

# Study on the International Judicial Assistance Systems of China and Cambodia

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**Abstract:** With the proposal of “The Belt and Road” Initiative, the contacts between China and Cambodia is becoming increasingly close; relevant legal disputes between the two countries are also becoming increasingly prominent. In the process of dealing with foreign-related cases, the international judicial assistance system has become the key to solve cases fairly and efficiently. It is also an important system to safeguard the rights and interests of relevant parties, to protect the sovereignty and independence of the countries and to ensure the judicial stability of the two countries. This paper discusses the assistance system of private international law between the two countries, and puts forward some suggestions to improve the system.

## 1. Introduction

Cambodia is a shining pearl in Southeast Asia. It has a long history. As early as 34000 B.C., Cambodians thrived in the Mekong River and the Tonle Sap Lake. The exchanges between China and Cambodia have lasted for more than two thousand years. In the long period, the two countries exchange ambassadors constantly; the cultural communication and commercial trade are also frequent and ceaseless.

In September 2013 and October, Chinese President Jin-ping Xi put forward the cooperation proposal for building the “New Silk Road Economic Belt” and the “21st Century Maritime Silk Road”. Cambodia is located at the important node of “The Belt and Road”. China and Cambodia are close comprehensive strategic cooperative partners. In the past 5 years, the “The Belt and Road” Initiative made solid progress in Cambodia. With the increasing political, economic and cultural cooperation between the two countries, related civil and legal disputes and criminal activities become increasingly prominent; the requirements of judicial cooperation become increasingly intensified. Judicial assistance has become a realistic demand for economic development and regional stability, while the joint settlement of disputes between countries through judicial assistance is the only way to safeguard the sovereignty and independence of countries, and the best way to safeguard judicial stability as well as the rights and interests of parties concerned.

## 2. Basic Situation of International Criminal Justice Assistance between China and Cambodia

The so-called criminal judicial assistance refers to a system in which “the judicial organs of our country and the foreign country request each other to carry out certain criminal proceedings in accordance with international treaties they have concluded, or in accordance with the principle of reciprocity.” According to the contents of criminal judicial assistance, it can be divided into three categories: criminal judicial assistance in a narrow sense, criminal judicial assistance in a broad sense and criminal judicial assistance in the broadest sense. In a narrow sense, criminal judicial assistance refers to mutual assistance and cooperation among countries in inquiring witnesses and appraisers, handing over physical evidences, testing documents, serving documents, providing information and handling relevant criminal proceedings. Criminal judicial assistance in a broad sense means to increase the content of extradition of offenders on the basis of criminal judicial assistance in a narrow sense. In the broadest sense, criminal judicial assistance includes extradition, criminal judicial assistance in a narrow sense, transfer of criminal proceedings as well as the recognition and enforcement of foreign criminal judgments. Therefore, the contents of criminal judicial assistance are generally considered as follows: investigation and evidence collection,

service of documents, transfer of evidence, notification of litigation results, extradition, transfer of sentenced persons as well as exchanges and cooperation of criminal intelligence information.

Until February 2017, China has concluded 135 treaties (108 of them have taken effects) on mutual legal assistance, agreements on assets return and sharing, as well as extradition treaties and agreements on combating the “three evil forces” with 70 countries. But China and Cambodia have not yet signed the treaties on criminal judicial assistance. The two countries only signed the Extradition Treaty between the People’s Republic of China and the Kingdom of Cambodia on February 9, 1992, which stipulates that the contracting parties shall, in accordance with the provisions of this treaty, extradite wanted persons found in the territory of one country so as the other country can prosecute, try, sentence and execute penalties for criminals in its territory. The treaty also stipulates the types of extraditable offences, which should be crimes that can be punished by imprisonment for more than one year or other forms of detention or any heavier penalty in both countries. It provides the grounds for refusing extradition as follows: political offences, religious and racial persecution, purely military offences, and offences that have been sentenced. It also emphasizes the principle of never extraditing one’s own nationals in the international law, and stipulates that the means of extradition should be contacted through diplomatic channels and put forward in writing materials.

### **3. Basic Situation of International Civil Judicial Assistance between China and Cambodia**

International civil judicial assistance generally refers to the system in which the judicial organ of one country acts on behalf of others or assists the judicial organ of other countries in carrying out certain judicial acts at the request of another country’s judicial organ or related parties in international civil proceedings. As far as international civil judicial assistance is concerned, the international community’s understanding of it can be divided into broad sense and narrow sense. In a narrow sense, international civil judicial assistance only includes serving litigation documents on behalf of others and collecting evidence. In a broad sense, in addition to serving litigation documents and investigating evidence, international civil judicial assistance also includes recognition and enforcement of foreign court decisions and foreign arbitral awards. Most scholars in civil law countries hold this view.

