

立法會
Legislative Council

LC Paper No. CB(2)1210/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

Panel on Security

Minutes of meeting
held on Tuesday, 8 January 2008, 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)
Dr Hon LUI Ming-wah, SBS, JP
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Members absent** : Hon Albert HO Chun-yan
Hon Margaret NG
Hon WONG Yung-kan, SBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
- Public Officers attending** : Item V
Ms Manda CHAN
Principal Assistant Secretary for Security A

Miss Deneb CHEUNG
Acting Deputy Principal Government Counsel (Treaties
& Law)

Item VI

Mrs Apollonia LIU
Principal Assistant Secretary for Security E

Miss Linda LEUNG
Assistant Secretary for Security

Mr Blaine Stewart HOGGARD
Assistant Commissioner of Police (Support)

Mr Patrick D. G. HODSON
Senior Superintendent of Police (Support Branch)
(Support Wing)

Mr Jack WONG
Senior Inspector of Police (Field)2 (Support Branch)

Item VII

Mrs Apollonia LIU
Principal Assistant Secretary for Security E

Miss Linda LEUNG
Assistant Secretary for Security

Mr Shelton NG
Assistant Commissioner of Police (Crime)(Acting)

Mr Edwin LAM
Senior Superintendent of Police (HQ Group)(Crime
Wing)

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

**Staff in
attendance** : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2)5

Miss Helen DIN
Legislative Assistant (2)1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)707/07-08)

The minutes of the meeting held on 6 November 2007 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)696/07-08(01) and CB(2)699/07-08(01))

2. Members noted that the Administration's paper on the replacement of a Crash Fire Tender in the Airport Fire Contingent had been issued since the last meeting. No member suggested that the paper be discussed by the Panel.

3. Members also noted that a letter from a property management company regarding amusement game rooms inside the clubhouses of private residential estates had been issued since the last meeting. Members agreed that the letter should be referred to the Panel on Home Affairs for follow-up.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)706/07-08(01) and CB(2)706/07-08(02))

Meeting in February 2008

4. Members agreed that the following items would be discussed at the next meeting to be held on 19 February 2008 at 10:45 am -

- (a) Review of the Frontier Closed Area;
- (b) Review of the Quality Migrant Admission Scheme; and
- (c) Civil claims against law enforcement agencies.

Meeting on 18 January 2008

5. The Chairman reminded members that a special meeting had been scheduled for 18 January 2008 at 10:45 am to continue discussion on the matters raised in the Annual Report 2006 (the Report) to the Chief Executive

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by the Commissioner on Interception of Communications and Surveillance (the Commissioner), who had been invited to attend the meeting. Referring to a letter dated 24 December 2007 from the Commissioner, the Chairman informed members that the Commissioner considered it inappropriate to attend the meeting to be held on 18 January 2008. However, the Secretary to his Commission would attend the meeting. The Chairman added that the Commissioner had told him that it was inappropriate for a judge to attend a committee meeting of the Legislative Council (LegCo) and there had not been any precedent where a judge attended a committee meeting of LegCo.

(Post-meeting note : The letter of 24 December 2007 from the Commissioner was circulated to members vide LC Paper No. CB(2)780/07-08 on 9 January 2008.)

6. The Deputy Chairman said that there were many examples where judges attended Panel meetings in other capacities. His view was shared by Ms Audrey EU, who recalled that Mr Justice ROGERS had attended a committee meeting of LegCo in a capacity other than a judge to discuss issues related to company law.

7. Members agreed that the Secretariat should gather more information about examples where judges attended committee meetings of LegCo in other capacities and the Commissioner be informed of such examples. Members suggested that the Commissioner be invited to reconsider attending the meeting on 18 January 2008.

8. Ms Emily LAU and the Deputy Chairman said that if the Commissioner still considered it inappropriate to attend the Panel meeting, the Commissioner should be suggested discussing the Report with Panel members at the Commissioner's office. Ms Emily LAU added that if such a meeting at the Commissioner's office was a closed one, the special meeting on 18 January 2008 should still be held as scheduled.

