

Partners on crime

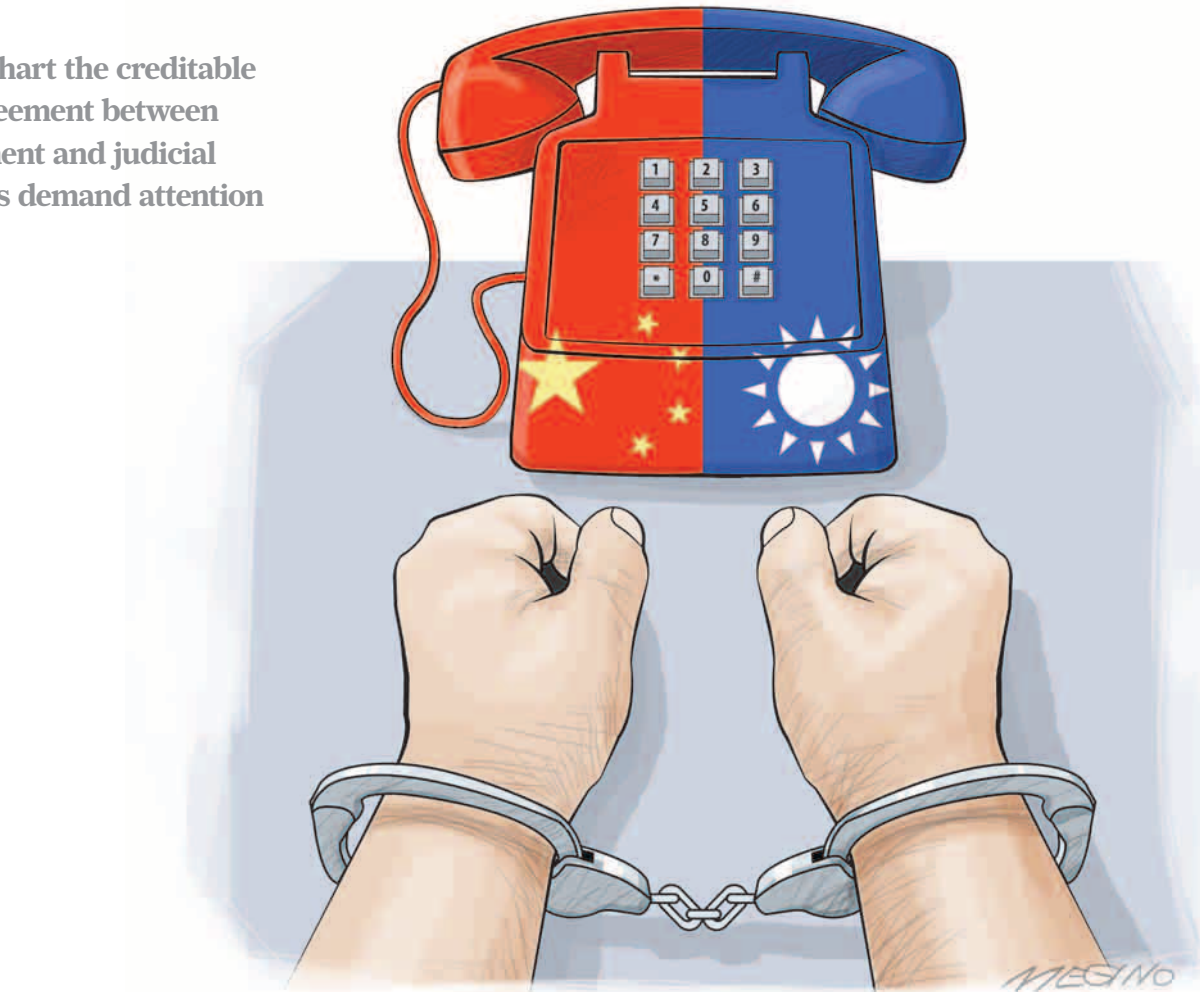
Jerome A. Cohen and **Yu-Jie Chen** chart the creditable progress made so far under an agreement between Beijing and Taipei on law enforcement and judicial co-operation. Yet, several key issues demand attention

