Comparison of and Cooperation on Drug Issues between Macau and Mainland China

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Abstract: Drugs are constantly spreading to different social strata and becoming more rampant around the world. The value of drugs trade has reached 500 billion dollars, making it second only to arms trade. In 2014, there was an estimated 207,400 drug-related deaths, corresponding to 43.5 deaths per million, amongst people between 15 and 64 years old.

The special geographical location and opening-up policy of Macau make it an important transportation hub for drug trafficking outside Mainland China. Hence, the mechanism of cooperation between Macau and Mainland China needs to be improved, to tackle drug issues.

Macau and Mainland China are seen as important transit points for drug transportation from the notorious ‘Golden Triangle’ region to Europe. The even more serious issue is that drug trafficking could induce drug consumption. Once drug consumption occurs on a certain scale, it will certainly cause further stimulation on the manufacturing and transportation of drugs, resulting in the formation of a vicious circle of drug-related crimes. Macau is an important window to China under the ‘one country two systems’ policy and ‘opening up’

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3 a constitutional principle formulated by Deng Xiaoping, the Paramount Leader of the People's Republic of China (PRC), for the reunification of China during the early 1980s. He suggested that there would be only one China, but Macau could retain its own capitalist economic and political systems, while the rest of China use the socialist system. Under this principle, each of the two regions could continue to have their own political systems, legal, economic and financial affairs, including external relations with foreign countries.
policy. Thus, combating transnational drug crime is imperative. This research focuses on drug issues in Macau and Mainland China. The article will contrast the laws on drug-related crimes of Macau to that of Mainland China, in order to seek effective cooperation and propose rational measures.

I. Comparison between Macau and Mainland China on Drug Issues

Admittedly, Macau was governed by Portugal for a long time. The laws are thus greatly influenced by that of Portugal and the continental law system. We need to probe into the similarities and differences between Macau and Mainland China’s legislations on drugs in order to promote bilateral cooperation.

(a) Comparison of the Concepts of Drugs

Macau defines ‘drugs’ as follows: ‘Narcotic Drugs and Psychotropic Substances given by the current conventions of Macau, and the relevant material modified by regulation or its preparation, and other substances from the attached tables of this law…’ While in Mainland China, the law provides as follows: ‘The term “narcotic drugs” as used in this Law means opium, heroin, methylaniline (ice), morphine, marijuana, cocaine and other narcotic and psychotropic substances that can make people addicted to their use and are controlled under State regulations’.

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4 A policy of China which was created in the early 1980s to allow the entry of foreign-funded companies into China in the four Special Economic Zones

5 Prohibit the illegal production, sale and consumption of narcotic drugs and psychotropic substances Law No. 17/2009/M (Macau)

6 Xing Fa Penal Code, art 357 (People’s Republic of China)
The two mentioned definitions reflect different modes of legislating. One uses the samples mode, which conveys concepts by listing items one by one; it is clear but difficult to achieve comprehensiveness. The other mode is the generalized norm mode. It summarizes the common features of the concepts, which makes it more logically comprehensive, but may be too abstract for law enforcement agencies.

The concept of drugs in Macau uses the stipulation by samples mode to enumerate specific kinds of drugs, one by one. The advantage of stipulation by samples mode is concrete, clear and definite law; it is easy to operate judicially as well. In 2014, five new kinds of drugs were added into the attached tables of the law.¹ Two years later these attached tables had twenty additions and modifications.² But the types and the range of drugs are changing more quickly nowadays. As lots of new kinds of drugs are springing out, scientists, in recent years, have found and shown that some medicine also have special addictive characteristics. The samples from conventions and attached tables cannot keep up with the current situation. The rapid changes and developments undermine the stability of the law. Compared to the legislation of Macau, the legislation of Mainland China defines the drugs concept better as it offers emphasis and comprehensiveness by combining the generalized norm mode with the samples mode. Such method could highlight important drugs by giving some examples and also avoid logical omissions of the types of drugs, reducing the need to amend the laws too frequently in order to keep up with the emergence of new drugs.

