

立法會
Legislative Council

LC Paper No. CB(2) 986/00-01

(These minutes have been seen by
the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of special meeting
held on Saturday, 18 November 2000 at 9:00 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Howard YOUNG, JP
- Members attending** : Hon NG Leung-sing
Dr Hon Philip WONG Yu-hong
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon Ambrose LAU Hon-chuen, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP
- Public Officers attending** : Mrs Regina IP, JP
Secretary for Security

Miss Eliza YAU
Principal Assistant Secretary for Security E

Mr LEE Ming-kwai
Director of Operations
Hong Kong Police Force

Mr WONG Che-kwong
Superintendent of Police (Licensing)
Hong Kong Police Force

Mr Benedict LAI
Deputy Law Officer (Civil Law)
Department of Justice

Ms Roxana CHENG
Senior Assistant Solicitor General
Department of Justice

Attendance by : Hong Kong Federation of Women
Invitation

Mrs Rita LIU
Vice Chairperson

Mrs Janice CHOI
Convenor, Community Affairs Subcommittee

Hong Kong Association of International Investment

Mr PUN Tak-hung
Secretary General

Hong Kong Federation of Fukian Associations

Ms TANG King-yung

Po Kin Athletic Society

Mr MA Gate

Mr TAM Seir-kim

Shauiwan and Chaiwan Residents Fraternal Association

Mr CHAN Shiu-kuen
Director

Federation of Hong Kong Guangdong Community Organizations

Mr AU YEUNG Sing-shiu

The Hong Kong Island Federation

Mr CHUNG Yam-cheung
Secretary General

Ladies' Subcommittee, The Chinese General Chamber of
Commerce

Mrs Sophia DAN YANG Wing-man

The Hong Kong Wan Chai District Association

Mr CHOW Shing-fung
Chairman

Community Activities Centre

Mr WAN Hing-sheung
Secretary

Hong Kong Political, Economic and Cultural Society

Mr SUN Shoe-wah
Chairman

Mr Peter CHEUNG
Secretary General

The King Chung Association

Ms CHIU Bie-gieng

Fukian Athletic Club

Mr CHOI Sai-chuen

Member Liaison Subcommittee, The Chinese General Chamber of
Commerce

Mr LAU Mak-leong

The Hong Kong Overseas Chinese General Association

Mr KU Suen-fai
Chairman

Mr LEE Chun-tak

Mr CHANG Hao

The Unified Associations of Kowloon West Limited

Mr YU Sau-ning

San Mei City Luk Ho Overseas Fraternity Association

Mr LAW Chi-hung

Mr PANG Lung-wuong

Individuals

Mr WONG Siu-yee

Mr CHOW Chi-cheong

Ms CAI Song-ying

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Views of organizations/individuals on the regulation of public meetings and public processions and review of the Public Order Ordinance (POO)

Members noted the newspaper articles, which were tabled at the meeting, provided by Miss Margaret NG.

(Post-meeting note : The newspaper articles tabled were issued to members vide LC Paper No. CB(2) 311/00-01(01) on 20 November 2000.)

Meeting with representatives of Hong Kong Federation of Women
(LC Paper No. CB(2) 278/00-01(01))

2. Mrs Janice CHOI presented the views as detailed in the submission of Hong Kong Federation of Women and concluded that there was no need to amend POO.

Meeting with representative of Hong Kong Association of International Investment
(LC Paper No. CB(2) 278/00-01(10))

3. Mr PUN Tak-hung presented the views as detailed in his speaking note for the meeting. He informed Members that Hong Kong Association of International Investment considered that there was no need to amend POO.

(Post-meeting note : The speaking note of Mr PUN Tak-hung was issued to members vide LC Paper No. CB(2) 330/00-01(01) on 23 November 2000.)

Meeting with representative of Hong Kong Federation of Fukian Associations
(LC Paper No. CB(2) 292/00-01(01))

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4. Ms TANG King-yung presented the views as detailed in the submission of Hong Kong Federation of Fukian Associations. She concluded that there was no need to amend POO.

