

立法會
Legislative Council

LC Paper No. CB(2)2519/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

**Minutes of special meeting
held on Monday, 29 June 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
Hon WONG Kwok-kin, BBS
- Member attending** : Hon CHAN Kin-por, JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHAN Hak-kan
Hon WONG Yuk-man
Hon IP Kwok-him, GBS, JP
- Public Officers attending** : Item I

Mr Alan LO
Principal Assistant Secretary for Security (C)

Mr Bill SUEN
Assistant Commissioner of Police (Operations)

Item II

Mrs Millie NG
Principal Assistant Secretary for Security (E)

Miss Linda LEUNG
Assistant Secretary for Security (E2)

Mr Clarence TO
Assistant Commissioner of Police (Crime)

Mr Eddy TONG
Chief Inspector, Crime HQ(1) (HQ Group) (Crime Wing)
Hong Kong Police Force

Item III

Mr David LAU
Principal Assistant Secretary for Security (A)

Mr John Alan COX
Regional Commander (Marine) (Acting)
Hong Kong Police Force

Mr KONG Sai-cheong
Senior Superintendent, Operations Bureau (Marine)
Hong Kong Police Force

Mr Glyn H DAVIES
Superintendent, Support Bureau (Marine)
Hong Kong Police Force

Mr CHAN Chi-hung, Albert
Head of Ports and Maritime Command (Acting)
Customs and Excise Department

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr YICK Wing-kin
Assistant Legal Adviser 8

Miss Josephine SO
Senior Council Secretary (2) 1

Miss Kiwi NG
Legislative Assistant (2) 1

Action

I. Combatting illegal immigration
(LC Paper Nos. CB(2)1984/08-09(01) & (02))

Principal Assistant Secretary for Security (C) (PAS(S)C) briefed Members on the measures taken by the Administration in combating illegal immigration, as set out in the Administration's paper.

2. Mr WONG Yung-kan said that to his knowledge, most illegal immigrants (IIs) entered Hong Kong via the Mainland. He considered that law enforcement agencies (LEAs) in Hong Kong should take concerted and coordinated efforts to intercept illegal immigration at source. He asked about the details of cooperation with the Mainland authorities on law enforcement against illegal immigration.

3. Assistant Commissioner of Police (Operations) (ACP(O)) responded that -

- (a) the Government of the Hong Kong Special Administrative Region (HKSAR) spared no effort in combating illegal immigration. It was believed that the decrease in the number of IIs intercepted from 2006 to May 2009 was due to the effectiveness of law enforcement actions taken by the Police and the relevant LEAs;
- (b) the HKSAR Government had all along been working closely with the Mainland law enforcement authorities in combating illegal immigration. LEAs in Guangdong and Hong Kong held meetings and exchanged views on the tackling of illegal immigration regularly. The Police provided the relevant units in Guangdong Province with information on illegal immigration from the Mainland (including non-ethnic Chinese entering Hong Kong illegally from the Mainland) on a regular basis to facilitate their follow-up and formulation of preventive measures. Having regard to the significant increase in the number of arrests of non-ethnic Chinese IIs in recent months, the Police had requested its counterparts in Guangdong Province to step up preventive action at the boundary at sea and on land. LEAs of both sides would continue to conduct joint operations at both the land boundary and the sea boundary of Guangdong and Hong Kong to intercept IIs;
- (c) as a result of the enhanced enforcement actions taken by LEAs of both sides, eight snakeheads and 18 IIs were arrested/intercepted in a joint operation conducted in May 2009; and
- (d) in May 2009, the Commissioner of Police (CP) had written to the

Action

Guangdong Public Security Bureau to express the HKSAR Government's concern about the upsurge in the number of arrests of non-ethnic Chinese IIs in recent months. The Guangdong Public Security Bureau had agreed to enhance cooperation with LEAs in Hong Kong to combat the problem.

