

為民疏處 地方讚揚

Gaining Prestige from Locals with Good Faith and Wisdom- Enforcement of Laws, Serving for the Public

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壹、前言

廿一世紀的進步，民衆環保意識逐漸抬頭，對於生態關懷也日益增長，對於政府各項公共工程之推行，各項監督作為相對嚴厲，使得各項公共工程抗爭畫面經常出現在電子媒體或平面報章雜誌上，對於一般民衆，或許是生活的一段小插曲，但對於海域執法的同仁而言，卻是一項「跋前疐後，動輒得咎」的非常任務，如何在貫徹公權力及為民服務的角色中取得最佳平衡點，成了執法單位及現場指揮官智慧的最佳考驗，以澎湖西嶼海水淡化廠海上管線鋪設及海水井新造工程為例，由於事前主管單位多次疏處未果，導致民怨沸騰，陳抗事件不斷，經海洋巡防總局及所屬澎湖海巡隊成功的疏處民衆，順利促使工程進入施造階段，就是最佳例證。

貳、問題

澎湖地區位處台灣海峽中樞，轄內地勢平坦無高山屏障，居民常年用水多仰賴颱風期間所帶之雨水，如遇天候平順，一進入夏、秋二季則遭逢缺水窘境，政府為體恤離島居民生活所需，除指導自來水公司加強現有水庫管理外，並建設地下水庫、海水淡化廠等輔助作為，期能達成地方水源自給自足之目標，因此，中央政府特責請自來水公司南區工程處於位於西嶼鄉大池村東南方約四百五十公尺處，興建佔地面積超過一公頃每

I.Foreword

Advance in the 21st century stimulates people's consciousness of environmental protection, as well as care about the ecology. The trend results in harsh attitudes from the public to the government's construction projects. Demonstrations against a variety of public constructions are therefore seen on mass media often. For people in general, this circumstance may be merely an episode; however, it is an extremely difficult task and a dilemma for Maritime Law Enforcement officers. How to obtain a balance between law enforcement and service for the public has become a big challenge to the law enforcement department and on scene commanders. Take the at-sea piping of desalination plant and seawater shaft work in Shiyue, Penghu for example, complaints from the public and demonstrations are endless owing to lack of a perfect conclusion in the negotiation before the project starts. With involvement into further coordination with the residents, Coastal Patrol Directorate General and its Coastal Patrol Corps of Penghu succeed in solving the problem and carry on the construction eventually.

II.Problem

Penghu is located in the middle of Taiwan straits, wherein the land is flat and no mountain exists. Residents' daily water normally depends on rainwater during Typhoon season. However, lack of water becomes an awkward condition when there are very few typhoons in summer and autumn. In order to satisfy daily needs of the residents and achieve the goal of self-supply of water locally, the government not only requires current

日產生淡化水750噸之海水淡化廠乙座，藉以因應滿足未來地方發展之需要。

但因地方對贊成或反對之兩派正反意見支持者分歧，導致本案於94年12月簽約後完成用地交付、細部設計、申請建造及用電等工作，遭遇民衆抗爭阻力不斷，致使發包廠商無法興建施工，致使本案工程延宕不前，遲至96年6月以強制方式方得正式進行陸地工程施工，另海上工程部分，則於96年8月7日開工後，亦遭受當地民衆以漁船實施柔性抗爭（漂流、佈網等手法）干擾施作，雖經本隊派艇至現場海域戒護海上施工船舶安全，惟廠商受颱風及心理影響，遲至96年9月5日方行復工，但居民阻撓仍是層出不窮，由於，本案係屬行政院公共工程委員會列管之重大民生工程案件，上級列為列管案件，故基於行政一體及互助合作之原則，為協助自來水公司全力達成年底完工之目標，特訂定此一海域工程安全維護計畫，期以公權力排除阻力，順利完成此一民生建設工程。

參、策略

合法的集會、遊行爲憲法保障之基本權利，然而我國現行集會遊行法之主管機關為內政部警政署，且該署於民國85年11月13日即以（85）警署保字第84396號函對內部作成集會遊行法不適用海域之函釋，其理由在於領海未劃分予各地方政府管轄，致該法主管之警察機關並未及於領海範圍。再者，依該法第1條第2項「本法未規定者，適用其他法律之規定」意旨觀之，有關海上聚眾活動之處理應可援引其他相關法律以為規範，似無需強以該法規範之。

依「海岸巡防法」第4條第1項第7款規定，巡防機關執行事項包括海上交通秩序之管制及海上糾紛之處理。另「海岸巡防機關與警察及消防機關協調聯繫辦法」第2條規定：於海域之涉嫌犯罪案件由巡防機關調查。但海上聚眾活動由巡防機關及警察機關共同處理。

處理海上聚眾活動與處理陸上聚眾活動迥然不同，無法使用阻絕器材或以優勢裝備、人力阻隔抗爭與被抗爭兩方。故獲知抗爭活動情資前，應即與抗爭團體、人員熱線接觸溝通、協調，勸導促使取消抗爭活動。倘堅持進行抗爭活動，現

limprovement of reservoir management from Taiwan Water Corporation, but also builds underground reservoir, desalination plant, etc. For this purpose, the Central Government instructs Southern Region Engineering Office, Taiwan Water Corporation to establish a desalination plant which is of 1 hectares and capable to produce 750 tons of desalinated water everyday in the area situated 450 meters southeast of Dachih Village, Shiyue Township.

