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Chang, Yao-chung

Monterey, California. Naval Postgraduate School

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Cyber Conflict Between Taiwan and China

Yao-chung Chang

Introduction

The Republic of China (Taiwan hereafter) and the People's Republic of China (China hereafter) are two particularly attractive targets for internet hackers. Reports have found that, compared to other countries in the Asia and Pacific regions, China and Taiwan rank as the top two countries in terms of malicious computer activity.^{1,2} Reports have also shown that most hacking into Taiwanese computer systems is initiated from within China and most hacking into Chinese systems originates within Taiwan.^{3,4,5,6,7}

Malicious computer activity across the Taiwan Strait not only impacts computer users in Taiwan and China but it also affects numerous users in other countries as well. It is not only a problem for China and Taiwan to remedy, nor is it one that they alone should deal with. As a matter of fact, reports have found that there have been a number of computer attacks against the US that originated from computers in Taiwan but were controlled by command and control servers in China.⁸

The current lack of formal mutual cooperation between Taiwan and China has become a bottleneck for the successful investigation of transnational cybercrime. Therefore, the establishment of other feasible mutual cooperation options between Taiwan and China has become an important concern not only between Taiwan and China but for all countries.

Impeded by the present political situation, there is currently no formal mutual assistance agreement against crime between Taiwan and China.^a However, there exists a level of quasi-formal and informal cooperation between law enforcement agencies, and these include “the Kinmen Agreement”, “the Agreement on Cross-Strait Mutual Assistance in Crime Matters” (hereafter, the Agreement on Mutual Assistance), and informal police-to-police cooperation. It is arguable whether these existing cooperation methods are applicable to cybercrime issues because cybercrime is potentially more sensitive for both governments as opposed to more conventional crimes.

This paper will introduce cases of cybercrime across the Taiwan Strait and the existing mutual cooperation methods used against crime. Based on interview data, it will also examine the use of quasi-formal agreements signed by non-governmental organizations under the authorization of both governments, and it will then examine the role played by informal relationships between police officials. In each case, the paper will examine obstacles these strategies face in obtaining cooperation.



^a The Government of People's Republic of China (China) claims sovereignty over Taiwan. Consequently, there is no possibility for Taiwanese and Chinese governments to sign a formal mutual agreement. For the special political situation between Taiwan and China, see Chapter 7 of *The Republic of China Year book 2009, Cross-strait Relations* at <http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/06Cross-straitRelations.pdf>.

Methodology

Thirty-eight interviews (including four focus groups, one in China and three in Taiwan) with a total of 44 interviewees were conducted in Taiwan and China during the years 2008 and 2009. All the interviewees interviewed in Taiwan are coded with the letter “T” while those in China are coded with the letter “C”. The number following the letter refers to the case record. For example, T001 means the first interview done in Taiwan.

Interviewees were selected purposely based on their work experience or background. People with knowledge of information security and cybercrime were potential samples for this research. These included but were not limited to IT people in government agencies and private companies, police officers, prosecutors, and other professionals in cybercrime and information security, such as professors, managers of legal compliance in companies, and information security experts in big accounting firms which audit information security and conduct staff training in organizations. They were categorized into four groups: public sector, private sector, law enforcement, and other professionals.

The concept of data saturation, whereby data is collected until no new information is obtained,⁹ was adopted by this research as the basis to decide the sample size. Except for the interviews in the categories of public sector and law enforcement agencies from China, interviews in other categories all reached the point of theoretical saturation.

In Taiwan, there were 23 interviews with 28 interviewees. There were only three interviewees with less than ten years experience in information security or related areas. All other interviewees in Taiwan had more than ten years working experience in this area. Four participants were female.

Among all the interviews in Taiwan, ten were conducted with 12 participants from the private sector; five interviews were conducted with seven participants from the public sector; four interviews were conducted with five participants from law enforcement agencies such as the police and prosecutors; and four professors were interviewed who were experts in law, information security issues or criminology.

In China, 15 interviews were conducted and 16 people participated. Seven interviews were conducted with eight participants from the private sector; three policemen were interviewed as well as five professors. With regard to the experience levels of the interviewees in China, only two had experience in the related area of less than ten years. In terms of gender, only one interviewee was female.

There were no Chinese government agencies willing to be interviewed. As well, there were no Chinese prosecutors interviewed. However, in lieu of formal prosecutors, some professors interviewed were also concurrently serving as deputy chief procurators. Their contributions helped overcome the lack of data from government officers and prosecutors in China.