4. Mr WONG Yung-kan and Mr WONG Kwok-kin noted that the Court of First Instance (CFI) had decided in a judicial review case in March 2009 that recognizance granted to IIs pending decision for asylum or torture claims represented an authority from the Director of Immigration (D of Imm) for these people to remain in Hong Kong. They expressed concern about the possible impact of the court's judgment on Hong Kong, in particular whether the employment opportunities of local workers would be affected. Noting that IIs entered into a recognizance could not be prosecuted for "unlawful remaining" after the handing down of the CFI's judgment, Mr WONG Kwok-kin enquired about the prosecution policy in respect of IIs or overstayers who took up illegal employment in Hong Kong.

5. In response, PAS(S)C advised that -

- (a) most of the people found illegally working were IIs or overstaying visitors. There was currently no offence against the taking of employment or establishing/joining in business by IIs and other ineligible persons. The Government used to prosecute IIs and overstayers found taking up employment in Hong Kong for the offences of "unlawful remaining" and "breach of conditions of stay" respectively under sections 38(1)(b) and 41 of the Immigration Ordinance (Cap. 115) (IO);
- (b) in the judicial review case of *Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice*, CFI held that recognizance granted to IIs pending decision for asylum or torture claims could in the context represent an authority from D of Imm for them to remain in Hong Kong. Hence, IIs entered into a recognizance would have a defence against the charge of unlawful remaining;
- (c) it was noteworthy that many non-ethnic Chinese IIs came to Hong Kong to take unlawful employment. Some of them lodged torture claims under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) after remaining in Hong Kong for a long time in order to prolong their stay. Some of them even lodged claims after their arrest or detention. As the long established prosecution policy referred to in paragraph (a) above was challenged in the judicial review case and there was an upsurge in the number of arrests of non-ethnic Chinese IIs in recent months after the CFI's judgment, the

Action

Administration saw an urgent need to amend IO to specify as an offence the taking of employment, or establishing or joining in business by IIs, with a view to maintaining effective immigration control and protecting the local workforce;

- (d) the Administration had introduced the Immigration (Amendment) Bill 2009 on 24 June 2009. The Bill would provide for a criminal offence against the taking of employment by IIs and other ineligible persons. The Administration would work closely with the Legislative Council (LegCo) and endeavour to complete the scrutiny of the Bill as soon as practicable. The new offence aimed to tackle the problems of illegal immigration and illegal employment; and
- (e) in the meantime, the Administration would continue to take rigorous measures to combat illegal employment. For instance, prosecution action would continue to be instituted against employers of IIs.

6. The Deputy Chairman shared the view that it was necessary for the HKSAR Government to enhance cooperation and intelligence exchange with the Mainland LEAs with particular regard to the development of illegal immigration so as to combat such activities. Where necessary, the Secretary for Security (S for S) or even the Chief Executive should consider raising the matter with more senior authorities in the Mainland. To tackle the problem of illegal employment, the Deputy Chairman was of the view that the Government should step up its raids on black spots of illegal employment, such as construction sites or recycling factories, and places frequented by IIs. Once illegal workers were found, prosecution action should be taken against the workers and the employer concerned. The penalties imposed on them should have a strong deterrent effect.

7. In response, PAS(S)C and ACP(O) advised that -

- (a) the HKSAR Government appreciated the need to maintain close liaison and to exchange intelligence with other governments on matters relating to cross-boundary crimes including illegal immigration. Since a great majority of non-ethnic Chinese IIs were found coming to Hong Kong through the Mainland, the Security Bureau (SB) had suggested the Mainland LEAs to step up interception operations in the Mainland and in the vicinity of Hong Kong. In the past few years, CP, S for S and other senior officials had also raised the matter with the Mainland authorities;
- (b) on the law enforcement front, the relevant departments and LEAs had always been vigilant against illegal employment so as to

Action

protect the employment opportunities of local workers. The Police had worked in close collaboration with the Immigration Department (ImmD) in launching joint operations targeting at illegal employment, and

- (c) in tandem with LEAs' efforts to combat illegal employment, the Government had been instituting vigorous prosecution against persons taking up unapproved employment or employing persons not lawfully employable. The maximum penalty for the offence of employing persons not lawfully employable under section 17I of IO was a fine of \$350,000 and imprisonment for three years.

