



Title	Political Policing in Hong Kong
Author(s)	Fu, HL; Cullen, R
Citation	Hong Kong Law Journal, 2003, v. 33 n. 1, p. 199-230
Issued Date	2003
URL	http://hdl.handle.net/10722/75000
Rights	Creative Commons: Attribution 3.0 Hong Kong License

POLITICAL POLICING IN HONG KONG



H. L. Fu and Richard Cullen*

Modern states, democratic ones in particular, have grown to prefer the use of more subtle, or at least less visible, police surveillance to open confrontation in a courtroom, where the state itself may be scrutinised in public. Well-equipped national security agencies enable the state to respond to potential security threats before they mature. Hong Kong's political police unit, the Special Branch, was indispensable to Hong Kong's colonial political order. Although it was disbanded before the handover of Hong Kong to China in 1997, political policing and monitoring probably continue under the new legal order. This article examines the historical origin of political policing in Hong Kong, including the establishment of the Special Branch and its initial focus on communist activity in Hong Kong. It then traces the demise of the Special Branch prior to the handover, examines the role played by the Independent Commission Against Corruption, and explores the relevance of political policing to contemporary society.

Introduction

A politically motivated trial of an enemy of the state is also, as it happens, a trial of the state itself. Modern states, democratic ones in particular, have grown to prefer the use of more subtle, or at least less visible, police surveillance to open confrontation in a courtroom, where the state itself may be scrutinised in public. Over time, there has been a clear trend away from subsequent punishment through political trials to more covert political surveillance by national security establishments. Today, only “dictatorial” and “authoritarian” states need resort to blatant violence against political dissidents.

Western democracies have become national security and surveillance societies. As political control has grown more preventative and proactive, it has also become more expansive and assertive.¹ Well-equipped national

* H. L. Fu is an Associate Professor in the Department of Law, University of Hong Kong; Richard Cullen is a Professor at Monash University, Melbourne, Australia and a Visiting Professor in the School of Law, City University of Hong Kong. The authors would like to thank Keith Akers, Pinky Choy and David Doyle for their research assistance and comments on the early versions of this article. This project is supported by a RGC grant #HKU 7214/00H.

¹ Laurence Lustgarten and Ian Leigh, *In From the Cold: National Security and Parliamentary Democracy* (Oxford: Clarendon Press, 1994), p 363.

security agencies enable the state to respond to potential security threats before they mature. Political dissidence is tolerated – but carefully watched. Political trials have become largely unnecessary. In Western democracies today, civil liberties are not manifestly threatened by classical political show trials, but rather through the abuse of power by their national security agencies. Most subversive activities are not charged or prosecuted as such. Charges of a sensitive political nature, such as treason and sedition, are rarely made. Instead, other laws, especially those governing societies and public order, are regularly used to control dissenting political voices.

Yet every country needs to control and prohibit genuinely subversive activities. The clandestine and deceptive nature of such activities, as well as their not infrequently violent manifestations, mandate government watchfulness and firm counteractions. The fundamental problem is that the term “subversion” can be defined to encompass a diverse group of underground activities, typically resulting in the grant of broad mandates to security agencies. Because “activities threatening to the national security often do not differ outwardly from similar non-threatening ones”,² even legitimate dissent – political, industrial and otherwise – can easily be categorised as subversive as a result of government incompetence or political malevolence, or a combination of the two. In this context, “[c]ivil disobedience therefore becomes subversive”.³

Preventative Political Policing

Understanding preventative political policing is central to an understanding of the operation of Article 23 of the Basic Law. The laws of treason and sedition have almost never been used in Hong Kong. Similarly, laws governing public order have been used only occasionally to secure Hong Kong's political stability. Instead, it is political policing, primarily through the former Special Branch of the Hong Kong Police, that has played a crucial role in suppressing subversive elements in Hong Kong. The Special Branch was indispensable to Hong Kong's colonial political order. Though it was disbanded before the handover of Hong Kong to China in 1997, political policing and monitoring doubtless continue under the new legal order.

