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Fighting Cross-Border Crimes between China and Hong Kong

Thus reality circumscribes the concept of sovereignty in operation and increases the necessity for world-wide coordination of matters ...

Malcolm M. Shaw, *International Law* (1997)²

I. Introduction

On Tuesday, October 20, 1998, Cheung Tse-keung, also known as the “Big Spender,” and 35 others accomplices went on trial in China for a host of criminal charges, ranging from murder to kidnapping to smuggling of explosives committed in Hong Kong and China from 1991 to 1997.³ The “Big Spender” case is the first time a Hong Kong legal resident was prosecuted, tried and executed in China under the People’s Republic of China (PRC) Criminal Law⁴ for criminal acts largely perpetrated in Hong Kong. As such, the case tests for the first time the criminal jurisdiction boundary between PRC and Hong Kong under “one country two-systems.”⁵ More significantly for our purpose, the “Big Spender” case also forced the Hong Kong Special Administrative Region (HKSAR) and PRC to come to terms with the many contentious legal⁶ and protracted policy issues⁷ attending the

² Malcolm N. Shaw, *International Law*, 4th ed. (Cambridge University press, 1997), p. 97.

³ For a summary of the prosecutor’s case, see “The prosecutor’s case” *SCMP*, November 6, 1998.

⁴ Criminal Law of the People’s Republic of China (Adopted at the Second Session of the Fifth National People’s Congress on July 1, 1979, revised at the Fifth Session of the Eighth National People’s Congress on March 14, 1997 was promulgated by Order of the President of the People’s Republic of China, No. 83 and entered into forces as of date of promulgation, No.). (Beijing: China Procuratorial Press, 1998) (hereinafter PRC Criminal Law).

⁵ Editorial: “Slippery slope,” *SCMP*, October 20, 1998.

⁶ “Jurisdiction issues must be discussed say Democrats,” *Hong Kong Standard*, December 6, 1998, p. 3.

cross-border crime control debate; the most salient of which is how the PRC Public Security Bureau (PSB) and Hong Kong Police (HKP) should be working together to deal with cross-border crimes.

This article is a first attempt to investigate into HKP⁸ and PSB⁹ cooperative practices in dealing with cross-border crimes penetrating the two jurisdictions,¹⁰ in the backdrop of “one country two systems” political settlement, provided for under the Basic Law of Hong Kong.¹¹ It is hoped that findings from this investigation can

⁷ Wang Ziyang, “The agenda for “one country two systems,” left behind by the ‘Big Spender’ case” *Hong Kong Economic Journal* December 7, 1998.

⁸ For a comprehensive literature review on Hong Kong policing, see “Policing Hong Kong Police,” *Asian-Pacific Criminal Justice and Crime Control Strategy* (Taiwan: National Chung-Cheng University, 2001), pp. 83-209.

⁹ For a comprehensive literature review on PRC policing, see “The Philosophy of Community Policing in China,” *Police Quarterly* Vol. 4(2): 186-214 (2001).

¹⁰ John Vagg, “The Borders of Crime: Hong Kong-China-Border Criminal Activity,” *British Journal of Criminology* Vol. 32(3):310 (1992)

¹¹ The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (April 1990) (Basic Law). (Adopted on 4 April 1990 by the Seventh National people’s Congress of the People’s Republic of China at its Third Session). Article 2 provides: “The National People’s Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the law.” Article 8 provides: “The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.” Article 18 provides: “The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided in Article 8 of this Law, and laws enacted by the legislature of the Region. National laws shall not applied in Hong Kong Special Administrative Region except for those in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislative by the Region.” Article 19: “The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. The court of the Hong Kong Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal

be used to inform upon future discussion and facilitate prospective handling of cross-border crimes and criminals.

This article is organized into six parts. After this brief introduction, Part II: “The nature and extent of cross-border crime problem in China” informs upon the nature and extent of cross-border crimes in China. Part III: “Problem with cross-border crime between PRC-Hong Kong” gives a brief account of the problem with PRC - Hong Kong cross-border crime calling for mutual assistance and cooperation. Part IV: “PRC – Hong Kong police practices towards cross-border crime” looks into why there is a lack of formal cooperative framework between the PSB and HKP and how, in spite of the lack of formal agreement, the PSB-HKP have been working closely together to deal with cross-border crime in practice. Part V: “PSB’s perspective on cross-border cooperation between PSB-HKP” discusses the perceived lack of cooperation by the HKP from the PSB perspective, a thorny issue standing in the way of a better working relationship awaiting to be resolved. Part VI: “Conclusion” summarizes as it reflects upon how best to improve the working relationship between HKP-PRB in the face of exploding cross-border crimes.

II: The nature and extent of cross-border crime problem in China

Cross-border crime defined

In China an “international crime” (“guoji fanzui”) is a crime that is perpetrated by foreign nationals with the conduct or consequence overlapping two or more international criminal jurisdictions. “Cross-border crime” is a species of “international

system and principles previously in force in Hong Kong shall be maintained.” Article 22: “No department of the Central People’s Government and no province, autonomous region, or municipality directly under the central Government may interfere in the affairs which the Hong Kong Special administrators on its own in accordance with this Law.”

crime.” A “cross-border crime” happens when the conduct or consequence of a crime overlaps two international criminal jurisdictions. When a cross-border crime is committed by a foreigner national or affects foreign interests it becomes a crime implicating foreign concerns case meriting different treatment.¹²

Cross-border crime problem in China

From traditional to cross-border crime

The opening of China in 1979 brought new criminality of all kinds. Between 1984 and 1993, the gross crime rate rose from 510,000 reported cases to 1,618,000 cases, i.e. an increase of 217%, with major crimes rising from 63,000 cases to 539,000 cases, i.e. an increase of 755.5%. The crimes were also getting more serious, violence, sophisticated and organized.¹³ The exploding crime problem led Wang Hanbin, the Secretary General of the Standing Committee to the Sixth National People’s Congress (NPC) to observe in 1983 with uncharacteristic candor: " During the last few years, the social order is deteriorating. Government agencies, public security and judicial organs have done a lot of work and implement many good policies, the situation has changed for the better but the total problem has not been resolved, currently the social order in a number of places are still not very good."¹⁴

¹² Xian Dang, *Police work implicating foreign concerns*, (Zhongguo shewai jingwu) (Beijing: Zhongguo renmin gongan daixue chubanshe, 1991), esp. Chapter 10: “Jurisdictional power over crimes implicating foreign concerns” (“Shewai xingshi guanhe quan”), pp. 237-263.

¹³ Feng Shuliang, *Methods of Crime Prevention in China* (Zhongguo yuefang fanzui fanlue) (Beijing: Falu chubanshe, 1994) pp. 20-39.

¹⁴ See "Guanyu zhugai "Renmin Fayuan Zhuji Fa", "Renmin Jianchayuan Zhuji Fa" he "Guanyu yanzhen yanzhong weihai shehui zhian de fanzui fenzhi de jue ding" de suoming" (“A clarification to certain laws concerning decision to amend "People's Supreme Court Organization Law", "People's Procuracy Organization Laws," and "Decision concerning seriously punishing criminals who seriously endangered social order") by Wang Hanhin,

The crime problem noted included cross-border crimes, a species of crime attracting increased attention and generating grave concerns, e.g. cross-border crimes increased by 230% from 1980 to 1990.¹⁵

The prevalence and nature of cross-border crime in China

As noted, since the opening of China, cross-border crimes have been on the rise, unrelentingly and precipitously. This is particularly the case between the border of PRC and HKSAR.

