

E X T R A C T

立法會

Legislative Council

LC Paper No. CB(2) 1258/98-99
(These minutes have been seen by
the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of meeting held on Thursday, 3 December 1998
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam
Hon Andrew CHENG Kar-foo

Members attending : Hon Martin LEE Chu-ming, SC, JP
Hon LEE Kai-ming, JP
Hon Margaret NG
Hon Ronald ARCULLI, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP

Members absent : Hon David CHU Yu-lin
Hon Howard YOUNG, JP

Public Officers attending : Item III

Mrs Regina IP
Secretary for Security

Mr Raymond WONG

Deputy Secretary for Security 1

Mrs Carrie WILLIS
Principal Assistant Secretary for Security A

Mr Stephen WONG
Solicitor General (Atg.)

Mr Gordon FUNG
Assistant Commissioner of Police (Crime)
Hong Kong Police Force

Item IV

Ms CHANG King-yiu
Deputy Secretary for Security 2

Mr Kelvin PANG
Assistant Commissioner of Correctional Services (Rehabilitation)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Miss Betty MA
Senior Assistant Secretary (2) 1

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Action

III. Arrangements with the Mainland on surrender of fugitive offenders

(LC Paper No. CB(2) 748/98-99(02))

Briefing by the Administration

3. Secretary for Security (S for S) stated at the outset that the following four principles were adopted for discussing the arrangements with the Mainland on surrender of fugitive offenders at this Panel meeting:

- (a) Public consultation on the proposals would be carried out and the relevant legislation would be introduced after the discussion with the relevant Mainland authorities on devising the rendition arrangement had been completed. In the meantime, it would not be appropriate to disclose details of the proposals under discussion;
- (b) It was inappropriate to disclose the views and stance of the relevant Mainland authorities in the course of discussion, which was in line with the Administration's usual practice adopted during bilateral negotiations or discussions;
- (c) Any confidential information related to the operations of the Police would not be disclosed; and
- (d) In order not to pervert the course of justice cases which were or would be under the court proceedings would not be discussed.

4. S for S said that the Administration was aware of the public concern, arising from the recent cases of CHEUNG Tze-keung and LI Yuhui, on the need for an early rendition agreement with the Mainland. Though the Hong Kong Special Administrative Region (HKSAR) Government did not have a formal rendition arrangement with the Mainland, there existed an administrative arrangement whereby Hong Kong residents were returned from the Mainland to the HKSAR for investigation or trial if they had committed offences solely in Hong Kong, and if they had also committed offences in the Mainland, they were returned after proceedings in the Mainland had been completed. Since 1990, 128 fugitive offenders had been returned to Hong Kong from the Mainland. The Administration was of the view that the present arrangement was unsatisfactory. It did not wish to see the HKSAR becoming a haven for fugitive criminals. Preliminary discussion with the relevant Mainland authorities on a rendition arrangement had already started prior to the reunification. After the reunification, the HKSAR

Action

Government had continued its discussion with the Mainland authorities. Given the immense differences in the legal and judicial systems in the Mainland and the HKSAR, the Administration needed to proceed carefully. It was definitely not an easy task to devise a rendition arrangement which would be acceptable to both the HKSAR and the Mainland.

5. Referring to para. 8 of the information paper, S for S highlighted the five guiding principles in devising a rendition arrangement with the Mainland. She added that though the existing SFO Agreements and mutual legal assistance in force were formulated in accordance with the relevant United Nations (UN) Model Treaties, appropriate modifications had been made having regard to the individual legal systems of the signatories. Regarding the jurisdiction of the Mainland judiciary, S for S said that as stipulated in the Basic Law, the Public Security Ministry, the Procuratorate and the courts in the Mainland did not have jurisdiction over Hong Kong residents if they had committed crimes solely in Hong Kong. The relevant Mainland authorities would not investigate, prosecute and try a Hong Kong resident under the Criminal Law of the People's Republic of China (PRC) for a crime committed solely in the SAR. The courts of the HKSAR should have jurisdiction over all offences committed by Hong Kong residents in the HKSAR under Hong Kong laws.

6. S for S assured members that the Administration would consult the public on the rendition arrangement with the Mainland upon completion of the discussions with the Mainland. Views from Members of the Legislative Council would be sought when the legislation as regards a statutory framework for the rendition arrangement was introduced.

