

立法會
Legislative Council

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LC Paper No. CB(2)1569/05-06
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of meeting held on Tuesday, 7 February 2006
at 2:00 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Members attending : Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon Alan LEONG Kah-kit, SC
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon CHEUNG Man-kwong

Public Officers attending : Item IV
Mr Stanley YING
Permanent Secretary for Security

Miss CHEUNG Siu-hing
Deputy Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

Miss Petty LAI
Assistant Director General (Regional Cooperation)
Trade and Industry Department

Mr Peter YAM
Director of Operations
Hong Kong Police Force

Mr Henrique KOO
Assistant Commissioner of Police (Operations)

Mr MA Wai-luk
Chief Superintendent (Crime HQ) (Crime Wing)
Hong Kong Police Force

Mr John Richard READING
Deputy Director of Public Prosecutions
Department of Justice

Item V

Mr Ambrose LEE
Secretary for Security

Mr Stanley YING
Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

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

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)945/05-06)

The minutes of the meeting held on 6 December 2005 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)973/05-06(01))

2. Members noted that a paper provided by the Administration on the timetable for review of the suspicious transactions reporting requirements under section 12 of the United Nations (Anti-terrorism Measures) Ordinance, section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance had been issued since the last meeting.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)995/05-06(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 7 March 2006 at 2:30 pm –

- (a) Interception of communications and covert surveillance;
- (b) Replacement of Fireboat No. 4; and
- (c) Police's undercover operations against vice activities.

(Post-meeting note : At the request of the Administration and with the concurrence of the Chairman, the items "Replacement of Fireboat No. 4" and "Police's undercover operations against vice activities" had been replaced by the items "Legislative proposals for the implementation of the co-location arrangement" and "Quality Migrants Admission Scheme".)

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4. Members agreed that the Administration should be requested to provide information on its immigration policy on foreign visitors, including the Government's immigration policy in respect of visit visas and transit arrangements for foreign visitors and the progress of granting of visa-free access to foreign visitors, including visitors from Russia.

IV. Security arrangements for the Sixth Ministerial Conference of the World Trade Organization held in Hong Kong from 13 to 18 December 2005
(LC Paper Nos. CB(2)995/05-06(03) and (04), CB(2)984/05-06(01) and CB(2)1055/05-06(01))

5. Members noted a speaking note provided by the Police and a submission from the Hong Kong Human Rights Monitor, which were tabled at the meeting.

(Post-meeting note : The speaking note and the submission tabled at the meeting were circulated to members vide LC Paper no. CB(2)1070/05-06 on 8 February 2006.)

6. Permanent Secretary for Security (PS for S) and Director of Operations, Hong Kong Police Force (Dir of Ops) briefed Members on the security arrangements for the Sixth Ministerial Conference of the World Trade Organization (MC6) held in Hong Kong from 13 to 18 December 2005. PS for S informed Members that –

- (a) the Administration was not in a position to disclose further information about the three cases where prosecution was being instituted against the arrested persons, as the legal proceedings had not yet been concluded;
- (b) complaints against Police officers relating to MC6 were being investigated by the Complaints Against Police Office (CAPO), which would submit its investigation findings to the Independent Police Complaints Council (IPCC); and
- (c) the Police was conducting a review on its operations during the conference period.

7. Mr LEE Cheuk-yan said that the Administration's paper was too brief and did not cover many aspects of the Police's operations. He asked about the amount of tear gas, super sock rounds and pepper spray used by the Police, the circumstances under which they were used and the Police's guidelines on such use of force. He said that the Police had not responded to the issues raised in the submission from the Hong Kong People's Alliance on WTO and the Asian Human Rights Commission, including the arrested persons' lack of access to legal representatives, the slapping of arrested persons by Police officers, complaints about racial discrimination against Asian demonstrators and some arrested persons having to wait inside coaches for

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more than eight hours before they were arranged to enter detention centres. He said that the Administration should appoint an independent committee to conduct investigation into the Police's operations during the conference period.