¹ Macau Law 10/2016 on Prohibition of unlawful production, trafficking and smuggling of narcotic drugs and psychotropic substances (Amend Act No. 17/2009)
² ibid
(b) Comparison of the Types of Crimes

There are six similar crime types between Macau and Mainland China. They are the crimes of smuggling, trafficking, transporting and manufacturing of drugs;\(^9\) possessing illegal drugs;\(^{10}\) cultivating illicit narcotic plants;\(^{11}\) luring, soliciting, cheating others into taking drugs; sheltering others taking drugs;\(^{12}\) and supplying unlawful narcotics or mental drugs.\(^{13}\)

The differences lie mainly in the related crimes for the illegal acts which encourage drug-related crimes. For example, the drug law of Mainland China sets up the crimes of harboring, transferring, or concealment of drugs; and smuggling articles used for the purpose of making drugs and coercing others into drug taking. On the other hand, Macau sets the crimes of illegal possession of drug equipment and allowing others to produce, sell and consume narcotic drugs and psychotropic substances in public or meeting areas. Setting these drug-related crimes help nip the crimes at their buds. The two regions could draw from each other on this point.

Another obvious difference is, taking drugs is also be a crime in Macau offenders are sentenced to imprisonment for three months to one year or fined. However, taking drugs is not regarded as a criminal behavior, but rather an illegal act in Mainland China. In Mainland China, drug users can be detained for no more than 15 days and may be fined no more than 2,000 yuan, drug addicts will have to go through compulsory detoxification. These

\(^{9}\) Xing Fa Penal Code, art 347 (People’s Republic of China); Macau Law 10/2016 on Prohibition of unlawful production, trafficking and smuggling of narcotic drugs and psychotropic substances (Amend Act No. 17/2009)

\(^{10}\) Xing Fa (n 6), art 351

\(^{11}\) Ibid, art 353

\(^{12}\) Ibid, art 354

\(^{13}\) Ibid, art 355
punishments are much more lenient than that of Macau. Nowadays, in Mainland China, drug related problems are getting more and more serious. In 2015, a total of 1,062,000 persons were identified and punished for using drugs, 531,000 new drug users were also discovered, totaling up to a nationwide increase of 20% and 14.6% respectively, in one year. The age of drug users are noticeably lower as well. Of the current 2,345,000 drug users nationwide, 43,000 or 1.8% are under the age of 18. Additionally, numbers of assaults and casualties involving drug users have increased. In 2015, 336 nationwide extreme cases and incidents caused by drug abuse, involving violent assaults, suicide, self-inflicted injuries, and even drugged driving, were reported; and 349 drug users were captured in connection with such cases.\textsuperscript{14} From this worrying situation, more and more lawyers in Mainland China are appealing to make ‘taking drugs’ also an accusation in the criminal law regulations. The leading reasons presented are listed below:

Firstly, from the societal aspect, drugs bring severe diseases which threaten the human health. For example, marijuana, the most commonly abused illegal substance impairs memory and learning, the ability to focus, attention and coordination. It also increases heart rate, harms the lungs and increases the risk of psychosis in vulnerable abusers. Cocaine is a short-acting stimulant, which may lead users to take it numerous times in a single session. Cocaine use can lead to severe medical consequences relating to the heart and the respiratory, nervous, and digestive systems. Heroin is a powerful opioid drug that produces euphoria and feelings of relaxation. It slows respiration, and its use is linked to increased risks of serious

\textsuperscript{14} ‘China's Drug Situation Report 2015’ <http://www.wendangku.net/doc/6b559defedfc8d377ee324e-1.html> accessed 12 April 2017
infectious diseases, especially when taken intravenously.\textsuperscript{15} Forty-nine thousand drug addicts died until the year 2014, in China, which resulted in a 500 billion yuan economic loss for the Chinese government.\textsuperscript{16}

Secondly, as taking drugs is the origin of drug-related crimes, it is believed that criminalizing the taking of drugs could deter criminals. Now that innocents are also taking drugs, drug addicts are becoming even more unscrupulous. The increasing number of consumers incentivize drug makers and drug traffickers to break the law despite knowing of the harsh punishments. If taking drugs is made a crime in the penal law, people who attempt to take the drugs would be deterred, leading to reduced consumption and a smaller market. This mechanism has a historical basis. The Shanxi-Hebei-Shandong-Henan border area governed by Deng Xiaoping and Liu Bocheng, stipulates, ‘a person who takes drug more than three times should be punished by death’ in its penal law. This area became a model for drug control in China and even other parts of the world in a very short time. Although the punishment may seem severe for our modern day society, it could prove that setting up the crime of taking drug has the effect of deterring drug-related criminals.

