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LegCo Panel on Security

Minutes of special meeting
held on Thursday, 13 April 2000 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present	:	Hon James TO Kun-sun (Chairman) Hon Albert HO Chun-yan Hon CHEUNG Man-kwong Hon Howard YOUNG, JP Hon LAU Kong-wah Hon Andrew CHENG Kar-foo
Members attending	:	Hon Martin LEE Chu-ming, SC, JP Hon LEE Kai-ming, SBS, JP Hon Margaret NG Hon Emily LAU Wai-hing, JP
Members absent	:	Hon Mrs Selina CHOW LIANG Shuk-yee, JP (Deputy Chairman) Hon David CHU Yu-lin Dr Hon LUI Ming-wah, JP Hon Gary CHENG Kai-nam, JP
Public Officers attending	:	Mrs Regina IP ,JP Secretary for Security Mr Raymond WONG ,JP Deputy Secretary for Security 1 Mrs Carrie WILLIS Principal Assistant Secretary for Security A Ms Alice CHEUNG Assistant Secretary for Security A2
Clerk in attendance	:	Mrs Sharon TONG Chief Assistant Secretary (2) 1

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mrs Shirley NG
Senior Assistant Secretary (2) 9

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I. Briefing by the Administration on the progress of establishing an arrangement with the Mainland on surrender of fugitive offenders
(LC Paper Nos. CB(2)748/99-00(02), CB(2)1644/99-00(01) and CB(2)1644/99-00(02))

The Chairman briefed the meeting that the issue of concluding an agreement with the Mainland on surrender of fugitive offenders was discussed at the Panel meeting held on 3 December 1998. According to recent press reports, the Secretary for Security (S for S) had led a delegation to Beijing lately to discuss with the Mainland authorities the establishment of a rendition arrangement, and an agreement would be reached in the middle of the year. As there had been some time since the issue was last discussed, the special meeting was convened to invite S for S to brief the Panel on the progress of discussion with the Mainland and the latest development in this regard.

2. At the invitation of the Chairman, S for S briefed the Panel on the progress of the issue, as detailed in her opening statement in the Appendix.

3. Miss Emily LAU was of the view that if the delegation to Beijing was led by S for S herself, the public would be given a strong impression that the discussion had reached a certain stage where an agreement would soon be reached, having regard to S for S's special status and the fact that discussion had been going on with the Mainland authorities for some time. Miss LAU asked S for S why she had kept the visit secret. In response, S for S said that she had no intention to keep the visit secret. The aim of paying the visit to Beijing was to attend an expert meeting. According to the usual practice, it was not a requirement to announce all expert meetings held between both sides. Last year, there were four expert meetings held with the Mainland authorities where no announcement had been made. Miss Emily LAU requested and S for S agreed to make prior announcement on any visit led by her on the subject in future.

4. Miss Emily LAU pointed out that according to a media report, Mr TANG Dehua, Vice-President of the Supreme People's Court, said that he was confident that an agreement on mutual legal assistance between the Mainland and Hong Kong would be reached within this year. In order to uphold the principle of "one country", he was of the view that cases involving cross-border crimes should be tried in the Mainland. This would resolve the problems associated with the differences in sentencing criteria between the Mainland and Hong Kong and the absence of capital punishment in the latter. Miss LAU expressed dismay and concern about the remarks. S for S responded that the Vice-President of the Supreme People's Court was not a member of the expert group

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attending the meeting, and she had not met Mr TANG while she was in Beijing. His remarks could not reflect the progress of the negotiation. S for S clarified that questions such as judicial authority were still under discussion at the level of expert meeting between both sides and no conclusion had been reached so far.

