

## Transnational Organized Crime: Police Cooperation in China and the EU

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**Abstract:** *This article outlines police cooperation strategies that have developed to fight organized crime in both the EU and Greater China. It explores the broadly similar organized crime problems faced within both systems while highlighting some of the major challenges to each. Using a socio-legal approach it compares the informal and formal cooperation mechanisms that have been established to address cross-border organized crime issues. The article uses the extensive literature analyzing the EU context as a framework for assessing the cooperation methods used within Greater China. Finally it uses this analysis to assess the police cooperation measures in place and explains what we can learn about the politics, law and culture of each region from this cooperation. The author contends that while police cooperation in Greater China is less formalized than that of the EU, significant informal cooperation exists which appears similar to how police cooperation started to develop within Europe half a century ago.*

### Introduction

This article aims to outline police cooperation strategies that have developed in the fight against organized crime. A particular focus will be on two very different systems: the European Union (EU) and Greater China. The article investigates predominantly types of cooperation frameworks that have evolved and how they reflect the politics, law and cultures of the systems addressed. In a globalized world cooperation beyond national boundaries is increasingly important. However, within different systems this cooperation has evolved according to different needs, political challenges and legal requirements. While the need – the fight against organized crime – is broadly similar in both Greater China and the EU, the possibilities of forming strategies to counter this type of crime are vastly different. This article therefore first addresses the existence and forms of organized crime in both systems. It then goes on to distinguish the different strategies that have developed to counter

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this type of crime and lastly addresses what we can learn about the politics, law and culture of these regions by assessing their police cooperation mechanisms.

The present article adopts a socio-legal approach, taking into account the discrepancies between the 'law in the books' and the 'law in action'. This is particularly important when comparing the highly formalized cooperation mechanisms in the EU with the very informal approaches applied between the systems forming Greater China. The focus of the present work is to analyze some of the cooperation strategies in Greater China and the EU to date and determine the interaction between legal and non-legal, harmonized and regional initiatives. This article does not seek to test a particular theoretical normative framework. Its aim is to analyze the development of some of the police cooperation strategies employed in the fight against organized crime in the system of Greater China. To this end, the existing research on EU strategies is used as a guideline for analysis.

This article, as well as comparative research in this area more generally, aims predominantly at creating a better understanding of both legal systems and, in particular, the legal regulation of police cooperation within them by employing a comparative legal methodology and a multidisciplinary approach. This was particularly important in relation to Greater China, bearing in mind that no equivalent assessment has so far been conducted. The ample literature and analyses in the EU context therefore helped to establish a framework that could be mirrored in the other part of the assessment.

Police cooperation strategies have been limited to the 20<sup>th</sup> century. A particular focus is put on the latter half of the 20<sup>th</sup> century to highlight the influence of systemic changes in Greater China and especially the retrocession of Hong Kong in 1997 and Macao in 1999,<sup>1</sup> which led to the current system of police cooperation. European cooperation and, in particular, legal formalization was already apparent under Napoleonic reign, but the earliest strategy assessed here will be Interpol.<sup>2</sup> Police cooperation strategies give significant insight into political systems. Considering that policing lies at the heart of national sovereignty, the openness and willingness for cooperation could be a strong indicator for the political profiles of the systems assessed.

### **Organized Crime in the EU and China**

Organized crime is not easy to define. From a non-legal perspective it could be defined as crimes committed by a group of people that form a secret association, have a hierarchical structure and rely either on family ties (like the classical mafia structure) or an otherwise defined more or less permanent membership. According to the literature, contemporary organized crime is, however, frequently not structured hierarchically.<sup>3</sup> The only type of organized crime that can until today be qualified as being hierarchical is the Italian Mafia. All other networks can be considered cellular.<sup>4</sup> There is also no common opinion in the literature as to whether

the predominant nature of organized crime is actually transnational, or whether organized crime operates mainly at the local level.<sup>5</sup> For the present assessment a focus was put on the investigation of organized crime cases across national and international boundaries. Whether this is the predominant form of organized crime in the two regions addressed was not investigated. It can be assumed that organized crime does cross boundaries in a number of cases in China and the EU though, thus justifying the establishment of cross-border police cooperation strategies in this field.

The EU is a region composed of 28 member states with different political and legal structures as well as organizational cultures. Organized crime is perceived to be a threat in the EU and hence there is considerable development at EU level to respond to it. This is also reflected in the development of specialized EU agencies in the fight against organized crime, such as Europol, Eurojust and CEPOL, which will be discussed below.<sup>6</sup>

A particularly important type of organized crime that has been prominent in the EU is the trafficking in human beings and, in particular, the sexual exploitation of children, including child pornography. The prevention and fight against this type of organized crime has been declared an EU priority and the Commission has proposed new rules to act against criminals responsible for child sexual abuse and trafficking, as well as better assistance for victims. Furthermore, cybercrime has been declared a priority for European crime-fighting. Attacks against information systems and other forms of cybercrime, such as online identity theft or on-line child abuse, are increasing with rapidly evolving technology. The EU aims at being equally innovative and flexible in responding to such crimes. Strategies that are being developed range from support for cross-border cyber-investigations and training of police to legislative measures. The European Cybercrime Centre within Europol started operation in January 2013.

The best way to fight crime today is by way of freezing the criminals' assets. This view is particularly persistent in the area of EU organized crime. High levels of financial crime, including tax fraud, identity theft, money laundering and corruption have been investigated in the EU. The ratification of the United Nations' Convention against Corruption has been hoped to create a more coherent EU anti-corruption policy. The main problem in this area is, however, the effective cooperation between EU member states, in particular on preventing crime by effectively freezing, confiscating and recovering proceeds of crime. The European Commission therefore promotes EU-wide standards on financial investigations, and the use of joint investigation teams, as discussed below.

