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## **‘Black Societies’ and Triad-like Organized Crime in China**

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### **Introduction**

The re-emergence of ‘black societies’ and triad-like organized crime in the People’s Republic of China (PRC) has occurred in the context of rapid modernisation, socio-economic change and globalisation. Socialist market reforms provided illicit opportunities while regulative uncertainty arising from the transition from austere communism to capitalism encouraged the revival of crime groups. With the establishment of the PRC in 1949 crime groups that once flourished in pre-communist China, such as the notorious Shanghai green gang, were eliminated along with drug addiction, feudal remnants and ‘exploitation of the masses’ by the punitive People’s Tribunals. Thus rapid change from a socialist command economy to a capitalist market economy over the past three decades engendered a parallel increase in crime (Zhong 2009, Bakken 2005), especially crimes committed by gangs and ‘black and evil’ forces (He 2009, Xia 2006). In the first phase of economic reform (1979-1997) criminal gangs gradually re-emerged especially in the form of Hong Kong, Taiwan and Macau triads in Shenzhen (Chiu 2010). As early as 1982-1983 the Shenzhen Government issued the ‘Notice on Abolishing Black Society Activities’ in the face of the growing presence of Hong Kong triads (He 2009:200). Despite the successive waves of strike-hard against crime campaigns launched since the early 1980s, crime groups have continued to emerge and expand their activities (Trevaskes 2010).

The colloquial term ‘black society’ (*hei she hui* or *hak she wui* in Cantonese)<sup>2</sup> is contentious and there is no official recognition of the existence of fully-fledged criminal organizations or black societies (Liu and Wu 2002). We adopt the term ‘black society’ and ‘triad-like’ to capture the idea of a criminal organisation that may or may not have traditional triad origins. Organizations with the ‘character of black

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<sup>1</sup> The author acknowledges with gratitude Lennon Chang, Wing Lo, Lena Zhong, Julie Ayling and Brigitte Bouhours for comments on earlier drafts.

<sup>2</sup> The English word ‘triad’ is often used to describe ‘black societies’ and has become synonymous with Chinese organised crime in general. Definitions of Chinese criminal groups are ambiguous because of definitional overlap between triad society, secret society, gang (*bang hui* in Mandarin), criminal syndicate and organised crime. Chinese secret societies or ‘triads’ (the original English rendition of *Hung Mun* or ‘heaven and earth’ societies) once had a traditional patriotic role, political functions and ritualistic elements, and so the distinction between contemporary ‘black society’ and triad is historically important (Wakeman 1995).

society' are, in Chinese law, a type of crime group and they can be distinguished by their attachment to a particular locality, and the use of violence and command complexity (Zhang 2010). However, the main features are official protection ('umbrella') and adoption of a legal business form (Liu and Wu 2002). Black societies have sometimes captured local authorities and challenged the authority of Public Security Bureau and People's Court officials (Choi 2007). Triads are sometimes depicted as a worldwide network that uses connections among overseas Chinese for drug and human trafficking (Lintner 2003). Chin and Zhang (2003) doubt the existence of such global networks because of a 'structural deficiency' that arises from the strength of the local sub-culture which also limits the capacity to develop strong transnational networks (see below). Zhao and Li (2010) analysed court cases relating to organized crime in Hong Kong between 1991-2008 and concluded that there was a trend to regionalization rather than internationalization. The presence of triads in international cases was rare. The development of organised crime in China, sometimes with the aid of Hong Kong or Taiwan triad connections, has nevertheless continued unabated (Xia 2008), raising concerns about the influence of foreign criminals and encouraging cooperation with foreign police services (Xie and Wang 2005).

This paper briefly outlines the criminal activities of 'black societies' or triad-like crime groups in China and discusses contemporary theories about their emergence and resilience. I conclude by reviewing the measures taken to suppress organised crime including legal reforms in Hong Kong and developments in the criminal law of the PRC.

