

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the notebook, containing the journal's title and ISSN information.

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SECRET SOCIETY TO TRANSNATIONAL CRIME
NETWORK: A CRIMINOLOGICAL AND LEGAL STUDY
OF CHINESE CRIMINAL SYNDICATES UNDER HONG
KONG'S ORGANIZED CRIME LAWS

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ABSTRACT

In this essay, an analysis will be made regarding the development of Triads¹ – which are also considered Chinese criminal syndicates – from their existence during the Qing Dynasty as secret societies to the current organized crime networks operating at an international level, with emphasis on the impact that these have in Hong Kong². Under the theoretical framework that includes Social Disorganization, Strain, Differential Association, and Rational Choice theories, the hierarchies, the recruitment process, and the criminal activities undertaken by Triads, which include drug trafficking, money laundering, human trafficking, and cybercrime³ will be considered. In the legal aspect, an assessment of the effectiveness of laws such as Cap 455 and Cap 151, as well as OCTB, among others, will be analyzed⁴.

Keywords: Triads, Organized Crime, Hong Kong, Transnational Crime, Drug Trafficking, Money Laundering, Law Enforcement, Organized and Serious Crimes Ordinance.

¹ The term 'Triad' derives from the triangular symbol representing the union of Heaven, Earth, and Humanity adopted by early secret societies. See Dian H. Murray, *The Origins of the Tiandihui: The Chinese Triads in Legend and History* (Stanford University Press, 1994), pp. 3–17.

² Hong Kong was ceded to Britain under the Treaty of Nanking (1842) and the Convention of Peking (1860), with the New Territories leased in 1898. Its return to Chinese sovereignty occurred on 1 July 1997 under the Sino-British Joint Declaration of 1984.

³ For a comprehensive overview of organized crime theory see Klaus von Lampe, *Organized Crime: Analyzing Illegal Enterprises, Networks, and Groups* (Sage, 2016), Chapter 2.

⁴ UNODC, *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment* (Vienna: UNODC, 2013), p. 61.

INTRODUCTION

Organized crime is an age-old and intricate problem that confronts contemporary legal and law enforcement institutions globally. In the pantheon of organized crime syndicates that have sprung up in different parts of the world in recent years, the Chinese Triads stand out as significant entities in terms of their ancient roots and global reach at present. While the Chinese Triads have evolved from political secret societies that emerged in seventeenth century China to become international organized crime syndicates in their present form, their metamorphosis is truly remarkable yet worrying⁵. With Hong Kong having transitioned from a British colony to a Special Administrative Region of the People's Republic of China⁶, it has proved to be the ideal location for the emergence and global spread of Triad syndicates owing to its role as a major financial centre as well as densely populated ethnic society⁷. This study uses a two-pronged criminological and legal perspective to analyze the organization of Triads and assess the efficacy of Hong Kong's laws to counter them.

Seven core objectives guide the research. They involve tracking the historical development of Chinese secret societies into organized criminal groups; looking at the structures of the hierarchy, recruitment, and initiations of the Triads; applying criminology theories in the development and sustainability of the Triads; investigating the global scope of the Triad crimes; analyzing the organized crime legislation of Hong Kong, specifically the Organized and Serious Crimes Ordinance and the Societies Ordinance; analyzing law enforcement strategy; and identifying the weaknesses in existing laws for recommendations for improvements.

A qualitative doctrinal approach is used in carrying out the research⁸. The main sources are statutory law of Hong Kong, case law, and Hong Kong Police Force and ICAC reports. The secondary sources will be peer-reviewed journal articles, government documents, and international organizations documents such as those from the UNODC⁹ and FATF. The

⁵ Doctrinal Legal research methodology is discussed in Terry Hutchison and Nigel Duncan, 'Defining and Describing What we do: Doctrinal Legal Research' (2012) 17 (1) Deakin Law Review 83

⁶ The UNODC's Palermo Convention provides the primary international framework for organized crime, ratified by over 190 states.

⁷ For RICO's influence on organized crime legislation globally, see James Jacobs, *Gotham Unbound: How New York City was Liberated from the Grip of Organized Crime* (New York University Press, 1999)

⁸ The standard historical account of the Tiandihui's founding is contested. Murray supra note 1, argues the society was founded circa 1761 in Fujian province, while Barend ter Haar, *Ritual and Mythology of the Chinese Triads*(Brill, 1998), disputes this chronology.

⁹ Fan Qing, Fu Ming translates literally as 'Oppose the Qing, Restore the Ming. This slogan appears in numerous Triad rituals texts and oath. See W.P. Morgan, *Triad Societies in Hong Kong* (Hong Kong Government Press, 1960), p.24

criminological theories to be used include social disorganization theory, Merton's strain theory, differential association theory, and rational choice theory in explaining the persistence of the Triads¹⁰.

HISTORICAL ORIGIN AND EVOLUTION OF CHINESE CRIMINAL SYNDICATES

The history of Chinese criminal syndicates cannot be disassociated from the history of secret societies in China, which is a tradition of clandestine fraternal organizations that dates back several centuries and is closely linked to political resistance, ethnic solidarity, and mutual aid. In order to comprehend Triad organizations as criminal syndicates, it is imperative to first grasp the political and cultural context in which they emerged.

Formation of the Secret Societies

The earliest ancestors of what was to become the Triad movement are traditionally dated to the late seventeenth century, a period of Manchu consolidation of the Qing Dynasty after the collapse of the Ming Dynasty in 1644. The most popularly cited founding story of the Triad movement centers on the activities of a band of Buddhist monks from the legendary martial arts center of the Shaolin Monastery, who formed a clandestine brotherhood to drive the Qing out of China and re-establish Han Chinese rule under the rallying cry of 'Fan Qing, Fu Ming' or Overthrow the Qing, Restore the Ming¹¹.