Political policing in Western democracies historically has had three features which Hong Kong shares. First, it targets primarily leftist organisations, in particular communist organisations. Well before the anti-communist hysteria of the Cold War era, communist activities were seen as threatening by many Western democratic states. Political policing involved consistent

² See Peter Gill, “Defining Subversion: The Canadian Experience Since 1977” (1989) *Public Law* 617, 633.

³ Laurence Lustgarten and Ian Leigh, “The Security Service Act 1989” (1989) 52 *Modern Law Review* 801, 807.

surveillance and harassment of communists and those among their supporters who were perceived to be dangerous to the prevailing order.⁴ In the United States, surveillance by the Federal Bureau of Investigation (FBI) was so extensive that “virtually no left-wing organisation, no matter how minuscule its membership, escaped FBI tapping or bugging”.⁵ Likewise, the “unremitting hostility” of the Canadian state to communism led to a systematic programme to control the communist party, its followers and sympathisers.⁶

Second, political policing in modern democracies is increasingly preventative and pre-emptive. Effective political control depends on effective gathering of intelligence and pre-emptive action. This goal was achieved by attending political meetings and infiltrating legitimate political movements, following leaders of political movements and preparing blacklists. Before 1976, “FBI internal security investigations emphasised collection of extensive political intelligence on organisations and individuals espousing revolutionary, racist, or otherwise ‘extremist’ ideological viewpoints”.⁷ Investigation practices normally consisted of “monitoring the activities of these groups, identifying their members and reading their publications”. This high degree of state vigilance brought the radical political movements of the day under firm control.⁸ As discussed below, the political complexion of groups under FBI surveillance has changed since 1976. Recent events have also underscored the inadequacy of traditional methods of political control to meet these new threats. Such failures illustrate the extent of Western states’ reliance on security agencies to ensure their political stability.

Finally, covert surveillance and harassment in modern democracies takes place largely beyond the control of courts and the legislature. Instead, sole discretion is vested in the security establishment and its political superiors. Security matters are thus exempted from regular accountability mechanisms. Lustgarten and Leigh comment that “perhaps the primary political function of security is as a part of the coinage of power, hoarded and used by ministerial and bureaucratic elites to ignore or short-circuit normal democratic

⁴ This discussion of the role of the FBI and other like organisations in countering subversion draws on: James Kirkpatrick Davis, *Spying on America: The FBI's Domestic Counterintelligence Program* (New York: Praeger, 1992); and Diarmuid Jeffreys, *The Bureau: Inside the Modern FBI* (Boston: Houghton Mifflin, 1995). For a study of political surveillance by state police, see Paul G. Chevigny, “Politics and Law in the Control of Local Surveillance” (1984) 69 *Cornell Law Review* 735; John T. Elliff, “The Attorney General’s Guidelines for FBI Investigations” (1984) 69 *Cornell Law Review* 785; B. R. Hancock, “The New Zealand Security Intelligence Service” (1973) 2 *Auckland University Law Review* 1, 7–8.

⁵ Athan G. Theoharis, “The FBI and Dissent in the United States”, in C.E.S. Franks (ed.), *Dissent and the State* (Toronto: Oxford University Press, 1989), p 96.

⁶ Reg. Whitaker, “Left-Wing Dissent and the State; Canada in the Cold War Era”, in C. E. S. Franks, *ibid.*, p 194.

⁷ John T. Elliff, “The Attorney General’s Guidelines for FBI Investigations” (1984) 69 *Cornell Law Review* 785, 793.

⁸ *Ibid.*, 789.

process”.⁹ The use of subtle, ideally even undetectable, political surveillance and harassment techniques has simply proven more effective in silencing dissenting voices than full-blown political prosecutions.