5. Miss Emily LAU pointed out that at the Panel meeting held on 3 December 1998, S for S had stated that rendition arrangement with the Mainland would be devised in accordance with five guiding principles (as contained in paragraph 8 of LC Paper No. CB(2)748/98-99(02)). She considered that the five principles, including the usual safeguards embodied in international agreements, double criminality rule and speciality rule, were all of great importance. Miss LAU asked whether the Administration was still clinging to the five principles, or whether there had been any compromise as an agreement was about to be concluded, or whether some of the principles would be abandoned and excluded from the agreement. Mr CHEUNG Man-kwong shared Miss LAU's view. He asked whether the five principles were used by the Administration as a baseline for negotiation or a starting point for making compromises during the discussions. S for S responded that the five principles had always been regarded as very important references for the Hong Kong Special Administrative Region (HKSAR) Government, and there had not been any change in the Government's stance. Protecting the principle of "one country, two systems" and safeguarding the interests of Hong Kong people had always been the primary considerations of the HKSAR Government. She said that Government officials involved in the talks had assumed great responsibility and were under immense pressure because they were held accountable to the public. She assured that the HKSAR Government would endeavour to conclude an agreement which was in the best interest of the people in Hong Kong.

6. Mr CHEUNG Man-kwong pointed out that subversion was an offence under the laws of the Mainland. As stipulated in Article 23 of the Basic Law, Hong Kong would also enact laws on its own to provide for the act of subversion. Anyone who had committed the offence of subversion in the Mainland could be sentenced to death, while there was no capital punishment in Hong Kong. He enquired whether the Mainland could, under the principle of double criminality, request the HKSAR Government to surrender anyone who had committed the offence of subversion in Hong Kong for trial in the Mainland after Hong Kong had enacted laws on its own on the said offence. Under the principle of double jeopardy, anyone surrendered to the Mainland would be dealt with by the legal point of view and sentencing criteria of the Mainland. Mr CHEUNG asked if this would mean that the two legal systems had merged into the laws of one country, and under which those who had committed an offence in Hong Kong could be tried in the Mainland. S for S reiterated that the five guiding principles, including the usual safeguards embodied in surrender of fugitive offenders agreements signed between the HKSAR Government and other jurisdictions, were references to which the Administration had attached great importance.

7. Mr CHEUNG Man-kwong asked whether a person who had committed the offence of subversion in Hong Kong would be surrendered; if so, whether he

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would be tried with the laws and legal point of view of Hong Kong or those of the Mainland. He also enquired whether the HKSAR Government could, on the ground that there was no capital punishment in Hong Kong, refuse the surrender of persons who had committed the offence of subversion in Hong Kong. S for S said that it was a very concrete question which involved a lot of details, and an answer could not be provided until discussions with the Mainland had been completed.

8. The Chairman considered that the question raised by Mr CHEUNG Man-kwong involved matters of many important principles, such as capital punishment, the offence of subversion and the surrender of political offenders etc. He believed that the Administration must have conducted a number of researches on the issues and analysed in great depth the various principles and scenarios involved. He asked if such information could be provided for members' information. Mr CHEUNG Man-kwong expressed support for the Chairman's request. He considered that such information could facilitate members' consideration on the issues. If the information was provided to the LegCo after an agreement had been reached between the HKSAR Government and the Mainland, no amendment could be made. S for S did not consider the provision of such information useful because solutions to hypothetical questions could only be confirmed after an agreement had been reached.

9. The Chairman considered that the Administration must have conducted researches on the issue of extradition and surrender of offenders, for example the rendition arrangements between different states of the United States of America(USA), the extradition arrangements between the USA and the United Kingdom (UK), and the writings of Professor CHIU Ping-ching. He was of the view that there was no need to keep these research materials confidential. The Chairman asked the Administration to provide these materials to the Panel to facilitate members' understanding of the crux of the matter and discussion of the issue. In response, S for S said that such information could be provided to the Panel, but she failed to see what assistance would it offer to members in providing them with such information as that on the different views held by the authorities of different countries on capital punishment. According to the international model agreement, the refusal of extradition request on the ground that there was no capital punishment in the requested party was a discretionary rather than a mandatory requirement.