Since the opening of China in 1979, cross-border crimes have taken on a number of defining characteristics and driven by certain definitive trends, namely:

First, cross-border crimes are spreading from coastal special economic zones in the 1980s, e.g. Shenzhen, to inner economic development areas in the 1990s, e.g. Yunan.

Second, cross-border crimes are manifested in many forms, e.g. smuggling, drugs trafficking, illegal migrations, financial crimes, and implicated many more departments, e.g. police, custom, and immigration.

Third, cross-border crimes are regionalized. For example, smuggling of cultural relics is limited to four provinces, i.e. Shanxi, Inner Mongolia, Henan, and Xianxi. Together, they accounted for 90% of the reported relics crimes nation wide. Drug trafficking is limited to the provinces Yunan, Guangxi, and Guangdong, with the former two provinces accounting for over 90% of the drug haul. Illegal immigration is concentrated mainly in two provinces, i.e. Fujian and Zhejiang, while

Secretary-General, Secretariate of Standing Committee, 6th NPC, and vice-president, Legal System Committee, on 1983, Aug. 25, 1983.

¹⁵ Feng Shuliang, *Methods of Crime Prevention in China* (Zhongguo Yuefang Fanzui Fanlue) (Beijing: Falu chubanshe, 1994). pp. 27-8.

economic smuggling is to be found along the coastal provinces of Guangdong, Zhejiang, Shandong and Liaoning. Lastly the killing, selling and exportation of endangered spices happened mostly in the provinces of Xinjian, Yunan and Jinxu.¹⁶

Fourth, cross-border crimes are increasing in frequency, magnitude and seriousness. For example:

In the case of smuggling, it has spread from the costal areas in the south-east, e.g. Hong Kong and Macau, to north of Changjiang, e.g. Shandong and Liaoning. Since 1992, smuggling activities are getting more organized, internationalized and out in the open. The smuggling vessels are getting larger. The smuggled goods are getting more expensive. The smugglers are getting better equipped, including armed escorts. For example, from January 1992 to August 1993, the Guangdong PSB seized 87 smuggling vessels for a total of RMB 1.56 billion worth of goods. In 1988 there were 42 seizures worth over RMB 1 million each, while in 1994, there were 767 seizures of such values.¹⁷

In the case of drug trafficking, in 1994 there were 38,033 cases. This is more than the total of all 1991 and 1992 cases combined by 70%. In 1995, the figure has risen to 57,524 cases, an increase of 51.2% over 1994. This represents 4,564 more cases than the total of all cases from 1990 to 1993.¹⁸

In the case of financial crime, commercial fraud is the most prevalent and has the greatest impact. In 1991, there were 77 cases of fraudulent use of misappropriated U.S. negotiable instruments in Hainan, Guangdong, Liaoning, Beijing, Xianxi, and Qinghai. In Shenzhen alone there were 34 such cases. In 1994, one credit fraud case

¹⁶ Xian Dang, *Police work implicating foreign concerns*, (Zhongguo shewai jingwu) (Beijing: Zhongguo renmin gongan daixue chubanshe, 1991), pp. 210 – 212.

¹⁷ *Ibid* p. 214.

¹⁸ *Ibid* p. 215.

alone involved 17 provinces with a combined lose of US\$ 476. 9 billion and RMB 15.4 billion.¹⁹

In the case of illegal migration, in 1992 there were 17,166 persons arrested, an increase of 17% from 1991. In 1991, 3,329 illegal immigrants were arrested at border check-points. In 1995, 4,205 were arrested at the border check-points. This is an increase of 26.3% over 1991 and 58.8% over 1994.²⁰

In the case of smuggling of stolen relics, there were a total of 10,000 items being seized by HPK and turned to PRC from 1983 to 1996.²¹

Finally in the case of cross-border organized crime, criminal gangs (*heshehui*) are increasingly extending their influence from the south-eastern costal cities, e.g. Shenzhen and Hainan, to inland provinces, e.g. to Helungjian, Shanxi, Liaonin, Hunan, Sichuan and Beijing. Since 1983 (to 1996) the PSB has uncovered 80 cross-border gangs, operating in ten provinces and involving many countries, e.g. Hong Kong (10 gangs), Macau (15 gangs) and Taiwan (20 gangs) and others (USA, UK, Japan).²²

¹⁹ *Ibid* p. 216.

²⁰ *Ibid* p. 218.

²¹ *Ibid* p. 219.

²² *Ibid* p. 220.

*Prevalence with the cross-border crime: A case study of smuggling*²³

Smuggling clearly demonstrates the above observed pattern of the growth in and proliferation of cross-border crimes and vividly accentuates the need for cross-border police cooperation, especially between PSB-HKP.²⁴

Smuggling is on the rise in China, esp. during 1980 to 1990.²⁵ Though the official detection rates do not reflect a growing trend in smuggling and in fact show a constant decline (except 1983 and 1989 when it registered inconsequential rise), both the value of smuggled goods recovered and effective yield per detection shows a sustained growth pattern. The value of goods recovered grow from RMB 51.3 million in 1980 to RMB 601.33 million in 1990, a ten fold increase. Likewise the effective yield per detected case grow from RMB 1401.8 per case to that of RMB 51501.4 per case i.e. a 36.7 times increase; an unmistakable upward trend.²⁶

Table 1: PRC CUSTOM DETECTION RATE

²³ Smuggling is used here to illustrate the problem of cross-border crime because of the ease access to comprehensive official data on smuggling. Smuggling is also the most prevalent cross-border crime in the PRC-HKSAR context. Wang Changyin (editor in chief), *Analysis of Criminal Cases Involving Foreigners and Hong Kong and Macau in the Shenzhen Special Economic Zone* (Shenzhen Jingji Tequ Shewei She-Kang - Aou Xingshi Anli Pingxi) (Beijing: Renmin fayuan chubanshe, 1990), p. 3.

²⁴ Wang Changyin (editor in chief), *Analysis of Criminal Cases Involving Foreigners and Hong Kong and Macau in the Shenzhen Special Economic Zone* (Shenzhen Jingji Tequ Shewei She-Kang - Aou Xingshi Anli Pingxi) (Beijing: Renmin fayuan chubanshe, 1990), p. 3.

²⁵ See Tian Wenchang, "Smuggling crime and control in China" ("Woguo de zousi fanzui yu zhili,") in *CHINESE LEGAL SCIENCE*, 1992, No. 2, pp. 101-108.

²⁶ During this eleven years period the RMB has devalued against all major world currencies. However, even adjusting for inflation or currency depreciation, the observation that smuggling is on the rise stills holds.

YEAR	CASES	RMB*	RMB/CASE
1980	36616	5133	1401.8
1981	34871	10568	3030.6
1982	32507	10195	3136.2
1983	33220	5918	1781.5
1984	27157	13574	4998.3
1985	23545	70932	30126.1
1986	18453	61082	33101.4
1987**	13018	16697	12826.1
1988	10102	23378	23141.9
1989	11960	56063	46875.4
1990***	11676	60133	51501.4

Notes:

* RMB in 10,000

** The method for recording detection rate changed in 1987. Before 1986 the data includes not only the case detected and amount recovered but also any prior self-confessed cases and amount admitted to by the detected smuggler. After 1987, the data only include cases actually detected and amount of goods recovered by officials.

