

立法會
Legislative Council

LC Paper No. CB(2)2090/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE

Panel on Security

Minutes of special meeting
held on Friday, 8 January 2010, at 10:45 am
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
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun
- Members attending** : Hon LEE Cheuk-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Member absent** : Hon WONG Yuk-man

Public Officers : Item I
attending

Mr Ambrose LEE Siu-kwong, GBS, IDSM, JP
Secretary for Security

Ms Carol YIP Man-kuen, JP
Deputy Secretary for Security

Ms Maisie CHAN Kit-ling
Administrative Assistant to Secretary for Security

Mr David LAU Kam-kuen
Principal Assistant Secretary for Security (A)

Mr Clarence TO Chun-wai
Assistant Commissioner of Police (Crime)

Mr Peter Geoffrey HUNT
Regional Commander (NTN) (Acting)
Hong Kong Police Force

Mr Daniel LEUNG Chin-wah
Senior Superintendent of Police (Crime NTN HQs)
Hong Kong Police Force

Ms Tammy CHAN Kam-kuk
Chief Inspector of Police (Crime HQs)
Hong Kong Police Force

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

Staff in : Mrs Vivian KAM
attendance Assistant Secretary General 2

Ms Connie FUNG
Senior Assistant Legal Adviser 1

Mr Bonny LOO
Assistant Legal Adviser 3

Miss Josephine SO
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

Action

I. Allegation of Mainland law enforcement officers taking enforcement actions in Hong Kong
(LC Paper Nos. CB(2)692/09-10(01) & (02) and CB(2)658/09-10(01))

The Chairman informed Members that, pursuant to the request of the Panel, the Administration had agreed to show Members the video recordings made by the Government in respect of the incident on 27 December 2009, in which four Hong Kong people staging a protest on Lo Wu Bridge demanding the release of LIU Xiaobo and two reporters accompanying the protesters were taken away by Mainland law enforcement officers. The Administration requested that the video recordings be viewed in camera since the Police had already started an investigation into the case.

2. Mr Paul TSE asked whether Members could refer to the content of the video recordings when the meeting proceeded to open discussion and was held in public again after the closed-door session. The Chairman said that Members should take into account whether by referring to the video recordings, they would disclose sensitive and confidential information about the case and inadvertently affect the Police's investigation. The Chairman considered that it would be more appropriate for Members to seek clarification on issues arising from the video recordings during the closed-door session.

3. Members agreed that the meeting be switched to a closed session at this point.

Confidential

(Closed-door session)

This part of the minutes is CONFIDENTIAL

(End of closed-door session)

Discussion

8. Dr Philip WONG and Mr IP Kwok-him said that there was no evidence indicating that Mainland law enforcement officers had crossed the boundary to take enforcement actions in Hong Kong. Dr WONG took the view that the allegation was not founded on facts and could seriously undermine the trust and mutual respect that had long existed between the police authorities of the Hong Kong Special Administrative Region ("HKSAR") and the Mainland and affect their cooperation in the end. He sought details about the agreed mechanism of police cooperation between the two places.

Action

9. In response, S for S advised that -
- (a) the police authorities of HKSAR and the Mainland had all along been cooperating on the basis of mutual respect, mutual non-subordination and mutual non-interference;
 - (b) under the Basic Law, HKSAR exercised a high degree of autonomy. Article 22 of the Basic Law stipulated that no department of the Central People's Government ("CPG") and no province, autonomous region, or municipality directly under CPG might interfere in the affairs which HKSAR administered on its own in accordance with the Basic Law. Both HKSAR and the Mainland had a clear understanding of and would abide by the provision;
 - (c) before the Reunification, the police authorities of HKSAR and the Mainland conducted cooperation based on the Interpol protocols. The two parties continued to adopt such a mode of cooperation after the Reunification. The basis and mode of cooperation were further regulated to ensure consistent implementation through regular high level meetings between the police authorities of both parties. Where cooperation was undertaken, both parties were required to strictly abide by the provisions of the relevant laws and to respect the jurisdiction of the relevant territory. When liaison on individual cases was conducted under this cooperation mechanism, if one party requested the other party to provide assistance, the requested party might gather information relevant to the case through legal channels and provide such information to the requesting party. When the requesting party sought assistance, it must give prior notification to the requested party and explain clearly the nature of the case and the scope of assistance sought. It would then be for the law enforcement officers of the requested party to undertake the investigation work in accordance with the law; and
 - (d) under no circumstances could police officers of one side take enforcement actions in the territory of the other side. If any Mainland law enforcement officers were suspected to have undertaken any law enforcement actions in Hong Kong, the Administration would follow up the matter with the Mainland authorities.
10. Dr Philip WONG noted that the incident in question stemmed from a demonstration held inside the Closed Area of the Lo Wu Boundary Control Point. He expressed concern about the management of boundary control points ("BCPs") and queried the propriety of allowing people to conduct demonstrations within BCPs.