Although the Economic Co-operation Framework Agreement between mainland China and Taiwan continues to preoccupy popular attention, this past month the two sides have made impressive progress in carrying out their less-known Agreement on Joint Cross-Strait Crime-Fighting and Mutual Judicial Assistance. That agreement between their specially constructed “semi-official” organisations concluded its second year on June 25. Shortly before this anniversary, police from both sides of the strait, with the help of counterparts in Indonesia, Cambodia, Malaysia and Thailand, netted 598 fraud suspects in a remarkable, precedent-setting joint operation. Mainland and Taiwanese courts and prosecutors have also begun to speed up their implementation of the agreement. Last month, China’s Supreme People’s Court issued a regulation instructing lower courts on how to serve judicial documents, investigate evidence in cases involving cross-strait elements and improve relevant administration. Following the visit of Taiwan’s prosecutor general to Beijing in early June, high-level prosecutors from both sides met in Taipei to discuss ways to improve practice under the agreement, including mechanisms for the remote interrogation of witnesses across the strait.

This agreement is one of 15 signed by Taiwan’s Straits Exchange Foundation and China’s Association for Relations Across the Taiwan Strait since 2008. Like the others, this agreement tactfully steers clear of politically sensitive language that might evoke conflicting sovereignty claims. For example, neither of the two governments involved, nor any government agency, is named. Legal terms such as “extradition” are avoided, since they might suggest a compact between separate states.

The agreement is much wider in scope than the 1990 “Kinmen Agreement” signed by the Red Cross organisations from both sides of the strait. The 2009 pact covers not only the return of criminal suspects and convicts but also exchange of information regarding criminal activity, assistance in arrests and criminal investigations, and judicial co-operation in civil, criminal and administrative matters.

The importance of this agreement was demonstrated in the wake of the Taiwan-Philippines deportation row early this year. The Philippines, which recognises the mainland Chinese government as the only legitimate government of China, including Taiwan, had deported 14 Taiwanese fraud suspects to the mainland rather than to Taiwan. Following negotiations under the agreement, however, the Chinese side promised to repatriate these suspects once its investigation is completed. Having learned a lesson from its vain attempt to directly repatriate its nationals from the Philippines, Taiwan has developed a new model



under the agreement, one that calls for co-operating with China’s law enforcers in countries where it lacks diplomatic relations. It put the model to use in the recent joint operations against cross-border fraud rings in Southeast Asian jurisdictions. This co-operation with Chinese counterparts enabled the island’s police to bring home over 200 Taiwanese suspects.

There has also been progress in other aspects of cross-strait law enforcement. Early this year, Taiwanese police and prosecutors, following leads from mainland police, arrested a Taiwanese who allegedly murdered his mistress in mainland China. This is the first case under the agreement of a Taiwanese being arrested in Taiwan for a crime committed in mainland China. It also marks the first time Taiwan prosecutors interrogated witnesses by video across the strait.

Despite such encouraging progress, some important issues remain unresolved. For example, mainland China has long been a haven for Taiwan’s economic criminals. In the past, it often refused to return them on the grounds



More challenging are cross-strait differences in standards for assuring human rights

that their alleged misconduct did not constitute a crime on the mainland. Taiwan had high hopes that the situation would be improved by the agreement, which, in a case that is not recognised as criminal by one side, authorises assistance if the case involves major social harm, and both sides agree to co-operate. Despite the flexibility provided for by the agreement, the work of returning Taiwan’s major economic criminals has not been effective, according to Taiwan’s Mainland Affairs Council.

Taiwanese government officials have also complained about poor co-ordination among their mainland counterparts. Taiwan has designated its Ministry of Justice as its sole agency in charge of cross-strait judicial co-operation. In mainland China, by contrast, responsibility for such co-operation is divided among four agencies – the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Justice and the Ministry of Public Security. Last year, Taiwan’s deputy minister of justice claimed that “many of Taiwan’s requests are pushed around among the different departments for quite a long time and some eventually get rejected”. If mainland China cannot designate a single agency to take charge on its side, it should create a joint mechanism to do so.