8. Dir of Ops responded that 34 CS grenades (tear gas), six super sock rounds and 738 canisters of pepper spray had been discharged and 515 Police officers had used batons during the conference period. He said that many issues referred to by Mr LEE Cheuk-yan were included in a comprehensive review being conducted by the Police.

9. PS for S said that the Administration's paper had been prepared having regard to the views and concerns of the community at large and the meeting of the Panel on Commerce and Industry held after the conference period. Since then the Hong Kong People's Alliance on WTO had raised further issues in its submission, which the speaking note of Dir of Ops had attempted to cover. He added that the Police was conducting a review on its operations during the conference period. The Administration would consider disclosing, except for information relating to the Police's internal operations, the results of the Police's review, where appropriate.

10. Mr LEE Cheuk-yan said that the Police should provide more information, such as the number of hits of batons by Police officers, the locations where tear gas had been discharged, the number of detainees slapped by Police officers and the number of translators deployed, so that Members could assess whether the Police had contravened human rights.

11. Dir of Ops responded that there were internal guidelines on the detention of arrested persons. The Police would examine whether such guidelines were complied with during the conference period. He said that there were practical difficulties for a Police officer to recall his number of hits of baton during the conference period. He added that 20 translators had been deployed on 17 December 2005. Although these translators were originally scheduled to work at different shifts, most of them had worked throughout 17 December 2005 and some of them had worked until the following day. The Police had sought the assistance of the Consulate General of the Republic of Korea in Hong Kong to recruit more translators but in vain. He added that the Police had not received any report of Police officers slapping detainees. Any person who claimed to have been slapped by Police officers could lodge a complaint with CAPO.

12. While commending the Police for exercising restraint during the conference period, Ms Margaret NG said that there was much inadequacy in the arrest operations and a number of issues had to be examined. The Police should not only review areas where complaints were received. The Police should conduct a full review, identify the facts in respect of the use of force by Police officers and disclose the findings.

13. PS for S responded that the review being conducted by the Police was a

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comprehensive one. Except for information relating to the Police's internal operations, the results of the Police's review on its operations would be made public, where appropriate. Any person who had specific concerns about the Police's operations could submit his views to the Administration.

14. Ms Margaret NG asked whether the Police had estimated the time needed for carrying out the necessary procedures to arrest a large number of persons and drawn up appropriate measures for such arrests.

15. Dir of Ops responded that preparations had been made by the Police having regard to the number of persons arrested in other places where international conferences were held. The information obtained from open source was as follows –

	<u>Place</u>	<u>Number of persons arrested</u>
(a)	Seattle	631
(b)	Washington	1 300
(c)	Prague	900
(d)	Scotland	355

16. Ms Margaret NG said that the Police should not round up a large number of people for a few hours and then accused them for participation in an unauthorised public meeting. Some newspapers had pointed out that the arrest of such a large number of demonstrators had not been found in other places.

17. Ms Margaret NG asked whether Hong Kong was the only place where prosecution was instituted against arrested demonstrators.

18. PS for S responded that the Administration had examined the issue and noted that arrests and prosecutions of such a scale had been found in many other places where international conferences were held.

19. Ms Margaret NG asked about the rank of the Police officer who made the decision to arrest some 1 000 demonstrators.

20. Dir of Ops responded that the Police officer who decided arresting some 1 000 demonstrators was the officer-in-charge at the scene, who was a Police officer at the rank of Senior Superintendent of Police. He said that according to information available to the Police, 26 demonstrators were prosecuted when MC3 was held in Seattle, while 23 demonstrators were prosecuted when the G8 Summit was held in Scotland. The Chairman requested the Police to provide information on the prosecutions instituted against demonstrators when international conferences were

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held in other jurisdictions. Ms Margaret NG added that the Police should also provide information on the outcome of such prosecutions.