The Special Branch

Precursors to the Special Branch

Communist activities in Hong Kong came under close scrutiny in the early part of the 20th century. The Guangdong-Hong Kong strike of 1925–1926, which was organised by the Communist Party in China, posed a direct threat to the security of Hong Kong.¹⁰ As a result, Hong Kong Police started to direct more serious attention to underground communist propaganda and local organisations. A 1928 police report contained the following statement on special political events:

“Following the defeat of the Communists in Canton in December, 1927, there was a great decrease in anti-foreign agitation during the year. Anti-Japanese feeling made itself felt in Hong Kong during May, 1928, in the form of shop-window breaking and street oratory. The agitation was never very strong and rapidly collapsed. During the year, Canton Authorities devoted attention to the suppression of undesirable labour activities, and throughout the year maintained a friendly attitude towards the British in Hong Kong.”¹¹

Communist activities continued, however, despite police efforts. According to a 1929 report:

“The suppression of the activities of Communists continued to be an important branch of Police work throughout the year. Communists have failed to obtain any serious hold in Hong Kong, but frequent raids by Police reveal that the Communist Party still maintains, or seeks to maintain, cells in Hong Kong. Their Agents are forced to conduct their activities with great secrecy, and there is evidence that the personnel of the Party’s Representatives in the Colony are frequently changed. It is significant that most of the Party’s Agents who have passed through the hands of the Police have been of the young student type, and appear to have been

⁹ Laurence Lustgarten and Ian Leigh (n 1 above), p 363.

¹⁰ See, for example, Chan Lau Kit-ching, “The Perception of Chinese Communism in Hong Kong 1921-1934” (2000) 164 *The China Quarterly* 1044.

¹¹ *Hong Kong Administrative Reports 1928*, K19.

controlled from Shanghai. Their efforts had been directed to cause trouble among the labouring classes of the Colony.”¹²

The biggest police success at this time was the arrest of 50 people during a raid on “a Communist Meeting in full swing” and the deportation of the principals.¹³

By 1930, an Anti-Communist Squad had been established within the Criminal Investigation Department (CID) to monitor left-wing political agitators. Reports describe a number of attempted demonstrations and strikes organised by communists, followed by arrests and banishment. Two events were of special importance. One was the proscription of a Chinese newspaper, *Siu Yat Po*, apparently for involvement in communist activities. The paper was closed by the Governor-in-Council and its manager and editor were banished. Another was the on-duty killing in Yau Ma Tei by communists of a Detective-Sergeant from the Anti-Communist Squad who had been attempting to obtain information about a communist anniversary.¹⁴ The killing apparently intensified anti-communist operations. Thereafter, “considerable further Anti-Communist Police activity ensued, revealing an important organisation within the Colony which [had] been definitely suppressed for the time being”.¹⁵

With greater resources the following year, the Anti-Communist Squad continued its efforts to monitor the promotion and development of communist organisations in Hong Kong. The police actively gathered intelligence on communist organisations, being particularly concerned about the involvement of Bolsheviks.¹⁶ In 1932, the Chinese name of the Anti-Communist Squad was changed to *Zhengzhibu*, meaning Political Department.

Establishment of the Special Branch

The Anti-Communist Squad changed its English name the following year to the Special Branch, apparently following British practice, while retaining their Chinese “political” designation. The name changes may have reflected a new institutional mandate, as anti-communist operations became increasingly proactive. Though there were no serious demonstrations in the first few years of the 1930s, the police continued to increase their resources. An increase at that time in Bureau staff was said to have “enabled it to watch successfully the general activities of the Communist Party in Hong Kong”.¹⁷

¹² *Ibid.*, K15.

¹³ *Ibid.*

¹⁴ *Hong Kong Administrative Report 1930*, K14–K15. Colin Crisswell and Mike Watson, *The Royal Hong Kong Police (1841–1945)* (Hong Kong: Macmillan, 1982), p 123.

¹⁵ *Hong Kong Administrative Report 1930*, K15.

¹⁶ *Hong Kong Administrative Report 1931*, K3.

¹⁷ *Hong Kong Administrative Report 1932*, K4.

According to the 1932 report, the police carried out raids before some of the more important communist anniversaries and seized “quantities of inflammatory documents” intended to be distributed at related events. The raids were followed by the arrest and banishment of communists.¹⁸ In the years immediately following the establishment of the Special Branch, communist organisations were kept under tight control. The police even claimed to have arrested and banished “key members” of local communist organisations.¹⁹ In 1935, they reported that the communist movement had collapsed, and no communist activities were observed in 1935 or 1936.²⁰ Even so, the Special Branch continued to expand; by 1938 it had moved to a new building, largely to accommodate the rapid influx of staff.