To increase efficiency, experts on both sides of the strait have proposed more direct communication between counterparts at each level of every government agency involved, with these partners holding periodic meetings to as-

sess progress. The June regulation of the Supreme People’s Court instructed provincial high courts to serve as second-level channels for contact with Taiwan and co-operating under the agreement. The Supreme People’s Procuratorate, Ministry of Justice and Ministry of Public Security, unfortunately, have not yet published similar rules.

Even more challenging than co-ordination issues are cross-strait differences in standards and expectations for assuring human rights and fair procedures. Criminal justice is the weakest link in China’s legal system. Chinese law enforcement’s heavy reliance on confession and the prevalence of torture to obtain it have long resisted reform.

Taiwan will soon be confronted with questions such as whether evidence collected by its mainland partner is legitimate and credible and how to protect the rights of its own people ensnared in mainland China’s judicial system. This major subject warrants detailed cross-strait discussions, as some human rights critics have suggested.

These issues and others will make this agreement an essential focus of cross-strait relations. It deserves public attention.

Jerome A. Cohen is professor and co-director of the US-Asia Law Institute at New York University School of Law and adjunct senior fellow for Asia at the Council on Foreign Relations. Yu-Jie Chen is a Taiwanese lawyer and research fellow at the US-Asia Law Institute. See also www.usasialaw.org.

Home bound

Frank Ching is concerned at the success of a Beijing clampdown that frees its critics from detention but strips them of their right to speak out



The release of the artist Ai Weiwei (艾未未), followed within days by that of the dissident Hu Jia (胡佳), created the impression that China, for whatever reason, was easing up on political repression. Unfortunately, this is not the case.

Ai was held for 80 days without charge and then let out on bail, without having been formally arrested but with the sword of Damocles now hanging over his head. Hu was released after serving a 3½-year prison term on charges of “inciting subversion of state power”.

But though one has not yet been tried and the other has served his full sentence, they are similar in at least one aspect: they are no longer incarcerated but they are not free.

In part, this is because, under mainland Chinese law, there is the concept of “deprivation of political rights”. And both men have been deprived of political rights, which in addition to the right to vote and stand for election includes such basic rights as freedom of speech and the right to meet the media.

Hu’s sentence included deprivation of political rights for one year after his imprisonment. Thus, while he has spoken to reporters after his release, he has emphasised he was merely chatting with friends rather than being interviewed.

The “deprivation of political rights” at the end of a prison sentence has been part of China’s justice system for decades, but increasingly the security authorities seem to be imposing this punishment at the beginning of the criminal justice process, without going through the formality of arrest, trial and sentencing. Thus Ai, when he was allowed home, told reporters he could not talk about his case.

Beijing, it seems, has succeeded in muzzling one of its most severe critics by simply revoking his political rights, without even the semblance of a trial.

Human rights lawyers have been subjected to similar treatment. Teng Biao (滕彪), a lawyer and human rights activist, was held incommunicado for about 10 weeks, after which he was allowed to return home but not allowed to speak to the media. Similarly, Jiang Tianyong (江天勇) was seized by the police in February and incarcerated for two months before he was allowed to go home. Since then he, too, has been uncharacteristically silent.

Beijing seems to have discovered a way to silence its critics pre-emptively, without going through the trouble – and publicity – of holding a trial. They are simply being deprived of their political rights, the most important of which is the right to speak up openly and to meet the media.

After Ai was detained in April, China’s foreign ministry spokesman Hong Lei (洪磊) confirmed his detention, saying that “China is a country ruled by law and will act according to law”. He said of Ai’s incarceration: “This has nothing to do with human rights or freedom of expression.”

But now, with the release of a muzzled Ai, it is clear that the case has everything to do with human rights and freedom of expression. In fact, as the cases of Ai, Teng and the others demonstrate, the idea is to create a situation where critics of the regime appear to be free but are no longer critical.