21. Ms Margaret NG said that many voluntary lawyers accompanied by their own translators were not allowed to visit detainees, unless a lawyer could provide the name of the detainees concerned. She asked how the detainees were made aware of their rights. She queried whether it was a standard procedure to require a detainee to take off his clothes during frisking and keep a detainee handcuffed when using the washroom. She considered that such arrangements should be reviewed.

22. PS for S responded that the rules for the questioning of suspects and the taking of statements, which were promulgated by the former Secretary for Security in 1992, stipulated, among others, that a detainee had the right to communicate or refuse to communicate with a lawyer. A note setting out such rights in English and Chinese had been provided to the detainees and explained to them through translators. He stressed that although preparations had been made by the Police, there were limitations on the detention facilities and the number of Korean-speaking translators.

23. Dir of Ops said that the arrested persons had been clearly informed of their rights through translators. Among the persons arrested, 202 had been visited by their lawyers and 12 by the representatives of their respective consulates. He stressed that there were stringent guidelines and established procedures on frisking, which sought to prevent the trafficking of drugs and weapons that might cause harm to detainees or other persons.

24. Ms Margaret NG queried why a voluntary lawyer was not allowed to visit a detained person, unless the lawyer could provide the name of the detained person and the detained person could provide the name of his or her lawyer. Mr Albert HO added that he had to wait for four hours before he was allowed to visit two detainees. He was not allowed to visit other detainees, even though he could provide the name of the labour union to which the detainees belonged. He questioned why flexibility could not be exercised as in the past.

25. Dir of Ops responded that arrangements would be made for a suspect to see a lawyer, if a detainee requested so. It was a general requirement that a detainee had to provide information about his lawyer and the lawyer had to provide the name of the detainee. To his knowledge, a complaint regarding access to lawyers had been lodged with CAPO.

26. Ms Margaret NG asked whether the Police's practice in frisking was adopted in other jurisdictions. She also asked whether the rules for the questioning of suspects and the taking of statements promulgated by the former Secretary for Security in 1992 had been provided to the Legislative Council. She said that the rules should be reviewed.

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27. PS for S responded that, to his knowledge, the rules were published in the gazette by the former Secretary for Security in 1992. He undertook to provide the Panel with a copy of the rules.

28. Mr Howard YOUNG said that many people in Hong Kong had hoped that achievements would be made in MC6 and that the Police would facilitate peaceful demonstrations while maintaining order. He considered that although there were some inadequacies in the Police's operations, anyone could note from the live broadcasts of television channels who had resorted to violence. He added that the demonstrators' use of bamboo poles to attack Police officers was unacceptable. He pointed out that most of the public's comments on the performance of the Police were positive.

29. Mr Howard YOUNG said that the protection of foreign consulates was particularly important for maintaining Hong Kong's image as a peaceful city. He noted from the television broadcast that a group of Police officers in ordinary uniform was found facing demonstrators. He asked whether this was due to any mistake in the deployment of Police officers. He added that there were reports that the plate on the external wall of the United States Consulate General in Hong Kong had been damaged by demonstrators. He asked whether it was due to a lack of adequate Police manpower at the scene. He considered that the persons who committed such an obvious offence of criminal damage should be arrested at the scene.

30. Dir of Ops responded that Police officers in soft order duty uniforms were deployed at the junction of Marsh Road and Lockhart Road to avoid provoking demonstrators. The incident arose from demonstrators who were supposed to march towards Hung Hing Road suddenly charging against the Police cordon line at the junction and marched along Lockhart Road. He added that the majority of the Police officers at the United States Consulate General in Hong Kong were deployed for preventing demonstrators from entering the building. A Police officer who tried to stop a demonstrator from damaging the plate on the external wall of the consulate was injured by the demonstrator. He said that this was one of the areas under review by the Police.

