

# The History and Development of Cross-Strait Police Cooperation

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## Abstract

The strategy of policing is a part of public affairs. It is devised according to a country's economic, social, and political levels. Other than law, the policy of police cooperation also depends on the system of social control and culture. The objective of cross-strait police cooperation is to enable maximal mutual assistance to prevent and deter criminal activities. Therefore, to determine the direction of cross-strait police cooperation between Taiwan and mainland China, it is necessary to learn from international and regional judiciary concepts; it also requires analyses of the issue, from setting aside jurisdiction disputes to studying the problem of police cooperation. The promotion of legalizing the cross-strait police cooperation system also strengthens experiences in police exchange, as has been exemplified by the police cooperation strategy of Guangdong, Hong Kong, and Macao, for identifying cooperation options and its developmental direction for the future.

**Keywords:** cross-strait relations; criminal judicial cooperation; policing cooperation

## Introduction

Police cooperation is defined as mutual facilitation, adaption, and support in completing a specific policing task (i.e., criminal, administrative, and security), or police authorities from different countries and regions acting in accordance with domestic law and international conventions, under the coordination of international organizations or mutually signed cooperation agreements establishing a rapport. The most basic definition of police cooperation is in accordance with the spirit of the "Universal Declaration of Human Rights" and the law in different countries; it must ensure and promote the maximal mutual assistance between criminal police to establish and develop all contributions for effectively preventing and deterring criminal activities (INTERPOL website, 2012).

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Since 1949, the Taiwan Strait has been a subject of much confrontation. The cross-strait underwent a “war conflict,” “peaceful confrontations,” and “nongovernmental exchanges” for 26 years, until the decree of martial law in Taiwan was lifted, allowing visits between relatives in 1987. Cross-strait exchanges were subject to the slow planning of the cross-strait policy and the legal system, which adhere to multi-pragmatic people. The development of cross-strait police cooperation aims to establish diplomatic forums in this seemingly incompatible but recurring process.

## **I Assistance of international and regional criminal justice and police cooperation**

International cooperation (assistance) in criminal justice refers to the various forms of cooperation and assistance between different countries in the prosecution of crime. Domestic scholars hold various interpretations toward the meaning of international cooperation in criminal justice. The representative is: International cooperation in criminal justice entails sovereign states assisting or executing certain duties in criminal petition procedures or holding criminal entities accountable according to relevant international treaties and the principle of reciprocity (Wen, 2003, p. 9).<sup>1</sup> Feng (1997) indicated that international criminal judicial assistance depends completely on the judicial authority of different countries in facilitating, assisting, and cooperating to fulfill the functions of criminal justice.<sup>2</sup> Zhao (1994) defined international criminal judicial assistance as criminal-policing matters between countries, which are performed on behalf of certain judicial powers to lend each other support and facilitate the prosecution of criminals.<sup>3</sup> Ma (1999) stated that international criminal judicial assistance is mutual criminal judicial assistance that directly or in coordination with international organizations between countries and regions upholds effective sanctions against international crime in accordance with international treaties and the bilateral reciprocity principle. It is a judicial system that addresses specific litigation matters.<sup>4</sup> Xie (2001) provided examples to distinguish international judicial cooperation and assistance, such as extradition, the migration of criminals, and the prosecution of foreign criminals. Zhang (1999, p. 353) defined international judicial cooperation as international criminal justice assistance. However, from the perspective of police cooperation, in practice and implementation, "cooperation" and "assistance" are synonymous.

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<sup>1</sup> Cheng Liang-Wen. Mutual legal Assistance [M]. Law Press, 2003.

<sup>2</sup> Huang Fang. International Criminal Judicial Assistance and Its Basic Principles [M]. Law Press, 1999.

<sup>3</sup> Zhao Yong-Chen .The Assistance of International Criminal Law and International Criminal Justice [M]. Law Press, 1994.

<sup>4</sup> Ma Jin-Bao. Chinese Interregional Criminal Judicial Assistance [J]. Journal of Gansu Political Science and Law Institute, 2003(6),p53-81.

In addition to the adoption of the United Nations Model Treaty, numerous bilateral and multilateral treaties are available for the collaborative system of international criminal justice. The principles of international criminal justice cooperation include those of nationalism, of equality and reciprocity, of the rule of law, other specific principles, and the protection of human rights.<sup>1</sup> The process of international judicial cooperation in criminal proceedings is as follows: a sovereign state, upon receiving a request from another state for criminal justice collaboration, on the basis of equality, mutual benefit, and the protection of human rights, and through the assistance of the state requesting assistance, prosecutes criminals effectively to achieve that state's judicial sovereignty in accordance with international treaties and domestic legislation (Wu, 1994).<sup>2</sup> The practical view often defines the relationship between international criminal justice cooperation and international police cooperation as similar in criminal justice cooperation. Therefore, the current study focuses mostly on the collaborative police relationship of the criminal judicial authority in performing duties for criminal justice.

