

立法會
Legislative Council

Ref : CB2/PL/SE

LC Paper No. CB(2)189/06-07
(These minutes have been seen
by the Administration)

Panel on Security

Minutes of meeting
held on Tuesday, 4 July 2006, at 2:30 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
Hon CHEUNG Man-kwong
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 LEUNG Kwok-hung
Hon CHIM Pui-chung
- Member attending** : Hon Martin LEE Chu-ming, SC, JP
- Members absent** : Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public Officers attending** : Item III
Miss CHEUNG Siu-hing
Deputy Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

Mr Henrique KOO
Assistant Commissioner of Police (Operations)
Hong Kong Police Force

Ms Deborah CHANG
Deputy Regional Commander (Kowloon West)
Hong Kong Police Force

Mr YIP Sheung-fung
Superintendent (Operations)
(Crime New Territories South Regional Headquarters)
Hong Kong Police Force

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

Item IV

Ms Manda CHAN
Principal Assistant Secretary (Security) A
Security Bureau

Mr John McIntosh HUNTER
Deputy Principal Government Counsel (Treaties and Law)¹
Department of Justice

Miss Jane LEE
Assistant Secretary (Security) A2
Security Bureau

**Attendance by :
invitation**

Item III

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Hong Kong People's Alliance on Globalization

Miss WU Sui-shan
Coordinator

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2) 6

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

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

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I. Confirmation of minutes of previous meetings
(LC Paper Nos. CB(2)2580/05-06 and CB(2)2582/05-06)

The minutes of the meetings held on 7 April 2006 and 2 May 2006 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)2370/05-06(01))

2. Members noted the invitation letter dated 1 June 2006 from the Commissioner of Correctional Services to visit correctional institutions. The Chairman suggested and members agreed that the Clerk should seek information from the Correctional Services Department concerning the departure date of the incumbent Commissioner of Correctional Services before deciding whether a visit could be arranged.

[Post-meeting note : As the incumbent Commissioner of Correctional Services will be leaving the office in July 2006 and members of the Panel were heavily engaged in the scrutiny of a security-related bill, the Chairman decided that the visit should be arranged later in the new legislative session. A letter dated 8 July 2006 was issued by the Clerk on behalf of the Chairman to the Commissioner of Correctional Services.]

III. Review of 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)1521/05-06(01), CB(2)2362/05-06(01), CB(2)2577/05-06(01) and 2669/05-06(01))

3. The Chairman informed members that he had acceded to the request of the Hong Kong Human Rights Monitor (HKHRM) and the Hong Kong People's Alliance on Globalization (HKPAG) to give views at this meeting, following the publication of

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the Police After Action Review Report (the Review Report) regarding the security arrangements for the Sixth Ministerial Conference of the World Trade Organization (WTO) (MC6) held in Hong Kong from 13 and 18 December 2005.

Briefing by the Administration

4. Deputy Secretary for Security (DS for S) said that the security arrangements for MC6 held in Hong Kong from 13 and 18 December 2005 posed a great challenge to the Police. In handling the violent confrontations with some of the demonstrators, the Police had been upholding the principles of "exercising maximum restraint" and "using minimum force". Many members of the public and international organizations had complimented the Police on their performance which had ensured the smooth conduct of MC6. The Police, however, were not complacent and had conducted a comprehensive review of the whole operation during the Conference period. The Review Report was forward-looking, with a view to identifying areas for improvement in handling future confrontations.

5. Assistant Commissioner of Police (Operations)(ACP) highlighted the content of the Review Report as set out in Annex A to the Administration's paper (LC Paper No. CB(2)2362/05-06(01)).