Another type of organized crime that is becoming more widespread in the EU is counterfeiting and the infringement of intellectual property rights. Objects of these crimes include, in the best case scenario, designer clothes and, in the worst, food and pharmaceuticals and breach not only legitimate commercial interests, but also consumers' rights to, for example, physical integrity. The income generated with these crimes can, according to European Commission estimates, compete with drugs and firearms trafficking.<sup>7</sup> The fight against illegal drugs is closely connected to the

fight against organized crime and drug trafficking could be said to often be a type of organized crime – depending on the definition of ‘organized crime’ which is highly debated within the EU context. Organized crime groups are estimated to earn up to EUR 230 billion a year with the trade in drugs alone. The EU has therefore developed a comprehensive Drugs Strategy, implemented through an EU Action Plan covering drug supply and demand reduction, coordination between member states, information and research and cooperation with non-EU countries. The EU pact to combat international drug trafficking - disrupting cocaine and heroin routes - was adopted in June 2010.<sup>8</sup> The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) provides factual overviews and an evidence base to support the drugs debate. Further issues that are addressed in the EU with a particular focus on international cooperation are crime trends, such as piracy on the high seas, trafficking in stolen cars, violence in sports and trafficking in cultural heritage.

Operational activities, such as investigations and prosecutions of crimes, cannot be coordinated at the EU level, but are the sole responsibility of EU member states. The Commission assists member states in fighting organized crime by providing various tools, such as the gathering of reliable crime statistics and the funding of European projects or specialist networks, discussed below. To foster a multi-disciplinary approach in the fight against organized crime, the EU has developed the so-called ‘administrative approach’, which combines prevention strategies regarding the public and economic sectors. This approach compliments the traditional methods employed by the criminal justice systems. However, the different approaches are implemented to different extents in the various systems forming the EU. A major problem in the EU is furthermore that both the substantive criminal law, as well as specific procedures relating to organized crime, are significantly different.<sup>9</sup> A network of informal contact points to exchange best practices is viewed by the Commission to counter this problem, which shows the resort to informal practices in the light of legal diversity. Europol furthermore supports the exchange of administrative information between EU States at the operational level. A more comprehensive overview of EU priorities with regard to organized crime can be found in the Stockholm Programme and its Action Plan, as well as in the Communication on the Internal Security Strategy.

While Greater China only includes four distinctly different jurisdictions - as opposed to 28 in the EU -, one could claim that the differences between them are greater and that the challenges to police cooperation are more significant. While the Basic Law for Hong Kong provides the ‘one country, two systems’ political settlement,<sup>10</sup> there are certainly more than two systems at play in the region. The Mainland Chinese system draws heavily on foreign legal models.<sup>11</sup> The Chinese criminal code<sup>12</sup> and the code of criminal procedure<sup>13</sup> in particular borrow from both, the Soviet and German civil systems.<sup>14</sup> Hong Kong, as a former British colony is governed by the common law system, which continues even after reversion to the PRC in 1997.<sup>15</sup> Macao, the other special administrative region (SAR) in Greater China and until 1999 Portuguese colony, has a ‘potpourri’ system similar to the mainland,

mainly based on Portuguese law, which in turn borrowed from German law.<sup>16</sup> Macao, like Hong Kong does not apply the death penalty, which distinguishes the two administrative regions from the Mainland and has the potential to complicate police and justice cooperation between these jurisdictions.<sup>17</sup> Taiwan, like Mainland China and Macao, is a civil law (inquisitorial) system.<sup>18</sup> It contains a mixture of Imperial Chinese law, contemporary Chinese law, principles and concepts of civil law systems, such as Germany and Japan, as well as the United States.<sup>19</sup> These differences in systems and legal heritage clearly also have an impact on the regulation and structure of police within them.

Not only do the systems differ with regard to civil and common law jurisdiction, but there are significant discrepancies in relation to the application of fair trial rights, in particular between the two special administrative regions on the one hand and Mainland China and Taiwan on the other hand and, even more strikingly, the latter two also apply the death penalty to a considerable number of offences. These differences do not make police cooperation impossible, but police from the two SARs have to be mindful of them to protect their jurisdictional safeguards when exchanging information or assisting investigations, in particular against their own nationals.

When looking at cooperation with regard to organized crime within Greater China, it becomes apparent that the historical similarities of policing organizations and laws that usually characterize states within a federal system do not exist. This is due to the different historical development of this region compared to a federation of states. Historically, Macao was under Portuguese rule until 20 December 1999 when it returned to Chinese sovereignty.<sup>20</sup> Taiwan was never recognized by China as a state, but retained a working, distinctly different legal system and law enforcement bodies cooperating, rather innovatively, like a sovereign nation state.<sup>21</sup> Hong Kong returned to Chinese sovereignty after a 99-year lease by the British government on 1 July 1997.<sup>22</sup> The different systems within Greater China do therefore not form a 'federation' and not even a 'union' of states, but rather display similarities with sovereign nation states as they enjoyed long standing sovereignty in one way or another. They are hence more likely to continue cooperating like autonomous nation states rather than a federation.