As setting up the crime of taking drugs may promote and strengthen drugs control efforts, Mainland China could learn from Macau’s policy.\textsuperscript{17}

\textsuperscript{15} Drugs, Brains, and Behavior: The Science of Addiction (July 2014) \texttt{<www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/addiction-health>} accessed 12 April 2017  
\textsuperscript{16} ‘China’s Drug Situation Report 2014’ \texttt{<http://www.nncc626.com/2015-06/24/c_127945747_2.htm>} accessed 31 Mar 2017  
(c) Comparison of the Criminal Penalty Systems

1) The Fine Systems

Mainland China adopts the unlimited fine system. Fines without limits brings difficulty to the law enforcement agencies and gives the judges too much discretion, leading to a lack in unified standards of application. This goes against realizing justice, and the authority of the judiciary will be severely weakened. Macau’s fine system calculates the fines by days. The system gives the upper and lower bounds of fine, which ranges from 500 MOP to 10,000 MOP. The courts consider the property, income, dependency obligations and other circumstances relating to the payment capacity of the criminals, then declare an amount and ask them to pay it day by day. This underlying principle of this system is that ‘all shall be equal before the law.’ With the existing large gap between the rich and the poor of the various regions in Mainland China, the introduction of this system could improve the justice system.

2) Protection of Minors

Both in Mainland China and Macau, drug addiction is a trend amongst the younger groups; thus, there is an urgent need to contain the damages of drugs on minors and safeguard their healthy growth.

In the penal code of Mainland China, heavier punishments will be given to those who take advantage of minors and use them to smuggle, traffic, transport, or produce drugs, as well as those who sell drugs, seduce, instigate, cheat or force minors to take and inject drugs. Apart from the penal code, judicial interpretation\(^\text{18}\) also give more details to the legislation.

\(^{18}\) Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Drug-Related Criminal Cases [Judicial Interpretation]
Firstly, behaviors which incite minors to hold illegal drugs belong to legal circumstances which impose heavier punishments. Article 5 provides, ‘using or abetting minors to illegally possess drugs shall be determined as a serious circumstance’. Also in Articles 7 and 8, when minors are used or abetted to commit drug crimes, the number of convictions and sentencing standards can be lower than the usual standards; this aims to reflect strict punishments.

Secondly, behaviors of using minors as criminal objects are directly judged as convictions. For instance, in Article 12, the behavior of sheltering minors taking drugs is directly taken as the crime of sheltering others in drug taking, it is not necessary to meet other requirements in respect of the number of persons, the number of consequences, and the consequences of the crime. In Article 13, the unlawful supply of narcotics or mental drugs to minors is directly taken as the crime of unlawful supply of narcotics or mental drugs, there are no requirements as to the amount of narcotics or mental drugs involved.

Thirdly, trafficking drugs to school students is an aggravating circumstance. In Article 4, trafficking drugs to school students are recognized as ‘vile’ and aggravates the statutory sentences. Although Article 347 provides, ‘who sells narcotic drugs to minors shall be given a
heavier punishment’ in the penal code, when the object is school students, the punishment becomes much tougher.

On the other hand, Macau only has three articles to protect minors from drugs. Under the ‘anti-drug law’, there are only three aggravating circumstances and one circumstance for heavier punishment under the three articles. For instance, the actor who tries to or attempts to deliver the plant, substance or preparation to minors will be punished by minimum level and 1/3 of the maximum of penalty.

It is obvious that on the issue of protection for minors, Mainland China has a more detailed legislation. The drug laws of Mainland China are rich in content, concrete in clauses and easy to operate; the severe punishments are committed to effectively protect minors from drugs. Macau could learn from Mainland China, to improve its legislation on the protection of minors from drugs.

II. Rationalization Measures

(a) Tolerance of Concept

The biggest challenge that both Mainland China’s and Macau’s judicial assistance bureaus encounter is to balance fighting against drug-related crimes and safeguarding the criminal’s

24 Xing Fa (n 6), art 347
25 Supreme law: to school students should be more severe drug trafficking’ China News Network (China, 16 April 2010) <news.xinhuanet.com/legal/2016-04/07/c_128872230.htm> accessed 12 April 2017
26 Macau Law (n 7)
27 ibid
basic rights. This applies and relates especially to the issue of death penalty in Mainland China, in terms of inter-regional judicial assistance in criminal cases. From the perspectives of criminal law, Mainland China tends to punishment while Macau tends to educate. The death penalty is set up in Mainland China, but not in Macau. Such difference should not be tied to the perceptive differences towards human rights. This is purely a difference in the perspection of law because the people’s right to live is not an absolute right and can be deprived under certain conditions (only if the deprivation is based on the justified acts of morality). So the problem as to whether the death penalty should exist is more associated with legitimacy and not the protection of human rights. John Locke defined law as a ‘social contract’ between the rulers and the ruled; as laws embody the unity of the government’s view and the people's will, legitimacy is the ruled’s acknowledgement of the power of the rulers.