Views of deputations

6. Mr LAW Yuk-kai of HKHRM made the following points -

- (a) HKHRM welcomed the release of the Review Report but found a lack of information to substantiate the conclusions reached in the Review Report. HKHRM considered that the Police should provide more information about the security arrangements for MC6, such as the provisions governing the use of force by the Police stipulated in Police General Orders 29-01, as the public had the right to know the principles behind these arrangements;
- (b) the Police had exercised restraint during the Conference period, especially during the early stage when no formal arrest action had been taken. The approach adopted by the Police had helped ease the tension between the Police and demonstration organizers; and
- (c) HKHRM questioned whether the Review Report had truthfully reflected the overall situation. The Review Report gave the impression that the Police operation during the MC6 period had been excellent in all aspects, but this was not the case, especially with regard to the use of force. According to the guidelines of the United Nations, clear warning should be given of the intention to use force and the nature and degree of force which the Police intended to use. The Police, however, had not always

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given clear warning prior to the use of Oleoresin Capsicum (OC) foam, Carson Stoughton (CS) grenades and super sock rounds. There were allegations that the Police were attacked by metal bars, but according to his understanding, only bamboo poles had been used.

7. Miss WU Sui-shan of HKPAG made the following points -

- (a) HKPAG questioned the impartiality of the Review Report, given that the review had been coordinated by a Chief Superintendent. She considered that the Police had taken unnecessary measures to restrict freedom of expression during the MC6 operation. She urged that a review on the Police's operation on MC6 should be conducted by a committee independent of the Police;
- (b) the Hong Kong People's Alliance on WTO had made a submission to the Panel on "Human Rights Violations during the Policing, Arrests, and Detentions during the WTO Protests in Hong Kong, December 2005" (LC Paper No. CB(2)1521/05-06(01)). Although the submission and the Review Report covered the same event, their findings were very different. She expressed concern that the Review Report provided a one-sided story from the perspective of the Police officers only, and urged members of the Panel to compare the Review Report and the submission;
- (c) she doubted whether the Police had upheld the principles of "exercising maximum restraint" and "using minimum force", given that a total of six super sock rounds, 34 CS grenades and 735 cans of OC foam had been used, and 1 153 persons had been arrested on 17 and 18 December 2005. She pointed out that the anti-WTO protests had not resulted in any major casualty or loss of property to the general public. She queried whether the level of force exercised by the Police had been reasonable; and
- (d) the arrest of 1 153 persons was the biggest single arrest action ever conducted by the Police. Using the excuse that policing strategy and tactics were confidential, the Police had refused to disclose information on how the decision on the arrest action was made. The arrest action infringed human rights as a large number of demonstrators were arrested without sufficient ground. The Police should inform the public who had made the decision and the basis for the decision.

8. DS for S responded to the views of the deputations, as follows -

- (a) the principles on the use of force by the Police were set out clearly in paragraph 39 of the Review Report. Although there might be different

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views on whether the information provided was adequate, the principles adopted by the Police were in line with the guidelines of the United Nations. The practical arrangements for the use of force would depend on the prevailing situation but must be reasonable in the circumstances; and

- (b) apart from collecting evidence from the Police, the review took into account information collected from non-governmental organizations and TV news videos, views and submissions received by the Panel, and complaints received by the Complaints Against Police Office. If there were any specific examples or information to show that the review had not been conducted impartially, the Administration would be happy to provide explanation.

Discussion

9. Members noted that between 17 and 18 December 2005, the Police arrested a total of 1 153 people for the alleged offence of "taking part in an unlawful assembly". A holding charge of "taking part in an unlawful assembly" was brought against 14 identified arrested persons on 19 December 2005. On 6 January 2006, having completed the enquiries, the Police, acting on legal advice from the Department of Justice (DoJ), decided to withdraw charges against 11 defendants. The Police charged the three remaining defendants with "taking part in an unlawful assembly" and two of them were also charged with "assaulting police officers". After reviewing all the evidence, DoJ advised in the afternoon of 11 January 2006 that the charge of "assaulting police officers" against two of the defendants should be withdrawn and that the remaining defendant should be charged with "taking part in an unauthorized assembly", instead of "taking part in an unlawful assembly". The charge on the defendant of "taking part in an unauthorised assembly" was eventually withdrawn because there was insufficient evidence to proceed with the charge. In respect of the two remaining defendants, the court ruled that one of the defendants had no case to answer, and the other defendant was acquitted after trial.

