

Police's Reply to Questions in Appendix 7

Footbridge Closure & Pedestrian Clearance

- i. Justifications for the Police to completely close the footbridges under which the motorcade of VP would pass as part of the security arrangements
- ◆ The movement of a dignitary by motorcade is a particularly difficult operational concept to manage, as the motorcade will be more vulnerable to risks as it will be moving through an environment that is not totally under the police control, unlike an enclosed environment within a venue that the dignitary is visiting. This is particularly so when the dignitary is moving between venues on their official itinerary and especially in the confined area of the HKSAR where the variety of routes that can be taken are limited and as such, routes may be anticipated and attacks planned in advance.
 - ◆ Disruptions and delays to traffic in the area or build up of unscreened crowds in the immediate vicinity of the dignitary may per se provide a cover or offer a target for potential attacks.
 - ◆ In order to minimise the risks involved when dignitaries move in motorcades, special measures are required to be put in place to ensure the personal safety of dignitaries and these have to be considered by the police

commanders. In addition to the provision of a Police traffic escort, footbridge controls and pedestrian clearance will also be implemented along routes between known venues.

- ◆ Footbridge control is implemented to regulate the flow of pedestrians on footbridges along the motorcade route to prevent objects being dropped or thrown from height directly onto the motorcade or onto the route as the motorcade is approaching. The control is maintained by uniformed officers and prevents persons from congregating on the footbridges prior to the approach of the convoy. In order to ensure that inconvenience to the community is limited, footbridges will normally only be controlled just prior to the imminent approach of the motorcade and resumes normal immediately after the motorcade had passed.
- ◆ The operational decisions on what security measures will be implemented to ensure the personal safety of visiting dignitaries are dependent on specific security requirements. Footbridge control has been implemented during previous visits by dignitaries based on the security requirements for the security operation in question.
- ◆ The duties of the Police are stipulated in section 10 of the Police Force Ordinance (“**PFO**”). This include preserving the public peace, preventing and detecting crimes and offences; preventing injury to life and property; regulating processions and assemblies in public places or places of public resort and preserving order in public places and places of public resort.

- ◆ In section 39(1) of the Interpretation and General Clauses Ordinance (“IGCO”), it is stipulated that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. Hence, police duties and powers laid down in section 10 of the PFO are bound by conditions.
- ii. Justifications for the Police to clear pedestrians along VP’s motorcade route
- ◆ Same as (i).
- iii. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries
- ◆ Similar measures were implemented in the previous visits of political dignitaries.

Setting up of DPA

- iv. Justifications to confine reporters to provide news coverage at a DPA
- ◆ In order to facilitate the work of the media, it is a common practice for the Police to set up DPA in the vicinity of activities and / or incidents which attract media interest. In relation to the visit of the VP there included both the movements and activities associated with the visit.
- ◆ In the setting up of DPA during protective security operations due to the

risks and threats associated with a dignitary the Police have to balance the need to facilitate the work of the media with the need to ensure that the proximity of unscreened persons and the congregation of large numbers of people do not in themselves pose security risks or threats.

- v. Rationale for setting up the DPA far away from WCT Building and the Hotel
 - ◆ In order to facilitate the work of the media, it is a common practice for the Police to set up DPA in the vicinity of activities and / or incidents which attract media interest. In relation to the visit of the VP these included both the movements and activities of the VP as well as demonstration activities with the visit.
 - ◆ In the setting up of DPA during protective security operations due to the risks and threats associated with a dignitary the Police have to balance the need to facilitate the work of the media with the need to ensure that the proximity of unscreened persons and the congregation of large numbers of people do not in themselves pose security risks or threats.
 - ◆ For the visit of the VP, the District Commanders of the scheduled locations which were visited made the decision for the sites where DPA were established based on a number of factors including, but not limited to:-
 - a) The need to facilitate the work of the media;
 - b) The location of the SZ;
 - c) The physical and geographical layout of the locations; and
 - d) The need to minimise obstruction to other members of the community