### **Evolution and activities of 'triads' or 'black' societies**

Contemporary black societies, such as the Hong Kong triads, have become more corporatized (Chu 2000) and operate beyond traditional protection services, predatory street crime, vice, extortion and drug dealing predicated on brand violence to embrace diverse mixed licit and illicit business activities that also include trafficking, copyright, Internet and financial crime. Cole (2010) also noted a similar trend of gentrification among black societies in Taiwan such as the *Four Seas*. Triad-like groups are not exclusively criminal but are often loose brotherhoods (often master-disciple form) bound by social as well as economic ties. Many of the traditional rituals performed at initiation and promotion have become perfunctory while traditional values such as the exclusion of women or foreigners and the imposition of strict punishments have weakened. Organisational forms have also been transformed to become less hierarchical and visible (Yu 1998; Ip 1999). Xia (2008) and Ip (1999) also noted that triad rituals had been copied from films and revived by contemporary criminals and 'black societies'.

The arcane history of the 'triads' created a self-serving mythology about them that drew on precepts of loyalty and brotherhood central to Confucianism (Bolton, Hutton & Ip 1996, Zhang S. 2009). Triads, it is generally accepted, devolved from mutual self-help organisations among the disenfranchised immigrant labourers drawn to the rapid economic growth of the opium ports of Shanghai and Hong Kong. Their violent subculture originated in the vigorous market competition of the 19<sup>th</sup> and early 20<sup>th</sup> centuries over waterfront labour and competition over the lucrative (and later illicit)

opium trade (Morgan 1960; Lim 1999). In largely immigrant societies, such as Hong Kong, Singapore, Shanghai and other coastal cities with a large ‘floating’ population, triad-like groups provided social capital in lieu of family, place and clan affiliation. Membership offered protection for otherwise vulnerable individuals exposed to unemployment and social exclusion. The triad secret societies that emerged in the late Qing dynasty were seen as a threat to both Chinese imperial and later British colonial order, and suppression forced elements of these mutual aid societies underground (Mei, 2003). The criminalisation of membership of the triad societies led to their full transformation to the ‘black society’, whose members often competed for a monopoly over illicit activities and involved themselves in protection, mercenary violence, and predatory crime (Murray 1993).

### *Activities*

In Hong Kong, triads have long been regarded as ‘simply a criminal conspiracy that has been given statutory recognition’ (see *R v Sit Yat-keung* 1985 cited in Broadhurst and Lee 2009). There were about 50 known triad societies reportedly operating in the 1970s-1990s of which 15 to 20 commonly came to the attention of the police due to their criminal activities (Ip 1999; Hong Kong Fight Crime Committee, 1986). The largest among them are the *Sun Yee On*, *Wo Shing Wo*, *14K*, and *Wo Hop To* (Chu, 2006) but no estimates of members is ventured. These groups appeared as territorially-based street or youth gangs drawn from disadvantaged areas, who often served entrepreneurs or ‘racketeers’ in illegal enterprises and projects. They were loosely connected and reinforce their authority by means of threats or signs associated with triad sub-culture. Recruits from these neighbourhoods later became adult success models for aspiring members of triad-related youth gangs (Lo 1984).

Typical offences reported in Hong Kong, Macau, Taiwan and now in Guangdong and other provinces include street-level narcotic trafficking, illegal gambling, loan-sharking, blackmail, extortion, price fixing and protection rackets involving local shops, small businesses, restaurants, hawkers, construction sites, recycling, unofficial taxi stands, car valet services, columbaria and funeral services, wholesale and retail markets, and bars, brothels, billiard halls, mahjong gaming, karaoke and nightclubs often associated with prostitution. Triads have also monopolised home decoration companies, the film industry, waste disposal, and non-franchised public transport routes. Counterfeit products, pornography, and cigarette and fuel smuggling are also important sources of illicit profit (Broadhurst and Lee 2009).

In the PRC a similar variety of offences is found. Recent cases show how gangs use violence to monopolise a local commercial activity and, through ‘public relations’ and corruption, evolve into a black society operating large scale business (e.g. see Zhang Y.H. 2009). The first PRC nationwide strike-hard (*yanda*) campaign against the ‘black and evil forces’ (December 2000 to April 2003) discovered 631 organisations with the ‘character of a black society’ and 532 were prosecuted, but only half (234) resulted in conviction. The second campaign (February 2006 to September 2009) yielded 1267 cases suspected of involving an organisation with ‘character of black society’ and 1053 cases were prosecuted under article 294 (Zhou 2009: the proportion convicted was not reported).