10. Mr Albert HO considered that of the five guiding principles, the fifth one was the most crucial one as it involved the major problem of concurrent jurisdiction. The problem of rendition would never exist had there not been the question of judicial authority. He considered it necessary to clarify under what circumstances would the Mainland authorities claim that they had judicial authority over a case and request for the rendition of Hong Kong people for offences committed within the territory of Hong Kong. Mr HO asked whether the Mainland authorities would, under the principle of one country, think that they had judicial authority over offences committed within the territory of Hong

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Kong by Hong Kong people and insist on the rendition of the people concerned; and how would the Administration deal with the request.

11. In response, S for S said that it was not uncommon for two to three jurisdictions to claim for judicial authority over the same type of offence at the same time. She cited as an example the smuggling of illegal immigrants to the USA by Hong Kong people. Under the rule of extraterritoriality and the Immigration Ordinance, Hong Kong would definitely try to have the person extradited to Hong Kong for trial. On the other hand, the USA would also think that it had judicial authority over the case and refuse the request for extradition. Although there were not many provisions on extraterritorial jurisdiction in the laws of Hong Kong, it did have extraterritorial jurisdiction over smuggling of illegal immigrants under its Immigration Ordinance. In view of the fact that Hong Kong was in the close proximity of the Mainland, the number of cross-border crimes was on the increase. It was not uncommon for the two places to have concurrent jurisdiction over a case, and the judiciary of both places would be prompted to exercise its judicial authority over the case. Not only was it a difficult problem to handle, it was also a major issue dealt with at the expert meeting. According to the usual international practice, there were different ways to handle the problem of extradition. In concluding an extradition agreement, the parties concerned might adopt as principle the determination of judicial authority by place of commission, place of arrest or place to suffer the consequences of the offence, and the Administration would have regard to these principles. S for S reiterated that upholding the principle of "one country, two systems" and safeguarding the interests of Hong Kong people had always been the primary considerations of the representatives of the HKSAR Government. She pointed out that it was stipulated in Article 19 of the Basic Law that, "The HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained." Maintaining the judicial power of the courts of the HKSAR was a principle that the HKSAR Government had taken very seriously.

12. Mr Albert HO asked if there were any offences which were committed solely in Hong Kong but the judiciary of the Mainland had judicial authority over the case, hence the offender concerned had to be surrendered to the Mainland. He also enquired whether the judiciary of the Mainland would have preferential jurisdiction over a case if it was considered that the offence concerned involved the principle of "one country". In response, S for S said that there was no provision in the Basic Law which allowed the judiciary of the Mainland to have preferential jurisdiction over a case for the reason of involving the principle of "one country".

13. The Chairman further enquired whether the case of LI Yuhui was an example to illustrate that the Mainland had preferential jurisdiction. S for S replied that it was not the case. With regard to the case of LI Yuhui, the judiciary of the Mainland considered that LI Yuhui had also committed offences

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in the Mainland and was arrested in the Mainland by the Mainland public security officers. According to the usual international practice, if no agreement was signed between the two places, the judiciary of the place where the offender was first arrested would have preferential jurisdiction. Therefore, it did not involve the question of preferential jurisdiction for the Mainland. She reiterated the statement she had made during the motion debate on 9 December 1998, which was summarised as follows:

> "On the issues of the jurisdiction of the Mainland arising as a result of these two cases, we have exchanged our views with the relevant authorities in the Mainland. We realize that if the offences committed by Hong Kong residents are entirely done in Hong Kong, then according to provisions in the Basic Law, all the public security organs, people's procuratorate and people's courts would have no jurisdiction over such cases. No doubts about it. There will never be any case where the Chinese Criminal Law and Law of Criminal Litigation will be invoked to investigate, prosecute and try the suspects. It is not so now and shall never be. The judicial authorities in the Mainland respect the autonomous jurisdiction of Hong Kong. The courts of the HKSAR have jurisdiction over all offences committed against the laws of Hong Kong by Hong Kong residents."

14. Mr Albert HO asked whether the Mainland could request for a surrender of fugitive offenders from Hong Kong on the ground that they had committed offences against national defence. S for S replied that it would depend on the provision of double criminality rule in the agreement. If the rule of double criminality was incorporated into the agreement and the laws of Hong Kong had not provided for offences against national defence, there would not be any problem concerning the surrender of fugitive offenders.