- ◆ It should also be noted that some DPA were situated in relatively close proximity within the SZ, where other non-accredited persons were not allowed to stay, to where the VP's motorcade would arrive / depart a venue and in these circumstances the risk to the motorcade is at its greatest due to the fact that the motorcade would be moving slowly. The setting up of the DPA at these locations was to provide the media with a vantage point in order to cover the arrival / departure of the VP. However in such circumstances in order to facilitate this and allow members of the media to congregate in locations of such close proximity, arrangements including a search and verifying the identities of members of the media were necessary.
- vi. Confirmation as to whether or not similar measures were implemented in previous visits of political dignitaries
- ◆ The setting up of DPA to facilitate the work of the media has been implemented during previous visits of dignitaries based on the factors and considerations outlined above.

Setting up of DPAA

- vii. Justifications to confine protestors / members of the public to protest at a DPAA
- ◆ One of the operational concept that Police adopts in managing public activities is the setting up of DPAA's to facilitate such activities whilst, at the same time, protecting the rights and freedoms of others. These are

areas which have been identified for members of the public to congregate in to express their views. The use of DPAAAs better facilitates the public activities and also minimises the disruption to other members of the community who wish to go about their own business.

- ◆ Police officers will be assigned to manage DPAAAs, usually to invite members of the public within a locality to make use of the DPAA and then to monitor the conduct of the public activities within its boundaries. When setting up DPAAAs during protective security operations, there is a need to carefully consider their locations. This is to ensure that the proximity of the members of the public located within a DPAA does not in itself create a threat to the personal safety of the dignitary, through the congregation of members of the public becoming a potential target or cover which may be utilised to make an attack on the dignitary.
- ◆ The concept of setting up areas to facilitate public activities is a common practice that is also adopted in other overseas jurisdictions. Such a practice ensures the better management of the activity and helps minimise disruptions that the activity may cause to other members of the community.
- ◆ The duties of the Police are stipulated in section 10 of the PFO. This include preserving the public peace, preventing and detecting crimes and offences; preventing injury to life and property; regulating processions and assemblies in public places or places of public resort and preserving order in public places and places of public resort.
- ◆ In section 39(1) of the IGCO, it is stipulated that where any Ordinance

confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires. Hence, police duties and powers laid down in section 10 of the PFO are bound by conditions.

- ◆ *“The Law requires protestors to also take note of the rights of other people... Therefore, protestors must tolerate some interference to their freedom of demonstration. Irrespective of the importance of their goals, demonstrators should have such tolerance” [YEUNG May Wan & ors v HKSAR (2005) 8 HKCFAR 137, at 185, per Bokhary PJ]*

viii. Justifications and rationale to set up three DPAA locations in Wanchai District at locations not within sight of the Grand Hyatt Hotel

- ◆ With the above considerations in mind, during protective security operations it is not always possible to site DPAA locations in as close proximity to a venue or person as is normally the case in the HKSAR during public activities. This is an important operational consideration that police commanders must bear in mind during planning to facilitate public activities during protective security operations.
- ◆ COMEE-11d explained that his choice of the DPAA locations in Wanchai District was to ensure a balance between a suitable proximity to the Hotel from the viewpoint of the protestors and a clear unobstructed passage for all other members of the public. COMEE-11d explained that the DPAA had to be outwith the designated SZ in order not to compromise the

integrity of some whilst striving to achieve the correlations described of convenience and safety to the protestors and the public at large. The considerations of COMEE-11d in fixing the location of the DPAA were in general in line with the rationale of the Force governing the setting up of a DPAA.

ix. Justifications and rationale to set up only one DPAA for the visit of the VP to Central Government Complex (“CGC”) which was located outside CITIC Tower opposite to the eastern side of CGC, when eventually the VP entered CGC on the western side, making it impossible for the protestors to see him

