

## The Research on Legalization of Cross-Strait CBMs

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### 《Abstract》

Since the ban on Taiwan people visiting China lifted in 1987, the interactions between Taiwan and China are frequent and deep in every aspect. Though ex-President Lee Teng-hui's and Chen hsiu-ban's Mainland policies are overall discouraging, it is in vain to stop Cross-strait contacts. The official Cross-strait contacts re-open after KMT, which lost its infield position in 2000, retaking the power in 2008. It is worthy of noting here that the opportunities for Taiwan and China to enhance their relationship comes when the 2008 global depression occurs. On the other hand, China market attracts Taiwan business to invest and makes Taiwan economy being dependent on China much more than ever. If the situation keep going on, it is too bad for Taiwan economic, even political, development in the future.

The trend of regime-building in international politics is obviously after the end of the Cold War. For examples, the successful integration of EU, the will-be Eastern Asia free trade area in so-called "ASEAN plus three" form, and especially the signatures of NPT and CTBT for global military security, those mentioned above all reply the calling for construction of a safe international, and regional of course, security circumstance. In sum, the legalization of Cross-strait confidence building measures (CBMs) is so vital not only to improve Eastern Asian regional security, but to ensure Cross-strait contacts moving toward a win-win plot.

This research is aimed to apply the concept of security regimes and legalization doing a field-integration study. In other words, the author tries to exert the "implicit" and "explicit" principles or rules, and the utilization of decision-making process in addition, to develop a multi-level (plural) comprehensive security regime. At the same time, by combining the compelling character of legalization and the liberate character of rule, the author also tries to construct "the legalization of security regime" in parallel way. Besides, whether Taiwan and China governments being abide by agreements which included in CBMs is observed through three indicators: **obligation**, **precision**, and **delegation** in this research. The supervision of decision-making process and the authorization condition of the Third Sector are also under examination. At last, the author evaluates the feasibility of legalization of Cross-strait CBMs and designs the priority of CBMs forms, in order to provide the academic study and governmental policy-making.

## Preface

Since 1987, the government allowed people to visit relatives on the mainland, followed by Lee Teng-hui has seen a period of "go slow" and the Chen Shui-bian period of "active management, effective opening" policy, but be unable to mitigate or reduce the heat cross-strait interaction. In particular, after 2008, "KMT-Communist Platform" by the CPC to build consensus and goodwill as a basis for mutual trust between the two sides had also re-established the mechanism for creating an opportunity. Into words, including "the dispute over sovereignty" and "ideology" and a long standoff not only affect the cross-strait economic and trade cooperation, but also to set aside the sovereignty dispute and build mutual trust mechanism into current and future focus of resolving cross-strait issues.<sup>1</sup> In this regard, although the related domestic research literature is very rich, but the results are still mainly focused on the following three face: one is the United States for the cross-strait confidence-building mechanism, attitudes and the impact. Second is from the cross-strait political disputes and military confrontation between the relaxation as well as the development trend of domestic political point of view to explore the mechanism of mutual trust between the Government and public opinion on the establishment of the views and feasibility.<sup>2</sup> Third, it is summed up the practical experience of various countries, as criteria for construction of cross-strait mutual trust mechanism.<sup>3</sup>

In the past, related to the construction of bilateral, multilateral, as well as a mechanism of cross-strait mutual trust and legal assessment and review of related literature is still low.<sup>4</sup> This paper is trying to canonical theory and from the international legalization constitute the other two for the intercept and view the current cross-strait relations by legal means the degree of development and thus hope to clarify the mechanism of mutual trust possible future construction of the prototype of

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1 Lin Cheng-yi, "the United States and the cross-strait confidence-building measures", "Problems and research", p. 44, No. 6, 2005, 11,12 months, pages 1-28; Zhou Maolin, "the current U.S. view of the cross-strait mutual trust mechanism with meaning", "Defense Policy Review", Volume 4 No. 4, Summer 2004, pages 38-62.

2 Wu Jiande, "cross-strait military mutual trust mechanism to establish the feasibility of analysis: the confidence-building measures point of view", "Defense Policy Review", Volume 1, No. 1, autumn 2000, pp 68-107; Tang Shao-cheng, "On the cross-strait military mutual trust mechanism", "Channel comments", No. 219, March 1, 2009, pages 34-36; Pang solution, "the establishment of military mutual trust mechanism across the Taiwan Strait to explore the feasibility of", "Journal of Zhongshan", No. 24, in December 2003, pages 87-99.

3 Ren-Chun Tang, "CCP's position on the confidence-building measures, practical experience and strategies to use", "Mainland China Studies", No. 47, No. 1, 2001 January-March, pages 105-134; Hsiao Chao-qin, "cross-strait confidence-building measures Chu Yi", "Prospect Foundation Quarterly", Volume 4 No. 1, January 2003, pages 65-91; Shun-Hop, "On the cross-strait "confidence-building measures," the concept", "Journal of Zhongshan", Section 21, December 2000, pages 123-142; Yue Ruiqi, "the two sides to construct" confidence-building measures "Reflections", "Communist Studies", Vol 26, No. 8, August 2000, pages 60 -- 76.

4 Yueh Jui-chi, "cross-strait security and confidence-building measures in the legalization of the", "outlook and exploration", Volume 2 No. 12, December 2004, pages 47-68.

the priorities. And so, this article is intended to be in the 1990s to date related to bilateral agreements signed between the two sides, or unilateral policy declaration for the object, and by international relations theory in the "International Regime" concept,<sup>1</sup> the constituent elements and characteristics, and the legalization feature to be integrated, and then test the degree of development of cross-strait mutual trust mechanism. This paper will seek to build "International Regime of the - the rule of law" of the research model, and by canonical tacit or explicit principles and decision-making process characteristics for the two sides signed a mutual trust mechanism, or claim measures, and the media coverage of the relevant mechanisms to summarize, finally re-legalized the use of rigid or flexible liberal principle of strict specifications, instead of "compulsory", "precision" and "authorization" of the constituent elements, to view the two sides mutual trust mechanism set of agreements, norms, rules, principles of compliance with obligations and commitments, precision how the decision-making process is being monitored, as well as the full authority of the third sector is

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1 "International Regimes" has not yet translated into the consensus. As the scholar Yuan Yi, in its "Security Regime System and the United States" in "relations: a cognitive analysis of Community Architecture" a text translated into "Safe Regime" system, In "Multilateralism and Cooperation under the Security Dilemma: International Relations Theory with the United States" in "relations" a text is translated as "international system"; Professor Cai Zhengwen in the book "The current international relations theory development and its assessment" book, academics, SONG Xue-wen and Li Bao-wen book "Globalization and the Chinese nation ism: Opportunities and One Country Two Systems" Limitations of an article by" the International Regime, then "transliteration; Secondly, scholars, Wu In" on the "international regulation" of the three kinds of theories advocated "a text of" international regulation "," international regime "and" the international system, "three words used interchangeably; Moreover, scholars Hua In" Analysis of the main schools of international regime theory "will be translated into the" international mechanism "; In addition, scholars Cheng-Tian Kuo, wrote in" international system and its international organization "in a book is translated as "international regime" and so different from the Chinese translation. See: Yuan Yi, "Security Regime System and the United States" in "relations: a cognitive analysis of community Architecture"s Pao Tsung, Wu Yu-shan-made "argument in the cross-strait relations theory" (Taipei: Five Southern Book Company, 1999 years), pages 389-432; Yuan Yi, "multilateralism and cooperation under the Security Dilemma: International Relations Theory and the United States" and "relationship", "Problems and research", No. 35, No. 6, June 1996, pages 1-17; Tsai Cheng-wen, "the current international relations theory development and its assessment" (Taipei: San Min Book Company, 1989, page 70; Song Xue-wen, Li Bao-wen, "Globalization and Chinese nationalism: one country two systems opportunities and" Limitations, "Mainland China Studies", No. 44 No. 7, July 2001, pages 1-30; Wu, "On the" international regulation "of the three kinds of theoretical propositions", "Hong Kong Social Science Journal", No. 16, 2000 Spring, pp 47-70; Hua, "Theory of the major schools of international mechanisms to assess", "Chinese Social Science Quarterly", No. 30, summer 2000, pp 155-164; Cheng-Tian Kuo, "international system and its international organization" ( Taipei: when the English Press, 1996). I believe that the "system" is the proper translation of the mean was too strong, and the "mechanism" and the mechanism in the translation too acquaintance, and the "establishment" is similar to the established institutions of the Chinese translation of the name, in addition to "system" easy to be confused with the international institution, "regulation" is easy to let people focus on the normative meaning, and the "Regime" system it may be mixed with the system of two canonical words. In view of this, this paper according to the scholars Stephen D. Krasner for the regime defined, and it is a set of principles, norms, rules and decision-making procedures, its aim is to establish the principle of cooperation among States, specifically the ways to resolve the dispute the methods and procedures, which includes a set of written and unwritten rules and formal and informal procedures, scope encompasses the political, security (military), economic and trade implications of different levels, and Professor Cai Zhengwen in his book that "Regime" has a formal meaning, "then" there is an informal meaning, inclusive and strong, but also were less likely to be confused with the other advantages of the English terms, namely, the "canonical" translation of the, also in line with the core concept of this paper.

affected by issues such indicators, thus sum up the two sides to establish mutual trust mechanism, the relevant measures of priorities.