Regional criminal judicial assistance is related to international criminal judicial assistance, and refers to the judicial authority and law enforcement authority in a different law domain of the same country. The purpose is to suppress crime that transcends legal borders through criminal investigations, witness interrogations, the issuing of arrest warrants, the transfer of suspects and felons, acknowledgment, and prosecutions to provide support and facilitate proceedings. The China Regional Criminal Judicial Cooperation (Assistance) oversees the different characteristics of judicial assistance activities in multijurisdictional and multi-legal systems and cultural backgrounds in Chinese territory.

The theoretical basis of regional criminal justice is mainly on highlighting the coordination of jurisdictional conflicts regarding criminal trials in various jurisdictions, focusing on the basic political context of “one country, two systems,” with respect for jurisdictions and the autonomy of different regions’ judicial departments. The theory of Regional Criminal Judicial Assistance, which emphasizes criminal jurisdiction over various jurisdictions, adheres to the principle of “territorial

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<sup>1</sup> The principle of nationalism, including the exclusivity of national jurisdiction, complies with international treaties, respects judicial immunity and the exclusion of extraterritorial jurisdiction, as well as protects special national interests. The principle of legality includes the application of the dual criminality rule and *non bis in idem*. Except for those subject to legislation for political and military offenses, the principle of a specialist includes dual criminality law, minimum penalty standards in extradition cases, the extradition object litigation behavior of specific limits, the special protection of witnesses, restriction of evidence, and other relevant data. The protection of human rights includes not granting extradition based on race, nationality, religion, political beliefs, and other aspects of human rights protection, and in cases where a possibility exists that the accused will face the death penalty.

<sup>2</sup> Wu Jin-Fang. Discussion on the Basic Principles of International Mutual Legal Assistance [J]. NTU College of Law, p331-347.

jurisdiction” and “personality,” and simultaneously regards principles as fundamental in the transfer of cases and of criminals between regions (Peng, 2010).

Regional criminal judicial cooperation manages domestic conflicts regarding issues on cross-jurisdictional crime. With Hong Kong and Macao's return and the cross-strait exchanges and relations, China has emerged in legal form with a pattern of “one country, two systems, and three methods in four jurisdictions.” This study examines the conflicts in regional criminal jurisdiction to improve criminal justice assistance between mainland China, Hong Kong, Macao, Taiwan, and other jurisdictions. The objective of this study is to devise a scientific and rational system of regional criminal judicial cooperation and assistance by chiefly focusing on mainland China and Hong Kong, and to examine the cross-strait legislature, judicial departments, and relevant theories and practice.

Research on China's regional criminal justice cooperation is conducted mainly to close the gap between economic and trade relations and increase the frequency of personnel exchange. Criminals take advantage of different legal systems and regional judicial independence to commit cross-border crime in Hong Kong, Macao, Taiwan, and mainland China. These four judicial authorities require the proliferation of research on regional police cooperation to more effectively combat cross-border crime. The current concepts of the cross-strait and four jurisdictions' regional police cooperation mode are mainly based on existing laws and features. The principles of "one country, two systems," "equality and mutual benefit," "mutual respect," and "effective punishment for crime" are the basic principles of regional police cooperation. Cooperation is basically consistent with the concept of judicial criminal assistance. It also focuses on the exchange of criminal intelligence, the arrest and transfer of suspects, entrusting the investigation and evidence collection, recovering proceeds from crime, and mutual legal assistance. Two scholars have proposed establishing a “committee” approach for police cooperation between Taiwan and mainland China (Zhang, 2009; Xiong, 2009).