31. Mr Albert HO said that although many people might be content with the Police's performance in the early stage of the conference period, it was necessary to examine the inadequacies for remedies and future improvement. He considered that the Police should, before deciding to arrest a large number of persons, assess whether there were sufficient facilities and manpower for handling such a massive arrest. He expressed concern that eight coaches with female demonstrators on board were forced to cruise for some hours without stopping because of a lack of detention spaces. Some of the arrestees had even been detained at remote locations such as the San Uk Ling Holding Centre. It was not until noon of 19 December 2005 when the Police established a centre to facilitate the location of the detained persons.

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32. Dir of Ops said that, under the Police's plan, arrested persons were to be detained in the detention centres of the Kowloon East Region, followed by those of the Kowloon West Region, the New Territories South Region and the New Territories North Region.

33. Mr Albert HO queried whether there were reasonable grounds to believe that the arrested persons had breached the law before arrests were made.

34. Dir of Ops responded that the Police would arrest a person only where there were reasonable grounds to suspect that the person had committed an offence. He believed that the public had noted the behaviour of the demonstrators from the live television broadcasts.

35. Deputy Director of Public Prosecutions (DDPP) said that the basis for the arrest of a person was reasonable suspicion of the person committing an arrestable offence. He recalled watching the events that occurred through the television at 11 pm on 17 December 2005 when he received a telephone call from an Assistant Commissioner of Police (ACP), who informed him about what had happened. The ACP informed him that there was a proposal to arrest and asked whether there was any problem from a legal perspective, if the arrests were to take place. In view of the information provided by the ACP and what he had noted from the live broadcasts on the television, he was of the view that there appeared to be a reasonable suspicion that persons had committed arrestable offences. However, the decision to arrest anyone is an operational matter for the police, and it is the police at the scene who are considering arresting that person who must have the reasonable suspicion. As the issue of identification would be an important one in the forthcoming trial, he was not in a position to provide further information on the issue.

36. Mr Albert HO queried whether the Police had arrested about 1 000 persons in order to prevent them from participating in the public meetings and public processions on the following day.

37. Dir of Ops responded that there was no question of such a consideration.

38. Mr Albert HO queried whether the Police had actually gone through an identification process before releasing the majority of the arrestees. He asked whether the charges against 11 of 14 detained persons were dropped for political reasons.

39. Dir of Ops responded that after the suspects were arrested, the Police had conducted a photo identification exercise to identify the persons who had breached the law. The Police had completed all the necessary procedures before releasing suspects where there was insufficient evidence to institute prosecution. He added that the Police's review would cover all relevant procedures.

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40. Mr LEUNG Kwok-hung said that he was one of some 1 000 persons arrested on 17 December 2005. He was released without giving any statement or undergoing any identification process. He queried how the Police could manage to complete the identification of over 1 000 suspects and seeking of legal advice within 24 hours. He commented that the decision to release the majority of the arrested persons was made by the Administration. The Police had not followed the established procedures on the identification of suspects and seeking of legal advice from the Department of Justice as to whether there was sufficient evidence to institute prosecution. He considered that the Administration should establish an independent committee to investigate into the allegations against the Police.

41. PS for S responded that the Police had followed the established procedures for the arrest of persons, gathering of evidence against arrested persons and the seeking of legal advice as to whether there was sufficient evidence to institute prosecution.

42. Dir of Ops said that although the demonstrators had not committed any robbery, many of them had used wooden beams and iron bars dismantled from hoardings and mills barriers outside the Central Plaza to attack Police officers. 89 Police officers had been injured during such confrontations.

43. DDPP said that following the arrests by the Police and an initial investigation, a number of arrestees were released. There was evidence indicating that 14 persons had committed the offence of unlawful assembly. Further investigation was required before a complete investigation report could be submitted to the Department of Justice for advice as to the sufficiency of evidence for instituting prosecution. Charges were subsequently laid on three persons.

44. Mr LEUNG Kwok-hung asked whether the Police had deliberately disseminated the news that overseas demonstrators planned to cause disturbance in Hong Kong. He queried why members of the media and public had been cleared from the scene of confrontation.