## The mutual trust mechanism

### I. The meaning and types of mutual trust mechanism

The purpose of the mechanism of mutual trust to reduce the hostility and to reduce confrontation and conflict, such as the Organization for Security and Cooperation in Europe (OSCE), ASEAN Regional Forum (ARF) and Asia Pacific Security Cooperation The Council (CSCAP) and so on, are important examples.<sup>1</sup> As to the connotation of mutual-trust mechanism, Ralph A. Cossa believes that the formal and informal mechanisms, including relevant measures aimed at addressing the uncertainties in order to prevent conflict, to reduce the misjudgment and the occasional outbreak of war.<sup>2</sup> Margaret Mason also believes that the trust measures will not only " a cumulative process, a voluntary, self-restraint, and the need to verify the measures."<sup>3</sup> Former Norwegian Defense Minister Johan Jorgen Horst also pointed out that: "the mechanism is to increase mutual trust between the parties on security and military policy, predictability, to achieve the effect of guaranteeing peace with each other."<sup>4</sup> Michael Krepon (The Henry Stimson Center) then said: "The kinds of mutual trust mechanism is to enable the country to reduce mutual hostility and tension with each other, or to avoid the possibility of a tool of war."<sup>5</sup>

Second, the classification on the mutual trust mechanism, according to the former United Nation Secretary-General Boutros Boutros-Ghalib, can be divided into the following five categories,<sup>6</sup> including: information measures (published or the exchange of military power associated and action and other information), communication measures (establish direct communication channels), proximity measures (establish verifiable other side's military activities and information of the channel), notify the measures (Bulletin of military action or exercise), restrictive measures (restrictions on the Special the scale of military action, time, etc.). This Kreponian view that the mechanism should

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<sup>1</sup> Jer-Ming Chang, Li-sheng, "" confidence building measures "concept Retrospect and Prospect", "Strategic and International Studies", Volume 2 No. 1, January 2000, page 2; Malcolm Chalmers, "Openness and Security Policy in Southeast Asia", "Survival, Vol.38, No. 3, Autumn 1996, pp.84-86.

<sup>2</sup> Ralph A. Cossa, "Asia Pacific Confidence and Security Building Measures," in Ralph A. Cossa (ed.), *Asia Pacific Confidence and Security Measures, Significant Issues Series* (Washington D.C.: The Center for Strategic & International Studies), Vol.17, No.3, 1995, p.7.

<sup>3</sup> Margaret (Peggy) Mason, "Confidence Building in the Asia Pacific Region: Prospects and Problems," pp.101-102.

<sup>4</sup> Johan Jorgen Holst, "Confidence- Building Measures: A conceptual Framework," *Survival*, Vol.25, No.1, January/February 1983, p.14.

<sup>5</sup> Michael Krepon, *A Handbook of Confidence-Building Measures for Regional Security*(Washington, D.C.: The Henry L. Stimson Center, 1998).

<sup>6</sup> *Study on Defensive Security Concepts and Policies*(New York: United Nations, 1993), pp.33-35.

include the communication measures, transparency measures, restrictive measures, confirmatory measures of view, quite close.<sup>1</sup> As Kenneth W. Allen have proposed declaratory measures (established market for the declaration of specific issues, including unilateral or bilateral, symbolic and practical meaning, etc.), communication measures (including military exchange and hotline phone settings), marine safety, rescue measures (including the rescue agreement reached in contact with the conduct search and rescue exercises together), restrictive measures (restrictions on the military power associated border areas), transparency measures (with each other and immediately inform the military activities, including the publication of defense white papers, exercise and troops forces beforehand prior notification, exchange of military information, etc.) and verification measures (inspection certificate in the relevant treaties or agreements the two sides of the Convention) and other six types of standards.<sup>2</sup> In summary, this article attempts to declaratory, integrated security, information exchange and transparency, communication, regulatory and other six types of restrictions and verification measures, induction and detection of mutual trust mechanism.

## The meaning of the International Regime

The so-called International Regime, are often mistaken for a similar United Nations and other international organizations, static, or even a world of global governance capacity of government (the relationship shown in Figure 1, Figure 2). In fact, the International Regime of the United Nations and international organizations have a dynamic, interactive relationship, often with different or special because of the question which presents a new look. Stephen D. Krasner thought that the international Regime should be "a set of principles, norms, the rules and decision-making process; on this basis, a particular field of international relations in the conduct of subscribers required similar to the expectations."<sup>3</sup> John G. Ruggie stressed that "the International Regime was accepted by the group of countries, including the mutual expectations, rules, norms, namely, paintings, organizational entities, and financial commitments and a series of concept."<sup>4</sup> In addition, Robert O. Keohane defined the International Regime as "sustained and associated with the set of rules whose purpose is to act the provisions of roles, limiting activity and the formation of expectations"<sup>5</sup>, while stressing its

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<sup>1</sup> Michael Krepon, *A Handbook of Confidence-Building Measures for Regional Security*, pp.15-20.

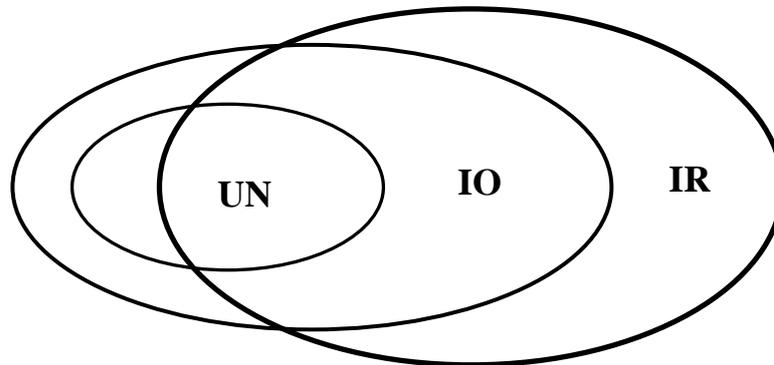
<sup>2</sup> Kenneth W. Allen, "Confidence – Building Measures and the People's Liberation Army," paper presented on International Conference for The PRC's Reforms at Twenty: Retrospect and Prospects, Sponsored by Mainland Affairs Council, Executive Yuan, Sun Yat – sen Graduate Institute of Social Science and Humanities, National Chengchi University, April 8-9, 1999, Taipei, Taiwan, ROC, pp.11-17.

<sup>3</sup> Stephen D. Krasner, ed., *International Regimes* (Ithaca, New York: Cornell University Press, 1983), p.2.

<sup>4</sup> John G. Ruggie, "International Responses to Technology: Concepts and Trends," *International Organization*, Vol. 29, No. 3, Summer 1975, p.570.

<sup>5</sup> Robert O. Keohane, "International Institutions: Two Approaches," *International Studies Quarterly*, Vol. 32, No. 4, December 1988, pp.382-383.

function is to provide information, reduce the miscarriage of justice, reduce interaction costs and increase the credibility of commitments to enhance the transparency of decision-making and create the focus of co-ordination of the provision of dispute resolution venues and so on.<sup>1</sup>



**Figure 1: International Regimes, the United Nations and International Organizations of the relationship between**

Source: author



**Figure 2: International Regimes and global governance of the relationship between**

Source: author

In general, the principles and norms-based international regime are more difficult to change, rules and decision-making process due to the principles and norms in specific, easier to implement them in written form. Furthermore, small areas of regime is under the larger context of canonical principles, norms, rules and decision-making process, the development of its corresponding constituent elements, and large areas of canonical correlation is between the basic principles and most of the specification similarities. However, almost all the international Regime of the number of conflicts within the system are the existence of these contradictions within the system will affect the efficiency of canonical, but also for international canonical open up more room for improvement and research.

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<sup>1</sup> Robert O. Keohane and Lisa L. Martin, "The Promise of Institutional Theory," *International Security*, Vol. 20, No. 1, Summer 1995, p.42.