Wu, Zhang, and others have argued that the concept of international police cooperation is consistent with international judicial cooperation, meaning that policing authorities worldwide act in accordance with domestic law and international conventions, either directly or under the coordination of international organizations, to mutually facilitate and aid in the tasks required to complete a specific mission for police (i.e., criminal, administrative, and security)."<sup>1</sup>

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<sup>1</sup> Wu Rui. Fundamental Issues of International Criminal Investigation Co-operation Subjects [J]. Journal of Fujian Police College, 2009(2),p26-33.  
Zhang Zhou-Yi. Probing into Several Problems of International Police Cooperation [J]. Public Security Science

Approaches in international police cooperation include relying on the International Criminal Police Organization in accordance with the Sino-foreign criminal treaties regarding judicial assistance and extradition treaties, the implementation of international collaboration in investigations (currently the most effective means of international police cooperation), employing a system for liaison police officers, joint law enforcement, the exchange of intelligence, police collaboration, outside instead of planting (e.g., to deter poppy cultivators from planting in toxigenic outside areas and diversifying with other cash crops, foods, and other illicit means to earn funds, with expert and technical support provided by cooperating countries), cross-border pursuits, joint investigations, extraterritorial investigations, evidence collection, the recovery of proceeds from crime, and delivery control.<sup>1</sup>

China has implemented a comprehensive, multilevel, wide-ranging international law enforcement cooperation system for international police cooperation. The Ministry of Public Security recently established cooperative police relations with 83 countries and regions, 65 hotlines with the internal affairs department of police in 44 countries, signed 237 copies of various cooperation files in 59 countries, and participated in regular meetings in 31 countries and international and regional organizations and meetings in 81 countries. The Ministry of Public Security (2012) also simultaneously sent 32 liaison officers to over 19 countries, including the United States, the United Kingdom, Russia, Pakistan, and Afghanistan.<sup>2</sup> These liaison officers assisted in 1,881 investigations, aided in the apprehension and repatriation of 298 criminal suspects, and assisted in handling cases involving more than 300 secure event of citizens and institutions since 2008. The ministry also signed the “United Nations Convention against Corruption” on December 10, 2003, to establish prevention mechanisms to combat corruption and strengthen international cooperation. This international police cooperation, whether signing formal agreements or stationing liaison officers, are the “United Nations Convention against Transnational Organized Crime” (Palermo Convention) and have been crucial legal resources of international criminal justice cooperation since September 2003.<sup>3</sup>

## **II The evolution of cross-strait police cooperation**

The dual process of jointly hindering crime and assisting in mutual criminal

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Journal——Journal of Zhejiang Police College, 2010(1),p35-39.

<sup>1</sup> Shen Hui-Zhang. To Discuss on New Fields Developing Cooperation of International Police Management [J]. Journal of Xinjiang Police Officers Academy, 2004 (3).

<sup>2</sup> Criminal Investigation Bureau Website ( 2012 ) <http://www.cib.gov.tw/police/police0103.aspx>

<sup>3</sup> Li Rong. International Criminal Judicial Assistance Preliminary Discussion on System of Criminal Judicial Assistance of United Nations Convention on Striking Transnational Organized Crime Tribune of Political Science and Law, p331-347.

justice comprises four periods: (a) the transfer from the window handover period (also known as the third mutual repatriation period, 1989); (b) the Kinmen Agreement (Red Cross, 1990); (c) the Wang-Koo talks (1993); and (d) the signing of the agreement for joint crime suppression and mutual criminal justice assistance (post–2009). The main objective is police cooperation for cooperative crime suppression.

#### **i Window handover period**

The initial approach for cross-strait mutual assistance in criminal justice entailed the mutual repatriation of criminal offenders through the International Criminal Police Organization (ICPO) through a third country (third place). For instance, mainland China's public security organs, through Singapore's National Central Bureau of the ICPO, transferred Taiwanese murderer Yang Ming-Zong to Taiwan's Criminal Investigation Bureau in April 1989. Taiwan's investigative organs also sought help from the ICPO and requested that mainland China's public security organs capture Wu Wen-Xin and other gun smugglers that were sent to Taiwan. Mainland Chinese Wu Da-Peng, who stole bank drafts, was found by police in Taiwan, and was repatriated through the ICPO in the same year. During this period, the mutual repatriation of cross-strait offenders was conducted according to each case.

#### **ii Kinmen Agreement period**

The formal cross-strait police cooperation started in September 1990 when the cross-strait representative of the Red Cross in Kinmen raised the issue of repatriation to resolve territorial disputes in violation of the relevant provisions of citizens, criminal suspects, and offenders, which resulted in the signing of the "About Sea Repatriation Agreement" in Kinmen (also known as the Kinmen Agreement). It entailed the mutual repatriation of illegal immigrants, criminal suspects, and criminals by sea. After this agreement, the Chinese Ministry of Public Security immediately issued a "Notice on the Implementation of Two-Way Repatriation between mainland China and Taiwan" in 1991, having made numerous provisions for "working principles," "staff range," "the business division of labor," "the repatriation process," "working requirements," among others, in response to repatriation by sea under the Kinmen Agreement. Because the Kinmen Agreement was unofficial, it resulted in talks between the Straits Exchange Foundation (SEF) and the Association for Relations Across the Taiwan Strait (ARATS), leading to frequent interruptions in repatriation operations (an operation was once on hold for half a year, from April to October of 1998). In addition, the agreement was a document signed by nongovernmental organizations, which lacked a substantial binding, and delayed Taiwan's repatriation request of stowaways outside Fujian Province. Because the document was limited to the demands of public security organs, funding and time factors emerged, as well as slow operations and false and incomplete data. The