9. The Chairman asked the Secretariat to convey the suggestions in paragraphs 7 and 8 above to the Commissioner for consideration.

Meeting on 31 January 2008

10. The Chairman reminded members that a special meeting had been scheduled for 31 January 2008 at 10:45 am to receive a briefing by the Commissioner of Police on the crime situation in 2007.

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IV. Subcommittee on Police's Handling of Searches of Detainees - The way forward

11. The Chairman recalled that the Panel had decided by a majority vote at its meeting on 4 December 2007 to appoint a Subcommittee on Police's Handling of Searches of Detainees. A proposal to activate the Subcommittee immediately notwithstanding that the maximum number of subcommittees on policy issues had been exceeded was voted down at the House Committee meeting on 14 December 2007.

12. The Clerk informed members that there were currently a total of 12 subcommittees on policy issues in operation, two of which were expected to complete work within January 2008. As the number of subcommittees on policy issues in operation had exceeded eight, the Subcommittee was put on the waiting list. In view of the decision of the House Committee on 14 December 2007, the Subcommittee had to await its turn for activation until the total number of subcommittees on policy issues was less than eight. In response to Ms Emily LAU's question on whether any of the other 10 subcommittees in operation were expected to complete work shortly, the Clerk said there was so far no indication that any of them would complete work within the next one to two months.

13. The Chairman said that some Members of the House Committee had expressed the view at the House Committee meeting on 14 December 2007 that as the Police would conduct a two-stage review of its existing practices regarding the handling of searches of detainees and planned to complete the stage-one review in three months' time, Members should await the completion of the Police's review before deciding whether the Subcommittee should be activated. The Subcommittee should not be activated before the completion of the Police's review even when the total number of subcommittees on policy issues was less than eight.

14. Ms Emily LAU and the Deputy Chairman considered that the Subcommittee should be activated once the total number of subcommittees on policy issues was less than eight. Ms Emily LAU said that the House Committee should be invited to reconsider the proposal that the Subcommittee be activated immediately notwithstanding that the maximum number of subcommittees on policy issues had been exceeded. The Chairman, Mr Howard YOUNG and Dr LUI Ming-wah however considered that Members should still await the completion of the Police's review before deciding whether the Subcommittee should be activated. If the outcome of the Police's review was found to be inadequate, Members would then decide on the way forward in respect of the Subcommittee.

15. Members agreed that the Police should be requested to expedite stage one of its review of the Police's existing practices regarding the handling of

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searches of detainees and report to the Panel at its meeting on 4 March 2008. Members also agreed that the meeting on 4 March 2008 would be dedicated to the discussion of the outcome of the Police's stage-one review and the improvement measures, if any, to be introduced.

V. Legislative proposal to implement the obligations on extradition under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia

(LC Paper No. CB(2)39/07-08(01))

16. Principal Assistant Secretary for Security A (PAS(S)A) briefed Members on the Administration's legislative proposal to implement the extradition requirements under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (the Regional Agreement).

17. Mr Howard YOUNG expressed support for the legislative proposal. He asked whether the legislative proposal was introduced to implement the Regional Agreement in Hong Kong or in response to increased pirate activities.

18. PAS(S)A responded that Hong Kong had an obligation to cooperate with other countries in preventing and combating piracy and armed robbery against ships in accordance with the Regional Agreement. Since the Regional Agreement came into force for Hong Kong in November 2006, three cases of Hong Kong registered vessels encountering piracy in the waters near Indonesia had been reported to the Information Sharing Centre established under the Regional Agreement.

19. The Deputy Chairman asked whether there were any differences between the requirements in the Regional Agreement and previous international agreements against piracy and armed robberies on the sea.

20. PAS(S)A responded that offences established by the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf had been implemented through the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004. The Convention and the Protocol aimed to criminalise unlawful acts threatening the safety of ships, their passengers and crew as well as fixed platforms attached to the sea-bed for exploiting offshore resources. The Regional Agreement sought to strengthen cooperation and information sharing among the Contracting Parties in Asia to combat piracy and armed robbery against ships which acts were already criminalised under the common law and the Crimes Ordinance (Cap.200). Articles 4 to 7 of the Regional Agreement

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provided for the establishment of an Information Sharing Centre in Singapore for such a purpose.