- ◆ Points under (vii) and (viii) are relevant.
- ◆ The setting up of SZ to ensure the personal safety of visiting dignitaries who are subject to a threat is an established international practice that is adopted all over the world. In the HKSAR context it is not a new concept and is one that has been adopted in the past in relation to visiting dignitaries. The term “Security Zone” is not a legal one but rather a Police operational term which also assists in the command and control functions of the Police.
- ◆ The concept of security zoning is built on the principle of graduated defence layering with intensifying security measures towards a CSZ to ensure the personal safety of the dignitary. In effect this results in a CSZ where the dignitary will be physically present, visits or passes through. It

is in these locations that the dignitary will be subject to the greatest threat and as such it is in these areas where security will be at its highest. Access to this area by authorised persons will normally only be permitted after the person has gone through some degree of security screening of his / her person and belongings. Following the principle of a layered approach, around the CSZ, an additional SZ is set up to provide an area of heightened security around the core.

- ◆ The creation of SZ, allows the Police to better control the environment immediately around the dignitary and, from a protective security perspective, to reduce potential threats as well as minimising the risk and disruption to the community. This includes ensuring that traffic in the area is properly controlled to allow for the rapid and unhindered movement of the dignitary's motorcade which minimises disruption and delays to other traffic in the area and ensuring that there are no build up of unscreened crowds in the immediate vicinity of the dignitary which may in itself provide a cover, or offer a target, for potential attacks.
- ◆ Given the security requirements for the VP's visit, the Police needed to manage public activity with due regard to the SZ and this inevitably meant that large gatherings of people needed to be avoided within the SZ. DPAA's were situated outside of SZ and ad-hoc public activities were also handled accordingly.
- ◆ In establishing SZ for the protection of the VP during his visit, public activities, large groups of people or other suspicious people were not allowed to remain in the zones. The rationale is clear and justifiable;

unknown elements or people possessing unknown intention would create a threat if they were allowed to get too close to the SZ and this needed to be avoided given the security requirements.

- ◆ COMEE-12b explained that the subject DPAA was the closest location that could be managed as (a) it was based on the threat assessment level; (b) it stroke a good balance between the security of the Delegation, public safety and the rights of other road users; and (c) it could allow over 800 people to conduct public activities there safely. The considerations of COMEE-12b in fixing the location of the DPAA were in general in line with the rationale of the Force governing the setting up of a DPAA.

- x. Justifications for setting up a SZ at CGC which extended beyond the Chinese People’s Liberation Armed Forces Hong Kong Building in Central, rendering it impracticable to set up a DPAA outside the western side of CGC

- ◆ Same as (ix).

- xi. Justifications and legal basis to remove by force the male wearing a June 4th T-shirt (COM-13) from the vicinity of Block 26, Laguna City, Lam Tin on 16.8.2011

- ◆ The duties of the Police are set out in section 10 of the PFO which include taking lawful measures for, inter alia, preserving public peace, preventing and detecting crimes and offences, preventing injury to life and property,

regulating processions and assemblies in public places or places of public resort, and preserving order in public orders and places of public resort.

- ◆ Every duty carries with it the power to perform that duty. Section 39(1) of the IGCO provides that where any Ordinance confers any power or imposes any duty, then the power may be exercised and the duty shall be performed from time to time as occasion required. (see *R v To Kwan Hang* [1994] HKC 293) Therefore, the Police are conferred with the powers to carry out the duties under section 10 of the PFO. However, the courts have also held that the exercises of powers must be reasonably necessary and proportionate.
- ◆ Every police officer enjoys the power and is subject to a duty to seek to prevent, by arrest or other action, any breach of the peace occurring in his presence. The power and duty extend to any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur. (*Chan Hau Man Christina v CP* [2009] 6 HKC 44)
- ◆ In *Rice v Connolly* [1966] 2 QB 414, Lord Parker CJ said that it is clear “*that it is part of the obligations and duties of a police constable to take all steps which appear to him to be necessary for keep the peace, for preventing crime or for protecting property...There is no exhaustive definition of the powers and obligations of the police...*”
- ◆ The Police are often in the frontline having to assess the situation and the risks involved, and to make timely judgment and take prompt actions. This is not always an easy task. It has been held that when freedom was

