan" is the first agreement on mutual legal assistance in criminal matters signed by Taiwan. One of the reasons why Taiwan and the USA signed the agreement is due to the Huang Guangjie case. Huang Guangjie has dual nationality, and is identified by the U.S. judiciary the important member of the syndicate. He was in jail in Taiwan then, facing a criminal sentence. The United States asked Taiwan to extradite Huang. But according to "Extradition Law" of Taiwan, the government should not extradite her own nationals. For strong aspiration of signing treaties of extradition or mutual legal assistance with USA, Taiwan was willing to make an exception to allow the extradition of citizens conditionally, but it was ultimately in vain.<sup>42</sup>

Another reason Taiwan and the United States signed the agreement was to fight drug crime. In 1992 Taiwan and the United States, mainly for curbing drug crime,

---

<sup>42</sup> Song Yaw-Ming(2009), "The Execution of International Legal Assistance on Criminal Matters-- Cross-Strait Cooperation in Combating Crimes", *Perspective and Exploration*, Vol. 7, No. 2, p.p.87-88.



signed the "Memorandum of Understanding of Cooperation on Criminal Investigation of North American Affairs Commission and the American Institute in Taiwan ". But since then there has been no progress. In early August 2001, the representatives of law enforcement of Taiwan, including Ministry of Justice, Investigation Bureau, and Criminal Investigation Bureau, went to the United States to discuss matters of bilateral mutual legal assistance agreements. The two sides got consensus on exchange of information gathering, investigation of evidence, questioning of witnesses, assistance of searching, seizure and verification, delivery of documents, confiscation of property, income and other items of cooperation. As for extradition, exchange of prisoners, repatriation of criminals and other parts, due to highly mandatory rules, and sensitive issues as national sovereignty and protection of human rights, there has not been consensus yet. On January 16, 2002, the Legislative Yuan passed the "Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan ", and the agreement was formally signed in March 2002.<sup>43</sup>

The agreement Taiwan and the United States signed should be classified as narrow mutual legal assistance in criminal matters. According to the provisions of the agreement, each one should provide assistance with investigation, prosecution, crime prevention and relevant criminal justice processes with each other, but excluding such things as extradition and transfer of criminal jurisdiction. According to the statistics of the Ministry of Justice, from 2001 to January 2010, during a nearly 8-year period, only 30 or so cases of bilateral mutual request have been submitted. The bilateral cooperation of two countries is not as smooth as expected.<sup>44</sup> The US has the largest number of Taiwanese fugitives. In the beginning, Taiwan hoped to execute the

---

<sup>43</sup> Aforementioned footnote 19, p. 5

<sup>44</sup> Available at: <http://www.moj.gov.tw/public/Data/0123152159765.pdf>. Date of logging on: 04/02/2011.

extradition of criminals by the effectiveness of the agreement, but it turned out to be in vain. Because the United States adopts common law, she is not willing to sign extradition treaties with foreign countries. Furthermore, the subject for extradition treaties should be a recognized country. Since the United States still adheres to the "one China" principle, Taiwan is not regarded as a state. Under these circumstances, extradition can not be included in the agreement. Mutual legal assistance agreements can not be effective for extradition.

(2) Taiwan-Vietnam Agreement on Mutual Legal Assistance: "Taiwan-Vietnam Agreement on Mutual Legal Assistance" was signed on April 12, 2010, and approved on May 21 by the Legislative Yuan. However, Vietnam is still worrying about mutual legal assistance in criminal matters. Therefore, this agreement is limited to civil litigation. This development may not meet the expectations of the Taiwan government. In the future, adding the content of criminal justice into the agreement is the goal of law enforcement of Taiwan.<sup>45</sup>

(3) Nanjing Agreement: On April 26, 2009, Chiang Pin-Kung and Chen Yun-Lin, representing SEF and ARATS respectively, signed the "Nanjing Agreement". The content and influence of "Nanjing Agreement" would be discussed in latter chapters.

### 3. Extradition treaty

Generally, the extradition of prisoners from abroad must be in accordance with bilateral agreements or treaties. If no agreement, treaty, or extradition is stipulated in the agreement or treaty, the government should follow the "Law of Extradition".

Seven countries have signed extradition treaties with Taiwan: Dominica, Dominican

---

<sup>45</sup> Available at: <http://udn.com/NEWS/FOCUSNEWS/BREAKINGNEWS1/5612671.shtml>. Date of logging on: 07/31/2010.

Republic, the Republic of Paraguay, South Africa, Swaziland Republic, Republic of Malawi, and the Republic of Costa Rica. Theoretically, Taiwan can ask those countries to repatriate Taiwanese criminals back to Taiwan on the basis of the provisions of the extradition treaty.<sup>46</sup> However, Taiwan criminals rarely flee to those countries. Therefore, the treaties of extradition are not so effective.

In theory, for effectively combating transnational or cross-border crime, all countries need a modern and comprehensive law on mutual legal assistance and extradition, as well as an extensive network of bilateral or multilateral treaties. However, due to the lack of formal diplomatic relations with other countries, Taiwan can not participate in international conferences held by UN, and can not join in multilateral or bilateral cooperation.

As mentioned earlier, before the “Nanjing Agreement”, the US was the only country which signed the mutual legal assistance in criminal matters with Taiwan. Taiwan has submitted some requests for judicial assistance to foreign countries, but the result is subject to the law of the requested country. Many countries have provisions on mutual legal assistance. Even for the non-signatory countries, mutual legal assistance agreements may also be provided assistance pursuant to the provisions. But the provided subject should be a “state”. In the international society, most countries insist on the “one China” principle. Under this circumstance, Taiwan has little chance to be recognized as a “state”. As a result, requests of Taiwan for judicial assistance are still difficult to attain.

However, the recent development of some cases has gone better. Although the laws of Switzerland and Singapore both stipulate that the subject to launch requests

---

<sup>46</sup> Ching Chi-Ren(2003), “Review and Prospect of Implementation of Taiwan-US Mutual Legal Assistance Agreement”, *Law Series*, No. 129, p.p.135-143

for judicial assistance shall be a "state", in the case of Warship Lafayette and the former President Chen's money-laundering case, Taiwan actually obtained judicial assistance from Switzerland, acquiring information on a specific account at Swiss bank; in the Papua New Guinea financial aid case, Singapore has also provided assistance to Taiwan. Undoubtedly, this development is very favorable for Taiwan's foreign judicial assistance.<sup>47</sup>

#### 4 Informal ways to arrest fugitives fleeing abroad

As mentioned earlier, our country has only signed extradition treaties with seven countries. If the fugitives flee to countries other than those seven ones, we can not extradite them back. To solve this problem, we developed a pragmatic method. In this method, judicial or military authorities will inform the Ministry of Foreign Affairs to revoke the passport of the wanted person(s), according to the "Passport Ordinance". This will make their residence in the foreign country illegal. Then, the local law enforcement agencies will cooperate to deport the wanted criminal, and inform the police authorities in Taiwan.<sup>48</sup> Then the criminal will be placed on the plane, and our law enforcement personnel will go to the plane to arrest him. This pattern is sometimes used with countries friendly to Taiwan, to help combat transnational crime. Sometimes China adopts the so-called deportation towards Taiwan illegal immigrants and criminals, avoiding the cumbersome extradition procedures, to save judicial resources. Generally speaking, China tends to deport the criminal after conviction. Deporting criminals does not mean exemption of prosecution. That is, China yields the court's power to the country of the criminal.

---

<sup>47</sup> Aforementioned footnote 43, p. 90

<sup>48</sup> Aforementioned footnote 47, p.p. 135-143

Currently, this informal mode of cooperation is the common way to arrest fugitives fleeing aboard from Taiwan. However, there are still restrictions. If the fugitives have legitimate right of abode in the local countries or dual nationality, and we have no diplomatic relations with the their residing countries, or the crime type is not significant enough to cause malignant effect, then the cooperation of repatriating criminals back to Taiwan becomes very difficult.<sup>49</sup>

We can find that establishing mutual legal assistance with foreign countries is a common goal of Taiwan and mainland China. For fighting against transnational crimes, signing treaties and agreements with other countries is very important, and it is also an inevitable method that both Taiwan and mainland China should adopt. Since China is a main destination for Taiwanese fugitives fleeing abroad, we have no reason why China should be excluded from the list of countries which Taiwan would like to sign the agreement of mutual legal assistance with. Therefore we can assert that signing the “Nanjing Agreement” with mainland China is a necessary decision for Taiwan.

### *3.2 International Mutual Legal Assistance of Mainland China*

After Deng Xiaoping returned to power in 1978, China started to adopt economic-oriented policies. Although the economy was gradually modernized, China inevitably faced the intrusion of globalization of crime. With accelerated economic globalization, the international community started to pay more attention to combating transnational crime by means of judicial cooperation. The need for judicial

---

<sup>49</sup> Chen Guang-Chi(2002), "Regional Cooperation in the Fight against Corruption", *Study on Regional Criminal Judicial Assistance* , Macao Institute of Justice Prosecutors, p.p. 358-368.

cooperation between countries continued to elevate. To satisfy this need, China has also been seeking international cooperation to expand the range of fighting against transnational crime.

According to statistics from Department of Treaty and Law under the Chinese Foreign Ministry, as of January 2010, China has signed 106 judicial cooperation treaties with 68 countries, including 32 extradition treaties, 16 civil and commercial judicial assistance treaties, 19 civil and criminal judicial assistance treaties, 27 criminal judicial assistance treaties, 6 transfer of sentenced persons treaties, and 6 agreements related to combat terrorism, separatism and extremist forces. In addition, China also joined more than 20 international conventions which are relevant to mutual legal assistance and provisions of extradition.<sup>50</sup> International cooperation in combating transnational crimes participated by China can be divided into the following four categories. They are as follows:

1. Extradition treaties.

Up to May 2010, China has signed extradition treaties with 32 countries. On August 26, 1993, China and Thailand signed "Extradition Treaty of the People's Republic of China and the Kingdom of Thailand". That was the first bilateral extradition treaty signed by China. The extradition treaties mainly stipulate obligation to extradite, extraditable crimes, the situation and the reasons for accepting or refusing extradition, extradition requests and the accompanying files, use of language, temporary custody, the transfer of extradited persons, property transfer, transit, costs and so on. Up to now, China has signed extradition treaties with these countries:

---

<sup>50</sup> Available at: [http://www.legaldaily.com.cn/zmbm/content/2010-01/21/content\\_2032122.htm?node=7578](http://www.legaldaily.com.cn/zmbm/content/2010-01/21/content_2032122.htm?node=7578). Date of logging on: 04/02/2011.

Thailand, United Arab Emirates, the Philippines, Mongolia, Indonesia, Korea, Pakistan, Laos, Azerbaijan, Kazakhstan, Kyrgyzstan, Cambodia, Uzbekistan, Lithuania, Russian Federation, Belarus, Bulgaria, Romania, Algeria, France, Spain, Ukraine, Portugal, Lesotho, South Africa, Angola, Tunisia, Namibia, Peru, Mexico, Brazil, and Australia.<sup>51</sup> In the past decades, China did not sign many extradition treaties with western countries. Those countries signing treaties with China were not the principal destination of the fugitives. As a result, the real effect of extradition was limited. In 2005, China successfully signed an extradition treaty with Spain. Later on France and Australia followed suit. For the time being, signing extradition treaties with United States and Canada, the most common destinations of fugitives, is the main goal of law enforcement in China.

## 2. Bilateral mutual legal assistance treaties.

In 1987, China and France signed "Agreement on Judicial Assistance in Civil and Commercial Matters", which is the first bilateral judicial assistance treaty that China has signed with another country. Since then, China actively strived to sign judicial cooperation treaties.

"Agreement of China and the Canadian Criminal Judicial Assistance", signed in 1994, is the first mutual legal assistance treaty in criminal matters. In June 2000, China and US signed the "Mutual Legal Assistance Agreement". That is a major breakthrough for China, because US is the main state where Chinese fugitives escape and hide.

---

<sup>51</sup> Available at: [http://www.legaldaily.com.cn/zmbm/content/2010-01/21/content\\_2032122.htm?node=7578](http://www.legaldaily.com.cn/zmbm/content/2010-01/21/content_2032122.htm?node=7578). Date of logging on: 04/02/2011.

Generally speaking, the above provisions of bilateral treaties on judicial assistance in criminal matters stipulate the scope of assistance, the rejection of assistance, the way of assistance, usage of language, legal assistance fees, requests for assistance and certification, and so on. The scope of assistance means criminal investigation, prosecution and other criminal procedures, including delivery of documents, investigation and evidence gathering (including the questioning of witnesses and suspects, evidence identification, judicial inquests, etc.) , the provision and exchange of legal information, communication outcome of criminal proceedings, request for the execution of search and seizure, confiscation of proceeds and instruments of crime and transfer of illicit money, and so on.<sup>52</sup>

### 3. Participation in international treaties.

China has joined" U.N. "Convention against Transnational Organized Crime". The convention, the first international criminal law convention, was drawn up by the U.N. on November 15, 2000. Its purpose was to combat transnational organized crime. Also, China has signed other international conventions related to the punishment of international crimes, such as: "Suppression and Punishment of the Crime of Apartheid International Convention", signed in 1976; " Convention on the Suppression of Unlawful Seizure of Aircraft", signed in 1971; " Convention on the Suppression of Unlawful Acts of Civil Aviation Safety ", signed in 1973; " United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Convention", signed in 1990; "Convention Against the Taking of Hostages", signed in 1983; "International Convention for the Suppression of Terrorist Bombings", signed in 2001; " International Convention on Suppression of the Financing of

---

<sup>52</sup> Wang Jun-Xiang (2008), "Exploration of China-ASEAN Cooperation Mechanisms to Combat Transnational Crime", Vol. 26, No. 12, *Hebei Law Science*, p.p.173-174



Terrorism", signed in 2002; the 2005 "United Nations Convention against Corruption", and so on.

4. Other cooperation and consultation mechanisms for combating transnational crimes.

China joined some transnational cooperation and consultation mechanisms, including "ASEAN (10 + 3) Ministerial Combating Transnational Crime Mechanism", "ASEAN and China (10 + 1) Informal Ministerial Meeting on Combating Transnational Crime", "China and ASEAN Prosecutors General Conference", "China, Laos, Myanmar, Thailand, Vietnam, Cambodia and the United Nations International Drug Control Programme (UNDCP)", "Bangkok Declaration", "ASEAN and China Cooperation in Drug Control Action Plan" and "Memorandum of Understanding of Non-Traditional Security Cooperation."