21. The Deputy Chairman asked whether there were any Articles in the Regional Agreement which had not been implemented through local legislation.

22. PAS(S)A responded that Article 12 of the Regional Agreement specified that a Contracting Party shall, subject to its national laws and regulations, endeavour to extradite offenders present in its territory, to another Contracting Party having jurisdiction over them, at the request of that Contracting Party. To implement this requirement, the Administration needed to make an order under section 3 of the Fugitive Offenders Ordinance (Cap. 503) (FOO) to direct that the procedures in FOO would apply as between Hong Kong and other Contracting Parties to the Regional Agreement. This would enable Hong Kong to extradite offenders to Contracting Parties with which Hong Kong had not concluded bilateral agreements on surrender of fugitive offenders (SFO).

23. The Deputy Chairman said that those countries with which Hong Kong had not concluded SFO agreements might not be implementing SFO safeguards regarding, for instance, human rights, political offences or death penalty. He said that care should be exercised to prevent the abuse of the proposed SFO order for political purposes.

24. PAS(S)A responded that the Regional Agreement provided that extradition should be carried out subject to the national laws and regulations of the requested party. Surrender requests involving offences of a political character would be refused in accordance with section 5(1) of FOO.

VI. Review Report on the Use of Handguns in the Hong Kong Police Force

(LC Paper No. CB(2)167/07-08(04))

25. Members noted the Administration's paper on the outcome of a review conducted by the Police on matters relating to an incident on 9 February 2007 where a Police officer's handgun was dislodged from the holster and fell to the ground and the outcome of a subsequent complaint lodged with the Complaints Against Police Office (CAPO) in respect of the incident.

26. The Deputy Chairman said that it was difficult for him to accept the results of the Police's review on the incident. He said that there had been numerous occasions where plain clothed Police officers intercepted running protestors or encountered chaotic conditions without dropping their pistols. As there was not a large number of protestors rushing towards the Chief Executive's Personal Security Officer (CEPSO) in the case concerned, he queried why CEPSO, who was in a highly alert state and had not attempted to

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draw his pistol from the holster, could drop his pistol with rounds of ammunition coming out of the magazine. He asked whether there had been any case in the past 20 years where a Police officer in a highly alert state dropped his pistol.

27. Assistant Commissioner of Police (Support) (ACP(S)) responded that the investigation into the incident covered the interviewing of witnesses, examination of the television news footage, press cuttings and photographs published by the media. It was concluded that the incident was purely an accident. It resulted from a scuffle that occurred when CEPSO tried to intercept protestors rushing towards the scene. He added that he was not aware of any previous case where a Police officer dropped his pistol in a highly alert state with the magazine broken and rounds of ammunition falling onto the ground.

28. PAS(S)E said that besides the investigations conducted in respect of the incident, the Police had looked into the technical aspect of the dislodgement of the pistol from the holster. While the holster in question was found to be safe and secure during various tests under different circumstances, one test showed that the pistol might come out of the holster, if it was subject to very strong pressure applied at a certain angle. This could account for the dropping of the gun during the incident. ACP(S) added that to address the issue, the Police had since mid-October 2007 deployed a new model of holster which featured a locking mechanism that would enhance security without compromising operational efficiency.

29. Mr Howard YOUNG considered that the equipment of Police officers should be constantly brought up-to-date. He asked whether reviews were regularly conducted by the Police to identify needs for updating the equipment of Police officers to bring it in line with the latest international standards.

30. ACP(S) replied in the affirmative. He said that the Police's Uniform and Accoutrements Committee constantly reviewed and updated the operational equipment used by the Police Force.

31. Referring to paragraph 7 of the Administration's paper, the Deputy Chairman asked about the facts supporting the conclusion that the CEPSO concerned had not attempted to draw his pistol at the scene and had not unfastened any safety device.