Frank Ching is a Hong Kong-based writer and commentator. Follow him on Twitter: @FrankChing1 frank.ching@scmp.com

Locals’ needs come first in rush for maternity bed spaces

Albert Cheng says a centralised system should cover public and private hospitals

Limiting the number of mainland women giving birth in the city’s hospitals from next year to free up resources for local expectant mothers has not completely resolved the issue. On the contrary, it is expected to shift the burden to private hospitals to satisfy rising demand.

To further complicate things, it has created an impression that the government is sending business to the private sector, and may lead to an undesirable situation whereby local expectant mothers who cannot find a place in public hospitals will increasingly find a private hospital bed space priced out of their reach, creating yet another wealth-gap problem in society.

Secretary for Food and Health York Chow Yat-ngok said last month the government would cap the number of mainland mothers giving birth in both public and private hospitals at 34,400 per annum from next year. The quota for public hospitals will be 3,400, a drop of 68 per cent from the 10,000-plus mainland women who gave birth there last year. Meanwhile, their number in private hospitals would drop by 7 per cent under the plan. The quota allocated to public hospitals does not differentiate between mainland women married to Hong Kong men and non-local mainland women, which many believe is unfair to the former.

The proposed quota system has given private doctors and hospitals the financial incentive to further expand their services for mainland women. As a result, the needs and

basic rights of local pregnant women will be overlooked.

The fact is that the government measure has not eased the problem but created a man-made shortage and given private hospitals an opportunity to raise fees due to an acute imbalance of supply and demand. Furthermore, the so-called maternity agents, who help pregnant mainland women secure hospital beds in Hong Kong, have already taken advantage of the restrictions and propose to raise their fees by up to 20 per cent. No wonder so many local pregnant women and mainland women married to Hong Kong men took part in the July 1 rally.

If the government is serious about tackling the root of the problem, it must shoulder the full responsibility of providing maternity care. First, it has to implement a centralised system to allocate bed spaces, covering both public and private hospitals. All reservations for maternity bed spaces should go through the government to make sure they are fairly distributed.

A monitoring group should also be set up to prevent manipulation, or favourable treatment to those who can afford higher fees. Doctors who help their patients register false due dates to secure a bed should be disciplined by the Medical Council. The government should also step up efforts to stop abuse by maternity agents, such as through legislation. Any government measure must have local residents’ best interests at heart. All local expectant mothers and pregnant women married to

Hongkongers should get priority when it comes to maternity services. Once their needs are satisfied, bed spaces and services can be allocated to non-Hong Kong residents.

The proposed quota system to allocate 3,400 bed spaces in public hospitals for mainland mothers will only create confusion, while neglecting the rights of mainland women married to local residents.

The number of pregnant women in that category is small; about 6,000 mainland women married to local men give birth in Hong Kong every year. If the quota of 3,400 could go to them, half the problem would be solved. But the government seems to have chosen the hard way. And, by doing so, it has compounded the problem and stripped away the rights of mainland women who are entitled to medical services here.

There are signs of growing public anger over a string of social and political issues. This latest one will only push public discontent towards boiling point, mainly because of our health chief’s lack of sensitivity and political acumen in mapping out a health policy. We must speak out against such misguided policy, to protect the rights and interests of local residents.

Albert Cheng King-hon is a political commentator. taipan@albertcheng.hk

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Yingluck’s true political tests are still to come

Pavin Chachavalpongpun says the acceptance of Thailand’s traditional elite will be crucial

Yingluck Shinawatra, leader of the Puea Thai party, has made history. She is expected to become the first female prime minister of Thailand after her party won the election with a slim majority of 265 out of the total 500 parliamentary seats.

As a local newspaper put it, a “red tide” has “swept Thailand”. Yingluck, the sister of former premier-turned-fugitive Thaksin Shinawatra, looks set to lead a five-party coalition with 299 seats. Thus, a solid coalition government is in the making.

But Yingluck’s path in politics will not be smooth. One of the most controversial issues has been the possible amnesty of her brother. The opponents of Puea Thai have already condemned any such move as part of Yingluck fighting to vindicate her own brother. But Yingluck has denied it, saying the party “has no policy to work for just one man”.