Action

11. S for S responded that the Basic Law stipulated that Hong Kong residents should have freedom of speech, freedom of assembly and freedom of demonstration. In this regard, the Police had all along been protecting the rights of Hong Kong residents and, where reasonably practicable, facilitating them to express their views through appropriate means. Nevertheless, given the special conditions and main function of BCPs and to ensure the safety of cross-boundary passengers and the smooth operation of BCPs, no person should conduct any demonstration within BCPs and the Lo Wu Boundary Control Point was no exception. It should be noted that the passenger flow of the Lo Wu Boundary Control Point was exceptionally heavy. It handled on average over 230 000 passengers daily, which was the highest among all BCPs. The day of the incident in question was a public holiday and the passenger flow of the Lo Wu Boundary Control Point exceeded 290 000.

12. The Deputy Chairman said that he could not subscribe to the Administration's view in paragraph 10 of its paper that there was no evidence to show that Mainland law enforcement officers had entered the boundary of Hong Kong to take enforcement actions, as videos taken by other people at the scene appeared to suggest otherwise. He held the view that the Police should try its best to collect various kinds of evidence to ascertain whether the claim was valid.

13. Echoing the Deputy Chairman's view, Ms Cyd HO said that in a video clip taken by other people at the scene and made accessible on the Internet, she could see some Mainland law enforcement officers doing video shooting when the protesters were marching slowly towards Shenzhen. She considered this act of the Mainland law enforcement officers an enforcement action, which should be followed up with the relevant Mainland authorities.

14. In response, Regional Commander (NTN) (Acting) ("Atg RC(NTN)") advised that the Police had already started an investigation into the incident. So far, it had viewed the video clips on YouTube and the Apple Daily's On-line News relevant to the incident which had been seen by Members at this meeting, approached and obtained statements from the two Ming Pao reporters who had been taken away by Mainland law enforcement officers on 27 December 2009, interviewed 24 Police officers and other independent witnesses such as staff of MTR Corporation Limited and contacted other relevant persons who might have first-hand information about the case, such as journalists covering the protest on Lo Wu Bridge and the organizer of the event. Atg RC(NTN) assured Members that the Police would continue its utmost to investigate whether any Mainland law enforcement officers had breached the agreed mechanism of police cooperation between the two sides.

15. Mr LEE Cheuk-yan said that he could see in the video clips on YouTube that a protester, who had once crossed the boundary but stepped back to the Hong Kong side immediately, was dragged to the Shenzhen side by a Mainland law enforcement officer in plain clothes. He recalled that when the media raised concern and sought the Police's response to the allegation, the Police

Action

had provided inconsistent and conflicting responses on different occasions. Expressing dissatisfaction with the way the Police had handled the media enquiries on the allegation of Mainland law enforcement officers taking enforcement actions in Hong Kong, which, in his view, showed a lack of candour, Mr LEE sought further information on the Police's investigation and the action that would be or had been taken in respect of the allegation.

16. S for S said that the video clips made accessible on the Internet were not clear enough to substantiate the claim and thus could be open to different interpretations. Based on the evidence collected so far, the Police was of the view that there was no evidence to show that Mainland law enforcement officers had exercised jurisdiction in Hong Kong. Nevertheless, as explained earlier, following the specific allegation by the reporters of Ming Pao claiming that Mainland law enforcement officers had crossed the boundary to take enforcement actions in Hong Kong, the Police had immediately launched an investigation into the incident and taken the matter up with the Guangdong Provincial Public Security Department. S for S emphasized that the Police took the matter seriously. There was no question of the Police lacking in candour in handling the allegation and the media enquiries.

17. Ms Cyd HO queried the sincerity of the Administration and the Police in responding to the allegation whether Mainland law enforcement officers had undertaken any law enforcement actions in Hong Kong. She agreed with Mr LEE Cheuk-yan's view that the video clips taken by other people at the scene were more helpful and informative. In her view, the Police should make a good faith effort to view all relevant video clips available on the Internet, so as to get a clearer picture of the incident in question. To avoid argument and recurrence of similar incidents in future, the Administration should consider installing additional surveillance cameras at various locations of BCPs.

