

EXTRACT

立法會

Legislative Council

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(These minutes have been seen by the
Administration)

Panel on Security

**Minutes of special meeting held on Monday, 28 June 2004
at 8:30 am in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon WONG Yung-kan (Deputy Chairman)
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHEUNG Man-kwong
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, JP
Hon Andrew WONG Wang-fat, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Michael MAK Kwok-fung
Hon IP Kwok-him, JP

Public Officers attending : Mr Ambrose LEE
Secretary for Security

Mrs Margaret CHAN
Deputy Secretary for Security 1 (Acting)

Mr Johann WONG
Administrative Assistant to Secretary for Security

Ms Angelina KWAN
Assistant Secretary for Security

Mr LO Yik-kee
Assistant Commissioner of Police (Crime)

Mr David NG
Senior Superintendent of Police (Liaison Bureau)

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

Staff in attendance : Mr Raymond LAM
Senior Council Secretary (2)5

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I. Administration's policy towards Mainland public security officials taking enforcement actions in Hong Kong
(LC Paper No. CB(2)2944/03-04(01))

At the invitation of the Chairman, Secretary for Security (S for S) briefed members on the Administration's paper regarding a case on 16 June 2004 where Mainland public security officials were alleged to have performed duties in Hong Kong and the existing mechanism for police cooperation between Hong Kong and the Mainland.

2. The Chairman asked whether the reply referred to in paragraph 6 of the Administration's paper was still awaited.

3. S for S responded that the Chief Executive (CE) and he himself had issued public statements reiterating that under the principle of "one country, two systems", Mainland public security officials were not allowed to take enforcement actions on their own in the territory of Hong Kong. CE had also asked him to follow up the matter. He had contacted the Director General of Guangdong Provincial Public Security Department (GDPSD) conveying the Administration's concerns and requesting a thorough investigation into the case.

4. Mr LAU Kong-wah asked whether any Mainland public security officials had been found performing duties in Hong Kong. He also asked whether undertaking surveillance and the possession of handcuffs amounted to taking enforcement actions in Hong Kong.

5. S for S responded that as the case concerned was still under investigation and legal proceedings might be instituted in the case, he was not in a position to disclose

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details about the case. He said that before and after reunification, the cooperation between Hong Kong Police and Mainland public security authorities had been conducted on the basis of Interpol practice. There was clear consensus between the Hong Kong Police and the Ministry of Public Security that under the "one country, two systems principle", the assistance in police investigation had to be undertaken in accordance with established procedures modelled on Interpol practice. If the police of one side wished to conduct investigation in the territory of the other side, it had to be carried out through the police of the other side. The police authorities of both sides should not conduct criminal investigation on their own in the territory of the other side. In the case concerned, the Police was investigating whether the Mainland persons concerned were in contravention of Hong Kong laws or the basis of police cooperation between Hong Kong and the Mainland.

6. Mr LAU Kong-wah asked whether there were previous cases where Mainland public security officials had been alleged to have taken enforcement actions in Hong Kong.

7. Assistant Commissioner of Police (Crime) (ACP(C)) responded that the Panel on Security had previously discussed the cases of SU Zhi-yi and CHAN Tsz-cheung in which Mainland public security officials had been alleged to have taken enforcement actions in Hong Kong.

8. Mr LAU Kong-wah said that the results of the investigation into the case of SU Zhi-yi were inconclusive. He asked whether S for S had reflected to the Mainland authorities the seriousness of these cases and requested that they be looked into.

9. S for S responded that the Administration had conveyed to the Ministry of Public Security its deep concerns about the present case. It had also expressed grave concerns about the previous cases to the Ministry of Public Security in the past. The Ministry of Public Security had stressed that it would adhere to the "one country, two systems" principle and that Mainland law enforcement officers were strictly prohibited from taking enforcement actions on their own in Hong Kong. He had noted from newspapers that the Ministry of Public Security had issued a statement a few days after 16 June 2004 that it had not sent any person to undertake investigation in Hong Kong. The Director General of GDPD had also indicated to him in their exchange on the latest case that his authorities would look into the matter seriously.

10. Mr LAU Kong-wah asked why the Ministry of Public Security could issue such a firm statement within a short period when the investigation of the case had yet to be concluded. He asked whether the Administration would follow up the matter with the Ministry of Public Security.

11. S for S responded that he was not in a position to comment on this particular statement. He assured members that the Administration would follow up the case with the Ministry of Public Security.

12. Mr CHEUNG Man-kwong asked whether the Mainland persons concerned were in breach of the agreed mechanism of police cooperation between the two sides and committed offences other than that of loitering and possession of offensive weapon. He considered that if the Mainland persons concerned were convicted of breaching Hong Kong laws and sentenced, they should serve sentences in Hong Kong. He enquired whether Mainland public security officials who had taken law enforcement actions in Hong Kong would commit any offences in Hong Kong. He asked whether the cases would be dealt with by the courts of Hong Kong, if the persons were found breaching such laws in Hong Kong.