45. Dir of Ops responded that the Police had not disseminated negative news about overseas demonstrators. Members of the public were cleared from the scene to avoid injuries. He said that he was not aware of any clearance of members of the media from the scene. The Chairman said that the clearance of members of the media could be seen from some television broadcast during the period.

46. Mr LEUNG Kwok-hung expressed concern that Police officers had used pepper sprays at a distance much closer than that referred to in the Police's guidelines.

47. Dir of Ops responded that the Police's guidelines only set out the effective distance of a pepper spray. There was no mention of any minimum distance at which pepper spray should be applied.

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48. Ms Emily LAU said that although the Police had been very restrained in some aspects, there were also aspects which had aroused wide public concern both locally and internationally. She considered that the paper provided by the Administration was too brief and did not contain response to the allegations made in the joint submission from the Hong Kong People's Alliance on WTO and Asian Human Rights Commission. She considered that the Administration should form an independent committee to review the Police's operations, investigate into the allegations and provide a report setting out all the facts.

49. PS for S reiterated that the cases pending trial would be dealt with by the court. Complaints against Police officers would be dealt with by CAPO. The Administration would consider disclosing, except for information relating to the Police's internal operations, the results of the Police's review, where appropriate.

50. Dr LUI Ming-wah commended the Police for playing a key role in facilitating MC6 to be held successfully in Hong Kong. He considered that the Panel should examine the security arrangements from a macro perspective instead of a micro one. He considered that the following issues should be covered in the Police's review –

- (a) the provision of emergency ambulance service for injured persons during the confrontations;
- (b) whether sufficient food and washroom facilities had been provided to the detained persons;
- (c) whether the disturbance outside the Central Plaza reflected weaknesses in the cordon line;
- (d) why arrests had not been made directly during the disturbance outside the Central Plaza; and
- (e) whether the prosecution of the leaders of Korean groups were deliberate.

51. Dr LUI Ming-wah said that as the findings of CAPO would be reviewed by IPCC, where he and Mr Alan LEONG were members, he considered it not necessary for the Administration to form an independent committee to review the Police's operations.

52. PS for S remarked that the relevant government departments had, before the conference period, drawn up contingency plans on the provision of emergency ambulance service. He said that if he remembered correctly, there were 50 MC6-related emergency ambulance calls during the conference period. Although the 12-minute response time target was met in some of the cases, there were some cases where the response time target could not be met. In this connection, the

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circumstances of each case were being examined by the Administration.

53. Dir of Ops said that arrangements had been made at night on 17 December 2005 for demonstrators to use washrooms in groups of five to seven detainees. The arrangement for the use of washrooms was also an area under review. He added that arrests had not been made directly when disturbance occurred outside the Central Plaza because the major task at that time was to maintain the integrity of the cordon line. Any arrests during that time would inevitably cause injuries.

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54. Dr LUI Ming-wah requested the Police to advise whether there were guidelines on the use of force under different levels of disturbance.

55. Mr LAU Kong-wah said that the Police had not made any major error in its operations during the conference period. He noted that both the Police and demonstrators were very restrained until disturbances occurred on 17 December 2005. He considered that the use of force by the Police was professional and commensurate with the different levels of disturbance, although the arrest-related arrangements should be reviewed. If suitable force was not used to contain the problem at an early stage, the situation might quickly become uncontrollable. He asked whether the Police's use of force had contravened any local legislation or the Police's internal guidelines. He considered that before the Police's review report was published, it was not appropriate to decide whether there was a need to establish an independent committee to review the Police's operations. He added that the acts of demonstrators which necessitated the use of different levels of force by the Police should be included in the Police's report.

56. Dir of Ops responded that an initial review indicated that the Police's use of force was not in contravention of any local legislation. Whether it was in contravention of the Police's internal guidelines was still under examination. He said that the Police's review would cover issues raised in the submissions from the Hong Kong Human Rights Monitor, the Hong Kong People's Alliance on WTO and the Asian Human Rights Commission.

