

For information

Legislative Council Panel on Security

**Allegation of Mainland Law Enforcement Officers Taking
Enforcement Actions in Hong Kong**

Purpose

This paper seeks to explain the mechanism of police cooperation between the Hong Kong Special Administrative Region (HKSAR) and the Mainland and the management of boundary control points (BCPs). It also provides information on a case which occurred on 27 December 2009 in which allegation was made that Mainland law enforcement officers took enforcement actions in Hong Kong.

Mechanism of Police Cooperation between HKSAR and the Mainland

2. All along, the police authorities of the HKSAR and the Mainland have been cooperating on the basis of mutual respect, mutual non-subordination and mutual non-interference.

3. In accordance with the Basic Law, the HKSAR exercises a high degree of autonomy. Article 22 of the Basic Law stipulates that no department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the HKSAR administers on its own in accordance with the Basic Law. Both the HKSAR and the Mainland have a clear understanding of and abide by the provision.

4. Before the Reunification, the police authorities of the HKSAR and the Mainland conducted cooperation based on the INTERPOL protocols. The two parties continue to adopt such mode of cooperation after the Reunification. The basis and mode of cooperation are further regulated to ensure consistent implementation through regular high level meetings between the police authorities of both parties. Where cooperation is undertaken, both parties are required to strictly abide by the provisions of the relevant laws and to respect the jurisdiction of the relevant territory. When liaison on individual cases is conducted under this cooperation mechanism, if one party requires the assistance of the other party, the

requested party may gather information relevant to the case through legal channels and provide such information to the requesting party. When the requesting party seeks assistance, it must give prior notification to the requested party and explain clearly the nature of the case and the scope of assistance sought. It will then be for the law enforcement officers of the requested party to undertake the investigation work in accordance with the law.

5. Under certain circumstances, it may be necessary for police officers of one jurisdiction to visit the territory of the other party to undertake case investigation through the local law enforcement agency. Such cooperation is not infrequent and is especially important for combating crimes. However, when undertaking such cooperation work, any law enforcement actions must only be taken by the local law enforcement agencies in accordance with the law. Under no circumstances can police officers take enforcement actions in the territory of the other jurisdiction. When these police officers are in the territory of the other jurisdiction, they have the same status as any other ordinary visitors. They do not enjoy any police powers or privileges and they cannot, therefore, exercise any power of arrest, detention, search of persons and premises, etc. If any law enforcement officers from other jurisdictions are suspected to have undertaken any law enforcement actions in the HKSAR, the Police shall follow up the matter with the relevant authorities.

Management of BCPs

6. All BCPs in Hong Kong are located within the Closed Area. The main function of BCPs is to provide immigration service to persons crossing the boundary. To ensure the safety of cross-boundary passengers and the smooth operation of BCPs, no obstruction to BCPs can be allowed. Under the provisions of the Public Order Ordinance (Cap. 245), the Frontier Closed Area (Permission to Enter) Notice (Cap. 245H) and the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice (Cap. 245K), any person who wishes to enter or leave the Closed Area needs to possess a valid Closed Area Permit unless general permission to enter or leave the Closed Area has been granted. The general permission covers persons who are cross-boundary passengers entering or leaving the Closed Area by designated mode of public transport, including trains, taxis, franchised buses and public light buses running scheduled service. Any person who is not a cross-boundary passenger and enters the Closed Area without a valid Closed Area Permit contravenes the law.

7. The Basic Law stipulates that Hong Kong residents shall have freedom of speech, freedom of assembly and of demonstration, etc. In this regard, the Police have all along been protecting the rights of Hong Kong residents and, under reasonable and practicable circumstances, facilitate them to express their views through appropriate means. However, given the special conditions of BCPs, demonstrations should not be conducted within BCPs. The passenger flow of the Lo Wu Boundary Control Point is exceptionally heavy. It handles on average over 230 000 passengers daily, which is the highest among all BCPs. In particular, the day of the incident in question was a public holiday and the passenger flow of the Lo Wu Boundary Control Point exceeded 290 000. To ensure the safety of the large number of cross-boundary passengers and the smooth operation of the BCPs, no person should conduct any demonstration within BCPs.

Summary of the Case

8. At around 3:44 p.m. on 27 December 2009, a group of about 20 persons (including a number of reporters) arrived at the Lo Wu Boundary Control Point. A female in the group was carrying several cardboard placards. When the group reached the Duty Free Shop located within the Departure Hall of the Lo Wu Boundary Control Point, they started to use plastic strips to bind their hands and chain themselves together, and inserted the cardboard placards in the collars behind their necks.

9. The Police officers at the scene issued two verbal warnings to the protesters to inform them that they had committed an offence under section 38 of the Public Order Ordinance (Cap. 245), i.e. entering a Closed Area without a valid Closed Area Permit. A few minutes later, a total of 19 protestors (12 males and seven females) left the Duty Free Shop, slowly marched towards Shenzhen in single file and chanted slogans at the same time. At that time, there were other passengers on the Lo Wu Bridge. Also, some other individuals took photographs and helped the protesters fix the cardboard placards.

10. A total of six persons (including two reporters) were taken away by Mainland law enforcement officers during the incident. At this point of time, there was no evidence to show that Mainland law enforcement officers entered the boundary of Hong Kong to take enforcement actions. The remaining protesters stopped immediately and continued to stay on the Lo Wu Bridge to chant slogans. They also sought assistance from the Police, claiming that a number from their group were taken away by Mainland law enforcement officers. The Police immediately offered

assistance. Through established border liaison channel, the Police verified with the Mainland authorities that the protesters concerned were safe. The information was relayed to the protesters on the spot.

11. In view that the protestors still refused to leave the Lo Wu Bridge, the Police issued the third verbal warning to the protesters, informing them that they violated the provisions of section 38 of the Public Order Ordinance. Later, the protestors returned from the middle part of the Bridge and the Immigration Department assisted them in completing immigration procedures for returning to Hong Kong.

12. The two reporters and four protesters who were taken away by the Mainland law enforcement officers were released between 7:20 p.m. and 8:55 p.m. They returned to Hong Kong via the Lo Wu Bridge.

Security Bureau
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