Kinmen Agreement marked the first time that public authorities from both nations solved a problem publicly and peacefully, as well as the first practice of cross-strait negotiations in “seeking common ground while putting aside differences, the pursuit of a win-win situation” (Ma Ying-Jiu, September 13, 2010). It was a significant vanguard in the cooperation and exchange of cross-strait affairs.

### **iii The period of the Wang-Koo talks and the SEF-ARATS Agreement**

The Ministry of Public Security and the State Council Taiwan Affairs Office issued the “Notice on the Coordination to Handle Taiwan-Related Criminal Cases” on April 2, 1993. Mainland China’s ARATS is authorized to coordinate various departments in the nation and the SEF of Taiwan. In the same year, from April 27 to April 29, ARATS and SEF conducted the Wang-Koo talks in Singapore for the first time, and both agencies signed the Koo-Wang Talks Common Agreement. One of the annual negotiation issues in the agreement is that both were determined to negotiate on the violation of the following provisions in the same year (1993): “Personnel repatriation when one enters the other’s territory and related issues,” “jointly combating maritime smuggling, robbery, and other criminal activities,” “consultation of intellectual property rights protection,” “the judicial authority of both nations providing mutual and tentative assistance in court,” and others. After a failure to reach these targets, the three Jiao-Tang talks followed. Thus, the agreement of both nations to jointly hinder crime and assist in mutual criminal justice entered the administrative stage. However, because China test-fired missiles and because of the political impact of Taiwan leader Li Deng-Hui’s visit to the United States in 1995, cross-strait relations had plummeted. Cross-strait negotiations were suspended for 4 years until Taiwan’s SEF Chairman Koo Chen-fu led a delegation to visit mainland China again on October 14, 1998 (i.e., the second Wang- Koo talks to relieve tension for both nations). However, cross-strait relations finally came to a standstill and could not be resolved through negotiations because of Lee Deng-Hui’s view on cross-strait relations when Deutsche Welle interviewed him on July 9, 1999.

Cross-strait police cooperation was affected by these cross-strait events and consultations during this period. The cooperation was limited to the repatriation content in the Kinmen Agreement and other issues such as the repatriation of hijackers in several SEF-ARATS meetings in 1993 and the “Cross-Strait Hijackers Repatriation Agreement and Related Matters” (draft) in 1995. In addition, because the fishery jurisdiction diverged, resulting in disputes regarding case processing (Thousand Island Lake Case) and other factors, the cross-strait issues regarding criminal justice and police cooperation were abandoned and remained at the level and scope of the Kinmen Agreement.

#### **iv The period of the the cross-strait agreement of joint crime suppression and mutual criminal justice assistance**

Both nations signed the “Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement,” also known as the “Nanjing Agreement” in the third Jiang Chen Will on May 14, 2009. The purpose was to enable both parties to institutionalize the joint hindrance of crime and assistance in mutual criminal justice to solve various legal disputes and to identify emerging criminal patterns as a result of frequent exchanges. The Nanjing Agreement established the basic procedures for both parties to jointly combat crime and assist in mutual criminal justice and investigations as well as implement the repatriation system. It addresses narcotics, smuggling, money laundering, fraud, corruption, white-collar prisoners, service of judicial documents, investigations and evidence collection, and the execution of civil referees and arbitration judgments. Its objective was to eliminate cross-border crime, especially regarding the emerging issues of cross-border cyber-bullying, cybercrime, money laundering, cross-border kidnapping, extortion, and white-collar crime cases by establishing an institutional mechanism for the cooperation of joint crime suppression, mutual legal assistance, and a normal contact window. The Nanjing Agreement normalized and legalized the cross-strait joint approaches in the fight against crime and mutual legal assistance. The agreement has had an extensive effect on the theory and practice of regional criminal judicial cooperation in the cross-strait relationship.