8. Responding to Mr WONG Kwok-kin's enquiry as to whether IIs having made a torture claim and entered into a recognizance were allowed to work in Hong Kong, PAS(S)C advised that to protect local workers and to avoid creating any magnet effect, refugees, asylum seekers and torture claimants were not allowed to work in Hong Kong. However, assistance would be provided to those with subsistence needs. The Administration, in collaboration with non-government organizations and on a case-by-case basis, offered assistance-in-kind to asylum seekers and torture claimants who were deprived of basic needs during their presence in Hong Kong. Mr LEUNG Kwok-hung requested the Administration to provide more detailed information on humanitarian assistance currently provided for torture claimants.

Admin

9. In reply to the Chairman's enquiry, PAS(S)C explained that Hong Kong and Mainland were parts of the same country. Any torture claims made by Mainland residents were not accepted in Hong Kong. Mainland IIs intercepted would be removed.

10. Ms Audrey EU and Mr LEUNG Kwok-hung expressed concern as to whether the offence provision under IO had adequate deterrent effect against employers convicted of employing persons not lawfully employable. In their view, the Administration should endeavour to identify and apprehend the employer of the illegal workers to see if there was sufficient evidence to prosecute the employer in the first instance. To relieve the overcrowding situation at penal institutions, IIs found taking up employment in Hong Kong should be repatriated to their home countries, instead of being prosecuted and imprisoned.

11. Mr Albert HO echoed the views of Ms Audrey EU and Mr LEUNG Kwok-hung, and suggested that the court should impose heavier penalties on employers of illegal workers in order to achieve the desired deterrent effect.

12. In response, PAS(S)C advised that -

- (a) in general, unless an II was found to have taken up employment

Action

or committed other offences, the Government would not initiate prosecution but arrange removal or repatriation as soon as possible. The policy of prosecuting IIs found engaged in employment was introduced years ago, as a deterrent to increasing number of IIs attempting to come to Hong Kong to seek employment. Imprisonment helped convey a clear message to those potential IIs that they would need to pay a price for their offence. Any change to the existing prosecution policy might convey a wrong message to snakeheads and potential IIs and run the risk of attracting an influx of IIs;

- (b) section 17I of IO provided that the employment of a person who was not lawfully employable was an offence liable on conviction to a fine of \$350,000 and imprisonment for three years. An II who took up employment was liable on conviction under section 38 of IO to a fine of \$25,000 and imprisonment for three years. Persons who breached their conditions of stay by taking up illegal employment were, under section 41 of IO, liable on conviction to a fine of \$50,000 and imprisonment for two years;
- (c) while both persons taking up unapproved employment or employing persons not lawfully employable would be liable to a fine or imprisonment, the penalties imposed were matters for the court. With regard to sentencing of employers of illegal workers, the Court of Appeal had laid down a sentencing guideline in 2004, which prescribed that in the absence of any aggravating or mitigating circumstances, a first time offender who employed illegal workers should be liable to immediate custodial sentence of three months; and
- (d) the level of penalties imposed on illegal workers and employers was closely monitored. Cases where the sentence was manifestly inadequate would be identified for consideration of follow-up actions, such as the seeking of a review by the court.

13. Ms Audrey EU noted that the Administration was conducting a review on the torture claim screening mechanism and was studying the implementation of a legislative regime with comprehensive and effective procedures for assessing claims made under CAT. She hoped that the Administration would expedite its review and introduce a comprehensive legislative proposal to tackle all the issues, including the specific problem of employment of IIs, in one go. She asked about the progress and the timetable for completing the review.

14. PAS(S)C responded that the HKSAR Government had been reviewing the torture claim screening mechanism, with a view to achieving effective

Action

screening, ensuring procedural fairness and preventing abuses. The screening process was suspended since December 2008 following a CFI's ruling in another judicial review case. As at mid-June 2009, there were some 5 000 claims pending screening. To deal with the backlog of claims, there was a need to resume screening as soon as possible. Against this background, the Administration planned to enhance the existing screening mechanism by implementing a series of improvement measures in the fourth quarter of 2009. The Administration also planned to introduce legislation on the screening procedures. The Administration would brief the Panel on the progress of the review at the next meeting to be held on 6 July 2009. The legislative framework to be introduced for handling torture claims would be ready for consideration by the Panel by the end of 2009. PAS(S)C stressed that as the Administration had not been able to prosecute IIs released on recognizance for undertaking illegal employment since the handing down of the CFI's judgment in March 2009, there was an urgent need for the Administration to address the problem by creating a new offence against the taking of employment by IIs.