*** Over 50% of the RMB value of goods recovered came from 7 custom points in Canton alone.

The above data set (Table 1) as structured creates some problems for valid analysis and meaningful comparison. First, there is an official change in data recording procedure in 1987. Before 1987 the data included detected and confessed cases. The confessed cases cannot be desegregated for time series analysis, e.g. a single detected case might result in 10 prior confessed smuggling. After 1987 the data reported only consisted of current detection and recovery rates. This allows for a more accurate plotting of progressive smuggling rates. Second, the data fluctuate

widely from year to year. This is especially the case with the value of goods recovered. Thus we witness the value of goods recovered doubled from RMB 5.1 million in 1980 to RMB 10.5 in 1981 only to drop by 40% to RMB 5.9 million in 1983. In 1984 it jumped 2.3 times to RMB 13.57 million. In the following year the recovery experienced a 5.2 times increase to RMB 70.9 million and dropped as precipitously two years later by a margin of 1:4.2 to RMB 16.69 million.

However meaningful trend analysis and historical comparison is still possible with periodizing and averaging. Judging from the data set as a whole the following observations can be made on smuggling as a cross-border crime problem in China:

(1) THE DETECTION RATE DECLINED The number of cases detected was quite stable during 1980-1983 and 1988 to 1990. However, the high detection rate before 1983 showed marked decline from 1983 to 1986. After 1987, the year the data recording method changed, the detection rate dropped and stabilized at 11,000. For comparison purposes if we average the years between 1980 (the year when smuggling became active) to 1986 (seven years) and compared this with the four years between 1987 and 1990, we find the ratio to be 29481 vs. 11689, i.e. the detection rate of the first period is 2.5 times that of the later.²⁷

(2) THE VALUE OF GOODS RECOVERED INCREASED The total value of recovered goods grew tremendously during 1980 to 1990. However, as observe, it also experienced wide gyrations during those years. To stabilize the yearly fluctuation and allow for meaningful inter-period comparison we can divide the 11-year span into three periods separated conveniently by the anti-crime campaign (1983-6) and official recording change (1987) in between. In the first period (80 -

²⁷ The averaging of detection rate over a number of years achieves two things: (1) Averaging avoids the distorting effect of yearly fluctuations. (2) Averaging allows comparison of two or more periods and capture overall trends.

82) the average recovery was RMB 8.632 million, in the second period (83 - 86) RMB 34.483 million, and the last period (87-90) RMB 39.067 million. Thus, the yield rate has increased substantially between the first and the last, i.e. 4.5 times.

(3) THE EFFECTIVE YIELD RATE PER DETECTION INCREASED The average yield per detected case is most consistent and revealing of the change in smuggling pattern and concomitant enforcement efforts. This is so because the average-yield rate is not affected by the change in official recording and independent of level of enforcement activities. The level of enforcement activities refers to the number of inspections made or investigation conducted. The level of enforcement activities would necessary affect the number of detections and gross value of smuggled goods uncovered. Level of enforcement activities is contingent on resource (personnel, financial and technology) deployment and policy directives. However, effective yield per case is not immune to changed focus/method of inspection or investigation, e.g. enforcement strategy.

Looking at the overall pattern, we can see an increase in effectiveness of custom officials enforcement efforts in recovering smuggled goods. Except for the years of 1983 and 1987 the yield rate has been going up precipitously. In terms of periods average: the first period (80 - 82) yield is RMB 2,522.9, the second period (83 - 86) is RMB 17,501.8 and the third period (87 - 90) is RMB 33,586.2. The increase in the last period is most consistent and evident.

This set of custom enforcement and recovery data points to a number of plausible explanations which merits further investigation:

(1) If we hold constant the level of enforcement activities by PRC custom officials, a highly unlikely scenario, the dropped in detection rate means possible effective evasion by smugglers or better deterrence by officials, or more likely both. Both explanations need more investigation.

(2) A more plausible explanation is that there was a change of smuggling behavior pattern and/or enforcement activities strategy. As smuggling becomes more organized, institutionalized, systematized, modernized and internationalized there are fewer transgressions but more cost-effective mass scale operations.²⁸ The number of smuggling operations mounted declined inversely with the increased in value of the goods smuggled, i.e. smugglers learned to be more efficient in their operations. The change of smuggling modus operandi affected the enforcement behavior of the custom officials. The custom officials enforcement strategy has to adjust to the smugglers' smuggling tactics and technologies. In more to be more cost-effect, the custom officials have to direct their resources and energy towards catching the "big fish" instead of conducting routine inspections and ad hoc investigations. The run of the mill border smugglers were neglected in favor of the big hauls. This hypothesis is consistent with a low detection rate reflecting possibly more targeted inspection/investigation drive but greater recovery of smuggled goods in both gross and transactional terms. The other two pieces of evidence pointed to this direction are: (1) The smuggling attributable to "legal personality" e.g. corporation and organization averaged 60.7% during 1984 to 1990: 1984 (56.3%), 1985 (90%); 1986 (83.8%), 1987 (47.8%), 1988 (45.5%), 1989 (49.6%) and 1990 (52.1%). The involvement of legal personality also fluctuates with the value of smuggled goods recovered, e.g. in 1984 when the legal personality caught was 56.3%, the value of good recovered was 13574. Next year when the legal personality caught was up to 90% the gross value of good recovered jumped to 70936. In 1987 when the

²⁸ See Tian Wenchang, "Smuggling Crime and Control in China" ("Woguo de Jiaocxi Fanju Yu Zhile,") in *CHINESE LEGAL SCIENCE*, 1992, No. 2, pp. 101-108.

gross value of goods recovered dropped sharply from 1986 so did the legal personality who was arrested. Though the evidence is tentative, the observation merits further investigation.

The above noted rise in smuggling as a cross-border crime has led one Hong Kong academic to observe:

In this case, smuggling represented a challenge by external agents to the sovereignty of a polity undergoing state building. Today, smuggling is still viewed by states as a challenge to their sovereignty and, as such, is a crime not against any individual but against the state. Just as 160 years ago, Chinese officials are still concerned about the threat of smuggling against the financial health of the state. Members of the Chinese government have "conceded that smuggling, especially that by legal persons {companies}, has been eating away at {the state's} revenue and undermined the national economy (He, 1998: 8).²⁹

The causation to cross-border crimes in China

There are a number of reasons accounting for the growth, spread, proliferation and deterioration of cross-border crime in China, chief amongst which is the modernization of China by way of economic reform and market opening to foreign trade and investment.³⁰ This coincides with the globalization of trade world-wide.³¹ The convergence of domestic modernization efforts and international globalization

²⁹ Benjamin C. Ostrov, "The anti-smuggling investigation bureau's war on smuggling in China," *Police Practice and Research: An International Journal*, (In print 2001). Citing He Sheng. (1998, November 5). Anti-Smuggling Fight Fiercer. *China Daily*, pp. 8. Available: Lexis-Nexis Academic Universe.

³⁰ See "Communiqué of the Third Plenary Session of the 11th Central Committee of the Communist Party of China" (adopted on Dec. 22, 1978), reprinted in *Beijing Review*, No. 52, Dec. 29, 1978, pp. 6-15.

³¹ "Get Rich Quickly," *Times*, April 13, 1998. (Globalization is breaking down national barriers – through integrating financial systems and dismantling territorial frontiers - and bringing people closer together.)

trend resulted in the movement of people, things, ideas and culture in an unprecedented scale. This created ideal conditions for across border crimes, i.e. a lot of motivated offenders, many criminal opportunities and decrease in guardianship over things and people.