#### **4. CROSS-STRAIT COOPERATION IN COMBATING CRIMES AND MUTUAL LEGAL ASSISTANCE BEFORE SIGNING "NANJING AGREEMENT"**

Before the “Nanjing Agreement”, there were some informal mechanisms for dealing with cooperation of counter crimes and mutual legal assistance between Taiwan and mainland China. However, these mechanisms could not totally resolve the problems of cross-Strait crimes. This is the most important reason why Taiwan and mainland China have to sign the “Nanjing Agreement”. Crime patterns, cooperative mechanisms, and relevant laws of Taiwan and China will be discussed in this chapter. From knowing these situations, we can make sure that Taiwan really has a strong need to sign the agreement of mutual legal assistance with mainland China.

##### *4.1 Patterns of Cross-Strait Crimes*

Our government has allowed people to visit relatives in mainland China since 1987, opening a new era in cross-Strait relations. Especially in recent years, accompanied with the trend of globalization, cross-Strait exchanges in various fields are expanding year by year. Combined with more frequent interaction between people, communication and mutual benefit, many security problems have emerged, such as illegal immigration and trafficking in persons, arms and drug trafficking, economic crime, organized crimes, and so on. In 1990, Taiwan implemented "Thunderbolt Project", and in August 1996, it implemented "Zhiping Project" and other anti-crime operations. These initiatives made gangsters feel insecure, and mainland China became Taiwan's principal place for gangsters to flee to. In particular, some criminal organizations also made use of the cross-Strait political impasse, committing crimes

on a large scale, including human trafficking, drug trafficking, money laundering, smuggling, fraud and other cross-border crimes, on both sides of Taiwan Strait.

The situation related to cross-border crimes across the Taiwan Strait can be summarized as following:

### 1. Hijacking

Before the 1980s, the Taiwan government set an act to greatly reward people who escaped from mainland China to Taiwan by airplane, and called them the "righteous anti-Communist to freedom". From the first case happening in Oct. 4, 1981, when seven young men whose parents were high-ranking officials in Guangzhou planned to participate in a hijacking to Taiwan but finally failed, until the end of 1990, there were at least 19 hijackings of civil aircraft. But by the 1990s, as both sides gradually opened to one another, in order to conform to the trend of international law on the punishment for hijacking, Taiwan announced the termination of "Period of Mobilization Counter-Insurgency" on May 1, 1991, the abolition of "Sedition Law," and other related laws which rewards those who escaped from mainland China to Taiwan. The period 1993 to 1998 was the climax of mainland Chinese hijacking civil airplanes to Taiwan. During this period, there were 13 cases involving 18 people. Instead of being rewarded, they faced criminal trial according to "Criminal Law" and "Civil Aviation Law" in Taiwan. Hijacking of civil aircraft from mainland China to Taiwan gradually disappeared after that.<sup>53</sup>

Although the "Kinmen Agreement" was signed in 1990, it could only deal with cases concerning fleeing criminals and illegal immigrants. At that time, both Taiwan and China only cared about cases in which criminals committed crime in Taiwan (or

---

<sup>53</sup> Aforementioned footnote 34, p. 180

China) and then fled to the other side. They did not consider the crime involved in two jurisdictions. Later the hijackers and the repatriation of passengers became a problem for the "Kinmen Agreement". Because hijackers violated international public law, Taiwan certainly could not give up her legal right to judge these cases. Furthermore, repatriation of hijackers has political implications which suggest that Taiwan is part of the jurisdiction of China. China has similar concerns. Finally separation of human and aircraft and separation of hijackers and passengers have reached cross-Strait consensus and been adopted by both sides of the Taiwan Strait.<sup>54</sup>

## 2. Illegal immigration and human trafficking

"Illegal immigrants" often refers to people adopting non-legal approaches to enter the territory of another country, commonly known as "stowing away"; "illegal immigrants" are generally dubbed "human-snakes"; a person or organization responsible for receiving and transporting illegal immigrants are known as "snakeheads". The first case of a "human-snake" from mainland China to Taiwan occurred on July 5, 1982. Until the lifting of martial law in Taiwan in 1987 and the opening up of family visits, the mainland Chinese continued to sneak into Taiwan. In recent years, different "human-snake" groups collaborated with each other and evolved toward conglomeration and internationalization. They smuggled women or used counterfeit forms of marriage to send them to Taiwan, and then the women became prostitutes after they arrived.<sup>55</sup> In recent years, Taiwan has often been graded in column 2 (Tier) list in "global human trafficking" by the U.S. State Department. In 2006 Taiwan was even ranked as "Watching List" in column 2, the second worst level. Human trafficking has multiple ways and patterns, not limited to performances in prostitution or sexual exploitation, sex trafficking. There are other patterns, such as

---

<sup>54</sup> Aforementioned footnote 43, p.p. 86-87

<sup>55</sup> Aforementioned footnote 34, p. 181

labor trafficking. Traffickers have two ways to smuggle Chinese women: by air or by sea. By air means sending a fake husband from Taiwan to mainland China to register for marriage with a woman, then leave her husband to return to Taiwan dealing with household registration procedures so that the spouse can obtain the identity, entry visa and then fly to Taiwan. By sea means stowing women away in fishing boats, commonly known as the "bucket seat" approach. Human traffickers hide women in some nets in fishing boats, waiting for an opportunity along the mainland coast, sailing into Taiwan waters, and then smuggling the women ashore.

According to statistics offered by the National Police Administration, since 2003, police seized more and more mainland women in the Taiwan region in sham marriages running prostitution. But cases of smuggling women to Taiwan for prostitution are gradually declining (see Table 2). The reason should be that fake marriage has lower risk than stowing women away to Taiwan.<sup>56</sup> Human traffickers in China enroll those who want to work in Taiwan, and then transport them to Taiwan. The recruitment and fundraising both occur in mainland China. Law enforcement bodies in Taiwan have no way of implementing judicial power to investigate the criminal groups in the preliminary stage.<sup>57</sup>

---

<sup>56</sup> Chen Chen-Fen(2009), "The Impact of Human Trafficking Law on Investigation Practice Regarding Cross-Strait Sexual Trafficking", *Perspective and Exploration*, Vol. 7, No.4, p. 88.

<sup>57</sup> Aforementioned footnote 54, p. 92

**Table 2. Statistics of Illegal Immigrant Mainland Chinese**

Treatment	People taken in Shelter			Repatriation			
	male	female	total	frequency	male	female	total
1992	2,749	155	2,904	12	1,698	114	1,812
1993	5,684	260	5,944	25	5,709	277	5,986
1994	3,056	160	3,216	23	4,514	196	4,710
1995	2,094	154	2,248	7	1,332	95	1,427
1996	1,449	200	1,649	10	2,072	178	2,250
1997	1,071	106	1,177	6	1,052	164	1,216
1998	1,183	111	1,294	5	1,030	91	1,121
1999	1,656	116	1,772	6	1,092	74	1,166
2000	1,201	326	1,527	7	1,083	147	1,230
2001	872	597	1,469	12	1,269	679	1,948
2002	826	1,206	2,032	9	794	608	1,402
2003	538	2,920	3,458	14	680	1,557	2,237
2004	706	1,077	1,783	9	330	1,110	1,440
2005	936	177	1,113	14	745	1,607	2,352
2006	747	87	834	9	925	671	1,596
2007	398	48	446	5	462	133	595
2008	228	57	285	3	308	57	365
2009	170	76	246	5	168	68	236
2010 till Apr	41	11	52	1	29	21	50
<b>Total</b>	25,605	7,844	33,449	182	25,292	7,847	33,139

Source of Data: National Immigration Agency. (<http://www.immigration.gov.tw/aspcode/info9904.asp>. Date of logging on: 04/02/2011.)

“Human trafficking” is not stipulated as a crime in China’s “Criminal Law”, but it is included in the criminal behavior in “Nanjing Agreement”; China considers the behavior of “human trafficking” consistent with the interpretation of the crime of kidnapping, organizing cross-border smuggling or organized crime, so it should be included in the scope of cross-Strait cooperation in cooperation in combating crimes.<sup>58</sup>

### 3. Trafficking of drug and firearms

Smuggling is a kind of tax evasion. It will not only affect national tax revenue, but also jeopardize normal development of domestic business, because of illicit transportation of controlled goods. As for smuggling drugs and firearms, it is even more harmful to public order. Therefore we should pay more attention to crack down on it and prevent from its happening. However, smuggling drugs and firearms is very lucrative. As a result, it is not easy to eradicate this kind of cross-border crime.<sup>59</sup>

4. Taiwanese criminals, suspects, wanted criminals or criminal defendant fled to mainland China

Since interaction between Taiwan and China is getting more and more frequent, and since the two sides lack cross-Strait mutual legal assistance, the result is that in Taiwan perpetrators, suspects, wanted criminals or criminal defendants flee to the mainland to hide. Infamous fugitives, such as Tuntex Group President Chen You-Hao, former Legislative Yuan Speaker Liu Sung-Fan, heavyweight of Bamboo Union Zhang An-Lok, and President of Guang-San Department Store Tseng Cheng-jen, are all still in China. Moreover, China now has the largest concentration of Taiwanese gangsters. Shifting of Taiwanese gangsters to the mainland in large numbers began in

---

<sup>58</sup> Aforementioned footnote 54, p. 97

<sup>59</sup> Wong Zong-Yao(2004), “Analysis of the Problem of Smuggling and Illegal Immigrants between Taiwan and Mainland China Region”, *Police Academy Monthly*, Volume 3, No. 5, p. 308.

1990, the period of implementation of the "Thunderbolt Project". Since the beginning of the "Thunderbolt Project", more than 300 gangsters escaped from Taiwan to mainland China. In 1996, during the period of implementation of "Zhiping Project", mainland China became the main destination for fleeing Taiwanese gangsters fleeing. In 1999, the three largest criminal organizations in Taiwan have set up their own bases in the mainland respectively, such as the Bamboo Union in Pearl River Delta in Guangdong Province, TienDau Union in Fuzhou and Xiamen, and the Four Seas Gang in Shanghai and Haikou, etc.<sup>60</sup>

#### 5. New fraud criminality

So-called "new fraud criminality" refers to criminal behavior, in which the perpetrators cheat their victims and make them transfer their money into dummy accounts used by the criminal group. This kind of criminality began in 1997, using telecommunication as its measure, taking advantage of human weaknesses of greed to lure victims or dread to frighten victims into a trap. New fraud criminality can be roughly divided into the following four types:

(1) Cross-Strait fraud: This is the earliest pattern of fraud criminality, and it can be divided into four sub-types. The first is a simple phone fraud. Perpetrators set up a base of telephone fraud in mainland China or forward the call from Taiwan to China and then return it back to Taiwan. After the Taiwanese victims are cheated and transfer money into the appointed account, Taiwanese "riders" will withdraw the money. Typically, criminals impersonate prosecutors, police officers, clerks of telecommunications companies or banks. They may say that the "victim's account is frozen" or "phone bills are not paid in full" as an excuse. They may also intimidate victims into misusing credit cards or linkages of suspected criminals, or demand that

---

<sup>60</sup> Xu Fu-Sheng(2009), "Research on Problem and Solution of Cross-Strait jointly Combating Organized Crime", *Collection of Seminar of Police Science and Security Management for Hong Kong, Macao, and the two sides of Taiwan Strait*, p.p.308-309



the victims deposit or remit all money within the designated account. In these cases, heads of such fraud syndicates usually live in mainland China, controlling the “Taiwan rider” overseas, to collect stolen money and then transfer it to mainland China.

The second is lottery fraud. Perpetrators are mostly under the guise of a "high-tech company", a "biotech company" or an "investment adviser". Perpetrators will deceive the victims, telling the victims they have won the lottery. Later on the perpetrators will ask the victims to remit 15% tax into the appointed account, or use another excuse to cheat them of their money.<sup>61</sup>

The third approach is setting up dummy companies and then cheating merchandise from other companies. Fraud groups make an order to Taiwanese companies, cheating them to ship industry goods to the dummy companies in mainland China, and take the goods away, causing serious losses to Taiwanese companies.<sup>62</sup>

The fourth one is insurance fraud. Criminal groups try to obtain fake death certificates first, submitting the certificates to insurance companies, and then apply for the insurance compensation. This is usually dealt with by criminals on both sides of Taiwan Strait. Because investigation and verification is difficult for Taiwanese insurance companies, this has been another effective way for criminal groups to steal insurance money.<sup>63</sup>

## (2) Intimidation, extortion, and kidnapping

This crime type can be divided into the following three methods:

The first method is a threat across Taiwan Strait. The criminal groups make a phone

---

<sup>61</sup> Available at: <http://news.yam.com/ettoday/society/200503/20050305442121.html>, The Liberty Times, 6 March 2005, p. 17

<sup>62</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=1025](http://www.cib.gov.tw/news/news01_2.aspx?no=1025). Date of logging on: 04/02/2011

<sup>63</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=1252](http://www.cib.gov.tw/news/news01_2.aspx?no=1252). Date of logging on: 04/02/2011

call from mainland China to Taiwan, saying that a friend or relative of the Taiwanese victim has been borrowing money from underground banks. Now, they say, they have kidnapped him (or her). When they make the phone call, they make beating or crying sounds at the same time, making the victim believe that what they say is true. Later on they threaten the victim to remit money to them in exchange for the release of the kidnapped person. To save their friend's, sometimes the victim does not realize he is being cheated, and will remit the money. Once the fraud group succeeds, they will command their "Taiwan rider" to withdraw illicit money.<sup>64</sup>

The second method is a scam in which someone makes a phone call from the mainland to the victim in Taiwan, saying that his/her child has been abducted by the criminal group. If the victim does not remit money to the criminal group, they say, the child will be killed. Sometimes the victim can not contact their child, and the perpetrators have a chance to succeed.<sup>65</sup>

The third method is "kidnap in mainland, pay in Taiwan ". This offense is a real kidnapping. Generally speaking, the kidnapers in mainland China are very familiar with the daily life and financial situation of the victim. Family members have to transfer ransom into the underground bank designated by the kidnapers. After confirming that the money is in the account, the kidnapers will release the captive.<sup>66</sup>

### (3) Cyber crime

"Cyber crime" is a transmutation of computer crime, the combination of the computer systems and communication networks. Compared with computer crime, "cyber crime" puts more emphasis on "Internet" applications. In other words, crime in

---

<sup>64</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=752](http://www.cib.gov.tw/news/news01_2.aspx?no=752). Date of logging on: 04/02/2011.

<sup>65</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=959](http://www.cib.gov.tw/news/news01_2.aspx?no=959). Date of logging on: 04/02/2011.