Cases of Cybercrime Across the Taiwan Strait

The special political situation between Taiwan and China, and their often antagonistic relationship, has encouraged the growth of malicious activities between them. It has been reported that both Taiwan and China possess net-armies which hack into their respective counterpart government systems to conduct cyber espionage and to steal sensitive data.^{10,11,12} Additionally, websites of a

sensitive political nature, such as those criticizing the “one China policy” are usually prime targets for distributed denial of service attacks (DDoS).^b

As an example, a significant number of cyber attacks occurred in 1999 when a special state-to-state relationship was declared by then-President of Taiwan Teng-hui Lee. In that year President Lee declared in an interview with *Deutsche Welle* that relations between Taiwan and China were of a state-to-state nature, or at least a “special” state-to-state relationship existed. Seeing that interview as a possible pro-Taiwanese independence declaration, nationalistic Chinese hackers cracked into Taiwan’s government websites to show their anger. Government websites such as those belonging to the Administrative Yuan, the Control Yuan, the National Assembly, and Presidential Executive Office were replaced with an image of the Chinese five-star flag and with political statements such as “Taiwan is an indivisible part of China”. As revenge, Taiwanese hackers spontaneously responded in kind. They hacked into Chinese government websites and replaced the image of China’s national flag with the Taiwan national flag.^{13,14}

This example is not isolated and similar events occur often. In 2002, a website constructed by the “Taiwan Tea Party”, which supports the independence of Taiwan, suffered consistent and serious DDoS which paralyzed its operation. A huge quantity of spam and messages from China was sent to the website, shutting it down (Chen 2002).¹⁵ In 2005 and 2006, Taiwan’s Ministry of National Defense was hacked into and computers in the Minister’s Office and the Secretary’s Office were infected with trojans and spyware.¹⁶ The Acting Director of the National Security Bureau in Taiwan has said that a Chinese cyber army launched more than 3,100 attacks against Taiwanese government systems in 2008, and this does not include attacks against the private sector. Their purpose was mainly related to stealing data and sensitive information.¹⁷

However, not all cyber attacks across the Taiwan Strait have political motivations. Some hackers do it simply for revenge, fun, or profit. For example, Shau et al. (2005) has suggested that at least 60 per cent of the cybercrime occurring in China is financially motivated.¹⁸ Among all targets, banks, the stock market and other financial agencies are the main victims. A senior police officer mentioned that the website of his institute was once hacked into and a Chinese national flag (usually called the “five star flag” in Taiwan) was inserted on the main page, showing off the hacker’s ability to hack into government agencies (T017).

Existing cooperation models against crime

Although there is no inter-governmental mutual assistance agreement between Taiwan and China, there are two agreements signed by non-governmental organizations with government support or authorization. One is the agreement in relation to extradition, the Kinmen Agreement, which was signed by the Red Cross Society of the People’s Republic of China and the Red Cross Society of the Republic of China with support from both governments. The other is the Agreement on Cross-Strait Mutual Assistance in Crime Matters. It was signed in 2009 between the Taiwan-based Straits Exchange Foundation (SEF), and the mainland-based Association for Relations Across the Taiwan Straits (ARATS).

^b A *distributed denial of service* (DDoS) attack makes web sites or other network services unavailable to users by flooding the resource with spurious requests from many computers.

As a framework for the swift repatriation of stowaways and criminals, the Kinmen Agreement on Handling Deportation of Wanted Criminals and Suspects was signed in 1990 between the Red Cross Society of the People's Republic of China and the Red Cross Society of the Republic of China (Taiwan). This was the first bilateral agreement between Taiwan and China since 1949, although both governments did not sign it but authorized non-governmental organizations to sign. It was also the first document between the two countries to contain "quasi-judicial" mutual assistance provisions and is recognized as a precedent for the Agreement on Cross-Strait Mutual Assistance in Crime Matters.¹⁹

The Agreement contains provisions for the repatriation of individuals who have illegally entered either country, as well as repatriation of criminals and suspects. Although it is concerned mainly with the repatriation of certain categories of people, it does imply cooperation between Taiwan and China in the arrest of criminals and suspects. According to informal statistics, between 1990 and January 2009, more than 38,000 persons who had fled to China were repatriated, including some serious criminal offenders.²⁰

Immediately following the signing of the Kinmen Agreement, the Straits Exchange Foundation^c was established in Taiwan in November 1990 and the Association for Relations Across the Taiwan Straits^d was established in China in December 1991. These two non-governmental organizations, both authorized by their respective governments, have become the main channels for official communications between Taiwan and China. In 2009, the Agreement on Cross-Strait Mutual Assistance in Crime Matters was signed by these two organizations. That agreement is recognized as a milestone in cooperation against crime between Taiwan and China.