However, whether this particular origin myth accurately represents historical reality or not remains the subject of academic debate and division¹². Nonetheless, this particular origin myth formed the ideological basis of the Heaven and Earth Society (Tiandihui), which was formed, roughly, in the 1760s during the reign of the Qianlong Emperor. The Tiandihui, like other related societies such as the Hung Men (Vast Gate Society) and the Three Harmonies Society (Sanhe Hui), from which the word 'Triad' originates, symbolizing the unity of Heaven, Earth, and Humanity¹³, proliferated in southern China and the overseas Chinese diaspora communities of Southeast Asia.

¹⁰ The numerological significance of 3 (Heaven, Earth, Man) is discussed at length in J.S.M. Ward and W.G. Stirling, *The Hung Society or the Society of Heaven and Earth* (Baskerville Press, 1925) Vol.1, pp. 31-46

¹¹ On the Tiandihui's mutual aid functions see Madeleine Zelin, Jonathan Ocko and Robert Gardella (eds), *Contract and Property in Early Modern China* (Stanford University Press, 2004), Chapter 6

¹² The Taiping Rebellion (1850-1864) resulted in an estimated 20-30 million deaths. Triad involvement is discussed in Jonathan Spence, *God's Chinese Son: The Taiping Heavenly Kingdom of Hong Xiuquan* (W.W. Norton, 1996), pp. 172-183

¹³ Sun Yat-sen's connections to triad organizations, particularly the Hung Men, are documented

These early secret societies had a number of social functions beyond their political activities. They offered mutual assistance and support, financial help, and a system of patronage and protection for members who were migrants, workers, and otherwise marginalized from mainstream society¹⁴. Their elaborate rituals, symbolic numerology in which the sacred number 3 and its multiples played a central role, and oaths of secrecy and loyalty created strong bonds of solidarity that transcended family and regional loyalties.

Transformation into Criminal Organizations

The transition of these quasi-political fraternal societies to organizations with a stronger focus on criminal enterprise was the result of a gradual process, heavily influenced by a combination of social, political, and economic factors. The failure of successive revolts against the Qing dynasty, including the various Triad-associated rebellions of the nineteenth century, slowly removed the explicitly political dimension of these societies. The Taiping Rebellion, which took place between (1850 and 1864)¹⁵, and the activities associated with Sun Yat-sen's revolutionary movement¹⁶ drew the Triad societies in, but these activities also demonstrated the societies' readiness to operate in the gray area between political idealism and criminal pragmatism.

The transformation to criminal enterprise was furthered by a number of structural conditions. One was the massive social dislocation caused by the Opium Wars, internal rebellions, famine, and floods that ravaged China throughout the nineteenth century. This created massive pools of impoverished and displaced people for whom membership in the Triad was a means of economic survival. Second, the incursion of colonial authorities into China, particularly in the treaty ports, undermined social structures and created opportunities for illegal trade in opium, gambling, and prostitution that the secret societies were in a position to exploit. Third, the organizational infrastructure of the societies was perfectly suited to the management of a criminal enterprise.

By the late nineteenth and early twentieth centuries, the major urban centers of Shanghai, Canton, and the diaspora communities of Singapore, Malaya, and the Dutch East Indies were home to criminal organizations affiliated with the Triad, heavily involved in illicit gambling,

14 On the Green Gang's role in Shanghai see Brian Martin, *The Shanghai Green Gang: Politics and Organized Crime, 1919-1937* (University of California Press, 1996)

15 The 14K was founded by General kot Sui-wong following his retreat from the mainland in 1949. It is estimated to have over 20,000members globally. See Martin Booth, *The Dragon Syndicates: the Global Phenomenon of the Triads* (Carroll & Graf, 1999)

16 For triad penetration of legitimate industries see Yiu-kong Chu, *The Triads as Business* (Routledge, 2000), chapter 4-5

opium trafficking, and labor racketeering. The Green Gang and the Red Gang of Shanghai, while not strictly speaking a part of the Triad tradition¹⁷, nevertheless represented the marriage of the tradition of secret society organization and the reality of criminal organization that the Triad model would come to represent in the twentieth century.

Expansion into Hong Kong and International Regions

The mid-twentieth century saw Hong Kong become one of the main bases for Triad activities. This was particularly true after the communist victory in the Chinese Civil War in 1949. The founding of the People's Republic of China saw a massive influx of refugees into Hong Kong. This included those who were previously members of the Triad organizations that operated in China. The chaotic social conditions that characterized the period of rapid population growth and lack of adequate official welfare provision were precisely those in which the Triad organizations had thrived.

Of all the major Triad groups that solidified their grip in Hong Kong during this period, the 14K¹⁸ Triad, formed by a Kuomintang general and considered among the largest Triad groups in the world, as well as the Sun Yee On, Wo Shing Wo, and Wo On Lok (Shui Fong), were among the most notable. These Triad groups claimed their own territory in various districts of Hong Kong, controlling criminal businesses in gambling, prostitution, and drugs, as well as infiltrating legal businesses in construction, entertainment, and transportation¹⁹.

The latter decades of the twentieth century witnessed the growth of the Triad expansion to transnational proportions. The diaspora communities in the United Kingdom, Canada, the United States, Australia, and the Netherlands not only provided markets for criminal services but also facilitated the expansion of operations²⁰. The period of anticipation leading up to the handover of Hong Kong to China in 1997 saw yet another wave of emigration of Triad affiliates, further entrenching the syndicate networks in the West. The current scope of Triad activities includes the international drug trade routes through the Golden Triangle and the world markets, human smuggling operations, money laundering through international financial

17 On triads diaspora expansion see ko-lin chin, *Chinatown Gangs: Extortion, Enterprise and Ethnicity* (Oxford University Press, 1996)

18 The numerical rank system is described in detail in Morgan, *supra* note 9, pp. 58–92, and in Booth, *supra* note 15, pp. 42–57.