10. Mr Martin LEE declared interest that he was the legal representative of the 14 arrested persons. He expressed dissatisfaction with the action taken by the Police before and after the arrest. The issues raised by Mr LEE were set out in his paper on "Complaints against the Police's handling of WTO", which was tabled at the meeting (circulated to members vide LC Paper No. CB(2)2669/05-06(01) on 5 July 2006). Mr LEE considered that DoJ and not the Police should be the authority to decide whether to lay charges on a person.

11. Deputy Director of Public Prosecutions (DDPP) responded that it was important to identify the roles of the various entities involved in the MC6 operation. The role of the Police was to decide when and who to arrest, and the role of DoJ was to decide whether it was appropriate to prosecute anyone arising from what occurred

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on 17 and 18 December 2005 based on the evidence that was available once investigation had concluded.

12. Ms Audrey EU said that according to paragraph 88 of the Review Report, a Senior Superintendent commanding at the scene considered that there was evidence to support that the people contained at the junction of Gloucester Road and Fleming Road might have participated in an unlawful assembly and attacked the Police officers, and he decided to have these people arrested after seeking legal advice from DoJ. Ms EU asked about the basis and the timing for the arrest action.

13. ACP and Deputy Regional Commander (Kowloon West) (DRC) said that on 17 December 2005, some people charged at the Police cordon on a massive scale and launched violent attacks against the Police officers, resulting in numerous injuries. This not only violated the laws of Hong Kong, but also went far beyond the acceptable realms of a peaceful demonstration. At about 5:42 pm on 17 December 2005, in order to prevent the disorder from worsening, the Police strengthened the manpower deployment of the cordon at Hennessy Road and Fleming Road with a view to containing the procession from advancing westward. At midnight, 17 December 2005, a Senior Superintendent commanding at the scene, after enquiring with front-line commanders about the disorder and having discussed the matter with ACP who had sought legal advice, decided to take arrest action. There was evidence to support that the people contained at the junction of Gloucester Road and Fleming Road might have participated in an unlawful assembly and attacked the Police officers. After consulting DoJ, the Police negotiated with the leaders of the demonstrators to ensure the smooth transfer of the detained persons. At 2:50 am on 18 December 2005, the Senior Superintendent announced to the people in the detention area that the Police were arresting them for the offence of "taking part in an unlawful assembly". The arrest action was based on the reasonable belief that those involved had violated the laws of Hong Kong.

14. DDPP recalled that he was watching on TV the events that occurred at 11:00 pm on 17 December 2005 when he received a telephone call from ACP, who informed him that persons had been contained, but there was no mention of the number involved. ACP asked him whether there was any legal impediment for taking arrest action at that time and he answered in the negative. In view of the information provided by ACP and what he had noted from the live broadcasts on the television, he was of the view that there appeared to be reasonable belief that persons had committed offences. The basis for the arrest and the persons to be arrested were operational matters for the Police.

15. Ms Audrey EU questioned the basis for the Police to detain over 1 000 persons at the junctions of Gloucester Road and Fleming Road for some six hours when there was no evidence to lay charges against them. The Chairman queried whether it was lawful for the Police to detain but not arrest a person. Ms Margaret NG said that the action taken by the Police was containment but the power to contain a group of people

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was not provided in law.

16. DRC responded that containment was a strategy engaged by the Police to prevent the disorder from worsening. DDPP affirmed that containment was a process used in similar events in other parts of the world. ACP supplemented that section 54(2) of the Police Force Ordinance (Cap. 232) provided that if a police officer found any person in any street or other public place, whom he reasonably suspected of having committed or of being about to commit or of intending to commit any offence, it should be lawful for the police officer to detain the person for a reasonable period for enquiry.