<sup>66</sup> China Times (January 25, 2007), p. A11

the criminal process requires the use of Internet, so that the criminal group can conduct their illegal behavior.<sup>67</sup>

In recent years, hackers from Taiwan and China use a Trojan horse to infiltrate personal computers and steal confidential information. This kind of crime can be divided into the following four methods:

The first method is buying the Trojan horse from Chinese hacker groups. Taiwanese computer users can pay money and download the program, and then invade into other people's computers and retrieve private information.<sup>68</sup>

In the second method, hackers on two sides of the Taiwan Strait cooperate to buy "keyword advertising", marketing in a large search sites on the Internet, setting up many fake websites, such as "Internet Banking", "Airline", "travel agent", "Computer Technology, Inc. ", " Human Bank ". If you click on these fake websites, hackers will upload a Trojan horse program to your computer, stealing personal information and account passwords, conducting unauthorized deposit transfers, borrowing money on Internet, or network shopping to collect money. In some cases, hackers invaded hundreds of computers which belonged to companies or people, stealing hundreds of thousands of personal data and banking passwords.<sup>69</sup>

The third method involves high-tech personnel from mainland China formatting the hacker organization, conducting the invasion of Internet mechanisms of consumption, and then selling online game cards which they obtained illegally in major auction websites. Afterwards, they remit the money to the accounts of China Industrial and Commercial Bank in the mainland.<sup>70</sup>

---

<sup>67</sup> Lin Yi-Lung, Li Jian-Guang(2000), "Study on Problems of Internet Criminality and Crime Prevention Mechanism ", *Police Science Series*, Vol. 31, No. 1, p. 194.

<sup>68</sup> China Times, January 6, 2007, p. AA3.

<sup>69</sup> Available at: [http://www.cib.gov.tw/news/news02\\_2.aspx?no=321](http://www.cib.gov.tw/news/news02_2.aspx?no=321). Date of logging on: 04/02/2011.

<sup>70</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=1375](http://www.cib.gov.tw/news/news01_2.aspx?no=1375). Date of logging on: 04/02/2011.

The fourth method is commanding a member of the criminal group in Taiwan to bring the dummy financial cards to the ATM every day, testing which card is applicable and not revoked by law enforcement. Then the member in Taiwan will tell the member in mainland China the account number of the applicable cards. Later on, the perpetrators in mainland China will deceive the victims on the Internet, pretending that the victims can buy some cheap goods or sex, and then ask the victims to transfer money to the dummy accounts in advance. Finally they withdraw the money.<sup>71</sup>

#### 6. Money laundering

Money laundering is the process “bleaching” illicit income that is earned by criminality. In recent years, money laundering has been combined with misappropriation. Perpetrators usually embezzle company assets, and then transfer huge amounts of money overseas. According to anonymous analysis, the number of cross-Strait money laundering each year could be from 200 billion to 300 billion RMB, equivalent to 2% GDP of mainland China. Money laundering has jeopardized the social, political, and economic situation of both sides of the Taiwan Strait.<sup>72</sup>

#### 4.2 Review of Cross-Strait Mutual Legal Assistance

Cross-Strait contacts and negotiations began in 1986, a result of pilot of Taiwan, Wang Xi-Jue, flying an aircraft to mainland China. To solve the aftermath of this incident, "Civil Aviation of China" of mainland China and "China Airlines" of Taiwan conducted cross-Strait talks, and then the two sides signed minutes of talks. The negotiation set up the pattern--civil, indirect, and mediator-free. This has been a model for later contact for cross-Strait negotiations.<sup>73</sup> From then on, when Taiwan and

---

<sup>71</sup> Available at: [http://www.cib.gov.tw/news/news01\\_2.aspx?no=1319](http://www.cib.gov.tw/news/news01_2.aspx?no=1319). Date of logging on: 04/02/2011

<sup>72</sup> Aforementioned footnote 34, p. 108

<sup>73</sup> Xiao Huai-Xiang(1993), "Non-Political Cross-Strait Negotiations (2) - Negotiations of the Affairs", *Studies on Communist*, Vol. 19, No. 7, p.105.

mainland China negotiated, they always followed the rules of this case.

### 1. Kinmen Agreement

"Kinmen Agreement" is the achievement of mutual legal assistance signed by the Red Cross of the two sides of Taiwan Strait. In 1990, the director of Red Cross of Taiwan, Chen Chang-Wen, and his counterpart in mainland China, Han Chang-Lin, signed the agreement, hoping it could contribute to repatriation of the illegal immigrants entering to each other's territory. According to this agreement, Taiwan and mainland China could repatriate illegal immigrants, suspects and criminals between Matsu and Mawei, or the alternative way, Kinmen to Xiamen. The "Kinmen Agreement" stipulates the affairs of repatriation, but cooperation of investigation, evidence collection, search, seizure, and other aspects are not included.

Theoretically speaking, the two sides of the Taiwan Strait should conduct repatriation on the basis of the Kinmen Agreement. Actually, there are still a lot of problems. First, the effect of this cooperation mechanism is still subject to the attitude of law enforcers of mainland China or influence of political factors. For example, sometimes the repatriation of illegal immigration would be delayed by Public Security of China due to time constraints or shortage of budget. Secondly, mainland China is more interested in the repatriation of illegal immigrants than the repatriation of criminals. The purpose of repatriation of illegal immigrants is solving the problem of illegal residence. For China, it seems to be a kind of administration. However, the repatriation of criminals has a quasi-extradition function and is involved with the sovereignty disputes. That is why repatriation of criminals is difficult to achieve.<sup>74</sup> Accordingly, the "Kinmen Agreement" does not have enough effect over mutual legal assistance. In addition, the effect has been lowered again due to the unilateral passive attitude of mainland China. Furthermore, the agreement is limited to

---

<sup>74</sup> Aforementioned footnote 14, p. 183

cross-Strait repatriation only. Mutual legal assistance in other forms, such as evidence survey, documents, and referee accreditation service, are not included in the "Kinmen Agreement". In practice, both sides mainly conducted the repatriation of illegal immigrants. Those we sent back to mainland China are almost all illegal immigrants. mainland China also sent back those Taiwanese who adopted illegal ways to enter China. If a criminal commits a crime in Taiwan and then flees to China legally, mainland China usually will not repatriate them back to Taiwan, unless they commit felonies, such as homicide or robbery.

After all, the "Kinmen Agreement" is neither formal nor official. There is no real restraining force, if either side does not comply with it. There are large numbers of illegal immigrants from mainland China, so the repatriation should be conducted approximately every three months. But the repatriation operation is often disrupted because the bilateral talk by the two Red Cross groups is blocked. For example, in April 1998 the repatriation operation was interrupted for half a year.<sup>75</sup>

There are also reports that although both sides signed the Kinmen Agreement, the mainland police would not necessarily arrest suspects and send them back to Taiwan. It has been rumored that many heavyweight gangsters were not repatriated on the basis of "Kinmen Agreement". Actually, they were bought back to Taiwan.<sup>76</sup>

## 2. Koo-Wang Talk

In April 1993, SEF chairman Koo Chen-Fu, authorized by Taiwan government, and director of ARATS Wang Dau-Han, authorized by People's Republic of China, held talks in Singapore for the first time. They signed the "Mutual Agreements of Koo-Wang Talk".

The "Mutual Agreements of Koo-Wang Talk" has four agreements: "Cross-Strait

---

<sup>75</sup> Aforementioned footnote 4

<sup>76</sup> Available at: <http://tw.politics.yahoo.com/news/2001/11/02/twdaily/2683371.html>. Date of logging on: 05/04/2010.

Verification of Certificates Agreement", "Cross-Strait Inquiries and Compensation of Registered Mail Agreement", "Systems of Contacts and Talks of SEF and ARATS Agreement" and " Koo-Wang Talk Mutual Agreement". The first article of "Koo-Wang Talk Mutual Agreement" is: "the two sides of Taiwan Strait are going to negotiate these issues in this year: " the repatriation and related problems of persons who violate relevant provisions and enter other's territory", "joint actions against piracy, smuggling, and other criminal activities", "protection of intelligence property rights (IPR Protection) ", " cross-Strait mutual assistance in the judiciary (the cross-Strait links and assistance between the courts) ". However, consensus of the "Koo-Wang Talk" has not yet really been fulfilled. Cooperation on combating crimes remains in the paper stage.<sup>77</sup>

In 1995, when the PRC launched missiles in military exercises in the Taiwan Strait after former President of Taiwan Lee Teng-Hui visited the United States, cross-Strait relation were broken. This situation did not change until SEF Chairman Koo Chen-Fu led a delegation to visit the mainland on October 14, 1998. Koo Chen-Fu is the first one ever authorized by Taiwan's government to visit mainland China since 1949, communicating cross-Strait affairs. So this journey is widely regarded as "ice-melting trip."

Although Taiwan and mainland China resumed interaction, the duration was not long. On July 9, 1999, Lee Teng-Hui was interviewed by "Deutsche Welle". When he was asked about his opinion about the fact that "Beijing views Taiwan as a renegade province," he responded that cross-Strait relation is "special relation of state to state ", which is now called the "Two States Theory ". As a result, cross-Strait relations were frozen, and the door for negotiation was closed again. This situation did not change until the KMT regained power in 2008.

---

<sup>77</sup>Aforementioned footnote 1, p. 3



### 3. Difficulties of mutual legal assistance

When it comes to "narrow mutual legal assistance" between Taiwan and other countries, we can apply "Law of Assistance of Cases Commissioned by Foreign Courts". But in the law of Taiwan, mainland China is not given the status of a foreign country. As a result, cross-Strait mutual assistance on criminal matters does not apply to the law.<sup>78</sup> So we have to legislate to obtain the legal basis for cross-Strait mutual legal assistance on criminal matters.

As mentioned earlier, under the existing legal framework, relations between Taiwan and mainland China can not be referred to as state-to-state relations; in other words, according to Taiwanese laws, mainland China is not regarded as a foreign country. Mainland China residents are not seen as foreigners either. So we can not apply "foreign" way to mainland China. In contrast, before signing "Nanjing Agreement", we had no way based on any existing law of mainland China to request China to provide judicial assistance. Repatriation is the only item which has legal basis for mutual legal assistance. Furthermore, sometimes the Criminal Investigation Bureau of Taiwan and public security of mainland China will exchange criminal intelligence in private. Other mutual legal assistance, such as interrogation, search, and evidence gathering can not be carried out because of the lack of legal basis.<sup>79</sup>

Both sides of Taiwan Strait understood the common need to sign agreements of mutual legal assistance to resolve the criminal issue. But before signing the agreement in Nanjing, the two sides had totally different opinions on the type and legal quality of the cross-Strait mutual legal assistance agreement. There was no intersection between the two sides for signing an agreement (see Table 3); until 2008, cross-Strait relation had been improved. After Taiwan and mainland China obtained a consensus with

---

<sup>78</sup> Shi Jun-Yao(1993), "Review of the Status Quo of Cross-Strait Mutual Assistance on Criminal Matters", Taipei: *Criminal Law Journal* , Vol. 37, No. 4, p.27.

<sup>79</sup> Aforementioned footnote 43, p. 90



minute different opinions, the two sides of the Taiwan Strait signed the “Nanjing Agreement”, which can be regarded as "special interregional mutual legal assistance on criminal matters.

**Table 3. Types of "Mutual Legal Assistance" and Two Governments' Attitude<sup>80</sup>**

Type	Taiwan	China
International	Accept	Refuse
Interregional of model of eastern and western Germany	Once accepted, but refuse later	Refuse
Domestic interregional	Refuse	Accept
Interregional between jurisdictions	Refuse	Refuse

#### 4.3 Laws Related to Cross-Strait Mutual Legal Assistance

Actually, before signing this agreement, China and Taiwan already had some laws and regulations relevant to cross-Strait mutual legal assistance. These are stated separately as follows:

1. The provisions related to cross-Strait mutual legal assistance of Taiwan.

##### (1) Repatriation

There are several laws stipulating the repatriation of criminals or suspects, including the special guidelines for cross-Strait repatriation, "Implementation Guidelines of Repatriation for Illegal Immigrants of mainland China "(repealed on October 29, 1999) and "Implementation Guidelines of Repatriation for Taiwanese People from mainland China". Furthermore, article 18, paragraph 1, sub-paragraph 4 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" stipulates that police may deport mainland China people in the

<sup>80</sup> Aforementioned footnote 11, p. 372

Taiwan Area as long as the people are likely to commit a crime. But if the case has entered the judicial procedure, the deportation shall be first agreed to by the Judiciary.

(2) Document verification

Article 7 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" states: "Documents produced in the Mainland Area shall be presumed to be genuine provided that they are authenticated by the institution set up or designated or by the private organization entrusted by the Executive Yuan". In April 1993, the "Cross-Strait Verification of Certificates Agreement" was signed in the Koo-Wang talk. Both sides agreed to send a copy of notarization related to inheritance, adoption, marriage, birth, death, commission, education, residence, and dependents. Authorities of both sides verified the notarization, and no longer needed a "letter of investigation" to handle it. Also, both authorities agreed to deal with cases other than notarization. With the implementation of the agreement, Judicial Yuan promulgated the "Note for the Court for Dealing with Cross-Strait Verification of Certificates Agreement" in the same year in June.

(3) Delivery of documents, investigation and evidence collection

Article 8 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" stipulates: "Where any legal process or document is required to be served, or any necessary investigation is required to be conducted in the Mainland Area, judicial authorities may request or entrust the institution or private organization referred to in Article 4 to carry out." This would be contacted and done by the SEF and ARATS.

(4) Recognition of judgments

According to Article 74 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area", the standard of approving judgments of the mainland is "not contrary to the public order or good morals of the Taiwan Area".

Civil judgments made by mainland China courts and recognized by Taiwan courts should only have executive power. But those judgments do not have res judicata as the decree made by Taiwan courts.

#### (5) Crime Prosecution

Article 75 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" stipulates: " Criminal offenses committed in the Mainland Area or in the vessels or aircraft of the Mainland, notwithstanding punishment already executed in the Mainland Area, may still be punishable in accordance with the laws of the Taiwan Area; provided, however, that the punishment may be waived in whole or in part" Although mainland China is not de facto territory of Republic of China, Taiwanese who commit crimes in mainland China would still be punished by Taiwanese laws.