18. In response, S for S advised that the closed circuit television ("CCTV") cameras installed at the boundary and the immigration control points were mainly for the purposes of maintaining public security and monitoring crowd movement. As installation of CCTV systems in public places had implications on personal privacy, the number of cameras to be installed should be carefully assessed having regard to the purpose and necessity that such facility would serve and the protection of privacy.

19. Mr Albert HO said that even if the present allegation of Mainland law enforcement officers taking enforcement actions in Hong Kong was founded, Members would probably accept an explanation from the Mainland authorities that it was an isolated incident due to the officers' reckless disregard for the consequences of their action. In Mr HO's view, the matter could have been resolved through an assurance by the relevant authorities of both sides that they would strictly adhere to the "one country, two systems" principle and prohibit law enforcement officers from taking enforcement actions in the territory of the other side. However, if the HKSAR Government chose to adopt an evasive approach and ignored the heightened community concerns about the allegation,

Action

the consequences could be very serious. Mr HO further said that to allay the public concerns over this issue, the Police should continue to investigate the case and follow up the matter with the Mainland authorities.

20. In response, S for S emphasized that the Administration was fully aware of the concerns of Members and the public about the need to uphold the principle of "one country, two systems". It would not condone any breach by Mainland law enforcement officers of the agreed mechanism of police cooperation. He assured Members that should there be a departure from the mechanism, the HKSAR Government would make a protest to the relevant Mainland authorities. Regarding the incident on Lo Wu Bridge, S for S reiterated that there was no evidence at this point of time to substantiate the claim that Mainland law enforcement officers had crossed the boundary to take enforcement actions in Hong Kong. Notwithstanding this, it should be noted that the Administration took a very serious view on the allegation. As a matter of fact, the Police had and would continue to undertake a full investigation into the allegation. In tandem with the Police's investigation, the HKSAR Government would also seek the assistance of the Mainland authorities to look into the allegation that a person in plain clothes had dragged a protester across to the Shenzhen side of the Lo Wu Bridge.

21. With regard to the demonstration on Lo Wu Bridge on 27 December 2009, Mr Paul TSE and Mr WONG Kwok-kin said that they could not understand why the Police had not taken enforcement action earlier to disperse the demonstrators before the situation got out of control, bearing in mind that the demonstration was conducted within the Closed Area of the Lo Wu Boundary Control Point, the passenger traffic of which was extremely heavy. They expressed concern whether there was a dereliction of duty on the part of the Police.

22. In response, S for S and Atg RC(NTN) said that -

- (a) there was no dereliction of duty on the part of the Police. It should be noted that the protesters, on arrival at the Lo Wu Boundary Control Point, had indicated that they intended to travel to the Mainland. As departing passengers, they also completed the immigration and customs clearance before staging the demonstration at the Departure Hall of the Lo Wu Boundary Control Point. During the procession when the protesters marched slowly towards Shenzhen in single file and chanted slogans at the same time, the Police officers at the scene had issued three verbal warnings to the protesters to inform them that they had committed an offence under section 38 of the Public Order Ordinance (Cap. 245) ("POO"), i.e. entering a Closed Area without a valid Closed Area Permit;
- (b) the Police was fully aware of Members' concern about the need to preserve law and order at BCPs. Given the special conditions of

Action

BCPs and the needs to ensure the safety of cross-boundary passengers, as well as the smooth operation of BCPs, demonstrations should not be conducted within BCPs, including the Lo Wu Boundary Control Point; and

- (c) as regards the demonstration on Lo Wu Bridge, the Police was conducting an investigation into the incident. Upon completion of the investigation, a report would be submitted to the Department of Justice for advice on whether there was sufficient evidence to prosecute any person for breach of the law.

23. Notwithstanding the above information provided by the Administration, the Deputy Chairman questioned the lawfulness of Police officers issuing warnings to the protesters for staging demonstration within the Lo Wu Boundary Control Point. He said that a person's right to demonstration and freedom of travel were well protected under the Basic Law and the laws of Hong Kong. He could not see the reason for giving the protesters three verbal warnings.

24. In response, Atg RC(NTN) advised that the Police officers at the scene issued warnings only when the protesters stopped and stayed on the Lo Wu Bridge to chant slogans. It was because in doing so, they would cause obstruction to the smooth operation of BCPs.