A report prepared by the Commissioner of Police in 1939 detailed the work of the Special Branch. Their most important function was labelled “Chinese Affairs”. The report observed that “[a] number of new guilds and labour associations were formed during the year, and together with older guilds, were active in collecting subscriptions for Chinese war relief and Chinese national welfare. Three small strikes occurred during the year.”²¹

Other Special Branch functions included immigration and passport control (for which they assumed responsibility in mid-1938) and the registration of persons. The outbreak of war with Germany added a heavy burden on the Branch, which then had to control enemy aliens and liaise with naval and military authorities.²²

It appears that the Special Branch was not especially proactive during the first decade of its existence. At the end of 1941, the Branch was criticised for lacking “an ‘underground’ system of intelligence”. Its chief means of obtaining information were still reactive, usually involving raids, arrests and questioning made after covert or otherwise unacceptable activity had taken place.²³

Special Branch Activities 1949–1970

Expanded mandate

The victory of the Communist Party in mainland China in 1949 and the subsequent Korean War increased the already heavy burden on the Hong

¹⁸ *Ibid.*, K5.

¹⁹ *Hong Kong Administrative Report 1933*, K7; *Hong Kong Administrative Report 1934*, K9.

²⁰ *Hong Kong Administrative Report 1935*, K9; *Hong Kong Administrative Report 1936*, K14. After the outbreak of Sino-Japanese hostilities, the Special Branch shifted its attention to monitoring anti-Japanese activities. There were a number of new organisations set up in Hong Kong to identify Chinese traitors and to boycott Japanese goods. There were also other minor anti-Japanese activities such as stone throwing and the posting of slogans: *Hong Kong Administrative Report 1937*, K15; *Hong Kong Administrative Report 1938*, K11.

²¹ *Hong Kong Administrative Report 1939*, K11.

²² *Ibid.*, K11.

²³ Preliminary Report on the Hong Kong Police Force, Enclosure to Governor Sir Mark Young to Secretary Lord Moyne, confidential letter, 1 Dec 1941 (CO129/588), cited in Steve Tsang (ed), *Government and Politics: A Documentary History of Hong Kong* (Hong Kong: Hong Kong University Press, 1995), p 169.

Kong Special Branch. The Branch then had to contend with the threat of communist infiltration. Its resources were stretched to cover a variety of tasks, most of which still remained reactive in nature. By 1950, it claimed it was facing “intense pressure”.²⁴ That year, the Branch introduced a programme of “controlled immigration” from the Mainland, which meant that prior permission to enter Hong Kong was required of passengers from Chinese ports. Meanwhile, the Branch complained that “expansion ha[d] outstripped the accommodation available and slum working conditions ha[d] obtained for some considerable time”.²⁵ In addition to its normal anti-subversion activities, the Special Branch began to perform security checks for service and defence purposes, which proved to be very demanding.

The Special Branch was also given responsibility for the enforcement of the Registration of Societies Ordinance. Of 889 applications for registration submitted in 1950, the Branch refused 141, apparently targeting mainly “leftist” organisations.²⁶ Another 150 applications were refused in 1951,²⁷ and the same number was refused the following year.²⁸

After 1953, reports on the operation of political policing in Hong Kong simply ceased to appear. From 1955 to 1958, the only meaningful statement made in annual police reports was that the Special Branch was “responsible for the prevention and detection of activities subversive to the security of the Colony”.

Focus shifts to security

Toward the end of the 1950s, the Special Branch started to improve its intelligence-gathering capacity. In addition to the prevention and detection of subversive activities, the Branch took increasing responsibility for “supplying the intelligence necessary for the maintenance of internal security”.²⁹ Even so, it was not until the early 1960s that meaningful progress was made, and it took an MI5 officer to effect the improvement. Thenceforth, the Branch “managed to improve its counter-intelligence and counter-subversive capacities by so much that it earned the reputation of being one of the best, if not the best within the British Commonwealth by the second half of the 1960s”.³⁰

The Zeng Zhaoke affair of 1961, named for a Police Superintendent found to be a communist infiltrator, shocked the colonial administration and encouraged

²⁴ *Annual Report on Hong Kong Police Force 1950–1951*, p 33.

