

Issues in Criminal Law Across the Taiwan Strait

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I. INTRODUCTION

The People's Republic of China (PRC) and the Republic of China (Taiwan) have been divided politically for forty years. Due to the immense power of cohesion inherent in Chinese culture, however, the speedy reunification of the PRC with Taiwan has been the common desire of the people on both sides of the Taiwan Strait. It is also the unshirkable historic responsibility for the governments of both sides. Recently, the government of the PRC has taken the lead in making persistent and positive efforts to promote contacts between the two sides, thus leading towards eventual reunification. Following this trend, Taiwan authorities have adopted a policy of permitting people to visit relatives in the PRC. Since then, increasing numbers of people from Taiwan have come to the PRC to visit, travel, do business, attend academic conferences, and even to relocate permanently.¹

Despite these promising signs, progress towards normalization and reunification has been slow for a number of reasons. In particular, due to the extended period of hostilities between the two sides and different governmental and legal systems, continued exchanges inevitably produce various legal problems. Of particular concern to each side are problems associated with criminal prosecution of non-residents and criminal jurisdiction over residents in each other's territory. The solution involves applying the law fairly and reasonably and requires that the social order and interests of both sides are reasonably safeguarded. Such a solution will promote continued exchanges.

Consequently, these concerns have received the attention of the legal profession in both the PRC and Taiwan. For example, on February 1, 1989, Taiwan authorities proposed the "Interim Regulations

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1. According to the Taiwan Ministry of the Interior, more than 150,000 people visited the PRC in the first ten months after the adoption of the open policy in the fall of 1987. The Taiwan government has also liberalized its laws to allow people from the PRC to travel to Taiwan to visit relatives, travel, or participate in academic exchange programs. Approximately 1,000 people from the PRC entered Taiwan in 1988. *Fu Dalu Tanqin Taibao Yida 15.8 Wan Ren*, Renmin Ribao [RMRB], Sept. 10, 1988, at 4.

Concerning the People's Relationship Between Taiwan and the Mainland Areas."² The purpose of this legislation is to regulate, via the legal system, the unique kinds of problems that may arise out of the increased contacts between people on both sides of the Strait.

This article discusses criminal law policy options available to both governments that would help facilitate the common goals of continuing exchanges and eventual reunification. Accordingly, this Article is divided into two components. The first focuses on issues of PRC criminal law, with particular attention paid to the unique issues that may arise out of the new PRC-Taiwan relationship. The second discusses these criminal law issues from a Taiwan perspective. The primary focus here is to analyze the Draft Regulations as a public policy measure that will either aid or hinder exchange and reunification.

II. THE PRC'S HANDLING OF TAIWAN-RELATED CRIMINAL LAW PROBLEMS

A. *Basic Principles for the PRC Judiciary*

As one consequence of the improved relations between the two sides, the PRC judiciary faces a variety of complex criminal law problems involving Taiwan residents in the PRC. Some include dealing with "historical"³ crimes involving former residents of the PRC. Others include handling recent difficulties created by the conflict of laws and concurrent jurisdiction resulting from the increasing numbers of people from Taiwan visiting the PRC.

In order to resolve these issues, the PRC judiciary must apply fair and reasonable principles of adjudication. What kinds of principles should be adhered to in handling criminal law problems involving Taiwan? In addition, what kinds of factors should be taken into account when establishing such principles?

It is the shared political position of the two governments on both sides of the Strait that there is only one China.⁴ Increased contacts

2. Taiwan Diqu yu Dalu Diqu Renmin Guanxi Zanzing Tiaoli Cao'an Tiaowen (Interim Regulations Concerning the People's Relationship Between Taiwan and the Mainland Areas (draft)) Lianhe Bao, Feb. 1, 1989, at 1 [hereinafter Draft Regulations]. Since the author's initial review of the Draft Regulations, another draft has been prepared and circulated for comment. The revisions in the later version do not affect the author's argument. See Taiwan Diqu yu Dalu Diqu Liang'an Renmin Guanxi Zhanxing Tiaoli Cao'an (Interim Regulations Concerning the People's Relationship Between Taiwan and the Mainland Areas (draft)) Zhongguo Shibao, Oct. 10, 1989 [hereinafter Draft Regulations II].

3. The term "historical" as used here generally refers to acts violative of the present or past criminal laws of the PRC prior to both the founding of the PRC in 1949 and the relatively recent thaw in relations between the PRC and Taiwan.

4. The goal of reunification is deeply ingrained in the public policy of the PRC. "Taiwan

between the two sides conform to the general will of the people and they are a necessary step along the road toward reunification. Reunification is of paramount importance to all the Chinese people. In this author's opinion, reunification should be the primary factor relied on by the PRC judiciary in establishing principles for resolving Taiwan-related criminal law problems. Notwithstanding the optimism about possible reunification, it is important to note that for over four decades, the PRC and Taiwan have had different systems of government, and different social systems with different legal structures. Obviously, this situation will persist indefinitely. Thus, there are bound to be considerable problems in deciding how the PRC judiciary should adjudicate the criminal acts of Taiwan residents. Nonetheless, political and ideological considerations should be subordinate to the guiding principle of maintaining contacts and eventual reunification. The fair and reasonable application of such a principle should include several important considerations.

First, in handling historical criminal law problems involving Taiwanese, the PRC judiciary should take into account the long division between the two sides and adopt a lenient attitude toward those problems in order to warm relations and to promote continued exchange.

Second, the PRC judiciary should clarify the legal status of Taiwan residents as Chinese citizens. Operating on the premise that there is only one China, the PRC judiciary cannot treat cases involving people from Taiwan in the same manner as those involving foreigners from another country.

Not only should the PRC's criminal laws be applied to crimes committed by Taiwan residents in the PRC, but they should also be applied to violations of PRC law in Taiwan. This will effectively protect the interests of citizens on both sides of the Strait.

Third, the PRC judiciary should declare that the conflict of laws between the mainland and Taiwan is merely one between different jurisdictions inside one nation. Recognition of the concurrent jurisdiction of Taiwan's laws and decisions along with the gradual effort to establish legal interaction and coordination will promote and guarantee reunification and is also in the best interests of all citizens.

Fourth, in criminal cases involving Taiwan residents that may

is part of the sacred territory of the People's Republic of China. It is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the giant task of reunifying the motherland." *THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA* Preamble (1982). See also *Liang'an Guanxi Zouxian Huanhe de Shinian*, *RMRB*, Dec. 29, 1989, at 4. Compare with *Li Zongtong Jieshou Dumai Xinwen Zhuanfang*, *Zhongyang Ribao*, May 9, 1989, at 1.

impede exchange and reunification, the PRC judiciary, to the extent feasible, should take jurisdiction and hear cases regardless of whether the crime is committed in the PRC or Taiwan. Strict punishment should be imposed in such cases in accordance with the controlling law in the PRC.