In 1985, 2,727,000 foreign nationals visited China. In 1994, 9,040,000 visited, an increase of 230%. In 1995, 11,860,000 visited, an increase of 76% over 1994. In 1994, 20,600 foreign enterprises invested in China. In 1995, 234,000 foreign enterprises were established. In 1985, there were 107 ports opened to foreign trade, by 1997 there were 219. Domestic market opening attracted investors as well as criminals. In 1987, there were 47 foreign national serving prison terms in China. By 1991, this grew to 228, a four-fold increase. This does not take into consideration the larger contingent of foreign criminals deported after investigation, prosecution and conviction, e.g. between 1990-1995 there were more than 15,000 foreigners being deported for a varieties of criminal offenses in China.³²

III. Problem with cross-border crime between PRC-Hong Kong

The cross-border crime problem is most acutely felt along the coastal areas of China, e.g. Guangzhou, especially in the Special Economic Zones (SEZ), e.g. Shenzhen Special Economic Zone. The Shenzhen SEZ was established by “Guangdong Province Special Economic Zone Regulations” (“Guangdong Sheng Jingji Tequ Tioli”) – adopted and promulgated by the NPC in August of 1980 to attract foreign investment, facilitate technology transfer and promote trade. In the developmental process, the SEZ attracted large number of outside criminals. They come with the foreign investors and alien workers, living and working alongside with

³² Xian Dang, *Zhongguo shewai jingwu* (Police work implicating foreign concerns) (Beijing: Zhongguo renmin gongan daixue chubanshe, 1991), pp. 222.

them. In 1991, a total of 31,900,000 people visited Shenzhen, an increase of 11.3% from a year ago. In 1984 there were 184 foreign criminals, a record year since 1950s. Between 1981 and 1982 crime rose by 70% and by 1984 they rose by another 100%.³³

Cross-border criminals escape local control and require international cooperation. One of the major characteristics of cross-border crimes in Shenzhen is that most of them are involved with foreigners and non-residents, including Hong Kong and Macau residents. These foreign perpetrated crimes have part of their conduct, consequences, and/or impact taking place between the Shenzhen, Hong Kong and/or Macau. Some of the most frequent kinds of cross-border crimes are smuggling between Hong Kong and Shenzhen, Hong Kong illegal gangs going to Shenzhen to extort money, commit crime and offer protection, Hong Kong visitors going to Shenzhen to procure vice and prostitution services, PRC criminals going to Hong Kong to commit crimes, and criminals from Hong Kong and China escaping to the other jurisdictions to evade law and justice.³⁴

Cross-district and especially cross-border crimes create enormous investigation and prosecution problems for the PSB and HKP alike, e.g. criminals committing crime in one place (Hong Kong or China) and eluding police capture by hiding in the other jurisdiction (Hong Kong or China) or criminals planning a crime in Hong Kong and committing a crime in China.

There are a number of reasons contributing to cross-border crimes between PRC-HKSAR. First, the border between PRC-HKSAR is long and porous. This makes for ease of entry. Second, the economic disparity between PRC and Hong

³³ Wang Changyin (editor in chief), *Analysis of Criminal Cases Involving Foreigners and Hong Kong and Macau in the Shenzhen Special Economic Zone* (Shenzhen Jingji Tequ Shewei Shang-kang- Aou-men Xingshi Anli Pingxi) (Beijing: Renmin fayuan chubanshe, 1990). p. 1.

³⁴ Ibid. 2-5.

Kong, while narrowing rapidly, is still substantial. This creates incentives and opportunities for criminals from both sides of the border who want to make a “fast buck” to breach the border with impunity.³⁵ For example, stolen vehicles moving north and prostitutes going south. Third, the more protective and humane legal system favors PRC instrumental criminals who has nothing to lose. Fourth, the lack of formal cooperative agreement between PRC and Hong Kong means that escaped fugitives enjoy an added sense of security.

Now that we have a brief exposure to the prevalence and nature of cross-border crimes in China, it is time to return to the issue that is of central concern to this article, i.e. how have the PRC – Hong Kong been cooperating in fighting cross-border crimes penetrating these two geographically close and culturally intimate but politically separated and administratively independent criminal – policing jurisdictions. To this most interesting and challenging issue we now turn.

IV: PRC – Hong Kong practices towards cross-border crime

This part of the article examines PRC – Hong Kong cooperative efforts and joint ventures in fighting cross-border crimes; past and present. Particularly, how cross-border crimes were handled routinely and semi-officially, without the existence of a formal mutual cooperation structure and official assistance agreement? More significantly, what are the problems and issues created by a strained PSB and HKP working relationship when they join hands in fighting cross-border crimes.

Obstacles to cross-border cooperation

Currently there is no formal cooperative structure, e.g. rendition or mutual

³⁵ John Vagg, “The Borders of Crime: Hong Kong-China-Border Criminal Activity,” *British Journal of Criminology* Vol. 32(3):310 (1992)

assistant agreement, between PRC and HKSAR government to facilitate the handling – investigation or prosecution - of cross-border crimes and criminals.

Existing cooperation is carried on in an informal, ad hoc and contingent basis. The lack of a formal structure and official agreement is not due to the failure of efforts, but in spite of them.

The major obstacles standing in the way of meaningful cooperation between HKP and PSB are due to the confluence of a number of factors; historical, ideological, and legal.

Historically, Hong Kong as a colony ruled by the British government, a fiercely independent sovereign, that has few incentives to work with the PRC government, which was perceived as an alien, if not hostile, regime, before 1997. For the most part, the relationship between the two sides is a detached one. The Chinese government detested the colonialists on nationalistic qua ideological grounds. The British government dismissed the communists based on political as well as cultural reasons.³⁶ This self-enforced isolation and other-suspecting attitude is much ingrained and still prevails within the current ranks of HKSAR government bureaucracies and infested the minds of most of the senior Hong Kong officials, including the police. This makes cooperation between PSB and HKP a difficult if not impossible undertaking.

Ideological, PRC and Hong Kong cannot be further apart. Up until 1979, China was a communist state and totalitarian regime. Since 1979, under the leadership of Mao and now Jiang, the country has adopted a water-down version of communism ideology, i.e. socialism with Chinese characteristics. Still, ideological purity is required of the Party officials and political correctness is expected common citizens.

³⁶ Frank Welsh. *A History of Hong Kong* (Britain, London: Harper Collins, 1993).

From the beginning of time and until very recently (after 1997), Hong Kong thrives on capitalistic first principles and operated as a free port. Ideologies of all kinds are not welcomed in Hong Kong, save for capitalism and commercialism. To the people in Hong Kong, capitalism and commercialism are less political ideology than work ethos, and less political theory than economic practices. Most important of all, they are less impositions of the government than conventions shared by everyone in Hong Kong.³⁷ This has led Prof. Endacott to observe that Hong Kong people are not politically apathetic as much they cannot be bothered with politics.³⁸ Given this apolitical ethos, the Hong Kong people have reasons to be fearful of PRC's less than sterling record as an oppressive regime, witness the June 4, 1989 political backlash. To the Hong Kong people and the Hong Kong government, then as now, it is best to avoid any unnecessary contacts with the PRC government at all costs, in fear that any such contact - cooperation and collaboration – might lead to the diminution of the way of life that Hong Kong come to know, e.g. corruption free government and rule of law judiciary.³⁹

Finally, *legally* the British and PRC governments have negotiated for the return of Hong Kong as a colony under British rule to be a Special Administrative Region within greater China under the “one country two system” doctrine as espoused by Deng. The political – constitutional settlement provided that HKSAR is to administered independently and autonomous from the PRC. The “one country two system” as secured by the Basic Law has been interpreted literally to preclude any ideological convergence, policy coordination and operational cooperation in crime

³⁷ Richard Hughes, *Borrowed Place, Borrowed Time* (Andre Deutsch, 1968).

³⁸ Endacott. *Government and People in Hong Kong: 1841-1962*. (Hong Kong: Hong Kong University Press, 1964), p. 244.

³⁹

control and policing issues between the PSB and HKP after 1997 and for 50 years hence.

