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Panel on Security

**Background brief prepared by Legislative Council Secretariat
for the meeting on 5 July 2005**

**Issues relating to allegations of Mainland public security officials
taking enforcement actions in Hong Kong**

Purpose

This paper summarises the discussions so far held by Members on issues relating to allegations of Mainland public security officials taking enforcement actions in Hong Kong.

Background

2. On 16 June 2004, the Police received complaints that there were suspicious vehicles in the vicinity of a residential building on Mt. Davis Road. In the evening of the same day, patrolling police officers found a private car with four men standing beside it at the roadside near the building and the bonnet of the vehicle raised. Meanwhile, another private car with three men on board drove up to that location.
3. In response to police enquiries, two of the seven men said that they were Mainland public security officials. A pair of handcuffs belonging to one of these two men was found in a handbag on the back seat of one of the vehicles. The other five were Mainland visitors.
4. The seven men were arrested by the Police for suspected offences of loitering and possession of offensive weapon. All seven men were released on bail awaiting further investigation.

Mechanism of police cooperation between Hong Kong and the Mainland

Meeting of the Panel on Security on 28 June 2004

5. The Panel on Security was concerned whether there was any breach of the mechanism of police cooperation between Hong Kong and the Mainland arising from the case, and discussed with the Administration the mechanism on 28 June 2004.

6. According to the Administration, cooperation between the Police and Mainland public security authorities had been conducted on the basis of Interpol practice. Assistance in police investigation had to be undertaken in accordance with established mechanism. If the police of one side wished to conduct investigation in the territory of the other side, it had to be carried out through the police of the other side. The police authorities of both sides should not conduct criminal investigation on their own in the territory of the other side.

7. Regarding the consequences of breaching the agreed mechanism of police cooperation, the Administration informed the Panel that there was no mention about the penalty for non-compliance. However, should there be a departure from the mechanism, the Police would make a protest to the relevant Mainland authorities.

8. In response to a member's enquiry, the Administration advised that there was no local legislation to deal with Mainland law enforcement officers undertaking investigation in Hong Kong. A member was of the view that legislation should be enacted to deal with Mainland law enforcement officers carrying out investigation in Hong Kong.

9. Regarding some members' concern about the scope of application of the mechanism of police cooperation, the Administration agreed to consider whether the coverage of the mechanism should be expanded to include the Ministry of State Security as well as provincial and municipal government.

Meeting of the Panel on Security on 1 March 2005

10. The issue of the mechanism of police cooperation between Hong Kong and the Mainland was again discussed by the Panel on Security on 1 March 2005.

11. The Administration advised the Panel that only statutorily authorised persons could take law enforcement actions in Hong Kong, even if the alleged offence was committed outside Hong Kong. Any other person, including law enforcement officials of other jurisdictions, attempting to take similar actions in Hong Kong might contravene the local legislation and might be prosecuted accordingly. In addition, the mechanism of police cooperation between Hong Kong and the Mainland had been operating smoothly and effectively. In view of these, the Administration did not consider that there was a need to draft legislation dealing with Mainland public security officials taking enforcement actions in Hong Kong.

12. Responding to a member's question whether there was any agreed mechanism on the taking of law enforcement actions by state security officials in Hong Kong, the Administration advised that the present mechanism was focused on police cooperation in criminal investigations. State security officials had not made any request for taking law enforcement actions in Hong Kong. The Administration had considered the matter and had come to the conclusion that there was not a need to do so, as state security officials were not involved in criminal investigations.

Police investigation and development of the case of two Mainland public security officials and five visitors arrested on 16 June 2004

Meeting of the Panel on Security on 28 June 2004

13. At the meeting of the Panel on Security on 28 June 2004, the Administration also briefed members on the case. Members were informed that the Ministry of Public Security had stressed that it would adhere to the "one country, two systems" principle and Mainland law enforcement officers were strictly prohibited from taking enforcement actions on their own in Hong Kong. Members were also informed that the Police had treated the case with utmost attention and had assigned the Regional Crime Unit of Hong Kong Island Region to conduct investigation.