Yingluck must realise that bringing Thaksin home would unnecessarily irritate the anti-Thaksin factions, both in the military and in the yellow-shirt People’s Alliance for Democracy, and that it would allow them to challenge the legitimacy of her government. This explained why Thaksin, in the aftermath of the election, suddenly downplayed his eagerness to go back to Thailand. Some perceived Thaksin’s plea to return home as just a part of the election campaign.

An equally arduous task is how to build a working relationship

between the new government and the military. It is evident that top leaders in the Thai army have adopted an anti-Thaksin attitude. The current army chief, General Prayuth Chan-ocha, has made known his disapproval of the Puea Thai party. He appeared on national television just weeks before the polls urging Thais not to vote for the party.

When Thaksin was in power, he failed to build friendly ties with the army. In fact, he did the opposite. Thaksin blatantly interfered in military affairs, thus partly forcing the army to “take back its pride” through a coup. Yingluck, often accused of being Thaksin’s puppet, has been open about her view of the military, saying: “I would like to create a dialogue with the army. We can work together.”

Her softer stance has so far been well received by General Prayuth. After the election, the army chief released a statement endorsing the victory of the Puea Thai party, thus rejecting the rumours that the army might attempt to overturn the result.

But Yingluck’s honeymoon period will not last. Ultimately, what is at stake is the power position of the old elite. Yingluck’s emergence is a threat to their power interests. How long the military can endure Yingluck will determine her government’s political life.

Pavin Chachavalpongpun is a fellow at Singapore’s Institute of Southeast Asian Studies

Growth turbulence the new order of the day

Stephen Roach says that, without structural repairs to economies, disruptions will continue

The global economy is in the midst of its second growth scare in less than two years. Get used to it. In a post-crisis world, these are the footprints of a failed recovery.

The reason is simple. The typical business cycle has a natural cushioning mechanism that wards off unexpected blows. The deeper the downturn, the more powerful the snapback, and the greater the cumulative forces of revival.

But a post-crisis recovery is a very different animal. As Carmen Reinhart and Kenneth Rogoff have shown in their book, *This Time is Different*, over the long sweep of history, post-crisis recoveries in output and employment tend to be subpar. Consequently, external shocks quickly expose their vulnerability. If the shocks are sharp enough, the relapse could turn into the dreaded double-dip recession. That is the risk today.

Most pundits dismiss the possibility of a double-dip recession. Labelling the current slowdown a temporary “soft patch”, they pin their optimism on the inevitable rebound that follows any shock. But in the aftermath of the worst crisis and recession of modern times, the escape velocity of self-sustaining recovery is much harder to achieve.

This conclusion should not be lost on high-flying emerging-market economies, especially in Asia, the world’s fastest-growing region. Yet with exports still close to a record 45 per cent of pan-regional gross domestic product,

Asia can hardly afford to take external shocks lightly – especially if they hit an already weakened baseline growth trajectory in the developed world. The recent slowdown in Chinese industrial activity underscores this risk.

Policymakers are ill prepared to cope with a steady stream of growth scares. They continue to favour strategies better suited to combating crisis than promoting post-crisis healing. That is certainly true of the US and Europe.

The likelihood of recurring growth scares implies little hope for creative approaches to post-crisis monetary and fiscal policies. Policymakers repeatedly seek a quick fix – another bailout or one more liquidity injection. Yet, in the aftermath of a balance-sheet recession in the US, and in the midst of a debt trap in Europe, that approach is doomed to failure.

Liquidity injections and bailouts only buy time. Yet time is not the answer for economies in need of structural repairs. Nor does time cushion anaemic post-crisis recoveries from the inevitable next shock.

It’s hard to know when the next shock will hit, or what form it will take. But, as night follows day, such a disruption is inevitable. With policymakers reluctant to focus on the imperatives of structural healing, the result will be yet another growth scare – or worse.

Stephen S. Roach is non-executive chairman of Morgan Stanley Asia. Copyright: Project Syndicate