Widely publicised cases such as that in Chongqing in 2009 involving a ‘grey’ entrepreneur Li Chian who through intimidation gained control over transport in the

city, illustrate the growing sophistication of criminal groups. Li had on his payroll a large number of officials including the Deputy Chief of the Public Security Bureau. He was sentenced for 20 years and fined 2.5 billion RMB (USD 376 million) (Dai 2010). The use of fines and confiscation of property are increasingly more common. In another 2009 case in Chongqing Xie Cai-ping, a female gang leader who operated around 80 gambling and opium dens for over four years, was convicted along with 22 others. She also secured a degree of immunity through bribery but evaded arrest because the authorities failed to connect the breadth of her operations and 'black society' character of her gang. Xie earned at least 100 million RMB and her operation served thousands of customers. She was the first female convicted for such offences in Chongqing (Jin, Li and Shi, 2010).

Two limited regional studies of black societies offer some picture of their activities. Tan and Yang (2009) analyzed 20 organisations in North-West China with the 'character of a black society' that involved 180 offenders of low 'cultural quality'. The authors found that overall the offenders were poorly educated (only 8 had tertiary education and 10 had finished high school) and relatively young with two-fifths aged 21-30 although ages ranged from 17-47. Just over a third involved groups of less than 10 persons and the form of relationships among them was limited to relatives, neighbours and work colleagues. Over two-thirds (69%) involved an 'umbrella' and two out of five (43%) had police protection or connivance. The authors found that most (61%) were charged with joining a criminal group. Other offences included eight homicides (4.4%), assault, robbery and kidnap (19%) as well as illegal detention (7.7%), extortion (1.6%) and, gambling (1.6%). Mo and Zhen (2010) examined 76 organised crime cases in central China (Hubei Hunan, and Heian). Most (84%, n = 64) involved organisations with the 'character of black society' and 12 cases, simple gangs, but none involved fully-fledged black societies. Only one case had connections outside of China and this confirmed the local nature of these groups. Nearly a third (n=22) conducted activities with the cover of legal business. Although a few were formed in 1989, most were formed after 2000 but 21 of these groups were established in 2005-2006. More than one in five cases (n= 18) involved homicides, 62 involved assault and 24 involved robbery.

The activities of triad-like groups expose them to contests over status or territory and the presence of violence may be a useful marker of their prevalence. Territorial or honour contests are disruptive to illicit markets and attract unwanted attention by the police. They may also deter customers from seeking the illicit services provided. Data for China are unknown as detailed statistics on gang violence or homicide are not available, although some claim gang violence has grown rapidly and murder rates are much higher than officially reported<sup>3</sup>. Cases of triad-related homicide in Hong Kong over the period 1989–1998 help reveal the nature of black society violence and show that most lethal events (49.5%) occurred between competing lower-rank triads often involved in street-level crime. These fatal events were diverse, sometimes combining honour-like contests with disputes over territory. Lethal violence between competing illicit entrepreneurs occurred in a fifth of cases (21.1%) and customers of illicit goods and services also comprised a significant proportion of fatalities (16.8%), some associated with unpaid debts. Internal punishment of a triad was less common (13.8%) but occurred equally in the context of the street-level group or the network-

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<sup>3</sup> Personal communication, Børge Bakken, November 11, 2010.

like syndicate. Overall the use of firearms was low (9.7%) because they are strictly controlled in Hong Kong (Broadhurst and Lee 2009).

### Theories of 'black societies'

In the general context of China's rapid economic and social change, functionalist theories of crime as a form of adaptation enhanced by anomie at the institutional level are relevant (Messner and Rosenfield 2009; Bernberg 2002). Institutional or regulatory weakness occurs alongside anomie when the 'rules of the game' are unclear, such as in a transitional economy or a colonial order of dubious legitimacy. In these circumstances a permissive environment for organised crime emerges. Lo (2010) applies the notion of social capital in this context and suggests that three main explanations of triad-like groups have been advanced: *structure-control*, *social network*, and *social capital* approaches.

The structure-control theory emphasizes a formal structure based on the master-disciple relations and triad subculture or values that facilitate the discipline necessary to minimize social exclusion and exploit illicit markets (e.g. Morgan, 1960). Lo (1984) observed that Hong Kong street gangs were protected by triad societies and their activities were influenced by triad subculture, such as sworn brotherhood and loyalty. Triad norms and punishments ordered their behaviour and created internal cohesion but rivalry with other gangs. Triads fostered a fictive family where members were expected to support their brothers, sacrifice themselves for the triad and take revenge if others attacked them. Through such structural and sub-cultural control, triad societies are able to run illicit activities despite the risks from police, putative rivals and other triads. Triad-like groups often have a distinct subculture and hierarchical structure, but it is the individual members not the organization that run the illicit business, like a franchise. Members of different triads can join illegal entrepreneurs to run an illicit or 'grey' business, but do not need permission from leaders.