Attempts at cooperative agreements

The PRC and Hong Kong governments have made many unsuccessful attempts to set-up a mutually agreeable cooperative framework to deal with cross-border crime issues in the past.⁴⁰

Take the case of transferring of criminals between PRC and HKSAR. As alluded to above, the main obstacle in reaching a rendition agreement resulted from Hong Kong officials' lacking confidence over China's perceived haphazard, corrupt and abusive criminal justice system and process.⁴¹ Specifically, Hong Kong demand that China promises not to impose capital punishment over criminals returned to China under such an agreement.⁴² It is feared that the return of criminals to China, without such a written guarantee, would violate Hong Kong's domestic commitment to the rule of law and international obligations under human rights treaties.⁴³

⁴⁰ Xian Dang, *Police work implicating foreign concerns* (Zhongguo shewai jingwu) (Beijing: Zhongguo renmin gongan daixue chubanshe, 1991), pp. 458-460.

⁴¹ See Kam C. Wong, "Police Law Reform in China," *British Journal of Criminology* (Oct. 2001, in progress).

⁴² "Hong Kong government confirmed that it will respect mainland's verdict" *Tai Kung Pao*. November 13, 1998. A5. (In a press conference after "Big Spender" verdict, the Secretary of Security confirmed that Hong Kong government have exchange of ideas with PRC officials over return of criminals. The major obstacle is over death penalty; Hong Kong has no death penalty, PRC does.)

⁴³ United Nation has a model rendition/extradition agreement. The model agreement does not mandate that the returned criminal be exempted from capital punishment. For example, England and Canada both have discretion not to return in capital cases. However, England has on two occasions returned to Germany two capital offenders without extracting a promise of exemption from death penalty. Hong Kong has strictly abided by a no capital punishment rule in the past. "Yip Suk-yi said that the death penalty issue should be dealt with according

In this regard, HKSAR government is bound by domestic legislation, i.e. Chinese Expatriation Ordinance (Cap. 235) which provides that fugitives will not be extradited or rendered an undertaking is given by the requesting country that the fugitive upon return would not be sentenced to death for a capital offense.

The ***FINAL REPORT ON CONFLICTS OF LAWS, EXTRADITION, AND OTHER RELATED ISSUES*** by the Special Group on Law further suggests that any agreement to return criminals to China must follow international norms and practice,⁴⁴ i.e. double criminality,⁴⁵ prima facie rule,⁴⁶ political crimes are not extraditable,⁴⁷ and previous crime not sought for extradition are not to be tried, after the criminal is returned.⁴⁸

During the Basic Law drafting process, there were extensive discussions over the issue of judicial assistance. At that time Hong Kong's negotiation stance was informed by three basic principles:

- (1) the rendition offense must also be a crime in Hong Kong, i.e. the double criminality rule;
- (2) the difference in punishment between PRC and HK should not be too wide, e.g. PRC with death penalty vs. HK without any death penalty;
- (3) there must be clear criminal procedures safeguarding the rights of defendants.⁴⁹

to situation, the government has difficulty in arriving at judicial assistance with the mainland.” *Hong Kong Economic Journal* December 4, 1998.

⁴⁴ The Extradition (Hong Kong) Ordinance, Cap. 236, making Extradition Act 1870 (the Act) applicable to Hong Kong.

⁴⁵ First Schedule to the Act.

⁴⁶ Section 10 of the Act

⁴⁷ Section 3 of the Act.

⁴⁸ Section 19 of the Act.

⁴⁹ “Tam Wai Chu: Hong Kong doing away with death penalty increase difficult for judicial assistance” *Ming Bao*, November 9, 1998.

Finally, on November 27, 1998, the HKSAR government established the following principles in its future negotiation with China over a rendition agreement: (1) rendition agreement must conform to Article 95 of the Basic Law; (2) any rendition arrangement must follow Hong Kong Laws; (3) any rendition agreement must be acceptable to Hong Kong and the PRC; (4) any agreement must take into account the principle of “one country two systems” and the differences between the two legal systems. Such a rendition agreement should protect people’s rights as well as preventing cross-border crime from avoiding justice; (5) all rendition must comply with Article 19 of the Basic Law.⁵⁰

On December 8, 1998, the Secretary of Security has made one critical change to her earlier give principles for negotiating a rendition agreement with the PRC, i.e. Hong Kong will not insist on waiver of death penalty as condition of return.⁵¹

The existence of informal working arrangements

Notwithstanding the above noted lack of formal cooperative structure and official agreement between PRC and HKSAR in dealing with cross-border crimes, functionally there is no denial on both sides that there exist a grave need for cross-border cooperation, e.g. in exchanging criminal intelligence, in investigating

⁵⁰ “SAR discussed China-Hong Kong rendition arrangements, political and capital offenders will not be transferred” *Hong Kong Economic Journal* November 28, 1998, p. 4.

⁵¹ “Yip Suk-yi said that the death penalty issue should be dealt with according to situation, the government has difficulty in arriving at judicial assistance with the mainland.” *Hong Kong Economic Journal* December 4, 1998. See also “Martin Lee is critical of Yip-Lau Suk-yi: on the transfer of fugitive arrangement, weakening once stance without negotiation.” *Ming Bao*, December 8, 1998.

crimes, in executing court papers, in locating of suspects, in surrendering of fugitives and in mounting joint operations.⁵²

In the main, PRC-Hong Kong-Macau police cooperation is built upon the structure of INTERPOL.⁵³ INTERPOL or International Criminal Police Organization was first established in 1923. Since then INTERPOL has grown to be a 150 member-countries strong international policing organization. Its headquarter is at Lyons. INTERPOL works through a network of associated members' National Central Bureaux. It operates a system of international notices for wanted (red) and professional (green) criminals. It has 100,000 files on international criminals and processes 350,000 messages for assistances from fellow members each year.⁵⁴ Hong Kong and PRC are both members of the INTERPOL. They both share in criminal intelligence and provide mutual assistance as fellow INTERPOL members.⁵⁵

China established an INTERPOL National Central Bureaux in Beijing in the 1984. Hong Kong has always been an INTERPOL member on account of British colonial rule.

In 1985, China invited the Commissioner of Royal Hong Kong Police Hong Kong in the capacity as INTERPOL representative to Beijing to exchange views and

⁵² Chen Zengxia, A discussion on criminal jurisdiction and judicial assistant involving China, Hong Kong and Macau under "one country two systems" ("Yiguo lianzhi" xia Yue-Kang-Auo hushe xingshi anjian guanhe yu shifa xiezuotantao") *Journal of Political Science and Law* (Zhengfa Xue Kan), Issue 49, 1996: 43-48, 45.

⁵³ Xian Dang, *Police work implicating foreigners to China* (Zhongguo shewai jingwu) (Beijing: Zhongguo remin gongan daixue, 1997), pp. 458 to 461.

⁵⁴ David McClean, *International Judicial Assistance* (N.Y.: Clarendon Press, 1992).

⁵⁵ For INTERPOL in China generally, see Ch. 7 to Xian Dang, *Police work implicating foreigners to China* (Zhongguo shewai jingwu) (Beijing: Zhongguo remin gongan daixue, 1997).

set forth avenue for cooperation.⁵⁶ The parties agreed upon five areas of cooperation:

- (1) Both parties agreed to establish regular and ad hoc working sessions to exchange views and discuss matters on how to improve and expand the scope of mutual cooperation. China agreed to set an INTERPOL liaison centre in Guangdong in 1987 to facilitate liaison work with Hong Kong.
- (2) Both sides agreed to exchange information on hijacking.
- (3) Both sides agreed to exchange intelligence and information over coinage crime. Hong Kong agreed to provide experts in training of PRC police in examining and discriminating counterfeit money.
- (4) Both sides agreed to exchange intelligence and information over drugs. Both sides would exchange drug enforcement officers.
- (5) Both sides agreed to exchange intelligence and information of smuggling of cultural relics. Hong Kong further agreed to stop the flow of Chinese cultural relics being smuggled to Hong Kong and exported abroad.