International Regime of the characteristics of three factors: First, it will enhance the country's willingness to cooperate and change their interests assessment criteria.<sup>1</sup> Second, the Regime will change the way international relations, so that countries are willing to rule through a system to solve the problem.<sup>2</sup> Third, the fact that Regime will form a de facto interest and action inertia, and even through the domestication process, into the internal specifications, to urge the Government or non-governmental organizations recognized the value of their interests and become a strong support system, and maintainer. In addition, the International Regime can also be listed under a number of functions: First, as the international community increased interdependence among countries, the problem areas of activity density (issue density) not only increasing but also help the establishment of canonical on reducing interaction costs.<sup>3</sup> Second, the Regime provides the legal framework can be the basis for a common look forward to interact with the establishment of a national responsibility, to promote beneficial bilateral or multilateral agreements; third, to improve information quality and reducing insecurity, will help Reach Out Consultations space. Finally, as the transparency increases and the establishment of norms, so that members of the inter-action with the predictability and verification of, for good or fulfill their obligations offenders who may also use the system of internal and external pressure on the statute to increase the parties in costs, and thereby force the constraint or modified improper conduct. As Arthur A. Stein's view, the international members of the majority from its own national interests, cost-effective to assess whether to join with the establishment of canonical, can be seen, the international environment affects national interests is an important factor in assessment, decision-makers will inevitably based on the interests of assessment and policy objectives to select the external action.<sup>4</sup>

### **The concept of the legalization of international regime**

The so-called legalization of international regime is a special form of institutionalized, which means with a strong international norm or law, restrain the Government from the decision in different scope of the topic.<sup>5</sup> When the legalization is more robust and rigorous, in the compulsory, accuracy and authorization level is relatively high.<sup>6</sup> In general, the legalization including three essential

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<sup>1</sup> Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, N. J.: Princeton University Press, 1984), pp.98-106.

<sup>2</sup> Lisa I. Martin, "International and Cooperation," *International Security*, Vol. 16, No.4, Spring 1992, pp.143-178.

<sup>3</sup> Robert O. Keohane, "The Demand for International Regimes," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, New York: Cornell University Press, 1983), pp.141-171.

<sup>4</sup> Arthur A. Stein, "Coordination and Collaboration: Regimes in an Anarchic World," in David A. Baldwin, ed., *Neorealism And Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993), pp.48-50.

<sup>5</sup> Judith Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, "Legalization and World Politics," *International Organization*, Vol.54, No.3, Summer 2000, p.386.

<sup>6</sup> *Ibid.*, p.396

elements: one is "obligatory" means the State or other actors are bound by certain rules or commitments; second is the "precision", which is clearly defined State and other actors request, authorized or proposed rules; The third is "delegation", the main emphasis has been authorized by the third sector on how to carry out an interpretation and application of rules and norms, to resolve disputes, or even the further development of other rules.<sup>1</sup> Summing up the above, it is not difficult to find an agreement only by precise norms and clear rules, and the full implementation of the agreement authorized by the third sector in order to oblige states to comply with legal regulations or commitments, in order to build and enhance the extent of the legalization.

In addition to compulsory, accuracy and authorization and other factors, the legalization with the following features:<sup>2</sup> First, though often subject to international or domestic political pressure, informal norms as well as other factors, so that there is ambiguity of the operating space, but it also allowed to show between rigid and flexible specification of the characteristics of mobility. Second, the legalization is usually the presence or hangs in the legal and political, between the two to have the flexibility of a subtle interaction. Third, the legalization is not a settlement of disputes a panacea, nor immutable, it has a complex and diverse nature. Fourth and legal spectrum can be organized from the system to the flexible laws, or even go to the more rigid flexible legalization, there may be as environmental change and the adjustment. Fifth, the legalization can be used as government was forced to deal with sudden shocks or changes in domestic politics when the buffer mechanism, so as to avoid the collapse of the policy or the country's political chaos.

## **The construction of international regime and the legalization**

Accordingly, the mutual trust mechanisms with the International Regime are all aimed at specific issues, through the exchange of two or more parties to reach a special arrangement, aimed at establishing a set of explicit or implicit principles, rules, norms and decision-making process to enhance understanding, confidence-building, to avoid misunderstanding and miscalculation, thereby lowering the potential for conflict purposes. Such mechanisms could include any unilateral, bilateral or multilateral, through the formal negotiations can be gained from the results or informal agreement, there can be or not legally binding force.<sup>3</sup> It is not difficult to find mutual trust mechanism with the International Regime, which were a common purpose in the hope that through formal or informal "declaratory measures" to express their own positions and attempted, and a set of implicit or explicit

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<sup>1</sup> Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International Organization*, Vol. 54, No.3, Summer 2000, p.401.

<sup>2</sup> Ibid., p.664-680.

<sup>3</sup> Lin Wen-cheng, "CCP's position on the confidence-building measures and practices", to close at Hurng-Yu Chen, chief editor of "confidence-building measures in theory and practice" (Taipei: Taiwan Research Institute for Strategic and International Institute, 2001), p. 112.

principles, norms, rules and decision-making procedures, under which the use of integrated security, information exchange and transparency, as well as communicating and agreements and other measures to deal with specific topics in order to reduce the crisis probability, thus achieve the control of and limitations, and inspection and other measures.

While a number of scholars believe that legal argument is too narrow and the lack of theoretical basis, often with only an object for analysis of international treaties, customary law ignores the role of acts of state is too process-oriented structural analysis of the expense of the rule of law, while due to domestic law with the international norms to the rigidity of the legalization or the domestic law, ignoring international norms, the legalization as a flexible classification criteria.<sup>1</sup> However, Keohane and so on still believe that international relations theory and international law is still in dynamic interaction study of the initial development, he hopes that Critics noted that their proposal to examine the structure and pairs of countries to take in accordance with international norms of behavior analysis.<sup>2</sup> In addition, although the international Regime of conduct stressed the voluntary nature of and selective, but still with the legalization as the basis, mainly because: first, the International Regime is the same with the legalization has a rigid or strict norms and the principle of flexible or loose features and advantages made between countries in the formulation of norms, rules, and decision-making procedures, more flexible space. Second, because of the special issues and inter-country norms and rules, often the obligation of each other and accurate degree level will be higher, particularly in decision-making process to obtain the public recognition, while the norms and rules of domestic law so that countries are willing to comply with commitments and obligations. Third, the legalization will contribute to the international cooperation and information transparency, the two sides are willing to abide by the agreement rules, especially in the decision-making process would be to consider the interests of each other's gains and losses, resulting in the two sides are willing to carry out or restrict their own behavior. Fourth, nations, to fight for more benefits and security, is willing to negotiate and establish a system, and try to avoid the recourse to force, so that they have encountered to recognize that the legalization will help to achieve mutual goals. Fifth, the interest of inter-State disputes or promise of supervision, often due to lack of neutrality or power arbitration or to join, resulting in two one-sided breach of contract. Therefore, delegation of authority to the third sector or by a third party to join, to resolve disputes and to limit the conflict generation, will help monitor the two sides to fulfill obligations and commitments; sixth, by assessing both internal and external national interests, cost-effectiveness, its emphasis on mutual reciprocity.

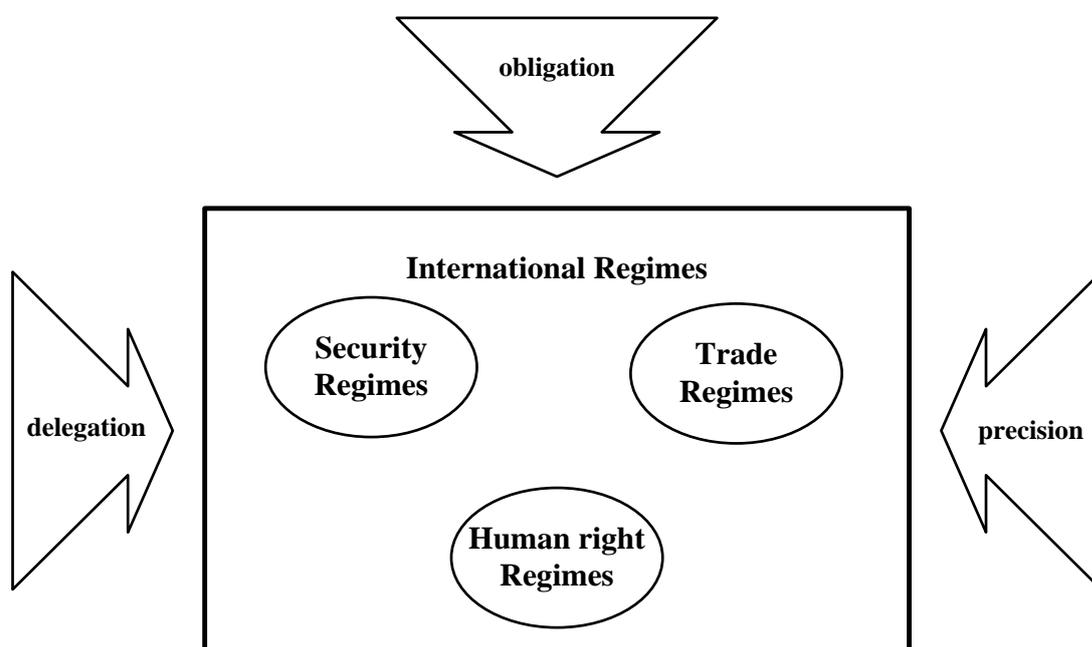
Among international relations theories, it is necessary to establish a general theory. In order to cover all topics under the premise, we have also only from the particular scope of the issue-area approach to the establishment of an appropriate analytical framework. And so, the

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<sup>1</sup> Martha Finnemore and Stephen J. Toope, "Alternatives to 'Legalization': Richer Views of Law and Politics," *International Organization*, Vol.55, No.3, Summer 2001, pp.743-758.