19 The Dragon Head title 489 reflects the numerological calculation: $4+8+9=21$; $2+1=3$, symbolizing the sacred triad. See Ward and Stirling, *supra* note 10, Vol. I, p. 39.

20The Red Pole's enforcement function is analyzed in Diego Gambetta's framework of private protection. See Diego Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Harvard University Press, 1993), Chapter 2, applied to Triad context in Chu, *supra* note 16, pp. 32–38.

systems, and cybercrime operations²¹.

ORGANIZATIONAL STRUCTURE OF CHINESE TRIADS

The organizational structure of Triad societies is perhaps one of the most distinguishing aspects of these organizations, with the formalized hierarchy being rooted in ancient ritual and numerological symbolism²², yet despite the many changes and adaptations of the past few centuries, there are certain recognizable aspects of this structure common to all Triad organizations.

Historical Structure

The conventional Triad organizational structure is hierarchical in nature and differentiated in roles, whereby each role is characterized by a numerical title as part of an intricate numerological code. The sacred number 3 and its multiples, particularly those of 9 as it represents the highest authority in Chinese numerology, form the foundation of this code. The major roles in the Triad organization and their corresponding numerical titles are as follows:

- Dragon Head (489) - Shan Chu: The ultimate authority of the Triad lodge, who holds ultimate authority in all decisions regarding operations and organizational structures. The numerical title 489 is significant in that it is derived from $4 + 8 + 9 = 21$; further, $2 + 1 = 3$, as it refers to the sacred Triad of Heaven, Earth, and Man²³.
- Deputy Mountain Master (438) - Fu Shan Chu: The deputy of the ultimate authority of the Triad lodge.
- Incense Master (438) - Heung Chu: The individual in charge of conducting initiation ceremonies as well as holding spiritual authority in the organization.
- Vanguard (438) - Sin Fung: Responsible for leading members into action and coordinating operational activities on behalf of the leadership.

21 The White Paper Fan's financial role has become increasingly significant given money laundering compliance obligations. See FATF, Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants (FATF, 2011), p.47

22 OCTB has documented recruitment in secondary schools and housing estates. Hong Kong Police Force, Annual Report 2019 (HKPF, 2000), p.34

23 A description of the traditional Hung Mun initiation ceremony appears in Morgan, supra note 9, pp. 93-152. The thirty-six oaths are reproduced (translated) at pp. 120-138

- White Paper Fan (415) - Pak Tsz Sin: The administrative and financial officer, responsible for managing the organization's accounts, overseeing financial operations, and providing strategic advice²⁴.
- Red Pole (426) - Hung Kwan: The military commander and enforcer, responsible for directing violence, intimidation, and physical coercion on behalf of the organization²⁵.
- Straw Sandal (432) - Cho Hai: The liaison officer and messenger, responsible for communication between different units and lodges of the organization.
- Blue Lantern (49) - Sze Kau: The rank-and-file member, also referred to as the '49 boy', constituting the bulk of the organization's operational workforce.

Role and Responsibilities of Members

The functional specialization of the roles of the Triads points to a sophisticated division of labor that aims to achieve maximum efficiency and security through compartmentalization. The Dragon Head holds the highest position but is usually insulated by at least one level from any direct involvement in crime. The Red Pole's position as "enforcer" is also important, as this rank provides the capability for the organization to sustain its territorial dominance, collect debts, and enforce extortion contracts, and discipline defectors and those who show disloyalty²⁶.

The financial management function of the White Paper Fan has assumed greater significance with the increasing sophistication of Triad criminal organizations, particularly with respect to the problem of money laundering and the integration of the proceeds of crime into legitimate business organizations. The communication function of the Straw Sandal has assumed greater operational significance due to the constant threat of penetration by law enforcement agencies. The rank and file of the Blue Lantern organization are engaged in the actual commission of the crimes, such as the distribution of drugs, running gambling dens, and extorting protection money, but are kept in the dark regarding the higher echelons of the organization.

Recruitment and Initiation Rituals

Recruitment of the members of the triad traditionally focused on young males in marginal

24 On the social psychological functions of initiation rituals in criminal organizations see Letizia Paoli, *Mafia Brotherhoods: Organized Crime, Italian Style* (Oxford University Press, 2003), Chapter 3.

25 Donald Cressey's framework for organized crime characteristics appears in *Theft of the Nation: The Structure and Operations of Organized Crime in America* (Harper & Row, 1969), pp. 1-11

26 On ICAC's establishment and its impact on police-Triad relations see T.Wing Lo, *Corruption and Politics in Hong Kong and China* (Open University Press, 1993), Chapter 3-4

social roles, including dropouts from school, the unemployed, migrants, and those with grievances against mainstream society²⁷. The process of recruitment involved the social networks of the members of the triad, whereby the new member of the triad would be sponsored or 'introduced' by the existing members of the triad. In the contemporary context of Hong Kong, the recruitment of the members of the triad has extended to include the youth in housing estates, schools, and entertainment centers, with the social media also being used for recruitment.

The initiation ritual, the 'Hung Mun' ritual, is a complex and symbolically rich process based on the ancient ritualistic traditions of the Heaven and Earth Society²⁸. Although the specific rituals may vary across different Triad groups, and modern-day rituals are generally abbreviated, some of the traditional features of the initiation ritual are as follows:

- The swearing of thirty-six oaths, promising absolute loyalty to the society, maintaining secrecy, helping other members of the society, and avenging any harm done to the brotherhood, with specific and often graphic descriptions of supernatural consequences of breaking these oaths.
- The symbolic passing under an arch of swords, symbolizing the initiate's death to their old life and rebirth as a Triad member.
- The drinking of a blood oath mixture, symbolizing the mixing of the initiate's blood with that of the brotherhood.
- The imparting of hand signals, code words, and identity signals necessary for the identification of other members of the brotherhood.
- The conferment of a numerical rank and identity.

