

Principle of Three Cautions in Police Response to Mass Incidents

Bao Huang

Law Department, Wuhan Textile University

Textile Road -1st, Wuhan 430073, China

Tel: 86-27-8722-8659 E-mail: ku-boat@163.com

Abstract

In the handle mass incidents, we must adhere to the principle of three cautions. Background of principle of three cautions is the reasonable demands in mass incidents. Premise of principle of three cautions is police use in non-police activities. Difficulty of principle of three cautions is the forbid and caution use of weapons and apparatuses. Core of principle of three cautions is caution use of arrest and detention measures.

Keywords: STA, Principle of three cautions, Mass incidents, Weapons and apparatuses

1. Introduction

In *Seeking Truth* magazine in No. 21 of 2008, there published an article by Meng Jianzhu comrades—State Councilor and Minister of Public Security, which named *Studying and Practicing the Scientific Concept of Development in-depth and to be the Party's Loyal Guards and the People's Close Friends* (hereinafter abbreviation is STA) In this paper it was said: In handling mass incidents,.....we must pay attention to the policy, pay attention to strategy, pay attention to methods, adhering to the three caution using (caution using police, caution using weapons and caution using coercive measures), and resolutely preventing aggravated conflicts by improper using of the police, positioning not allowed, inappropriate disposal, and resolutely preventing the occurrence of bloody casualties. In my opinion, the proposal of the principle of three cautions in STA has strong guidance and meaning to the public security organs involved in the current and disposal mass incidents, in line with our current rule of law and building a harmonious society.

2. Background of Principle of Three Cautions: the Reasonable Demands in Mass incidents

In recent years, due to the rapid socio-economic development and Conflict and Dispute Resolution channel is not smooth in economic development process, it is leading to unstable social order to a certain extent, even leading to mass incidents in some regions which formed a more adverse impact in the community. According to the *Social Blue Book*—published by Chinese Academy of Social Sciences in 2005: From 1993 to 2003, the number of mass incidents has increased to 60,000 from 10,000, up to 87,000 cases in 2005, more than 90,000 in 2006. The number and intensity of mass incidents in 2008 than other years ever; the number of participation in mass incidents is from 730,000 in the last century to 3,070,000 at present.

What are mass incidents? As a professional term, Mass incidents first appeared in China in November 8, 2004, the Central Office of the State Council transmitted the central processing petitions and mass incidents highlight the joint issue—the *Work of the Comments on Actively Prevent and Properly Handling Mass Incidents* (the Central Office[2004]33). The morning of July 7, 2005, the State Council Information Office held a press conference and Li Jingtian, Vice Minister of the Central Organization Department and deputy head of maintaining the advanced nature of the Central Leading Group said: The recent events occur in China's rural areas, which we called mass incidents rather than riot. In the process of reform and development, we should constantly resolve social contradictions and make our society more harmonious. Of course, some grassroots cadres may be not good and some capacity to resolve conflicts is not strong, together with other aspects of the reasons, a number of mass incidents triggered. In fact, as a professional of the term, words of mass was already there in *Provision of to Deal with Mass Incidents for Public Security Organs* issued by Ministry of Public Security in April 5, 2000. The second section provides that, mass incidents is gathering together to implement the violation of national laws, regulations, rules, disturbs social order, endangering public safety, violation of personal safety and security of public and private property. According to *Provision of to Deal With Mass Incidents for Public Security Organs*, Mass Cases include large numbers of illegal assembly, of procession and of demonstration, an illegal organization and cult organizations such as the large-scale gathering, gathered to containment, the impact of party government agencies, the judiciary, the military authorities, an important security objective, radio, television, communications hub, foreign embassies, consulates and other vital parts or

units, Robbing national warehouse, key projects and other public and private property, goods in 10 categories mass activities. Strictly speaking, Mass Cases incidents belonging to mass incidents, but the scope of the provisions has no significant difference between the two terms from the defining by Ministry of Public Security. Because in the provisions of 10 categories of mass incidents in *Provision of to Deal With Mass Incidents for Public Security Organs*, it is difficult to distinguish boundaries between illegal and crime, many mass incidents has actually violated the relevant provisions of the Criminal Law . In judicial practice, a lot of mass incidents just begin as a security incident, and many mass incidents will develop into a criminal case with the progressive development and deterioration of the situation.