(Post-meeting note : The speaking note of Secretary for Security on the arrangements with the Mainland on surrender of fugitive offenders was circulated to members vide LC Paper No. CB(2) 812/98-99 dated 7 December 1998)

Discussion

The case of LAU Kwok-wah

7. Mr CHEUNG Man-kwong and Mrs Selina CHOW pointed out that based on the Statement of Offences, LAU Kwok-wah appeared to have been tried in the Mainland for offences committed solely in Hong Kong. Some members were of the view that the case had arouse public concern about the judicial jurisdiction of the Mainland and HKSAR. In response, S for S said that on the basis of additional information obtained from the Mainland authorities, the Police's investigation and the reports made by

Action

the Police officer who was present at the court proceedings in respect of the trial of CHEUNG Tze-keung and his gang in the Mainland, the Administration had reasons to believe that LAU Kwok-wah was tried in the Mainland court for offences committed in the Mainland under Mainland laws.

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8. The Chairman opined that there was a lack of written evidence to substantiate the additional information quoted by the Administration. Some members had reservation about the stance of the Administration over this issue. The Chairman requested the Administration to keep members informed of further clarification sought from the Mainland authorities regarding the case of LAU Kwok-wah.

Political offences exception in the rendition arrangement

9. Noting from para. 8(4) of the information paper that the usual safeguards in the existing SFO Agreements with other jurisdiction included the normal exclusion in relation to political offences and political prejudice, Mr CHEUNG Man-kwong was concerned whether the Administration would fight for similar provisions to be included in the rendition agreement with the Mainland. The case of LAU Kwok-wah had aroused concern that a Hong Kong resident might be arrested in the Mainland and prosecuted under Mainland laws for offences committed in Hong Kong, such as being alleged for committing crimes of endangering national security and tried in the Mainland for his participation in political activities in Hong Kong which were non-criminal offences under Hong Kong laws.

10. S for S responded that in the course of discussion with the Mainland authorities, the Administration would make reference to the international practice in formulating the rendition arrangement with the Mainland. It was generally accepted international practice that persons accused or convicted of political crimes should not be extradited. In this connection, she noted that political offences had already been repealed under the amended Criminal Law of the PRC which came into force in 1997. Double criminality, amongst others, would be another international practice taken into consideration. An individual would be surrendered only if the offence in question would have been an offence had it been committed in Hong Kong.

11. Mr LEE Cheuk-yan enquired about the authorities to determine whether a person, regardless of whether he was a Hong Kong or Mainland resident, should be surrendered to the Mainland in relation to political offences and political prejudice allegedly committed in the Mainland. S for S said that the crux of the matter was on how the principle of double

Action

criminality would be applied.

12. Mr LEE Cheuk-yan asked how, in the event that an offence in question was an offence in both the Mainland and the HKSAR, evidence would be adduced having regard to the differences between the evidence requirements in the two places. S for S said that the handling of the issue would be subject to the proceedings for committal to be agreed in the rendition agreement. For example, under the Fugitive Offenders Ordinance (FOO) (Cap 503), evidence in relation to the offence should be admissible by the Hong Kong court. In this connection, Mr LEE Cheuk-yan urged that the standard for admissibility of evidence by the Hong Kong courts should be adopted in the rendition agreement between the Mainland and the HKSAR.

13. The Chairman pointed out that the then Bills Committee on the Fugitive Offenders Bills had a lengthy discussion on the objective of the Bill, the handling of the political offences exception, etc. He suggested to circulate these information for members' reference.

(Post-meeting note : The above information had been circulated to members vide LC Paper No. CB(2) 799/98-99 on 7 December 1998.)

14. In response to Mr CHEUNG Man-kwong's further enquiry, S for S said that extradition was applicable only if the offence in question would have been an offence in the jurisdiction where an individual was arrested as well as in the requesting jurisdiction. If an offence in question would not have been an offence had it been committed in Hong Kong, request for extradition might be refused in accordance with international practice. S for S added that the relevant Mainland authorities had assured that the Public Security Ministry, the Procuratorate and the Mainland courts did not, and would not have jurisdiction over Hong Kong residents who had committed crimes in Hong Kong alone.