#### **III The development of cross-strait criminal justice and police cooperation**

Gao and Zhao (1992) coauthored a paper entitled “Exploring the Macroscopic Problems of Cross-strait Criminal Law” for both nations regarding problems in criminal law. They proposed three criteria to address the problem, as follows: (a) Criminal law must comply with the fundamental interests of the Chinese nation; and (b) should meet the mutual objective of both parties.<sup>1</sup> Most scholars have suggested that Taiwan’s judicial assistance in criminal cases shifted toward the “one country, two systems” approach because Hong Kong and Macao had not yet returned to the administration of China. After the return, China presented the following points to address criminal jurisdiction conflicts between mainland China and Hong Kong and Macao: (a) national sovereignty; (b) equality in the various legal systems; (c) reciprocity; (d) abiding by international treaties and international practice; and (e) insistence on upholding human rights, effectively punishing crime, convenience in litigation (including litigation for extradition), and recognizing the rights of the other party effectively.<sup>2</sup> At that time, relations among Hong Kong, Macau, and mainland

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<sup>1</sup> Gao Ming-Xuan , Zhao Bing-Zhi. The macro study of inter-related criminal law in Cross Strait[J]. The Jurist, 1992(1).

<sup>2</sup> Gao Ming-Xuan, Wang Xiu-Mei. Criminal jurisdiction of Interregional content and principles for a settlement of

China were based on the “return to the relationship of one country, two systems,” and the cross-strait relation was “not yet a unified relationship.” The objective of the distinction between “cross-strait relations” and “one country, two systems” was to create a significant difference between the nature of criminal jurisdiction conflicts and the principles of coordination of the two sides as well as Hong Kong and Macau. Therefore, the “one country, two systems” cooperation approach is unsuitable for the cross-strait relationship, and should be treated as a separation.

With the development of cross-strait relations and the resumption of political relations, the regional judicial approach for police cooperation has become “domestic” (i.e., among Guangdong, Hong Kong, and Macao) to solve insufficient clauses in the Kinmen Agreement regarding cross-strait criminal justice and police cooperation (Zhu, 2008; Cao, 2008). Studies began to explore the regional approach for criminal justice and police assistance under the “one country, two systems” approach in 2005 and investigate cross-strait criminal justice and police cooperation. After the Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement was signed in 2009, the clauses and practical research for the Cross-strait Agreement became a central issue. Other political and management theories such as that of globalization and regional police affairs, a new security concept (Shang Hai Spirit), non-traditional security systems, cost analyses of institutional choice (Yin 2007; Tian Ye, 2007),<sup>1</sup> the theory of cooperative governance, new institutionalism, integration theory (Gao Lang, 2011), and innovative social management<sup>2</sup> (Li, 2011), and a technical perspective were adopted to study cross-strait criminal justice and police cooperation.

The predicament of cross-strait criminal judicial assistance, including the political positioning dispute between the "one country, two systems" and cross-strait mutual legal assistance approaches before the Nanjing Agreement, which chiefly entailed whether cross-strait relations should be considered regional or international

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the conflict[J]. Law Science, 1999(6).

<sup>1</sup> A comparison of the variables affecting the amount of transaction costs includes the field sensitivity of collusion measurement problems, state configuration, transparency, asset specificity, transaction frequency, and uncertainty in the model choice for a transaction cost analysis on the Shanghai Cooperation Organization system.

<sup>2</sup> Integration theory is divided in three parts: functionalism theory, neo-functionalism theory, and federalism. Functionalist David Mitrany indicated that the international system adjusts according to the functional requirements of the international community. The rapid developments in technology, economics, and communication result in numerous common problems between different countries, resulting in pressure that leads to increasing international cooperation and contributes to the merging of national policies of different countries. Neo-functionalists have suggested that integration can occur only when the government, political parties, and interest groups can benefit from the integration process. They specifically focus on the "spillover effect." Federalism advocates that functional links and the cooperation system should be established in the fields of science and technology or economics, and then gradually be extended through trial and error as issues are redefined and the benefits are weighed. The scope of integration should be extended to include relevant parties in the political sphere. Federalists indicate that, for the system design to meet political expectations, it must consider economic, social, and awareness gaps between the different political players and objectives, to enable them to accept a unified arrangement. While maintaining a high degree of autonomy, through the first "integration," cooperation is to be established through federalism, resulting in a united economy and the gradual integration of social and ideological factors.

mutual legal assistance because of the issue of national sovereignty. Because the Kinmen Agreement inadequately addresses this issue, cross-strait criminal justice and police cooperation are still addressed according to each case. Compared to “ASEAN and China's anti-drug cooperation action plan” and the “Shanghai Cooperation Organization Member States on Cooperation in Combating Illicit Trafficking of Narcotic Drugs and Fining Social Drugs Users and their Precursors Agreement,” cross-strait criminal judicial assistance is clearly lacking in practice.