57. The Chairman said that the Administration should establish an independent committee to review the Police's operations given that part of the Police's review would not be made public. He said that the subject should be further discussed when the results of the Police's review on its operations were available.

V. Interception of communications and covert surveillance

(LC Paper Nos. CB(2)997/05-06(01) and CB(2)971/05-06(01) & (02))

58. Members noted a submission from the Law Society of Hong Kong, which was tabled at the meeting.

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(*Post-meeting note* : The submission tabled at the meeting was circulated to members vide LC Paper no. CB(2)1071/05-06 on 8 February 2006.)

59. Secretary for Security (S for S) and PS for S briefed Members on the Administration's proposals for enactment of legislation to regulate interception of communications and covert surveillance by law enforcement agencies.

60. While welcoming the introduction of legislation regulating interception of communications and covert surveillance, Mr LEUNG Kwok-hung expressed concern that not all types of covert surveillance would be authorised by the court. He considered that the Administration's proposals failed to protect the rights of persons who were targets of interception of communications or covert surveillance.

61. S for S responded that the Administration's proposals were a big step forward in comparison with the existing practice in terms of transparency and monitoring mechanism. Under the proposals, all interception of communications and the more intrusive covert surveillance would be authorised by judges. An independent oversight authority would be established to review the compliance of law enforcement agencies with the provisions in legislation.

62. Ms Margaret NG said that the pace of scrutiny of the relevant bill would depend on whether the Administration was willing to accept the suggestions of members. She opposed the proposal that members of the panel of judges responsible for authorising interception of communications and the more intrusive covert surveillance would be appointed by the Chief Executive. Referring to paragraph 24 of the Administration's paper, she also opposed the appointment of a sitting judge as the oversight authority and expressed concern that the oversight authority would comprise one person only. She expressed reservations about the proposal that questions that might tend to suggest the occurrence of telecommunications interception should be prohibited from being asked in proceedings. She requested the Administration –

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- (a) to clarify whether Mainland Public Security authorities and State Security organs were within the meaning of non-government parties under the proposed legislation;
- (b) to consider providing in the legislation that the reasons for interception of communications or covert surveillance should be included in the application for judicial authorisation, and that such application should be made by way of an affidavit;
- (c) to advise whether the renewal of judicial authorisation would be indefinite and, if so, the justifications for that;
- (d) to explain how one could differentiate between "more intrusive"

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operations and “less intrusive” operations under the two-tier authorisation system for covert surveillance;

- (e) to reconsider whether the panel of judges authorising interception of communications and the more intrusive covert surveillance operations should be appointed by the Chief Executive;
- (f) to consider adding penalty provisions for non-compliance with any code of practice made under the proposed legislation;
- (g) in relation to a person whose communication was intercepted by law enforcement agencies or was the subject of any covert surveillance operation, to provide the justifications for not informing the person afterwards that such activities had been conducted;
- (h) to explain the circumstances under which covert surveillance would be carried out by law enforcement agencies; and
- (i) to provide a written response to the issues raised in the submission from The Law Society of Hong Kong.

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63. Mr Albert HO requested the Administration –

- (a) to provide statistics on the “more intrusive” and “less intrusive” covert surveillance operations carried out by law enforcement agencies;
- (b) to advise whether the code of practice made under the legislation was subsidiary legislation;
- (c) to advise whether any person whose communication was intercepted by law enforcement agencies or was the subject of covert surveillance would be informed afterwards of such activities conducted and, if not, the justifications for not so doing;
- (d) to consider establishing a committee as an independent oversight authority to keep under review the compliance of law enforcement agencies with the provisions of legislation regulating interception of communications and covert surveillance and any code of practice made under the legislation; and
- (e) to provide information on the consequences of illegal covert surveillance conducted by law enforcement agencies.

64. Mr Howard YOUNG asked whether the tracking of a person without the use of surveillance devices would require authorisation.

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65. PS for S responded that as the tailing of a person in a public place without the use of surveillance device did not involve infringement on the reasonably expected privacy of the person, authorisation would not be required.