Mass incidents in the foreign research is called as crowd disorder, Collective Incidents, Mass incidents or even riots and so on. In translations of Western sociological works, it will generally be referred to as collective behavior, set behavior; Taiwan scholars know as the mass event, gathering activities, mass incidents. From the sociological point of view, American sociologist Parker defines the collective behavior as an emotional impulse in promoting and in the collective common under the influence of individual behavior in his publication of *Introduction to Sociology* in 1921.

Ed Grabianowski, Associate Editor of Information Services in New York City of the United States, think that mass incidents (riots) is a group of people doing illegal activities in fear or anger implemented under the control of violence. The group of people in the crowd incidents formed awareness of group psychotherapy—which will make they to do something they will not to do under normal circumstances ,and it produces the Anonymous effect psychological: Do whatever you want, whoever you want to beat is to beat and whatever you want to smash is to smash. But under the social contract, natural rights and other theories in western countries, it emphases on protection of private rights, it is believed that the loss of the public interest within limits is needed price to protect the interests of vulnerable groups, and therefore more tolerant and open to such activities, but a serious violation of the law and causing harm to the interests of others is the exception.

Since the mid-90th of 20 century, mass incidents showed increased number, a wide range, being expanding, the large number of participants, and the more intense conduct and so on. According to the Government Information and Statistics, a scholar named Hu Angang said, after 1994, there are a number of mass incidents increasing trend in the country , about 10% growth rate in 1995 and 1996, accelerating rapidly after 1997, the average annual growth rate as high as 25.5% during the period 1997 to 2004. These data reflect rapid growth of mass incidents over the past decades. The growth rate in the 21st century is more severe, especially in 2008, being called as mass incidents year: from Weng'an incidents in Guizhou in June to Menglian event of conflict in Yunnan in July, from the Sanjiang Mass incidents in Guangdong in October to Longnan incidents in Gansu in November. In addition to the taxi, bus stop transport event in the main city of Chongqing, Jingzhou in Hubei, Sanya in Hainan, Yongdeng in Gansu, Dali in Yunnan, Shantou in Guangdong and other places; corpse snatching incidents in Fugu of Shanxi, environmental dispute cases in Lijiang of Yunnan, teachers strike incident in Sichuan and Chongqing, illegal fund-raising events in Jishou of Hunan, land acquisition events in Langfang of Hebei, forest dispute incident in the drums mountains of Jiangxi, laid-off workers petition event in Wuhan of Hubei, coal conflict in Kai County of Chongqing, labor dispute in Dongguan of Guangdong

3. Premise of Principle of Three Cautions: Police Use in Non-police Activities

In the STA fourth point—strengthening ideological and political construction of public security force, focusing on building a harmonious community relationship between the police and the people, it read: To further standardize the types of non-police activities and to achieve a reasonable use of the police. On the need for using the police in non-police activities, we must regulate behavior. In fact, it is difficult to find the origin of non-police activities in our legal documents. the figures of non-police activities only appears in the notification and circular of the Ministry of Public Security, such as Article 18 of *The Provision of Management and Use of Guns for Organs of Public Security* issued by Ministry of Public Security in October 9, 1999 [the public Security notification number (1999) 74] stipulates: the Police wearing and using firearms must comply with the following provisions: (1) not to allow to bring and use firearms in non-police activities; Article 26 stipulates: in following circumstances, the firearms must be in central depository or higher level public security organs if the unit temporarily has no central depository on storage conditions: (1) during the vacation, sick leave, family visits, tourism and other non-police; Article 30 stipulates: public security organs at all levels must be strictly in accordance with the standards for equipment and ammunition by Ministry of Public Security, and the police equipment and ammunition shall be not used in non-police activities. In July 23, 2000, *the Rules of Policemen Internal Affairs for Organs of Public Security* is issued by Ministry of Public Security [the public Security notification number (2000)60] and it's section 23 stipulates: (d) the documents should be appropriately managed and may not alter, copy, lend, mortgage, gift, sale and purchase. Documents strictly prohibited for non-policing

activities or illegal activities. Unfortunately, these provisions are not made a clear interpretation and definition to non-police activities. As the usage of the practice established, non-police activities raised as the opposite of police activity.