China's researchers have defined the Nanjing Agreement for comprehensive regional cooperation agreement. This agreement chiefly addresses the points of and approaches to cooperation. Regarding the content of cooperation, the agreement focused on both parties jointly hindering crime and providing criminal justice and mutual assistance, and considered mutual legal assistance in civil matters. Regarding the cooperation approach, the agreement comprises four main points in regional judicial cooperation: (a) the repatriation of criminals; (b) the service of documents and mutual legal assistance in investigations and evidence (the main clause); (c) the transfer of those sentenced; and (d) the recognition and enforcement of civil referees or an arbitral award. Therefore, the agreement differs considerably from the Kinmen Agreement and other agreements that have only modified certain cooperation clauses and methods. This comprehensive regional cooperation agreement resulted in three historic breakthroughs for China's regional cooperation: (a) it established judicial cooperation between different jurisdictions; (b) it replaced the case investigation approach in law enforcement cooperation among mainland China, Hong Kong, and Macao; and (c) any evidence obtained through the agreement is effective in achieving “mutual exemption,” and can be directly applied to criminal proceedings for all parties. It can be a reference and details the practical experience of mainland China, Taiwan, Hong Kong, and Macao.<sup>1</sup>

The case-by-case assistance stage was improved in the Nanjing Agreement, the content regarding cross-strait criminal justice and police cooperation was completed, and a basic framework of the current cross-strait cooperation in criminal justice was devised. However, strong public authority color in criminal judicial assistance as well as cross-strait uncertainties rendered the cross-strait agreement only a framework. The agreement detailed the features of strong principles and weak operations, which requires both sides to solve specific operational issues in greater depth based on practical needs for further consultation. Therefore, to solve the problem of mutual legal assistance in different jurisdictions and legal conflicts between both parties, they

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<sup>1</sup> Chen Lei, Wang Jun-Xiang, Chen Si-Qi. Basic Characteristics of Cross-Strait Fighting Together against Criminals and Judicature Mutual Aid Agreement [J]. Criminal Research, 2012(4), p83-91.

should learn from the case-by-case assistance approach to construct a major case coordination approach. In practice, cross-strait police departments should cooperate effectively in combating crime based on mutual trust, especially when investigating cross-border telecommunications fraud cases. Hence, future cooperation could be extended to human trafficking, drug-related crimes, organized crime, white-collar crime, and other transnational criminal cases (by district), and comprehensive approaches could be established. The Cross-Strait Agreement is not subject to the law of the cross-strait and police scholars, especially for jurisdiction and law conflicts. Although their authorities differ, the main content of the agreement, signed by ARATS and SEF, must be recognized by their respective legal procedures. However, the core issue of jurisdiction has not been addressed in the field of judicial cooperation. This highlights the issue of mutual recognition of criminal referees having failed to reach a consensus on the criminal judicial assistance of both parties<sup>1</sup> (Li Zhi, 2009). In addition, the operating level of the criminal justice cooperation has also failed. The Nanjing Agreement clearly defined the focus for combating crime in cross-strait cooperation, but still did not contribute to devising a solution by both parties in the cooperation process for combating crimes involving jurisdictional conflicts. Therefore, certain scholars believe that the framework of the Nanjing Agreement for mutual legal assistance requires detailing the level of technology for use, and also obtaining an even greater consensus regarding criminal justice, especially for issues on the jurisdiction of sovereignty. In this manner, it can resolve conflicts in cross-strait judicial assistance for police cooperation.<sup>2</sup>

#### **IV Problems faced by cross-strait police cooperation**

The main problem of cross-strait police cooperation is criminal justice conflict. This involves the sovereignty issue of the penal code in criminal jurisdiction and differences in the code of criminal procedure embodied in the law and the level of its application.

##### ***i Conflict in cross-strait criminal jurisdiction***

The jurisdictional conflict of both parties involved in criminal cases is due to their political history, which has resulted in disputes and contradictions in sovereignty between specific legal provisions and the current judicial process. Specifically, the "One China" issue is the main point of dispute in the domestic politics of Taiwan, although the issue is basic to resolve. In addition, because of the jurisdiction dispute,

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<sup>1</sup> Li Zhi. Impact of Agreement of Jointly Cracking down on Crime and Mutual Legal Assistance across the Taiwan Strait on the cross-strait system of judicial assistance [J]. Journal of Chang an University, 2009(12), p55-60.