15. Mr CHEUNG Man-kwong enquired about the purpose of introducing the Immigration (Amendment) Bill 2009. He queried whether the HKSAR Government could do nothing with regard to the problem of illegal employment by IIs released on recognizance, until the passage of the Bill.

16. PAS(S)C responded that after CFI had delivered its judgment in March 2009, prosecuting IIs found working illegally for unlawful remaining might no longer be an option, given the defence as mentioned in paragraph 5 above. The Immigration (Amendment) Bill 2009 would create a new offence prohibiting IIs and other ineligible persons from taking up employment or establishing/joining in any business, thereby resurrecting the deterrence against illegal immigration. The Administration noted that a Bills Committee had been formed to study the captioned Bill. It would work closely with LegCo and endeavour to complete the scrutiny of the Bill as soon as practicable. In the meantime, the Administration would continue to take rigorous enforcement actions and institute prosecution against employers engaging persons not lawfully employable.

17. Mr CHEUNG Man-kwong noted with concern that the Hong Kong Sub-office of the United Nations High Commissioner for Refugees (UNHCR) took a very long time to process refugee claims lodged under the 1951 United Nations Convention relating to the Status of Refugees, and likewise ImmD in its processing of torture claims made under CAT. He asked about the average time required by UNHCR's Hong Kong Sub-office and ImmD for processing a refugee or torture claim.

18. PAS(S)C advised that the time needed for assessing each case varied with factors such as the individual circumstances of the case. Regarding the

Action

assessment of torture claims, ImmD normally took at least a few months to complete the processing of a case.

19. Mr Albert HO considered that the tardiness on the part of the Administration in processing the torture claims had intensified the problem of illegal employment. He expressed concern over the existing procedures adopted by the Administration for assessing torture claims, which in his view were unfair and cumbersome. He stressed the importance of putting in place comprehensive legislation and effective procedures for the assessment of torture claims. The procedures should meet high standards of fairness as required in the court judgment, and facilitate the provision of publicly-funded legal assistance to claimants who did not have such means.

20. PAS(S)C responded that immigration officers responsible for screening/processing of claims made under CAT had performed according to their best endeavours. It was noteworthy that the longer-than-expected time required for determining a torture claim was also dependent on factors such as the willingness of the claimant to cooperate. Sometimes, the screening was delayed because the claimant concerned repeatedly failed to show up for interview.

21. Mr Albert HO and Ms Emily LAU shared the view that the HKSAR Government should provide refugees, asylum seekers and torture claimants with adequate assistance to ensure that they could lead a life with dignity. Ms LAU further urged the Administration to provide resources to assist UNHCR's Hong Kong Sub-office in expeditiously implementing the screening policy for claimants for refugee status.

22. PAS(S)C noted members' views and said that the Administration would consider all practicable measures to enhance the torture claim screening mechanism.

II. Police's handling of cases of violence against well-known personalities and civil servants in their performance of duties
(LC Paper Nos. CB(2)1984/08-09(03) & (04))

23. The Deputy Chairman said that in many cases of violence against well-known personalities, the Police could not find out the mastermind involved in the criminal plot. He expressed concern about the measures taken and the difficulties faced by the Police in tackling such crimes.

24. Assistant Commissioner of Police (Crime) (ACP(C)) responded that on receiving a report of criminal intimidation or violence, irrespective of whether the case involved a well-known personality, a civil servant or any other person, the Police would conduct a thorough investigation into the case in order to

Action

bring the culprits, including the attacker or the mastermind, to justice. This involved taking statements from relevant parties, locating witnesses, gathering evidence at scenes of crime, establishing the culprits' profiles and analyzing their modus operandi. Depending on the evidence available and subject to legal advice, the Police might arrest and lay charges against the persons concerned. ACP(C) said that subject to relevant information that might be provided by the victims, the difficulty in establishing any direct links between the culprits and the victims as well as the often limited information available regarding the incidents might make the investigation of such cases particularly difficult. Notwithstanding this, the Police was obliged to conduct thorough investigation into all such crime reports, and would not hesitate to put in extra resources for the investigations on a need basis.