<sup>2</sup> Judith Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, "Response to Finnemore and Toope," *International Organization*, Vol.55, No.3, Summer 2001, pp.759-760.

author hopes to unite the international canonical and legal relevance, and countries have to comply with international norms. "Compulsory" is clearly defined and related to the "accuracy" and "authorized" to deal with the third sector, as the cross-strait leaders wish to establish mutual trust mechanism to validate the legalization of the magnitude of the measure. It is worth emphasizing that the international community frequently due to the different scope of the question, they produce different principles. And can these different principles, norms, rules and decision-making procedures be implemented? Especially when in conflict with national interests, or subject to domestic political pressure, the operation will often show the condition of ambiguous loss of accuracy, resulting in higher than the domestic law of the parties set agreement. Therefore, the International Regime is the main characteristic of complementary and legalization construction of theoretical model, and will help to clarify the relevant issues (see Figure 3).



**Figure 3: "International Regime of the - the legalization" model**  
**Source: author**

### **I The principle of the rule of law: compulsory, precision and authority**

First, the "obligation" refers to oblige states and other subjects of law, the legality of laws and regulations must comply with the obligations and commitments, but unrelated to mandatory, ritual or moral obligations, which aims to create legal obligations through a norms and procedures discussed in the form of international institutional system.<sup>1</sup> The extent of the obligation and the level of principles is described in Table 1.

<sup>1</sup> Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International Organization*, Vol. 54, No.3, Summer 2000, pp.408-409.



**Table 1: the principle of degree of obligation**

Low Level	Principles	Explained
High ↓	The principle of the obligation, without exception	Legally binding language, or other indicators of political treaties; Metaphor condition of the obligation
	State a clear obligation to retain the principle	Strain obligations; escape clause
Low	Obligation to advise	
	No legal authority to develop norms	Advice and guidance
	Explicitly refused to legally binding	

Source: Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International Organization*, Vol.54, No.3, Summer 2000, p.410.

Second, "precision" means that a reasonable explanation would be to narrow the scope of its features include: Accurate and does not ambiguous laws and regulations, while not produce conflicts between the laws and regulations, can be explained one by one; accuracy is most important feature of the law, but also its equivalent to a rational point of view and have the force of the fundamental elements of the meaning of the source; the more the form of a normative account of laws and regulations prior decision to conduct the less acceptable; more standard format with a description of the more likely after the decision; precise and careful consideration for the legalization reached the international level, has a special and meaningful quality guarantee.<sup>1</sup> With regard to precision and the level of principles is shown in Table 2.

**Table 2: the principle of precision**

Low Level	Principles	Explained
High ↓	Key laws and regulations	A narrow interpretation of the subject
	But because of the interpretation of substantive issues	
	The broad scope of action	
Low	Standardization	For special circumstances of the referential meaning.
	Can not decide whether to obey the guidelines	

Source: Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International*

<sup>1</sup> Ibid., pp.412-415.

Finally, the “delegation” refers to the state and other actors, designated as the representative of the third sector to implement the agreements, these representatives, including courts, arbitrators and behavior of organizations.<sup>1</sup> Its features include: representatives are given the right interpretation of laws and regulations with the implementation of "dispute handling mechanisms," they will be under the principle of international law and regulations applied to the actual incident; when the members agreed to a binding decision of the third sector, the "Dispute Resolution Mechanism" would have a high degree of legitimacy and justification; in relation to members of the whether to accept or reject the non-legitimate political bargaining, a representative of the legality would be smaller.<sup>2</sup> Lead to "dispute resolution" and "make laws and implement" produce different levels of the principle of authority, please refer to table 3, 4 below.

**Table 3: "dispute resolution" of the delegation level**

Low Level	Principles	Explained
High ↓	Court	1. General jurisdiction 2. Private direct access 3. To explain the regulations and supplementary regulations 4. Domestic jurisdiction
	Court	Jurisdiction, restrictions on access or regulatory authority with both sides agreed to set up.
	Binding arbiter	
Low	A non-binding arbiter	
	Reconciliation, co-ordination	
	System of bargaining	
	Purely political bargaining	

Source: Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International Organization*, Vol.54, No.3, Summer 2000, p.416.

<sup>1</sup> *Ibid.*, p.415.

<sup>2</sup> *Ibid.*, pp.415-418.

**Table 4: "make laws and implement" the principles of the delegation level**

Low Level	Principles	Explained
High ↓	Binding rules	Central coercive power
	Agreed with the withdrawal of the binding rules	
	Binding internal policy	Removal of the legitimacy of the central coercive power
	Equivalent to the standard	
Low	The drafting of the Convention	Observation and open
	Advice	Not to public observation
	Normative statement	
	Consultative Forum	

Source: Kenneth W. Abbott, Robert O. Keohane, and Anne-Marie Slaughter, "The Concept of Legalization," *International Organization*, Vol.54, No.3, Summer 2000, p.416.

## II Cross-strait mutual trust mechanism of the development of the current situation

1979 "Message to Compatriots in Taiwan" in the first time put forward the "peaceful reunification and one country two systems" in Taiwan policy document can be regarded as a unilateral declaration of measures the Chinese Communists. However, more than ten years later, our view of the international situation and domestic changes in the environment. In 1991, "National Unification Guidelines" explicitly states that "the two sides should renounce their hostile attitude," aims to establish channels of communication and so on, and announced the termination of Communist Rebellion time to show Taiwan's sincerity in the cessation of hostilities.<sup>33</sup> Although both sides claimed each policy document, but the CPC has always responded to a single concept of sovereignty, but limited to a unilateral declaration of measures, but they are aimed at building Taiwan the cross-strait mutual trust mechanism to show the initial goodwill.<sup>1</sup> Into words, precisely because of the CPC stressed the importance of "one China" build a mechanism on the basis of a framework for consultation, so far the two sides still can not through official government channels only to the SEF and the ARATS of the quasi-official bodies as the first consultation and negotiation the third sector. The cross-strait mutual trust mechanisms measures summarized as follows:

### (A) declaratory measures

Since the cross-strait political and military interaction little, coupled with weak mutual trust, so that both sides use many unilateral declarations. For example, in the eve of Spring Festival 1995, Jiang Zemin's "Jiang's Eight Points", referred to "uphold the one China principle is the realization of

1 Mainland Affairs Council, "China Policy and Cross-Strait Relations Answers", <[http : //www.mac.gov.tw](http://www.mac.gov.tw)>

the basis and premise for peaceful reunification."<sup>1</sup> In 2000, a five-week annual forum related "Jiang's Eight Points," then Deputy General Manager Qian Qichen, and Central Committee's Taiwan Work Office director Chen Yunlin both re-emphasized that any cross-strait dialogue should be based on "One China" ground.<sup>2</sup> In September 2000, then Taiwan Affairs Office spokesman Zhang Mingqing also declared that China's Taiwan policy will continue to adhere to the "peaceful reunification," "one country, two systems" principle and "Jiang's Eight Points" proposition.<sup>3</sup> As for the Chinese New Year gathering in 2001, Zhu Rongji also reiterated the implementation of "peaceful reunification and one country two systems" basic principles and "Jiang's Eight Points" and insisted on "one China" based on the promotion of cross-strait negotiations.<sup>4</sup> It is noteworthy that although the CCP's Taiwan policy showing a significant consistency in comparison to the past hard-line attitude, aka. "Taiwan is one part of the People's Republic of China," then turned to the people of Taiwan with the international community demands flexibility. For example, in September 2001, Qian Qichen, declared that the so-called "new syllogism,"<sup>5</sup> published in 2004, and Hu Jintao's "517 Statement" for the first time called for "cross-strait formal end of hostilities, the establishment of military mutual trust mechanism" This attitude also seen in 2004 China's defense white paper. In 2007, Hu Jintao declared the "17th session of the People's Assembly" report, also called for "one-China principle on the basis of consultations, officially ending the state of hostility and reach cross-strait peace agreement was signed. Construction of cross-strait peace and development framework creates new prospects for the peaceful development of cross-strait relations."<sup>6</sup> On the international front, President Hu Jintao in 2008 talks with U.S. President George W. Bush's first public initiative in the "92 consensus" to resume cross-strait consultations on the basis of no longer emphasized that "one China."<sup>7</sup> In this regard, the Taiwan Affairs Office Director Wang Yi in 2009 also pointed out that the cross-strait impasse can be not first developed common ground by scholars, but also the exchange of ex-servicemen from the two sides started military contacts.<sup>8</sup>