Since then, PRC and HKSAR police officials agreed to meet twice a year in a joint forum called: “China-Hong Kong INTERPOL bilateral working session”⁵⁷ to be held alternatively in Hong Kong and Beijing. By 1995, there were 21 such meetings.

According to unconfirmed data, there from 1985 to 1995, over a ten years period, the PRC assisted Hong Kong with 10,000 more cases and the Hong Kong Police has

⁵⁶ “Mainland-HK police join hands,” *Beijing Review*; Beijing; Jan 17, 1994, Vol. 7:7. (Since 1985, Hong Kong and China have been cooperating to fight cross-border crimes, such as drug trafficking, smuggling and car theft. To coordinate its fight against drug crimes with Hong Kong, the Chinese police have reinforced its patrol along its southern border areas).

⁵⁷ Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 362.

assisted China through the INTERPOL in handling 500 cases.⁵⁸ For example, in the early part of 1986, two mainland police officers were allowed to visit Hong Kong twice for the investigation of three major corruption cases happened in Hubei, Shanghai, Guangzhou. In 1987, Hong Kong police assisted PSB officers in the investigation of a corruption case of involving a Dongfang (Oriental) Hotel manger. The Hong Kong police also assisted PRC in transferring major corruption criminals who were hiding in Hong Kong to China for prosecution.

In 1992 the PSB and HKP decided to improve their level of cooperation as a result of increased in cross-border violent and gang instigated crimes. Thus, at the fifteenth “China-Hong Kong INTERPOL bilateral working session” both sides agreed upon the following measures to increase communication and exchange of information: (1) The Ministry of Public Security would stationed an permanent official in Hong Kong to facilitate the gathering and transmission of information. (2) In order to improve upon the effectiveness of the PRC - INTERPOL liaison centre in Guangdong, the center would be upgraded and to be led by Guangdong PSB head, Chen Shaoji. This allowed for more effective communication and better coordination between HKP and Guangdong PSB. (3) In order to improve upon coordination of operations and facilitation of communication between Hong Kong and Shenzhen, Shenzhen-Hong Kong liaison officer would be directed by Shenzhen PSB head, Liang Da. (4) To improve upon communication and exchange of intelligence and information, both sides agreed to establish a 24 hrs duty officer.⁵⁹

In practice, the Hong Kong police routinely inform the PSB about the existence of dangerous or at large Hong Kong criminals, as part of INTERPOL

⁵⁸ Xian Dang, *Police work implicating foreigners to China* (Zhongguo shewai jingwu) (Beijing: Zhongguo remin gongan daixue, 1997), pp. 459.

⁵⁹ Id. p. 460.

protocol; especially when they escaped into China or planned on committing crimes in China.⁶⁰ This is an open secret. Grenville Cross, the Director of Public Prosecution has observed: “Without such an (rendition) agreement, the mainland authorities, nonetheless, have assisted Hong Kong through administrative arrangements to secure the return of suspected criminals who are Hong Kong residents.” Information, such as request for mutual assistance, is transmitted to the other side by way of a “speaking note.” (*suo tie*).⁶¹

The working relationship between PSB and HKP by and through the “China-Hong Kong INTERPOL bilateral working session” and “Guangdong-Hong Kong border liaison annual working meeting” is a cordial and effective one. Since 1987 and until 1997, Guangdong and Hong Kong have exchanged 471 notes for mutual assistance. Through the years PSB and especially Guangdong police has provided material assistance in the investigation of many serious crimes, e.g. robberies, smuggling of drugs, commercial crimes, kidnappings and car thefts. Theoretically, PSB is free to act or not to act upon the information supplied by Hong Kong police officials. However, in practice, the PSB usually acted upon the information with due diligence and zealousness. Upon finding the suspect or criminal, the PRC police authority would inform the Hong Kong police of when and where the criminal suspect would be “expelled” from the PRC and into the welcomed arms of the Hong Kong police.⁶² Between 1990 and 1995, the PSB-Guangdong police arrested and transferred to Hong Kong 70 Hong Kong criminals, including the

⁶⁰ David McClean, *International Judicial Assistance* (N.Y.: Clarendon Press, 1992).

⁶¹ Grenville Cross S.C. (Director of Public Prosecution) “Letter: Criticism over the Big Spender case unfair.” *SCMP* November 4, 1998.

⁶² John Bassett Moore, *Extradition*, Vol 1 (Boston: The Boston Book Company, 1891) (Expulsion was another way of getting rid of undesirable inhabitants in a state.)

number two most wanted person from Hong Kong Ye Yusheng.⁶³ In 1995 alone, there were 18 cases of transfer of criminals.⁶⁴ By October 1997, there were 111 altogether.⁶⁵ PSB-Guangdong police also helped HKP in the interdiction of drugs, rescue of kidnap victims, and recovery of stolen properties, e.g. thus far PRC has returned 110 stolen vehicles and 9 luxury yachts to Hong Kong. In 1998 (Jan. to Nov. 5) there were 17 cases of transfer of criminals.⁶⁶ The impression one gathered from official data is that the pattern of PSB returning criminals to Hong Kong is a consistent one: 1990 – 1994 (52/48 or 1.1/month), 1994-1995 (18/12 or 1.5/month), 1995 – 1997 (31/24 or 1.3/month), 1997-Nov. 5 1998 (17 or 1.54/month). (See Table 2 below).

Table 2: Numbers of Hong Kong fugitives transferred from the mainland: 1990 - 1997

Nature of Offence	1990 to 1997	Jan. 1998 to Nov. 11, 1999
Murder, manslaughter, homicide	15	1
Assault, injury to person	6	--
Rape	3	3
Kidnapping, unlawful detention	5	2
Robbery	21	--
Blackmail	4	1
Arson	2	--
Burglary, theft, receiving	20	5

⁶³ Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 362.

⁶⁴ Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 366.

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⁶⁶ “Mrs. Ip is not concerned about similar incidence like Cheung Tzse-jeung’s case before an agreement” *Hong Kong Economic Journal* December 12, 1998.

stolen property		
Fraud, forgery, coinage	6	3
Dangerous drugs offenses	19	1
Possession of arms and ammunition	2	--
Others	8	1
Total	111	17

Figures supplied by Secretary for Security.

Notes: (1) Transferring of fugitives from PRC is only an informal administrative arrangement. (2) The transfer of fugitives only involved transferring of fugitives from PRC to Hong Kong. (3) Such transfer only applied to fugitives who were Hong Kong residents committing crimes in Hong Kong. (4) If the fugitive had committed crime in mainland, he would have to returned after the mainland criminal proceeding was completed.⁶⁷

A typical ‘Guangzhou-Hong Kong border working meeting’ (1999) agenda would have the Guangzhou party raising the following issues: management of the Shenzhen river project, transfer of Guanzhou-Hong Kong criminals, compensation for dead fishes at Dingling island outside Zhuhai municipality, proper scope and issues of Guangzhou-Hong Kong border work meeting and cross-border smuggling issues.

The level cooperation and material assistance offered by PSB in fighting cross-border crimes are openly acknowledged by past and present Commissioners of Police (CP) in growing terms since 1991. In 1991, the CP observed that the PSB cooperated with and otherwise provided assistant to HKP in foiling a number of smuggling rings.⁶⁸ In 1992, the CP observed that the cooperation between HKP and PSB continued to improve as attested to by the fact that many fugitives of justice were

⁶⁷ “Mrs. Ip is not concerned about similar incidence like Cheung Tzse-jeung’s case before an agreement” *Hong Kong Economic Journal* December 12, 1998. (Figures provided by the Secretary of Security.)