### 2. Provisions related to cross-Strait mutual legal assistance of mainland China

#### (1) Document verification

As mentioned above, in April 1993, the ARATS and the SEF signed the "Cross-Strait Verification of Certificates Agreement". For enforcing this agreement, the Ministry of Justice of PRC promulgated "Measures of Enforcement of Cross-Strait Verification of Certificates Agreement" in May 11, 1993, "informing the associations of notary public and notary offices handling Taiwan-related affairs."

#### (2) Delivery of documents

According to the estimation of SEF, the number of cross-Strait documents delivery requested by Taiwan totals approximately 8,000 a year. In the beginning, China's authorities adopted personal ways and mail ways, but both methods had little legal effect, and no follow-up enforcement act was made. To solve this problem, the Supreme People's Court of the PRC promulgated "Reply on How to Deliver the Document to the Litigant of Taiwan Area" on August 29, 1984, adopting the way of

declaration. This was meant to ensure that individual rights could be protected. On January 26, 1990, the Ministry of Justice issued "Notice of Dealing with Taiwan-Related Legal Affairs", agreeing that lawyers of both sides would conduct document delivery. On April 17, 2008, the Supreme People's Court issued the "Certain provisions of Taiwan-Related Documents Delivery of Civil Litigation", approving delivery of fax, e-mail or other means of cross-Strait service.

### (3) Investigation and evidence collection

Mainland China does not have special regulations on cross-Strait investigation and evidence collection. Those affairs are mainly based on "Civil Procedure Law of The People's Republic of China" and "the Opinion of Some Questions Applying for Civil Procedure Law of The People's Republic of China" of the Supreme People's Court and the other relevant regulations.

In civil context, the request of evidence is not as strict as in criminal cases. As a result, law firms belonging to two sides of Taiwan Strait often cooperate with each other to obtain relevant evidence. But in criminal cases, it is totally different. Because criminal matters involve issues of authority and sovereignty, the problems are more difficult and complicated. Before Taiwan and mainland China set up normal mechanisms and operational patterns, in southeastern provinces, such as Fujian and Guangdong, the Public Security and the Taiwan National Police Agency, Investigation Bureau, had cooperated through different channels. The cross-Strait cooperation between prosecutors started in 2006. The content includes questioning witnesses and exchanging household information. Drug cases occupy the majority.

### (4) Recognition of judgment

As mainland China views Taiwan as a domestic province, judgments of Taiwanese courts are generally recognized. On May 26, 1998, PRC issued "the Regulation of the Recognition of People's Court toward Civil Decree of Taiwan Court", stipulating that

decrees made by Taiwan courts can apply for recognition from courts of mainland China, but the relevant application information shall not have any words breaching of "one China" policy such as: "the Republic of China" and so on.

On April 27, 1999, the PRC issued the "Reply about If the Litigant Takes Civil Mediation Agreement of Taiwan Court or Other Relevant Authorities to Confirm the Mediation Agreement or Apply for Recognition to the People's Court"; on April 10, 2001, PRC had issued the " Reply about If the Litigant Takes Payment Order of Taiwan Court or Other Relevant Authorities to Confirm the Mediation Agreement or Apply for Recognition to the People's Court ", acknowledging the legal effect of mediation agreement and payment order and expanding the scope of recognition of judgments of Taiwan.

As the PRC has such regulations of recognition of judgment of Taiwan court, the PRC hopes that Taiwan will have the same attitude toward mainland China, approving its proposed decree and confirming the judging effect and res judicata equivalent to the decree of Taiwan's court, so that people can take the decree of mainland China to Taiwanese courts, claiming the legal effect of this decree. Since Taiwan has different notions toward this issue, this problem remains unsolved.<sup>81</sup>

#### *4.4 Cross-Strait Cooperation in Combating Crimes*

##### 1. Main content

Generally speaking, if Taiwan and mainland China have signed an effective agreement of mutual legal assistance, cooperation in combating crimes would be conducted very smoothly. Unfortunately, we did not have an intact one with China before "Nanjing Agreement". As a result, law enforcement of Taiwan had to adopt some informal ways for dealing with cross-Strait criminal cases. Basically, the

---

<sup>81</sup> Aforementioned footnote 6

so-called joint crime-striking action was still restricted in repatriation and exchange of criminal intelligence.

These are the contents of cross-Strait cooperation on crime-striking actions before “Nanjing Agreement”:

(1) Repatriation of criminal suspects: Before signing the agreement in Nanjing, mutual repatriation of criminal suspects was the most important task of cross-Strait cooperation in combating crimes. According to statistics, since the Kinmen Agreement signed in 1990, to April 2010, the two-way cross-Strait repatriation operations were conducted 219 times, repatriating 39,272 people. Mainland China took back 38,906 illegal workers, including 18 hijacking suspects; the number of repatriated illegal Taiwan immigrants, criminals and suspects is 366, including one hijacking suspect. The data tells us illegal mainland immigrants are still the main objects of repatriation. Repatriation for Taiwanese criminals conducted by mainland China is obviously insufficient. According to the relevant data of the National Police Administration, SEF has requested ARATS to provide assistance arresting 728 wanted Taiwanese criminals from 1990 to May 31, 2008, but there were only 168 (23.08%) caught and repatriated. 413 people (56.73%) were still not repatriated yet. From these figures we can find cross-Strait mutual legal assistance in criminal matters on repatriation had considerable room for improvement.<sup>82</sup>

---

<sup>82</sup> Xu Rui-Shan(2008), “*The Current Situation and Problems of Cross-Strait Cooperation in Combating Crimes*”, 2008 Police Studies and Security Management Seminar, p.58.

**Table 4. Number of Request on Assistant Arresting Criminals of SEF to ARATS**

**Time Frame: 1990 to May 31, 2008**

crime	number	percentage
Kidnap and extortion	38	5.2
homicide	81	11.1
firearms	71	9.8
fraud	106	14.6
drug	77	10.6
others	355	48.7
total	728	100.0

**Table 5. Statistics of Criminals Hiding in Mainland China**

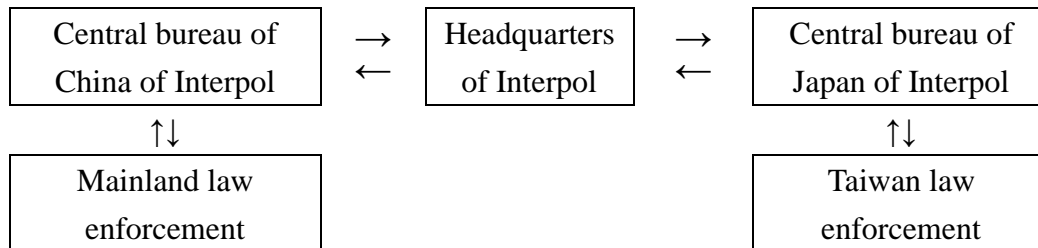
On the list of request of SEF to ARATS				Total	Not on the list but repatriated
Repatriated	Criminal came back actively or the wanted warrant revoked	Still at large	Total		
168	147	413	728	149	

There are several ways to deal with cross-Strait repatriation. The first pattern adopted by Taiwan and China is dealing with repatriation of criminal suspects through the Interpol. For example, in February 1989, China informed the Interpol police headquarters of Chinese suspect Wu Da-Peng, imposing a red warrant on him, and Interpol informed the courts of Taiwan and Hong Kong later on. In October of the same year, law enforcement of Taiwan arrested Wu and repatriated him to China. In the same year in April, the mainland law enforcement handed over Taiwanese murder suspect Yang Ming-Shiang to our police officers through the Interpol police in Singapore.<sup>83</sup> However, Taiwan is not a member of Interpol. We can only ask the Central Bureau of Japan of International Criminal Police Organization to convey

<sup>83</sup> Tzeng Chen-I, Shen Dau-Zhen, et al.(2002), *Assessment and Analysis of Feasible Mode of Cross-Strait Cooperation in Combating Crime*, Taipei: Taiwan cross-Strait Exchange Foundation, p. 82.

relevant information to mainland China. It is still a problem.

**Figure 1. Cross-Strait Cooperation and Communication Processes through the International Criminal Police Organization**



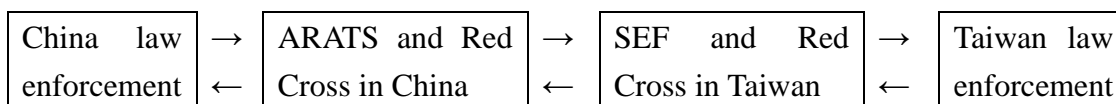
Before signing the “Kinmen Agreement”, this pattern was a major method for cross-Strait cooperation in combating crime. Although the connection was indirect and efficiency was not high, in difficult circumstances, this should be regarded as a flexible approach. After the “Kinmen Agreement” signed in 1990, this mode of cooperation came to a halt.

The “Kinmen Agreement” model could be seen as the second period in cross-Strait repatriation history. In September 1990, the two Red Cross groups of Taiwan and mainland China signed the agreement in Kinmen, setting up the principles, objects, transfer locations, and procedures of repatriation. The establishment of a bilateral communication platform has been in place ever since. Under this agreement, one party will give the other authority the information about the one who is going to be repatriated through the Red Cross, waiting twenty days for an answer. If the information has been verified, the two sides can arrange the time and place of repatriation. Subsequently, the two sides set up the SEF and the ARATS respectively. The two semi-official institutions took over the task of cross-Strait repatriation, and became important windows of cross-Strait affairs. In the "Kinmen Agreement" mode, the cross-Strait cooperation in the repatriation program can be explained by the



following figure:

**Figure 2. Repatriation under "Kinmen Agreement"**



This model has two characteristics different from that of Interpol. First, the repatriation is a direct flight without stopping at a third place. Second, SEF, ARATS and Red Cross of the two sides are responsible for the repatriation. They do not have to ask for help from international organizations.

The “Macao pattern” is a complement for the “Kinmen Agreement” model. After a long time in cross-Strait exchanges, the "Kinmen Agreement" has become the major basis for cross-Strait cooperation in combating crime. But sometimes the two sides of the Taiwan Strait left the "Kinmen Agreement" aside, conducting repatriation via a third region (mainly Macao). In July 2001, the leader of “Four Seas Gang”, Yang Guang-Nan, was arrested by public security in Shanghai in the mainland. Under cross-Strait coordination, the mainland public security escorted Yang Guang-Nan to Macao, then Taiwanese police took him over in Macao, sending Young back to Taiwan to receive a legal sentence.<sup>84</sup> Another case occurred in April 2002. The most wanted Taiwanese criminal nicknamed "pangolin", Chan Long-Lan, who had escaped from Taiwan to mainland China, was seized by public security of China because he committed a crime in the mainland. After the implementation of his penalty, he was released on parole. Mainland China did not repatriate him on the basis of the "Kinmen Agreement". Instead, they escorted Chan to Macao, for the reason that he is "not popular character ". When Chan was in the airplane belonging to Taiwanese airlines in

<sup>84</sup> Available at: [http://news.bbc.co.uk/chinese/simp/hi/newsid\\_1050000/newsid\\_1059500/1059548.stm](http://news.bbc.co.uk/chinese/simp/hi/newsid_1050000/newsid_1059500/1059548.stm).  
Date of logging on: 04/02/2011.

Macao, Taiwan judicial officers arrived there and arrested him. This case was the first time that a wanted criminal has been sentenced in jail in China and bailed out, then sent to the third country to land, and finally arrested by Taiwanese law enforcement.<sup>85</sup>

(2) The exchange of criminal intelligence: With the change in cross-Strait relations, especially the "mini three links", cooperation on repatriation of criminal suspects is no longer enough to handle a lot of crimes, such as smuggling, drug trafficking, money laundering and other types of cross-border crime. Law enforcement groups on both sides of the Taiwan Strait urgently need more ways to cooperate. In February 2006, the "Chung Wan-I drug trafficking group" was cracked down on by cooperation of law enforcers from Taiwan and mainland China. That was the first case which was accomplished through cross-Strait police cooperation in combating drug crime.<sup>86</sup> In this case, investigation agencies on both sides exchanged criminal intelligence through the SEF and the ARATS, analyzed drug trafficking organizations control information and finally arrested the whole group of criminals. However, in the practice of cross-Strait cooperation in the fight against crime, such successful cases are rare.

(3) Joint crackdown actions: joint crackdown action refers to the task done by a third country or area other than Taiwan or China. The third country or area contacts mainland China and Taiwan separately to form a partnership composed of cross-border operation against crime. Therefore there is no direct cross-Strait connection. As from 2004 to 2005, under the coordination of the United States Drug Enforcement Administration, the mainland, Hong Kong, Taiwan and Indonesian police conducted the anti-drug project, "Tsunami Action", destroying the world's third

---

<sup>85</sup> Available at: <http://www.libertytimes.com/2002/new/apl/3/today-c6.htm>. Date of logging on: 06/08/2010.

<sup>86</sup> Available at: <http://tw.people.com.cn/GB/14810/4109704.html>. Date of logging on: 06/09/2010.

largest drug factory.<sup>87</sup> Because this joint crackdown action should be subject to other national interests and their willingness, this kind of cooperation is also very rare.

## 2. The plight of the cross-Strait cooperation in fighting crime

After 20 years of practice, cross-Strait cooperation in combating crime has achieved certain results, and also constructed the base for future cooperation. But before the signing of "Nanjing Agreement", cross-Strait cooperation in fighting crime still has a lot of shortcomings. It is stated separately as follows:

(1) Lack of direct collaboration: Cross-Strait joint crime-striking mechanisms have developed for many years, but it does not have a direct dialogue window for law enforcement agencies. As a result, law enforcers on either side can not communicate directly with each other. When any one side wants the other side to help arrest the suspect or the exchange criminal intelligence, the two sides still have to do it through the Red Cross or the ARATS and the SEF. Sometimes they even need to do it via a third country. The law enforcement agencies cannot communicate in the preliminary stage, and this hurts efficiency. Moreover, the effect of cooperation is muddled by intermediary and bilateral relationship. Therefore, the lack of a direct communication platform is the largest problem of cross-Strait cooperation in combating crimes.

(2) Insufficient content of cooperation: As mentioned above, content of the "Kinmen Agreement" is limited to the repatriation of both sides. Investigation and evidence gathering, intelligence exchange, and the transfer of loot are not included in it. Joint crime-striking action is based on the "Kinmen Agreement", so cooperation of both sides is also limited to repatriation and indirect transfer of criminal intelligence. Obviously, this is not enough to cope with newly-developed cross-Strait criminalities.