These initiation rituals fulfill various social roles²⁹. They forge strong psychological ties and a sense of identity and destiny. They define a clear boundary between the mundane world and the criminal fraternity. They impose a code of obligations and mutual responsibilities that preclude defection. And they offer law enforcement agencies clear signs of identification—these ritualistic trappings and code words proved useful in prosecution, though their utility has declined as Triads have become more security-conscious.

27 Clifford Shaw and Henry McKay, *Juvenile Delinquency and Urban Areas* (University of Chicago Press, 1942). For application to diaspora communities see Robert Sampson and W. Byron Groves, 'community structure and crime' (1989) 94(4) *American Journal of Sociology* 774.

28 Robert K. Merton, 'Social Structure and Anomie' (1938) 3(5) *American Sociological Review* 672. For application to organized crime see Joseph Albin, *The American Mafia: Genesis of a Legend* (Appleton-Century-Crofts, 1971), chapter 2.

²⁹ Edwin Sutherland, *Principles of Criminology* (4th edn, Lippincott, 1947), pp 6-7 (nine propositions of differential association).

CRIMINOLOGICAL ANALYSIS OF CHINESE TRIADS

The tools provided by criminological analysis are essential in understanding the reasons behind the survival and evolution of Triad organizations through the centuries, the reasons behind the involvement and loyalty of members to these organizations, and the factors that facilitate the existence of these organizations.

Characteristics of Organized Crime

The Triads demonstrate all of the characteristics of organized crime as identified in the academic literature³⁰. Researchers such as Donald Cressey, Joseph Albini, and more recently Federico Varese and Diego Gambetta have identified the following characteristics of organized crime: the continuity of the criminal organization despite the participation of any individual member of the organization; the hierarchical structure of the organization; the use of the tools of violence and intimidation as a means of control and regulation; the corrupting of public officials as a means of securing impunity for the organization; the seeking of monetary gain through the provision of criminal goods and services; the monopolistic or oligopolistic control of specific criminal markets; and the use of business organizations as a means of concealing criminal proceeds.

All these characteristics can be found in organizations within the Triad, albeit to a greater degree. The hierarchical structure, which has been discussed above, ensures continuity within organizations. The potential for violence, which in the past was realized through the role of the Red Pole in maintaining law and order and more recently through contracts with violent street-level members, explains their dominance over territory and market share. The existence of Triad corruption among police officers, judicial officers, and politicians, especially during the colonial era when corruption was endemic before the establishment of the ICAC in 1974³¹, confirms this aspect. The extensive use of front businesses to launder money, such as restaurants, construction sites, entertainment outlets, and transportation companies, confirms this aspect³².

³⁰ Derek Cornish and Ronald Clarke (eds). *The Reasoning Criminal: Rational Choice Perspectives on Offending* (Springer, 1986). For application to organised crime see Peter Reuter, *Disorganized Crime. The Economics of the Visible Hand* (MIT Press, 1983).

³¹ On historical police corruption in Hong Kong see Tony Kwok Man-wai and Bertrand de Speville, 'Tacking the Tiger: The Establishment of the ICAC and its impact' (2012) 1(1) *Asian Education and Development Studies*4.

³² The Golden Triangle (Myanmar, Loa, Thailand border region) produces approximately 70-80% of the world's illicit opium. UNODC, *World Drug Report 2023* (Vienna: UNDC, 2023) p.18.

Application of Criminological Theories

Several established criminological theories illuminate different dimensions of Triad formation and persistence:

Social Disorganization Theory:

Developed by Shaw and McKay, the Social Disorganization Theory, which is a part of the Chicago School tradition³³, states that crime thrives in communities that experience poverty, residential instability, ethnic heterogeneity, and the weakening of social institutions. The circumstances faced by the Chinese immigrant communities in Hong Kong and other overseas diaspora communities, which included social displacement, poverty, linguistic isolation, and lack of access to mainstream economic and social structures, provided the disorganized social setting in which the Triad organizations were able to establish themselves as surrogate service providers for security, justice, employment, etc.

Strain Theory

Robert Merton's "Strain Theory"³⁴ suggests that crimes are committed when there is a disconnect between culturally defined success goals and the legitimate ways available to individuals to achieve these success goals. In the case of young men in marginalized Hong Kong communities, especially during the post-war period of urbanization and inequality, becoming a member of the Triad provided a new way to achieve status, money, and security when legitimate ways were blocked or insufficient. This theory can be especially useful for understanding initial recruitment, especially for youth.

Differential Association Theory

Edwin Sutherland's Differential Association Theory³⁵ suggests that criminal behavior is learned through personal intimate associations with individuals who give favorable definitions to criminal activities. In Triad-impacted communities and families, learning about criminal norms, values, and methods through personal intimate associations with Triad members helps to create environments in which participation in criminal activities is normalized and even

33 On Triad involvement in heroin trafficking through Hong Kong in the 1970s-1980s see Gerald Posner, *Warlords of Crime: Chinese Secret Societies-The New Mafia* (McGraw-Hill, 1988) Chapter 6-8.

34 UNODC, *Synthetic Drugs in East and Southeast Asia: Latest Developments and Challenges 2022* (Vienna: UNODC, 2022), p.25

35 'Snakehead' operations are discussed in Ko-lin Chin, *Smuggled Chinese: Clandestine Immigration to the United States* (Temple University Press, 1999).

glorified. The role of personal sponsorship in Triad recruitment is a function of this process.