Meeting with representative of Po Kin Athletic Society
(LC Paper No. CB(2) 278/00-01(02))

5. Mr MA Gate presented the views as detailed in the submission of Po Kin Athletic Society and concluded that there was no need to amend POO.

Meeting with representative of Shaukiwan and Chaiwan Residents Fraternal Association
(LC Paper No. CB(2) 278/00-01(03))

6. Mr CHAN Shiu-kuen informed Members that besides the views as set out in its submission, Shaukiwan and Chaiwan Residents Fraternal Association considered that the expression of views on POO should be made in a peaceful manner. It considered that there was no need to amend POO.

Meeting with representative of Federation of Hong Kong Guangdong Community Organizations
(LC Paper No. CB(2) 278/00-01(04))

7. Mr AU YEUNG Sing-shiu presented the views as detailed in the submission of the Federation of Hong Kong Guangdong Community Organizations. He concluded that there was no need to amend POO, which had already maintained a proper balance between the right of peaceful assembly and public order.

Meeting with representative of Hong Kong Island Federation
(LC Paper No. CB(2) 278/00-01(05))

8. Mr CHUNG Yam-cheung said that some media were not impartial in the reporting of news, such as in reporting news about Hong Kong Island Federation. He informed Members that besides the views as set out in its submission, Hong Kong Island Federation considered that there was no need to amend POO, which maintained a proper balance between the freedom of an individual and social stability. He said that requiring organizers of public meetings or public processions to give prior notice to the Police would not deprive them of their rights.

Meeting with Mr WONG Siu-yee

9. Mr WONG Siu-yee presented the views as detailed in his submission.

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He concluded that there was no need to amend POO.

(Post-meeting note : The submission of Mr WONG Siu-ye was issued to members vide LC Paper No. CB(2) 620/00-01(01) on 5 January 2001.)

Meeting with representative of Ladies' Subcommittee, The Chinese General Chamber of Commerce

(LC Paper No. CB(2) 278/00-01(97))

10. Mrs Sophia DAN YANG Wing-man presented the views as detailed in the submission of the Ladies Subcommittee of the Chinese General Chamber of Commerce. She concluded that there was no need to amend POO.

Meeting with representative of the Hong Kong Wan Chai District Association

(LC Paper No. CB(2) 278/00-01(06))

11. Mr CHOW Shing-fung presented the views as set out in the submission of Hong Kong Wan Chai District Association and concluded that there was no need to amend POO.

Meeting with representative of Community Activities Centre

(LC Paper No. CB(2) 278/00-01(07))

12. Mr WAN Hing-sheung informed Members that the Community Activities Centre considered that there was no need to amend POO. Besides the views as set out in its submission, the Community Activities Centre considered that -

- (a) it was inappropriate to describe the existing POO as draconian, as over 6 600 public meetings or public processions had been held since 1 July 1997;
- (b) debates on whether a piece of legislation should be amended should be held in a peaceful manner; and
- (c) it was permissible under the International Covenant on Civil and Political Rights (ICCPR) to impose restrictions, such as those on the grounds of national security and public order, on the right of peaceful assembly.

Meeting with representatives of Hong Kong Political, Economic and Cultural Society

(LC Paper No. CB(2) 278/00-01(08))

13. Mr SUN Shoe-wah presented the views as set out in the submission of

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Hong Kong Political, Economic and Cultural Society, which considered that there was no need to amend POO.

Meeting with representative of the King Chung Association
(LC Paper No. CB(2) 278/00-01(09))

14. Ms CHIU Bie-gieng presented the views as detailed in her speaking note for the meeting. She informed Members that the King Chung Association considered that there was no need to amend POO.

(Post-meeting note : The speaking note provided by Ms CHIU Bie-gieng was issued to members vide LC Paper No. CB(2) 330/00-01(03) on 23 November 2000.)

Meeting with representative of Fukian Athletic Club
(LC Paper No. CB(2) 292/00-01(02))

15. Mr CHOI Sai-chuen presented the views as detailed in the submission of Fukian Athletic Club and concluded that there was no need to amend POO.