(3) The procedure of repatriation is too complicated: According to the repatriation process stipulated in "Kinmen Agreement", one party is supposed to offer

---

<sup>87</sup> Police Internet Newsletter. December 5, 2005.

information to the other, and the informed one shall reply within 20 days, followed by the repatriation of the agreed time and place. Both sides should take the Red Cross dedicated vessels. These vessels should follow the guiding civilian vessels in the agreed location. No matter repatriating vessels or guiding boats, the Red Cross flag should be hung, and other banners or mark shall not be used. When the repatriation process is conducted, the representative for signing certificate should be the one who is informed to the other party in advance. Besides, the sites of repatriation are limited to Kinmen or Matsu to Mawei or Xiamen, even if the suspects are seized in northern region of China. These rules have increased unnecessary trouble.

(4) Cooperation mechanisms are unstable: the "Kinmen Agreement" is signed by civil organizations of Taiwan and China. It is not official and has no real binding force to the governments of both sides. Each side can only rely on cooperation and coordination of goodwill of the other side, and can not rely on the effectiveness of the agreement itself.<sup>88</sup> Such cooperation often varies due to unstable cross-Strait relations. For example, from July 1999 to February 2000, due to cross-Strait tensions, the SEF and ARATS negotiation channels were disrupted, as well as bilateral cooperation in combating crime, stopping up to eight months.

In summary, there were many problems of cross-Strait cooperation, due to a fundamental lack of stability and institutionalization of the cooperation mechanisms before the "Nanjing Agreement" was signed. This phenomenon seriously affected the effectiveness of cross-Strait cooperation in crime-striking actions.

---

<sup>88</sup> Tang Rong-Zhi, Tao Xu-Dong, Li A-Ji(1999), *The Feasibility Study for the Issue of Mutual Legal Assistance across the Taiwan Strait*, Fujian Institute of Law, p.72

## 5. CONTENTS AND IMPACTS OF “NANJING AGREEMENT”

### 5.1 Main Contents and the Actual Operational Processes

On April 26, 2009, SEF Chairman Chiang Pin-Kung and ARATS President Chen Yun-Lin, signed the "Cross-Strait Cooperation in Combating Crimes and Mutual Legal Assistance Agreement" in Nanjing. In the same year on June 25, the “Nanjing Agreement” took effect automatically. This agreement is divided into five chapters and 24 articles. The first chapter stipulates general principles, including norms of co-operation, business communication, subject for contact and other matters. The second chapter stipulates matters of cooperation in combating crimes, including scope of cooperation, assistance of detection, repatriation, etc. The third chapter stipulates content of mutual legal assistance, including delivery of legal documents, investigation and evidence collection, transfer of loot, recognition of judgment, transfer of criminals, and humanitarian visiting. Chapter Four stipulates processes of request, including submission and execution of request, non-assistance, confidentiality obligations, restrictions on use, mutual exemption of notarization, document format, and cost of assistance. Chapter Five is Supplementary Provisions, stipulating the execution and altering of the agreement, dispute resolution and other issues. Main content and the actual operation of the process of “Nanjing Agreement” hereby are stated separately as follows:

#### 1. Subject for contact

The issue of subject for contact can be considered the most complicated part of this agreement. Article Three stipulates the subject for contact of both sides. The subject for contact is divided into three levels. The first level refers to the SEF and the ARATS, which are the subjects signing the contract. They represent the Mainland Affairs Council of Taiwan and the Taiwan Affairs Office of mainland China

respectively. The second level refers to the Ministry of Justice (of Taiwan) and the Ministry of Public Security, Supreme People's Procuratorate, Supreme People's Court and the Ministry of Justice (of mainland China). They are responsible for operation and execution. The third level refers to the authorized organs, such as: Investigation Bureau, National Police Administration (Criminal Police), Coast Guard, National Immigration Agency, Customs and other financial institutions. They are all responsible for business exchanges.

## 2. Scope of cooperation

Article Four adopts the principle of "dual criminality" in common international judicial mutual assistance, and lists the scope of bilateral cooperation to combat crime. But there is an exception in paragraph three. This paragraph states: "For the behavior which is regarded as a suspected crime in one party but not in the other, as long as it will significantly harm the society, this case can be mutually assisted after both sides agreed", in order to create the possibility of flexible cooperation across the Taiwan Strait.

## 3. Process of intelligence exchange

Article 5 stipulates that the two sides agree to exchange intelligence and cooperation for the investigation of crime. "Criminal intelligence" means information or intelligence relevant to the crime. Collection and use of the information and intelligence must be in accordance with relevant laws and regulations to protect the fundamental rights of the people and to avoid undue infringement.

Intelligence has the characteristics of urgent, fine, and red tape. For the maintenance of channels and methods of exchange of intelligence of judicial police or other authorities before signing "Nanjing Agreement", the Ministry of Justice in Taiwan has authorized the judicial police and the relevant administrative authorities (limited to the central level) to carry out criminal intelligence matters or major message exchange

operations directly with the mainland counterpart. For the time being, the China Ministry of Public Security is the main agency for intelligence exchange.

The result of intelligence sharing should be reported to Ministry of Justice and notify the National Security Bureau. If the exchange for intelligence is related to the case under investigation, the judicial police should report to the prosecutor.

#### 4. Process of arresting and repatriation

(1) Article 6, paragraph 1 provides that the implementation of the repatriation operation should be "in accordance with principles of humanitarian, security, fast and convenience. Sea or air transportation means are added on the original basis". That means sites for repatriation of criminals are not limited to Fujian Province; instead they are expanded to all flight points within the "three direct links". As a result, repatriation will be much more convenient and time-saving than the mode under the "Kinmen Agreement". However, the repatriation of the people staying without permission and illegal immigrants still apply for the "Kinmen Agreement".

(2) For convention of international mutual legal assistance on criminal matters, military prisoners, political prisoners, religious prisoners, nationals should not be repatriated. Due to special cross-Strait relations, it is difficult to write these words into the content of all text. So article 6, paragraph 3 states: "if the requested party thinks there are special circumstances such as affecting the interests of people or other major concerns, the requested party could decide to repatriate the criminal or not". This paragraph can keep flexible space for the requested party. Some scholars assert special agents of intelligence and condemned criminals shall not be repatriated either.

#### 5. Process of investigation and evidence gathering

(1) Article Eight of "Nanjing Agreement" states: "The two sides agree to conduct mutual assistance of investigation and evidence collection in accordance with the provisions of one's own laws, including acquirement of testimony and statements; to

provide documentary evidence, physical evidence and audio-visual information; to confirm the residence of the person or to confirm his identity; inquest, identification, inspection, visits, investigations, search and seizure, etc". Basically, this article covers all the evidence and investigation activities of all types of routine investigation and evidence gathering projects.

(2) Article 8, paragraph 2 states: "The requested party should try his best to provide assistance in the form required by the requester, if it does not violate his own rules". This means that both sides can request the other party according to this article to help investigate and collect evidence. The evidences submitted by both sides should pass preliminary examination. So article 18 provides that this evidence enjoys mutual exemption of certification and would not require any form of proof.

(3) Article Fourteen, paragraph 2, provides that if the execution of the request would prejudice the ongoing investigation, prosecution or judicial proceeding, the requester may suspend assistance and explain to the requester.

#### 6. Process of delivery of legal document

Subjects of delivery of documents are Ministry of Justice (Taiwan) and the Supreme People's Court (China). Due to a shortage of manpower in the Ministry of Justice, sometimes SEF will help make it.

#### 7. Recognition of judgment

(1) Article 10 of "Nanjing Agreement" stipulates that on the basis of the principle of reciprocity, as long as it is not contrary to public order or good customs, civil decree and arbitration should be mutually recognized and executed.

(2) Taiwan adopts different standards of recognition towards civil decree of mainland China and that of other foreign countries. According to the "Code of Civil Procedure," Article 402 stipulates that Taiwan's law system for foreign decree adopts "automatic recognition system". If there is not any circumstance listed in Article 402



of the "Code of Civil Procedure", the court will not conduct substantive review towards the decree, recognizing that it has the same effect as that made by Taiwan's court. As for the decree made by mainland China, according to Article 74 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area", Taiwan court adopts the "rule recognized system". The press release of Judicial Yuan on June 19, 2009, states that "If the decree confirmed in mainland China would be enforced in Taiwan, the litigant should apply for the recognition of Taiwan court. The decree would be enforced after Taiwan court recognizes it. If the court does not recognize it, it should not be enforced. Recognize it or not depends on whether the decree breaches public order or good morals of Taiwan". As mentioned earlier, mainland China and Taiwan still have different opinions over this issue. There is not a unified standard of recognition of mainland China decree.

#### 8. Transfer of the offender

(1) Article 11 of "Nanjing Agreement" provides: "The two sides agree on principle of humanitarian and reciprocity, transferring the sentenced person if the requested party and the sentenced person both agree".

(2) Article 9 of "Criminal Law" states: "In spite of the same act is judged by a foreign court, it should still be judged by this law. If he or she has been enforced penalty in a foreign country, this person may be exempt from all or part of the enforcement of sentence". Mainland China is not regarded as a "foreign state" and therefore can not apply to Article 9 of "Criminal Law". In response to the special cross-Strait situation, Article 75 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" stipulates: "If he or she commit a crime in the mainland or in the mainland ship or aircraft, this person should still be judged according to the law, even he or she has enforced the penalty. But the convict may be exempt from all or part of its enforcement of penalty."

## 9. Significant information reporting and humanitarian visit

(1) Article 12 of the "Nanjing Agreement" stipulates that both sides should report information of nationals of the other side who have been arrested, non-illness death or suspected non-illness death, and approve a humanitarian visit.

(2) When Taiwan authorities want to know about Taiwanese who have been arrested in mainland China, they often contact the Public Security Ministry and the Ministry of Justice of China, in order to understand the reasons and place for detention, the course of events, and the relevant procedures. Prisoners in the mainland and their relatives in Taiwan also hope the Government can take care of their bail, parole for medical treatment, and other legal rights. On non-illness or suspicious non-illness deaths, such as people on both sides traveling across the strait and experiencing accidents or other incidents, the contact window of both sides should inform the other under article 12, contacting the family, offering legal assistance, and helping them go to the mainland (Taiwan).

## 10. Circumstances of refusal or suspension of assistance

In the premise of "in accordance with provisions of the side" in "Nanjing Agreement", there is some space for both parties dealing with specific cases. The "Nanjing Agreement" stipulates conditions in which one party can refuse or suspend assistance. They are stated in the following provisions:

(1) Article 4, paragraph 3: "One party regards that as a crime, the other party does not, but it is still a major threat to society, the requested party may offer exclusive assistance if both sides agree".

(2) Article 6, paragraph 3: " If the requested party thinks there are special circumstances such as affecting the interests of people or other major concerns, the requested party could decide to repatriate the criminal or not".

(3) Article 8, paragraph 2: "The requested party should try his best to provide assistance in the form required by the requester, if it does not violate his own rules".

(4) Article 14, paragraph 2, "If the execution of the request would prejudice the ongoing investigation, prosecution or judicial proceedings, the requested party may suspend the provision of assistance and explain to the requester."

(5) Article 15: "The two sides agree that if content of the request does not meet one's own regulations or execution of the request would prejudice the public interest or morals of one's own and other circumstances, the requested party may not provide assistance and explain to the requester".

## 5.2 *Characteristics and Legal Status*

Undoubtedly, cross-Strait mutual legal assistance is strongly needed. Even during the period in which cross-Strait negotiations have been suspended, the research of mutual legal assistance has not been interrupted. What on earth is the legal characteristic of the cross-Strait agreements? Are they international agreements, treaties, or quasi international agreements, treaties, or public laws? Actually it depends on the definition of both sides.

### 1. Assertion of Taiwan

Interpretation No. 329 of Council of Grand Justice, Judicial Yuan states: "The treaty defined in the Constitution means international agreement concluded by the Republic of China and other countries or organizations, including those using the name of the treaty, convention or agreement, and the contents are directly related to important affairs of the state or rights or obligations of the people and has legal effect. Those contracts, whose titles are treaty, convention, or agreement with the approval provisions, should certainly be sent to go through the Legislative Yuan. The rest of the international agreements, except those authorized by law or agreed by the

Legislative Yuan in advance, or its contents are identical with the domestic law, should be sent to the Legislative Yuan for review". According to the Constitution and Constitutional Amendments, cross-Strait relations are not "international relations", nor "domestic relations. Therefore, the agreement signed by the two sides is not the treaty which Constitutional refers to. It is not equivalent to the written agreement of international treaties either. Article 5, paragraph 2 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area" states: Cross-Strait agreement which is related to the amendment of the law or shall be prescribed by law, should be submitted to the Executive Yuan and transferred to the Legislative Yuan for review within 30 days. If the agreement is not related to amending the law and to the rights and obligations of people, it can be regarded as an executive order. The dealing institution should only report it to the Executive Yuan for approval. But out of respect for the right of supervising of Congress, the agreement will also be submitted to the Legislative Yuan for reference.

## 2. Assertion of mainland China

Compared with Taiwan, mainland China has a more consistent view on cross-Strait agreements. The mainland thinks the agreement is stipulating affairs about "interregional mutual legal assistance" under the concept of "one country, two systems, three legal systems, four jurisdictions". This concept produces the following characteristics:

- (1) Does not apply the principle of national sovereignty.
- (2) Simplifying procedures of international mutual assistance in criminal matters.
- (3) Fully respects the legal system of each jurisdiction.

From the above cross-Strait perspective of Taiwan and mainland China, there are still great differences between the two sides, and these differences are difficult to solve by negotiations. At the moment, when Taiwan and mainland China are dealing

with meetings like "Jiang Chen talk", they will shelve disputes, escaping political positions in the framework. The "Nanjing Agreement" is a good example. For example, there are usually terms such as "reciprocal" and "national treatment" in prefaces of international agreements. In order to avoid trouble, such terms are deleted in the "Nanjing Agreement". Furthermore, Taiwan and China also follow the "Kinmen Agreement" precedent, using "repatriation" instead of "extradition", which can be acceptable to mainland China. Because the two sides have the consensus for de-politicization, Taiwan and mainland China realized the normalization and institutionalization of mutual legal assistance.