Public consultation

15. Referring to para. 8(4) of the information paper, Mr Albert HO pointed out that the usual safeguards in the existing SFO Agreements with other jurisdiction would only be of useful reference. Given that the discussion and negotiation of a rendition arrangement with the Mainland would be kept secret, Mr HO urged the Administration to explore the viability of other channels for collecting public views.

16. S for S responded that the rendition arrangement would be drawn up in line with the principles laid down in the UN Model Treaty on

Action

Extradition introduced in 1990. While some of the provisions in the Model Treaty were mandatory, some were discretionary, including the provision for seeking an assurance that the death penalty would not be carried out after the extradition. Parties concerned might agree to modifications to suit their mutual needs. S for S said that given the Administration had not yet consulted the Central People's Government on its proposal regarding the rendition arrangement, it was inappropriate to disclose details of the proposal. S for S stressed that the Administration did understand members' concerns and would not have the rendition agreement presented as fait accompli.

17. Miss Emily LAU asked if the Central People's Government had ever requested the Administration not to disclose the details of any discussion regarding the rendition arrangement. S for S responded that no such request had ever been received. She said that keeping the content of discussion confidential in the course of negotiation was not an unusual practice. S for S assured members that though the Administration might not be able to consult members at every stage of the discussion, members would have sufficient time to scrutinize the proposal as any rendition arrangement must be underpinned by local legislation.

18. Miss Emily LAU considered that public consultation before reaching any agreement on the rendition arrangement with the Mainland would be worthwhile as the discussion and negotiation might take two to three years. S for S clarified that the Administration expected that two to three years would be needed for the discussion as well as the passage of legislation on a rendition agreement with the Mainland.

19. Mr Albert HO and Mrs Selina CHOW also urged the Administration to actively consider ways to collect public views on the rendition arrangement with the Mainland so that any arrangement would not only be acceptable to the HKSAR Government and the Mainland authorities, but also the general public of Hong Kong.

Contents of the rendition agreement

20. Miss Emily LAU asked whether assurance from the Mainland had been sought such that no death penalty would be imposed on any offenders surrendered. S for S responded that the FOO which provided a statutory framework for SFO arrangements between the HKSAR Government and some other countries did not apply to the Mainland. Article 4 of the Criminal Law of the PRC provided that the Law was equally applied to anyone who committed a crime. No one should have the privilege of transcending the Law. Given the immense differences in the policy on death penalty in the Mainland and the HKSAR, it might not be easy to

Action

reach an early agreement on the rendition arrangement. The Administration had reflected this problem to the Mainland authorities.

21. Some members were of the view that any rendition agreement with the Mainland should not deviate from the UN Model Treaty on Extradition. Mr Martin LEE stressed that all the provisions of the rendition agreement with the Mainland, including the discretionary provisions, should adhere strictly to the Model Treaty. Given the immense differences in the legal systems in the Mainland the the HKSAR, he would not accept any modifications on the Model Treaty. In response, S for S said that following the spirit of formulating the Model Treaty was more important than strictly adhering to the exact wordings of the Model Treaty. She pointed out that as there was death penalty in the United States (US), assurance that the death penalty would not be carried out was not stipulated as a mandatory condition in its extradition treaties with other countries. With reference to experiences in Canada and the United Kingdom, there were at least two cases in which the fugitive offenders were surrendered without assurance from the requesting parties that the death penalty would not be carried out. S for S said that it might not be appropriate for the HKSAR Government to be too inflexible over the question of death penalty. She was not unduly worried that a lot of criminals would escape justice in Hong Kong by fleeing to the Mainland if there was no SFO arrangement at the moment having regard to the heavier sentences handed down by the Mainland court.

Commission of economic offences in the Mainland

22. Mr Martin LEE expressed concern about Hong Kong residents being framed a charge in the Mainland as a result of business disputes. S for S said that the Administration understood the public concern over the possible allegation of economic offences in the PRC. She pointed out that offenders who had committed economic offences was not punishable by death under the Criminal Law of the PRC. In the event of bribery, only Mainland officials who had received graft would be liable to death penalty.