66. Mr Howard YOUNG said that The Law Society of Hong Kong had expressed in its submission that a maximum duration of three months for an authorisation was too long. He asked whether there was any information on the durations in the past.

67. PS for S responded that he had no information on hand regarding the duration of such operations in the past. However, it might not be appropriate to use previous durations as a reference, as the proposed requirements on authorisation would be tighter than the existing ones.

68. S for S said that the proposed maximum duration of three months for an authorisation was the same as that recommended in the Interception of Communications Ordinance and the report entitled "Privacy: Regulating the Interception of Communications" published by the Law Reform Commission in 1996. The proposed duration was much shorter than that proposed in the White Bill published in 1997 (i.e. 6 months).

69. Mr LAU Kong-wah said that the court's declaration regarding the six-month validity period for section 33 of the Telecommunications Ordinance and the Law Enforcement (Covert Surveillance Procedures) Order in the case of *Leung Kwok Hung and Koo Sze Yiu v. Chief Executive of the Hong Kong Special Administrative Region* was the subject of an appeal. He asked whether the Administration had drawn up any contingency plans in respect of the scenario where the appellant succeeded in the appeal.

70. S for S responded that the Administration would not speculate on the outcome of the appeal. However, the Administration hoped that there would not be any legal vacuum in respect of law enforcement. If the appellants succeeded in their appeals, the Administration hoped that the Legislative Council would enact the relevant legislation urgently.

71. Mr LAU Kong-wah asked how a law enforcement officer would determine whether a covert surveillance operation was more intrusive or less intrusive, and whether further authorisation would be required, if an operation was changed from a less intrusive one to a more intrusive one during the course of operation.

72. S for S responded that there would be clear provisions on when different types of authorisation would be required. Authorisation should only be given for the purposes of prevention or detection of serious crime or the protection of public security. He added that serious crime included offences punishable with a maximum imprisonment of not less than three years or a fine of not less than \$1 million for

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covert surveillance, or offences punishable with a maximum imprisonment of not less than seven years for interception of communications. Consideration would be given to the necessity and immediacy of the case, and whether the purpose sought could reasonably be furthered by other less intrusive means. Besides internal reviews within law enforcement agencies, an independent oversight authority was proposed to be established. He said that as the interception of communications would involve the privacy of many persons other than the target, judicial authorisation would be required in all cases. On the other hand, covert surveillance was in general less intrusive in that it was more specific in terms of location, time and event, and hence would be subject to either judicial or executive authorisation depending on the degree of intrusiveness of the operation concerned.

73. Mr LAU Kong-wah asked whether judicial authorisation would be required for the conduct of covert surveillance of a target's activities inside his own office. S for S replied that it would be the case generally.

74. The Chairman said that he was pleased to note that a majority of the proposals in his Member's Bill which was enacted in 1997 had been adopted in the Administration's legislative proposals. He opposed the proposal that the panel of authorising judges would be appointed by the Chief Executive. He added that the Administration should reconsider whether covert surveillance where the use of devices involved a party participating in the relevant communications should be considered less intrusive. He requested the Administration –

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- (a) to clarify whether the protection of public security included the protection of national security;
- (b) to illustrate by way of example how the two-tier authorisation for covert surveillance worked;
- (c) to explain, quoting examples, the circumstances under which oral and very urgent applications would be made;
- (d) to provide a list of offences where authorisation should be given for covert surveillance and interception of communications respectively; and
- (e) to provide information on the interception of communications and covert surveillance conducted by law enforcement agencies in terms of categories of offences.

75. S for S responded that the legislative proposals sought to regulate covert surveillance and interception of communications conducted by law enforcement agencies as well as enhancing the safeguards for privacy. The proposals were unrelated to the implementation of Article 23 of the Basic Law.

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76. The meeting ended at 5:20 pm.

Council Business Division 2
Legislative Council Secretariat
3 April 2006