### 5.3 Impacts of "Nanjing Agreement"

The "Nanjing Agreement" is basically drawn up with reference to the "Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan ", but it is still different from other international mutual legal assistance agreements, due to the special political situation between the two sides, and contents of cooperation in combating crimes stipulated in it. Basically, after the signing of this agreement, the judiciary departments of Taiwan and mainland China have established a cross-Strait direct, formal, institutionalized cooperation, symbolizing the beginning of a deeper level of cross-Strait cooperation in the judicial field. Accompanying the implementation of the "Nanjing Agreement", the condition of cross-Strait mutual legal assistance and joint crime-striking actions has been changed as follows:

1. From indirect cooperation to direct cooperation: before the signing of the "Nanjing Agreement", cross-Strait cooperation on fighting crime was executed in an informal, indirect way due to the lack of legal basis. Because this kind of cooperation is continually affected by many external factors, cross-Strait cooperation against crime remains ineffective. Article Three of the "Nanjing Agreement" clearly stipulates

that the subjects for cross-Strait contact refer to "the contact designated by authorities in charge". That means both sides have direct contact in the judiciary department. Coordination through the intermediary of other units is no longer need. Both sides of Taiwan Strait can enter a new type of direct cooperation.

2. Single aspect into diversification: cross-Strait cooperation in combating crimes in the past was limited to assistance in arresting criminals and repatriation of criminal suspects. Other cross-Strait crackdown action is rare. The "Nanjing Agreement" covers the basic mutual assistance in criminal and civil matters, diversifying cross-Strait cooperation in combating crime and mutual legal assistance.

3. Expansion of joint crime-striking levels: cross-Strait crimes have happened more and more frequently in recent years, and the skills and tactics are changing. In the past, the judicial police of both sides of the Taiwan Strait only cooperated on fighting major criminal offenses, such as drug trafficking, crimes at sea, and hijacking. According to Article Four of the "Nanjing Agreement", the most serious crimes, economic crime, and corruption are all included in the scope of cross-Strait cooperation in combating crime, and "other crimes" are also included. Now judicial police have legal basis for cross-Strait cooperation in combating crimes, and the items are also increased significantly.

4. Simplification of repatriation procedures: Article Six of "Nanjing Agreement" stipulates that repatriation should follow the principles of quick and convenient. Repatriation can be implemented without participation of the Red Cross or the SEF and ARATS. So efficiency is significantly elevated. During the implementation of the procedures, judicial documents do not have to go through substantive review, and arrest warrants are not required. Moreover, sites for repatriation from the mainland are not limited to Xiamen or Mawei. In the case of cross-Strait direct flights, efficiency is apparently improved.

5. Active crime-striking actions: Article Five of the "Nanjing Agreement" stipulates the cross-Strait exchange of criminal intelligence and cooperation for investigation of crime. After a mechanism of exchange of information is established, the content of cross-Strait cooperation can be expanded and deepened to form a comprehensive, multi-level exchange, so that both sides can grasp the overall situation, and the exchange of information will help crack down on cross-Strait crime and prevent future crime.

#### *5.4 Follow-up Legislation*

The "Nanjing Agreement" could be classified as framework agreement, stipulating the direction and spirit of the cooperation in combating crimes and mutual legal assistance, not the details of real execution. For making the provisions of the "Nanjing Agreement" into action, both sides have to legislate on the basis of the spirit of this agreement.

For promoting cross-Strait cooperation in fighting crimes and mutual legal assistance, our government has completed five draft Guidelines, including: "Guidelines for the Exchange of Intelligence", "Guidelines for the Repatriation of Arrested People," "Guidelines for Investigation and Evidence Collection," "Guidelines for Delivery of Documents" and " Guidelines for Transfer of Criminals", all of which are under deliberation of Executive Yuan now.

On May 14, 2009, mainland China promulgated the "Supplementary Provision of Recognition of People's Court over Civil Judgments of Taiwan Courts", to adapt provisions of recognition of the civil judgments in "Nanjing Agreement". This provision expressly confirms that civil judgments of Taiwan have legal power in China courts. The trial would not be held again unless there is new evidence or

something different. That is, "non bis in idem."<sup>89</sup>

### *5.5 Negative Comments*

Generally speaking, officials, Dharma Realm and many police units of Taiwan and mainland China hold positive attitude towards "Nanjing Agreement", asserting that signing this agreement would facilitate cross-Strait cooperation in combating crimes. According to the release of the poll by Mainland Affairs Council in April, 2010, 79.6% of support the Taiwan and mainland China process consultations on cooperation in combating crimes and signing an agreement to resolve the problems of judicial investigation and repatriation of prisoners.<sup>90</sup> We can suppose that Taiwan's public opinion has high expectations for the "Nanjing Agreement".

Although the mainstream of public opinions expects the "Nanjing Agreement" to bring positive effects to cross-Strait mutual legal assistance in fighting crime, some scholars and opposition parties in Taiwan have different views towards the "Nanjing Agreement". Negative effects towards "Nanjing Agreement" are stated separately as follows:

1. Taiwan courts could become China's accomplice for oppressing Taiwanese businessmen.

Taiwan's largest opposition party, the Democratic Progressive Party, thinks the quality, system, and culture of justice of both sides are very different, and the difference would jeopardize our judicial basis. Article 10 of "Nanjing Agreement", "recognition of judgment," states that "on the basis of the principle of reciprocity, as long as it is not contrary to public order or good customs, civil decree and arbitration should be mutually recognized and executed ". However, judges of mainland China

---

<sup>89</sup> Aforementioned footnote 6

<sup>90</sup> Available at: <http://www.sef.org.tw/ct.asp?xItem=50645&ctNode=4287&mp=37>. Date of logging on: 04/03/2011.



are usually not qualified, and Chinese courts are ruled by man instead of by law. The judiciary often loses its independence and impartiality. Once Taiwan businessmen encounter lawsuits in China, they often become lambs to the slaughter. If this agreement is implemented, the Chinese court's decision will also have res judicata in Taiwan. Taiwan courts have to approve judgments made by China courts, and then become Taiwan "Executive Department" of China courts; this is tantamount to helping China persecute Taiwanese.

## 2. The model of document delivery has dwarfed Taiwan's status.

Former DPP spokesman Cheng Wen-Tsan pointed out that article Seven of "Nanjing Agreement", stipulating "delivery of documents", stated that delivery of judicial documents should be "in accordance with one's own regulation". According to international norms, the delivery of judicial documents should be done by diplomatic departments (the embassy or the office in charge of diplomatic affairs). For the time being, China adopts the "court to court" model to convey legal documents to Hong Kong and Macao. If China deals with delivery of legal documents "in accordance with one's own regulation" and adopts "court to court" model towards Taiwan, the SEF and ARATS will be skipped, and Taiwan will have equal status as Hong Kong and Macao. So this is a major deficiency.<sup>91</sup>

## 3. The ineffectiveness of repatriation

Some scholars believe that part of the cross-Strait cooperation in "Nanjing Agreement" originally had existed before it was signed. The agreement only slightly expanded the content of cross-Strait judicial cooperation and made it explicit. The main influence of this agreement depends on the effectiveness of repatriation.

---

<sup>91</sup> Available at: <http://www.libertytimes.com.tw/2009/new/apr/30/today-p4.htm>. Date of logging on: 04/03/2011.

Since the two sides opened up to each other, the trend of the perpetrators fleeing to United States to circumvent prosecution has gradually transferred to China. While Taiwan and China do not recognize the sovereignty of each other, there was little mutual legal assistance between them in the past, and mechanisms of crime prevention were vulnerable. That is why repatriation of prisoners became the main subject of negotiation of “Nanjing Agreement”. However, whether repatriation is successful or not still relies on the decision of requested party. In the present situation, the number of people fleeing from Taiwan to the other side is much more than the number of those fleeing from mainland China to Taiwan. Therefore, China is the party who can decide. If Taiwan asks mainland China to repatriate some criminals who have made considerable contributions to the mainland's economic or political status, mainland China may refuse, saying it will undermine the principles of humanity or other public orders. If this agreement can only contribute to the repatriation of some people who did not commit a major crime, while turning a blind eye to the others, then such an agreement can not meet our expectations.

4. Religious prisoners and political prisoners could be a problem in the future. Article Four of the “Nanjing Agreement” expressly provided “for the behavior which is not regarded as a crime in one party, as long as it will significantly harm the society, both sides can offer assistance if they agree”. Such agreement has not only violated the principle of dual criminality, it has also likely made Taiwan help to persecute and repatriate political criminals or exiles. Article 300, paragraph 1 in Criminal Law of China, provided that “people who organize and utilize secret societies, cults and superstition damaging the country and laws, must be sentenced from three to seven year’s imprisonment”. Based on the protection of freedom of belief, there is not so-called cult stipulated in Taiwan criminal law. If China requests Taiwan to repatriate Falun Gong practitioners, Taiwan invariably must turn down such a request on

humanitarian reasons. But the results of such a refusal would inevitably make it harder for Taiwan to request the repatriation of criminals fleeing to mainland China. The institutionalization of the repatriation program will go back to the negotiating table for the consultation, and this is not the expected result.<sup>92</sup>



---

<sup>92</sup> Available at: <http://www.nownews.com/2009/12/23/142-2549741.htm>. Date of logging on: 04/03/2011.

## 6. ACHIEVEMENTS AND EXISTING PROBLEMS

After the signing of the “Nanjing Agreement”, the two sides have had remarkable achievements in fighting crime and developing mutual legal assistance. But assessing the contribution of this agreement and transforming it into quantitative data is difficult. This study will compare some indicators from before the signing of the agreement and from after it. Furthermore, this study will discuss real cases and evaluate direct benefits for both Taiwan and mainland China.

### *6.1 Achievements in Cooperation in Combating Crimes*

According to the statistics of the MAC, from June 25, 2009 to the end of February, 2010, Taiwan and mainland China have jointly detected criminal cases of fraud (12 cases, 357 people), drugs (1 case, 2 people), and kidnapping (2 cases, 9 people), totaling 15 cases. From these cases, they arrested 368 suspects (280 Taiwanese and 88 mainland Chinese), including 12 cases of telecommunications fraud, arresting 357 suspects (273 Taiwanese and 84 mainland Chinese), demonstrating that cross-Strait cooperation in fighting crime has remarkable results.<sup>93</sup>

Before the signing of the "Nanjing Agreement", the judicial police institutions of both sides did not have intelligence exchange channels or mechanisms. Sometimes Taiwan police institutions detected a criminal group in Taiwan, but the victims were mainly living in the mainland, or criminal groups were in the mainland, but the victims were in Taiwan. Sometimes police even seized the offender, but they could not find the victims, because it was difficult to execute cross-Strait exchanges of criminal intelligence. However, with the signing of the "Nanjing Agreement", there

---

<sup>93</sup> Available at: <http://www.mac.gov.tw/ct.asp?xItem=75517&ctNode=6409&mp=1>. Date of logging on: 04/03/2011.

are regulations about delivery of documents, investigation and evidence collection, etc. Those problems could be significantly reduced.

Police detected the He Fu-Ren fraud group in Pingtung County in May of this year. The criminal group usually impersonated mainland China police or prosecutors, and made phone calls from Taiwan to mainland residents. After being arrested, the suspects admitted that they found that Taiwan police could not easily trace the victims on the other side of Taiwan Strait, so the mainland residents became their prey. In this case Taiwan police has asked the Public Security of the PRC to investigate dummy accounts and victims on the basis of the "Nanjing Agreement". Taiwan police will obtain relevant information soon.<sup>94</sup>

## *6.2 Achievement of Mutual Legal Assistance*

According to MAC statistics, since June 25, 2009, from the day the "Nanjing Agreement" took effect, to the end of February, 2010, the two sides have carried out more than 5,000 requests for mutual legal assistance, including repatriation on both sides, intelligence exchange, investigation and evidence collection, transfer of criminals, major information communication, business communication, delivery of litigation documents, etc.<sup>95</sup>, far exceeding the "Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan", which has only 73 cases over 7 years. When the counselor of Ministry of Justice, Chen Wen-Qi, was interviewed on Radio Taiwan International on May 21, 2010, he pointed out that the cross-Strait mutual legal assistance has more than 7,000 cases so far.<sup>96</sup> The statistics

---

<sup>94</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100522/78/263u5.html>. Date of logging on: 06/08/2010.

<sup>95</sup> Available at: <http://www.mac.gov.tw/ct.asp?xItem=75517&ctNode=6409&mp=1>. Date of logging on: 04/03/2011.

<sup>96</sup> Available at: [http://www.rti.org.tw/radio/Program/Program\\_DispatchContent.aspx?ProgID=294&DispatchID=26932](http://www.rti.org.tw/radio/Program/Program_DispatchContent.aspx?ProgID=294&DispatchID=26932). Date of logging on: 04/03/2011.

prove the rapid progress of cross-Strait mutual legal assistance.<sup>97</sup>

The eye-catching cases can be stated separately as follows:

1. Repatriation of criminals

As mentioned earlier, from 1990 to May 31, 2008, a period of about 19 years, 168 wanted suspects and criminals were sent back from mainland China to Taiwan on the basis of the "Kinmen Agreement". In comparison, the Ministry of Justice pointed out that from June 25, 2009, the day the "Nanjing Agreement" took effect, to the end of May, 2010, there have been 35 wanted criminals repatriated back to Taiwan within only 11 months, including people suspected of being involved in fraud, kidnapping, narcotics, and other crimes. Compared with the figure in the past, the "Nanjing Agreement" has significantly improved the effectiveness of cross-Strait repatriation.<sup>98</sup>

Hsu Yang-Rong, who fled to the mainland after committing murder in Kaohsiung in March, 2009, and was repatriated in June by the mainland, can be described as one of the important indicators. In the past, repatriated people from mainland China to Taiwan were mostly those who entered China illegally, or violated the law in China and then were repatriated after serving their sentences on the mainland. Otherwise, the repatriated people would still be on the most-wanted lists of Taiwan. In this case, Hsu Yang-Rong flew to China after the incident, and during his time in China he did not violate the law. What's more, Taiwan judicial institutions had not yet officially put Hsu on the wanted list, meaning that in accordance with established practice, Hsu was not classified as one who should be repatriated by the mainland. Before the signing of the "Nanjing Agreement", the mainland would not take the initiative to conduct investigations of this kind of case, and the mainland had no obligation to arrest or

---

<sup>97</sup> Available at: <http://dailynews.sina.com/bg/tw/twlocal/cna/20091218/2354974790.html>. Date of logging on: 04/03/2011.

<sup>98</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100528/78/26fyv.html>. Date of logging on: 06/09/2010.

return Hsu. But in this case the mainland quickly and immediately arrested Hsu and repatriated him to Taiwan. It can prove that the "Nanjing Agreement" makes a substantial contribution to cross-Strait repatriation.<sup>99</sup>

Furthermore, after the "Nanjing Agreement", the sites of repatriation are no longer limited to Matsu to Mawei or Kinmen to Xiamen. On May 28, 2009, the mainland repatriated Liu Kai-Qi, the former trustee of Hua-Xiang Technology Co. Ltd., from directly from Shanghai to Taoyuan.<sup>100</sup> Another wanted suspect of drug crimes and robbery, Lin Tai-I, was also repatriated from Changsha, Hunan, to Taiwan.<sup>101</sup> From these cases, we can expect that direct flight will become the main method of cross-Strait repatriation, and it will greatly increase timeliness and convenience.