A particular organized crime problem in Greater China is corruption. To counter corruption in the region a bilateral formal cooperation framework was established in 1988. The Mutual Case Assistance Scheme (MCAS) between Mainland China and Hong Kong<sup>23</sup> (MCAS) was created between the Guangdong Procurator's Department and Hong Kong's Independent Commission Against Corruption (ICAC) to investigate cross-border corruption cases. It was only put in writing in 1996.

Another bilateral agreement in the region was signed in 1990 between Mainland China and Taiwan, the 'Kinmen Accord'<sup>24</sup> which evolved into the 2009 Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement, which could be regarded as a 'formal' agreement.<sup>25</sup> This agreement is aimed at fighting all

types of cross-border crime, but particularly applies to organized crime and can be said to have similar effects as EU cooperation frameworks in the field.

Another agreement that was established to further cross-border cooperation in the fight against organized crime is the '1994 Agreement'. It confirmed the principle established between Hong Kong and the Mainland before, that cooperation between the two parties should be conducted through a direct Interpol link between the Hong Kong and the Guangdong province and the liaison officers of the Ministry of Public Security (MPS) stationed in Hong Kong.<sup>26</sup>

In 1998, Mainland China and Hong Kong also signed a Memorandum of Understanding (MOU) on cross-border policing, which stipulated in very general terms the independence of both sides, and the aim of mutual contacts and communications.<sup>27</sup> This MOU can, due to its lack of clear provisions concerning operational cooperation, only be considered a declaration of intent.

Another 'formal' agreement in the area of organized crime is the 2005 'Arrangement between the Government of the Hong Kong Special Administrative Region and the Government of the Macau Special Administrative Region on the Transfer of Sentenced Persons' between Hong Kong and Macau.<sup>28</sup>

In 2009, the police from Mainland China, Hong Kong and Macau also signed a MOU on developing the 'Electronic Communal Information Sharing Platform' (ECISP).<sup>29</sup> This is the only written tripartite agreement in the region, established between Guangdong, Hong Kong and Macao. The aim of the agreement is to enhance the exchange of information, improve common investigations and cross-border crime prevention.

Since 1979 Macao and China have established a 'channel of criminal investigation' including the participation of designated officials from either side, regular meetings and joint investigations.<sup>30</sup> Guangdong, Hong Kong and Macao have established common crime investigation units and liaison officer meetings since 2002 and since 2006 they regularly hold joint crime campaigns and visits.<sup>31</sup> Liaison officers between all four systems assist in criminal investigations and foster information exchange.<sup>32</sup>

Informal cooperation is the most prominent type of cooperation in organized crime cases in Greater China. Organized crime can be considered the most significant communality with regard to crime problems in the region. With regard to drug law enforcement, which is one of the biggest problems in all four parts of the region, Guangdong, Hong Kong and Macao are since 2003 cooperating in drug investigations, have established common drug control strategies, and are implementing common anti-drug laws and trans-regional drug policies.<sup>33</sup> However, the challenge that remains – similarly to the EU – is the difference in sentencing regimes and they put a bar before any formal agreements influencing operational cooperation in the field.<sup>34</sup> Another promoter of informal police cooperation is illegal gambling. The 2006 Soccer World Cup, for example, led to enhanced cooperation between the systems and tackled in particular the issue of illegal gambling.<sup>35</sup> A type of organized crime that has not been mentioned in relation to the EU, but has led to

significant cooperation in organized crime in Greater China are kidnapping cases across borders. While Hong Kong and the Mainland had regular informal communications since 1992, their exchange of information was significantly enhanced through the occurrence of such very prominent kidnapping cases around 2000.<sup>36</sup>

The most prominent of these kidnapping cases – and very frequently cited in the Chinese and English literature on the topic – is the so-called ‘Big Spender’ Case.<sup>37</sup> Cheung Tze-keung, also known as the ‘Big Boss’ or ‘Big Spender’, became one of the most well-known Chinese criminals in the 1990s through a series of abduction cases of prominent and wealthy people. Cheung was sentenced to death by a Chinese Court in November 1998. The 43-year-old had not been a Triad member, which was rather surprising to the court considering the scale of his operations and their requirement of significant criminal connections. Cheung’s father had already been a famous name in organized crime in China as he operated an illegal gambling operation. Cheung acquired his first criminal conviction at 16, and spent most of his youth in and out of street fighting gangs and remand centers. In 1991 he was sentenced for hijacking a security van outside an airport, which was the biggest cash robbery in the territory's history. While the Triads keep a distance from Hong Kong's tycoons, Cheung started work on a plan to kidnap the ten richest when he was released from jail.

In May 1996 Cheung started with the wealthiest family of all. Victor Li, the eldest son of the shipping billionaire Li Ka-shing, was seized from a car as he was returning to his father's house. Cheung deliberately kidnapped the son rather than the father, knowing that only Li Ka-shing himself would be able to obtain the money in time. Cheung wanted almost £108 Million. He also wanted them within 24 hours. This was probably the biggest ransom paid in history. His second victim was Walter Kwok, head of one of Hong Kong's biggest property conglomerates. The Kwoks did not cooperate with Cheung as well as the Lis, but eventually Kwok’s wife paid £48 million for her husband's release.

Cheung's organized crime group was - unlike the mafia structure - a fluid and cellular group consisting of quickly hired and fired ‘soldiers’. They carried out armed robberies for Cheung and bought weapons for protection in the future. They also assassinated those suspected of being informers. The reason Cheung was known as ‘Big Spender’ was his gambling habit. He would gamble millions of pounds in a single session. He is reported to have once lost HK\$200 Million (£16 Million) on one game. His luck came to an end with his arrest and conviction in Guangzhou (Mainland China) on charges of kidnapping and possession of 800kg of explosives and weapons. He lost his appeal and was convicted to death by firing squad.