B. Criminal Law Problems Faced by the PRC Judiciary

The PRC judiciary has consistently taken a lenient approach toward historical criminal cases, including criminal acts committed as the result of the long period of separation and hostility between the PRC and Taiwan.⁵ Considering the particular historical circumstances and popular demand for reunification, there is compelling need for leniency in treating historical crimes committed by people from Taiwan. Will Taiwan residents who committed criminal acts in the mainland before the founding of the PRC be prosecuted for such crimes today if they return to the PRC?

In the majority of situations the answer would be no. The Criminal Law of the PRC does not apply to crimes committed before the founding of the PRC.⁶ This is true for Taiwan residents as well as PRC citizens. It should be noted, however, that the Criminal Law does not confer blanket immunity from prosecution.

Nonetheless, the drafters seem to have intended that art. 9 of the Criminal Law prohibit prosecution for criminal acts committed before the founding of the PRC. This interpretation, however, is not stated explicitly within the statute. A strict reading of art. 9 implies that while the Criminal Law does not apply to crimes committed before the founding of the PRC, it does not exclude the application of other criminal laws promulgated before the Criminal Law.⁷

Therefore, in terms of the statute of limitations, Taiwan residents who committed crimes before the founding of the PRC will not be absolutely immune from criminal prosecution. Thus, it is not unreasonable for Taiwan residents to be concerned about the prospect of prosecution for criminal acts committed before the founding of the PRC.

5. *Zuigao Renmin Fayuan Zuigao Renmin Jianchayuan Guanyu Buzai Zhuisu Qutai Renyuan zai Zhonghua Renmin Gongheguo Chengli Hou Dangdi Renmin Zhengquan Jianli Qian de Fanzui Xingwei de Gonggao*, 1989 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO 7.

6. *Zhonghua Renmin Gongheguo Xingfa* (Criminal Law of the People's Republic of China) art. 9 (adopted July 1, 1979, promulgated July 6, 1979) ZHONGHUA RENMIN GONGHEGUO FALU HUIBIAN (PRC Compilation of Laws) 101, 102 (1984) [hereinafter *Criminal Law*].

7. *Id.* art. 76.

The PRC judiciary has taken steps to alleviate such concerns. On March 14, 1988, the Supreme People's Court and the Supreme People's Procuratorate jointly issued a proclamation stating that, as Taiwan residents returning to the PRC to visit relatives and to travel help promote the exchange of people and commerce, and thus help accomplish reunification, no crime committed by Taiwan residents in the mainland before the founding of the PRC will be prosecuted.⁸ This proclamation is an authoritative interpretive document applicable to the judicial organs at every level in the PRC and it excludes any possibility of criminal prosecution of those who left for Taiwan after committing crimes in the mainland before 1949. Consequently, Taiwan residents should feel comfortable about returning to the PRC to visit relatives, travel, or engage in other activities. This proclamation affirms the PRC's judicial principle of leniency in approaching these historical problems.

A second category relates to bigamy.⁹ Will Taiwan residents be prosecuted for bigamy because of second marriages in Taiwan after they left the PRC? After the Taiwan authorities adopted its open travel policy, some newspapers in Taiwan warned that those who had spouses on both sides of the Strait should not depart because they would be subject to criminal prosecution for bigamy if discovered.¹⁰

The supreme judicial organs of the PRC have already clarified their stance on this matter. On June 3, 1988, Mr. Chen Jiabin, vice presiding judge of the Criminal Court of the Supreme People's Court of the PRC, stated that bigamy resulting from the separation of the two sides is understandable and is fundamentally different from bigamy committed by PRC citizens.¹¹ PRC judicial organs will treat bigamy cases as civil suits, not as crimes. Therefore, the PRC court will not attempt to interfere on its own initiative even when the parties have resorted to the courts after failing to resolve their disputes through negotiation.¹²

In a news conference held on August 9, 1989, Ms. Ma Yuan,

8. *Zuigao Renmin Fayuan Zuigao Renmin Jianchayuan Guanyu Buzai Zhuisu Qutai Renyuan Zai Zhonghua Renmin Gongheguo Chengli Qian de Fanzui Xingwei de Gonggao*, 1988 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO 16.

9. Criminal Law, *supra* note 6, art. 180. For a more comprehensive description of the crime of bigamy in the PRC, see HUNYIN FA JIANGYI (Lecture Notes on Marriage Law) 26 (Wang Yiuchang ed. 1983).

10. *Zuigao Renmin Fayuan Guanyuan Tan Qutai Renyuan Huynin*, *Fazhi Ribao*, June 7, 1988, at 2.

11. *Id.*

12. Traditionally, most civil disputes between individuals in the PRC are settled by extrajudicial mediation or conciliation. See Cohen, *Chinese Mediation on the Eve of Modernization*, 54 CALIF. L. REV. 1201 (1966). But cf., MOSER, LAW AND SOCIAL CHANGE IN A CHINESE COMMUNITY 61 (1982).

associate chief justice of the Supreme People's Court, once again declared that in light of the realistic situation of the division between peoples on the two sides, bigamy cases involving Taiwan residents will not be treated as criminal bigamy.¹³ Ms. Yuan also mentioned that her declaration carried judicial authority and lower courts at all levels were instructed to carry it out accordingly.¹⁴

In their handling of bigamy cases, PRC judicial organs have thus adhered to the principle of fairness and reasonableness, the critical elements in any legal system. Marriage, by definition, means that husband and wife shall live together.¹⁵ With decades of separation, marriages with those who left the PRC for Taiwan have become nothing more than a mere formality. Under such circumstances, those who left spouses in the PRC and married again in Taiwan probably had no other choice. Such marriages are not the deliberate effort of those involved to destroy the system of monogamy, and therefore subsequent remarriages do not amount to a criminal act.¹⁶ Given the reality in the PRC, the rumor that those Taiwan residents who married again in Taiwan would be criminally prosecuted in the PRC is absolutely false and groundless. PRC judicial organs have never attempted to impose criminal liabilities for bigamy on Taiwan residents for marrying again after they left the PRC.