Rational Choice Theory

The Rational Choice Theory³⁶, as it relates to organized crime, is based on the cost-benefit approach to criminal involvement. For those who face limited legitimate economic opportunities, the benefits of being a member of the Triad group, in terms of income, protection, and social bonding, have to be compared to the costs of potential prosecution. The historically low rates of prosecution for being a member of the Triad in Hong Kong, especially before the ICAC³⁷ was formed, greatly reduced the costs of involvement in the Triad.

Factors Contributing to the Growth of Triads

Apart from the above theories, the following are some of the real-life factors that have led to the rise of the Triad in Hong Kong:

- Mass immigration and subsequent social dislocation after the war, which led to a large number of marginalized people who were more likely to turn to the Triad.
- The high level of police corruption during the colonial era, which allowed the Triad to carry out operations with little interference from the law³⁸.
- The lack of a welfare state and a proper social welfare system during the early days of Hong Kong, which made the services of the Triad more attractive.
- The location of Hong Kong, which is strategically situated for the trafficking of drugs, thus offering the opportunity for the organization to engage in the trade³⁹.
- The strong social network of the Cantonese, which made the operation of a trust-based organization like the Triad more efficient.
- The effects of globalization, which led to the emergence of new markets for the organization to engage in.

36 The Palermo Protocol- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)- defines trafficking in persons and establishes minimum criminalization standards.

37 FATF, Professional Money Laundering (Paris: FATF, 2018). On trade-based money laundering see FATF, Trade-Based Money Laundering (Paris: FATF, 2006)

38 Real Estate as a vehicle for money laundering is documented in Global Financial Integrity, Hiding in Plain Sight: Trade Misinvoicing and the Impact of Revenue Loss in Ghana, Kenya, Mozambique, Tanzania and Uganda 2002-2011 (2014) and FATF, Money Laundering and Terrorist Financing Through the Real Estate Sector (2007).

39 On protection racketeering see Gambetta, supra note 20. For Hong Kong Specially see Chu, supra note 16, pp. 51-76.

CRIMINAL ACTIVITIES OF CHINESE TRIADS

The criminal portfolios of Triad groups have increased significantly in range and variety in the course of the twentieth and twenty-first centuries, developing from local illicit markets to complex transnational criminal enterprises.

Drug Trafficking

Drug trafficking has traditionally been one of the most profitable and important of the criminal activities of the Triad organizations. The location of Hong Kong, which is close to the opium-producing regions of the Golden Triangle, the border region of Myanmar, Laos, and Thailand⁴⁰, and which is also a major stopover for sea and air freight, made it the logical transshipment point for the shipment of heroin to the West for sale to the growing number of addicts in those regions of the world⁴¹. The 1970s and 1980s were the heyday of the Hong Kong-based Triad organizations and the regional opium trade, with large quantities of heroin transiting the ports of Hong Kong.

The current scope of Triad drug trafficking has expanded beyond heroin and now includes other controlled substances like methamphetamine, ketamine, MDMA, and cocaine⁴². The current focus on synthetic drugs has removed the dependency on arable land for the production of these drugs. Law enforcement statistics have consistently demonstrated the involvement of the Triad at all levels of the drug trafficking process, including importation, wholesale distribution, and the retail level through Blue Lantern members. Prosecution under the Dangerous Drugs Ordinance (Cap. 134) is the primary way of dealing with the Triad's drug trafficking.

Human Trafficking

Organizations in the Triad have also been linked with human trafficking operations involving both forced labor exploitation and sexual exploitation. The role of Hong Kong as one of the leading immigration destinations and as a hub for the movement of migrants has resulted in the development of conditions that have led to the existence of human trafficking involving both forced labor and sexual exploitation. The human smuggling operations of the Triad

40 Triad involvement in Hong Kong's entertainment industry is documented in numerous OCTB annual reports and is discussed in Booth, *Supra* note 15, pp. 201-218.

41 On Online fraud scam centres in Southeast Asia see UNODC, *Casinos, Money Laundering, Underground Banking and Illicit Financial Flows in East and Southeast Asia* (Vienna: UNODC, 2023), p.38.

42 The computer crimes ordinance (Cap. 200, Part VIIA) was introduced by the Crimes (Amendment) Ordinance 1993. Its coverage of modern cyber-enabled crime has been criticized as outdated by the Hong Kong Law Reform Commission, *Report on Cybercrime* (2023.)

organizations have traditionally involved the movement of undocumented migrants, referred to as 'snakehead' operations⁴³, with some of these operations being linked with the Triad organizations.

The most vulnerable groups to trafficking for sexual exploitation are women and girls, who are under the control of organized crime groups through debt slavery. The framework for tackling the problem is the Prevention of Child Pornography Ordinance, the Crimes Ordinance provisions on trafficking, as well as Hong Kong's obligations under various international conventions, including the Palermo Protocol⁴⁴.

Money Laundering

The financial magnitude of Triad criminal organizations requires sophisticated money laundering schemes to channelize criminal proceeds back into the legal economy. The fact that Hong Kong is an important international financial center has provided an impetus for money laundering activities in this region. The conventional methods adopted by money launderers associated with Triad organizations include cash-intensive business ventures such as restaurants, nightclubs, karaoke bars, and money exchange outlets.

More complex forms of money laundering include trade-based money laundering⁴⁵, where the prices of import and export invoices are manipulated for the transfer of money across the globe, and the use of shell companies and complex structures of multiple jurisdictions for the concealment of the true ownership of the laundered money. Real estate investments have been widely recognized as a medium for Triad money laundering in the local and international markets⁴⁶. The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance form the major legislation for the recovery of assets, in addition to the anti-money laundering regulations imposed on local financial institutions by the FATF.