The social network approach to criminal groups stresses *guanxi*. *Guanxi* defines reciprocal obligations in personal and social networks as the basis of contemporary organized crime. *Guanxi* is also a fundamental element of social capital but draws on the notion that reciprocal relations create trusted networks with similar obligations to those within families or clans. Since the 1990s, triad-like groups have been undergoing a process of transformation that involved decentralization or 'disorganization' and are said to become loose networks with more fluid and dynamic structures (Xia 2008). Internal conflict and clashes between triad-related gangs have increased and cohesiveness and members' loyalty and righteousness have diminished (Yu 1998). To maximize profits and expand power and territories, members from different triads have combined to run both legitimate and illicit business (Chu 2000, 2005). Although sub-cultural norms (e.g. rituals, oaths, secrecy, and brotherhood) have been diluted and triad-like groups are more disorganized, *guanxi* is a crucial expression of relationships that helps maintain trust among disparate groups and individuals (Williams and Godson 2002).

Zhang and Chin's (2003; 2008) structural-deficiency thesis pointed out that the culture and organizational structure of triad societies, though effective in enforcing control in local neighbourhoods, is incompatible with the dynamic nature of

transnational crime such as human trafficking. Human trafficking, for example, is dominated by individual triads or entrepreneurs who make use of their own familial and social networks to commit crime. These players come from diverse social backgrounds and legitimate businesses, and are well connected with wider society. They team up because they share the same entrepreneurial drive to make quick money and because they are not part of a triad structure nor bound by triad rules, they can easily join or leave these illicit activities in response to criminal opportunities (Zhang and Chin 2003). Such project driven groups exemplify the utility of trusted networks over traditional command and control structures favoured in the past.

Lo (2010) argues that these two theories are not sufficient in explaining contemporary organized crime in Hong Kong and China. He builds on them by applying the idea of social capital to explain the connections between political interests, social networks and organized crime. Lo based his work on a case study of the *Sun Yee On*, one of the most powerful Hong Kong triads. He distinguished networks based on bonding, bridging and linking forms of social capital. *Bonding* social capital is characterized by dense interactions and collective actions within relatively homogenous groups of people (Putnam 2000). Although bonding social capital strengthens norms of reciprocity, solidarity and trust, it is inward looking, excluding other social groups with diverse backgrounds, and as such has the negative consequences of limiting illicit opportunities or increasing conflict between groups (Paoli 2002). Triads might be limited by bonding social capital due to the emphasis on internal control and sub-culture, per the ‘structural deficiency’ thesis argued by Zhang and Chin (2003). In contrast, *bridging* social capital promotes interactions between diverse and heterogeneous groups of people while *linking* social capital also involves vertical relationships with those in authority. Bonding and bridging social capital essentially link groups in horizontal networks. In asymmetric power relations (as in relations between the State and a proto triad-like group), linking social capital strengthens ties between state organizations and less powerful organizations. Such vertical linking enables access to power, social status and wealth by diverse social groups, including criminal groups.

According to Lo, rather than suppressing triad-like activities in Hong Kong, the mainland Chinese authorities deployed a ‘united front’ tactic to *include* triad leaders as their allies. A ‘patriotic triad’ label served such a function and was an example of linking social capital that enabled leaders of the *Sun Yee On* to develop ‘bridging capital’ with state owned enterprises in China. Triad leaders were thus co-opted but also had to comply with demands for law and order by officials in exchange for business opportunities. They converted the social capital they had developed into economic capital through illicit means in the stock market as well as through illicit markets (e.g. counterfeit products).