A third category of criminal law problems involves felonies such as arson, murder, rape, or robbery committed by some Taiwan residents in the early 1950s after the founding of the PRC, but before the end of the civil war in provinces such as Yunnan, Guizhou, and Sichuan. The question of whether to prosecute these offenses is still under review by the supreme judiciary organs of the PRC and no clear answers have yet emerged.¹⁷ In this author's opinion, the nature of such crimes are identical or similar to the nature of those crimes committed before the founding of the PRC. Both categories stem from the historical problems arising out of the background of the civil war between the Chinese Communist Party and the Guomindang (KMT). This author believes that, based on the spirit of historical leniency and reasonableness of the law, the PRC judicial organs will not seek criminal prosecution for such crimes.

13. *Guanyu Renmin Fayuan Chuli Shetai Minshi Anjian de Jige Falu Wenti*, 1988 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO 17.

14. *Id.*

15. *Zhonghua Renmin Gongheguo Hunyin Fa* (Marriage Law of the People's Republic of China) art. 14 (adopted and promulgated Jan. 1, 1981) ZHONGHUA RENMIN GONGHEGUO FALU HUIBIAN (PRC Compilation of Laws) 205 (1984).

16. Criminal Law, *supra* note 6, art. 180.

17. See *supra* note 5.

A fourth category of criminal law problems involves crimes committed by Taiwan's military, police, or intelligence personnel in the 1950s and the 1960s. As with the issue of prosecution of crimes committed during the civil war, this question is still under study.¹⁸ In the author's opinion, the same principles articulated for other historical criminal acts should govern these cases as well. Most of these crimes are already more than twenty years old, and the statute of limitations for the most serious crimes is only twenty years.¹⁹ So in principle, crimes committed more than twenty years ago will not be prosecuted. Of course, the Criminal Law also provides that crimes with punishments such as lifetime imprisonment or death can be prosecuted, with the approval of the Supreme People's Procuratorate, even when the statute of limitations would normally have run.²⁰ Does this mean that Taiwan residents who committed crimes under the particular historical circumstances will be prosecuted? In the author's opinion, the PRC's Supreme People's Procuratorate will never decide lightly to prosecute such historical crimes. Of course, the correct and proper solution of this question still depends on clear instructions from the PRC's supreme judicial organs.

C. Those Who Fled Criminal Prosecution in the PRC

In recent years, some PRC citizens left the PRC illegally. Some of them left the PRC to escape prosecution for crimes they committed in the PRC; some engaged in terrorist activities such as aircraft hijacking; some merely slipped through the border.²¹ These people have violated the criminal laws of the PRC. The question then is whether the PRC will seek prosecutions for such crimes. Based on years of judicial experience and practice, and in light of the need to balance law and order in the PRC with the demand for contacts between the two sides, the author believes that this question should be handled differently in different situations.

First, PRC courts should refrain from prosecuting those ordinary citizens who illegally left the PRC in pursuit of a capitalistic lifestyle or in order to visit relatives or friends, but who never committed any other serious crimes in the PRC. They should be allowed to return to the PRC to visit or travel, and at most, they should be required to undergo reprimand and re-education.

18. *Id.*

19. Criminal Law, *supra* note 6, art. 76.

20. *Id.* art. 76(4).

21. Law of the People's Republic of China on the Control of the Exit and Entry of Citizens, art. 14 (adopted and promulgated Nov. 22, 1985) 2 THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1983-1986) 191, 199 (1987).

The PRC judiciary should prosecute or attempt to extradite PRC citizens who committed the following serious crimes before or during their departure from the PRC: arson, murder, rape, robbery, kidnapping, larceny, smuggling, drug-trafficking, corruption, accepting bribes, hooliganism, escaping arrests, and using violence against border administration personnel. PRC judicial organs should also prosecute state, civil, military, police, and judicial personnel who illegally left for Taiwan and any who have organized or assisted for profit the illegal emigration of people from the PRC. Without insisting on such prosecutions, law and order in the PRC and the interests of the PRC citizenry will be jeopardized. Law and order in Taiwan will also be adversely affected. Moreover, the extradition and surrender of such people to the PRC will indirectly promote the normalization of relations.²² Prosecution of the aforementioned crimes will not be precluded by the statute of limitations only if: 1) PRC judicial organs have previously adopted "forceful" measures before the criminal escapes prosecution;²³ or 2) the statute of limitations for one crime is extended by the commission of a second crime if the second crime occurs before the statute of limitations for the first crime expires.²⁴ Otherwise, the PRC judiciary normally should not seek criminal prosecution for the above-mentioned crimes committed after the statute of limitations has run.²⁵

If the offender engaged in terrorist activities such as the hijacking of aircraft,²⁶ hostage taking,²⁷ assaulting diplomatic personnel,²⁸ or other violations of international law during his illegal departure, PRC judicial organs should insist on criminal prosecution. In these situations the goal of reunification must be subordinate. There is not only the need to safeguard law and order in the PRC, but there is also the

22. Of course, prosecution of these crimes will be subject to the statute of limitations constraints. Criminal Law, *supra* note 6, art. 76.

23. There is no limitation on the period for prosecution imposed on criminals who escape during investigation or trial after compulsory measures have been adopted by PRC judicial organs. *Id.* art. 77.

24. *Id.* art. 78.

25. *Id.* art. 176.

26. See Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, 22 U.S.T. 1641, T.I.A.S. No. 7192, 10 I.L.M. 133 (1971); see also Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), Sept. 23, 1971, 24 U.S.T. 564, T.I.A.S. No. 7570, 10 I.L.M. 1151 (1971); Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219, 2 I.L.M. 1042 (1963).

27. See International Convention Against the Taking of Hostages, Dec. 17, 1979, G.A. RES. 146 (XXXIV 1979), 74 A.J.I.L. 277 (Jan. 1980), 18 I.L.M. 1456 (1979).

28. See Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973 (Annex to G.A. RES. 3166 28 GAOR, Supp. 30, U.N. Doc. A/9030), T.I.A.S. No. 8532, 13 I.L.M. 41 (1977).

corresponding need to uphold the PRC's international responsibility for safeguarding world peace and punishing international criminals.²⁹ It should be pointed out that regardless of the motivations of such criminals, Taiwan's judicial organs should also seek criminal prosecution of such international criminals according to international custom and relevant international treaties rather than encouraging or even providing sanctuary for political considerations.

D. Other Taiwan-Related Criminal Law Problems

With the adoption of an open policy toward Taiwan by the PRC and the gradual relaxation of restrictions on Taiwan residents who can come to the PRC to visit relatives, travel, or engage in business activities, increasing numbers of Taiwanese have returned to the mainland.³⁰ Many "non-historical" criminal law problems involving them inevitably arise. The first category involves Taiwanese, not previously PRC residents, who visit the PRC and either commit crimes or become victims. The second category involves crimes committed by Taiwanese in Hong Kong or Macao.