Among the ASEAN countries, China has signed the Agreement between the People’s Republic of China and the Kingdom of Thailand on Civil and Commercial Judicial Assistance and Arbitration Cooperation with Thailand, the Treaty between the People’s Republic of China and the Socialist Republic of Viet Nam on Civil and Criminal Justice Assistance with Vietnam, the Treaty between the People’s Republic of China and the Lao People’s Democratic Republic on Civil and Criminal Judicial Assistance with Laos, and The Treaty between the People’s Republic of China and the Republic of Singapore on Civil and Commercial Judicial Assistance with Singapore. At present, China and Cambodia have not signed a treaty on civil judicial assistance, which brings some difficulties to international civil judicial assistance between the two countries.

In addition to treaties signed by the two countries, some multilateral international treaties can also be used as the legal basis for judicial assistance between the two countries. For example, in the field of extraterritorial service of civil and commercial judicial documents, the Hague Service Convention is a relatively common used international treaty, which China acceded to on January 1, 1992. As for foreign investigation and evidence collection, the Hague Evidence Convention is a universally applicable convention in the world, and China acceded to it in 1998. However, Cambodia has not acceded to the Hague Conference on Private International Law or concluded the two conventions, which makes the civil judicial assistance between the two countries lacks the basis of international treaties.

The international civil judicial assistance between our country and Cambodia is mainly carried out based on the principle of reciprocity in international law. Savigny once proposed that, for many countries, if they want to maintain the interests of human beings together, it is necessary for them to carry out a certain degree of reciprocity and mutual assistance in the process of legal cases trial. Article 262 of the Civil Procedure Law of China stipulates that: “In accordance with international

treaties concluded or acceded to by the People's Republic of China, or in accordance with the principle of reciprocity, the people's courts and foreign courts may request each other to serve documents, investigate and collect evidence and conduct other litigation acts on their behalf." Thus, the principle of reciprocity can be the basis for China and Cambodia to carry out foreign-related civil judicial assistance.

#### **4. Basic Situation of International Police Cooperation between China and Cambodia**

International police cooperation, in a sense, is also a kind of police diplomacy. It refers to a kind of law enforcement act in which police organs of different countries provide mutual assistance or cooperate with each other in the fields of punishing international crimes and maintaining international order in accordance with their own laws or international conventions.

The police cooperation between China and Cambodia is mainly achieved through the mechanisms of cooperation between China and the Association of Southeast Asian Nations and the Greater Mekong Sub-region. China began to establish dialogues with ASEAN in 1991, and further established a comprehensive dialogue partnership in 1996. After the publication of the Joint Statement on the Meeting of the Heads of State of the People's Republic of China and ASEAN in 1997, the bilateral relations have made gratifying progress. In 2002, the leaders of China and ASEAN signed the Joint Declaration on Cooperation between China and ASEAN in the Non-traditional Security Field, which marked the formal beginning of security cooperation between China and ASEAN, and also provided basic guarantee for the police cooperation between China and ASEAN countries.

In addition, police cooperation with Cambodia depends on the Greater Mekong Sub-regional Mechanism (GMS), which refers to six countries and regions in the Mekong River Basin, including Cambodia, Vietnam, Laos, Myanmar, Thailand and China. As one of the largest sources of drugs in the world today, the famous "Golden Triangle" region is located in the hinterland of this region. Therefore, transnational drug crimes are particularly serious in countries of the sub-region. In this area, it is necessary for countries to carry out police cooperation, so as to strengthen and improve the fighting ability against transnational crime. At present, China and the Greater Mekong Sub-region countries have established a system of police and law enforcement cooperation in combating drug-related crimes, a system of anti-drug liaison officers in border areas between neighboring countries, a system of regular border talks and meetings, and a system of information exchanging and sharing. An anti-drug official training mechanism is also established. Taking Yunnan Province as an example, the Yunnan Police Officer Academy has established friendly relations with the Royal Police Cadet Academy of Thailand, the Cambodian National Police Academy, the Lao People's Police Academy and the Myanmar Central Police Training School. These schools have conducted many law enforcement training sessions and seminars.

Finally, in the area of police cooperation between China and Cambodia, in 2006, China and Cambodia signed the Agreement on Cooperation between the Government of the People's Republic of China and the Royal Government of Cambodia on Combating Transnational Crime, which focus on deepening and expanding police exchanges between the two parties and strengthening cooperation in the field of non-traditional security.