Meeting with representative of Member Liaison Subcommittee, The Chinese General Chamber of Commerce
(LC Paper No. CB(2) 278/00-01(11))

16. Mr LAU Mak-leong presented the views as detailed in the submission of Member Liaison Subcommittee of the Chinese General Chamber of Commerce. He concluded that there was no need to amend POO.

Meeting with Mr CHOW Chi-cheong
(LC Paper No. CB(2) 278/00-01(13))

17. Mr CHOW Chi-cheong presented the views as set out in his submission. He said that there was no need to amend POO.

Meeting with representatives of the Hong Kong Overseas Chinese General Association
(LC Paper No. CB(2) 278/00-01(12))

18. Mr CHANG Hao presented the views as detailed in his speaking note for the meeting. He informed Members that the Hong Kong Overseas Chinese General Association considered that there was no need to amend POO.

(Post-meeting note : The speaking note provided by Mr CHANG Hao was issued to members vide LC Paper No. CB(2) 355/00-01(01) on 27 November 2000.)

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Meeting with representative of the Unified Associations of Kowloon West
(LC Paper No. CB(2) 292/00-01(03))

19. Mr YU Sau-ning presented the views as detailed in his speaking note for the meeting. He informed Members that the Unified Associations of Kowloon West considered that there was no need to amend POO. He said that one should not challenge a piece of legislation merely because of one's dislike of the provisions.

(Post-meeting note : The speaking note provided by Mr YU Sau-ning was issued to members vide LC Paper No. CB(2) 330/00-01(02) on 23 November 2000.)

Meeting with representatives of San Mei City Luk Ho Overseas Fraternity Association
(LC Paper No. CB(2) 278/00-01(14))

20. Mr LAW Chi-hung presented the views as detailed in the submission of San Mei City Luk Ho Overseas Fraternity Association. He concluded that there was no need to amend POO.

Meeting with Ms CAI Song-ying
(LC Paper No. CB(2) 292/00-01(04))

21. Ms CAI Song-ying presented her submission and concluded that there was no need to amend POO.

Issues raised by Members

22. Miss Margaret NG said that the LegCo Secretariat might have arranged organizations or individuals having similar views to attend the same meeting. She noted that consistent views were expressed by the organizations and individuals attending the meeting. The Chairman clarified that the Secretariat had not arranged organizations or individuals having different views to attend different meetings. Attendance was arranged on a first-come-first-served basis. Mr AU YEUNG Sing-shiu said that he learnt about the Panel's meetings to gauge public views on POO from the newspaper. Mr Peter CHEUNG said that he also learnt of the meetings from the newspaper. Miss Margaret NG clarified that she was fully confident about the impartiality of the LegCo Secretariat in arranging organizations or individuals to present their views to the Panel. She made the remark because she thought that arrangements might have been made for organizations or individuals having different views to attend different meetings.

23. Miss Margaret NG said that even without POO, any behaviour

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prejudicial to public order or causing harm to other persons could be dealt with by other existing legislation. She pointed out that the right of assembly was a fundamental one guaranteed under the Basic Law. Any restriction of this fundamental right must be strictly necessary. ICCPR further required that restrictions on rights had to be necessary in a democratic society. She said that the penalties for breach of such restriction should be proportionate to the offence. In this connection, she expressed doubt about whether a maximum sentence of five years' imprisonment for failure to notify the Police was proportionate. She added that although it was also necessary in the United Kingdom (UK) to give prior notice to the police before holding a public meeting or public procession, a person who failed to do so would only be penalized by a fine. The police in UK was not empowered to prohibit the holding of a public meeting or public procession.

24. Mr Peter CHEUNG said that POO sought to safeguard public order as well as the lives and property of the majority in the community. Although peaceful assembly was a civil right, ICCPR provided that it should be exercised in the interests of national security, public safety, public order and the protection of the rights and freedoms of others. The requirement of giving seven days' notice to the Police was reasonable. It allowed sufficient time for the Police and the organizers of a public procession to work out arrangements for a public procession to be held without disrupting public order. Even where the Police objected to the holding of a public meeting or public procession, an organizer could still lodge an appeal under POO. There was thus no need to amend POO. He said that some people in the legal profession and some legislators had persuaded some students and illegal immigrants to hold unauthorized public processions. He considered that the Police should strictly enforce POO against these persons.