In contrast, the Taiwan side has always insisted that "prosperity and mutual benefit" as the

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1 "People's Daily", January 31, 1995, page of 1; the Executive Yuan's Mainland Affairs Council series, "CCP President Jiang Zemin issued a New Year tea party to promote the reunification of the motherland 完成祖国统一大业是重要任务" Speech is a collection of "reference work on the mainland consolidated (Volume II, China's Taiwan Policy important statements and documents) "(Taipei: Mainland Affairs Council issued in 1998), pp 365-372;" the United Daily News ", January 31, 1995 , version 2.

2 "Wen Wei Po", January 30, 2000, page of 3.

3 Wang Chuo-chung, the "CCP's Taiwan Affairs Office: The key issue is the cross-strait unification and independence struggle, reiterated its adherence to" one, the new syllogism, "", "China Times", September 6, 2000, version A13.

4 "Zhu Rongji: The one in the basis of cross-strait negotiations", "China Times", January 24, 2001, version A13.

5 The so-called "new syllogism", that is, "There is only one China, the mainland and Taiwan belong to one China, and China's sovereignty and territorial integrity brook no division," please see: Qi Yue Yi, "Hu will not even reach five all agree, the termination of hostilities as soon as possible resumption of talks", "China Times", September 11, 2001.

6 Wang Mingyi, Zhu Jianling, Linke Lun, "the report addressed to Hu Jintao, 17 consultations to promote talks to end hostilities", "China Times", October 16, 2007, page of A3.

7 Wang Mingyi, "did not mention a good response in Beijing", "China Times", May 23, 2008, page of A4.

8 "Wang Yi, Taiwan to join the WHA: cautiously optimistic", "China Times", March 12, 2009, version A13.

base. For example, the repeal of "Period of Communist Rebellion Temporary Provisions" in 1991 indicated that Taiwan government did not deny the China Community Party as a political entity.<sup>1</sup> Koo-Wang talks in 1993 and the follow-up consultations agreed to "one China, respective interpretations" approach proclaimed the status quo.<sup>2</sup> In 1995, President Lee Teng-hui provided "Lee 6 items" in reference to "the reality of the two sides divided the pursuit of the reunification of China."<sup>3</sup> In 1998, then Premier Vincent Siew said that the cross-strait relations of the status quo and future development in favor of military exercises and Beijing to exchange information builds up mutual trust mechanism to avoid miscalculation and war breaks out, and to maintain the cross-strait peace and stability in the Asia-Pacific region.<sup>4</sup> Although this period because of the "Taiwan Strait crisis" and "two states initiative" so that cross-strait interaction at a low ebb, but the 1998 Koo-Wang talks restarted the basis of mutual trust to continue to make to fix. It is worth mentioning that the military has changed the attitude of the previous non-contact that the two sides should establish an early warning mechanism to reduce the military misunderstandings or conflicts. In addition, President Lee also said that in April 1999, hoping to establish cross-strait peace and stability mechanism and the OSCE conference planning made four important policy statements.<sup>5</sup>

Although the Democratic Progressive Party take power in 2000, in order to reduce the PRC toward Taiwan independence concerns, and to avoid tension and confrontation across the Taiwan Strait into the situation, but also advocated the establishment of mutual trust mechanism to resolve the dilemma. For example, President Chen Shui-bian in his inaugural press conference one month when they said he hoped cross-strait leaders can like the South and North Korea to "shake hands."<sup>6</sup> Then Premier Tang Fei emphasized on the basis of mutual respect and willingness to promote cross-strait exchanges and comprehensive dialogue; then Defense Minister Wu Shih-wen also pointed out that the Ministry of Defense will depend on the government cross-strait policy, and gradually promote the establishment of "mutual trust mechanism."<sup>7</sup> However, during president Chen

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1 Executive Yuan's Mainland Affairs Council series, "national unity Agenda", included in the "consolidated reference work on the mainland (the first book an important mainland policy statement and documents)" (Taipei: Mainland Affairs Council issued in 1998), pp 13 -- 15.

2 The follow-up in the first Koo-Wang meeting, the two sides for the "one China" respective interpretations, in fact, there are considerable differences, such as the CPC advocated the partition of China; while Taiwan is a divided China as the proposition two those for the meaning of sovereignty there is a big difference.

3 "Central Daily", April 9, 1995, page 2.

4 "United Daily News," April 18, 1998, page of 1.

5 Declared as follows: Welcome to ARATS Chairman Wang to visit in 1998 continuation of constructive dialogue, so as to promote cross-strait leaders. Should be institutionalized as soon as possible to resume negotiations in order to solve the problems arising from bilateral exchanges, and gradually establish a mechanism of cross-strait peace and stability. Expanding cross-strait exchanges and cooperation projects and the scope of the accumulated trust and seek mutual benefits. Narrowing the development gap between the two sides to promote cross-strait integration. Only in mainland China as soon as possible to complete the social pluralism and political democratization, in order for the two sides in a democratic and free basis, more attention to the future development of consensus. "United Daily News", April 9, 1999, page of 1.

6 "Central Daily", June 21, 2000, page of 1.

7 "China Times", October 16, 2000, page of 4.

Shui-bian's tenure, the Chinese Communists are basically still "listening to his words and watch his deeds" principle in handling cross-strait relations. The cross-strait relation did not get breakthrough until 2008. "Lien-Hu Meeting" in 2005 stressed that "the two sides in the 92 to resume negotiations on the basis of consensus and, ultimately, officially ending the state of hostility, the signing of a peace agreement," with the implementation of the consensus of opportunities.<sup>1</sup>

### **(B) Comprehensive safety measures**

With the increasingly frequent cross-strait sea transport, building official or private rescue mechanism and the contact is not only necessary, it in fact has become easier in recent years, the two sides reached a mutual trust measures. For example, in 1995 China Search and Rescue Association, under the Ministry of Communications in Beijing, China Maritime Search and Rescue Center to reach and rescue at sea, "Message Alert" is a tacit understanding with the China Maritime Search and Rescue Center, China's civil aviation search and rescue center, as well as Shanghai, Guangzhou, Fuzhou, Xiamen, Shantou and other marine stations to establish a 24-hour rescue hotline contact channels, cross-strait civilian rescue agencies and in November 1997 signed an agreement together and set up a hotline.<sup>2</sup> However, due to lack of political trust, the two sides continue to be held until October 2008, "Kinmen-Xiamen mini three links, joint maritime search and rescue exercise" before the two sides from the exchanges and contacts developed to the stage of confidence-building collaboration.<sup>3</sup>

### **(C) information exchange and transparency measures**

Since 1992, Taiwan Defense Department has published eight "National Defense Reports." Of these, the 2002 version for the first time the "establishment of cross-strait military mutual trust mechanism" as an important chapter, and pointed out that the initial information from the defense and implementation of an open sea rescue began with the ultimate goal in the signing of a peace agreement to end hostilities.<sup>4</sup> In 2008, the Defense Department announced the establishment of cross-strait military mutual trust mechanism, targets at this stage, short-term aspect is promoting unofficial contacts, giving priority to issues including the publication of National Defense Report, pre-notice exercises to ensure that no first attack, take the initiative to Strait released regime of conduct, and mid-range is to promote the official contacts, reducing hostility, prevent military misjudgment, long-range goal is to ensure that cross-Straits peace.<sup>5</sup> What is more, since 1997, Taiwan

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1 "Hu will not even reach five all agree, the termination of hostilities as soon as possible to resume talks", "United Daily News," April 30, 2005, page 2.

2 "Search and rescue exercise for military mutual trust, has taken the first step", "China Times", February 23, 2009, page of A8.

3 Qi Yue Yi, Li Jinsheng, "Kinmen-Xiamen sea area and rescue the two sides out joint exercises", "China Times", October 22, 2008, version A11

4 Lude Yun, "I baked new Defense White Paper Calls for the establishment of cross-strait military mutual trust mechanism", "United Daily News," July 24, 2002, page of 4.