25. The Deputy Chairman appreciated the difficulties faced by the Police in investigating cases of intimidation or violence against well-known personalities. He, however, hoped that the Police could continue with its relentless effort in fighting such crimes, and any decision by the Police to close the files should only be taken after the clues and evidence available had been thoroughly considered. If necessary, the Administration should increase the amount of police rewards offered for information useful to detection. Where a witness or victim was subject to a threat of physical injury, the Police should provide him with appropriate protection.

26. In response, ACP(C) advised that the Police would adjust its investigation tactics and strategies having regard to the circumstances of each individual case. For detection of serious crimes and if the cases concerned warranted, the Police would offer reward to any person who could provide information leading to the arrest and satisfactory prosecution of the culprits. Regarding the protection for victims/witnesses, ACP(C) said that the Police would assess the risks and offer appropriate protection based on the nature and circumstances of each case. He further said that the Police would continue its investigation of undetected cases involving criminal intimidation or violence against well-known personalities. If there were new developments, the Police would re-examine the cases for further action if appropriate.

27. Mr CHEUNG Man-kwong expressed concern that cases of intimidation or violence against well-known personalities had a low detection rate. Citing the assault incident on Mr Albert HO in August 2006, Mr CHEUNG said that in the light of the court judgment, he had reason to believe that those who organized and masterminded the assault were still at large. He called on the Police to continue the investigation, with a view to bringing the culprits to justice in order to uphold the rule of law. His view was supported by Mr LEUNG Kwok-hung.

28. In response, ACP(C) assured members that the Police would continue with its sustained efforts to investigate and would keep in view the

Action

developments of cases involving criminal intimidation or violence against well-known personalities. Regarding the case where Mr Albert HO was assaulted in a restaurant in 2006, ACP(C) advised that, while four assailants had been caught and put in jail, one culprit was still wanted by the Police. ACP(C) emphasized that the Police was committed to fighting violent crime. It would not tolerate any behaviour that disrupted the law and order in Hong Kong, and would continue to do its best to ensure the safety of the community.

29. Citing past cases of violence against civil servants in their performance of duties, Mr Albert HO said that to his knowledge, some of the serious assaults were planned by offenders with triad affiliation who meant to seek revenge on the civil servants. He noted that frontline staff of some government departments such as the Lands Department and the Food and Environmental Hygiene Department (FEHD), were facing higher risks of being attacked. He expressed concern about the protection provided for civil servants in the execution of their duties by the Police. He hoped that the Police would, in its investigation, attach as much importance to cases of violence against civil servants as those against public figures.

30. Principal Assistant Secretary for Security (E) (PAS(S)E) stressed that the Police was deeply concerned about cases of violence. On receiving reports of assault, irrespective of whether the cases involved well-known personalities, civil servants or any other persons, the Police would conduct a thorough investigation and try to identify all clues that might lead to the successful detection of the case, in order to bring the culprits to justice. ACP(C) supplemented that in many cases, the injured civil servants were mainly from departments which had frequent contacts with the public, such as FEHD. Where it was anticipated that an operation to be launched by such departments would encounter resistance from members of the public, the Police would assist as appropriate.

31. In reply to the Chairman's enquiry on whether the figures provided in paragraphs 4 and 5 of the Administration's paper included cases of violence against civil servants in their performance of duties, PAS(S)E and ACP(C) said that -

- (a) the Police did not have readily available statistics on cases involving violence against civil servants. This was because crime statistics were kept on the basis of the nature of offences and many offences might involve violence;
- (b) the Labour Department had all along been keeping statistics on occupational injuries involving workplace violence, including assault, in the government sector; and
- (c) occupational injuries were defined as injury cases arising from

Action

work incidents, resulting in death or incapacity for work of over three days, and which were reported under the Employees' Compensation Ordinance.