The structure-control approach focuses on the nature of associations whereas the social network model specifies the types of mutual activities (Cohen 1977; Levi 1998). The structure-control model emphasizes the internal organisation of a triad-like society, the social network model looks beyond command and control to examine the triad’s relationship with external parties that helps them survive and grow. The social capital approach recognizes the role of both vertical and horizontal relationships in maintaining external connections needed by a crime group by distinguishing between bridging and linking social capital. The social capital approach helps explain the

transformation of criminal groups into triad-like groups and the development of more enduring structures that occur when a political-criminal nexus is formed (Chin and Godson 2005). Given the role of social capital in the transformation of organized crime, different policing strategies and countermeasures are needed. Disrupting the different forms of ‘capital’ suggests that the emphasis should be on strengthening anti-corruption measures, crime proofing licit business, seizing tainted wealth and ensuring that measures against bribery and intimidation are effective rather than relying on offender-centric tactics.

### **The suppression of ‘black societies’ in China**

Concern about the role of criminal groups has a long history. Anti-triad laws prohibiting membership in Hong Kong, for example, date back to 1845. However, in post-reform China, only recently have the former colonial territories Macau, Hong Kong and Taiwan<sup>4</sup> developed comprehensive anti-organised crime legislation and strategies, while on the mainland efforts remain fragmented and under-developed.

#### *Hong Kong and Macau Special Administrative Region (SAR)*

In Hong Kong the law had been “cast wide...to enable triad type activities to be stamped out” (*HKSAR v Chan Yuet Ching*, cited in Broadhurst and Lee 2009) and triads have long been regarded as a criminal conspiracy. Suppression of corruption among police had been a priority in post-war Hong Kong. A series of scandals involving corrupt officers led to political intervention and the establishment of the Independent Commission Against Corruption (ICAC) in 1974 with powers to compel witnesses and to examine unexplained wealth. This severed the symbiotic link between the police and triads (Cheung & Lau, 1981) and hostility towards any symbiotic relationship between organised crime and police has been sustained. Corruption had provided the soil upon which the triads flourished; without it growth was limited. Specific measures such as The Drug Trafficking (Recovery of Proceeds) Ordinance of 1989, the Organised and Serious Crimes Ordinance (OSCO) of 1994, and later amendments and statutes<sup>5</sup> granted law enforcement agencies further powers to investigate and prosecute activities associated with organised crime. Due to the difference in legal traditions and the lack of independence among oversight bodies these measures have not been duplicated in the PRC.

Following the establishment of the ICAC, over 14,269 arrests for triad membership were recorded between 1974-1977 and police claimed that triads were in terminal decline. Annual arrests of alleged triad members have fallen steadily from the peak of 2745 in 1972-1976, to half that (1337) in 1991-1995 and down to an average of 780 arrests per annum in 2000-2008. Over time the age of offenders arrested has changed: about 56 percent were under 21 years of age in 2008 compared to 72 percent in 1989, but in 1959 only 8 percent of those arrested for triad offences were under 21. This suggests the transformation of the old triads to the looser triad-affiliated youth and street gangs whose ‘patriotic’ origins and social roles are dubious. Recorded crime may not accurately reflect changes in crime but rather measures police activity and

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<sup>4</sup> Due to space limitations the situation in Taiwan (but see Republic of China, Organised Crime Law 1996) and Macau are not examined in any detail.

<sup>5</sup> For example, see Witness Protection Ordinance 2000, and the Interception of Communications and Surveillance Ordinance 2006.

the relative visibility of triads: triad-like groups remain significant albeit with a promising decline in the involvement of youth (Broadhurst and Lee, 2009).

The reforms in Hong Kong acknowledged that police had concentrated their resources on the substantial presence of triads and the perpetrators of organised crime rather than those who influenced or controlled them. The law reforms broadened the concept of what constitutes organised crime beyond the ambiguous identity of the triad.

Organised crime groups were redefined as any triad society or any group of two or more persons associated solely or partly for the purpose of engaging repeatedly in offences such as drug trafficking, loan-sharking, extortion, corruption, blackmail, prostitution, illegal gambling, import of illegal immigrants, robbery, forgery and smuggling<sup>6</sup>. In a similar way Macau redefined organized crime in 1997 as ‘associations or secret societies’ constituted for the purpose of obtaining illegal advantages. The definition also required that the ‘existence of the association is manifested in an accord, agreement or in other ways’ aimed at committing one or more specified crimes.<sup>7</sup> To be proved to exist, a secret society need not have a clear hierarchy, places to meet or to meet regularly or have written rules of formation and profit sharing.