15. Miss Margaret NG expressed concern about members' lack of understanding about the problems associated with the rendition agreement. She considered that the five principles which members' had been striving for were dangerous rules to Hong Kong, since it was an usual international practice to conclude extradition or rendition agreements on a bilateral and reciprocal basis. There was the worry that in the absence of a rendition arrangement between Hong Kong and the Mainland, the Mainland would become a haven for criminals. Nevertheless, she was of the view that once an agreement had been concluded, the Mainland could ask the HKSAR Government to surrender anybody whom it considered to be offenders. Under such circumstances, the people of Hong Kong would be put under a very unfavourable condition, given that there were immense differences in the judicial, enforcement and legal systems between the two places. Hong Kong people had all along been able to enjoy various basic human rights and freedom, but Hong Kong and the Mainland represented two different pictures in respect of permission granted to offenders in engaging their own defence counsel, approval given to the offenders' family members to visit them in prison and the rate of conviction. She cited as examples the offence of subversion, for which Hong Kong should enact laws on its own under Article 23

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of the Basic Law; the offence of theft of state secrets which might involve journalists covering in the Mainland; and the offence in respect of Falun Gong. She was of the view that if reciprocal agreements were signed on the offences under the five principles, the Administration had actually done a disservice to the people of Hong Kong. She said that these were the concerns of the legal profession after examining international agreements on extradition and rendition.

16. S for S understood the concerns expressed by members. She said that it was the reason why during the course of discussion, it would be of paramount importance to specify the types of offences to be included into the list of offences for which surrender might be granted. As regards the discrepancies between the judicial procedures and the development of legal systems in the Mainland and Hong Kong, she was of the view that discussion with the Mainland should not be given up because of the existence of such differences. If the Administration did not discuss with the Mainland, a large number of existing cases would have to be left on the shelf. She took the case of LI Yuhui as an example to illustrate that in the absence of rendition arrangement, LI Yuhui would never be surrendered to Hong Kong if the case was solely handled with the usual international practice of preferential jurisdiction for the place where the case was first handled. She said that if the Administration refused to have discussion with the Mainland on surrender of fugitive offenders arrangement, Hong Kong's ability to combat cross-border crimes would be undermined. She assured members that the Administration would, in the course of discussion, attach great importance to the procedural and legal safeguards granted to Hong Kong people surrendered to the Mainland.

17. Miss Margaret NG pointed out that it was the usual practice of China for not surrendering Chinese nationals. She asked whether Hong Kong could, under the principle of "one country, two systems", refuse to surrender Hong Kong residents if Chinese nationals were not surrendered by the Mainland. S for S explained that the provision of not surrendering the nationals of a country was drawn up in view of the principle of jurisdiction based on nationality embodied in the laws of the country concerned. For instance, if a person committed homicide in France, the country he belonged could, with the consent of France, refuse to surrender him in the spirit that the person concerned would be given lawful sanctions in his own country. However, the current problem lied in the fact that Hong Kong and the Mainland belonged to one country, but each had its own judicial systems. During discussion with the Mainland authorities, representatives of the HKSAR Government would pursue the conclusion of an agreement on the basis of reciprocal treatment, mutual benefits and safeguards as well as protection of the interests of Hong Kong people.

18. Miss Margaret NG said that under Chinese Law, China has extraterritorial jurisdiction on its nationals, which meant that China had jurisdiction over its nationals who had committed offences outside the territory of China. Miss NG asked whether the Mainland could request the surrender of Hong Kong residents who had violated the Chinese Criminal Law under the principle of extraterritorial jurisdiction, and what was the stance of the Security Bureau on this issue. S for

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S said that examination and discussion on Article 7 of the Chinese Criminal Law on extraterritorial jurisdiction were underway.