25. Mr Paul TSE opined that there was no point in further arguing about the purposes of the protesters. He cautioned that the chaos on Lo Wu Bridge on 27 December 2009 could cause severe damage to the image of Hong Kong, if not properly handled. In his view, the Administration should address the root of the problem by commencing a review of the security control measures adopted in connection with BCPs and the Police's practice in handling unnotified/unauthorized public meetings or processions conducted within the Closed Area. He reiterated that regardless of the result of the review, the Administration should make it clear to the public that the holding of public order events within BCPs was strictly prohibited. Mr IP Kwok-him echoed Mr TSE's view, and proposed that the review should also cover issues relating to reporters doing news coverage and performing reporting duties within BCPs.

26. The Administration agreed to consider the views and suggestions made by Members over the management of BCPs.

27. Regarding the treatment for news media, S for S advised that the Force Procedures Manual ("FPM") contained detailed guidelines on how the Police should deal with matters concerning news reporting by the media. It was stated clearly in FPM that the Police should maintain cordial relations with the news media based on mutual respect and understanding, and provide timely and accurate information to journalists within the bounds of the law. FPM also provided guidelines on how to facilitate the media in filming, photo-taking and reporting. The guidelines in FPM sought to assist frontline Police officers in

Action

striking an appropriate balance between executing their duties and facilitating news reporting by the media. S for S further said that under POO, the Frontier Closed Area (Permission to Enter) Notice (Cap. 245H) and the Shenzhen Bay Port Hong Kong Port Area (Permission to Enter) Notice (Cap. 245K), any person who wished to enter or leave the Closed Area needed to possess a valid Closed Area Permit ("CAP") unless general permission to enter or leave the Closed Area had been granted. The general permission covered persons who were cross-boundary passengers entering or leaving the Closed Area by designated mode of public transport. For journalists who needed to enter the Closed Areas for work purposes, they were required to apply for a CAP beforehand.

28. Dr Margaret NG referred to a submission from Hong Kong Human Rights Monitor ("HKHRM") tabled at the meeting, and expressed concern over the Police's handling of CAP applications from reporters. She considered that the Administration should review the existing CAP application procedures, with a view to facilitating reporters in carrying out their duties in the Closed Areas.

(Post-meeting note: The submission from HKHRM was circulated to members vide LC Paper No. CB(2)716/09-10 on 8 January 2010.)

29. S for S said that the Police would, within what was permitted under the law, facilitate media coverage of any event or incident in an orderly and safe manner. As a guiding principle, it was necessary to ensure that the presence of the media would not cause undue hindrance to Police operations or pose a safety hazard to themselves or other members of the public.

30. In response to Members' queries about the lead time required for issuance of CAPs, Atg RC(NTN) advised that to ensure the smooth operation and effective management of BCPs, access to the Closed Areas was controlled by the Police through the issuance of CAPs based on actual needs to enter the Closed Areas. He explained that a four-day period was normally required for processing an application. The processing of CAP applications from the media could be expedited, if there was an urgent need to cover breaking news.

(Members agreed to extend the meeting by 15 minutes)

31. Mr LEE Cheuk-yan and Ms Cyd HO said that they could not understand why two reporters of Ming Pao covering news on Lo Wu Bridge on 27 December 2009 were arrested by Mainland law enforcement officers. They queried whether the Mainland authorities were making attempts to hinder or interfere with the reporting activities of Hong Kong journalists. Mr LEE requested the Administration, specifically the Security Bureau and the Constitutional and Mainland Affairs Bureau, to follow up the issue with the Mainland authorities, with a view to preventing recurrence of similar incidents in future.

32. In response to Ms Cyd HO's enquiry about the Police's follow-up action with the Mainland authorities to ensure that Mainland law enforcement officers

Action

would abide by the agreed mechanism of police cooperation, Assistant Commissioner of Police (Crime) advised that the Hong Kong Police and the Public Security authorities of the Mainland held high-level working meetings regularly to discuss law and order problems of mutual concern and police cooperation matters. During the "Tripartite CID Head Meetings" held between the Police, the Guangdong Provincial Public Security Department and the Macao Security Police, the three sides also had in-depth discussions and exchanged views on various security issues.

II. Any other business

33. The Chairman drew members' attention to a letter dated 7 January 2010 from Mr CHEUNG Man-kwong, expressing concern about a case recently reported by the media where the Police was alleged to have used unnecessary force against demonstrators staging peaceful demonstrations. In the light of Mr CHEUNG's request for a meeting to discuss the Police's handling of public meetings and public processions, members agreed to include the item in the agenda for the next regular meeting to be held on 2 February 2010. The Chairman said that members might also raise the issue at the special meeting scheduled for 27 January 2010 at which the Commissioner of Police would brief members on the crime situation in 2009.

34. There being no other business, the meeting ended at 1:03 pm.

Council Business Division 2
Legislative Council Secretariat
19 July 2010