If both the rulers and the ruled see the death penalty as necessary to their society, the existence of the death penalty has legitimacy and reasons. Considering the situation of Mainland China in the light of such understanding, as the death penalty reflects the will of the people, the government of Mainland China respects this will and sets it as a penalty; this respect of the government or the rulers show their care of the ruled’s human rights. Thus, death penalty is not contradictory to the protection of human rights, in this sense. Coordination in laws can be realized if the legal systems and legal cultures are respected. On

28 Coicaud J M & Curtis D A., Legitimacy and politics: a contribution to the study of political right and political responsibilit (Cambridge University Press, 2002).


30 Coicaud J M & Curtis D A (n 28)
the issue of ‘whether judicial assistance in criminal cases will be accepted or rejected’, assessments shall be conducted on the benefits which the assistance would offer and the damages it could bring. An example of a practice would be: when an actor escapes to Macau after being sentenced to death by the Mainland judicial authorities, Macau judicial authorities should assist the Mainland judicial authorities by transferring the actor back according to the request of the authorities. In such case, Macau should not adopt the principle of non-extradition in order to reject the transfer, because this principle appears in international law. Macau is only a region belonging to China, thus the principle of international law shall not be applied. For prisoners of drug-related crimes in Mainland China who may be sentenced to death but is awaiting trial, the Macau judiciary authorities should assist to hand over the actors. In such situation, the principle of priority acceptance should be applicable; this means that if Mainland China takes priority in accepting the case, Macau should assist to hand over the criminal(s). Thus, if Macau takes the priority to accept the case, it is not necessary to hand over the criminal(s), and the local law can be applied to carry out criminal sanctions on the criminal(s).

(b) Strengthening of Police Cooperation and Improvement of Mechanisms for Judicial and Police Cooperation

To improve the criminal justice assistance mechanism between Macau and Mainland China, cooperation between the two police forces is crucial. Macau and Mainland China could learn from the mechanism of ‘unified arresting’ from the regional judicial cooperation in the European Union. The ‘European Arrest Warrant’ is a new system of international cooperation in criminal matters within the EU. It is used to arrest or surrender fugitives
instead of extradition. Mainland China and Macau could follow the example of EU and set up a system of ‘interregional warrant’.

This interregional warrant has high potential in practice. The European arrest warrants has possibilities to be implemented smoothly even though there is a need to overcome issues concerning state sovereignty and surmount numerous different political opinions. These issues are not worrying problems when it comes to the implementation of such mechanism between Mainland China and Macau. The 112 years of Portuguese rule cannot compare to the domination of China since the fifth century BC, for thousands of years. There are numerous similarities in lifestyle, culture, and value judgments between Macau and Mainland China. The differences between the two regions are much smaller than the differences amongst the states in the EU. Additionally, the issue of state sovereignty does not exist between Macau and Mainland China under ‘one country two system’ policy. Macau Basic Law also supports the regional warrant system, in Article 93, it is stipulated that Macau should maintain judicial relations with the judicial organs of other parts of the country, and they may render assistance to each other.

In the implementation of such assistance scheme, the requesting party shall issue an arrest warrant, and the requested party shall arrest and handover the suspects as soon as possible, after receiving the arrest warrant. A number of serious crimes should be stipulated.

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During the operation, if the crime is serious enough, the requested party should take actions, including arresting and delivering the suspect or criminal, as soon as they receive the warrant for apprehension. Secondly, both regions should without delay set up a permanent inter-regional police agency and develop information technology for timely contact in exchanging information on drug-related crimes, and sharing resources. Lastly, they should also increase technical cooperation and joint training of police officers. The training should mainly include: the methods of detection of drug offenses; the routes and techniques used by drug offenders; the proceeds of crime and the transfer of property; the collection and judgment of evidence; etc., in order to achieve unified concepts and techniques of law enforcement to enhance the ability to jointly cope with and tackle drug-related crimes.

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