19. Mr Martin LEE shared the concerns of Miss Margaret NG. He was of the view that Hong Kong had a sounder judicial system than the Mainland, and that was why many countries were reluctant to sign an extradition agreement with the Mainland. The difficulty being faced was that the rendition agreement between the Mainland and Hong Kong could not be implemented unilaterally. Mr LEE said that among the five guiding principles in working out the surrender of fugitive offenders arrangement between the Administration and the Mainland, the fourth one on the safeguard of normal exclusion in relation to political offences and political prejudice was an effective tool. However, the situation would become very worrying after Hong Kong had enacted laws on its own under Article 23 of the Basic Law to provide for the offence of subversion. Acts which were not regarded as offences at the moment would become offences for which request for surrender from the Mainland might be entertained. Mr LEE asked which approach would put Hong Kong people in the most unfavourable situation. S for S considered that Mr LEE was too pessimistic, because any rendition arrangement reached would have to be submitted to the LegCo for scrutiny before it was enacted and took effect. As regards laws on the offences of treason, subversion and secession to be enacted by Hong Kong on its own in accordance with Article 23 of the Basic Law, approval from the LegCo was also required before they could be enacted. Implementation details of the legislation were also subject to scrutiny by the LegCo. She was of the view that the legislation and implementation details concerned were under the control of Hong Kong people. Mr Martin LEE said that under the existing voting system of the LegCo, the Central Government could pass any bill it wished to enact. S for S disagreed.

20. Regarding the remarks made by Mr TANG Dehua, Vice-President of the Supreme People's Court of China, as reported in the newspaper, Mr LAU Kong-wah asked if Mr TANG had attended the expert meetings held between Hong Kong and the Mainland in the past, and whether his remarks formed the baselines of the Mainland side during the negotiation. S for S replied that Mr TANG had never attended the expert meetings, and she was not in a position to make any explanation of his remarks. However, under Article 19 of the Basic Law, the courts of HKSAR should have jurisdiction over all cases in Hong Kong.

21. Mr Andrew CHENG commented that although Mr TANG had not attended the expert meetings, it was worrying to learn from the press after S for S had met with the Mainland authorities that some Mainland officials had the idea of giving preferential status to the principle of "one country". The remarks of Mr TANG might have reflected the views of some Mainland officials, or might have exerted some influences on the stance of the Mainland officials negotiating with the representatives of the HKSAR Government. He expressed concern that S for S might be forced to compromise on the table of negotiation. Mr CHENG asked how S for S could say "no" under the principle of "one country", and how to back off tactfully in the course of negotiation. S for S reiterated that

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Mr TANG's remarks did not reflect the progress of negotiation between the two sides. She did not think that a situation had emerged in the course of discussion where one side was unyielding and was pressing on the other. In fact, both sides shared a common legal basis, the Basic Law, which was national law also applied to the Mainland. According to Article 19 of the Basic Law, Hong Kong should be vested with independent judicial power, including that of final adjudication. As regards the stance of the Mainland side during the expert meetings, S for S reiterated that it was inappropriate to disclose the details of discussion at this stage.

22. The Chairman considered the situation worrying as Mr TANG, despite his absence at the expert meetings, had actually suggested that "in order to uphold the principle of 'one country', cases involving cross-border crimes should be tried in the Mainland. This would address the problems of differences in sentencing criteria between the Mainland and Hong Kong and the absence of capital punishment in the legal system of the latter." If a Mainland official not involved in the discussion managed to express such an idea, it might well be the consensus of the Mainland officials concerned. The Chairman asked whether an agreement on rendition arrangement between the two places would, just as Mr TANG suggested, be reached within this year. In response, S for S said that the Administration aimed at completing the talk within 2000. She said that it would be more realistic to expect an agreement to be reached by the end of this year.

23. Miss Margaret NG expressed concern as to whether the Administration had any baselines and what the baselines were in negotiating with the Mainland on the rendition arrangement. She considered that the negotiation should be suspended rather than having no baseline at all. However, she also expressed worry if the five principles as stated by the S for S were adopted as baselines for negotiation. As evidenced by the usual international practice such as reciprocal arrangements, as well as the arrangements on division of jurisdiction between the two places as explained by the Secretary for Justice in her speech delivered to the LegCo on 9 December 1998, protection granted to Hong Kong people under the Basic Law was very limited. Article 19 of the Basic Law could only be applied to offences committed solely in Hong Kong by Hong Kong people, but a number of existing cases involved lots of connections with the Mainland. Besides, under the usual international practice, the purpose of extradition was to put the persons concerned for trial instead of having them convicted, thus the requesting party would only be required to provide prima facie evidence, which might subsequently be refuted and declared not substantiated. Miss NG enquired if adequate safeguards had already been provided by virtue of Article 19 of the Basic Law, and whether her concerns could be addressed.