<sup>2</sup> Gao Ming-Xuan, Xu-Hong. The Coordination Problems under the Jurisdiction of Cross Strait Inter-related Crime [J]. Criminal Science, 2010(1), p12-16.

no consensus exists on selecting the “under the jurisdiction of the criminal act” as the main approach and selecting “the actual control jurisdiction” as a supplement or in choosing “damage to the jurisdiction of the serious side” of legal interests as a supplement in the Nanjing Agreement. An agreement was also not reached on the legal effect and the binding of the current cross-strait agreement, the possibility of the mutual establishment of institutions, and the nature of such institutions. The main negotiation topic extended to the cross-strait judiciary from ARATS and SEF. In this study, we presented differences in the criminal justice system of the cross-strait and how they affect the role of both parties in combating cross-border crime and criminal judicial assistance as well as the functionality of cross-strait police cooperation.

*ii The cross-strait legal conflict and delays in supporting measures*

Despite both parties having established a relatively effective cooperation approach for repatriation, such as hotlines, an emergency system, and collaborative agencies, current police cooperation still faces cross-strait legal conflicts and delays in supporting measures because of institutional and cognitive differences. These problems limit the content of assistance regarding the repatriation of prisoners, and thus far, cannot enable meaningful police cooperation, such as cross-border pursuits, joint and extraterritorial investigations, evidence collection, recovery of criminal proceeds, control delivery, and other approaches to investigative collaboration. For example, a medallion was stolen by a foreigner from Heilongjiang Province in May 2012. It was on exhibition in the Lv Guang Building of Kinmen to commemorate General Hu Lian of the Chinese Nationalist Party. Taiwan's Kinmen police discovered from surveillance footage provided by mainland China that the man had returned to the country. Kinmen police were required to inform the Taiwan Criminal Investigation Bureau so that the two sides could jointly handle this case by pursuing suspects in accordance with the limits set by the existing mutual legal assistance plan. This shows that the approach often adversely affects the result, causing detection delays for critical cases.

*iii The problem of police cooperation in the form of individual cases*

Cross-strait police cooperation lacks an overall scheme and exhibits a tendency to cooperate in individual cases in accordance with the impact of relevant policies and systems. This is because cross-strait police departments receive varying regional judicial assistance in criminal matters involving mutual support, convenience, and assistance activities. Thus far, a common legal basis has been missing, and an effective operational approach for cross-strait police cooperation has not yet been devised because of the recognition problem and the cross-strait dispute over

sovereignty. Cooperation can currently only be conducted through indirect contact according to individual cases, and it is still in the testing phase for intelligence exchange, investigations, evidence collection, the issuance of arrest warrants, the repatriation of suspects, the recovery of illicit funds and goods, jurisdiction handovers of criminal cases, and other aspects. In other words, the significance of the approach to the current cross-strait police cooperation is emphasized, but international and regional police cooperation is not actively practiced.

#### *iv The substantive issues of the cross-strait judicial system*

Because of the differences between the cross-strait judicial systems, the implementation of institutional barriers in accordance with the Nanjing Agreement is a serious issue. Specifically, the police in mainland China and Taiwan are subject to different regulations, resulting in varying degrees in their ability to police. For example, evidence in an investigation obtained from police in mainland China might be inadmissible in a court in Taiwan. Cross-strait police authorities have gained considerable experience and established a basis for cooperation through the case-by-case assistance approach. However, they have not yet fully established an official contact system directly, resulting in difficulties and delays in evidence collection as well as in the recovery of illicit goods in certain cases. Moreover, Chinese regional police cooperation mainly relies on actions taken by those who occupy the higher echelons of government. The non-governance approach substantially affects the completion of specific police tasks, but it also has numerous weaknesses, such as non-institutionalization, informalities, short-term implementation, and reliance only on superiors.

### **V The prospect and suggestions for cross-strait police cooperation**

The cross-strait relationship involves various political, economic, social, and cultural differences because of political considerations and the separate development of the governments. Cross-strait police are employing different systems and approaches to law enforcement. Police cooperation should entail maintaining order, law enforcement, and the functions of police services. Thus, the development of cross-strait police cooperation could be based on the “Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement.” Policy issues should be reviewed and feasible analyses on cross-strait police cooperation should be conducted to devise a framework for the future of cross-strait police cooperation governance. The following section provides recommendations.