1. Criminal Law Problems Related to Taiwan Residents in the PRC

The PRC judiciary views Taiwan residents as citizens of China. They are treated as PRC citizens in terms of legal protection of their rights and interests. At the same time, Taiwan residents are also required to obey the criminal law of the PRC. Any violation will be dealt with according to controlling law.³¹

Among recent criminal cases in the PRC, a small number have involved Taiwan victims who were either physically assaulted or sustained property loss.³² Typically, these cases have involved larceny, racketeering, blackmail, robbery, kidnapping, assault and battery, and murder. Some criminals have taken advantage of Taiwan visitors' lack of familiarity with the PRC and have targeted them specifically. Most of the offenders have been citizens of the PRC although some are even from Taiwan. PRC judicial organs have strictly prosecuted

29. See *supra* text accompanying notes 26-28. The PRC is obligated to uphold treaties it is a signatory to under the international law principle of *pacta sunt servanda*—treaties are binding upon parties to them and the obligations imposed must be performed in good faith. Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, U.N. Doc. A/Conf. 39/27 (1969), 63 A.J.I.L. 875, 884 (1969), 81 I.L.M. 679, 690 (1969).

30. According to PRC government statistics, as many as 150,000 people visited the PRC from Taiwan in 1988 alone. See *Zengjin Haixia Liang'an Jiaowang Liaojie Xinren he Gongshi*, RMRB, Feb. 2, 1989, at 1.

31. Criminal Law, *supra* note 6, art. 3.

32. *Panchu Yigi Taiwan Yumin Douou An*, *Zhongguo Fazhi Bao*, Jan. 13, 1989, at 1.

such criminal cases, especially where the offender specifically chose Taiwan residents as his victim. Punishing these criminals reflects the need to safeguard social order in the PRC. More importantly, punishment directly provides effective protection for the rights and interests of Taiwan residents and promotes normalization of relations.

Conversely, there are crimes committed by Taiwan residents in the PRC against either PRC citizens or the government. Most of these crimes can be classified into three types: 1) crimes arising out of greed, such as smuggling, swindling, and speculating and profiteering; 2) crimes endangering public security and social order, such as murder, rape, robbery, hooliganism and gambling; and 3) crimes endangering national security, such as espionage,³³ inciting defection,³⁴ armed rebellion,³⁵ and propagating the overthrow of the present government of the PRC.³⁶ In order to safeguard law and order in the PRC and protect normal exchanges between the two sides, crimes committed in the PRC by Taiwan residents should be prosecuted and penalized according to the criminal laws of the PRC.

In determining the crimes to be charged, PRC judicial organs can take a lenient approach where appropriate and decline to prosecute certain crimes such as hooliganism, gambling, low level speculation and profiteering, smuggling, or other ordinary crimes which have not created significant damages, or have been committed largely because of ignorance of PRC laws. In sentencing, the courts should ordinarily impose the appropriate penalties. For rare offenders who have caused significant damage, such as leaders or principals of organized crime rings, the court should impose heavy penalties. If the crimes are not particularly serious, the PRC court could impose relatively less severe penalties in light of judicial practice and experience.³⁷ Where probation is appropriate, the court should allow it.

If an offender from Taiwan, having committed serious crimes in the PRC, returns to Taiwan, the PRC judicial organs should have the power to seek criminal prosecution.³⁸ How can the absentee offender be prosecuted? There are two ways: 1) the PRC can prosecute the offender when the offender reenters the PRC, provided that the statute of limitations has not expired;³⁹ or 2) the PRC can produce evidence to Taiwan authorities and request that the offender be

33. Criminal Law, *supra* note 6, art. 97.

34. *Id.* art. 93.

35. *Id.* art. 94.

36. *Id.*

37. *Id.* arts. 67, 68, 69.

38. *Id.* art. 3.

39. *Id.*

extradited to the PRC to stand trial. Although there is no extradition treaty or agreement between the PRC and Taiwan, this type of judicial exchange and cooperation between different regions of China with different social systems has already existed for a number of years between the PRC, Hong Kong, and Macao.⁴⁰ Cooperation along these lines would benefit law and order of both sides. However, given the infancy of relations between the PRC and Taiwan, the immediate implementation of such cooperative exchanges between the two judicial systems may not yet be practical.

Nonetheless, since both Taiwan and the PRC are governed by Chinese, the possibility of cooperative exchanges between brothers is not entirely unreasonable. PRC judicial organs have already indicated their willingness to cooperate with Taiwan authorities on a variety of matters, not limited to criminal law.⁴¹ With the gradual normalization of relations and contacts, the two judiciaries should move toward cooperation. The author believes that such cooperation will prove to be beneficial to law and order and the interests of the people on both sides.

2. Taiwan-Related Criminal Law Problems in Hong Kong and Macao

Conceptually, Taiwan, Hong Kong, and Macao are all territories of China. Nevertheless, each region still maintains its own legal system. So if a Taiwan offender escapes to a foreign country, Taiwan, Hong Kong, or Macao should ask that foreign country to extradite the offender. Dealing with Taiwan offenders who first commit a crime in Taiwan, Hong Kong, or Macao and then escape into the PRC is more problematic. The author's opinion is that the handling of such acts should differ depending upon the nature of the crime.

Certain crimes committed in Taiwan, Hong Kong, or Macao by Taiwan offenders are classified as crimes in violation of international law and are proscribed by laws of both the PRC and Taiwan.⁴² In other words, the offenders escape into the PRC after committing crimes that are generally recognized by all the nations as endangering life, property, international relations, or international peace. Accord-

40. See, e.g., *Zhonggang Liangdi Nengfou Jinxing Sifa Xiezhuo*, *Shenzhen Fazhi Bao*, Aug. 3, 1988, at 1; *Ying'an Guoji Guanli Chuli Zhonggang Falu Jiufen*, *Shenzhen Fazhi Bao*, Dec. 13, 1988, at 1; *Guangdong Xianggang Liangdi Fayuan Dacheng Yixiang Sifa Xieyi*, *RMRB*, June 18, 1988, at 4; *Yueyu dao Kaiping de Fanren Beibu Yafan Aomen*, *RMRB*, Oct. 18, 1987, at 4.

41. *Xiamen Buhuo Taiwan Tongji Yaofan Zousi Qiangzhi Da'an*, *Fazhi Ribao*, Oct. 31, 1989, at 1.