24. In response, S for S said that the five principles mentioned were the baselines for negotiation with the Mainland authorities on rendition arrangement. Non-compliance with the principles would mean that the Administration had failed to reach any consensus and thus conclude an agreement with the Mainland authorities. The Chairman and Miss Margaret NG asked if it was possible to

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have a scenario where no agreement would be come up with by both sides. S for S replied that it might be the case.

25. Referring to paragraph 16 of the minutes of meeting of the LegCo Panel on Security on 3 December 1998, Miss Emily LAU asked if there would be any unalterable provisions in the rendition agreement to be submitted to the LegCo by the Administration. S for S said that implementation of any rendition arrangement must be underpinned by local legislation. As discussion had not yet been completed at this stage, she was not sure what alterable or unalterable provisions would be incorporated. She explained that after a consensus had been reached with the Mainland authorities, the Administration would make public the arrangement and various sectors would be consulted. The Administration would proceed with the drafting of the bill after public consultation and introduced it to the LegCo for scrutiny. The Mainland authorities had expressed their understanding and acceptance of the above procedures. Deputy Secretary for Security 1 (DS for S1) clarified that paragraph 16 of the minutes of meeting was about the United Nations (UN) Model Treaty on Extradition. While some of the provisions in the Model Treaty were mandatory and strict adherence was expected from the international community, some were discretionary and might be included in the agreement through negotiation by the relevant countries. The proposed agreement to be introduced to the LegCo by the Administration was not an international agreement. S for S added that Members of the LegCo might propose any amendments to the proposed agreement introduced by the Administration, whereas the Administration would express its views on the issues raised.

26. Mr Martin LEE said that since Hong Kong would enact laws on its own for the offence of subversion under Article 23 of the Basic Law, he expressed concern as to whether the Administration would be able to come up with any desirable agreement on surrender of fugitive offenders.

27. Referring to the remarks made by S for S during an interview broadcasted on the radio as reported at Ming Pao Daily News on 15 November 1998, Mr CHEUNG Man-kwong pointed out that she had put forward three principles to be adhered to when negotiating with the Mainland on the conclusion of rendition agreement, namely ——

(a) the offences concerned had been provided for in the laws of both places;

(b) an undertaking had to be made to guarantee that death penalty would not be imposed on the fugitive offenders surrendered; and

(c) judicial proceedings had to be safeguarded so that the fugitive offenders concerned would not be tried and convicted arbitrarily.

Mr CHEUNG asked about the reason of not including the principle mentioned in sub-paragraph (c) above into the five principles put forward by S for S. S for S

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replied that her stance had been fully explained in the paper she submitted to the LegCo while the press report concerned could not reflect her position. Moreover, she had never put forward the principle of providing safeguards for judicial proceedings. The Chairman asked the Secretariat to check with the radio station concerned to see if the interview had been tape-recorded, and then revert to Panel members.

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(*Post-meeting note* : The radio station concerned had not kept the tape of the interview.)

28. Mr CHEUNG Man-kwong asked whether it was an important principle for the fugitive offenders surrendered to be provided with safeguards in judicial proceedings and protected against arbitrary trial and conviction. He also asked if the Administration could refuse requests on surrender of fugitive offenders or drop the negotiation on the conclusion of an agreement in the absence of any safeguards in judicial proceedings. S for S replied that she was not in a position to answer these questions as they involved too many details which were still under discussion. The Chairman asked S for S whether she agreed that the principle of no arbitrary trial was a reason for refusing requests for surrender. S for S reiterated that the fourth principle in the five guiding principles put forward by the Government, i.e. the usual safeguards embodied in international agreements on extradition, would serve as useful references in this regard.