5 Shang-yi-fu, Wang Guangci, "to promote cross-strait military trust and unofficial contacts", "United Daily News," June 4, 2008, page of A4.

Han Kuang Exercises will be in the previous manner prior to the press release explain the nature and purpose of the exercise.<sup>1</sup> On the other hand, the PRC published the first "China's arms control and disarmament white paper in 1995, and published continuous during 1998-2008."<sup>2</sup> In particular the 2004 version White Paper, for the first time the "confidence-building measures" was taking account, furthermore, in the first part of 2008 version White Paper, "security situation" also pointed out that the "92 consensus" on the basis of common political resume negotiations and progress in cross-strait relations have been the improvement and development.<sup>3</sup>

#### **(D) communicative measures**

In 1991, China and Taiwan have set up the SEF and the ARATS separately, as they gave consultations and negotiations intermediaries; listed in Singapore has gone through in 1993, "Koo-Wang Talks," Beijing 1994 "Chiao-Tang talks" and the 2008 Taipei, "Jiang Chen talks." They dealt with the consultation mode, repatriation, mutual legal assistance, postal, trade and shipping, etc., and created good results on specific topics. Worse still, only two meetings in 1993 and signed a "deputy heads, the Secretary-General meet once every six months, the Deputy Secretary-General and Director-level on a quarterly basis to meet an" agreement in the next two visits will exceed that density should be agreed upon. SEF Chairman Chiang Pin-kung also said the two organizations have agreed to establish three levels of communication mechanism (i.e. Chairman of president, vice-chairman of the vice president, and Deputy Secretary-General level), compared to the past, only an "emergency contact Line", which is rare since the cross-strait exchanges,<sup>4</sup> is obviously a more institutionalized interaction. In addition, Taiwan's experts and scholars to participate in their personal capacity are usually of the Asia-Pacific Security Cooperation Council,<sup>5</sup> with China and other countries to discuss relevant security issues.<sup>6</sup> Thus, the two sides at this stage although the lack of contact with the first track, but the second track is also after all the promotion of non-official channels of communication approach.

#### **(E) regulatory measures**

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- 1 "Military exercises should have a greater pattern of thinking", "China Times", June 24, 1997, editorial.
  - 2 He Jingping, "CCP's national defense white paper / disarmament section of the half a million Chinese disarmament task is completed", "United Daily News," October 17, 2000, page of 13.
  - 3 Wang Li-chuan, "2008 China's Defense White Paper: Taiwan a" limited "military deployment in accordance with the situation to adjust", "United Daily News", January 21, 2009, version A11.
  - 4 Zhi-De Li, "Mainland Affairs Council, a senior official:" Interactive two more intensive than ever, "", "United Daily News," June 15, 2008, page of A2.
  - 5 The Asia-Pacific Security Cooperation Council, the purpose of the establishment is open to all countries within the Asia-Pacific region to participate, but because the Chinese Communists made no efforts to block Taiwan's exclusion from the outside, but in our country are trying to get and protests, China agreed to Taiwan's non-official experts and scholars from way of a private citizen to participate in the working group discussions.
  - 6 Kenneth W. Aellen, "Military Confidence-Building Measures Across the Taiwan Strait," A paper prepared for the Conference on Building New Bridges for a New Millennium, (Sponsored by The Public Policy Institute Southern Illinois University, December 6-7, 1998), p.7.

Across the Taiwan Strait after the signing of the first government-authorized private agreement, the two sides signed in 1990, Red Cross, "Kinmen agreement" aimed at the repatriation of illegal immigrants in the settlement of the issue. Subsequently, the 1993 Koo-Wang talks continue to sign the document verification, e-mail compensation, two personnel exchanges, Koo-Wang talks and other four agreements, which also resolved the substantive exchanges between people on both sides of the issue. As for the four agreements signed in 2008, including air, sea, postal service, food safety, a new milestone has been set in cross-strait relations.<sup>1</sup> Second, in 1997, cross-strait navigation administration officials and shipping companies in Hong Kong talks, the two sides agreed to review the time required, and in April the successful launch of a pilot fixed-point direct flights, showing the two sides to promote cross-strait direct links have been according to schedule carried out smoothly,<sup>2</sup> As for the end of 2002 Spring Festival charter flights for Taiwanese businessmen take place indirectly, more symbolic meaning.<sup>3</sup> In addition, the two sides over the years has been the acquiescence of the "Straits middle", and as Aaron suggested, the two sides established the Air Force has long been a kind of voluntary restrictions;<sup>4</sup> but without a formal joint agreement to provide air and regime of conduct maritime military experience is still impossible to implement and constraints each other.

#### **(F) limits and verification measures**

Since 1990, the parties authorized by both governments for the implementation of the Red Cross repatriation operation in matters relating to the signing of the sea "Kinmen Agreement," even though in succession in April 1993 the signing of the first Koo-Wang talks in the "two sides of public use of the certificate verification agreement", "cross-strait registered mail Look compensation agreement," "two systems of contact and talks agreement," "Koo-Wang talks mutual agreement," etc., but for documents served to investigate the evidence, examination of witnesses, such as mutual legal assistance to help summoned, but it has not reached an agreement resulted in the PRC does not recognize Taiwan as the effectiveness of judicial decisions, resulting in the formation of judicial proceedings gap.<sup>5</sup> The "cross-strait financial cooperation framework agreement," "cross-strait air

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1 Related agreements as "the public use of the certificate to verify the cross-strait agreement", "cross-strait registered mail inquiries, compensation agreement", "two systems of contact and talks agreement", "Koo-Wang talks mutual agreement", "cross-strait financial cooperation framework agreement," " Air regular flights across the Taiwan Strait agreement "" cross-strait common fight against crime and mutual legal assistance agreement "such as the signing of the consultation paper.

2 Lai Jin-hong, GUO Jin-ping, "cross-strait direct flights designated by the five airmen out of line", "United Daily News," April 3, 1997, page of 9.

3 Chen Chung-shen, "direct charter flights to pay department: three cities outside Shanghai to Case-based technology assessment also OK to stop down a third open Hong Kong and Macao is not a problem for a month or ten days ago, but the fare will not be cheaper", "China Times" , November 14, 2002, page 2.

4 According to November 29, 1998 the Tze-lih Evening Post, in 1958 air war across the Taiwan Strait after Taiwan's Air Force in peacetime in the implementation of tasks, always 30 nautical miles from the mainland coast flight; PRC side of coastline along its flight, the invisible maintain a center line in the Strait.

5 Yang Su-min, China ", and announced the recognition of the reciprocal enforcement of judgments in civil side effect", "China Times", May 27, 1998.

scheduled flights agreement" "cross-strait common fight against crime and mutual legal assistance agreements" as an agreement signed in the third Jiang-Chen Talks,<sup>1</sup> then in essence, a mechanism for mutual trust and lay the legalization foundation. It is worth mentioning that the "joint fight against crime and mutual legal assistance agreement," will be incorporated into "prisoner exchange" clause also signed at the same time. In the future, if a Taiwan prisoners were sentenced in mainland China, the only thing to do is to meet the provisions of cross-strait justice, and the torture consent can be exchanged with each other inmates,<sup>2</sup> thereby will promote cross-strait mutual legal assistance in the implementation of the legalization.

### III The legalization of cross-strait mutual trust mechanism

Next, author will further the use of basic elements of the legalization as a criterion to validate the two sides have signed a political declaration with the relevant norms in order to understand the current situation and future cross-strait development. First obligation is concerned, the talks with Jiang Chen-level consultations with the other two sides "comprehensive security measures" and "communication measures" the degree of institutionalization and the rule of law has increased dramatically. For example, maritime search and rescue messages from the past inform the present, by mutual agreement has been signed to establish hotlines and consultation exercises on a regular basis. Secondly, in the resumption of communication between the two organizations, the current cross-strait negotiations already have a multi-level and multi-manner, for example, only two agreed that in the past an "emergency contact line," expanded to three-link mechanism. In addition, in the past because of the dispute over sovereignty to obstruct Taiwan's internal political situation and the constraints, so that both sides in the "declarative", "regulatory" and "limitations and verification" of such measures as the degree of the rule of law is very low, with the high-level cross-strait political change and thinking changes, coupled with increasingly frequent exchanges, resulting in a marked progress in cross-strait relations; for example, the Chinese Communists in the "517 Declaration" and "17 Great" report are expressed in good faith, and even the "92 consensus" instead of "one China" the principle of hope "to build mutual trust, shelve disputes, seek common ground, to create a win-win" in the "control measures" and "limits and verification measures." Jiang Chen talks are also due to sign an agreement and let the legalization, the degree of greatly improved. It is worth mentioning that the "information exchange and transparency measures" were involved to more sensitive political issues and lack of mutual trust between the military and therefore a lower degree of the rule of law.