32. ACP(S) responded that the conclusion was drawn after investigation of the case concerned, which included examination of the statements given by CEPSO and witnesses, the relevant news footage of television broadcasting companies, press cuttings and photographs published by the media. He added that as one of the tests conducted showed that the pistol might come out of the

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holster if it was subject to very strong pressure applied at a certain angle, the Police had deployed a new model of holster since mid-October 2007.

33. The Deputy Chairman said that to his knowledge, there were two or three cases in the past six months where marine Police officers dropped their guns into the waters. He asked whether there was any weakness in the design of the holsters used by marine Police officers.

34. Referring to paragraphs 16 and 17 of the Administration's paper, PAS(S)E responded that the holsters used by marine Police officers had also been tested in this review under three scenarios based on their usual operational environment. The tests confirmed that when properly secured, handguns would not be dislodged in those scenarios and would remain firmly held in the holsters.

35. ACP(S) added that there were two cases involving the dropping of guns by marine Police officers on duty in 2007. In the first case, which occurred on 16 June 2007 at 8:20 am, a marine Police officer dropped his gun into the water. Divers had been deployed to recover the lost gun without success. A full investigation into the case had been conducted. There was indication that the Police officer concerned had not complied with the relevant Police order, and the matter was being followed up in accordance with the established procedures. The second case occurred on 24 November 2007 at 11:45 am.

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36. The Deputy Chairman requested the Administration to provide more information about cases of marine Police officers dropping their guns in 2007.

VII. Police's handling of reports or complaints about press articles
(LC Paper Nos. CB(2)706/07-08(03) and CB(2)706/07-08(04))

37. Members noted the Administration's reply to a letter dated 2 January 2008 from the Chairman on the Police's handling of reports or complaints about press articles.

(Post-meeting note : The letter tabled at the meeting was circulated to members vide LC Paper No. CB(2)780/07-08 on 9 January 2008.)

38. PAS(S)E briefed Members on the Police's practices in handling reports or complaints about press articles. She stressed that the Police's visit to a media organisation on 1 November 2007 did not involve any criminal investigation or search of journalistic material.

39. The Deputy Chairman said that the spirit of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) concerning the protection of journalistic material should also apply to the collection of background

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information to facilitate the Police's decision on whether and how a complaint or report should be followed up. He said that if the Police was not sensitive enough in the collection of background information about a complaint, no one would be willing to supply information of public interest to the media.

40. PAS(S)E responded that the Police was aware of the sensitivity of journalistic material. Although members of the public had a social responsibility to provide assistance to the Police in the investigation of cases, the Police could not compel any party to provide information unless empowered to do so under existing legislation. She stressed that the Police adopted a cautious approach in collecting background information from media organisations. For example, in the current case, plain clothed Police officers travelled in a civilian car instead of a Police vehicle to visit the media organisation concerned so as to keep the operation in a low profile.

41. The Deputy Chairman asked about the information the Police officers intended to obtain in the visit concerned. He said that if the purpose of the visit was to obtain the identity of the author of the article concerned, it would involve the collection of information concerning the facts which fell within the scope of journalistic material.

42. Assistant Commissioner of Police (Crime) (Acting) (ACP(C)(Atg)) responded that the purpose of the visit was to inform the media organisation of the receipt of a complaint and to seek its cooperation in providing background information for an initial assessment on the complaint. The Police had not sought to obtain the identity of the author concerned in the visit.

43. Miss CHOY So-yuk said that although it was stated in paragraph 6 of the Administration's paper that the Police handled reports or complaints against mass media in a prudent manner, what the Police had done in the case which involved an article published about two years ago had given one the impression that it had abused its power and handled the case in a reckless manner. She asked about the purpose of the Police's visit to the media organisation on 1 November 2007, the number of Police officers who took part in the visit and the reasons for deploying such a number of Police officers for the visit. She also asked whether Police officers would be deployed to visit the respective media organisation concerned whenever a complaint in respect of a media organization was received.