14. Some members were concerned whether any Mainland public security officials had performed duties in Hong Kong, and whether undertaking surveillance and the possession of handcuffs amounted to taking enforcement actions in Hong Kong.

15. The Administration responded that the Police was investigating whether the Mainland persons were in contravention of Hong Kong laws or the mechanism of police cooperation between Hong Kong and the Mainland. The Police had sought confirmation about the identity of the arrested persons and the purpose of their visit to Hong Kong from the relevant Mainland public security authorities and a reply was awaited.

Administration's letter dated 13 July 2004 regarding the identity of the seven Mainland persons in the case

16. In its letter dated 13 July 2004, the Administration informed the Panel on Security that upon the enquiries of the Administration, the Guangdong Provincial Public Security Department (GDPSD) replied that two of the seven arrested persons were serving public security officials and the other five were employees of a car rental company in Shenzhen. The purpose of their visit was sightseeing and shopping.

Administration's letter dated 15 January 2005 regarding its reply to a press enquiry on the case

17. In its letter dated 15 January 2005, the Administration informed the Panel on Security of its reply to a press enquiry on the case that the Police had completed investigation into the offences of "loitering" and "possession of offensive weapon" which were suspected of having been committed by the seven Mainland persons. The Department of Justice (D of J) had, after consideration of all the evidence and relevant information, concluded that there was insufficient evidence for bringing prosecution against the seven Mainland persons.

Meeting of the Panel on Administration of Justice and Legal Services on 17 January 2005

18. Issues relating to prosecution of the seven Mainland persons in the case were raised at the meeting of the Panel on Administration of Justice and Legal Services on 17 January 2005 during the briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's Policy Address 2005.

19. Some members expressed concern about D of J's decision of not prosecuting the seven arrested persons. Some members asked whether the decision not to prosecute was due to insufficiency of evidence, or the lack of specific law in Hong Kong for taking prosecution actions even though there was sufficient evidence such as an admission on the part of the public security officials concerned that they had undertaken law enforcement duties in Hong Kong.

20. The Administration responded that, based on the investigation of the Police and having considered all the evidence and relevant information, D of J had found that there was insufficient evidence to bring prosecution against the seven persons. There was insufficient evidence to prove all the elements of the two offences concerned after a thorough investigation. The Administration advised the Panel that irrespective of their identity, people coming to Hong Kong had to comply with the laws of Hong Kong, and they would be criminally liable for prosecution for committing offences in Hong Kong.

Meeting of the Panel on Security on 19 January 2005

21. Issues relating to the investigation conducted by the Police were raised at the meeting of the Panel on Security on 19 January 2005 during the briefing by the Secretary for Security on the Chief Executive's Policy Address 2005.

22. Some members asked whether the Administration had requested the Mainland authorities to investigate the case and provide a reply.

23. The Administration responded that it had requested the Mainland public security authorities to investigate the case and the reply obtained was that –

- (a) no Mainland public security official had taken enforcement actions in Hong Kong in the case concerned; and
- (b) one of the Mainland public security officials concerned had inadvertently brought a pair of handcuffs to Hong Kong.

24. Some members queried why the arrested Mainland persons were released on bail, although most Mainland residents who visited Hong Kong with Two-way Permits were not allowed to do so.

25. The Administration advised the Panel that the Police would not allow an arrested person to be released on bail, if investigation revealed sufficient evidence for instituting prosecution against the arrested person or when there was a likelihood that the arrested person might escape when released on bail. In the case, the seven arrested persons were released on bail in accordance with established procedures pending investigation of the case.

Meeting of the Panel on Security on 1 March 2005

26. The Panel on Security was concerned about allegations that Mainland public security officials had taken enforcement actions in Hong Kong arising from the case of the seven Mainlanders, and further discussed the subject matter on 1 March 2005.

27. The Panel was informed that D of J had, having considered carefully the provisions in respect of the offences of “loitering” and “possession of an offensive weapon” as well as the available evidence in the case, come to the conclusion that there was insufficient evidence to give rise to a reasonable prospect of achieving a conviction against any of the seven persons; nor did the evidence support a prosecution against any of the seven persons for any other criminal offence.