Cheung was not the only criminal who operated as a kidnapper between Hong Kong and Mainland China. He was, however, the most prominent one which is why his case is presented as an example. Also, this type of organized crime is not to this extent existent in the EU, which is why it should be highlighted here.

Since 2004, Guongdong, Hong Kong and Macao police intelligence exchange has increased through the setting up of a common database on organized crime groups and members<sup>38</sup> between Guangdong and HK police. The PRC and Hong Kong have established a significant number of common training initiatives and in 2003 a border police assistance mechanism on fraud, theft, robbery, kidnapping and violence to exchange intelligence.<sup>39</sup>

It can be concluded that organized crime issues in the EU and Greater China are vastly similar, although differences can be seen in the areas of gambling and kidnapping. Also, literature on China mentions less frequently human trafficking and cybercrime as a focus of police cooperation. Two areas that both systems focus on similarly are, however, corruption and drug crimes.

### **Organized Crime and Police Cooperation**

Historically, police cooperation in the area of organized crime evolved through 'informal' – not legally binding – mainly bilateral initiatives.<sup>40</sup> The first 'international' cooperation mechanism with a focus on organized crime, involving more than a select number of states - and today open for all states of the world to join - was Interpol.<sup>41</sup> The creation of 'formal' cooperation mechanisms is more frequent in bilateral contexts, for example through the establishment of mutual legal assistance agreements between two countries<sup>42</sup> or in multilateral contexts between neighboring countries with frequent interactions at their transnational borders, such as the Benelux, or the 'Nordic' countries in the EU.<sup>43</sup> Most recently there have been cross-border cooperation agreements within a wider regional context, such as at the European Union level.<sup>44</sup> Between countries without established neighborhood relations cross-border cooperation frameworks are limited to the bilateral context. However, the EU is a rare exception to this rule, bringing together 28 member states under common legal frameworks on cross-border law enforcement cooperation.

In countries with vastly different human rights systems, such as Greater China,<sup>45</sup> formal cooperation agreements are less frequently established. Hong Kong, for example, has often rejected rendition requests by Mainland China (PRC) for political and legal reasons and is generally less cooperative, mainly for human rights reasons, than the Mainland.<sup>46</sup> Without an established legal framework, there is nothing the PRC can do about this. Police cooperation in Greater China therefore remains mostly informal, opening up opportunities for human rights infringements within operations 'under the radar' between the different police forces and also leading to unilateral 'spy' operations, for example to retrieve suspects from the other state.<sup>47</sup>

A significant number of bilateral and multilateral cooperation strategies exist between the member states of the EU.<sup>48</sup> Some that have to be mentioned in the context of organized crime as they were mainly established in the fight against drug crimes are: The Benelux Treaty, NebedeagPol and the EU Police and Customs



Cooperation Centers. The 1962 Benelux Treaty on Extradition and Mutual Legal Assistance in Criminal Matters,<sup>49</sup> was the first, and one of the most advanced, treaties of its kind at that time. The Treaty allowed for cross-border operations and hot pursuit (Articles 26 and 27), which formerly had been perceived as a grave breach of state sovereignty.<sup>50</sup>

The main objective NebedeagPol was to provide a more structured, rather than ad hoc informal, approach to cross-border cooperation through network building and education. An example of this is the creation of the Meuse-Rhine Euroregion initiative EPICC (Euregional Police Information and Coordination Centre), which is an active promoter of exchange of operational information in the Belgium, Dutch, German border region.<sup>51</sup> EPICC is based on a trilateral treaty between the three neighboring countries initiated by the efforts of NebedeagPol. It can be compared to a similar initiative in Greater China.

The establishment of bilateral and multilateral initiatives under the Schengen Convention is explicitly envisaged under its Article 39.5: 'The provisions of this Article shall not preclude more detailed present or future bilateral agreements between Contracting Parties with a common border.' This framework therefore explicitly allows the establishment of regional legal regulation in the field of police cooperation.

Another form of formalization is the establishment of EU level legislation. Several EU initiatives in the field of cross-border law enforcement have been developed, the most prominent being the 'Europol Convention' (signed by the then 15 EU member states on 26 July 1995), which came into effect on 1 July 1999 and has, since 2010, been replaced by a Council Decision.<sup>52</sup> The formalization was necessary to establish a common data-exchange mechanism for the entire EU and the Europol liaison officer network. Another important EU level strategy is the 2000 EU Convention on Mutual Assistance in Criminal Matters.<sup>53</sup> Apart from other aims, it established the highly debated joint investigation teams (JITs) in the EU. JITs are a new mechanism to coordinate cross-border investigations, which aimed at changing the established practice of parallel investigations. Despite initial resistance to this development, 40 JITs have been operational in the first 10 years of the Convention's implementation.<sup>54</sup> These two strategies, Europol and the 2000 Convention, were significant promoters of the fight against organized crime. Europol itself evolved from the 'Europol Drugs Unit' (EDU), which displayed a similar structure to the later Europol.<sup>55</sup> Joint Investigation Teams were geared at supporting the fight against organized crime and despite their slow start in practice are by now a major initiative in the field, dealing with all major crime areas outlined in part II of this article.