13. S for S responded that the Police was investigating whether the Mainland persons concerned had contravened local laws and the agreed mechanism of police cooperation. If they were found in breach of local laws, evidence and information gathered in the case would be referred to the Department of Justice for consideration of prosecution. If they were found in breach of the agreed mechanism of police cooperation, the Administration would request the relevant Mainland authorities to follow up the matter. ACP(C) added that loitering and possession of offensive weapon were the only two alleged offences identified so far in the investigation conducted by the Police.

14. Mr CHEUNG Man-kwong expressed concern that if Mainland law enforcement officers undertook investigation in Hong Kong but were not in possession of offensive weapon and their acts did not amount to loitering, the Police might not be able to take any actions against such persons. In view of the absence of specific legislation relating to Mainland public security officials taking enforcement actions in the Hong Kong Special Administrative Region, he asked whether there were loopholes in the protection of the jurisdiction of Hong Kong. The Chairman said that investigation was broader in meaning than taking enforcement actions.

15. S for S responded that under the agreed mechanism of police cooperation, law enforcement officers of both sides were prohibited from taking enforcement actions and undertaking investigation on their own in the territory of the other side. If the police agencies of one side wished to conduct investigation on the other side, it must seek assistance from their counterparts on the other side. It had to give prior notification to the other side and explain clearly the nature of the case.

16. Mr CHEUNG Man-kwong considered that there were grey areas in respect of whether an act constituted taking enforcement actions or investigation. He doubted whether the rights of Hong Kong residents could be properly protected under the existing mechanism of police cooperation. He suggested that the Administration should consider preventing Mainland law enforcement officers from carrying out investigations on their own in Hong Kong through legislative means.

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17. S for S noted the suggestion of Mr CHEUNG Man-kwong. He however cautioned that legislation of such nature, once enacted, would bind all persons, including paparazzi. The community had to consider carefully the need for and impact of such legislation.

18. Miss Margaret NG asked whether the Mainland persons concerned had come to Hong Kong with Two-way Permits (TWPs). She also asked whether these persons were in breach of their condition of stay, if they were found to have performed duties in Hong Kong. She considered that the Police should also examine whether the activities of the concerned persons in Hong Kong had contravened their condition of stay.

19. S for S responded that the Mainland persons concerned had visited Hong Kong with TWPs. Police investigation of the case was still ongoing. If the persons concerned were found to have done anything in Hong Kong which had breached their condition of stay, appropriate follow-up action would be taken.

20. Ms Audrey EU asked whether there were other local legislation, besides those relating to loitering and possession of offensive weapon, that was relevant to Mainland public security officials undertaking investigation in Hong Kong. She also asked about the consequences of breaching the agreed mechanism of cooperation.

21. S for S responded that there was no local legislation specific to Mainland law enforcement officers undertaking investigation in Hong Kong. He said that there was no mention in the agreed mechanism of police cooperation about the penalty for non-compliance. Should there be a deviation from the agreed mechanism, the Police would make a protest to the relevant Mainland authorities concerned.

22. Ms Audrey EU asked about the scope of application of the agreed mechanism of police cooperation. She also asked whether the mechanism was adequate and whether it was applicable to law enforcement officers other than public security officials, such as state security officials. She considered that besides public security officials, the mechanism should be applicable to state security officials.

23. ACP(C) said that the mechanism was only applicable to the cooperation between police authorities of Hong Kong and the Mainland. S for S said that a record of discussion between the Hong Kong Police and the Ministry of Public Security setting out the agreed mechanism had been provided in confidence to the Panel in the past. The mechanism had been operating well. He undertook to check whether the coverage of the mechanism would include state security officials and other law enforcement officers.

24. Referring to a news report in a local newspaper, Ms Audrey EU asked whether similar incidents had occurred in the past but the Mainland public security officials concerned had left after apologising to the Police officers at the scene.

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ACP(C) responded that he was not aware of any incidents of such a nature.

25. Mr Howard YOUNG said that visitors from many overseas countries had been granted visa-free access to Hong Kong. He asked whether overseas visitors who organised exhibition, attended meetings or discussed businesses in Hong Kong were in contravention of their condition of stay. He considered that serious problems might arise, if the definition of employment was too broad. He hoped that any new measures to be adopted by the Administration would not affect overseas businessmen conduct such business activities in Hong Kong.

26. S for S responded that although visitors from more than a hundred countries were given visa-free access to Hong Kong, such visitors were not allowed to undertake any employment in Hong Kong. Nevertheless, visitors were generally allowed to attend meetings and discuss business in Hong Kong. He added that there were many precedents and judicial interpretations on what constituted employment.

27. The Chairman asked whether there was any unfair treatment of Mainland visitors in the enforcement of law. S for S responded that visitors from the Mainland and other places were treated equally.