17. Ms Margaret NG pointed out that the power to detain applied to an individual, and not a large group of people, whom the Police reasonably suspected of having committed an offence. She questioned whether the Police had made a right decision on the arrest action. As the arrest action involved 1 153 people, the Police should have foreseen that it was beyond its capability to verify the identities of these people within a reasonable period. She also questioned whether it was reasonable to suspect each and every 1 153 person to have taken part in an unlawful assembly. Ms NG cautioned that the action of detaining a large number of people might have violated human rights. The Police should have considered taking alternative action, such as recording the identities of the 1 153 persons and taking follow-up action when there was sufficient evidence to support that some of them had violated the laws of Hong Kong.

18. Mr Albert HO said that the Police had the impression that some demonstrators had violated the laws of Hong Kong but it was not sure of the persons involved. The arrest action taken by the Police was based on the reasonable suspicion that these people were among the procession contained at the junction of Gloucester Road and Fleming Road. There were, however, no reasonable grounds to believe that the arrested persons had breached the law before the arrests were made. He noted that eight coaches with female demonstrators on board were forced to cruise for some hours without stopping because of a lack of detention spaces. He queried whether it was reasonable to detain them for over 10 hours.

19. DRC said that when those people were contained, there were reasons to believe that they might have participated in an unlawful assembly and attacked the Police officers. It was, however, necessary to collect evidence and verify the role played by each individual before charges could be instituted against any person. ACP added that after containment, there was a screening process after which over 100 people were released. Those not involved in the incident, including onlookers, tourists and news representatives, were allowed to leave if there was no indication that they had participated in an unlawful assembly or attacked the Police officers. This was done after the Police had verified their identities and purpose of being at the scene, and checked for signs of confrontation. To ascertain if there was sufficient evidence to prosecute the arrested persons, the investigating officers reviewed a total of 83 Police

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and TV news videos, and made enquiries with the front-line officers who had participated in the operation. There being no indication that any females had engaged in violence, the Police started releasing 192 female arrested persons from 9:20 pm on 18 December 2005.

20. While appreciating the arduous task faced by the Police in the MC6 operation, Mr CHEUNG Man-kwong was of the opinion that the arrest action of the Police lacked basis as all along there was no evidence to support that the females contained at the junction of Gloucester Road and Fleming Road had participated in an unlawful assembly and attacked the Police officers. He said that the Police had broken their record by conducting the biggest single arrest action, bringing a holding charge of "taking part in an unlawful assembly" against only 14 identified arrested persons out of the 1 153 persons arrested, and eventually failing to have any person convicted.

21. Mr Martin LEE said that the Police had done a good job in handling the confrontations at the early stage and should have carried it to the end. It would have been better if the Police had released all the persons after arresting them. After all, the injuries inflicted on the Police had not been serious. He also expressed concern that the identification evidence was poor, as the Police failed to arrange Korean actors to participate in an identification parade.

22. Ms Audrey EU asked why holding charges were laid against only 14 persons when a large number of people were arrested, and why only three arrested persons were prosecuted at the end. She said that judging from the result of the arrest action, the Police apparently had made a wrong decision. They should admit their mistake and learn from this lesson.

23. ACP reiterated that the arrest of over 1 000 people by the Police was based on the reasonable belief that they had violated the laws of Hong Kong. Following the arrest, investigation was immediately carried out to identify persons suspected of breaking the law and ascertain if there was sufficient evidence to prosecute the arrested persons. Reference was made to Police and TV news videos; enquiries were made with front-line officers who participated in the operation; and comparisons were made on the assailants as captured in the videos with photographs of the arrested persons. Eight photo albums of male arrested persons were compiled and photo identification was attended by four front-line officers who were involved in the confrontation. The four Police officers identified 14 arrested persons who had attacked the Police officers. Acting on the advice of counsel from DoJ, a holding charge of "taking part in an unlawful assembly" was brought against the 14 identified arrested persons. The Police officers had difficulty in identifying other assailants because many of them were wearing masks during the confrontations.