Containing 24 articles in five chapters, the Agreement covers the extent of cooperation, the types of crime covered, mutual assistance in crime investigation and evidence collection, and other administrative aspects. Unlike the Kinmen Agreement, which focuses on the repatriation of criminals or suspects, this agreement focuses on collaboration in combating crime and the arrest of criminals.

Mao-Su Huang,^e the Deputy Director-General of Taiwan's National Police Agency,^f comments that the Agreement has institutionalized collaboration in combating crime.²¹ Positive comments were also made by a spokesperson for the Taiwan Affairs Office of the State Council of the People's Republic of China at a news conference held in December 2009:

The Agreement realized the institutionalisation, generalisation and comprehensive nature of the judicial mutual assistance across the Taiwan Strait. Since entering into effect in June, it is executed very well with significant outcomes. It promoted greatly the efficiency of collaboration between both sides, and protected the rights and interests of citizens on both sides.²²

Not surprisingly, there has been criticism of the Agreement on Mutual Assistance. Some commentators think that both sides have been too optimistic when praising its benefits. Tong (2009) doubted that China would extradite criminals and suspects under the new Agreement because China did not always send criminals back under the previous Kinmen Agreement. He noted that China refused to repatriate stowaways under the Kinmen Agreement for a certain period of time when the relationship between Taiwan and China was tense.²³

^c 海峡交流基金會

^d 海峡两岸关系协会

^e 黃茂穗

^f He was commissioner of the Crime Investigation Bureau when the Agreement was signed.

Chang (2010) also advised that although some requests had been made by Taiwan, “they are still pending and the attitude of the Chinese Government in terms of cooperation is the most important factor.” He said, in an interview with Taiwanese Government officials, that trust between Taiwan and China is the key to the success of the Agreement. Therefore, the effectiveness of the Agreement on Mutual Assistance is still hugely reliant on the political situation between, and the attitudes of, both Taiwan and China—especially the attitude of China.²⁴

Informal police-to-police cooperation

Apart from the above quasi-formal agreements against crime, informal police-to-police cooperation is often used to advance crime investigations. Some senior police and academics said that limited mutual help with investigations has been secured privately and that some *guan-xi* (關係 “informal relationships”) exist between the police in Taiwan and China.

Guan-xi, which resembles the idea of social capital, plays a very important role in different aspects in Chinese society.⁸ As Yang notes in her anthropological work on Chinese culture, the term *guan-xi* literally means relationship. However, she argued that in the context of the gift economy, “it has the sense of social connections, connections which must be carefully initiated, preserved and renewed through the giving and receiving gifts, favors and dinners or banquets.”²⁵ It can be built on pre-existing relationships such as classmates, people from the same native-place, relatives, superiors and subordinates in the same working place and so on.²⁶

Guan-xi between people also represents the trust between them. Based on *guan-xi*, police from both sides can build *mo-chi* (默契 “unspoken consensus”) that facilitates crime investigation across the Taiwan Strait. As a senior investigator said, even under the political barrier, some crime problems still need to be cleared and this informal police-to-police relationship can help solve the problem:

Many things can be done privately and not be discussed formally. It is related to the status of Taiwan. We think this is the most troublesome thing to us...It is just like the *mo-chi* between you and me. We know our “bosses” are like aliens to each other, but in order to achieve outcomes, we need *mo-chi* (T017, senior police officer).

A senior law enforcement officer in Taiwan also illustrated the existence of informal police-to-police relations and cooperation between Taiwan and China. He said that some police in the Crime Investigation Bureau in Taiwan had some *guan-xi* with the public police in China. They could deal with some cases “under the table”. That is, there is some unofficial cooperation.

For example, in 2005 a cross-Strait kidnapping case was cleared with the help of informal police-to-police cooperation. While there was no formal mutual cooperation between Taiwan and China, the police in Taiwan, in order to solve the case, used their personal relations (*guan-xi*) to request help from police in China. The criminal was finally arrested by police in Macao and was sent back to Taiwan. Interestingly, official press releases do not emphasize this informal police-to-police relationship as it might be criticized for being “under the table”.