What are police activities? Police activities in the English are for the Policing, which refers to police behavior or the sum of the police behavior generally. It was also translated into a simple police work. Some Chinese scholars believe that police activities in the narrow sense refer to the conduct implied by police and in general sense refer to all behavior by police for the whole community to implement the maintenance of law and order, fighting crime. Abstractly it is the sum of all the police behavior and a particular police conduct specifically. According to article 2 of *People's Police Law*, Police's mission is to protect national security, maintain public order, protect the personal safety of citizens, freedom and legitimate property, and protect public property, to prevent, suppress and punish criminal activities. To achieve the purpose of maintenance of public order and cracking down on illegal and criminal activities, people's police have the power to impose specific acts, include the 14 types of duties in Article 6 of *People's Police Law*. Additionally, there are other responsibilities and obligations for the public security organs in times of crisis, dispute help, rescue and relief and social welfare provided by Article 21 of *People's Police Law*. These can be regarded as our legal definition of police activities. According to Article 14 of *110 Response Alarm Work Rules* by Ministry of Public Security, 110 receiving desk alarm include: (a) criminal cases; (b) order case (incident) cases; (c) the mass incidents which may endanger the person and property or social order; (d) natural disasters, security and disasters; (e) the other alarm related to illegal and crimes needing disposition of the public security.

By contrast, any activities other than those acts should belong to non-police activities. In a word, non-police activities refer to asking the police to attend, but it is not required by law beyond the scope of police duties of the activities. According to statistics of Chinese scholars, non-police activities were assessed, including in government non-police activities, offside in law enforcement activities (such as the public security organs paying the tax directly or checking unlicensed traders and operating activities and interfere in economic disputes), having to do something without the duties of administrative acts (such as grass-roots of public security organs engage in charge of food, beg for money and do family planning and other activities according to the instructions of the Government), and outside the scope of public security organs duties as non-emergency assistance, mediating disputes, violations (such as illegal interfered with economic disputes, on violations of civil parties to the dispute mediation, labor relations disputes offside disposal), to replace the courts to do other compulsory relocation. Both in the literal sense or from point view of the laws and regulations, non-police activities should be independent of police authorities, nor the exercise category of police power in China. But in practice, the public security organs are heavily involved in the non-police activities, and the ratio time occupied by non-police activities for public security organs has exceeded the normal police work hours. As a statistics: the proportion of the police and the time invested in the non-police activities in some Local Police Stations of Luoyang City is the lowest 30%, generally about 50%, some units or more.

4. Difficulty of Principle of Three Cautions: Forbid and Caution use of Weapons and Apparatuses

The principle of three cautions including the principle of using weapon or police apparatus caution is made and well-developed in the context of frequency of mass incidents. March 2, 2009, Institute of Law and Social Science Documentation Publishing House of the CASS issued *the Blue Book of Law: the Report of Law Development No.7 (2009)* in Beijing, which lists lots of nationwide significant impact mass event in 2008 :From the 6 • 28 incident in Weng'an, Guizhou to the 7 • 3 event in Fugu, Shanxi , from the 7 • 19 incident Menglian, Yunnan to the 11 • 7 events in Baoan Shenzhen , from the 11 • 17 incident in Longnan Gansu to 11 • 25 incident in Dongguan It can be said the scale and the impact and the extensive of mass incidents occurred in China is unprecedented in 2008.

Why is the mass incidents occurred frequently? What is its social roots and specific incentives? A number of related researches have discussed, such as the interests of the dispute, the gap of wealth, labor tensions, and administrative division and so on. Limited to space, we do not need to make too much argument, but there is a need to explore the legality and legitimacy of the incentives for mass incidents. Taiwan scholars Lv Shiming said that as a mass self-help, the mass incidents is a way to express mass views, which occurred because the communication channels were not smooth enough; in the first Chinese forum of police face-fight in 2008, an expert of Wuhan Public Security Bureau gives statistics data: More than 80% of incidents in current population of China is the maintenance of rights of the people, and they have a clear interest demands and behavior of relative restraint. From Weber's theory of mass behavior patterns about personalized cause in the mass incidents, some domestic experts think the cause can be divided into four major categories of mass disputes: objective and reasonable type, the rational value type, emotional impulse type and traditional practices type. From the above

reasons for classification, it can be seen that a significant proportion actors' motivations of mass incidents are reasonable and the means of conduct is a legitimate reason. Therefore, the governments have an important responsibility to protect the basic rights of citizens and safeguarding social justice in disposal of the interest of daily coordination and emergency. The governments should solve the people's livelihood difficulties effectively, track and analyze the problems the people are not satisfied with and the main focus in what areas and aspects, especially understand the criticism of the masses to the government's work, come up with tough measures to work hard to rectify, to minimize the social confrontation, and to maximize to resolve the negative factors. In the disposal of mass incidents, Public security organs must adhere to the principles of three cautions. They should not use the police force in mass incidents not involving crimes. Facing the criminal acts or potentially criminal, they should be noted that weapon or police apparatus is used in caution in the process. How to understand using weapons and police apparatus with principle of caution? In my view, the core of principle of using weapons and police apparatus is to use according to law, use weapons and police apparatus careful.