#### *People's Republic of China (PRC)*

The first PRC criminal law promulgated in 1979 defined a crime group or syndicate as ‘hooligan activities and groups’ (Article 160). This proved difficult to interpret in practice, despite in 1984 a joint ‘Explanation’ by the Supreme Peoples’ Court (SPC) and the Supreme People’s Procuratorate (SPP) during the first national strike-hard campaign (Zhong 2009, p135). In the 1997 extended revision of the Criminal Law, clauses on hooliganism which emphasized group behaviour were divided into those on ‘molesting and humiliating women’ (Article 237), ‘assembling to have brawls’ (Article 292), ‘undermining public order with provocative and disturbing behaviours’ (Article 293), and ‘assembling a crowd to engage in promiscuous activities’ (Article 301). The 1997 Criminal Law retained the key clause from the 1979 Law about ‘criminal syndicate’ and defined it as any relatively stable criminal organization, which is composed of more than three persons for the purpose of jointly committing a crime (Article 26). Although police had cracked down on a substantial number of gangs and criminal groups the existence of ‘black societies’ like the Hong Kong triads was denied. Mr. Wang Han-bin, vice-president of the Standing Committee of the National People’s Congress, stated in the ‘Explanation of the PRC Criminal Law (Revision Draft)’ on March 6, 1997 that

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<sup>6</sup> Subsection 2(1) of the Hong Kong (SAR) OSCO applied provided that a serious offence: (a) is connected with the activities of a particular triad society; (b) is related to the activities of two or more persons associated together solely or partly for the purpose of committing two or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or (c) is committed by two or more persons, involves substantial planning and organization and involves: (i) loss of the life of any person, or a substantial risk of such a loss; (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or (iii) serious loss of liberty of any person.

<sup>7</sup> See Article 1(1), Organized Crime Law 1997: the list contains offences associated with organized crime including homicide, offences against the person, abduction and kidnapping, rape, trafficking in persons, extortion, prostitution, loan sharking, robbery, illegal immigration, illegal gambling, trafficking in fauna, artifacts, explosives and firearms, document and credit card fraud, and corruption.

‘...obvious and typical black societies crime have not appeared, but criminal organizations of the character of a black society did exist; organized crime such as playing the tyrant in a locality, committing all sorts of crimes, bullying and harming the masses has occurred occasionally’.

Organizations with the ‘character of a black society’ are more formal than a criminal gang (Article 26, Criminal Law 1997) with positions for a leader, mid-level organizers, and core members as well as ordinary or affiliate members: all may be subject to internal discipline. Article 26 holds organizers and ringleaders criminally responsible for actual offences committed by the group. Proto black societies are also profit oriented but have a stable income derived from providing illegal drugs or goods, extortion, and receiving protection fees from legal business. They routinely use violence or threats to extort or manipulate a market or business or elements of society. Finally, officials provide protection through the use of bribery, threats or induction, or a member may be placed into a government agency to provide ‘umbrella’. Article 294 of the 1997 Criminal Law of the PRC defines organized criminality as:

‘Whoever organizes, leads, or actively participates in an organization with characteristics of a criminal syndicate, which carries out lawless and criminal activities in an organized manner through violence, threat, or other means, with the aim of playing the tyrant in a locality, committing all sorts of crimes, bullying and harming the masses, and doing what has seriously undermined economic and social order’.

Three activities are criminalized by Article 294: a) organizing, leading and participating; b) recruitment by overseas organized crime; and c) officials ‘harbouring and conniving’ with criminals. Harsh punishment is meted out for offenders who lead and officials who protect them. Due to the ambiguity of what is ‘an organization of the character of a black society’ among police and court officials, the People’s Supreme Court, in 2000, issued a judicial interpretation ‘Explanation of Questions Related to Judging Cases of Organizations with Character of Black Society’ that stated that such a criminal organization should simultaneously possess all of the following four features (Zhang 2010): 1) they are relatively stable, possess a relatively large membership, and a definite line of leadership; 2) they embark on criminal and illegal activities for economic interests. Such syndicates must have a firm economic base that exists to support the routine work of the syndicate; 3) they employ violent or threatening means to commit crimes in a well-organized fashion; and 4) they use bribery or threats to lure or compel government officials to participate in syndicate activities or to obtain protection from them in order to take control of a particular trade or industry or seriously damage the economic order or way of life in an area.