⁸ There are doubts about the similarity and differences of *guan-xi* and social capital, especially in the field of anthropology, where some argue that *guan-xi* is an essential and defining elemental part of Chinese culture, while others believe that *guan-xi* is little more than a Chinese word for social capital which can be found in all societies, see more discussion at e.g. Gold, Guther, & Wank (2002), Jacobs (1979), King (1991), Smart (1993), Yang (1988). Here, the original expression *guan-xi* is used to avoid any misunderstanding that might result from using other terms, such as “social capital”.

Inevitably, there are some defects that diminish the effectiveness of informal police-to-police cooperation. One is that *guan-xi* is usually exclusive to the persons who build it and it does not usually last long. It is difficult to pass to others. Therefore, *guan-xi* might not work if the person changes position or leaves his job. Furthermore, informal police-to-police cooperation is still highly dependent on a positive political environment for *guan-xi* to be effective. In other words, if the relationship between Taiwan and China improves, the police may be able to achieve more. Equally, if the relationship between the countries worsens then little will be achieved.

Cooperation against cybercrime across the Taiwan Strait

From the discussion above, we can see that a number of alternate forms of cooperation against crime exist to cover the current lack of formal cooperation between Taiwan and China. These include quasi-formal mutual cooperation and informal police-to-police cooperation.

Theoretically, quasi-formal cooperation agreements, such as the Kinmen Agreement and the Agreement on Mutual Assistance should be sufficient for Taiwan and China to cooperate in combating cybercrime. This is supported by most of the interviewees. All elements for cooperation against cybercrime, such as mutual assistance in crime investigation and evidence collecting, and extradition, are included in these two agreements. Academics, both in Taiwan and China, believed that the agreements should be able to be used as a model for cooperation against cybercrime.

Elements of cybercrime, such as hacking and other malicious activities, were proposed for inclusion in the Agreement on Mutual Assistance by the Taiwanese negotiators.²⁷ However, cybercrime received no special mention in the final document. This may have been because cybercrime was not seen as a first order issue or that it was too sensitive for governments to address explicitly.

However, should attitudes change, the use of the generalized term “other crimes” in the Agreement on Mutual Assistance could cover cooperation on cybercrime for those cybercrimes which are not sensitive, such as purely economic crimes like fraud. Indeed, some cybercrime cases have been pursued under the agreements. For example, since the signature of the Agreement on Mutual Assistance, at least 100 computer fraud crime groups have been investigated and hundreds of criminals and suspects involved in computer fraud have been arrested.²⁸

Although the agreements seem to enable Taiwan and China to cooperate when combating cybercrime, a police officer in China argued that it was a time-consuming and complicated process (C008). This is an understandable position. For example, the Agreement on Mutual Assistance is unclear as to which agencies have charge of the investigation and collection of evidence. In accordance with the text of the agreement, it seems that all requests need to be made between ARATS and SEF through assigned contact points, and those requests must be made in writing. This inevitably causes delay in the investigation and evidence collection.

Apart from the quasi-formal agreements listed above, informal police-to-police cooperation is another channel for cooperation when investigating cybercrime across the Taiwan Strait. As advised previously, a level of *guan-xi* already exists between certain police officers in China and Taiwan, leading to informal cooperation on major crimes. As a senior police officer said, for computer fraud cases, they cooperate “under the table” first in crime investigation and evidence collection. Through the use of *guan-xi*, they can ask “their friends” to locate criminals so that they can obtain accurate information on the criminal’s whereabouts. When the case is ready to close, they will then formally apply for mutual assistance to the appropriate contact officer in charge of the region and seek the

arrest of the suspect criminals. This approach is more efficient than simply sending out a request to ARATS without any helpful background information.

Notwithstanding some success in this mutual assistance against cybercrime, the methods used have been limited and only apply to certain types of cybercrime. Most police interviewed were still very pessimistic about cooperation between China and Taiwan against cybercrime.

A senior police officer in China said that they seldom dealt with transnational crime cases, and if a case was related to Taiwan, there was even less chance of it being pursued. Similarly, some senior law enforcement officers in Taiwan said that, according to their experience or their understanding, when a crime originated overseas the local police could usually do “nothing”:

For Taiwan and China, zero. There is no mutual help between Taiwan and China. We try to tell them and ask for their help, but ... basically there is no response (T004, senior police officer).