Another major initiative in the area of organized crime in the EU is CEPOL, the European Police College, which was founded in order to train police officials in relation to cooperation.<sup>56</sup> CEPOL promotes training and education through seminars, workshops and the exchange of senior level police officers ; they can work for a limited time in other countries and learn about another system.<sup>57</sup> This cooperation mechanism is similar to established practices in Greater China and geared towards

promoting trust between practitioners to harmonize practice and enhance cooperation. However, while this is based on a common understanding of accountability and human rights in the EU, cooperation in Greater China faces the challenge of greater diversity in this area.

Between the countries forming the region of Greater China (Mainland China, Hong Kong, Macau and Taiwan) police cooperation is mainly informal and not based on binding legal frameworks. A common legal framework on police cooperation, like the Schengen Convention, does not exist. However, similar to international, rather than EU police cooperation, some agreements were established bilaterally.

An example of a bilateral 'formal' cooperation framework in the area of organized crime is the 1988 Mutual Case Assistance Scheme (MCAS) between Mainland China and Hong Kong.<sup>58</sup> This agreement has already been outlined above. The document, signed by both parties in 1996, after a review of MCAS, was called the 'Summary of Review on Mutual Case Assistance' and set out the underlying principles and details of implementation of MCAS. The agreement specified that only witnesses, not suspects could be interviewed by either side and that the participation of witnesses had to be voluntary and supervised by the host jurisdiction. In 2000, the agreement was further extended to other Procurator Departments beyond Guangdong through collaboration with the Supreme People's Procurator Department.<sup>59</sup>

Another bilateral agreement that supported the regional fight against cross-border organized crime in Greater China was signed in 1990, the 'Kinmen Accord' between Mainland China and Taiwan.<sup>60</sup> Other than MCAS, and similar to most agreements in the region, the Accord did not regulate operational police, but justice cooperation, in particular rendition between the two systems.<sup>61</sup> In 1993 – as a response to the major kidnapping/hijacking cases mentioned above – it was supplemented by a further agreement specifically on the extradition of hijackers, which was equally never officially approved.<sup>62</sup> When the Taiwanese President Lee Teng-hui visited the United States in 1995 the relationship between Mainland China and Taiwan worsened to the extent that a 'formal' agreement through the 'Kinmen Accord' and its supplement was no longer possible.<sup>63</sup> However, cooperation practice at the justice and operational policing level continued and in 2009 the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement was concluded, which could be regarded as a 'formal' agreement.<sup>64</sup> As Taiwan was never recognized by the PRC as a sovereign state, while nevertheless behaving like one, both sides had established diplomatic organizations through which cooperation, for example in criminal matters, could be conducted.<sup>65</sup> This is why the Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement was concluded between the Taiwan Straits Exchange Foundation (Taiwan) and the Association for Relations Across the Taiwan Straits (PRC).<sup>66</sup> Despite the obvious political tensions between the two parties, this agreement reads similar to those established between EU member states.

The later '1994 Agreement' confirmed the principle established between Hong Kong and the Mainland, that cooperation between them should be conducted through a direct Interpol link between the Hong Kong and the Guangdong province and the liaison officers of the Ministry of Public Security (MPS) stationed in Hong Kong.<sup>67</sup> Cooperation through Interpol had been the long established practice of operational police cooperation between the two parties during the 99 years of British rule in Hong Kong and the 1984 Sino-British Joint Liaison Group decided in 1989 that cooperation through Interpol should persist even after the return of Hong Kong to Chinese Sovereignty in 1997.<sup>68</sup> Interpol Hong Kong and its counterpart in Macao formally became 'sub-bureaus' of the PRC Interpol National Central Police Bureau which facilitates cooperation between all three systems to date.<sup>69</sup> Compared to the *Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement* the 1994 Agreement is rather limited. Cooperation through Interpol and the existence of liaison officers does only facilitate the exchange of information, not the assistance in investigations and evidence gathering that is possible at the operational level between Mainland China and Taiwan.

In 2009, the police from Mainland China, Hong Kong and Macao signed an MOU on developing the 'Electronic Communal Information Sharing Platform' (ECISP) – similar to the EPICC system developed in the Meuse-Rhine Euroregion in the EU.<sup>70</sup> This is the only written tripartite agreement in the region, established between Guangdong, Hong Kong and Macao. The aim of the agreement is to enhance the exchange of information, improve common investigations and cross-border crime prevention. Considering that the agreement was put in the form of an MOU, its use cannot be enforced and so far a practical assessment of its usefulness has not been made. However, it can be expected that practitioners take advantage of its existence, at least in cases where cooperation would not necessarily lead to human rights infringements.

Besides these more or less formal agreements in the area of organized crime, there are a much more significant number of informal police cooperation frameworks in place between Mainland China, Taiwan, Hong Kong and Macao. Macao and China have, already since 1979, established a 'channel of criminal investigation' including the participation of designated officials from either side, regular meetings and joint investigations.<sup>71</sup> Guangdong, Hong Kong and Macao have established common crime investigation units and liaison officer meetings since 2002 and since 2006 the regularly hold joint crime campaigns and regular visits.<sup>72</sup> Liaison officers between all four systems assist in criminal investigations and foster information exchange.<sup>73</sup> The fact that the four systems have established informal cooperation mechanisms can be linked to the fact that the crime problems in the region, in particular relating to organized crime, are similar and that cooperation is therefore crucial.<sup>74</sup>