⁶⁸ See *Police Annual Review* (1991)

being returned to Hong Kong by the PSB during the year.⁶⁹ In 1993, the CP it observed that as a result of PSB and HKP cooperation a number of key cross-border gangs were destroyed and many criminals were returned to Hong Kong to be dealt with by law.⁷⁰ In 1994, the CP observed that as a result of the excellent working relationship and active cooperation between HKP and PSB the recurring problem of fugitives escaping into China and increase in cross-border crimes have been brought under effective control.⁷¹ In 1995, the CP observed that the PRC Ministry of Public Security has made clear that China would not tolerate criminals coming from Hong Kong. Furthermore, PSB and HKP should do more in the sharing of criminal intelligence and mounting of joint police operations. Finally, the success of past PSB-HKP cooperation effort is amply demonstrated with the monthly return of Hong Kong fugitives by PSB.⁷²

The overall conclusion one can draw from this historical reflection of the level of PRC-SAR cooperation over cross-border crimes is that there is at all time a healthy dialogue between PSB and HKP officials, especially in cases involving locating of serious criminals and foiling of dangerous gangs. However, the record also shows that with respect to return of suspects and fugitives, the exchange has been very much a one-way street, i.e. from China to Hong Kong. This picture of police cooperation is best depicted by Hong Kong Commissioner of Police in a press conference over Hong Kong public order in January of 1996:

⁶⁹ *Police Annual Review* (1992)

⁷⁰ *Police Annual Review* (1993)

⁷¹ *Police Annual Review* (1994)

⁷² *Police Annual Review* (1995)

Hong Kong police has been cooperating with the mainland public security now for over ten years, the achievements are everywhere in evidence. In 1995 alone, with the cooperation of the mainland public security, there were 18 criminals repatriated to Hong Kong. With car thefts, in 1995 14 container tractors and 8 luxury cars were recovered and returned. Two other luxury yachts were also found and returned.”⁷³

It is thus not correct to observe, as some did, that the PRC political authority in general and the PSB in particular is intending on interfering with Hong Kong’s justice administration and legal autonomy. It appears that the contrary situation, i.e. Hong Kong has been obstructing China from enforcing her domestic law by not rendering the needed assistance, obtains.⁷⁴ This lop-sided cross-border mutual PSB – HKP cooperation scheme has been described by a PRC author as an “unequal” (*bu pingdeng*) relationship:

For example, in cases of transfer (*yijiao*) of criminals, when Hong Kong residents who have committed crime in Hong Kong and escaped into China to hide, after the Guanzhou (police) received request for assistant to arrest, they would used heir utmost effort to arrest the suspect and transfer him to Hong Kong. However when Hong Kong resident committed crimes in the mainland and escaped to Hong Kong or even mainland resident criminals who have fled to Hong Kong,

⁷³ Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 366.

⁷⁴ Liu Guoxiang, “Current existing problems confronted by mainland public security organ in the handling of criminal cases implicating Hong Kong and post-1997 strategies” (Danqian neidi gongan jiguan banli xiegang xingshi anjian zhong cunzai de falu wenti ji 1997 nian hou de duice) *Gongan Yanjiu* (Public Security Studies) Vol. 51: 32-37 (1997)

Hong Kong police often received the request for assistance to investigation, but as a result of difference in legal system was not able to transfer the criminals back.⁷⁵

Illustrative cases of successful PSB-HKP cooperation

The level and nature of PSB-HKP cooperation and mutual assistance in the investigation of cross-border crime and return of cross-border criminals can best be illustrated by the following cases. These reported cases first reported here contribute to our understanding of how PSB and HKP worked closely to fight cross-border crimes a professional manner.”⁷⁶

1. “King Fook” and “Po Shing” jewelry shops armed robbery

On August 28, 1990, two jewelry shops in Hong Kong – “King Fook” and “Po Shing” – were robbed by armed robbers of \$4 million dollars of jewelry. The HKP quickly identified two Hong Kong criminals who fled in China. The HKP Royal sent two police officers to Guangdong – PSB to ask for assistance and supplied them with criminal intelligence. Within 12 hours, the two mainland accomplices were arrested. Both of them were prosecuted and tried in China according to PRC law as PRC nationals.

2. Armored car armed robbery

On July 12, 1991, an armored vehicle from Kai Tak Airport was robbed at gun point of 169 million U.S. dollars. The Deputy Assistant of Police went to Guangzhou to seek help from the Guangzhou – PSB. The Guangdong police notified all banks in

⁷⁵ *Id.* p. 367.c

⁷⁶ Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 370-390.

Guangzhou province of the robbery to be on the looked out for the criminals and the loots. When one of the major robbers appeared with the robbed US dollars, he was arrested and returned to Hong Kong.

3. Chow Sang Sang jewelry shop armed robbery

On April 23, 1992 at 6.50 p.m. the Chow Sang Sang Jewelry Shop at 529 Nathan Road in Kowloon was robbed by five people with machine guns. They escaped.

On April 24, 1992) the five suspected robbers had a fire fight with the police using AK47 and grenades when the HKP tried to arrest them. . 17 people were injured, including 5 police officers and 12 citizens. On April 28, 1992 the Royal Hong Kong police requested the Guangdong – PSB to assist in the search for and arrest of the five suspected criminals, including: Feng Wei-han, “rat An”, Pan Wei-xue, and Pan Wei-min. On May 8, 1992 the PSB arrested Feng Wei-han (a HK resident) and turned him over to the HKP for disposition.

4. Shui Hing majong shop armed robbery and murder

In the evening of May 5, 1995, Hong Kong criminal Wong Kin-wai conspired with three criminals from mainland China to rob Shui Hing majong shop in Kowloon.

Three Hong Kong people were killed. The police fired and injured three criminals.

On May 10, 1992, the HKP requested assistance Guangdong – PSB through their respective INTERPOL offices in Hong and Guangdong. Upon receiving the request, the Guangdong – PSB formed a special task force and arrested the three mainland criminal defendants – Cen Wei-hong, Li Ganfei, and Tang Yuzhang (all mainland residents). The Guangdong – PSB further sent police officers to gather information in Hong Kong and exchange intelligence with HKP. Cen and Li were later tried and

executed in China according to PRC law. Tang was sentenced to death with execution suspended.

The overall impression one gets from these cases is that when the crime was committed in Hong Kong by mainland residents they would be prosecuted and punished inside China. When crimes were committed in Hong Kong by Hong Kong residents they would be transferred back to Hong Kong for prosecution. The HKP-PSB has a good working relationship in seeing to it that cross-border criminals are getting their share of justice wherever they are.

V: PSB's perspective on cross-border cooperation between PSB-HKP

The problem of lack of cooperation

Overall, the PSB has reasons to be concerned about the level of cooperation they are getting from the HKP. Notwithstanding the rise in cross-border crimes between China and Hong Kong, the HKP has been less than helpful, for legal and political reasons, to assist PSB in their law enforcement activities. For example, a typical case in 1989 involved a criminal who robbed and killed in Guangzhou. He escaped to Hong Kong. The Guangdong PSB requested the HKP to arrest the fugitive and turn him over. The HKP arrested the fugitive but refused to turn him over. The fugitive was charged with possession illegal immigration documents and was sentenced to 20 months in prison.