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1The main contents of the Nanjing talks: The two sides agreed to mutual recognition and enforcement of judicial decisions in civil and arbitration awards; the financial sector agreed to expedite the commercial financial institutions to each other's bodies; cross-strait civil aviation department also agreed to convert the cross-strait direct charter flights on a regular basis and to expand the cross-strait routes and destinations. Please refer to Wang Mingyi, Ming-Chieh Wu, "Jiang Nanjing agreement: a classical variable Chen: produce results", "China Times", April 26, 2009, page of A3.

2 Liu Shang-yun, "for prisoners Taiwan may be the first repatriation of the crew of smuggling", "China Times", May 11, 2009, page of A12.

Second, in precision, "Information exchange and transparency measures" to prevent illegal immigrants, except in the exchange of information on issues of crime hotline, co-operation with foreign, and military topics is still acting in an official publication of information-based instruments, which shows that the accuracy is still high. It is noteworthy that, since the Chinese political negotiations will be the bottom line from "one-China principle" to "92 Consensus", in this "creative room for ambiguity" and "common ground" approach, under a possible future for cross-strait political negotiations under the foundation. In this way, "regulatory" and "limitations and inspection" of measures also improves the accuracy compared to the past; for example, Kinmen and Matsu repatriation operation and mutual legal assistance "for prisoners clause." As for the "comprehensive security measures" and "communicative measures" while the accuracy of rescue units and private efforts to increase the number of two contacts and talks, is proportional to the relevant rules and provisions of which is the more specific and detailed sound, consultation levels and channels are also more clearly and diversity; for example, in 1995, hotline set up in 1997, rescue co-signed agreements and a joint search and rescue exercise today can be proved.

Finally, delegation of the third sector or arbitration institutions, the relevant "information exchange and transparency measures" are mostly related to military topics, in order to ensure Taiwan's security, before the signing of a final peace agreement before the end, it seems inappropriate for the exchange of unofficial or second track. It is worth mentioning that in recent years the Chinese Communists in the establishment of military mutual trust mechanism, seems to be more a goodwill response, for example, Wang pointed out that in 2009, the two sides could be the first to carry out military and security mutual trust mechanism for academic exchanges, but also the exchange of ex-servicemen from the two sides started the military contact. Compared with other confidence measures, such as cross-strait notary verification, trade, investment, aviation rights, financial cooperation, mutual legal assistance, and related cross-strait affairs, at present, the two governments are fully authorized by the SEF and the ARATS negotiation, so higher levels of authority (The degree of development of the rule of law See Table 5).

**Table 5: Cross-strait confidence-building mechanisms and legal status of the degree of**

Types of measures	Obligations	Precisions	Delegations	The status of cross-strait mutual trust mechanism
Declaratory measures	M	L	M	<p>☆ the PRC:</p> <ol style="list-style-type: none"> <li>1. 1995, Jiang said: "In upholding the one China principle is the realization of the basis and premise for peaceful reunification." And suggested the two sides on the "officially ending the state of hostility, and gradually realizing peaceful reunification," to be negotiated.</li> <li>2. September, 2001, Qian for the first time and declared the new position of syllogism.</li> <li>3. 2004-year in May's "517 Declaration" first put forward the "formal end of hostilities, the establishment of military mutual trust mechanism" appeal.</li> <li>4. October, 2007, in Hu Jintao, 17 major reports called for "consultations, officially ending the state of hostility and reach cross-strait peace agreement was signed, to build cross-strait peace and development framework."</li> <li>5. March, 2008, in President Hu Jintao during a telephone conversation with Bush's first public initiative in the "92 Consensus", based on cross-strait consultations and negotiations to resume.</li> <li>6. October, 2008, in Wang stressed that "the establishment of mutual trust, shelve disputes, seek common ground, to create a win-win."</li> </ol> <p>☆ Taiwan:</p> <ol style="list-style-type: none"> <li>1. 1991 Period of Communist Rebellion was abolished the Temporary Provisions.</li> <li>2. 1993 "The Koo-Wang talks" and agree to the "one China, respective interpretations" method declaration.</li> <li>3. 1995, President Lee Teng-reference to "the reality of cross-strait divided the pursuit of China's reunification."</li> <li>4. April, 1998 in Japan, Siew said: "From the cross-strait relations as a whole in terms of the status quo and future development in favor of military exercises and Beijing to exchange information, build up mutual trust mechanism to avoid miscalculation and war breaks out."</li> <li>5. October, 1998, in the Mainland Affairs Council Chairman Chang King-yuh stress that the Koo-Wang meeting was to re-start cross-strait relations a key step in, you can for the resumption of institutionalized cross-strait negotiations as well as two higher-level communication and dialogue with that goal.</li> <li>6. April, 1999, in the National Reunification Council chaired by President Lee Teng-hui, hoping to establish cross-strait peace and stability mechanism, refer to the OSCE meeting planning.</li> <li>7. 2000, Chen Shui-bian hopes people can like the South</li> </ol>

				<p>and North Korea leaders to "shake hands."</p> <p>8.2000 , Tang stressed that on the basis of mutual respect and willingness to promote cross-strait exchanges and comprehensive dialogue, progressive step by step to promote cross-strait "mutual trust mechanism" is established.</p>
<b>Comprehensive security measures</b>	<b>H</b>	<b>H</b>	<b>H</b>	<p>1.1995 Search and Rescue Association in Beijing with China, "China Maritime Search and Rescue Center" (under the Ministry of Communications), to achieve cross-strait sea rescue, "Message Alert" is a tacit understanding with the mainland "China Maritime Search and Rescue Center", "China Civil Aviation Search and Rescue Center", as well as Shanghai, Guangzhou , Fuzhou, Xiamen, Shantou and other marine rescue base (stations), the establishment of a 24-hour rescue hotline contact channels.</p> <p>2. November, 1997, the two sides of the non-governmental rescue organizations such as the China Relief Association in Taipei and the mainland of China Maritime Rescue Center, co-sign an agreement and set up a hotline.</p> <p>3. October 23, 2008, at the "Kinmen-Xiamen mini three links, joint maritime search and rescue exercise," and create promoted by the people, the Government agreed, and the people benefit of the win-win situation.</p>
<b>Information exchange and transparency measures</b>	<b>L</b>	<b>L</b>	<b>L</b>	<p>☆ Taiwan:</p> <p>1. China's Ministry of Defense since 1992 has published eight "National Defense Report", which in 2002 a new version of "National Defense Report," for the first time the "establishment of cross-strait military mutual trust mechanism" as an important chapter.</p> <p>2. June, 2008, in the Ministry of Defense announced that it will build cross-strait military mutual trust mechanism</p>

				<p>and the process is divided into short-, medium-and long-range three-phase.</p> <p>3. Since 1997 our government's Han Kuang exercises in the previous pre-release that is the way to illustrate the nature and purpose of the exercise and warned ships and aircraft should avoid exercise areas.</p> <p>4. In the prevention of crime, illegal immigrants across the Taiwan Strait issue, the Coast Guard Administration and the Fujian border, Marine Corps has established a hotline for bilateral cooperation channels and enhance cooperation.</p> <p>☆ the PRC:</p> <p>1.1995 promulgated in the first "China's arms control and disarmament," White Paper.</p> <p>2.1998-2008 years, more than published "China's national defense" white paper.</p> <p>3. "2004 China's National Defense White Paper" for the first time the "confidence building measures" into the 2008 page of the White Paper pointed out that the two sides in the "92 consensus" on the basis of common political resume negotiations and progress in cross-strait relations have improved and developed.</p> <p>4. March, 2009, in Wang Yi that the two sides can first be experts and scholars have yet to unify the country before the political relations and military security and mutual trust mechanism, to carry out academic exchanges, but also the exchange of ex-servicemen from the two sides started the cross-strait military issues contact.</p>
<p><b>Communication measures</b></p>	<p><b>H</b></p>	<p><b>H</b></p>	<p><b>H</b></p>	<p>1.1991, the two sides set up the SEF and the ARATS, as authorized by the two governments negotiated and intermediaries.</p> <p>2.1993, in Singapore, "Koo-Wang Talks," Beijing 1994 "Chiao-Tang talks" as well as the 2008 Taipei, "Jiang Chen Talks", in consultation mode, repatriation, mutual legal assistance, postal, trade and navigation are the specific issues to obtain significant results.</p> <p>3.1993, the signing of Koo-Wang talks, "the deputy head of the Secretary-General meet once every six months; Deputy Secretary-General and Director-level on a quarterly basis to meet again."</p> <p>4. The two sides agreed to set up two three-level contact mechanism: the chairman of the president, vice-chairman of the vice president, and Deputy Secretary-General level, is rarely seen since the cross-strait exchanges.</p> <p>5. Taiwan experts and scholars to participate in their personal capacity, the Asia-Pacific Security Cooperation Council.</p> <p>6. Although the Chinese Communists against Taiwan's</p>