24. DDPP said that there was no doubt that a certain amount of military precision among the protestors took place in the evening of 17 December 2005. The violence escalated as the day went past and the Police seemed to have acted with considerable

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restraint. Faced with more severe violence, they had no choice but to effect arrest action. The magistrate handling the case accepted that based on the evidence, there were acts of violence perpetuated by a number of people on that evening. DDPP said that these people wore masks in order to hide their identification. The identification made by the Police was in respect of persons whose faces could be genuinely seen. Preliminary legal advice was sought from DoJ based on statements of officers who had identified the 14 persons from the album. The holding charge was then laid and the investigation continued thereafter.

25. DDPP further said that attempts were made by the Police to arrange an identification parade but there were difficulties. As 11 arrested persons were Koreans and there were insufficient Korean actors in Hong Kong, a formal identification parade could not take place. The defence had offered to fly some 80 Korean actors (8 actors per suspect) to Hong Kong at the expense of the Hong Kong Government. A decision was made not to spend public money on this exercise and an alternative was adopted for confrontation identification. Arising from that process, three persons were identified and prosecuted, and the remaining 11 arrested persons were released subsequently. The magistrate decided, having heard the evidence, that there was insufficient acceptable identification evidence and he acquitted all three defendants.

26. The Chairman pointed out that paragraph 191 of the Review Report had not mentioned that public money had been a consideration in deciding whether an identification parade should be arranged. The Review Report had, however, remarked that the Police should avoid using face-to-face confrontation as evidence in future unless there was no other alternative. Ms Margaret NG said that when it came to gathering of evidence, one should avoid adopting an unreliable method, such as face-to-face confrontation.

27. DDPP said that while identification parade was the ideal way of gathering evidence, courts in the past had accepted both confrontation identification evidence and evidence of identifications from photographs. It was a matter of balancing the amount of money that would cost the public and proceeding with evidence that was available. In this case, the court held the view that the quality of identification was insufficient.

28. Mr Martin LEE said that the Police had maintained a difficult stance during the plea-bargaining process. All 14 defendants offered to plead guilty to "unauthorized assembly", but the prosecution insisted on "unlawful assembly", even though the maximum penalty for the two different offences was the same.

29. DDPP explained that although the two charges carried the same maximum penalty, the conduct in relation to the two was quite different. The charge of "unauthorised assembly" effectively was a charge of assembling in a place with no authority to assemble, or assembling without any authority. In this case, there was

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an "authorized assembly", as the assembly was to follow a particular route and arrive at a particular place. However, a large number of people deviated from the route in respect of which the authority was given and thus committed the offence of "unauthorised assembly". "Unlawful assembly" invariably involved some acts of violence. Ultimately, two defendants went to trial on the charge of "unlawful assembly". The magistrate was not satisfied with the quality of the identification process and acquitted all the defendants.

30. Mr Albert HO said that the best way to substantiate charges against assailants, especially those wearing masks, was to take immediate arrest action during the attacks. Since the Police had not done so, they should have anticipated the difficulty in identifying these assailants once they had joined the procession, and should have aborted the arrest action. Mr HO suspected that the decision to take arrest action was made by the top management although the Police prosecuted only a few people at the end. The Police should be well aware that only a small portion of people contained were involved in the confrontation. Mr Albert HO, Mr CHEUNG Man-kwong, and Mr LEUNG Kwok-hung held the view that the underlying reason for the Police to arrest the 1 153 persons was to prevent them from participating in the public meetings and public processions the following day.

31. ACP responded that the decision to take arrest action was made by a Senior Superintendent commanding at the scene, not senior police management. There was no question of the arrest aiming to prevent the people arrested from participating in the procession to be held the following day. While the Police were aware that taking immediate arrest action during the attacks was the best way to substantiate charges against a person, it would, however, run the risks of escalating confrontations and resulting in more injuries.