As mentioned above, with regard to drug law enforcement, Guangdong, Hong Kong and Macao are since 2003 cooperating in drug investigations, have established common drug control strategies, and are implementing common anti-

drug laws and trans-regional drug policies.<sup>75</sup> Since 1992, there is also enhanced cooperation between the systems relating to kidnapping<sup>76</sup> and since 2006 illegal gambling.<sup>77</sup> Since 2004 Guangdong, Hong Kong and Macao have established a common database on organized crime groups and members<sup>78</sup>. Since about 2003 the PRC and Hong Kong have increasingly established common training initiatives and a border police assistance mechanism on fraud, theft, robbery, kidnapping and violence to exchange intelligence.<sup>79</sup> Police cooperation between Macao and Taiwan is rarely reported in the literature.<sup>80</sup> The PRC and Taiwan have due to their more prominent similarities established closer cooperation even through a formal cooperation framework; however, they equally rely on informal cooperation, such as reported regular visits since 2001.<sup>81</sup> Informally, Taiwan, Hong Kong and the PRC also exchange information and intelligence and they participate in common investigations, similar to EU Joint Investigation Teams under the 2000 Convention.<sup>82</sup>

However, a number of factors inhibit informal cooperation and at the same time a stronger development of formal cooperation. Those factors are the differences in criminal procedure and admissibility of evidence and the differences in human rights regimes, in particular with regard to the death penalty.<sup>83</sup> While European countries have established a vast array of possibilities in the area of mutual recognition, in particular with regard to the collection and exchange of evidence,<sup>84</sup> such an inherently trust-based legal strategy cannot be envisaged in Greater China as the systems are not rooted within the same human rights and value structure. The cooperation mechanisms are still much more similar to international cooperation models rather than the more 'approximated' EU model.

Another problem in Greater China that can usually only be detected in international cooperation rather than regional or federal models is that the differences in organizational structures of police forces and the multitude of government departments with overlapping competences, in particular in the PRC, complicate cooperation.<sup>85</sup> These differences make it harder for police to find their competent counterpart in the other organization and to access relevant information.

## **Conclusion**

It can be concluded that organized crime cooperation between the systems of Greater China is only partly different from cooperation in the EU. The 'informal' cooperation, which has evolved in the EU to more formal mechanisms, is still predominant in Greater China. However, this is not to say that all cooperation in the EU is already formal. There is simply a higher degree of formalization due to EU level legal activism in this field. The actual organized crime problems in the two systems are not that different and a perceived need for enhanced cooperation exists in both regions. The types of crimes, as was concluded above, differ slightly and there are some interesting particularities of organized criminal methods in China.

However, overall the most prominent problems are drug crimes in both systems and these have significantly enhanced cooperation in the EU and Greater China alike.

While the fight against organized crime in general and drug crimes in particular has led to the formation of Europol in the EU, there are more 'soft' laws and measures guiding cross-border law enforcement in Greater China. The strategies still predominantly used between the four entities are Interpol and international liaison officers, which indicates a high level of sovereignty of the systems within this region (despite being systems within 'one country'). Also, the two mechanisms – Interpol and liaison officers – were the first strategies that European states could use in the fight against crime. One could hence question whether the further strategies established at the EU level are really needed or whether the international strategies, as proven by cooperation in Greater China, would also provide for a high level of cooperation in the area of organized crime. Independent of formalization levels, both systems established information exchange platforms and forms of Joint Investigation Teams that tackle the issue efficiently. Both systems are furthermore supporting existing strategies with 'social' measures, such as common training, seminars, conferences, visits and officer exchanges. The fact that the EU has a more formalized system does not seem to make such 'social' support redundant.

A possible conclusion of this assessment could have been to question cooperation in Greater China in the light of EU strategies. However, the opposite seems to be perfectly possible. Excluding judicial cooperation and death penalty issues, police cooperation in China in the field of organized crime is highly developed, though more through 'soft' measures than formalized treaties and agreement. This is very similar to how cooperation started out between European countries 50 years ago. From a purely operational perspective there do not seem to be outstanding advantages of the EU system and many well-working strategies in the EU have similarly developed in Greater China, despite the lack of formalization in the Asian part of the comparison.

## NOTES

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<sup>1</sup> Sonny Shiu-Hing Lo, *The politics of cross-border crime in Greater China – Case studies of Mainland China, Hong Kong, and Macao* (New York: M.E. Sharpe, 2009), p. xiii.

<sup>2</sup> Bill Heberton and Terry Thomas, *Policing Europe: Co-operation, conflict and control* (New York: Palgrave Macmillan, 1995), pp. 24-65.

<sup>3</sup> Petrus Van Duyne, 'Organised crime, corruption, and power', *Crime, Law and Social Change*, 26:3 (1997), p. 201.

<sup>4</sup> See generally Letizia Paoli, *Mafia brotherhoods. Organized crime, Italian style*, (2<sup>nd</sup> edn, New York: Oxford University Press, 2003).

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<sup>5</sup> Letizia Paoli and Cyrille Fijnaut, 'Introduction to part I: The history of the concept', in Cyrille Fijnaut and Letizia Paoli (ed.) *Organised crime in Europe*, (Dordrecht: Springer, 2004), p. 21.

<sup>6</sup> The following assessment is mainly based on an analysis of the 2013 Europol serious and organised crime threat assessment (SOCTA 2013).

<sup>7</sup> See at <http://ec.europa.eu>.

<sup>8</sup> See at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/114889.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114889.pdf).

<sup>9</sup> See generally Jean Pradel, *Droit pénal comparé* (2<sup>nd</sup> edn, Dalloz, 2002).

<sup>10</sup> Article 2 of *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.

<sup>11</sup> Pitman B. Potter, 'The Chinese legal system: Continuing commitment to the primacy of state power' *The China Quarterly* 159: (September 1999), pp. 673, 674.