However, conflicts between the local residents pro and con are so fierce that contractors have difficulties proceeding with the construction after handover of land and detailed designing in December, 2005. It is until June, 2007, when the government enforces the contract to start the work on land. As for the work at sea beginning in August 07, 2007, it is also the target for residents' "tender fight". The residents tried to interrupt the work at sea by spreading nets. Even though the Coastal Patrol Corps render ships for protection of the construction team at sea, Typhoons and interruption of residents still bring impact on the contractors, the work is therefore re-started until September 05, 2007. But this does not end residents' disturbance. Hence, due to the fact this project is determined as one of major constructions of Public Construction Commission, Executive Yuan, and based upon principle of administrative cooperation, the "Plan for Safety and Protection of Coastal Construction" is established to assist Taiwan Water Corporation to accomplish the work by end of the year with governmental authorities.

III.Strategy

Under the Constitution, legitimate assembly and parade are both the basic rights of people. As the authority governing Assembly and Parade Act, National Police Agency, Ministry of the Interior issues an official letter No.84396 to interpret the said act is inapplicable to maritime affairs for the reason that territorial sea is not under jurisdiction of municipal authorities. Furthermore, pursuant to Assembly and Parade Act § 1.2, it should be appropriate to refer to other laws for management of assembly at sea.

In accordance with Coast Guard Act § 4.1.7, the coastal-guard-related organizations are responsible for control and management of traffic and disputes at sea. Also, based on "Measures of Coordination and Communication between Coast Guard Administration and Police and Fire Departments", coastal guard organizations are in charge of investigation of maritime crime while assembly at sea is under jurisdiction of both coastal guard organizations and police departments.

場處理應全程蒐證（錄音、照相、錄影），保持理性、平和態度，如發生違法行為，非必要時以不逮捕現行犯為原則，主要係考量海上逮捕困難度高、且避免刺激參與抗爭人士，加劇抗爭反彈情緒，增加危險性及處理困難度，而宜於抗爭活動結束後，將蒐證情形移送檢察機關依法究辦，以儆效尤。

如遇陳抗民衆採柔性抗爭手法如漂流、佈網等作為，經查雖無法強勢排除該等漁船於該區域活動，仍可採多數巡防艇強勢護送工作船進入施工區作業，並以廣播告知該區船隻，海巡單位依據上級命令執行公務，如有硬闖破壞或阻撓等行為發生，一律以妨害公務罪究辦（此看法經洽詢澎湖地檢署吳主任檢察官巡邏認同及支持）。

綜上所述，集會遊行法雖已排除海域抗爭事件之適用，惟本總局基於依法賦予有關海域秩序維護、海上交通管制等職權，仍可對於海上抗爭事件採取必要之因應措施（依據海洋巡防總局於91年4月17日洋局巡字第0910008755號函頒「行政院海岸巡防署海洋巡防總局海上聚眾活動處理原則」辦理）。例如抗爭團體意圖為強暴脅迫或已下手實施強暴脅迫時，即可援引刑法第135條「妨害公務執行及職務強制罪」或第136條「聚眾妨害公務罪」、第149條「公然聚眾不遵令解散罪」或第150條「公然聚眾施強暴脅迫罪」等法令，移送檢察機關偵辦，或視情節輕重，依社會秩序維護法及其他相關法令處罰。



陸上施工陳抗一景。

Demonstration against the construction

Because such widely-applied tools on land as barriers, advanced instruments, manpower to close off people pro and con cannot be used at sea, the way to manage assembly at sea is significantly distinct from that on land. Before obtaining intelligence on demonstrations or conflicts, the standard procedures should be contact, communication, coordination with the participants, and then convince to cease the activity efficiently. Under the circumstance that the participants insist to continue the demonstration, involved officers should proceed with on scene evidence collection (sound recording, photo taking, video recording), and maintain rational and peaceful attitudes. To consider difficulty of arresting at sea and avoid exasperating participants, although illegal activity occurs, do not arrest in flagrante delicto unless it is necessary. To decrease risks and difficulty it is appropriate to bring illegal participants to justice with the collected evidence after the conflict.

When residents adapt such "tender way" as spreading nets, it is recommended to convoy the working ship into the construction zone with a number of patrol ships even though the authority cannot evacuate compulsively fishing boats in the area. The convoy can be accompanied with announcement as a warning to the nearby fishing boats that anyone involved into interruption and disturbance in the construction zone will be accused of offenses of interference with public functions (this strategy is also supported by Mr. WU, Head Prosecutor of Penghu District Prosecutor Office).