42. See, e.g., *supra* text accompanying notes 26-28.

ing to a number of international treaties to which the PRC is a party⁴³ and the "Decision to Exercise Criminal Jurisdiction of Crimes Sanctioned by International Treaties to Which the People's Republic of China is a Signatory or Participant,"⁴⁴ the PRC will fulfill its obligation toward such treaties by exercising general criminal jurisdiction over the aforementioned crimes regardless of the nationality of the offender or the location of the crime. Therefore, the PRC should neither reject the entry of Taiwan offenders who flee to the PRC after committing crimes against international law in Taiwan, Hong Kong, or Macao so as to allow them to be at large, nor extradite offenders to the authorities of Taiwan, Hong Kong, or Macao. Instead, the PRC should directly exercise criminal jurisdiction and impose its own sanctions on those offenders in order to fulfill its international obligations and safeguard world peace and safety. The PRC does not refrain from seeking criminal prosecution of those who ostensibly come to the PRC with political motivations but have violated internationally sanctioned criminal measures (such as hijacking) in arriving.

There are some crimes committed in Taiwan, Hong Kong, or Macao by Taiwan offenders before they enter the PRC that are not crimes in violation of international law but are proscribed by the laws of either the PRC, Taiwan, Hong Kong, or Macao. For example, after Taiwan authorities adopted the open travel policy, some Taiwan residents attempting to escape criminal prosecution in Taiwan entered the PRC with large sums of money illegally obtained in Taiwan.⁴⁵ There have also been incidents where a Taiwan criminal has escaped to the PRC after having committed murder in Taiwan.⁴⁶ How should such cases be dealt with? The author believes that, given the principle that both Taiwan and the PRC are part of one China and that the common interest of the two peoples should be protected, PRC judicial organs should never attempt to release or protect such criminals. When law enforcement agencies in Taiwan, Hong Kong, or Macao request the PRC's cooperation in the apprehension and extradition of criminals, PRC judicial organs should actively cooperate so that the criminals can be apprehended and extradited to the appropriate law

43. See *supra* notes 26-28 and accompanying text.

44. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu dui Zhonghua Renmin Gongheguo Dijie he Canjia de Guoji Tiaoyue Shuo Guiding de Zhuixing Xingshi Guanxiaquan de Jueding (The People's Congress Standing Committee's Resolution concerning criminal jurisdiction over offenses defined by the international treaties to which the PRC is a signatory and participating country) (adopted June 23, 1987) 1987 ZHONGHUA RENMIN GONGHEGUO FALU HUIBIAN (PRC Compilation of Laws) 74.

45. *Taiwan Yixie Jingji Zuifan Taowang Dalu*, Lianhe Bao, March 23, 1988, at 1.

46. *Wo Jingguan Yajie Yi Taiwansheng Sharenfan Zhi Xinjiapo*, Fazhi Ribao, Apr. 22, 1989, at 1.

enforcement agencies. If law enforcement agencies of Taiwan, Hong Kong, or Macao do not request cooperation in apprehension or extradition, PRC law enforcement agencies could directly prosecute such crimes. Of course, a PRC law enforcement agency can request the cooperation of its counterparts in Taiwan, Hong Kong, or Macao in the collection of evidence necessary for prosecution.

Some Taiwan residents have entered the PRC after they have engaged in conduct violative of Taiwan but not PRC criminal law: engaging in business activities in PRC denounced by Taiwan criminal law as the "the crime of assisting rebellion";⁴⁷ visiting the mainland without official approval; and contacting PRC officials prohibited as "the crime of contacting enemies."⁴⁸ Some Taiwan residents have also been accused of crimes for their activities in promoting exchanges between the PRC and Taiwan and for advocating reunification.⁴⁹ For all of the above activities, there should be no criminal prosecution in the PRC. The PRC should neither refuse to allow such people to enter the mainland nor extradite them to the Taiwan authorities. To the contrary, these people should be provided appropriate accommodations and protection. Criminal prosecution of these Taiwan residents by the Taiwan authorities is unreasonable and would hinder reconciliation, exchange and reunification. The intelligentsia in Taiwan and the public generally disapprove of such criminal charges.⁵⁰ To them, it is problematic for Taiwan authorities to call the people of the PRC "enemies," and some have called for the amendment of these outdated and inappropriate laws.⁵¹ Some Taiwan courts recently have demonstrated their reasonableness by rejecting criminal charges of this kind and affirming the innocence of Taiwan reporters and businessmen who were prosecuted for reporting or doing business in the PRC.⁵²

47. Chengzhi Panluan Tiaoli (Regulations for Suppressing Rebellions) art. 4(b) (promulgated June 21, 1949, amended July 26, 1958) XINBIAN JIBEN LIUFA FALING PANJUE QUANSHU (The Six Basic Laws and Reference to the Interpretation of the Courts) 486 (Lin Jidong, Zheng Yubo, Cai Dunming & Gu Dengmei eds. 1983) [hereinafter BASIC LAWS].

48. Kanluan Shiqi Jiansu Feidie Tiaoli (Regulation for Ferreting Out Espionage in the Time of Suppressing Rebellion) art. 2 (promulgated June 13, 1950, amended Dec. 28, 1954) *id.* at 488.

49. *Tai Gaodeng Fayuan dui Beikong Chongdang Zhonggong Xinshi de Shencheng Panjue Wuzui*, Lianhe Bao, Oct. 1, 1988, at 1.

50. *Liangming Taishang yu Dalu Tongshang'an Chongshen*, RMRB, Aug. 6, 1988, at 4.

51. *Id.*

52. *Liangming yi Dalu Zhijie Maoyi Taishang Huopan Wuzui*, RMRB, Oct. 29, 1988, at 4; *Taiwan Guofa Panjue yi Shangren dao Dalu Jingshang Wuzui*, RMRB, Aug. 13, 1988, at 4.

3. Criminal Cases Involving Taiwan Residents Beyond Chinese Territory

There are several categories of cases in which Taiwan residents have violated the criminal laws of both the PRC and Taiwan in areas beyond Chinese territory (i.e., the PRC, Taiwan, Hong Kong, and Macao). Accordingly, these cases deserve separate treatment.

PRC law enforcement agencies should have the right to prosecute any crimes involving the PRC or its citizens as victims. If the criminal is in a foreign nation, PRC authorities should have the right to demand extradition from that foreign nation. If the criminal is in Taiwan, Hong Kong, or Macao, PRC authorities should have the right to request the cooperation of the local law enforcement organs in the apprehension and eventual prosecution of such criminals according to applicable PRC criminal laws. If offenders enter the PRC, then judicial organs should still impose criminal sanctions regardless of whether the offender has been prosecuted by a foreign jurisdiction or one in Taiwan, Hong Kong, or Macao. In appropriate cases, however, PRC judicial organs should exempt the offender from further prosecution or impose a lighter sentence.