²⁵ *Annual Report on Hong Kong Police Force 1951–1952*, p 48.

²⁶ *Annual Report on Hong Kong Police 1950*, pp 33–34.

²⁷ *Annual Report on Hong Kong Police Force 1950–1951*, p 33.

²⁸ *Annual Report on Hong Kong Police Force 1951–1952*, p 49.

²⁹ *Annual Report on Hong Kong Police Force 1958–1959*, p 7 and *Annual Report on Hong Kong Police Force 1959–1960*, p 7.

³⁰ Steve Tsang (ed), *Government and Politics: A Documentary History of Hong Kong* (Hong Kong: Hong Kong University Press, 1995), p 173.

further reforms.³¹ One of these was the transfer that same year of immigration and passport control responsibilities to the Immigration Department, activities that had previously consumed substantial Branch resources.

Branch manpower

As demonstrated in Figure 1, the strength of Special Branch forces almost doubled between 1960 and 1970.³²

Figure 1: Special Branch Staff Counts, 1957–1977

Year	Regular Police	Civilian Staff	Total
1956–1957	165	52	217
1957–1958	216	67	283
1958–1959	218	90	308
1959–1960	230	103	333
1960–1961	235	110	345
1961–1962	248	109	357
1962–1963	262	136	398
1963–1964	319	140	459
1964–1965	340	130	470
1965–1966	379	155	534
1966–1967	409	172	581
1967–1968	419	189	608
1968–1969	438	195	633
1969–1970	479	204	683
1970–1971	506	212	718
1971–1972	504	213	717
1972–1973	/	/	/
1973–1974	628	248	876
1974–1975	631	278	909
1976	632	329	961
1977	627	329	956

(Source: *Annual Reports on Hong Kong Police Force 1956–1977*)

³¹ Luo Ya, *Zhengzhibu Huiyilu* (Memories of Special Branch, RHKP) (Hong Kong: Chinese University Press, 1997), pp 140–147.

³² *Ibid.*, p 5.

Branch admission requirements

The quality and regulation of Special Branch agents had also improved since the early 1960s. The Branch came to require that all applicants undergo a thorough political review, termed "Position Vetting". This review spanned from the beginning of the applicant's schooling through the time of application, and included educational and occupational experiences, references, extra-curricular and social activities, memberships in societies or organisations and a check of all police records and other unconfirmed intelligence. In addition, the backgrounds of spouses, parents, siblings, children and relatives of the applicants were vetted. Once appointed, an officer was also subject to further vetting from time to time, especially before promotion.³³

Most Special Branch agents were previously police officers of high reputation, with the rank of inspector or above. They held university degrees and could demonstrate skill in monitoring political activities.³⁴ Every Branch agent also had to sign a copy of the Official Secret Act every six months, to reinforce the crucial need for maintaining secrecy.³⁵ Those assigned to the Special Branch were not allowed to leave it before retirement.³⁶ Agents were also required to report to their superiors whenever relatives from the Mainland visited them.³⁷

Effect of the Cultural Revolution

In 1966, the Cultural Revolution in mainland China spilled over to Hong Kong, causing serious riots in the streets. By this time, though, the Special Branch was ready to cope with just such a serious challenge. Tsang argues that the Special Branch "was put to the test in the Communist confrontation of 1967 and it passed with flying colours".³⁸ The riots exposed the communist organisation, which then "was badly damaged by the Special Branch and the police in Hong Kong".³⁹

The role of the Hong Kong Special Branch in these events was unusual in many respects. Sinclair noted that: "[t]he unique geo-political situation of

³³ *Ibid.*, p 13.

³⁴ Wen Sicheng, *Xianggang Zhengfu Yu Shizheng Jiagou* (Hong Kong Government and its Executive Structure) (Hong Kong: Joint Publishing, 1994), p 141.

³⁵ Luo Ya (n 31 above), p 14.

³⁶ Hao Bin, *Huangjia Xianggang Jingchadui* (Royal Hong Kong Police Force) (Hong Kong: Haishan Tushu, 1985), p 175.