<sup>12</sup> Adopted at the second session of the fifth National People's congress on 1 July, 1979; revised at the fifth session of the eighth National People's Congress on 14 March, 1997 and promulgated by order no.83 of the President of the People's Republic of China on March 14, 1997.

<sup>13</sup> Adopted by the second session of the fifth National People's Congress on 1 July, 1979, and amended pursuant to the decision on amending the criminal procedure law of the People's Republic of China adopted by the fourth session of the eighth National People's Congress on 17 March, 1996.

<sup>14</sup> Pitman B. Potter, *Op.Cit.*, p. 674.

<sup>15</sup> See for example Yash Ghai 'The intersection of Chinese Law and common law in the special administrative region of Hong Kong: Question of technique or politics?' in Jorge Oliveira and Paulo Cardinal (ed.) *One country, two systems, three legal orders – Perspectives of evolution* (Berlin: Springer, 2009), pp. 13-14.

<sup>16</sup> Frances M. Luke, 'The imminent threat to China's intervention in Macau's autonomy: Using Hong Kong's past to secure Macau's future', *American University International Law Review*, 15:3 (2000), p. 731.

<sup>17</sup> *Ibid.*

<sup>18</sup> Hungdah Chiu and Jyh-Pin Fa, 'Taiwan's legal system and legal profession' in Mitchell A. Silk (ed.) *Taiwan trade and investment law* (New York: Oxford University Press, 1994).

<sup>19</sup> *Ibid.*

<sup>20</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 131.

<sup>21</sup> *Ibid.*, p. 173.

<sup>22</sup> Sonny Shiu-Hing Lo, 'The influence of Hong Kong's policing on China – Mechanisms of knowledge transfer', *Asian Survey*, 51:4 (2011), p. 771.

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<sup>23</sup> Choy Dick Wan and Fu Hualing, 'Cross-border relations in criminal matters' in M. S. Gaylord, D. Gittings and H. Traver (eds), *Introduction to crime, law and justice in Hong Kong* (Hong Kong: Hong Kong University Press, 2009), p. 227.

<sup>24</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 174.

<sup>25</sup> See *Cross-strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement* between the Taiwan Straits Exchange Foundation and the Association for Relations across the Taiwan Straits, 25 July 2009.

<sup>26</sup> Choy Dick Wan and Fu Hualing, 2009, *Op. Cit.*, p. 228.

<sup>27</sup> *Ibid.*, p. 771-772.

<sup>28</sup> Hong Kong Department of Justice, *Arrangements with the Mainland and the Macao SAR*, <http://www.legislation.gov.hk/intracountry/eng/pdf/macao/tsp.pdf>. Accessed on 11 January 2014.

<sup>29</sup> Sonny Shiu-Hing Lo, 2011, *Op. Cit.*, p. 774.

<sup>30</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 169.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, p. 169-185.

<sup>33</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 171.

<sup>34</sup> Mark S. Gaylord, 'Cross-border crime and legal jurisdiction in post-colonial Hong Kong', *Crime, Law and Social Change*, 31:1 (1999), pp. 31, 44.

<sup>35</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 171.

<sup>36</sup> Kam C. Wong. "Understanding PRC criminal justice process: Anatomy of the 'big spender' case" *Crime and its control in Greater the PRC*. (Hong Kong: Hong Kong University Press, 2004).

<sup>37</sup> *Ibid.*

<sup>38</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 178.

<sup>39</sup> *Ibid.*

<sup>40</sup> For example early exchanges of information - see Mathieu Deflem, *Policing world society* (Oxford: Oxford university press, 2002), p. 47.

<sup>41</sup> Bill Heberton and Terry Thomas, *Op. Cit.*

<sup>42</sup> See for example Canada's mutual legal assistance in criminal matters and extradition treaties, [http://www.oas.org/juridico/mla/en/can/en\\_can-mla-gen-liste.html](http://www.oas.org/juridico/mla/en/can/en_can-mla-gen-liste.html). Accessed on 12 February 2014.

<sup>43</sup> See *Treaty Concerning Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands*, signed 27 June 1962

(entered into force 11 December 1967), as amended by the *Protocol Supplementing and Amending the Benelux Treaty Concerning Extradition and Mutual Assistance in Criminal Matters*, signed 11 May 1974 (entered into force 1 March 1982); henceforth also '1962 Benelux Treaty' and *Convention Between Denmark, Finland, Norway and Sweden Concerning the Waiver of Passport Control at the Intra-Nordic Frontiers*, signed on 12 July 1957; henceforth also 'Nordic Passport Convention'; Iceland acceded to the convention on 24 September 1965; the convention has been amended by an agreement of 27 July 1979, supplemented by the agreements of 2 April 1973 and of 18 September 2000.

<sup>44</sup> There are a number of different legal frameworks applicable in the EU, most importantly the *Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, signed 19 June 1990, [2000] OJ L 239/19 (entered into force 1 September 1993); henceforth also 'Schengen Convention'.

<sup>45</sup> See for an overview Sonny Shiu-Hing Lo, *The politics of cross-border crime in Greater China – Case studies of Mainland China, Hong Kong, and Macao* (New York: M.E. Sharpe, 2009).

<sup>46</sup> K.C. Wong, 'Policing cross-border crimes between China and Hong Kong: A preliminary assessment', *Asian Policing*, 2:1 (2004), pp. 14-15.

<sup>47</sup> Ibid.