A Taiwan offender may commit a crime against international law in a foreign nation before entering the PRC. In such cases, PRC judicial organs should exercise general criminal jurisdiction and prosecute such crimes according to PRC laws in order to fulfill the international treaty obligations of the PRC.⁵³ If the offender then escapes to Taiwan, Hong Kong, or Macao or remains in a foreign nation, such offenders should then be prosecuted by the respective judicial organs of Taiwan, Hong Kong, Macao, or the concerned foreign nation.

Taiwan offenders may commit crimes other than those discussed above. If an offender escapes to Taiwan after the commission of a crime beyond Chinese territory, Taiwan judicial organs should prosecute according to Taiwan law. If an offender remains in a foreign nation, the Taiwan judicial organs should request extradition for prosecution in Taiwan or request the concerned foreign nation to seek criminal prosecution. If an offender enters the PRC, PRC judicial organs should, upon request, apprehend and extradite the offender to Taiwan. In the absence of such a request from Taiwan, PRC judicial organs should directly prosecute such crimes according to the criminal laws of the PRC in order to safeguard the sanctity and reputation of the PRC legal system.

53. See *supra* note 29.

III. TAIWAN'S DRAFT REGULATIONS ON THE BILATERAL RELATIONSHIP

Most legal problems arising out of increased contacts between people from both sides of the Strait cannot be resolved by applying current law, because of the particular nature of the problems and the special circumstances under which they arise. As a result, while both sides have been prudent and sometimes creative in using the current systems to resolve practical problems, both governments are in the process of devising special laws to regulate newly created legal problems. Taiwan has made greater progress in this respect than the PRC.

Based upon two tentative bills under consideration, the "Zhao Shaokang Bill"⁵⁴ and the "National Policy Research Center Bill,"⁵⁵ the Taiwan Justice Department formally completed the Draft Regulations on February 1, 1989.⁵⁶ The Draft Regulations have been reviewed and approved by the State Council, the Legislative Yuan, and the President, with the intention of establishing the controlling law in the handling of present civil exchanges between the two sides.⁵⁷ The Draft Regulations reflect the Taiwan authorities' concerns about regulating the exchange through law. The Draft Regulations also conform to the needs of modern law-based society. Many of the provisions in the Draft Regulations deserve commendation for their reasonableness, practicality, and progressiveness. Nevertheless, some special provisions concerning civil issues, such as marriage⁵⁸ and inheritance,⁵⁹ are not entirely reasonable and will not promote the normalization of relations. The focus of this section is on the criminal law problems that exist in the Draft Regulations.

A. Reasonable and Progressive Provisions of the Draft Regulations

The Draft Regulations provide that those who remarried in Taiwan or lived together permanently with another before the adoption of the open travel policy promulgated on November 17, 1987, will be exempt from criminal prosecution or penalty for bigamy.⁶⁰ With rea-

54. *Tichu Taiwan yu Dalu Renmin Guanxi Fa Cao'an* 1989 ZHONGGUO LUSHI 52 [hereinafter Zhao Shaokang Bill].

55. XU ZONGLI, WEI FENGHENG & LU RONGHAI, TAIWAN JI DALU DIQU MINJIAN JIAOLIU GUANXI FA CAO'AN (Draft on the Law Governing the Civic Exchanges Between Taiwan and the Mainland) (1987) [hereinafter National Policy Research Center Bill].

56. Draft Regulations, *supra* note 2.

57. *Id.*

58. Draft Regulations, *supra* note 2, art. 13; Draft Regulations II, *supra* note 2, art. 7.

59. *Id.* art. 15; Draft Regulations II, *supra* note 2, art. 9.

60. Draft Regulations, *supra* note 2, art. 38; Draft Regulations II, *supra* note 2, art. 41.

soning similar to the PRC's approach to bigamy mentioned above, this provision is reasonable and practical. Individual actors certainly cannot be blamed for the family tragedies and unforeseeable misfortunes resulting from the division of the country. This is especially true in view of the heavy penalties imposed upon conviction for the crime of bigamy in Taiwan.⁶¹ As stated previously, PRC supreme judicial organs have already promulgated interpretative declarations stating that bigamy cases involving Taiwanese will not be prosecuted.⁶² In this area, both sides have come to a clear and reasonable understanding.

In the past, the Taiwan government strictly prohibited Taiwan residents from travelling to the PRC, contacting PRC citizens, or engaging in direct trade with the PRC, subjecting violators to severe sanctions.⁶³ Such prohibitions have inordinately restricted normal exchanges between civilians. Under the Draft Regulations, with the approval of the State Council, Taiwan residents will now be permitted to travel directly to the PRC.⁶⁴ Taiwan residents, including "legal" persons, will also be permitted to invest in the PRC or engage in direct trade with the PRC upon the approval of the State Council.⁶⁵ Given the history of hostility between the two sides, this is commendable but limited progress toward the eventual normalization of relations.

B. Unreasonable Provisions of the Draft Regulations

1. Exchanges Between Citizens of the PRC and Taiwan

In this author's opinion, requiring application for permission is reasonable when the basis for issuing permission is appropriate. Nonetheless, penalties for violating the Draft Regulations on visitation to the PRC are unduly harsh.⁶⁶ Some Taiwan residents, however, have entered the PRC without permission from the Taiwan government because their government imposes unreasonable restrictions or prohibitions by limiting the number of visits per year and by narrowly classifying who is considered a relative. Furthermore, travel

61. Xingfa (Criminal Law of the Republic of China) art. 237 (promulgated on Jan. 1, 1935, amended Nov. 36, 1969) BASIC LAWS, *supra* note 47, at 420, 466.

62. *See supra* note 5.

63. *See* Jieyan Fa (Martial Law) (promulgated Nov. 29, 1934, amended 1949, repealed July 15, 1987) BASIC LAWS, *supra* note 47.

64. Draft Regulations, *supra* note 2, art. 26; Draft Regulations II, *supra* note 2.

65. Draft Regulations, *supra* note 2, art. 27; Draft Regulations II, *supra* note 2, art. 30.

66. Persons from Taiwan intending to enter the PRC must apply for permission from the government agency in charge. Draft Regulations, *supra* note 2, art. 28. Those who violate art. 28(1) are subject to penalties of up to six months in prison or a fine of up to NT \$20,000. *Id.* art. 42; Draft Regulations II, *supra* note 2, art. 43.

to the mainland by certain persons, such as ordinary government functionaries, popular representatives, professors, and scholars at government universities is flatly prohibited.⁶⁷ These restrictions and prohibitions run contrary to the legitimate wishes of the people of both the PRC and Taiwan to strengthen contacts. No convincing argument can be made that the security of Taiwan will be jeopardized without such restrictions and prohibitions. Most of those who came to the PRC without the Taiwan government's permission departed Taiwan legally and openly arrived in the PRC through third countries. Some came to the PRC concurrent with their study, work, or visits to other countries. Such acts are different in nature from those who left Taiwan for the PRC because of their illegal activities in Taiwan. In addition, these people travelled to the PRC for personal reasons, and their activities in the PRC will not endanger the security and interests of Taiwan. This is precisely why they dare to return to Taiwan afterwards.

