

立法會
Legislative Council

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(These minutes have been seen by
the Administration and cleared
with the Chairman)

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**Minutes of the third meeting of the
Subcommittee to study the Italy Order, the South Korea Order and the
Switzerland Order made under section 4
of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) held
on Friday, 26 May 2000 at 1:00 pm
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon James TO Kun-sun (Chairman)
Hon Jasper TSANG Yok-sing, JP
Hon Mrs Miriam LAU Kin-yee, JP
- Absent with Apology** : Hon David CHU Yu-lin
Hon Margaret NG
- Public Officers attending** : Mrs Carrie Willis
Principal Assistant Secretary for Security
- Mr John Hunter
Deputy Principal Government Counsel (International Law)
- Mr MAN Wing-yiu
Assistant Secretary (Security)
- Clerk in Attendance** : Mr LAW Wing-lok
Chief Assistant Secretary (2) 5
- Staff in Attendance** : Mr Stephen LAM
Assistant Legal Adviser 4
- Miss Mary SO
Senior Assistant Secretary (2)8

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I. Meeting with the Administration

(LC Paper No. CB(2) 1923/99-00 - already issued on 9 May 2000)

The Chairman welcomed representatives of the Administration to the meeting.

2. Members noted the Administration's paper which detailed the response to members' concerns/queries raised at the last Subcommittee meeting held on 14 December 1999 regarding Articles 15, 25 and 34 of the HKSAR/Switzerland Agreement (the Agreement).

Article 15 - Notification of imprisonment

3. The Chairman said that although the HKSAR Government had a duty to protect the interests of HKSAR residents who had been sentenced to imprisonment in Switzerland, it was equally important to respect the wishes of the individuals concerned who might not want consular help or might not want the fact of their imprisonment to be known to the HKSAR Government. In order to strike a right balance between protecting the interests of Hong Kong people sentenced to imprisonment and their privacy, the Chairman was of the view that the HKSAR Government should forgo the right of automatic notification of imprisonment of HKSAR residents in Switzerland provided under Article 15 of the Agreement.

4. Deputy Principal Government Counsel (International Law) (Dep PGC) responded that provisions which provided for unconditional notification could more adequately protect the interests of Hong Kong people than provisions which required consent particularly if the provisions in a bilateral agreement did not contain the requirement such as that contained in the VCCR for the person concerned to be informed of his right to request notification. Moreover, unilaterally forgoing certain rights would be tantamount to amending the Agreement. In the Administration's view, such a course of action was undesirable from the external affairs perspective. Moreover, Article 15 of the Agreement would not greatly infringe on the privacy of Hong Kong permanent residents sentenced to imprisonment in Switzerland, as the HKSAR Government would not publicise advice received as to their imprisonment. Furthermore, the fact of their imprisonment would be in the public forum in Switzerland and expected to become public knowledge in Hong Kong.

5. Dep PGC further said that there was no international unanimity that consent should be a prerequisite to informing a consular post of the detention of its nationals. Article 36 of the Vienna Convention on Consular Relations (VCCR) actually reflected the compromise reached between two different stances as to whether a consular post should be automatically informed of the custody of its nationals in the receiving state. On the one hand, some states considered that the wishes of the individuals (who might not want consular help

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or might not want the fact of their imprisonment to be known to the authorities of their country) should be respected. On the other hand, some states considered that if consular officers were not automatically informed of the custody of their nationals, this might put their nationals at risk. In the end, Article 36 of the VCCR was drafted to make notification contingent upon request of the detained individual but with the rider that the person concerned be informed of his right to request notification. However, the fact remained that many countries, when concluding bilateral agreements with other states on the establishment of consular posts, did include clauses regarding unconditional notification to the consular posts concerned of the detention of their nationals. Dep PGC also pointed out that Article 15 of the Agreement was consistent with similar provisions in the Consular Agreements with the United States of America, Canada and the United Kingdom which also did not require the consent of the person concerned prior to informing his consular post of his detention.

6. The Chairman said that the Administration should consider whether, in cases where a Hong Kong resident was sentenced to imprisonment in Switzerland, the Swiss Government could be requested to notify the HKSAR Government of the details of the sentence such as the term of sentence, the crime committed and the location of imprisonment, but without disclosing the identity of the person concerned unless the Swiss Government had obtained his written consent. Mr Jasper TSANG and Mrs Miriam LAU expressed support for the suggestion.

Adm

7. Principal Assistant Secretary for Security responded that the legal aspects of the arrangement suggested by the Chairman needed to be examined in detail. If the proposed arrangement was eventually not considered to be in breach of any provisions of the Agreement, the Administration would request the Swiss Government to adopt such an arrangement.

8. Members did not raise any queries on Articles 25 and 34 covered in the Administration's paper.

Conclusion

9. Members agreed that in order not to delay the implementation of the Switzerland Order, a paper would be submitted to the House Committee on 9 June 2000 recommending that the Switzerland Order be supported. In the meantime, the Administration was urged to make its best endeavour to explore with the Switzerland authorities to see if the suggestion mentioned in paragraph 6 above could be adopted.

10. There being no other business, the meeting ended at 1:26 pm.

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26 July 2000