What is the meaning of weapons and police apparatus? According to Article 3 of *the Ordinance of People's Police Using Police Weapons and Apparatus*, Police Weapons refer to people's police weapons and equipment in accordance with the provisions of firearms, ammunition and other lethal weapons for police use; police apparatus is in accordance with the provisions of Police equipment, batons, tear gas, high-pressure water gun, special riot guns, handcuffs, leg irons, Jingsheng and other police equipment. The most important difference of weapons and police apparatus is: weapon is a lethal police equipment and may object to the behavior of the direct consequence of casualties once used; and police apparatus is the Police Equipment which can be classified into the expelling, falling upon and binding and it's main object is to subdue and control the behavior. Stopping illegal and criminal acts, police should be required to use the police arms; when the use of police equipment can not stop, or the consequences of possible serious harm may be done if do not using weapons to stop, police can use weapons by law. The use of weapons to stop the illegal and criminal activities should be to minimize casualties and property losses in principle. So, what is lawful use? According to the chapter 2 and chapter 3 of *the Ordinance of People's Police Using Police Weapons and Apparatus*, police apparatus can apply to 11 different cases as gang fights, beating up other people, causing trouble and insulting women or other indecent activities and weapons can be apply to 15 kinds of situations as fire, flooding, explosions and other serious harm to public safety. In these circumstances and within the Ordinance to use weapons in accordance with legal procedures is used by law.

What is caution use? *Jin*, Tonal word, is from qín voice. Its meaning is cautious and careful. *Shuo Wen* said: *Jin* is being careful too; *Shen*, Tonal word from the heart, sound like *Zhen*. Its meaning is the careful and cautious. *Shuo Wen* said: *Shen* is Jin too. *Er Ya* said: *Shen*, Honest also. *Mandarin • Zhou Language* recorded: *Shen*, moral conduct. The word of *Shen* often associated with *Wu*, *Wu* and *Mo* and its meaning is forbidden, just as ought to and so on. From the essential meaning of the caution, the starting point of caution using weapons and police apparatus is to reduce the use of weapons and police gear, and it is best if it can do without the weapons and police gear, and weapons and police apparatus can be used less better than more, ensuring that weapons and police apparatus be used at a reasonable limit and range and strict control to avoid the uncontrolled magnification of weapons or police apparatus.

5. Core of Principle of Three Cautions: Caution Use of Arrest and Detention Measures

What are compulsory measures? According to the interpretation of *Law Dictionary*, compulsory measures refer to taking to the coercion lawfully which the judiciary is to protect the normal proceedings. It can be divided into three types: first, the criminal compulsory measures. It is suitable for the three organs—the Public Security Bureau, the Procuratorate, and people's courts; the object is the criminal defendant, or an active major suspects; appropriate measures have issue a warrant, bail, residential surveillance, detention, arrest. Second, the civil compulsory measures. It is suitable for the people's court; application objects are including not only parties, other participants, but outsiders; applicable prerequisite is the implementation of civil conduct which perpetrates the prejudice; the measures have issued a warrant application, reprimand, ordered out of court, fined and detained. Thirdly, compulsory measures of administrative proceedings. It is only slightly different for the object and the same features with civil compulsory measures. In addition to Article 2 of *Public Security Administrative Procedural Rules*, the public security organs have the power on the offense for mandatory drug treatment, shelter and education compulsory administrative measures in accordance with laws, regulations and rules. It can be seen that the civil compulsory measures and compulsory measures of administrative proceedings referred mainly to the compulsory measures by the people's court in civil and administrative proceedings, and mandatory drug treatment, shelter and education compulsory administrative measures is for specific- object (drug addicts

and prostitutes and their customers) , which are outside the scope of the research. In police handling mass incidents, the public security organs are mainly applicable to criminal compulsory measures, including the power to decide the issue a warrant, bail, residential surveillance, detention and the power to apply the arrest. The core of compulsory measures of three caution principle is used to caution compulsory measures in criminal detention.