32. DS for S believed that the public would give a fair judgment on the performance of the Police. During the Conference period, the Police made their best effort to facilitate the smooth conduct of all peaceful demonstrations. Force was only used for the purpose of maintaining public order and the Police upheld the principles of "exercising maximum restraint" and "using minimum force" throughout. Even though the demonstrators continued to batter the Police cordon, the Police tried their best to discharge their duty in a professional manner. Containment was an appropriate strategy to prevent worsening of the disorder; arrest action and prosecution had been proceeded with in accordance with the established procedures. DS for S reiterated that the Review Report was forward-looking. The Police had learnt lessons from the MC6 operation and had identified areas for improvement which were set out in the Review Report.

33. The Chairman said that the Review Report was meant to be forward-looking but failed to address how arrest action should be conducted in future confrontations. Members had validly raised the concern about whether individuals were arrested on the reasonable belief that each and every one of them had violated the laws of Hong

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Kong. He drew an analogy that it was inappropriate to arrest all the people in a building when two robbers were suspected to have hidden inside.

34. DRC said that the analogy drawn by the Chairman was inappropriate. The arrest action taken on 17 and 18 December 2005 was of a different nature. Based on the Police and TV news videos, the Police estimated that over 1 000 people had participated in an unlawful assembly and attacked Police officers. The public could watch from the live broadcasts on television that some people attacked the Police cordon on a massive scale and used fatal weapons like long wooden poles. As confrontations escalated, the Police adopted the strategy to contain those who were suspected to have violated the law at the junction of Gloucester Road and Fleming Road. She emphasised that the arrest action was not taken recklessly, it was based on the reasonable belief that those involved had violated the laws of Hong Kong.

35. Referring to paragraph 69 of the Review Report that "On arrival at the junction of Lockhart Road and Marsh Road, over 1 000 demonstrators attacked the Police officers maintaining public order at the junction", Mr LAW Yuk-kai said that many of the demonstrators were onlookers who did not participate in the attack. In his view, about one hundred people were involved in the attack and there was no basis for the Police to arrest over 1 000 persons.

36. Miss WU Sui-shan said that demonstrators arrived at the scene in groups and at different times on 17 December 2005. There was no way that the Police officers could be attacked by 1 000 demonstrators at one time. She said that the Police were giving inaccurate information. She was present at the scene on the night of 17 December 2005. She was taken custody and charged. It was therefore incorrect to say that no female demonstrator had been charged. The Chairman suggested that Miss WU might provide further details in a submission, if she would wish the Panel to follow up.

[Post-meeting note : The Administration subsequently advised the Panel that according to Police's record, Miss Wu was taken into custody but was never charged, nor was any female demonstrator.]

37. Some members were unconvinced of the Administration's explanations and remained concerned about whether the Police had abused their power in containing the procession, detaining persons and conducting arrest action. In their view, the Review Report did not help the Police improve their response to future confrontations. The Chairman said that it might be necessary to invite the Senior Superintendent commanding at the scene to explain to the Panel how and why the decision on the arrest action was made. He suggested that the issue be further discussed in future.

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IV. Proposals to implement the obligations on extradition and mutual legal assistance under the United Nations International Convention for the Suppression of Terrorist Bombings, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf
(LC Paper No. CB(2)2577/05-06(02))

38. Principal Assistant Secretary for Security briefed members on the legislative proposals to implement the obligations on extradition and mutual legal assistance under the United Nations International Convention for the Suppression of Terrorist Bombings, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf as set out in the Administration's paper.

39. The Chairman said that he was satisfied that the legislative proposals would not violate human rights. He drew members' attention that the legislative proposals would be introduced into LegCo in the 2006-07 legislative session. Members present at the meeting generally expressed support for the proposals.

V. Proposed legislation to implement the United Nations Convention Against Corruption in Hong Kong and related matters
(LC Paper No. CB(2)2577/05-06(03))

40. Members agreed that due to the time constraint, the item be deferred for discussion at the next meeting.

41. The meeting ended at 4:47 pm.