25. Mr Wan Hing-sheung said that although BL had set out the rights and freedoms of an individual, Article 42 of BL (BL42) provided that residents and other persons in Hong Kong were obliged to abide by the laws in force in the Hong Kong Special Administrative Region (HKSAR). All persons, including legislators and the legal profession, should therefore abide by POO.

26. Miss Margaret NG said that a piece of legislation would be in contravention of BL39 and therefore have no effect, if the penalties were disproportionate. Mr Peter CHEUNG said that BL39 sought to implement, *inter alia*, provisions of ICCPR in Hong Kong. As ICCPR provided that the right of peaceful assembly should be exercised in the interests of national security, public safety, public order and the protection of the rights and freedoms of others, POO was not in contravention of BL39.

27. Miss Margaret NG said that although the right of peaceful assembly had to be exercised in the interest of national security, any restriction on the right had to be necessary in a democratic society. In this connection, it was

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questionable whether a maximum sentence of five years' imprisonment for failure to comply with the seven days' notice requirement was necessary in a democratic society. She added that although it was a practice of the legislature to examine whether a bill was consistent with the provisions in ICCPR, an oversight might sometimes occur in the legislative process. It was therefore necessary to re-examine whether POO was consistent with the provisions of ICCPR. Mr AU YEUNG Sing-shiu said that penalties for failure to give notice were applicable to organizers rather than participants of public meetings or public processions. Miss Margaret NG pointed out that under section 17A of POO, all participants and organizers of a public meeting or public procession would contravene POO if prior notice for the holding of such activities had not been given to the Police. She considered that the proportionality of the provision should be reviewed.

28. Secretary for Security said that the penalties provisions reflected the views of the community at large when POO was enacted in 1967. The proportionality of these provisions had not been questioned when legislative amendments were introduced to POO in 1995 and 1997, nor was it questioned after the "26 June Incident". The proportionality was not questioned until the last one or two months. It could thus be concluded that the provisions reflected the view of the community at large in the last 30 years.

29. Mr CHUNG Yam-cheung said that the existing POO was more lenient in many respects than that before the enactment of the Public Order (Amendment) Ordinance 1995. He questioned why the amendments made in 1997 were described as a restoration of draconian law. He said that legislation should be tailored to the prevailing needs of the community. The seven days' notice requirement was based on past experience. It should not be relaxed merely because requirements in UK were more lenient. Miss Margaret NG said that the word draconian was used to describe legislation in the colonial times rather than existing legislation. The POO before the enactment of the Public Order (Amendment) Ordinance 1995 was draconian because it contravened the Hong Kong Bill of Rights Ordinance. With the enactment of the Public Order (Amendment) Ordinance 1995, the Police could not object to the holding of a public meeting or public procession. The amendments made in 1997, which required a notice of no objection from the Police, were thus described as a restoration of draconian law. She considered that POO should be examined to see whether any of its provision was unreasonable or unconstitutional. She added that the penalties in other places were different from those under POO. Mr SUN Shoe-wah said that if a piece of legislation was described as draconian after it was subsequently amended, BORO would also be draconian, as its overriding effect had been amended after BL came into force.

30. Mr James TO said that he recognised the divergence of views in the community on whether POO should be amended. He cautioned that there would be little room for discussion if a subject was politicized.

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31. Mr WAN Hing-sheung agreed that it was inappropriate to politicize issues. He said that Mr James TO seemed to have always opposed the government of HKSAR. For example, Mr TO had been silent on the arson at the Immigration Department's Wan Chai office in August 2000, but had strongly accused the Police of using pepper spray in the "26 June Incident". Mr James TO responded that he had, as the spokesman of the Democratic Party, condemned the arson at the Immigration Department's Wan Chai office in August 2000. He had commended the Police on many occasions. As such commendation was seldom reported in the media, he had subsequently adopted the practice of writing to commend the officers directly.