<sup>48</sup> See for an overview Saskia Hufnagel, *Policing cooperation across borders – Comparative perspectives on law enforcement within the EU and Australia* (Farnham, Surrey, UK; Burlington, VT Ashgate, 2013) Chapter 2.

<sup>49</sup> *Treaty Concerning Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands*, signed 27 June 1962 (entered into force 11 December 1967), as amended by the *Protocol Supplementing and Amending the Benelux Treaty Concerning Extradition and Mutual Assistance in Criminal Matters*, signed 11 May 1974 (entered into force 1 March 1982).

<sup>50</sup> Toine Spapens and Cyrille Fijnaut, *Criminaliteit en Rechtshandhaving in de Euregion Maas-Rijn* (Intersentia, 2005), p. 26.

<sup>51</sup> See Police Academy of the Netherlands, *Yearbook 2005*, <http://spl.politieacademie.nl/from-peer-network-to-euregional-commission/tabid/765/Default.aspx>.

<sup>52</sup> *Council Decision of 06 April 2009 Establishing the European Police Office (Europol)*, [2009] OJ L 121/37; henceforth also 'Europol decision', previously *Europol Convention: Council Act of 26 July 1995 Drawing up the Convention based on Art K.3 of the Treaty on European Union on the Establishment of a European Police Office (Europol Convention)*, [1995] OJ C316/2.

<sup>53</sup> EU Council Act of 29 May 2000 Establishing in Accordance with Article 34 of the Treaty on European Union the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, [2005] OJ C 197/3 (entered into force 23 August 2005); henceforth also '2000 Mutual Legal Assistance Convention' or simply 'Mutual Legal Assistance Convention'.



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<sup>54</sup> Ludo Block, 'EU joint investigation teams: Political ambitions and police practices' in Saskia Hufnagel, Simon Bronitt and Clive Harfield (ed.), *Cross-border law enforcement regional law enforcement cooperation - European, Australian and Asia-Pacific perspectives* (Milton Park: Routledge, 2012), p. 87.

<sup>55</sup> John Occhipinti, *The politics of EU police cooperation: Toward an European FBI?* (Boulder: Lynne Rienner Publishers, 2003), p. 34.

<sup>56</sup> See European Police College, *About CEPOL* (2010), <http://www.cepol.europa.eu/index.php?id=about-cepol>.

<sup>57</sup> Ibid.

<sup>58</sup> Choy Dick Wan and Fu Hualing, 2009, *Op. Cit.*, p. 227.

<sup>59</sup> Ibid.

<sup>60</sup> Sonny Shiu-Hing Lo, 2009, *op. cit.*, p. 174.

<sup>61</sup> Ibid, pp. 174-176.

<sup>62</sup> Ibid, p. 174.

<sup>63</sup> Ibid.

<sup>64</sup> See *Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement* between the Taiwan Straits Exchange Foundation and the Association for Relations Across the Taiwan Straits, 25 July 2009.

<sup>65</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 173.

<sup>66</sup> See Chapters 1-4 of the *Cross-Strait Joint Crime-Fighting and Judicial Mutual Assistance Agreement* between the Taiwan Straits Exchange Foundation and the Association for Relations Across the Taiwan Straits, 25 July 2009 and Jerome A. Cohen 'Partners on crime' *South China Morning Post*, 6 July 2011, <http://www.usasiala.org/wp-content/uploads/2011/07/2011.07.06-SCMP-Chen-and-Cohen-Partners-on-crime.pdf>. Accessed on 15 August 2011.

<sup>67</sup> Choy Dick Wan and Fu Hualing, 2009, *op cit.*, p. 228.

<sup>68</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 177.

<sup>69</sup> Sonny Shiu-Hing Lo, 2011, *Op. Cit.*, p. 772.

<sup>70</sup> Ibid, p. 774.

<sup>71</sup> Sonny Shiu-Hing Lo, 2009, *Op. Cit.*, p. 169.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid, 169-185.

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<sup>74</sup> This is the case with regard to a number of offences, such as smuggling of goods, drug trafficking, illegal immigration, organised crime, counterfeiting of goods and gambling; see for example K.C. Wong , 'Policing cross-border crimes between China and Hong Kong: A preliminary assessment', *Asian Policing*, 2:1 (2004), p. 5.

<sup>75</sup> Sonny Shiu-Hing Lo, 2009, Op. Cit., p. 171.

<sup>76</sup> Kam C. Wong, Op Cit.

<sup>77</sup> Sonny Shiu-Hing Lo, 2009, Op. Cit., p. 171.

<sup>78</sup> Sonny Shiu-Hing Lo, 2009, Op. Cit., p.178.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid, p. 172-173.

<sup>81</sup> Ibid, p. 173.

<sup>82</sup> Ibid, p. 173-177.

<sup>83</sup> See for example in relation to the Hong Kong situation Mark S. Gaylord 'Cross-border crime and legal jurisdiction in post-colonial Hong Kong', *Crime, Law and Social Change* 31:1 (1999) p. 44.

<sup>84</sup> Caroline Morgan 'The potential of mutual recognition as a leading policy principle' in Cyrille Fijnaut and Jannemieke Ouwerkerk (ed.), *The future of police and judicial cooperation in the European Union*, (Lieden and Boston: Martinus Nijhoff Publishers, 2010), pp. 231-233.

<sup>85</sup> An example for this issue are the competences of multiple departments for fraud in the PRC; see Sonny Shiu-Hing Lo *The politics of cross-border crime in Greater China – Case studies of Mainland China, Hong Kong, and Macao*, (New York :M.E. Sharpe, 2009), p. 183.