The meaning of custody in *the Contemporary Chinese Dictionary* is the meaning of detention and custody. As a legal measure, custody is the enforcement measures which ask suspect or other persons concerned with the case remain in certain places. To the trial center, custody can be divided into pre-trial detention and post-judgment custody, and post-judgment enforcement is the sentences of detention in fact. So the researchers' core of using measures with caution is pre-trial detention, which also known as open custody. Pre-trial detention is closely related with arrest, detention and other measures, and latter is the prerequisite and basis for the former, the former is the result and purpose of the latter. Even in some countries, measures of pretrial detention is equal to arrest, as it is that the detention period for suspects detained is the period after arrest in our country's law (**Article 124 of Code of Criminal Procedure**). Our pre-trial detention is an arrest continuity or a detention prior to conviction, and is a mandatory measures which temporary restrict or deprive of the liberty of criminal suspects or accused by the public security organ, the People's Procurator ate and the criminal courts to ensure the smooth implementation of the law. A certain extent, the implementation of pre-trial detention described the suspect having great social harm, which means it also more likely implementation of the criminal acts and the investigating authorities have more solid grasp of the evidence on the case. Judging from the property nature, pre-trial detention is not punitive measures, but a mandatory measure in the investigation process. The important functions of pre-trial detention are: first, it can preserve the suspect's physical and make him not escaping investigation, prosecution and trial, and enable the smooth implementation of the decision if the referee is to determine his guilt. Second, it can preserve evidence and prevent criminal suspects hiding evidence, witnesses and relevant staff from undue interference. Again, the suspect and accused in custody are in a very isolated relatively weak position, which can more easily be used to obtain confessions; even confessions obtained in this way can not be adopted in the decision itself, simply by using statements to obtain evidence or clues is valuable to corroborate the evidence. Finally, the detention of socially dangerous criminal suspects is to prevent them to commit new crimes, reduce the incidence of suicide and self harm, and other dangerous. Even in some cases, detention is an important means to protect them not to be killed by their accomplice.

Although pre-trial detention measures has a significant authority to investigation and evidence gathering, but it has very large influence on liberty of suspects , so the implementation of pre-trial detention generally should adhere to the principle of exceptions and the principle of proportionality, which is very important principle in police handling mass incidents and the caution implementation of measures. The principle of exception of pre-trial detention means custody violated the fundamental freedoms and rights of presumed innocent citizen (not a formal decision made by the Court, everyone should be presumed innocent), and corresponding to the importance of rights, pre-trial detention should be seen as a preventive measures which only apply in an exceptional circumstances as the legal procedures and conditions. The article 9 of paragraph 3 of **UN international covenant on civil and political rights** states that It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. United Nations Human Rights Committee clearly states: pre-trial detention should be an exception and as short as possible. The Principle 39 of **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** by United Nations General Assembly on Dec. 9, 1998 also provides that, except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review. The principle of proportionality, including the three requirements of the appropriateness, necessity, and equivalence, is to take measures to pre-trial detention in compelling circumstances, and it should be taking the specific case and the severity of the crime etc into account, which is needed or not, to take short-term detention is better to take long-term custody. The reason why approve of the principle of proportionality in exceptional circumstances, is to ensure that suspects do not obstruct the proceedings and hope to seek a basic balance between national interests and personal interests. This view of pre-trial detention being used with caution is in recognition of excellent premise of interests of justice, upholding the Principles of presumption of innocence, limiting government power to prevent the government to violate personal individuals' freedom in the name of suspected crimes on the grounds of clear reflection of the position.

References

- Alexander M. Butman. (1981). *Responding to the Mass Casualty Incident: A Guide for Ems Personnel*. Emergency Training Press.
- Bruce Revere, Chow Hon Huen & Bruce Rovere. (2000). *Chinese Military Police: Knife, Baton and Weapon Techniques*. Rovere Consultants International.
- Cao, Peixin. (2010). *Media Incidents: Power Negotiation on Mass Media in Time of China's Social Transition*. Uvk Verlags Gmbh.
- Clive Harfield. (2009). *Blackstone's Police Operational Handbook: Practice and Procedure*. Oxford University Press.
- Department of Defense. (2009). *Military Police and Tactical Employment of Nonlethal Weapons*. Pentagon Publishing.
- James B. Crippin. (2011). *First Response to Bombing Incidents and Weapons of Mass Destruction*. Chemical Rubber Company Press.
- Jerry Ahern. (2010). *Armed for Personal Defense*. Krause Publications.
- Lisa Keller. (2010). *Triumph of Order: Democracy and Public Space in New York and London*. Columbia University Press.
- Peter Squires. (2007). *Gun Culture or Gun Control? Firearms and Violence - Safety and Society*. Oxford University Press.
- Sarah Manwaring-White. (1983). *The Policing Revolution: Police Technology ,Democracy and Liberty in Britain*. The Harvester Press.