44. ACP(C)(Atg) responded that after receiving the complaint in question, the Police had, in accordance with its established procedures, carried out an initial assessment and collected background information before deciding how the complaint should be followed up. The Police had a responsibility to follow up a complaint, regardless of when the alleged acts occurred. In this case, three plain clothed Police officers who travelled by a civilian car visited the media

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organisation with a view to obtaining its cooperation in providing background information on the case.

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45. Miss CHOY So-yuk asked whether any Police officer involved in the case had read the article concerned before the visit to the media organisation, ACP(C)(Atg) responded that he did not have such information on hand. Miss CHOY requested the Administration to provide a written response.

46. Miss CHOY So-yuk said that, to her knowledge, the complaint concerned was finally not substantiated. She asked whether any abuse of power or dereliction of duty was found with any Police officer. She also asked whether any Police officer was found to have handled the case in a rash manner. ACP(C)(Atg) replied in the negative.

47. Mrs Selina CHOW said that the public was concerned about the Police's impartiality in handling complaints about press articles and the impact of the Police's handling of such complaints on press freedom and the freedom of speech. As articles of a commentary nature were frequently published in the media, she considered that the Police should review whether it should be an established procedure to visit the media organisation concerned whenever a complaint of such a nature was received.

48. ACP(C)(Atg) responded that the Police handled all complaints and reports impartially. It was the Police's established procedures to study each complaint or report received by the Police. In view of the wide concern on the case, the Police would consider how cases of a similar nature could be better handled in the future.

49. Mr LEUNG Kwok-hung asked whether the purpose of the visit was to intimidate the media organisation concerned.

50. ACP(C)(Atg) replied in the negative. He reiterated that the purpose of the visit was to seek the cooperation of the media organisation in providing background information for an initial assessment on the relevant complaint.

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51. The Chairman asked about the type of background information the Police had requested the media organisation to provide. ACP(C)(Atg) responded that the Police officers had, among others, informed the media organisation of the complaint. The Chairman requested the Administration to provide information in writing on why it was necessary for Police officers to visit the media organisation and why three Police officers were needed for the visit.

52. Mr CHEUNG Man-kwong said that the Police's visit to or search of media organisations was a sensitive issue that should be handled prudently, as the freedom of expression and the freedom of publication might be involved in

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the process. He considered that in this case, the Police should first study the press article to determine whether it had the effect of instigating violence. If the press article did not have any effect of instigating violence, there should not be a need for Police officers to visit the media organisation. He asked whether any Police officer was found to have abused his power in the case concerned.

53. ACP(C)(Atg) stressed that the case in question did not involve any search of journalistic. The Police officers concerned had handled the case in accordance with the established procedures. He said that in view of Members' concerns, the Police would conduct a review on how cases of a similar nature could be better handled in the future.

54. PAS(S)E said that the Police was aware of the need to handle visits to media organisations prudently. It was also aware of the stringent legislative requirements governing the search of journalistic material.

55. Mr CHEUNG Man-kwong said that the Police should inform the media organisation concerned of the outcome regarding its handling of the case. PAS(S)E responded that the media organisation concerned had in fact written to the Police in relation to the case and the Police had already replied to the media organisation accordingly.

56. Members generally considered that the Police's established procedures for handling reports or complaints about press articles should be reviewed. Ms Emily LAU and the Deputy Chairman said that after receiving a complaint, the Police should at least examine whether there was a *prima facie* case before deciding whether and how a report or complaint should be followed up. Mr LEUNG Kwok-hung added that the Police's established procedures might be open to abuse, as the Police could visit a media organisation to obtain information after deploying a person to lodge a complaint against the media organisation concerned.

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57. Ms Emily LAU requested the Administration to provide information on the Police's established procedures for handling reports or complaints against press articles and the changes, if any, to be made to such established procedures, having regard to the views and concerns expressed by Members at the meeting.

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58. Members agreed that a special meeting would be held to further discuss the subject and the Secretary for Security should be invited to attend the meeting. To facilitate Members' discussion, the Chairman requested the Administration to provide more detailed information on the case.

(*Post-meeting note* : The special meeting was subsequently scheduled for 29 February 2008 at 10:45 am.)

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59. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
3 March 2008