28. Some members queried why prosecution was not instituted against the seven persons, and whether evidence for bringing prosecution against these persons was indeed insufficient. These members considered that the information provided so far by the Administration could not convince the public of its decision not to institute prosecution against the seven arrested persons. They were of the view that the Administration’s refusal to disclose further information about the case might give the public the impression that the Administration was shielding the arrested persons from prosecution.

29. The Administration responded that there was no question of shielding the arrested persons. The Police had followed all the necessary procedures and conducted a thorough investigation before referring all relevant information to D of J for independent advice on the sufficiency of evidence to support criminal proceedings against the seven persons. The Administration stressed that before and after the

reunification, the police authorities of Hong Kong and the Mainland had cooperated in accordance with Interpol practice. To ensure consistent implementation, the basis and mode of operation were further regulated through regular high level meetings between the police authorities of both sides. Under no circumstances could police officers of one jurisdiction take enforcement actions in the other jurisdiction.

30. The Panel requested the Administration to write to the Mainland authorities conveying members' concerns and seeking a reply on the punishment, if any, imposed on the public security official who brought a pair of handcuffs to Hong Kong. A member requested the Administration to provide the Panel with copies of its letters to GDPSD on the case.

Administration's response to further enquiries from the Panel on Security

31. Arising from a newspaper report on a person claimed to be the victim in the case, the Panel on Security had sought further information on the case from the Administration.

32. In its letter dated 19 May 2005, the Administration replied that in reaching the decision of whether or not to prosecute, all relevant material was taken into account. Careful consideration was given to whether any of the suspects could be prosecuted for loitering, possession of an offensive article, or for any other offence. As there was not a reasonable prospect of securing conviction, prosecution was not a viable option. If there was new evidence, the decision taken in the case regarding prosecution would be open to re-assessment. However, D of J was not aware of such new evidence.

Related information

33. Questions relating to allegations of Mainland public security officials taking enforcement actions in Hong Kong were raised by Members at the Council meetings on 9 May 2001 and 15 October 2003. A list of these questions is in the **Appendix**.

Relevant papers

34. For details of the discussions, members may wish to refer to the following documents -

Minutes

- (a) Minutes of meeting of Panel on Security held on 28 June 2004 (LC Paper No. CB(2)3252/03-04);

- (b) Minutes of meeting of Panel on Administration of Justice and Legal Services held on 17 January 2005 (LC Paper No. CB(2)942/04-05);
- (c) Minutes of meeting of Panel on Security held on 19 January 2005 (LC Paper No. CB(2)1248/04-05);
- (d) Minutes of meeting of Panel on Security held on 1 March 2005 (LC Paper No. CB(2)1392/04-05);

Papers

- (e) Administration's paper for meeting of Panel on Security on 28 June 2004 (LC Paper No. CB(2)2944/03-04(01));
- (f) Administration's letter dated 13 July 2004 in response to issues raised at the meeting of the Panel on Security on 28 June 2004 (LC Paper No. CB(2)3094/03-04(01));
- (g) Administration's letter dated 15 January 2005 regarding its reply to a press enquiry on the case (LC Paper No. CB(2)682/04-05(05));
- (h) Administration's paper for meeting of Panel on Security on 1 March 2005 (LC Paper No. CB(2)923/04-05(04)); and
- (i) Administration's letter dated 19 May 2005 in response to a request from the Panel on Security for additional information on the case (LC Paper No. CB(2)1628/04-05(01)).

35. The above papers are available on the website of the Legislative Council (<http://www.legco.gov.hk>).

**Council questions raised by Members relating to
allegations of Mainland public security officials
taking enforcement actions in Hong Kong**

Council meeting on 9 May 2001

At the Council meeting on 9 May 2001, Hon LAU Kong-wah asked a written question on law enforcement officers of the Mainland and Hong Kong carrying out cross-border duties. The question and the reply are available at <http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010509fe.pdf>.

Council meeting on 15 October 2003

2. At the Council meeting on 15 October 2003, Hon LAU Kong-wah asked a written question on Mainland customs officers taking law enforcement actions within Hong Kong waters. The question and the reply are available at <http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1015ti-translate-e.pdf>.