The last feature – the ‘protective umbrella’ – is considered crucial. The collusion between the protective umbrella and the crime group constitutes a ‘political-criminal nexus’ that can threaten revenues and the legitimacy of the State. The protection by a state official is an important, but not necessary, precondition for a criminal group to grow into an organization of the character of a black society. The difficulties in defining ‘an organization of the character of a black society’ prompted the Standing Committee of the National People’s Congress (NPC) to issue a further Interpretation in 2002 that expanded on the earlier guidance on Article 294. In terms similar to the

earlier judicial interpretation of Article 294 the NPC stated that the offence of organized criminality, shall simultaneously comprise four characteristics:

- 1) The criminal organization is stable, with large number of members, definite organizers or leaders, and fixed backbone members;
- 2) Gains economic benefit through organized illegal acts, criminal acts or other means, with a certain economic base to support its activities;
- 3) Has frequently committed organized illegal and criminal acts through violence, threats or other means, perpetrating outrages, riding roughshod over or cruelly injuring or killing people; and
- 4) Committed illegal and criminal acts, or taking advantage of protection and connivance by State functionaries, it plays the bully over an area, exercising illegal control and wielding illegal enormous influence over a certain area or trade, thus seriously disrupting the economic order and people's daily activities.

This Interpretation rendered 'a protective umbrella' as an optional aspect of a black society, and has guided the campaigns of 'strike at the black and eradicate the evil' ever since. The national campaign launched in 2006 regarded 'eradicating protective umbrellas' as an important measure of campaign success. Nevertheless, uncertainty and confusion about the application of an Article 294 offence remains among police, lawyers and the courts (Wang, Wei, and Yang 2009). A recent proposed amendment (Criminal Law 8th Amendment August 2010), not yet endorsed by the Standing Committee of the NPC, has recommended that the 2002 NPC interpretation of 'an organization of the character of a black society' be used to re-write Article 294. Other proposed changes include enhanced punishments for overseas mafia who recruit members within the PRC and corrupt officials, the addition of fines and the confiscation of property from offenders. Enhanced punishments are sought in respect on extortion and blackmail (Article 274), the use of violence especially to curb a crime group's use of threats or violence to intimidate those at auctions, company share, bond or capital trade or to force involvement or withdrawal from a specific business (Article 226) and finally to address the need to recognise that criminals playing the town tyrant and creating fear among the people often instigate repeated disturbances to social order (Article 293).

### **Reform and change**

While China's domestic laws comply in part with the United Nations Convention against Transnational Organized Crime<sup>8</sup>, Lewis (2007) notes that legal reforms are not driven by a fear of transnational organized crime alone but also by internal security and threats from 'separatists' and cults such as *Falun Gong*. There are concerns about the reach of organized crime and the role of foreign crime syndicates but revenue protection is the dominant priority. There is little evidence that Chinese crime groups have extensive transnational operations or control foreign illicit enterprises although this may change if drug abuse grow unabated and China consolidates overseas markets in Africa and elsewhere in Asia.

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<sup>8</sup> The PRC makes a reservation with regard to Article 35, paragraph 2 of the Convention and is not bound to refer disputes to the International Court – a reservation made by many countries, including the United States.

A key countermeasure has been to promote anti-corruption efforts. Traditional mass-line ‘strike-hard’ (*yanda*) anti-crime programs have not proven effective in curbing the growth of organized crime (Zhang & Chin 2008, Trevaskes 2010). Police and prosecutors are also restrained by the absence of forfeiture of property laws, adequate unexplained wealth provision or laws that punish those who are members of overseas gangs (Zhang 2010). The need to demonstrate that the criminal group has an organizational structure and can enforce rules on its members, combined with the limited capacity of many Public Security Bureau units, and the absence of Hong Kong-style conspiracy laws are key limitations in the suppression of black societies. The costs of internal public order have rapidly grown and the legitimacy of the police will depend increasingly on their efforts to curb corruption and organized crime (Sun, Shen, Guo et al. 2010).