Action

Committal proceedings for fugitive offenders

23. Miss Margaret NG said that as provided in section 10 of the FOO, the evidence in relation to an offence ought to be sufficient to warrant the person's committal for trial. She enquired about the proceedings for committal to safeguard any person being arrested having regard to the differences in evidence requirements between the courts in Hong Kong and in the Mainland. In response, S for S said that the Administration agreed that safeguarding the proceedings for committal was an essential element in formulating an arrangement on the surrender of fugitive offenders. It would give due emphasis to the issue when discussing with the Mainland authorities on a rendition agreement. S for S added that the evidence that warranted a person's committal for trial in the jurisdiction of other courts would be based on the laws of Hong Kong and the admissibility of evidence by the courts in Hong Kong.

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24. To facilitate members' understanding on how the committal proceedings implemented and the standard in use, the Chairman and Miss Margaret NG requested the Administration to provide information on how the committal proceedings, in particular the evidence requirements under section 10(6)(b)(iii) of the FOO, being implemented so as to demonstrate the prevailing standard.

Guiding principles in devising a rendition arrangement with the Mainland

25. Referring to para. 8 of the information paper, Mr Andrew CHENG enquired how the Administration could safeguard the One Country Two Systems principle and underpin the rendition arrangement by legislation in the HKSAR in devising a rendition arrangement with the Mainland having regard to the immense differences in the legal systems of the two places. For instance, there was no act of treason in the HKSAR at the moment as the implementation of Article 23 of the Basic Law was not yet finalized. He also asked whether the Administration would withdraw from the negotiation table should any proposal from the Mainland be considered unacceptable.

26. In response, S for S said that the FOO which provided a statutory framework for the existing SFO arrangements did not apply to the Mainland. Thus, any rendition arrangement with the Mainland would have legal effect only after enacting the necessary legislation. She stressed that in devising any rendition arrangement with the Mainland, the guiding principles stated in the information paper would be observed and that it would have to be acceptable to both the HKSAR and the Mainland.

Action

The Case of LI Yuhui

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27. Mr CHENG Kai-nam expressed concern about the prosecution of LI Yuhui in the Mainland in connection with the alleged murder committed solely in Hong Kong. He asked if the Administration was aware of the progress of the case and whether there were any similar precedent cases available for members' reference. S for S said that as the court proceedings in respect of LI Yuhui had not yet started in the Mainland, the Administration did not have any information regarding the charges laid against LI. However, there were no lack of precedent cases where though the principal offences were committed in other countries, the suspects were tried in Hong Kong court. Assistant Commissioner of Police (Crime) agreed to provide information, if any, on whether there were cases similar to the Li Yuhui case that Mainlanders were suspected to have committed offences in the SAR and were subsequently arrested and tried in the Mainland.

28. Mr CHENG Kai-nam said that even though LI Yuhui was a Mainland resident, the Administration should consider seeking his return for trial in the Hong Kong court. S for S said that the Mainland court had jurisdiction over the case in accordance with Article 7 of the Criminal Law of PRC. Mr Martin LEE expressed disagreement with the Administration's interpretation of Article 7 of the Criminal Law of PRC.

29. In response to Miss Margaret NG, S for S said that if there was a rendition agreement with the Mainland, arrangement could be made for surrendering Mainland residents who had committed offences in Hong Kong and had returned to the Mainland.

Question of concurrent jurisdiction

30. Mr Martin LEE was concerned about the handling of cases of LAU Kwok-wah and LI Yuhui. He considered that these two cases ought to be tried in Hong Kong because the offences in question were committed in Hong Kong. Regarding the issue of concurrent jurisdiction, S for S said that overseas experience such as extradition arrangements between Canada and the US suggested several guidelines could be developed for handling the problem, viz. the place where the offence was committed, the nationality of the victim, the place where the evidence was found and the interests of the jurisdiction concerned.

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31. Mr Albert HO requested and Solicitor General (Ag) agreed to provide information on the interpretations of nationals of the PRC and the territory of the PRC in the light of concurrent jurisdiction.

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32. The Chairman suggested that the issue of judicial jurisdiction of the Mainland and HKSAR be followed up in another meeting. To facilitate members' future discussion, he requested the Administration to provide information on the extradition agreement between US and Canada as well as information on overseas experience in handling extradition cases which involved the question of concurrent jurisdiction.

(Post-meeting note: The information subsequently provided by the Administration had been circulated to members vide LC Paper No. CB(2) 830/98-99 on 8 December 1998.)

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Legislative Council Secretariat
14 January 1999