#### **i Avoiding disputes and solving jurisdictional conflicts**

Cross-strait negotiations have developed into discussions involving sovereign

matters from a technical viewpoint. Jurisdictional consent and approval is fundamental for future negotiations, especially for police cooperation regarding criminal justice, police administration, and academic exchanges. The governance model of cross-strait police cooperation could generate co-prosperity by resolving cross-strait disputes regarding sovereignty issues and their contradictions, which have been caused by discords in cross-strait politics, specifically concerning legal provisions and the realization of the extant judicial model.

## **ii Multivariate study of problems in police cooperation**

The issue of cross-strait exchanges diverse made the way of study the issue of cross-strait police cooperation must be varied. Research in cross-strait police cooperation must address issues from multiple international and regional views. To establish a basic and effective framework, studies must be conducted from the perspectives of the legal system, organizational roles, decision-making processes, and the establishment of procedures before the actual state of cooperative governance and the police cooperation system can be discerned. In addition, police administration regarding criminal justice concerns crime prevention and the management of police in public affairs. Today, studies on cross-strait police cooperation theory and practice focus on criminal justice cooperation, but research conducted from a public policy perspective is scant. Therefore, the study of cross-strait police cooperation can begin from the theoretical perspective of public administration to construct an effective cross-strait cooperative governance model. Specifically, the concept of regional cooperative governance should be developed with theoretical cooperation as a foundation to garner more effective social management. This should be the main objective of regional cooperation at local levels, and reasonable procedures for cooperative governance should be established as the main cooperation model.

## **iii Legalizing the system of cross-strait police cooperation**

The current model of cross-strait police cooperation focuses on repatriation, investigations, and prevention technology. The differences in both systems and in mentality have resulted in legal conflicts and delays in supporting measures, as well as other practical problems, including judicial cooperation in the criminal division for extradition, criminal justice assistance, the transfer of criminal proceedings, and the recognition of criminal judgment and performance. The problems should also be addressed further through more in-depth meetings, and the solutions should be based on the principles of the Nanjing Agreement, including the mutual establishment of institutions, approaches to solving the existing legal effect and binding, the implementation of a liaison procedure, emergencies, and collaboration between

agencies seeking intelligence. A program that observes political and administrative neutrality to facilitate cross-strait police cooperation must be enacted.

#### **iv Strengthening police exchanges**

Cross-strait police could promote mutual collaboration to effectively prevent, combat, and curb the increasing cross-strait regional crime rate with shared experiences in cooperation and overcome political and legal obstacles. They could simultaneously reinforce the direct channels of contact between cross-strait police authorities, thereby establishing an effective model for cross-border pursuit assistance and exchange regarding personnel criminal justice and intelligence. Furthermore, for transaction coordination, relevant departments can hold occasional seminars and regular meetings with high-ranking officers, create a joint permanent organ to manage cross-strait police coordination, and establish a police affairs department in ARATS and SEF to address and resolve any cross-strait problems that may emerge through discussion. Research on cross-strait criminal justice and police cooperation can also be strengthened to construct an effective cooperative governance model for cross-strait police regarding the legal, technical, procedural, and assistance aspects.

#### **v Learning from the experience of police cooperation from Guangdong, Hong Kong, and Macao**

Regional police cooperation is an effective approach for public security organs to jointly prevent, curb, and combat crime, share intelligence, learn, and conduct exchanges. The rapid development of regional police cooperation is a critical part of history. Hong Kong, Macau, Taiwan, and mainland China have different jurisdictions, and each jurisdiction has separate criminal jurisdictions. Because they are subject to the various complex links existent in criminal jurisdiction, the legal system, and jurisdictional conflicts, this results in obstacles in the proceedings of criminal cases. However, the theory and practice of regional criminal judicial assistance has been developed considerably under the basis of "one country, two systems" after the return of Hong Kong and Macao. Therefore, the theoretical model and practice of police cooperation in Guangdong, Hong Kong, and Macao provide an excellent reference for the cross-strait relationship.

Overall, the history and the development of cross-strait police cooperation have been the focus of numerous confrontations and meetings regarding complex conflicts and cooperation. Affected by sovereignty disputes, cross-strait police cooperation still targets problems in investigations, technical exchanges, crime prevention, and the repatriation of criminals. This study can act as a reference for relevant government bodies investigating how to maneuver cross-strait exchanges and improve police integration, to establish an effective cooperation model for the exchange of effective

police policy management information, the institutionalization of exchange regulations, regional communication models, and local governance as a reference for cross-strait police authorities in the future.

A desirable and feasible direction to bridge the gap in differences in mentality and politics for cross-strait police cooperation will be to promote the enactment of a cooperative system, strengthen the exchange of police activities, solve conflicts, and avoid disputes.

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