## 2. Transfer of the offender

On April 21, 2010, special agents of Investigation Bureau of Taiwan escorted inmate Feng Li-Xin from Xiamen to Taiwan, so he could continue serving his sentence here. This set the first example of transfer of an offender according to the "Nanjing Agreement". In March, 2009, Feng was sentenced to life imprisonment for drug smuggling in the mainland. He was originally serving his penalty in China early this year. Because he suffered from throat cancer with pulmonary metastasis, coupled with thalassemia disease, his family members asked the Ministry of Justice, Mainland Affairs Council and the SEF for help. Finally Feng was returned to Taiwan. According to article 11 of the "Nanjing Agreement", he will be sent back to Taiwan, serving the sentence and receiving medical care. After returning Feng to Taiwan, prosecutors decided that Feng was in serious condition and could not be imprisoned, so they

---

<sup>99</sup> United Daily News(June 6, 2009), p. B2, synthetic news of Kaohsiung.

<sup>100</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100529/1/26imw.html>. Date of logging on: 06/09/2010.

<sup>101</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100604/5/26wc5.html>. Date of logging on: 06/09/2010.

decided to restrict him from leaving the country, demanding his family members take care of Feng Li-Xin and report his condition daily to police. According to the data of the Ministry of Justice, Taiwan received a total of 141 requests to return criminals from the mainland, and Feng is the first successful case.<sup>102</sup>

### 3. Investigation and evidence collecting

In the financial reform scandal case of former President Chen Shui-Bian, the defendant Qiu De-Xin, financial president of China Development LTD co., was sued for helping to launder overseas money for Chen's family. Qiu asked the court for the remote video questioning of two witnesses Liu Xiao-Ning, Pan Jian-Hua, who are the owners of dummy accounts and living in Hong Kong. On May 10 this year, after hearing the discussion, the presiding judge of the court Zhou Zhan-Chun thought that Hong Kong is only an area, not a state. Since Taiwan and China have signed agreements on mutual legal assistance in combating crime, Zhou suggested that "commissioned interrogation" methods be used to enable the witness in Shenzhen, Guangdong, to be questioned by the court. Then the testimony could be sent back to Taiwan. After that, the testimony will have legal effect. If Qiu De-Xin's lawyer agrees, two witnesses will go to the mainland and be interrogated. That will be the first case in which a witness is interrogated by a mainland China court at the request of a Taiwan court after the signing of "Nanjing Agreement".<sup>103</sup>

### 6.3 Existing Problems

Although Taiwan and China successfully signed the "Nanjing Agreement", which played a considerable role in combating crimes and promoting mutual legal assistance, there are still many factors that become obstacles to implementation of the

---

<sup>102</sup> United Daily News. April 22, 2010.

<sup>103</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100511/4/25fo1.html>. Date of logging on: 06/09/2010.



agreement, including the efficiency of implementation of the agreement and the agreement itself. Those can be stated separately as follows:

1. The legal status and content of the agreement

The signing subjects of the "Nanjing Agreement", the SEF and the ARATS, which are officially authorized, are still civil institutions. The agreement they signed is only regarded as some kind of trend of cooperation of public power, not treaties, conventions, etc., which are legally binding. For the judiciary departments of Taiwan and mainland China, the "Nanjing Agreement" is not a law. Law enforcement is not obligated to implement it. This agreement would be legally binding after further legislation or amending of relevant laws. The "Nanjing Agreement" can not be fully legalized unless the Legislative Yuan draws up laws or acts of cross-Strait mutual legal assistance based on it.

2. The differences in legal systems of Taiwan and mainland China

Article Four of the "Nanjing Agreement" stipulated the scope of cross-Strait cooperation in combating crimes, adopting the principle of "dual criminality". Due to the difference between laws of the two parties, the third paragraph of this article provides that "for the behavior which is not regarded as a crime in one party, as long as it will significantly harm the society, both sides agreed to negotiate to assist in the case". While this provision may be helpful to resolve problems deriving from the legal differences between Taiwan and mainland China, as mentioned above, there will still be problems if the mainland asks our assistance in the repatriation of political or religious suspects.

Besides, differences in litigation systems also affect mutual legal assistance. Taiwan revised its "Law of Criminal Procedure" in 2002, emphasizing the "principle of words and directness" of the evidence. But in fact, legal assistance is usually indirect. Legal effect of the evidence obtained through legal assistance is worth

exploring. Article 159 of "Law of Criminal Procedure" provides that "testimony of witnesses stated outside the trial shall not be used as evidence, unless other laws permit". If the provision is concerned, witness testimony obtained on the basis of mutual legal assistance, including by the Public Security of the mainland and Taiwan judicial police investigating in the mainland, is likely to cause controversy, because the witness does not pledge in the trial.

### 3. Ineffective repatriation of eye-catching offenders

Ever since Taiwan and China signed the "Nanjing Agreement", cross-Strait repatriation has been ongoing, but some eye-catching criminals have not been repatriated yet, such as the World Tuntex Group Chairman Chen You-Hao, former speaker of Kaohsiung City Council Zhu An-Xiong, , former specialist of Lee and Li Attorney's at Law Liu Wei-Jie, former National Security Bureau Colonel Liu Kuan-Chun, former speaker of Legislative Yuan Liu Sung-Fan, and former president of Guan-San Enterprise Group Tseng Cheng-Jen. According to statistics from the Ministry of Justice, from the signing day of the "Nanjing Agreement" until the end of May this year, Taiwan requested repatriation from mainland China 171 times. Thirty five cases were completed, seven were rejected, and 129 are still processing. China has demanded three repatriation cases; two have been completed and one is still processing.<sup>104</sup>

In the opening ceremony of the "20th Anniversary Seminar of Cross-Strait Exchanges of Law ", which was held on March 28 this year, Deputy Justice Minister Wu Chen-Huan publicly said that Taiwan usually responds to the mainland's repatriation requests smoothly and quickly, but China's responses to Taiwanese requests are slower. The repatriated fugitives from the mainland to Taiwan are mainly

---

<sup>104</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100528/78/26fyv.html>. Date of logging on: 06/09/2010.

murderers and other convicts; economic criminals are uncommon.<sup>105</sup>

#### 4. Problems of Taiwanese prisoners in China

Considerable numbers of Taiwan businessmen reside in mainland China. So far mainland China does not offer exact figures on how many Taiwanese in China have been sentenced to imprisonment or detained. There is no progress on the request for humanitarian visits concerning prison sentences or custody cases.. So far, of all the repatriation requests from Taiwan to China for those sentenced by Taiwan's courts, the only person sent back was Feng Li-Xin<sup>106</sup>



---

<sup>105</sup> Available at: <http://tw.news.yahoo.com/article/url/d/a/100328/5/22vh6.html>. Date of logging on: 06/10/2010.

<sup>106</sup> Available at: <http://www.libertytimes.com.tw/2010/new/feb/9/today-fo3.htm>. Date of logging on: 06/09/2010.

## 7. CONCLUSION

The “Nanjing Agreement” is different from similar ones signed by Taiwan before, because the agreement stipulates both cooperation in crime fighting and mutual legal assistance. As a result, after the signing of the “Nanjing Agreement”, these two tasks are apparently improved. For example, according to the agreement, the judicial police of the two sides can conduct criminal intelligence exchange frequently. As a result, judicial police will effectively combat cross-Strait criminal groups, which got away with crimes in the past due to poor cross-Strait interaction. Furthermore, this agreement can produce a deterrence effect on the increasingly rampant cross-Strait crime trends. Moreover, in the aspect of mutual legal assistance, including repatriation and transfer of Taiwanese criminals, the effect is much better than it in the past. These benefits can confirm the positive effect of the "Nanjing Agreement" on cross-Strait cooperation in fighting crimes and implementing mutual legal assistance.

Inevitably, the "Nanjing Agreement" also causes some negative comments, as this study mentioned earlier. However, some of the negative comments seem to be false.

As mentioned above, some people express concern that Taiwan courts would become mere executive offices due to the "Nanjing Agreement". Actually, the "Nanjing Agreement" is a framework, only stipulating the norms of judicial cooperation in cross-Strait direction; implementation is still subject to respective legislations. Article 10 of the “Nanjing Agreement”, "Recognition of Judgment", stipulated that "civil decree and arbitration (arbitration award) should be mutually recognized and executed ". But the real mechanism should follow the laws of Taiwan. According to current law, article 74 of "Act Governing Relations between The People of The Taiwan Area and The Mainland Area", the civil decree of mainland China

would be legally effective in Taiwan only if approved by the Taiwan court. So it only has legal effect of execution. It does not have the same effect of decrees made in Taiwan courts, the *res judicata*. For the time being, Taiwan does not have a new law to decide the legal effect of court judgments made in mainland China, so we should adopt the regulation of the Act mentioned above. As a result, assertion that Taiwan courts will be the Executive Office of China should not happen.

The institution dealing with delivery of documents is another issue the critics argue. According to the agreement, this job is directly dealt with in a “court to court” way. Although the opposition party thinks this method is the same as that of Hong Kong and Macao, it is the only way to simplify legal procedures and save a lot of time. Besides, some people claim that this agreement should have been signed by diplomatic institutions, not SEF or ARATS. At the beginning, both sides wanted to avoid political issues, so the “Nanjing Agreement” was signed by the SEF and ARATS. If any one party has insisted on negotiating through diplomatic institutions, the possibility of signing the agreement would have been zero. Therefore, the criticism of dwarfing Taiwan due to the absence of the Ministry of Foreign Affairs of signing the agreement does not make sense.

Repatriation is still the most important achievement of the “Nanjing Agreement”, and the efficiency of it is always criticized. It is reported that the mainland takes a different attitude towards economic criminal offenders and the other fugitives. The officials of mainland China think the latter fled to the mainland, and after a long time they would probably be linked to local gangsters or other criminals. For the welfare and safety of the society, China’s authority is more willing to arrest those Taiwanese fugitives and return them to Taiwan. But the former in the mainland usually run their business and have some economic influence. They will be helpful to the economy of China. If China’s authority helps Taiwan arrest any Taiwanese economic criminals,

the mainland economy would certainly be affected, causing panic in the Taiwan business region. As a result, the repatriation of heavyweight economic criminals back to Taiwan in the short term is hard to accomplish.<sup>107</sup>

In summary, although there are still shortcomings to be overcome, the "Nanjing Agreement" is really useful to both Taiwan and China, as long as we ignore some political issues. After the signing of the "Nanjing Agreement", cross-Strait cooperation and mutual legal assistance have become better due to the effect of normalization and legalization. President Ma Ying-Jeou had stated that on the basis of the "Nanjing Agreement", public order in Taiwan has become better. We hope that this trend can continue, and that cross-Strait crimes will be eliminated.



---

<sup>107</sup> Available at: <http://tw.nextmedia.com/rnews/article/ArtID/60837/IssueID/20091219/SecID/102>.  
Date of logging on: 06/15/2010.

## References

Bossard, André. (1990). *“Transnational Crime and Criminal Law”*, Chicago, Illinois: The Office of International Criminal Justice/The University of Illinois at Chicago.

Charter of United Nation, clause 1, article 2.

Chen Chen-Fen (2009), “The Impact of Human Trafficking Law on Investigation Practice Regarding Cross-Strait Sexual Trafficking”, *Perspective and Exploration*, Vol. 7, No.4, p.p. 88-96.

Chen Guang-Chi (2002), "Regional Cooperation in the Fight against Corruption", *Study on Regional Criminal Judicial Assistance*, Macao Institute of Justice Prosecutors, p.p. 358-368.

Chen Wen-Qi (2009), *“Opening a New Era of Cross-Strait Mutual Legal Assistance-- Brief Introduction of Cross-Strait Cooperation in Combating Crimes and Mutual Legal Assistance Agreement”*, October 30, 2009, speech in Investigation Bureau, Taipei.

Ching Chi-Ren (2003), “Review and Prospect of Implementation of Taiwan-US Mutual Legal Assistance Agreement”, *Law Series*, No. 129, p.p.135-143.

Convention of United Nations, Model Treaty on Extradition, article 4 and 5, resolution no. 45/116, 14/12/1990.

Criminal Police Internet Newsletter (December 5, 2005).

Editorial Committee of the CPC Central Committee documents (1993), *Selected Works of Deng Xiaoping*, Beijing People's Publishing House.

Gao Ming-Xuan, Wang Xiu-Mei (2000), “Discussion on Content of Conflict over Interregional Jurisdiction of Criminal Matters and Principles of Resolution”, edited in *China International Criminal Law and Criminal Justice Cooperation*, Beijing: Legal Publishing House, p.p.20-42.

Hsieh Li-Kung (2002), "Study on Agreement on Mutual Legal Assistance in Criminal Matters between USA and Taiwan and its Impact to Anti-Transnational Crime", *Journal of Border Police*, Central Police University, No. 1, p.p. 1-24.

Hsieh Li-Kung (2003), "Blue Print of Cross-Strait Mutual Legal Assistance —Draft of Agreement on Mutual Legal Assistance ", *Exploration of Regional Criminal Judicial Assistance in China*, Beijing: Publishing House of Chinese People's Public Security University, p.p.287-293.

Hsieh Li-Kung (2008), "The Establishment of the Mechanism of Cross-Strait Cooperation in Combating Crimes and Amendment of Kinmen Agreement", edited in *Collection of Police Science and Security Management Seminar*, p.p. 383-392.

Jia Qing-Jun (2008), "Study on Mutual Legal Assistance on Criminal Matters Related to Taiwan", *Journal of Beijing's People Police College*, No. 4, p. 44

Jian Jian-Zhang (2001), "Study on Mutual Legal Assistance between Taiwan Strait", *Police Science Series*, Vol. 32, No.1, p.p. 169-190.

Ker Ger-Zhuang (1999), *Study on Foreign and Hong Kong, Macao and Taiwan Criminal Law*, Publishing house of Shanghai Social Science College, p. 56

Lin Yi-Lung, Li Jian-Guang (2000), "Study on Problems of Internet Criminality and Crime Prevention Mechanism ", *Police Science Series*, Vol. 31, No. 1, p.p. 191-216.