In brief, the "criminal" problem of going to the PRC without government permission is caused primarily by unreasonable restrictions and prohibitions imposed by Taiwan authorities. It is unfair and unreasonable for Taiwan authorities to refuse to change inappropriate restrictions and prohibitions and to impose criminal sanctions on those who, by coming to the PRC without permission, produce no real danger to Taiwan.

During the period of hostility, Taiwan authorities imposed strict penalties on Taiwan businessmen who engaged in direct trade with the PRC under the crime of "assisting enemies" under the Regulations for Suppressing Armed Rebellion.⁶⁸ After the lifting of martial law and the announcement of the open travel policy in 1987, the Supreme Court of Taiwan held that ordinary trade with the PRC for the sole purpose of profit does not constitute "assisting enemies" under the Regulations for Suppressing Armed Rebellion.⁶⁹ The Executive Yuan of Taiwan adopted this holding through resolutions and has notified courts at all levels of this holding.⁷⁰ Thus, according to the current doctrinal state of the law, there should be no criminal sanctions imposed upon direct trade with the PRC for profit. Such rulings by the Taiwan judiciary on this matter are a commendable effort conforming to the current trend of more normal association between the two sides.

67. See *supra* note 48.

68. *Id.*

69. Chunshu Maoyi Wanglai Bushe Zhanglue Wuzi yu Dalu Zhijie Tongshang Bu Goucheng Zifeizui, Jingji Ribao, Sept. 7, 1988.

70. *Id.*

Nonetheless, translation of this judicial attitude into statutes has been slow. Although the National Policy Research Center Bill embraced the above ruling,⁷¹ the Draft Regulations still state that those who invest in the PRC or engage in direct trade with the PRC for profit are subject to up to three years in prison and/or a fine of up to NT \$400,000.⁷² This provision, as pointed out in the Taiwan press, is "inappropriate" and "contrary to the reason of law."⁷³ Given the growth of trade between the two sides, this provision will be difficult to implement as well.

The Draft Regulations represent a legal implementation of Taiwan's official conservative "Three Nos" policy — no contact, no compromise, no negotiation. The "Three Nos" policy, however, is a restriction imposed upon the official body of the Taiwan government and it should not be relevant to ordinary citizens.⁷⁴ Imposing this provision on the general public runs contrary to the principle of "Separation of Government and Civilians" that Taiwan authorities have advocated.⁷⁵ Therefore, this provision of the Draft Regulations is suspect, unreasonable, and inhibitive of the normalization of relations.

2. Provisions on PRC Citizens Visiting Taiwan

The Draft Regulations also impose strict restrictions on the entry of PRC citizens into Taiwan. For example, people from the PRC who have joined organizations or assemblies proposing "armed insurgency," or have worked on behalf of "traitors" outside of Taiwan can be exempted from prosecution or penalty when they come to Taiwan if they truthfully report such activities to the authorities when applying for permission to come to Taiwan.⁷⁶ The Mainland Working Conference of Taiwan's State Council affirmed the above provision in its meeting in February 1989 by making it clear that those PRC citizens who joined the Chinese Communist Party or other "insurgent organizations" are required to report to the police and voluntarily confess in order to avoid criminal prosecution.⁷⁷ In addition to the Communist Party, these so-called "insurgent organizations" include

71. National Policy Research Center Bill, *supra* note 55, sec. 36.

72. Draft Regulations, *supra* note 2, art. 41. The fine for violating this provision is now up to NT \$1,000,000. Draft Regulations II, *supra* note 2, art. 49.

73. Li Zongtong Shicha Mazu Junzheng Sheshi Mian Junmin Ju'ansiwei Qianghua Zhanbei, *Zhongyang Ribao*, Sept. 22, 1988, at 1.

74. *Taiwan Dangju Jinzhi Renmin yu Maoyi Youwei Fali*, *Fazhi Ribao*, Mar. 10, 1989, at 4.

75. Guomindang Xianjieduan Dalu Zhengce (Quanwen). *Zhongyang Ribao*, July 13, 1988, at 3.

76. Draft Regulations, *supra* note 2, art. 39; Draft Regulations II, *supra* note 2, art. 42.

77. *Qian Taiji Guojun ji Juanshu Ke Laitai Dingju*, *Zhongyang Ribao* Feb. 22, 1989, at 2.

military, educational, and cultural institutions and all other mass and grass-root level organizations under the leadership of the Communist Party.⁷⁸ In addition to the meetings of the Communist Party, so-called "armed insurgency assemblies" include meetings of the People's National Congress, the Political Consultation Conference, and all other various organizational and mass meetings "controlled" by the Communist Party.⁷⁹

The absurdity of this provision is obvious. As the Taiwan press has pointed out, if the above provision is strictly applied, every PRC citizen over the age of ten will be subject to Taiwan's criminal sanctions.⁸⁰ With such a huge cloud hanging over their heads, how could PRC citizens visit Taiwan? Would the Taiwan government ever allow PRC citizens to come to Taiwan? The author believes that since this provision only concerns civilian contacts, both governments should abandon political opposition and treat the people of the other side as compatriots regardless of their political beliefs or background. They should not treat them as enemies.

The present level of contact between the two sides would not have been possible if the PRC had engaged in a similar practice. The PRC could have treated all Taiwan residents who have been members of the KMT or its affiliated organizations, or who have participated in the meetings of the KMT and its affiliates, as criminals, and anarchists, requiring that they confess to the PRC authorities in order to be exempted from criminal prosecution. Such a practice by Taiwan or the PRC could escalate tension in PRC-Taiwan relations. Moreover, these types of provisions are contrary to principles of fairness and reasonableness that should govern relations between the two sides.

A more reasonable provision is contained in the Zhao Shaokang Bill which provides that the Regulations to Suppress Armed Rebellion and its equivalent in the Criminal Code of Taiwan shall cease to be applicable provided that PRC citizens do not violate the crimes of "internal disorder" and "external rebellion."⁸¹ At the same time, some legal experts and the press believe that the Regulations to Suppress Armed Rebellion, obsolete as it is, should be abolished altogether. Taiwan authorities should seriously consider such practical and beneficial proposals.