29. Miss Margaret NG asked if there were ways to ensure that fair trial would be offered to Hong Kong people surrendered. S for S said that very subjective judgement was involved in determining whether the trial was a fair or an arbitrary one. Generally speaking, the focus of rendition arrangement was whether legal safeguards had been provided for in the course of rendition, while arrangements after surrender would not be taken into consideration.

30. Mr Martin LEE said that the judicial system of the Mainland was very much different from that of Hong Kong, and was not transparent enough. For example, family members of suspects in the Mainland could not visit them in prison and they would have difficulties in engaging defence counsel. Mr LEE noted that S for S had indicated that she would ask the Mainland authorities to allow reporters from Hong Kong to attend and cover trials involving Hong Kong people in the Mainland. He asked if it was possible to ask the Mainland authorities to also allow family members of suspects from Hong Kong to attend the trials. S for S replied that the judicial systems of Hong Kong and the Mainland would interact with each other for development. Efforts had always been made by the Government to relay to the Mainland authorities the requests of Hong Kong people in respect of allowing family members of suspects to be tried in the Mainland to visit them in prison and allowing these suspects to engage defence counsel. On-going efforts in these respects had all along been made even without the negotiation on rendition agreement. A successful example was the case of LI Yuhui. Reporters from Hong Kong were permitted to attend and cover the trial held in the Mainland. As to whether the offence concerned should be classified as a criminal case, the issue of allowing family members of

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suspects to visit them and the arrangements of engaging defence counsel, they were governed by the Chinese Criminal Law and the Law of Criminal Litigation. Hong Kong people had no alternative but to abide by the relevant legislation. The HKSAR Government had been reflecting the opinions of Hong Kong people in these respects. Mr Martin LEE hoped that the opinions could be incorporated into the provisions of the agreement. Miss Margaret NG, however, had different opinions in this regard. She considered that the requests need not be included in the rendition agreement. She was of the view that the ultimate aim of concluding a rendition agreement was to ensure a fair trial for the persons surrendered. This was the most important point.

31. Miss Margaret NG considered that it was of paramount importance as to whether the trial system of the Mainland had reached international standards for a fair trial. If it was not up to the required standards, rendition agreement to be concluded would not be able to achieve its desirable results. She requested the Panel to conduct a study on the trial system of the Mainland to see if it had attained the international standards for a fair trial. The study might be conducted by hearing the views of experts and the responses given by the Administration.

32. The Chairman said that a three-pronged approach might be adopted in conducting the study ——

(a) the Legal Service Division of the LegCo Secretariat would make an assessment to ascertain areas which required follow-up study;

(b) experts in the relevant areas would be invited to attend public hearings; and

(c) legal experts in specialized areas from the Department of Justice would be invited to meet with members to discuss the arrangements and safeguards in extradition and rendition procedures adopted by other countries.

33. Miss Margaret NG was of the view that the core objective of the study was how to ensure a fair trial for the persons surrendered.

34. Mr CHEUNG Man-kwong said that important provisions of a general as well as a specialized nature in international agreements on rendition and extradition should be examined for members' reference. Apart from important provisions of a general nature in international agreements, he was of the view that references should also be made to provisions of a specialized nature, having regard to the fact that such provisions would definitely be included in the agreement to be concluded by the Mainland and Hong Kong given the immense differences in the judicial systems of the two places.

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35. Miss Emily LAU supported the suggestion of conducting the study. She considered that the study should be completed as soon as possible since a rendition agreement would soon be concluded.

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36. The Chairman suggested and members agreed that the Legal Service Division of the LegCo Secretariat should conduct a preliminary study, propose topics to be included in the study and make initial recommendations on the scope of the study for circulation to members. Members would then make the decision to invite experts in the relevant areas and experts from the Department of Justice to attend special meetings or public hearings.

37. There being no other business, the meeting ended at 4:10 p.m..

Legislative Council Secretariat
21 September 2000