#### **5. Suggestions on Improving the Judicial Assistance between China and Cambodia**

##### **5.1 Signing a treaty of judicial assistance with Cambodia as soon as possible**

Treaties are the most important basis for judicial assistance among countries. Only by defining the contents, principles and procedures of judicial assistance in treaties, can parties be truly bound to fulfill their obligations in accordance with the treaty. At present, China and Cambodia have not signed a formal treaty on assistance in civil and criminal justice. There are only two agreements between the two countries, namely, the Treaty on Extradition between the People's Republic of China and the Kingdom of Cambodia, and the Agreement on Cooperation between the Government

of the People's Republic of China and the Royal Government of Cambodia on Combating Transnational Crimes. Thus, China and Cambodia have a certain degree of difficulties in the practice of judicial assistance. Under the premise of friendly consultation and on the basis of ensuring the sovereignty and integrity of the two countries, China and Cambodia should draw up a treaty on civil and criminal judicial assistance as soon as possible. The specific contents of judicial assistance, such as service documents, investigation and evidence collection, compulsory measures, witness protection and appearances in court, execution of judgments and rulings, and transfer of stolen goods, should be formulated as mutually acceptable standards between the two countries. In this way, difficulties caused by different laws of the two countries can be eliminated; the rights and obligations of the two parties can become clearer. Thus, the dealing of transnational cases involving international judicial assistance can become "legally based", while the settlement of transnational cases between the two countries can become more effective, timely and equal.

## **5.2 Establishing a professional team of judicial assistance**

International judicial assistance should be accomplished by people's courts, but it is not the main business of people's courts. Therefore, sometimes the courts do not attach enough importance to international judicial assistance; higher and lower courts may have different departments which take responsibility of managing these cases; personnel dealing with foreign-related cases may be grass-roots level officers who are not familiar with the procedure; the team is unstable. Based on the foreign-related and professional features of judicial assistance, personnel engaged in this work should be elites. Therefore, China needs to select competent judges and judicial auxiliary personnel who have overall awareness and diplomatic awareness, as well as certain knowledge reserves on international law. Then these people should be trained to establish a professional and stable judicial assistance team. In addition, in view of translation difficulties in judicial assistance, we can build a pool of foreign-related translators, select foreign language proficient personnel from various professions, such as university teachers, civil servants and judicial workers, and include them into the pool of talents, so as to reserve talents for international judicial assistance and the trial of foreign-related cases.

## **5.3 Strengthening and perfecting international police cooperation among sub-regions**

The police cooperation among countries in the Greater Mekong Sub-region has achieved initial success, but there are still differences in the values, interests and views of police cooperation and law enforcement among countries. Some countries show negative attitudes in police cooperation, especially in information sharing, which poses greater challenges to police cooperation among countries. International police cooperation among countries in the sub-region is the most important platform for China and Cambodia to carry out international police cooperation. The two countries should do their best to promote and improve the international police cooperation in the sub-region and contribute to the social stability, prosperity and development of the sub-region. First of all, countries in the sub-region should consider international police cooperation as an important issue on their agenda of foreign affairs, and strengthen communication through channels such as talks, meetings and consultation, so as to form a common spirit of cooperation, eliminate the sense of departmentalism and form a joint force. Secondly, we need to set up a joint platform for police and law enforcement involving regional countries, holding regular talks and meetings with all parties, consulting on cooperation in police and law enforcement, broadening channels for police cooperation and law enforcement, exploring new cooperation modes and simplifying cooperation procedures, so as to institutionalize the level of police cooperation and realize the transformation from virtual to practical international police cooperation. Finally, the legal basis for police cooperation should be established. At the central level, China can strengthen dialogues with Cambodia and other countries in the sub-region, continue to carry out high-level consultations and meetings, conclude multilateral or bilateral treaties on police cooperation and law enforcement on the basis of reserving common ground and seeking differences, or issue relevant joint statements, and formulate corresponding and supporting operating rules and agreements on police cooperation and law enforcement according to treaties and declarations. Then, a legal system of police

cooperation and law enforcement can be established from internal and external aspects, thus embodying principles and flexibility, and laying a legal foundation for bilateral and multilateral police cooperation and law enforcement in an all-round way.

## **References**

- [1] G.Z. Chen, Criminal Procedure Law, 6th ed, Peking University Press, Beijing, 2016.
- [2] S.P. Shao, Course of Modern International Criminal Law, Wuhan University Press, Wuhan, 1993.
- [3] S.Y. Li, F.Y. Ou, International Private Law 4th ed, Peking University Press, Beijing, 2015.
- [4] D. Xiang, Introduction to International Police Cooperation, People's Public Security University Press, Beijing, 2005.
- [5] J. Sun, Z.H. Zeng, Progress, characteristics and trends of international judicial assistance of the People's Court in the new era, J. The People's Judicature (Application). 1 (2017).