To sum up, although Assembly and Parade Act is inapplicable to maritime conflicts, the ex officio Maritime Patrol Directorate General is authorized to take necessary action based upon the power to maintain maritime order and control traffic at sea. (see "Principle of Proceeding Assembly At Sea of Maritime Patrol Directorate General, Coast Guard Administration, Executive Yuan", issued in the official letter No. 0910008755 as of April 17, 2002). Clearly speaking, as participants of conflict have intention or already have de facto practice of intimidation and threat, ex officio officers have the power to refer to the Criminal Law § 135, "Offenses of Obstructing an Officer in Discharge of Duties & Crime of Coercion"; § 136, "Offenses of Obstructing an Officer in Discharge of Duties by Unlawful Assembly"; § 149, "Offenses of Dispersing Order of Public Assembly"; or § 150, "Offenses of Intimidation and Threat in Public Assembly". The involved participants in the assembly will be granted investigation from prosecution department or penalties according to Social Order Maintenance Act and other laws.

肆、經過

為達平和執法，澎湖海巡隊隊長何士青遂率三組偵緝人員及居住當地之同仁前往大池村進行問題瞭解，掌握村中意見領袖看法及作為，並提供相關法律見解，使民衆確實瞭解法律底限，不致在激情陳抗中，誤觸法網，加深政府與民衆間之鴻溝，適時設立聯絡窗口，掌握及時陳抗情資及民衆作為，編排勤務立即因應，經一夜疏通，其意見領袖同意僅實施海上陳抗意見表達，不會有觸法之作為。

為避免陳抗事件擦槍走火，海巡隊亦採全隊停止休假，編排6網次巡防艇勤務嚴陣以待，由於事前規劃得宜，每位同仁均清楚明白勤務作為，故當工作船隻進入施工水域時，十多艘陳抗船隻雖立即一擁而上，均無法迫近阻撓，只見工作平台順利施作，地方人士經一陣子意見表達後，便鳴金收兵，宣告踏出海上工程施作的第一步。

俟後，澎湖海巡隊仍每日編排海（陸）巡防勤務，掌握及時村民陳抗動態，確保工程施作安全無虞，歷經二十多天的勤務戒備，海上施作工程進度已大幅超前原定目標，順利達成上級交付之任務。

伍、結語

古云：「身在公門好修行」，身為海上人民的樞母，面對上級的命令及民衆的意見表達的雙面要求，如何扮演好角色，一方面貫徹公權力，一方面又是民衆的依靠，確實不易，透過本案，如果堅決以法律來阻絕陳抗民意，工程一定能夠順利施行，但是處理違法事件時，勢必有不少民衆遭移送法辦，甚至身陷囹圄，對於一心保衛家園的村民而言，心中對政府的歧見勢必加深，而澎湖海巡隊用誠意來化解地方的怨懟，讓民衆知道在意見表達之際，又不致誤觸法網，除了完成上級推行重大工程列管案件外，也贏得民衆的尊敬，製造雙贏局面，成為處理海上陳抗的一個成功案例。

（本文作者任職於海洋巡防總局第八【澎湖】海巡隊）

IV.Course

In order to enforce laws in peace, He Shi-qing, leader of Penghu Offshore Flotilla leads three teams of investigators and local officers to Dachih Village. In addition to a problem solution, they seek for communication with the opinion leader in the village, and provide the local residents with relevant legal information to prevent them from violating the laws when having fierce conflicts. They also launch a contact channel, which renders intelligence on conflict-related affairs, schedule service particularly for rapid response. After the coordination lasting for a night, the opinion leader accepts expression of opinion at sea does not offend against the laws.

To avoid expansion of conflicts, no leave of absence is allowed in the Offshore Flotilla. Six rounds of on scene duties are prepared as well. Thanks to the well-planned schedule and complete understanding to the duty, more than ten boats owned by residents spill to obstruct but can hardly get close as the construction ship enters into the construction zone. The platform is under construction successfully. Participants in the assembly ceased the conflict following expression of opinion. The first step of the construction at sea is achieved significantly.

Hence, schedule of daily duties to control situation of conflicts are maintained to ensure safety of construction. After at least twenty days of at sea duties, great progress in the construction is accomplished even more than expected.

V.Conclusion

As ancestors say, "serving as public servant is good for moral teachings". Positioned as the maritime guardian of people, it is never easy to obtain balance between governmental order and request from the public. Through this experience, we learn enforcement with strong hand may help progress of construction. However, it may also worsen the situation when a large number of participants are brought into justice or put into jail. For the local residents who expect nothing but protection of homeland, their dissatisfaction with the authorities must be deepened. By solving complaints from the residents and offering an opportunity to express opinion without violation of laws, the Offshore Flotilla not only succeeds in progress of construction, but also gains respect from the public. This win-win situation has become a glorious model for all cases related to conflicts at sea.

(The author of this article is currently working in the Offshore Flotilla 8, Maritime Patrol Directorate General)