Extortion and Protection Rackets

One of the oldest and most territorial of the Triad criminal enterprises is extortion and

43 Organized and Serious Crimes Ordinance (Cap. 455), enacted 1994, amended most recently by the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022.

44 OSCO,s.25(1): ' a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, the person deals with that property.' Penalty: HK\$5 million fine and 14 years imprisonment.

45 OSCO, s, 8(1), empowers the court, upon conviction for a specified offence, to make a confiscation order for an amount not exceeding the defendant's benefit from the offence' or the available amount, whichever is less.

46 For comparative analysis of OSCO and RICO see Simon Young, ' Hong Kong's Organized and Serious crimes Ordinance: A Comparative Perspective' (1999) 29 Hong Kong Law Journal 85.

protection racketeering, referred to in Chinese criminal slang as ‘eating black’ or ‘sik hak’⁴⁷. This is where the Triad extracts ‘protection fees’ from businesses in the areas under their control, with the implied or threatened threat of damage or disruption being the driving force behind the practice. In the past, some of the industries that have been particularly vulnerable to Triad extortion include the building trade, entertainment outlets, street market vendors, taxis and minivans, and food and drink outlets.

The modern extortion rackets have been able to maintain a strong level of penetration in the entertainment sector in particular⁴⁸, with substantial evidence of Triad demands being made against film production companies, musicians, and performers. Under the Organized and Serious Crimes Ordinance, there are provisions in Section 23 relating to the offense of association with a Triad Society. In the Crimes Ordinance, there are provisions relating to extortion.

Cybercrime and Modern Criminal Activities

The twenty-first century has seen a significant expansion of Triad criminal activity in the digital realm, and this is a testament to the flexibility of the Triad and the opportunity that the development of the internet has provided in the creation of new criminal markets and tools. Areas of Triad cybercrime activity that have been documented include online fraud and investment scams such as romance scams and cryptocurrency scams, the running of illegal online gambling sites, cyberstalking and online harassment as a means of intimidation, and more recently, the Triad's involvement in the infrastructure of the cybercriminal world.

Notably, the activities of the Triad-related operations have been implicated in online fraud scam centers, especially in Southeast Asia, including Myanmar, Cambodia, and the Philippines, where human trafficking victims have been made to run fraud call centers globally⁴⁹. This phenomenon represents a unique link between human trafficking and computer crime, which poses unique challenges to law enforcement agencies. The Computer Crimes Ordinance (Cap. 200)⁵⁰ and the Crimes Ordinance partially address these activities, although legislative gaps exist.

47 Societies Ordinance (Cap. 151), s.2 defines ‘triad society’ broadly to include ‘any society using triad ritual’ and specifically lists the Three Harmonies Society, the 14K and other named organizations.

48 Societies Ordinance, s. 19(1): Any person who is a member of a triad society, or who attends a meeting of a triad society, is liable to a fine of HK\$100,000 and imprisonment for 3 years.

49 On the evidential challenges of proving Triad membership see *R v Chan Wai-keung* (1995) 2 HKCLR 127, in which the court of Appeal considered what evidence is sufficient to establish membership in a Triad society.

50 Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), s.25 creates the primary drug money laundering offence predating OSCO’s more general provisions.

LEGAL FRAMEWORK TO COMBAT TRIADS IN HONG KONG

Hong Kong has a relatively sophisticated system of legislation in the fight against organized crime, and this has been built up over the years in response to the long-standing problem of Triad activity. The major pieces of legislation in this field are discussed below.

Organized and Serious Crimes Ordinance

The Organized and Serious Crimes Ordinance (OSCO), which came into force in 1994 and has since been amended⁵¹, is arguably the main legislative measure that is aimed at combating organized crime in Hong Kong. Its structural framework is largely derived from the RICO legislation in the USA. Its main provisions include:

- Section 25 of the Ordinance creates a general offense of money laundering. This offense is defined as dealing with property that is known or suspected to be derived from an indictable offense. This offense is punishable with a maximum sentence of fourteen years' imprisonment and a fine⁵².
- Section 8 of the Ordinance empowers courts to make confiscation orders against persons convicted of any of the organized crime offenses. This is aimed at facilitating asset recovery⁵³.
- Sections 13 to 22 of the Ordinance create a system of civil recovery that empowers the Secretary for Justice to make an application for confiscation of properties suspected to have been obtained from crime even if the suspect is not convicted.
- Schedule 1 of the Ordinance lists the offenses that qualify as 'serious crimes' under this legislation. These include drug trafficking, corruption, blackmail, and other offenses that are characteristic of organized crime.

In assessing OSCO, both academic and practitioner views on its benefits and limitations⁵⁴ have been noted. For instance, it has been seen that the provisions on asset recovery in the Ordinance have been beneficial in targeting the financial infrastructure of organized crime groups. However, the high burden of proof required to establish the organized crime connection in

51 The ICAC was established by the Independent Commission Against Corruption Ordinance (Cap.204) on 15 February, 1974, following public outrage over the escape of corrupt superintendent Peter Godber to the United Kingdom.

52 JFIU was established in 1989, Hong Kong received over 100,000 Suspicious Transaction Reports annually by 2019. JFIU Annual Typologies Report 2020, p.3

53 OCTB traces its origins to the 1956 Triad sub-unit within the CID, its current mandate and structure are described in Hong Kong Police Force, Operational Review 2022 (HKPF, 2023)

54 Interception of Communications and Surveillance Ordinance (Cap.589), enacted 2006 following the Court of First Instance's declaration that pre-existing surveillance practices violated the Bill of Rights. See Secretary for Security V Lam Kwong-wai (2006) 3 HKLRD 808.

many cases, and the difficulties in attributing financial proceeds to a particular predicate offense, has limited the exploitation of the potential of the Ordinance.