78. *Id.*

79. *Id.*

80. *Cong Xianshi Qingkuang Zailun Xiufa Yingbian de Jipoxing*, Lianhe Ribao, Nov. 23, 1988.

81. Zhao Shaokang Bill, *supra* note 54, art. 10.

3. The Scope of Taiwan Criminal Law and Criminal Jurisdiction

The Draft Regulations propose sweeping extensions in the criminal jurisdiction of Taiwan. For example, crimes committed in the PRC or on PRC vessels or aircraft are to be prosecuted and penalized according to the laws of Taiwan.⁸² Sentences for such offenses can be exempted, in whole or in part, if the offender has already been penalized in the PRC for the same crime.⁸³

According to this provision, the criminal law of Taiwan shall apply to all crimes committed in the PRC regardless of 1) whether the offender is from the PRC or Taiwan; 2) whether the victim is from the PRC or Taiwan; 3) whether the crime is of an international nature; or 4) whether the crime directly violates the interests of the PRC or Taiwan.

There are two problems with this provision. First, it is entirely impractical. Both sides are independent political entities with their own legal systems and judicial powers. Presently, the application of the criminal law of both sides is limited to crimes committed in the respective territories of the two sides, and their laws are designed to protect their respective interests. This does not change despite contrary human wishes. If one side attempts to disregard this practical reality and force application of its own laws to crimes committed in the other side's territories, the first side will find that such attempts are impractical and unworkable. Such attempts will also rid the law of its seriousness. Moreover, it would be futile to prosecute crimes committed by PRC offenders in the PRC according to Taiwan law. Taiwan should also recognize the principle that PRC judicial organs have the power to prosecute crimes committed in the PRC by offenders from Taiwan according to PRC criminal law. Only those crimes which have not been prosecuted in the PRC should be prosecuted by the Taiwan side. This position is more practical.

The second problem with this provision is that it is simply unreasonable. Crimes committed in the PRC, no matter the nature of the crime or the nationality of the offender or victim, are directly violative of law, order, and the societal interest of the PRC, not Taiwan. Such crimes should be prosecuted according to the criminal laws of the PRC. Prosecution according to Taiwan's criminal law under these circumstances is contrary to the reason of law and common sense. Furthermore, criminal investigations, prosecutions, or even sanctions against those in Taiwan who have already been prosecuted in the PRC could likely bring about double criminal prosecution for the

82. Draft Regulations, *supra* note 2, art. 37; Draft Regulations II, *supra* note 2, art. 40.

83. *Id.*

same crime. Such impractical and unreasonable provisions are the result of adherence to the hard-line attitude of the supremacy of the "legal authority of the Republic of China" by the policy-makers of Taiwan. Such attitudes are outdated and they should be promptly abandoned.

4. Repatriation of Taiwan Residents Convicted of Crimes in the PRC

The Draft Regulations provide that persons from Taiwan will be regarded as PRC citizens if they reside in the PRC for two consecutive years.⁸⁴ According to this provision, these persons will not be allowed to return to Taiwan.⁸⁵ For most Taiwan visitors to the PRC, this provision does not create much of a problem. It does create a problem for those who are prosecuted and sentenced by PRC judicial organs for crimes committed in the PRC, if their sentences exceed two years. If this provision is enforced, some Taiwan residents will not be able to return home after serving their sentences and will have to suffer separation from their families. The Taiwan authorities should consider such special circumstances and establish special measures to allow these people to return to Taiwan. Such measures will safeguard the interests of Taiwan and at the same time prevent interference with the proper exercise of criminal jurisdiction of the PRC.

5. Miscellaneous Problems

There are other problems that have not been resolved in the Draft Regulations. For example, how should the governments of both sides handle cases in which an offender commits a crime in his home region and then attempts to take advantage of normalization by escaping to the other side to avoid criminal prosecution? This problem not only concerns each side's exercise of criminal jurisdiction, but also safeguards for law and order and the interests of the people.

Legal practitioners and scholars have focused on this problem. One product of their efforts is a proposal that the judiciaries of the two sides should consider mutual cooperation and coordination. This proposal has been incorporated into the National Policy Research Center Bill which provides that Taiwan's Minister of Interior should cooperate in the extradition of PRC criminals according to Taiwan's extradition laws upon requests from the PRC judicial or police organs, the International Police Organization, or foreign govern-

84. Draft Regulations, *supra* note 2, art. 2(4).

85. *Id.*

ments.⁸⁶ Taiwan authorities regretfully did not include this provision in the Draft Regulations.

In brief, it is apparent that the Draft Regulations have some reasonable as well as unreasonable provisions. The legal profession and the press in Taiwan have focused their attention on many problems and have put forward some valuable and reasonable proposals.⁸⁷ Taiwan authorities should face these problems, study the criticisms of the legal professions on both sides, and make laws that will help promote and safeguard the exchanges between and the interests of the two sides.

IV. FINISHING THOUGHTS

Given the brief history of exchange between the two sides, the limited practice of handling criminal cases involving Taiwan, and the infancy of related research, there are inevitable shortcomings in the current approaches to handling criminal problems. In order to gradually improve the handling of criminal problems involving Taiwan, help safeguard the interests of the people of the two sides, and help promote reunification, this author believes that further work can be done in several areas.

To start, the criminal legal profession in the PRC should increase research on criminal problems involving Taiwan, develop appropriate theoretical principles, and produce more detailed and practical data for the correct resolution of criminal problems involving Taiwan.

In addition, the supreme judicial organs of the PRC should strengthen regulatory guidance in the handling of criminal problems involving Taiwan. PRC supreme judicial organs should issue timely documents regulating and coordinating the following problems: 1) cases in which crimes were committed after the founding of the PRC by those who left the PRC for Taiwan; 2) cases where offenders illegally departed the PRC after committing crimes in the PRC; and 3) current cases involving Taiwan residents visiting in the PRC. The supreme judicial organs of the PRC should also investigate and study the experiences of judicial organs in various regions with large concentrations of Taiwan visitors. The PRC legislature should also pay close attention to the handling of criminal problems involving Taiwan and establish basic principles through legislation. At the appropriate time, new legislation should supplement current criminal legislation in order to provide a clear legal basis for the handling of such cases.

Finally, the legal scholars, practitioners, and legislatures of both

86. National Policy Research Center Bill, *supra* note 55, sec. 35.

87. See *supra* note 74.

sides should gradually initiate dialogue and exchange opinions in order to find fair, reasonable, and practical solutions to the kinds of criminal law problems discussed in this article. This type of cooperation will strengthen all of China.