³⁷ "Officers Speak of Working in Fear", *South China Morning Post (SCMP)*, 26 July 1994. Reports claimed that no active Special Branch agents were allowed to visit Taiwan or the Mainland, nor were those who had left the Branch less than five years prior. Those who left the Branch more than five years prior had to obtain approval in advance before visiting either place. Hao Bin, *ibid.*, p 176. These restrictions were finally lifted, perhaps because of the approaching handover. Their removal did not initially have much impact on Special Branch agents, however, because "none of them dared to go to the [M]ainland". It seems times have changed, as former agents now sometimes travel there as tourists.

³⁸ Steve Tsang (n 30 above), p 292.

³⁹ *Ibid.*, p 297.

Hong Kong poses special problems for [Special Branch] men. Political rivalry between various groups from outside the borders of the territory causes headaches that are found nowhere else on earth and requires tactics and skills developed to a rare degree of finesse."⁴⁰ One related function of the Special Branch was the monitoring of potential political threats to the Government. This required that they "keep a delicate finger on the pulse of potential political agitators",⁴¹ including a variety of left and right wing political organisations, labour unions and foreign organisations. The Special Branch collected information on those organisations, including their members, activities and financial resources.

At times, the Special Branch appeared to be omnipresent. When a *South China Morning Post* reporter published a story on a possible increase in taxi license fees in 1977, he received a visit from a Special Branch representative asking for the source of the information.⁴² The Branch paid special attention to leftist students at the University of Hong Kong. Between 1968 and 1969, they asked the chairman of the Students' Association there more than once for the names of students with a leftist orientation, allegedly to prevent them from becoming civil servants after graduation.⁴³ The Branch was also involved in controlling industrial action,⁴⁴ monitoring senior Chinese officials on their visits to Hong Kong⁴⁵ and guarding and interrogating communist and nationalist spies held at their Victoria Road reception centre in Pokfulam.⁴⁶

While the Special Branch recognised the threats posed by both sides of the political spectrum, and purported to prevent and detect "subversive activities of all kinds",⁴⁷ it nevertheless admitted that "the Left were the greater trouble makers and the more dangerous element".⁴⁸ The right wing was seen as mischievous, but communists were subversive.

⁴⁰ Kevin Sinclair, *Asia's Finest: An Illustrated Account of the Royal Hong Kong Police* (Hong Kong: Unicorn Books, 1983), p 138.

⁴¹ *Ibid.*, p 138.

⁴² Wen Sicheng (n 34 above), p 142.

⁴³ *Ibid.*, p 142.

⁴⁴ "Concern Over Fate Of Activists: Special Branch Took Dissidents To China Border", *SCMP*, 26 July 1994. See also, Luo Ya (n 31 above), pp 119–120.

⁴⁵ "Unforgivable Neglect", *SCMP*, 12 Nov 1994.

⁴⁶ Glenn Schloss, "Return of Big Brother?", *SCMP*, 8 Mar 2001.

⁴⁷ *Annual Report on Hong Kong Police Force 1946–1947*, p 20; *Annual Report on Hong Kong Police Force 1947–1948*, p 9. See also *Fei Yi Ming and Lee Tsung Ying v R* (1952) 36 HKLR 133.

⁴⁸ *Annual Report on Hong Kong Police Force 1951–1952*, p 49. Athan G. Theoharis, "The FBI and Dissent in the United States", in C. E. S. Franks (n 5 above), p 96. While right wing groups were subject to surveillance by the secret police, its intensity and scope paled in contrast to that suffered by the left. In the US, for example, the monitoring of right wing organisations such as the KKK and some pro-fascist organisations was exceptional, and in any event carefully limited. In Canada, the far right was able to completely escape political monitoring during the Cold War, and until very recently, far right organisations there regarded the police as "partners" in the salvation of Western society. C. E. S. Franks, "Introduction", and Stanley Barrett, "The Far Right in Canada", in C. E. S. Franks (n 5 above), pp 13–14, 224–246.