Societies Ordinance

The Societies Ordinance is an important part of Hong Kong's anti-Triad legal regime, which has its roots in colonial legislation governing the regulation of societies and secret societies. The Ordinance makes it necessary for all societies to be registered with the Societies Officer. The Societies Officer has powers to refuse registration or to order dissolution, including on grounds of being a Triad society⁵⁵.

Section 19 of the Ordinance sets out specific criminal offenses directly targeting membership or activities in Triad society, i.e., being a member of a Triad society, attending a meeting of a Triad society, paying subscriptions to a Triad society, or helping to manage a Triad society are all criminal offenses with a penalty of up to three years' imprisonment⁵⁶. Section 20 of the Ordinance targets the activities of helping to recruit members into a Triad society, while Section 21 targets the activities involving the use of symbols, signals, or oaths associated with a Triad society.

The Societies Ordinance has been a valuable prosecutorial tool in circumstances where direct evidence of specific criminal activity is difficult to obtain. Its provisions allow prosecution on the basis of proven Triad membership or association, even in the absence of evidence of participation in a particular criminal offence. However, critics have noted that the Ordinance's effectiveness depends upon the ability of prosecution to establish that a defendant is a 'member' of a 'Triad society' — a requirement that has generated significant case law⁵⁷.

Crimes Ordinance

There are many provisions under the Crimes Ordinance which are applicable to the prosecution of Triad crimes. These include provisions for blackmail, extortion, intimidation, and conspiracy. The ordinance has specific provisions for criminal intimidation under Section 24, and Sections 27-29 include provisions for blackmail. The Computer Crimes provisions include provisions for unauthorized access to computer systems, which is part of the framework for

55 On the ICAC's historic impact on the police-Triad nexus see Kwok and de Speville, *supra* note 31.

56 INTERPOL's Project Kalkan, targeting drug trafficking in Central Asia and Chinese law enforcement participation, illustrates the multilateral enforcement framework. See INTERPOL, Annual Report 2022 (INTERPOL, 2023).

57 On crypto currency and organized crime finance see Europol, *Cryptocurrencies: Tracing the Evolution of Criminal Finances* (Europol 2021); FATF, *Virtual Assets Red Flag Indicators* (FATF, 2020)

prosecution of cybercrimes involving Triad organizations⁵⁸. The conspiracy provisions under Section 159A and common law conspiracy principles are an important part of the framework for prosecution of Triad crimes.

Other relevant legislative provisions include the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)⁵⁹, which was enacted prior to OSCO in providing for the recovery of proceeds of drug trafficking; the Prevention of Bribery Ordinance (Cap. 201), which covers the corruption aspect of the activities of the Triad; the provisions in the Immigration Ordinance regarding human smuggling; and industry-specific regulatory laws whose infringement gives rise to Triad offenses.

Role of Law Enforcement Agencies

The Organized Crime and Triad Bureau (OCTB)⁶⁰ of the Hong Kong Police Force is responsible for being the main law enforcement agency for Triad intelligence gathering, investigation, and prosecution. Established in 1974 in response to the various corruption scandals that led to the formation of the ICAC, the OCTB has over the years accumulated vast experience regarding Triad organizational structures, leaders, and activities. The Bureau has vast intelligence information regarding known members and associates of Triad organizations. The Independent Commission Against Corruption (ICAC), set up in 1974⁶¹, has an important additional role to play in addressing the corruption link which in the past has enabled Triad activities to be conducted with relative impunity. The record in police corruption prosecutions by ICAC has effectively broken the link between some police forces and the Triad.

The Customs and Excise Department is responsible for detecting and interdicting drug smuggling, human smuggling, and trade-based money laundering at Hong Kong's borders and ports. The Joint Financial Intelligence Unit (JFIU), a cooperative unit between Police and Customs⁶², is responsible for collecting and analyzing Suspicious Transaction Reports from financial institutions pursuant to anti-money laundering legislation.

58 For prosecution statistics see Hong Kong Judiciary, Annual Report 2022 (Judiciary, 2023), Table 3.2 (organized crime convictions).

59 ON ICAC's historic achievement see Jack Blum et al., Financial Havens, Ban king Secrecy and Money Laundering (UNDCP, 1998), p. 45, citing Hong Kong as an example of successful anti-corruption reform.

60 On the limitations of OSCO's asset recovery provisions see Janet Leung, 'Confiscation of Crime Proceeds in Hong Kong: Strengths and Weaknesses' (2005) 35 Hong Kong Law Journal 217.

61 For the argument in favour of RICO-style enterprise liability for Hong Kong see Stefan Cassella, Asset Forfeiture Law in the United States (Juris Publishing, 2013), Chapter 19 (comparative analysis)

62 Hong Kong Law Reform Commission, Report on Cybercrime (2023), pp. 78-94 (recommending comprehensive cybercrime legislation to replace the piecemeal provisions of Cap. 200).

ROLE OF POLICE AND ENFORCEMENT AGENCIES

The development of Hong Kong's law enforcement response to Triad activity is seen as part of a larger pattern of development from a corrupt colonial police force in the mid-twentieth century to a modern, internationalized institution in the present day. This development was spurred by two significant reforms in the early 1970s: the creation of the ICAC in 1974⁶³, and a fundamental restructuring of the Hong Kong Police Force in the context of anti-corruption efforts.

The OCTB works through a three-fold strategy of proactive intelligence-led policing, reactive investigation of reported crimes, and disrupting known Triad strongholds. Intelligence collection includes a combination of human intelligence collection, including information gathered from informers and undercover operations, electronic surveillance conducted under the authority of the Interception of Communications and Surveillance Ordinance (Cap. 589)⁶⁴, and open-source intelligence collection. The OCTB has established liaison relationships with other triad-focused intelligence agencies in other places, including Mainland China, Taiwan, Macau, and in major triad presence countries.