28. Mr WONG Yung-kan asked about the number of cases where law enforcement officers of the Mainland and other countries had undertaken investigation in Hong Kong in accordance with the agreed mechanism.

29. S for S provided members with statistics relating to police cooperation between Hong Kong and the Mainland, which was tabled at the meeting. He undertook to provide statistics regarding overseas police officers' visits to Hong Kong to undertake investigation duties with the assistance of the Hong Kong Police in the past three years.

(Post-meeting note : The statistics tabled at the meeting was circulated to members vide LC Paper No. CB(2)2966/03-04 on 28 June 2004. The statistics on visits of overseas law enforcement officers to Hong Kong were circulated to members vide LC Paper No. CB(2)3094/03-04 on 15 July 2004.)

30. Mr WONG Yung-kan said that S for S should raise the matter direct with the Ministry of Public Security. S for S responded that regardless of the findings on the case, the subject matter would certainly be raised when he had opportunities to meet officials from the Ministry.

31. The Chairman said that in the case of SU Zhi-yi, the Mainland authority concerned still maintained that no public security official had exercised jurisdiction in Hong Kong. There were also reports of a case where a Mainland law enforcement official had used local dialect to threaten the subject being interviewed even under the cooperative arrangement with law enforcement agencies in the

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Mainland. He considered that the Administration should raise the matter with the highest level in the Mainland so that the Ministry of Public Security would monitor such matter closely. He said that as there were reports in newspaper that state security officials had been videotaping and carrying out surveillance on public processions in Hong Kong, the coverage of the agreed mechanism should be expanded to include the Ministry of State Security, the Mainland Procuratorate as well as provincial and municipal governments.

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32. S for S responded that it might not be fair to treat reports in newspapers as the facts. He said that even if a Mainland public security official intended to carry out videotaping in Hong Kong only, the relevant Mainland public security authority had to give prior notification to the Hong Kong Police. He undertook to consider whether the coverage of the agreed mechanism should be expanded to include the Ministry of State Security as well as provincial and municipal government, having regard to the purview of the Security Bureau. He added that to his knowledge, there were similar cooperative arrangement between the Independent Commission Against Corruption and the Mainland Procuratorate.

33. Mr CHEUNG Man-kwong said that the Administration should enforce the law against Mainland law enforcement officers who were in breach of local laws. He considered that the Administration should raise the matter with the Ministry of Public Security and request it to take actions against the persons in breach of the agreed mechanism. The Administration should also examine whether there were loopholes in local legislation and the agreed mechanism.

34. S for S noted the views of Mr CHEUNG. He stressed that the Administration would continue to enforce the law.

35. Mr Howard YOUNG considered that the scope of the cooperative mechanism should be confined to law enforcement agencies but not other civilian agencies such as the National Tourism Office.

36. Miss Margaret NG said that if visitors who attended meetings in Hong Kong were required to have an entry visa which allowed the holder to undertake employment in Hong Kong, Mainland public security officials who performed duties in Hong Kong should be regarded as breaching their condition of stay.

37. The Chairman asked whether there were differences in the interpretation of the agreed mechanism, which did not appear very clear, by the Police and the relevant Mainland authorities.

38. S for S responded that the agreed mechanism was worked out according to the principles of cooperation based on the Interpol practice. In short, it provided that under no circumstances could police officers of one side take enforcement actions on their own in the territory of the other side.

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39. Referring to paragraph 4 of the Administration's paper, the Chairman asked whether the Police had identified other offensive weapons besides a pair of handcuffs. He also asked whether the Police had found any files or photographs inside the vehicle of the Mainland persons concerned.

40. ACP(C) responded that the Police officers at the scene had followed the general procedures on the handling of suspects, including inspection of all items inside the vehicle and all items carried or possessed by the suspects. No item requiring follow-up had been identified besides a pair of handcuffs.

41. The Chairman asked whether the Police had investigated whether the Mainland persons concerned were involved in serious crimes, besides loitering and possession of offensive weapon.

42. ACP(C) responded that the Police was investigating the case along this direction. He stressed that the Police had treated the case with utmost attention and had assigned the case to the Regional Crime Unit of Hong Kong Island.

43. The Chairman said that there were reports that the seven Mainland persons concerned had already returned to the Mainland after release on bail. ACP(C) responded that the Police had no knowledge of this.

44. Mr CHEUNG Man-kwong said that the Police should ask the relevant Mainland authorities about the cases under investigation by the seven Mainland persons concerned so as to facilitate its investigation of the case. ACP(C) responded that there was so far no evidence to suggest that the Mainland persons concerned had performed duties in Hong Kong. He said that the Police had sought confirmation about the identity of the arrested persons and the purpose of their visit to Hong Kong from the relevant Mainland public security authorities and a reply was awaited. The Chairman requested the Administration to provide the requested information within the current legislative session.

(Post-meeting note : The information provided by the Administration was circulated to members vide LC Paper No. CB(2)3094/03-04 on 15 July 2004.)

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