T004, a senior police officer in Taiwan, explained that this might be because some hackers were hired by their respective governments. Cooperation when combating cybercrime, especially when that cybercrime was directed against government agencies, was likely to be awkward even when both sides trust each other. As Professor Susan Brenner^h indicated in her book *Cyberthreats: The Emerging Fault Lines of the National State*, it is quite impossible for the sponsoring state to cooperate in the investigating efforts:

When what is ostensibly cybercrime is state-sponsored - as is increasingly true of economic espionage - the efficacy of the civilian law enforcement response process breaks down. The sponsoring state will almost certainly refuse to cooperate with the investigative efforts of the victim state's law enforcement officers, and thereby thwart the crime response process.²⁹

Apart from government-sponsored crime, it was also argued by interviewees that it was highly improbable that governments would cooperate when investigating “hacktivism” which supports their own national interests. For example, if an attack against a Taiwanese website originated in China, and that website specifically opposed China’s “one China policy”, it can be safely predict that neither Taiwan nor China would offer much cooperation when investigating that matter. The case of the attack against the official website of the 2009 Kaohsiung Festival, which screened The *Ten Conditions of Love*, a documentary about exiled Uighur activist Rebiya Kadeer, is a good example.

Given this, the Chinese and Taiwanese governments could only be anticipated to cooperate if it could be shown that the hackers involved were not supported by either government or that the hacking behavior was not related to national interests. Senior police officers in Taiwan believed that cooperation against cybercrime between Taiwan and China was possible if it was an economic issue and there is no government element involved and when both sides suffered from the same crime:

...Only when they are suffering from the same crime do they cooperate. Do you remember the news not long ago about organised crime being cleared-up? That group not only committed fraud in Taiwan, but also in China. That is why China's public police were willing to help. See, I reckon only when they are suffering will they help! (T017)

When the Chinese suffer from the same crime will they start to cooperate? The best example of cooperation is the mutual assistance between Taiwan and China in terms of telecommunication and computer fraud! (T004)

^h NCR Distinguished Professor of Law and Technology at the University of Dayton School of Law.

In addition to the nature of the cybercrime being committed, the political situation between Taiwan and China can determine whether cooperation is possible. Most interviewees agreed that there would be no cooperation between Taiwan and China when the political situation was tense. T017 said that, when Cross-Strait relations were tense, Taiwan could hardly get a response from China to their requests. Even informal police-to-police cooperation stopped—even *guan-xi* does not work when relations between Taiwan and China are bad.

The attitude of the respondent can also play a vital role in cooperation. According to a senior police officer's experience, most of the SEF requests to ARATS for help in cybercrime investigations remain unsettled. Often only a *pro forma* reply to the request for assistance was received, even when the relationship was good:

I remember that we had requested ARATS, via SEF, to investigate some cybercrime problems. For most of the cases, we did not get any response from them. Even if there was a reply, the answers were usually *pro forma*, telling us that they could not find any information or there was nothing wrong (T017).

Conclusion

It is encouraging that, despite the lack of formal mechanisms for mutual assistance between Taiwan and China, there are alternative channels for cooperation, including quasi-formal mutual assistance and informal police-to-police cooperation. Current agreements and informal police-to-police cooperation could potentially be sufficient for police from both sides to cooperate with their counterparts against cybercrime. However, that cooperation can only apply to cybercrimes that are purely economic in nature and where there is no government involvement. Cooperation is more likely when both countries are suffering from the same crime, such as computer fraud.

There are still barriers impeding cooperation between the two countries. Cooperation, whether quasi-formal or informal, is highly dependent on the official or governmental relationship between Taiwan and China existing at the time of the criminal investigation. Quasi-formal cooperation and informal cooperation through *guan-xi* between police forces work well only when the official relationship between Taiwan and China is not tense. Moreover, as indicated by interviewees, the attitude of respondents can also potentially impede cooperation.

It may be a long time before the two governments are able sign an official agreement for formal mutual assistance against cybercrime. However, with current improvements in the relationship between Taiwan and China, there is optimism that the situation could change in the near future. In the interim, and in the absence of a formal agreement, it is all the more important to advance the current quasi-formal and informal cooperation between Taiwan and China.

About the Author

Dr. Yao-chung Chang completed his PhD at the Centre of Excellence in Policing and Security, Regulatory Institutions Network, at the Australian National University. His PhD research, entitled "Cybercrime Across the Taiwan Strait: Regulatory Responses and Crime Prevention," focuses on alternative solutions to combating cybercrime during a period of negative mutual assistance between both China and Taiwan. He is now working as a research officer at the Centre of Excellence in Policing and Security.

In 2005-2007, he worked as a researcher and project manager at the Science and Technology Law Centre, Institute for Information Industry, which is recognized as one of the most important think tanks for the Taiwanese Government in the area of legal responses to new technology.

Notes

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