32. Mr Albert HO and the Chairman shared the view that the Police should keep track of cases of violence against civil servants in their performance of duties, in particular those revenge attacks which were serious in nature. In doing so, the Administration would have a better grasp of the situation and be able to identify measures to address the problem.

33. ACP(C) noted members' views. He said that the Police would explore whether its Communal Information System could be further enhanced to cater for this specific requirement.

34. Ms Emily LAU expressed concern that cases of violence against well-known personalities had a low detection rate and the masterminds were not arrested in most of the cases. She considered that the Police should reinforce the message of zero tolerance towards violence and conduct investigation on all cases reported to the Police in an impartial and thorough manner.

35. In response, ACP(C) emphasized the impartiality of the Police in handling cases. He assured members that the Police had always tried its best to investigate each case, regardless of the background of the victims. Upon receipt of a crime report, irrespective of whether the case involved a well-known personality, a civil servant or any other person, the Police would conduct impartial and thorough investigation into the case in order to bring the culprits to justice. ACP(C) further said that the Police was committed to providing quality service. It had set out various guidelines for officers to follow. The crime detection rate was only one of the many aspects reflecting the work of the Police. Hence, it should not be over-emphasized as it might underplay the Police's sustained efforts in anti-crime work. Regarding cases of violence and criminal intimidation against well-known personalities, ACP(C) reiterated that whether a case could be detected would depend on many factors, such as whether the victim could provide relevant information to the Police, whether there were witnesses at the scene and the amount of evidence left at the scene. Whether prosecution could be instituted in a case would depend on whether there was sufficient evidence against the culprit.

36. Ms Audrey EU expressed concern about election-related violence. She cited a case involving intimidation acts against some members of the Civic Party which happened on the polling day of the 2008 LegCo Election, and queried why no investigation or prosecution action was instituted against the people who committed the intimidation even after a complaint had been made. She considered that the Administration's inaction would encourage violence at election. She hoped that the Police and the Registration and Electoral Office

Action

would adopt more effective measures to deal with election-related crimes. Ms EU also sought information on the number of complaints, arrests, prosecution and conviction on cases concerning criminal damage to publicity boards and banners of LegCo Members in the past two years, and whether the Police had adopted any measures to combat such crimes.

37. Mr WONG Yung-kan said that he had similar experience during the District Council elections and supported Ms EU's suggestion that the Police should step up its enforcement action against election-related violence.

Admin

38. ACP(C) responded that the Police was concerned about criminal incidents involving LegCo Members and would adopt a proactive approach in the investigation. Regarding cases of vandalism of publicity boards and banners, ACP(C) said that he did not have the information in hand and would provide the figures after the meeting.

39. Mr LEUNG Kwok-hung expressed dissatisfaction that the Police did not take any enforcement action against old men who often shouted or yelled at public figures openly at the Victoria Park. He also expressed concern about the disorderly conduct of debt collectors.

40. In response, ACP(C) said that while the Police would investigate such complaints, the decision on whether prosecution could be instituted in a case would depend on the sufficiency of evidence.

III. Proposed amendments to the Import and Export Ordinance to enhance control over smuggling at sea

(LC Paper Nos. CB(2)1984/08-09(05) & (06))

41. Responding to the Deputy Chairman's enquiry about the background to and reason for making amendment to section 4 of the Import and Export Ordinance (Cap. 60) (IEO), Principal Assistant Secretary for Security (A) (PAS(S)A) explained that under section 4 of IEO, the Commissioner of Customs and Excise (C of C&E) might authorize in writing any person approved by S for S, any public officer and any Police officer at the rank of Inspector or above to exercise any of the powers and perform any of the duties conferred or imposed on an authorized officer by IEO. In March 1991, in accordance with section 4 of IEO, the then C of C&E authorized all Police officers at the rank of Inspector or above to act as authorized officers so that they could exercise and perform various powers and duties under IEO, including the power to stop, board and search any vessel, aircraft or vehicle; to arrest and detain person; to seize articles, vessels and vehicle; and to require production and examination of licence, record or documents. While there were Police officers at the rank of Inspector or above on patrol at all times at different locations in Hong Kong waters, the Police saw a need for officers

Action

below the rank of Inspector policing the waters of Hong Kong on smaller vessels to be able to exercise the powers authorized under section 4 of IEO as well, so as to allow Marine Police more flexibility in manpower deployment in combating smuggling at sea.