				<p>participation in various military forum, through the U.S. National Defense University (NDU) with China Center for Strategic and International Studies (CISS) research plan, Taiwan's national security experts and retired military officials, have the opportunity to discuss.</p>
<b>Regulatory measures</b>	<b>M</b>	<b>M</b>	<b>H</b>	<p>1.1990, Red Cross is authorized the signing of the "Kinmen Agreement" to address the issue of repatriation of illegal immigrants.</p> <p>2.1993 , Koo-Wang talks to sign "two sides of public use of the certificate verification protocol," "cross-strait registered mail inquiries, compensation agreement", "two systems of contact and talks agreement", "Koo-Wang talks mutual agreement" and other four agreements.</p> <p>3. January, 1997, in cross-strait navigation administration officials and shipping companies in Hong Kong talks, the two sides agreed to review the time required, and in April the successful launch of a pilot fixed-point direct flights.</p> <p>4. November, 2002, in the Executive Yuan agreed that Taiwan businessmen in mainland Chinese New Year indirect charter flights, but airlines are required to apply in advance.</p> <p>5. The two sides the Air Force has established a voluntary restrictions, and on for years.</p>
<b>Limits and verification measures</b>	<b>M</b>	<b>M</b>	<b>H</b>	<p>1.September, 1990, both sides Red Cross is authorized for the implementation of the repatriation operation, the signing of the sea "Kinmen Agreement", there are regular implementation of the repatriation operation.</p> <p>2.2008 talks on the Third-Jiang Chen signed a "Cross-Strait financial cooperation framework agreement", "cross-strait air scheduled flights agreement", "Cross-Strait joint fight against crime and mutual legal assistance agreement", "Jiang Chen consensus" and other documents.</p> <p>3. Aforementioned "common fight against crime and mutual legal assistance agreement", will be incorporated into "prisoner exchange" clause, the future of crime in the mainland Chinese people have been sentenced, and only needs to meet the provisions of both the judiciary and torture the parties have agreed can be exchanged with each other inmates.</p>

1. Note: (1) to "H" on behalf of a high level; (2) to "M" level representatives; (3) to "L" on behalf of low-level.

2. Source: author

From the actual development of cross-strait interaction over the years of view, in 2008, after ruling party in Taiwan, China to show goodwill, has to restart the negotiations and the signing of two diverse and multi-level communication channels, so that regular meetings be institutionalized so that the "communicative measures" significantly improve the legalization; as less politically sensitive" comprehensive security measures "has been receiving a higher degree of mutual trust mechanism, and so far the two sides to establish mutual trust mechanism easier to start area. Second, the current political declaration without any intersection, after Communist China has been for the "one China" interpretation of the adjustment, it seems that is no longer the two parallel lines, or even because of lower accuracy, leading to "declaratory measures" the degree of the rule of law slightly has dropped, so as to create the fuzzy space to negotiate. It is worth noting that the "information exchange and transparency measures" the degree of the rule of law has always been low, there are basically three reasons: first, those involving issues of political and military fields are more difficult to give both the commitment and signed the relevant agreements; followed by , in the absence of any under the premise of mutual trust and agreement, the two sides are also difficult to further exchange of information, or to enhance transparency; and third, based on national security considerations, not easy to authorize purchase of the third sector or non-machine interaction and negotiations.

Finally, in the "control measures" and the "limits and verification measures", although the levels involved in complex and extensive, but the two sides continued to sign the related agreements and the establishment of a consensus has been established institutionalized cross-strait exchanges and interaction, These rules of the game has greatly improved the degree of legalization; the current cross-strait mutual trust mechanism to the overall degree of legalization, see the following table 6.

**Table 6: At present, the two sides of the legal level of mutual trust mechanism**

Types of measures	Obligations	Precisions	Ddelegations	The degree of the rule of law
Declaratory measures	M	L	M	Moderate
Comprehensive security measures	H	H	H	Height
Information exchange and Transparency measures	L	L	L	Low
Communication measures	H	H	H	Height
Regulatory measures	M	M	H	Moderate
Limits and verification measures	M	M	H	Moderate

- Note: (1) to "H" on behalf of a high level; (2) to "M" level representatives; (3) to "L" on behalf of low-level.
- Source: author

Based on the foregoing, we find that the development of cross-strait mutual trust mechanism, compared to the past is concerned, there has been substantial overall progress, but the degree of the rule of law not to make the ideal. The future should be "comprehensive security measures" and "communication measures," as the basis to establish and strengthen mutual understanding and the degree to strengthen the bilateral "declaratory measures" for future political negotiations to end hostilities and to prepare well in advance, and then sign cross-strait peace agreement, to promote "information exchange and transparency measures" can also be institutionalized in order to avoid misunderstanding and misjudgment of the situation occurred. In addition, to strengthen economic and trade issues, "regulatory" and "limitations and inspection" of such measures to establish specific, rigorous and complete specification, and with the expansion of cross-strait interaction and deepen their common understanding. It is noteworthy that cross-strait relations would definitely be the wave of globalization and regionalization, a certain degree of influence, the future may be like the European Union in general, from the field of economic integration, a "spillover" (spillover) to political issues, in order to achieve a comprehensive legal mechanism for mutual trust building.

## **Conclusions and recommendations**

In recent years, mutual trust mechanism-related measures have become regional and inter-State conflict prevention and prevention of miscarriage of justice buffering mechanisms. At present in Europe and parts of Asia have accumulated quite a fruitful experience, but after nearly two decades of cross-strait exchanges and interaction, also established a number of the basis of mutual trust mechanism, but the process still need to work together in many space. Although both sides hope to set aside the sovereignty dispute by seeking common ground and creating ambiguous space, while strengthening mutual trust, but the agreement with the relevant regulations, legal and institutional levels remained inadequate. In particular, both sides insist on the legitimacy of its sovereignty, its potential conflicts of neighboring countries are also to be worried. Nevertheless, especially in 2008 after the change, China's Taiwan policy have also been substantially revised, thus getting the bilateral relations have become closer than in the past, the future building of mutual trust mechanism and strengthening the rule of law degree, it should be you can expect. On the analytical framework, this article is aimed at by the International Code of features with the legalization, and build "International Code of the - the legalization" model, and apply the basic constituent elements of the legalization as an indicator of cross-strait mutual trust mechanism of validated measures of the degree of development. Accordingly, I compile nearly two decades of official and unofficial cross-strait exchange of information and data, analyzing the two sides in the "declarative", "comprehensive security", "Information exchange and transparency", "communicative", "control" of and "Limitations and verification" of such measures as the degree of the rule of law; by the empirical analysis obtained by the preliminary conclusions of cross-strait mutual trust mechanism in the

"communicative", "regulatory" and "Limitations and verification" of the rule of law and other related measures of the degree of , compared to a significant increase over the past decade has been presented, perhaps the main reason to shelve the sovereignty dispute and narrow the differences in political discourse and the establishment of common ground consensus results, and implemented in the formulation of norms and rules. It is worth mentioning that, although the two sides have been debating over political issues, but in terms of comprehensive security, non-governmental exchanges and rescue mechanisms for the improvement of already established institutional channels, thus reinforcing the basis for future cross-strait mutual trust mechanism. As is well known, the regional peace, stability and development in the domestic environment is the foundation of globalization, but globalization depends on a bilateral or multilateral relations with the legalization of protection, thus, stable development of cross-strait relations, as well as an agreement or common norms of institutional and legalization should be a win-win good policy. Despite the current legalization, the degree of cross-strait mutual trust mechanism has been significantly increased, but the future may still be due to both external and internal factors, the impact of change, therefore, this paper hopes to explore the specific proposed by the relevant and attract valuable comments to urge the Government to re-think cross-strait policy the formulation of the problem. Of course, the official or unofficial documents and information related to confidence-building mechanisms for the presentation, only the rule of law as to validate the degree of a ring, in addition to a number of related issues deserve further exploration. Because of the systematic analysis of cross-strait relations still have a broad space for development, the research is concerned, the relevant research should still continue to work space. Personal advice, compared to the past tendency of literature analysis is purely qualitative research approaches in cross-strait relations, the future, or should be some basis for research themes, setting a more concrete long-term observation and can be validated measure in order to construct a more specific cross-strait interaction framework for analysis.

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