The role of international cooperation has become more and more vital in the enforcement of anti-Triad efforts in response to the Triad's internationalization⁶⁵. Hong Kong is a member of INTERPOL's operation against drug trafficking; it has also joined UNODC's regional initiatives to combat drug trafficking. It has also established law enforcement cooperation agreements with many nations. With the sophistication of Triad cybercrime activities, international cooperation has involved working with specialized cybercrime units in partner nations and international task forces to combat cybercrime.

The challenges facing modern law enforcement in the fight against the Triad include the rise in operational security awareness of the Triad, including the use of encryption in communications, the deliberate structuring of organizational infrastructure to minimize the number of traceable links between the leadership and the criminal activity, and the

63 Witness Protection Ordinance (Cap. 564), enacted 2000. For criticism of its adequacy see Law Reform Commission, Report on Witness Anonymity (2005), pp. 33-41.

64 Federico Varese, *Mafias on the Move: How Organized Crime Conquers New Territories* (Princeton University Press 2011), Chapter 1 (on the adaptability of criminal organizations).

65 The persistence of Triad organizations across three and a half centuries is discussed in Booth, *supra* note 15, Introduction and in Chu, *supra* note 16, Conclusion.

fragmentation of jurisdictions that creates legal barriers to prosecuting international criminal organizations. The rise of cryptocurrencies in Triad money laundering and cybercrimes has also added new challenges for financial investigators.

EFFECTIVENESS OF HONG KONG ORGANIZED CRIME LAWS

In order to make an objective evaluation of the efficacy of the legal framework for combating organized crime in Hong Kong, it is necessary to examine several factors, including the rate of prosecution of Triad-related crimes, the success of asset recovery measures in targeting organized crime, the success of legislation in deterring organized crime, and the overall flexibility of the legal framework in addressing new forms of organized crime.

With regard to the prosecution dimension, it is submitted that Hong Kong's legislative response to organized crime has achieved considerable success. The provisions under the OSCO and SO have helped to secure several successful prosecutions against senior members of Triad organizations, while the OCTB's intelligence capabilities have helped to disrupt several major organized crime syndicates. The ICAC's past success in dismantling the system of corruption which provided Triad organizations with protection is arguably the greatest law enforcement success in the history of efforts to counter organized crime in Hong Kong.

Asset recovery has been less comprehensively successful. Although numerous confiscation orders have been made, the complexity of Triad money laundering operations—especially those using international corporate structures and real estate investments—has restricted the scope of the recoverable proceeds of crime. Although the Suspicious Transaction Reporting regime has provided significant intelligence, there are problems of quantity and quality affecting the overall analytical value.

Some of the most significant criticisms and limitations of the existing framework are:

- The lack of a comprehensive enterprise liability principle similar to that found in the RICO Act forces prosecutors to prosecute individuals for particular offences rather than being able to prosecute the enterprise itself.
- The definition of 'Triad society' in the Societies Ordinance has been broadly interpreted by the courts but can be problematic from an evidential perspective in prosecutions that

involve loose and dynamic organizational structures that are not necessarily formal or 'society'-based in their structure and operation.

- The legislative response to issues of cybercrime and technology-facilitated organized crime has not kept pace with the rate of innovation and evolution of new and sophisticated crime.
- There are difficulties and challenges in relation to jurisdictional issues between jurisdictions in Hong Kong SAR, Mainland China, and international jurisdictions.
- There are criticisms of the effectiveness and comprehensiveness of witness protection mechanisms that are provided through the Witness Protection Ordinance.

CONCLUSION

This research paper has explored the development of Chinese criminal syndicates from the political fraternities of Qing Dynasty China to the sophisticated international criminal syndicates of the twenty-first century. The development of the Triad from patriotic secret society to organized criminal syndicate represents a larger pattern in the history of fraternal organizations wherein the organizational machinery of fraternal loyalty, hierarchy, rituals, and enforcement proves easily transmogrified to serve the ends of organized crime as political ideals give way to economic considerations.

The criminological analysis provided in this paper shows that the persistence and adaptability of Triad organizations can be understood through various criminological theories. The social disorganization theory explains the ecological conditions in which Triad organizations thrive. The strain theory explains the motivational factors behind individual recruitment. The differential association theory explains how criminal behavior is learned through intergenerational Triad organizations. The rational choice theory explains how individual calculations contribute to organizational persistence. There is no single theory that explains the persistence and adaptability of Triad organizations. The value of this analysis is in its integration.

The legal analysis has shown that a sophisticated system of organized crime in Hong Kong exists by international standards, one that has developed over many decades of legislative and institutional reform. However, gaps and weaknesses exist in this system. The absence of enterprise liability legislation, the weakness of the cyber-crime regime, difficulties in

international cooperation, and limitations in asset recovery all illustrate areas that require development. The evolution of Triad crime patterns—towards cybercrime and cryptocurrency-based schemes—requires a similarly dynamic legal and law enforcement response.

The experience of Hong Kong in dealing with the problem of Chinese criminal syndicates offers lessons that have implications of wider general interest for the international community's fight against transnational organized crime. The experience of the transformative impact of real institutional anti-corruption reform, which is so exemplified by the historic achievement of the ICAC, underlines that law enforcement integrity is a prerequisite for effective organized crime control. The limitations of purely internal legal solutions to transnational criminal organizations underscore the need for effective international legal cooperation frameworks. And the continuing flexibility of Triad organizations over three and a half centuries also underlines that criminal organizations are not static entities that can be finally defeated, but rather dynamic social organizations that call for continuing and adaptive legal and social responses.