Liu Dao-Lun (2009), "Cross-Strait Cooperation in Fighting Crime Problems and Countermeasures", *Taiwan-Related Legal Research, Fujian Laws*, No. 1, overall No. 97, p.p. 62-64

Liu Ming-Te (2009),

[http://www.cdnews.com.tw/cdnews\\_site/docDetail.jsp?coluid=110&docid=10074966](http://www.cdnews.com.tw/cdnews_site/docDetail.jsp?coluid=110&docid=10074966)  
1, Central Network News, April 30, 2009

Liu Qin-Zhang (2009), "Functional Analysis on Cross-Strait Crime Prevention- Study on the re-Construction of Cross-Strait Mutual Legal Assistance in Criminal Matters",



edited in *Collection of Police Science and Security Management Seminar*,  
p.p.353-382

Liu Ya-Ping(1992), *Science of International Criminal Law*, Beijing, China Political and Legal Publishing House.

Ma Jin-Bao (1996), *International Crime and International Criminal Judicial Assistance*, Beijing: Legal Publishing House.

Mu Hong-Yu(2003), “ Thesis of the Nature and Content of Criminal Judicial Assistance in China”, *Exploration of Regional Criminal Judicial Assistance in China*, Beijing: Publishing House of Chinese People's Public Security University, p.p. 38-47.

*People's Procuratorate Semimonthly* (2008), No.19.

Qi Wen-Yuan and Liu Dai-Hua (2004), *Research on International Crime and Transnational Crime*, Beijing University Publishing House.

Shi Jun-Yao(1993), “Review of the Status Quo of Cross-Strait Mutual Assistance on Criminal Matters”, *Criminal Law Journal* (Taipei), Vol. 37, No. 4, p.p. 21-30.

Song Yaw-Ming (2009), “The Execution of International Legal Assistance on Criminal Matters-- Cross-Strait Cooperation in Combating Crimes”, *Perspective and Exploration*, Vol. 7, No. 2, p.p. 81-91.

Tang Rong-Zhi, Tao Xu-Dong , Li A-Ji(1999), *the Feasibility Study for the Issue of Mutual Legal Assistance across the Taiwan Strait*, Fujian Institute of Law.

The Liberty Times (March 6, 2005), p. 17.

Tzeng Chen-I, Shen Dau-Zhen, et al.(2002), *Assessment and Analysis of Feasible Mode of Cross-Strait Cooperation in Combating Crime*, Taipei: Taiwan cross-Strait Exchange Foundation.

United Daily News (April 22, 2010), p.10.

United Daily News (October 12, 1998), p. 13.

Wang Jun-Xiang (2008), "Exploration of China-ASEAN Cooperation Mechanisms to Combat Transnational Crime", Vol. 26, No. 12, *Hebei Law Science*, p.173-174

Wang Tai-Quan, Chen Yueh-Duan (2000), *Laws Related to Cross-Strait Relations*, Taipei: The Chinese Book Co., Ltd.

Wang Zhi-Wen (1996), "Theory of International Civil Legal Assistance and Regional One", *Hua Gang Law Monthly*, No. 24, p.p. 243-258.

Wong Zong-Yao (2004), "Analysis of the Problem of Smuggling and Illegal Immigrants between Taiwan and Mainland China Region", *Police Academy Monthly*, Vol 3, No. 5, p.p. 307-335.

Wu Jing-Fang (1998), "Practice of Cooperation in Combating Crimes of Taiwan and China — Facilitation for the Interregional Mutual Legal Assistance in Criminal Matters between the Two Sides", *Chung-Shing Monthly of Law*, No. 44, p.p. 29-41.

Xiao Huai-Xiang (1993), "Non-Political Cross-Strait Negotiations (2) - Negotiations of the Affairs", *Studies on Communist*, Vol. 19, No. 7, p.p. 105-115.

Xu Fu-Sheng (2009), "Research on Problem and Solution of Cross-Strait jointly Combating Organized Crime", *Collection of Seminar of Police Science and Security Management for Hong Kong, Macao, and the two sides of Taiwan Strait*, p.p. 301-322.

Xu Rui-Shan(2008), "The Current Situation and Problems of Cross-Strait Cooperation in Combating Crimes", *Collection of 2008 Police Studies and Security Management Seminar*, p.p.55-60.

Yang Su-Min, Zhang Xiao-Yi (2009), *Times Weekly*, May 11, 2009.

Zhang Zhi-Hui (1999), *International Criminal Law Theory (supplement)*, Beijing: Publishing House of China University of Politics and Law.

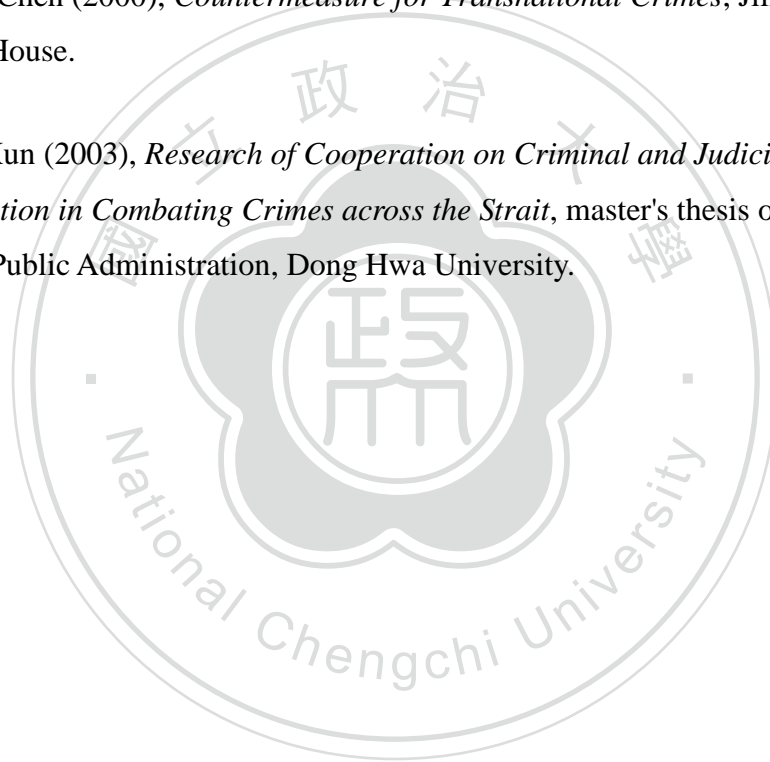
Zhao Bin-Chi, Qian, Yi, and He Shin-Wan (1996), *Punishment and Prevention of Transnational and Regional Crime*, Beijing: China Founder Press.

Zhao Shi-Chen (1996), *Study on International Mutual Legal Assistance in Criminal Matters*”, quoting from” *Research on Mutual Legal Assistance*, Beijing: Legal Publishing House.

Zhao Yong-Chen (1994), *International Criminal Law and Mutual Legal Assistance*, Beijing: Legal Publishing House.

Zhao Yong-Chen (2000), *Countermeasure for Transnational Crimes*, Jilin People’s Publishing House.

Zhong De-Xun (2003), *Research of Cooperation on Criminal and Judicial Issues and the Cooperation in Combating Crimes across the Strait*, master's thesis of National Institute of Public Administration, Dong Hwa University.



## **Appendix**

### ***Agreement on Cross-Strait Cooperation in Combating Crimes and Mutual Legal Assistance***

*To protect the rights of the people across the Taiwan Strait and to safeguard the order of cross-Strait exchanges, the Straits Exchange Foundation and Association for Relations Across the Taiwan Strait, discuss the issue of the cross-Strait cooperation in combating crimes and mutual legal assistance and contact, through equal consultations, agreed as follows:*

#### ***Chapter I, General Provisions***

##### ***1, Cooperation Matters***

*The two sides agreed to provide the following assistance of each other in civil and criminal matters:*

- (A) Cooperation in combating crimes;*
- (B) Delivery of documents;*
- (C) Investigation and evidence gathering;*
- (D) Recognition and enforcement of civil judges and arbitration (arbitration award);*
- (E) Return (transfer) criminal (sentenced person);*
- (F) Other cooperation matters the two parties agree with.*

##### ***2, Business Exchanges***

*Both sides agreed officials of departments in charge to conduct regular working meetings, reciprocal visits, cooperation in professional training, exchange of the system and norm, documents for judgment and other relevant information.*

##### ***3, Subjects for Contact***

*Matter of this Agreement agreed by the parties should be contacted and implemented*

*by the contact designated by authorities in charge. Necessary, by mutual agreement, both sides can designate other units for contacting.*

*Other relevant matters in this Agreement would be contacted by the Straits Exchange Foundation and Association for Relations Across the Taiwan Strait.*

## **Chapter II, Cooperation in Combating Crimes**

### *4, the Scope of Cooperation*

*The two sides agreed to take measures to fight against acts which both sides allege under suspicion of crime.*

*The two sides agreed to focus on fighting against crimes as the following:*

*(A) involving murder, robbery, kidnapping, smuggling, firearms, drugs, human trafficking, illegal migration and cross-border organized crime and other major crimes;*

*(B) encroachment, breach of trust, fraud, money laundering, counterfeit or altered money and securities, and other economic crimes;*

*(C) corruption, bribery, dereliction of duty and other crimes;*

*(D) seizure of aircraft, ships and other crimes involving terrorism;*

*(E) other criminal offenses.*

*For the behavior which is regarded as a suspected crime in one party but not in the other, as long as it will significantly harm the society, this case can be mutually assisted after both sides agreed.*

### *5, Assistant detection*

*The two sides agreed to exchange information related to crime situation, to help arrest, repatriation of criminals and criminal suspects, and in cooperation with an investigation when necessary.*

### *6, Repatriation*

*The two sides agreed to follow humane, safe, fast, convenient principle, increasing*

*sea or air transportation means on the original basis, executing the repatriation of criminals, criminal suspects, and transferring relevant paper (evidence), signing receipt during taking over.*

*The requested party can execute repatriation after the end of the judicial process if the judicial process.*

*If the requested party thinks there are special circumstances such as affecting the interests of people or other major concerns, the requested party could decide to repatriate or not.*

*The requester should not prosecute behavior of the repatriated person other than the reason the requester submitting to requested side unless the requested party agrees.*

### **Chapter III, Mutual Legal Assistance**

#### **7, Delivery of Documents**

*The two sides agree in accordance with one's own regulation and do their best to deliver judicial documents for each other.*

*The requested party shall help complete delivery within three months from the date of receiving the requesting document.*

*The requested party shall notify the requester of the result, and return the receipt of recipient to the requester in time; if the delivery can not be completed, the requested party shall explain and return the relevant data .*

#### **8, Investigation and Evidence Collection**

*The two sides agreed to conduct mutual assistance of investigation and evidence collection in accordance with the provisions of one's own laws, including the obtaining of testimony and statements; to provide documentary evidence, physical evidence and audio-visual information; to confirm the residence of the person or to confirm his identity; inquest, identification, inspection, visits, investigations; search and seizure, etc..*

*The requested party should try his best to provide assistance in the form required by the requester, if it does not violate his own rules.*

*Relevant evidence obtained by the requested party should be immediately handed over to the requester. But if the requested party has carried out investigations, prosecutions or judicial proceedings will be the exception.*

#### *9, the Transfer of the Loot*

*The two sides agree that if it does not violate one's own context, they shall assist the transfer of income of crime or transform the loot into other valuables with each other.*

#### *10, the Recognition of Judgment*

*On the basis of the principle of reciprocity, as long as it is not contrary to public order or good customs, civil decree and arbitration (arbitration award) should be mutually recognized and executed.*

#### *11, Criminals Take Back (Transfer)*

*The two sides agreed on principle of humanitarian and reciprocity, transfer the sentenced person if the requested party, requester and the sentenced person all agree.*

#### *12, Humanitarian Visits*

*both sides should promptly report information of nationals of the other side who is arrested, non-illness death or suspected non-illness death, and provide humanitarian visit for their families.*

### ***Chapter IV, Request Procedures***

#### *13, the Request*

*The two sides agreed to a request for assistance in writing. However, in urgent situations, the request can be other formats under permission of the requested party, and should be confirmed in writing within ten days.*

*The request shall contain the following: requesting departments, purpose, illustrations, briefs and other materials necessary to execute the request.*

*If the request can not be executed due to the lack of the content of the requesting document, the requested party may ask requester for additional information.*

#### *14, Execution of the Request*

*The two sides agreed to the provisions under this Agreement and your side to help implementation of the other request, and kept abreast of the situation.*

*If the execution of the request would prejudice the ongoing investigation, prosecution or judicial proceeding, the requested party may suspend assistance and explain to the requester.*

*If the requested affairs can not be completed, the requested party should explain to the other side and return relevant information.*

#### *15, not Provide Assistance*

*The two sides agreed that if content of the request does not meet one's own regulations or execution of the request would prejudice the public interest or morals of one's own and other circumstances, the requested party may not provide assistance and explain to the requester.*

#### *16, Obligation of Confidentiality*

*The two sides agreed the relevant information of request to assist and implementation of the request shall be kept confidential, unless the party uses it in accordance with the request.*

#### *17, Restrictions on Use*

*The two sides agreed only use the data provided by the other side according to the purpose contained in the requesting document,, unless both parties have other agreement.*

#### *18, Exemption of Proof with Each Other*

*The two sides agreed these evidences, legal documents and other data requested and assisted according to this agreement enjoy mutual exemption of certification and do*



*not require any form of proof.*

#### *19, Document Format*

*The two sides agreed to use agreed format for the document of submitting the request, replying the request, and informing the results.*

#### *20, the Cost of Assistance*

*Both sides agreed to waive costs execution of the request with each other. However, the Requester shall bear the following costs:*

*(A) appraisal fees;*

*(B) translation, interpretation and transcription costs;*

*(C) expenses for providing assistance to the witnesses and, experts, due to go, stay, leave the requester;*

*(D) any other mutually agreed fees.*

### ***Chapter V, Supplementary Provisions***

#### *21, Implementation and Change of the Agreement*

*The two sides should abide by the agreement.*

*Agreement to change shall be approved by mutual consent, and confirmed in writing.*

#### *22, Dispute Resolution*

*Dispute due to the application of this Agreement shall be resolved as soon as possible through consultation.*

#### *23, Other issues*

*If there are matters not covered in this agreement, both parties can discuss in other way.*

#### *24, Signing and Taking Effect*

*This Agreement will take effect after the two sides complete their own relevant preparations, no later than sixty days since the signing day.*

*The agreement was signed on April 26, four copies, two for each party.*

*Straits Exchange Foundation chairman, Chiang Pin-Kung*

*Association for Relations across the Taiwan Strait President, Chen Yunlin*