A United Nations survey of the prevalence of crime victimisation among businesses in four cities (Hong Kong, Shanghai, Shenzhen and Xi'an; n = 5117) showed that the prevalence of most crime against business was highest in Shenzhen: bribery and corruption was 2.5 times more likely in Shenzhen than Hong Kong. The prevalence of extortion, a typical triad-related offence was similar in Shenzhen and Hong Kong (3.1 percent) but the prevalence of corruption was much lower in Hong Kong (2.7 percent) than in Shenzhen (8.5 percent). Extortion in Hong Kong was reported almost exclusively by small retail businesses but in Shenzhen was reported by a diverse range of businesses including medium size enterprises. Interestingly mainland business operating in Hong Kong reported higher levels of extortion than local business. This suggests that operations conducted away from home base were perceived as being more at risk, regardless of the assumed fidelity to the rule of law in Hong Kong. Shanghai reported relatively low levels of extortion and bribery but corruption by party officials was significant in Xi'an (Broadhurst, Bouhours, Bacon-Shone, et al 2010). Although this data reflects patterns in 2004-2005 and may not reflect current experience it does suggest that the victimisation of business by criminal groups, while common, is not rampant and varies with the institutional capacities of the city and its economic and social milieu. For example, economic development in Shenzhen attracted millions of rural migrants from all over China. Many of these migrant were unemployed and there was a rapid rise in homicide and crime (from the early 1990s), especially protection and corruption, because some markets were unprotected by law (Tan & Xue, 1997; Zhong 2008; Xia 2008).

For effective measures against triad-like groups in China, it is sometimes argued that the Hong Kong experience offers a possible model. With the advent of the ICAC law enforcement shifted from symbiosis (partial capture) to one of hostility towards organised crime and sustained suppression of triad subculture that helped transform triads to less visible and more flexible forms. Hong Kong’s economy is also now one of the wealthiest and it is among the most cosmopolitan cities in Asia. Attitudes toward violence and corruption have become less tolerant (Mitchell 1998). Crime victim survey respondents reported fewer crimes involving triads (Broadhurst and Lee 2009: Table 1) and fear of crime was among the lowest of any city surveyed by the United Nations ICVS in 2005 (Broadhurst, Bouhours, Bacon-Shone, et al 2010; Van Dijk et al. 2008). The overall crime rate had also begun to decline through the 1990s, including those crimes associated with triad activities (Broadhurst, Lee and Chan, 2008). According to victims, even commonplace triad-related crimes such as criminal intimidation, wounding and assault, blackmail, and robbery were less likely to involve

triad-like groups in 2005 than in 1989. However, Hong Kong's low tax system and advanced financial services combined with the absence of currency and exchange controls also encouraged money laundering, especially arising from tax avoidance and illicit profits from mainland Chinese.

Due to effective anti-corruption measures some triad-related activities in Hong Kong did become less prevalent from the 1980s with a reduction in criminal revenue due to effective disruption to the supply of illicit services and goods (Lethbridge 1986) and the attention shifted to the growing markets resulting from the opening of the Chinese economy. These illicit markets survive in environments where corruption flourishes and government underestimates or colludes with underground economies. Some of these markets are relatively new such as copyright theft, waste disposal, Internet-driven gambling or scams while smuggling (including exotic species and products), adulteration of products, tax avoidance and money laundering continue to evolve and exploit the disconnect between international standards and local practice (He 2006).

Suppression of triad-like groups via effective confiscation of their illicit assets is required and law enforcement needs to adopt a broader approach to disrupt profits and counter money laundering. Efforts to curtail corruption and links between crime groups and the political classes will also be crucial and need to be guided by further reforms in the PRC criminal law as recently proposed. In addition, firmer use of Chinese Communist Party (CCP) disciplinary mechanisms, and transparency in the oversight role of all levels of the CCP Political and Legal committees is urgently needed so that checks and balances within government and CCP are effective (Gong 2008). Countermeasures will succeed only to the extent that corruption can be curtailed and this will mean greater levels of integrity among law enforcement and inspection systems designed to ensure professional standards among police and other officials. This may require the payment of salaries that are sufficiently high to make redundant rent-seeking and unexplained wealth laws palatable. Planned extension of local elections from townships to the county level may encourage linking social capital and may increase the risk of 'black-gold' politics, vote-buying and corruption. Countering triad-like groups will require a concerted national approach throughout greater China and the can only succeed if the political will exists to quell the drive for enrichment among officials and to strengthen the independence of institutions serving the rule of law.

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## CHINA: ORGANIZED CRIME ACTIVITY