involved, the courts must scrutinise the conduct of the Police with care. On the other hand, the courts should not carry the scrutiny to the length of second-guessing the Police on operational matters. (see *R v To Kwan Hang* [1994] 2 HKC 293 at 304B per Bokhary JA (as he then was))

- ◆ According to the House of Lord judgment in *R (Laporte) v Chief Constable of Gloucestershire* [2007] 2 AC 105 and the judgment in *Chan Hau Man Christina v Commissioner of Police* supra, at 55, “[t]he court must guard against the danger of hindsight, and the judgment of the officer on the spot, in the exigency of the moment, deserves respect.”
- ◆ “The law also calls upon demonstrators to accommodate other people’s rights... For that purpose demonstrators have to tolerate some interference with their own freedom to demonstrate. Such tolerance is expected of demonstrators however strongly they may feel about their cause” [see *YEUNG May Wan & ors v. HKSAR* supra, at 185, per Bokhary PJ]
- ◆ “A right of peaceful assembly is not infringed by the Police doing their duty to preserve the public peace and to prevent injury to life and property. On the contrary, the right would be put in peril if the police were to refrain from doing that duty.” [see *R v To Kwan Hang* supra, at 303F per Bokhary JA (as he then was).
- ◆ In exercising the above powers, police officers may need to cordon off and stop people from entering an area (see *R v To Kwan Hang* supra, *Chan Hau Man Christina* supra and *HKSAR v Au Kwok Kuen* [2010] 3 HKLRD 371). In the context of public assembly and demonstration for example, the court

has sanctioned the setting up of “clear zones” by the Police to maintain order or where necessary.

- ◆ COMEE-13a explained that he decided to remove COM-13 given COM-13’s unusual and uncooperative behaviour as the VP could come down for departure at anytime and thus potential threat needed to be eliminated. He needed to find out COM-13’s bona fides and reasons for behaving in such an unusual manner as well as what his intentions were. The conduct, manner, demeanor as well as the refusal to cooperate displayed by COM-13 raised significant alarm for COMEE-13a in the location and context in which COM-13 did it. He therefore resorted to removal which was done in as sympathetic, sensible and professional way as he could. The thinking process of COMEE-13a there and then was in line with the justifications of the Police Force before moving a person from an incident scene.

xii. Justifications and legal basis to remove by force the three protestors in Cases 11, 12 and 15 (COM-11, COM-12 and COM-15) who refused to go to the DPAA but insisted to go inside the Hotel or the CGC which was listed by the Police as the CSZ on 16 August 2011 and 17 August 2011.

- ◆ Points under (xi) are relevant.
- ◆ For Case 11, COMEE-11d explained that the Hotel’s management and Security Wing personnel were responsible for the grounds of the Hotel and the vehicular and pedestrian ramp leading up to it, whilst the duties of him

was to look after all other areas in the SZ. COMEE-11d clarified that the Hotel had stated that they would not allow any protest within the Hotel. He recalled that there was an agreement between the Police and the Hotel that any person who had bona fide reasons for entering the Hotel, such as being a resident of the Hotel, would be allowed access once the veracity of any claim for legitimate business was confirmed. The bona fide reasons of COM-11 entering the Hotel could not be verified and she was thus removed from the scene. The thinking process of COMEE-11d there and then was in line with the justifications of the Force before removing a person from an incident scene.

- ◆ COM -12 had not been removed by force.
- ◆ CAPO cannot comment on the removal of COM-15 as the case has entered “Sub-Judice” procedures with investigation suspended since 6 September 2011.