42. Notwithstanding the explanations provided by the Administration, the Deputy Chairman was of the view that since combating smuggling activities was mainly the responsibility of the Customs and Excise Department (C&ED) while the Police only played a complementary role, the Administration should consider increasing the manpower of C&ED in order to enhance C&ED's enforcement capability against sea smuggling activities, rather than extending the authorization made under section 4 of IEO to cover all Police officers. The Deputy Chairman further said that where necessary, C&ED and the Police should conduct joint operations against sea smuggling activities.

43. In response, PAS(S)A advised that the present proposal to extend the authorization made under section 4 of IEO was drawn up having regard to the changes in modus operandi of smuggling activities at sea in recent years and the need to enhance the effectiveness of law enforcement actions against smuggling by speedboat. Besides allowing Marine Police more flexibility in manpower deployment in combating smuggling at sea, this legislative amendment would help enhance the effectiveness and efficiency of the Police's anti-smuggling efforts.

44. Regarding the proposal to reduce the number and the total power of the engines of a vessel of less than 250 gross tons that might be presumed to be constructed or used for the purpose of smuggling under section 14A(6)(b)(iv) of IEO, the Deputy Chairman asked whether the Administration had consulted the relevant stakeholders, such as operators of water sports activities, on the details of the proposal. He further asked about the number of vessels of less than 250 gross tons outfitted with high-powered outboard engine(s) in Hong Kong.

45. In response, PAS(S)A advised that -

- (a) the Administration had consulted the local vessel industry, including various fishermen associations and pleasure craft clubs, as well as the statutory Local Vessels Advisory Committee which comprised a cross-section of industry representatives, on the proposed amendments to section 14A(6)(b)(iv) of IEO. The industry in general had no objection to the proposal; and
- (b) according to the record of the Marine Department (MD), as at May 2009, there were a total of 5 667 vessels of less than 250 gross tons with a valid licence, of which 269 were mounted with engines with output exceeding 225 horsepower.

Action

46. Expressing support for the proposed amendments to IEO, Mr WONG Yung-kan enquired about the policy intent of the legislative proposal to amend section 14A(6)(b)(iv) of IEO.

47. PAS(S)A advised that having reviewed the modus operandi of smuggling activities at sea in recent years and to enhance the effectiveness of law enforcement actions against smuggling by speedboat, the Administration saw a need to amend section 14A(6)(b)(iv) of IEO to reduce the number and the total power of the engines of a vessel of less than 250 gross tons that might be presumed to be constructed or used for the purpose of smuggling to one or more engine where the total power of the engines could exceed 168 kilowatts or 225 horsepower, so as to better target the prevailing types of speedboat constructed or used for smuggling purpose. PAS(S)A emphasized that under section 14A(6)(a) of IEO, enforcement against smuggling vessels required an authorized officer to have reasonable suspicion that a vessel had been or was intended to be used for the purpose of smuggling. In addition, section 14A(7) of IEO provided that it should be a defence for the master or other person in charge of a vessel to prove that he did not know and could not with reasonable diligence have known that the vessel was used for smuggling. Therefore, the proposed amendment to section 14A(6)(b)(iv) would not affect vessels of less than 250 gross tons engaged in bona fide purposes, even if outfitted with outboard engines the total power of which exceeded 168 kilowatts or 225 horsepower.

48. Mr WONG Yung-kan expressed concern about the existing policy governing the licensing system for pleasure vessels. He considered that the Administration should review the relevant legislation and tighten up the control over the operation of pleasure vessels. PAS(S)A responded that he would refer Mr WONG's views to MD for consideration.

Admin

49. Mr WONG Yung-kan expressed concern over the situation where fishing vessels were modified as cargo vessels and used for smuggling purpose. He enquired whether the situation was serious and if so, whether the Administration would consider introducing legislative amendments to tackle the problem. At the request of the Chairman, the Administration undertook to provide a written response.

50. The meeting ended at 4:35 pm.