Consistent with the above cited case, the Hong Kong government has routinely rejected rendition requests from the mainland based on spurious grounds: no crime has been committed in Hong Kong; no sufficient evidence has been produced by PSB; as a capital offense the criminal is not extraditable on humanitarian grounds; the

crime should be more appropriately prosecuted in Hong Kong.⁷⁷ This led one seasoned PSB official to observe that Hong Kong has been made a safe heaven for PRC fugitives from justice. In fact, once a criminal escaped into Hong Kong there is little the PRC police can do.⁷⁸ This lack of cooperation has led the PSB, on occasions, to take the law into their own hands, e.g. by luring Hong Kong back to China or intruding into Hong Kong territory.⁷⁹

In this respect and comparatively speaking cross-border cooperation between Macau and Taiwan fares much better. In the first half of 1992 there were ten cases of exchange of criminals between Macau – PSB police; three from PSB to Macau and seven in the other direction. For example, in May of 1992, a Macau murderer escaped into China. The Guangdong – PSB arrested and turned over the wanted fugitive within days on May 17, 1992. In early 1992, two Macau criminals committed murder in Zhuhai municipality and returned to Macau. The PSB asked for assistance from the Macau police. The Macau police promptly investigated and returned the criminals to the Guangdong – PSB for prosecution.

In the case of Taiwan, PSB and Taiwan police worked together professionally with each other through two indirect channels. One is through the official INTERPOL channel; assistance is requested and provided for as fellow members of the international organization. The other is through unofficial private organizations and

⁷⁷ See Darren Goodsir, “Hijack Suspect to Stay in Hong Kong,” *SCMP*, June 30, 1995.

⁷⁸ Liu Guoxiang, “Current existing problems confronted by mainland public security organ in the handling of criminal cases implicating Hong Kong and post-1997 strategies” (Danqian neidi gongan jiguan banli xiegang xingshi anjian zhong cunzai de falu wenti ji 1997 nian hou de duice) *Gongan Yinjiu* (Public Security Studies) Vol. 51, pp. 32-37.

⁷⁹ “Hui Ki-an acknowledged that part of the crime rate resulted from economic downturn” *Hong Kong Economic Journal*, Jan. 8, p. 7. (The Hong Kong Commissioner of Police denied reports that PRC public security has been entering Hong Kong waters to arrest criminals.)

informal personal arrangements. The first case of recorded cooperation was with the return of fugitives from justice from PRC to Taiwan in August of 1988. A Taiwan murderer, Yang Ming, was arrested by the PSB and returned to Taiwan through Singapore.⁸⁰ In September of 1990, PRC worked through the Red Cross to enter into two agreements with Taiwan to turn over smugglers, suspects and offenders, i.e. “Extradition transactions agreement” (Qianfan Zuoye Xieyi Shu) and “Jin Meng Xie Yi”. The police cooperation agreement was put to good use one month later for the return of a PRC embezzler. On Feb.22, 1989, Wu Daipeng, a Beijing Bank employee stole US\$3.44 millions and escaped to Taiwan. The PRC police posted Wu on a wanted list with INTERPOL and asked Taiwan to help. On March 17, 1990, Taiwan, Taipei district court sentenced Wu to one year sentence on charges of fraudulent documents. After he served his time, he was extradited to China through the Red Cross.⁸¹

PRC and Taiwan has also negotiated informal private agreements through the PRC Hai-Xia Lian-an Guanxi Xiehui (Cross-straits two borders relations association) and Taiwan Hi-Xia Jiaoliu Jijin hui (Foundation on cross-straits exchange) to deal with extradition of hijackers. In 1995 they have entered into two agreements: First, the “Lian-an jieji-fan deng qianfan ennti” (Business concerning cross-straits hijacking criminals) provided for the apprehension, detention, and extradition of hijackers between Taiwan and PRC. Second, the “Weifan you guan guiding jinru duifang dicu renyuan de qianfan ji xiang guan wenti” (Questions related to extradition of persons violating regulations intrusion into others area in violation of regulations) provided for the return of illegal immigrates and unauthorized fugitives who were found in each other’s territories.

⁸⁰ Id. 462.

⁸¹ Id. 463.

Illustrative cases of failure of co-operations between PSB-HKP

The multi-jurisdictional cross-border robbery on board of the hydrofoil “Eastern Star” best illustrates the lack of reciprocal cooperation by the Hong Kong police to PRC police request for assistance. On June 13, 1995, Liang Bin, the suspect who masterminded the robbery of “Eastern Star” escaped to Hong Kong. In November of 1995, the Chinese INTERPOL National Central Bureau Chief Zhu Yin-tao formally asked Hong Kong to return Liang Bin to China at the “Guangdong-Hong Kong border liaison annual working meeting” but to no avail. He complained to the Hong Kong press that Hong Kong should not be a safe haven for cross-border criminals.⁸²

Another case is the Wah Ye watch and jewelry shop murder and robbery case. On December 28, 1989 at about 9 pm, the Wah Ye watch and jewelry shop in Guangzhou was robbed by three robbers armed with two guns and one hammer. The robbers killed one shop keeper and one security staff and ran away with RMB 100,000 jewelry. In May of 1990 the Guangzhou PSB arrested two suspects – Guo Rui and Li Ping-wei. They were prosecuted and sentenced to death. The other principle criminal – Lu Jing escaped to Hong Kong. The Guangzhou PSB sought help from Hong Kong through the INTERPOL. In early December 1991, the suspect Lu Jing was arrested by the Hong Kong immigration authority for using a false passport to enter Hong Kong. The Guangzhou PSB again asked for his return to stand trial as a mainland resident who has committing a murder in China. The HKP refused to turn Lu Jing over but prosecuted him for relevant counts of using a

⁸² Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 368.

false passport and illegal stay. The Hong Kong police promised to return Lu Jing after he served his sentence in Hong Kong.

VI. Conclusion

Thus after 1987 the HKP and PSB has developed unofficial channels of communication and informal working arrangements between HKP and PSB to deal with cross-border criminality at the operational level and on a case to case basis. For example, in cases when rendition of criminals from the PRC to Hong Kong is deemed necessary, the Secretary for Security would make the request if the following conditions are met: (1) The fugitive committed a crime in Hong Kong; (2) the fugitive is a Hong Kong resident; and (3) the fugitive is not currently on trial in the PRC.⁸³ In other circumstances, the HKP would inform the PSB through the INTERPOL officially or by way of wanted list informally. The PSB would then take step to locate the fugitive and expelled the same into the waiting arms of the HKP.⁸⁴

More pointedly, HKP has a close professional working relationship with the PSB.⁸⁵ Before 1997, one such channel of cooperation was the INTERPOL. This is still being used today.

PRC established an INTERPOL National Central Bureaux in Beijing in the 1984. In 1987, it set up an INTERPOL (branch) liaison centre in Guanhdong in to work with Hong Kong. PSB and HKP officials meet twice a year in the “China-Hong Kong INTERPOL bilateral working session” to share intelligence and discuss mutual

⁸³ “Mrs. Ip is not concerned about similar incidence like Cheung Tzse-cheung’s case before an agreement” *Hong Kong Economic Journal* December 12, 1998.

⁸⁴ Conversation (1999) with CSP, HKP (retired) who was posted to the Frontier Division.

⁸⁵ *Police Annual Review* (1996), p. 27.

concerns. PSB and HKP has also established an INTERPOL liaison officer system to facilitate mutual cooperation on a daily basis on such matters as sharing of criminal intelligence, assisting in criminal investigation, authenticating documents, identifying accident victims, locating missing persons, searching for evidence, summoning witnesses, enforcing confiscation and forfeiture orders, attacking drug smuggling and searching wanted suspects and criminals.⁸⁶

⁸⁶Wu Zhiqiang, *Hong Kong Police* (Guangdong renmin chubanshe, 1996), pp. 362.