32. Mr James TO said that not much legal views on the consistency of POO with ICCPR and BL were expressed at the meeting. He added that even if POO was consistent with ICCPR and BL, there was still room for discussing whether the length of notice and the number of persons above which notice had to be given were appropriate. He said that it was inappropriate for the Police to determine the length of notice required from its past experience, as the Administration's position might usually be different from those of organizers of public meetings or public processions. Many people who criticized the existing POO had also criticized the POO in the colonial times. He added that the Public Order (Amendment) Ordinance 1995 had been implemented without any problem for about two years. The necessity for the amendments to POO in 1997 was thus questionable.

33. Mr SUN Shoe-wah said that some young members of his organization had intended to stand out and oppose to some public processions in the two-year period after amendments were made to POO in 1995. These young members had been restrained from taking such actions to avoid clashes and bloodshed. Mr CHOY Sai-chuen said that similar situations had also occurred with his organization. He said that consideration could be given to creating a "demonstration zone" in the Victoria Park for peaceful processions to be held without advance notification of the Police. However, different groups of demonstrators should be separated to avoid clashes which might result in social unrest.

34. As regards the major difference between the provisions of POO before the enactment of the Public Order (Amendment) Ordinance 1995 and after the enactment of the Public Order (Amendment) Ordinance 1997, Deputy Law Officer (Civil Law) informed Members that there was a licensing system for the holding of public meetings or public processions before the amendments in 1995. With the enactment of the Public Order (Amendment) Ordinance 1995, this was replaced by a notification system. This notification system was retained in the Public Order (Amendment) Ordinance 1997 except that a "notice of no objection" mechanism was introduced. Under this latter mechanism, the Commissioner of Police (CP) was required to issue a notice of objection as soon

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as practicable and within a specified time limit, if he objected to a procession. If CP did not issue a notice of no objection or a notice of objection within the time limit, he was taken to have issued a notice of no objection. Miss Margaret NG said that the Public Order (Amendment) Ordinance 1997 also introduced the grounds of national security and the protection of the rights and freedoms of others on which CP might object to the holding of a public procession. Mr Peter CHEUNG said that it was very natural to introduce the concept of national security after reunification.

35. Miss Emily LAU said that although some people might have been pressurized in the colonial times, this did not mean that these persons should now pressurize others. She further said that although the organizations and individuals attending the meeting considered that POO should not be amended, there were other views calling for amendment of POO. In this connection, the following issues could be reviewed -

- (a) whether the seven days' notice period was too long;
- (b) whether failure to give notice should be a criminal offence;
- (c) whether a maximum sentence of five years' imprisonment for failure to give seven days' notice was too heavy; and
- (d) whether it should be the Police rather than the organizer who lodged an appeal.

Miss LAU asked whether attending deputations and individuals considered that LegCo should also consider the views expressed by other persons not attending the meeting.

36. Mr AU YEUNG Sing-shiu agreed to the view that LegCo should listen to the views of various sectors of the community on POO. He said that it was important for the expression of views to be made in a peaceful manner rather through vigorous actions on the streets. Mr WAN Hing-sheung shared the same view. Mr CHUNG Yam-cheung said that it was up to LegCo to decide whether the views of various sectors of the community should be listened. He reiterated that there was no need to amend POO. If POO was to be amended, his organization might propose further tightening the provisions in POO.

37. Miss Emily LAU asked whether the Administration would provide an overall response to the points raised at the meeting and the submissions received. S for S responded that as many organizations would express views on POO, it was not the appropriate time to provide an overall response. She assured Members that the Administration would respond to the points raised at the motion debate on POO on 20 December 2000. Mr James TO hoped that Members would be informed of the Administration's position before the motion

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debate.

38. The Chairman said that organizations interested in expressing views on POO were welcome to contact the Secretariat for further arrangements on a first-come-first-served basis. If necessary, more special meetings of the Panel could be convened to receive views on POO.

39. The meeting ended at 12:45 pm.

Legislative Council Secretariat

28 February 2001