The Branch intervened in an incident on 1 March 1952⁴⁹ and was clearly behind the successful prosecution of *Ta Kung Pao* for sedition in 1952.⁵⁰ It consistently monitored the Xinhua News Agency, as well as China-backed organisations, including several companies in the Chinese Resources Building in Wan Chai, and many pro-China schools and companies, including Gordon Wu's Hopewell Holdings. Visiting Chinese officers were followed, as were many pro-Beijing figures – even members of the Chinese People's Political Consultative Conference (CPPCC) and National People's Congress (NPC). This last action came as no surprise to Mr Ng Hong-mun, a long-time local NPC member, who claimed he knew he had been under surveillance since the 1950s.⁵¹ Especially after the 1967 riots, communist organisations were subjected to almost continual scrutiny by the Special Branch. The Branch also regularly subjected members of such organisations to personal phone-taps and surveillance.

Surveillance of other "subversive" groups

The right wing did not escape Special Branch surveillance completely. For example, in 1976 Special Branch officers managed to detain a dozen right-wingers who had planned to disrupt ceremonies organised by leftists to mourn the death of Mao Tse-tung.⁵² Some 63 nationalist agents involved in espionage and sabotage attempts against China were also arrested in Hong Kong.⁵³ Later, even pro-democracy activists attracted Special Branch attention. Elsie Tu, a

⁴⁹ On 2 Nov 1951, a disastrous fire in Tung Tao Village consumed a large number of wooden huts. The Government's response to the incident was criticised as unsatisfactory. The discontent of the public towards the Hong Kong Government grew as disturbances following the fire became more serious. A Canton Comfort Mission planned a visit to the fire victims on 1 March 1952. A group of Hong Kong residents met to welcome the Comfort Mission. This action drew the attention and suspicion of the Hong Kong Government. A large number of police were ordered to the railway station where the Comfort Mission was expected to arrive, and the Mission was forbidden from entering Hong Kong. A confrontation between the public and the police ensued. Many of the protesters were charged, and some were deported. This incident became known as the "March First Incident". The *People's Daily* published an article protesting the arrest and killing of some Chinese Hong Kong people by the Hong Kong Government. The article was reprinted in *Ta Kung Po*, which published other stories and editorials relating to the event. The newspaper was charged with publishing a seditious publication under s 4(1)(c) of the Sedition Ordinance, that is, printing, publishing, selling, offering for sale, distributing or reproducing seditious publication and its proprietor-publisher, printer and editor were arrested and prosecuted. *Fei Yi Ming and Lee Tsung Ying v R* (1952) 36 HKLR 133 and 156. For a witness's description of the trial, see Zhou Yi, *An History of Leftist Struggle in Hong Kong* (Hong Kong: Liwen Press, 2002), ch 8.

⁵⁰ *Annual Report on Hong Kong Police Force 1952–1953*, p 47.

⁵¹ Ada Yuen and Michelle Chin, "China-link groups on snoop list revealed", SCMP, 12 Nov 1994.

⁵² Kevin Sinclair, *Asia's Finest: An Illustrated Account of the Royal Hong Kong Police* (Hong Kong: Unicorn Books, 1983), p 138. For the Special Branch's control over agents from Taiwan, see Steven Tsang, "Strategy for Survival: The Cold War and Hong Kong's Policy towards Kuomintang and Chinese Communist Activities in the 1950s" (1997) 25 *Journal of Imperial and Commonwealth History* 294.

⁵³ Kevin Sinclair, *ibid.*, p 138.

long time critic of the colonial government in Hong Kong, was another regular victim of police surveillance.⁵⁴

The Branch was further involved in the handling of political dissidents who fled from the Mainland. For example, Branch officers on reserve duty allegedly escorted pro-democracy activists who fled the 1989 bloodshed in Tian'anmen Square from the Immigration Department to police stations in Sheung Shui and Fanling. It seems the officers' concern that some dissidents might be returned across the adjacent border with mainland China was well founded. One officer said that the Hong Kong Government later arranged for dissidents "with value" to be escorted overseas – but "small potatoes" were sent home.

Data collection

The Special Branch, like any other secret intelligence or security agency, collected massive amounts of information in its files. The information generated by the Special Branch was then used by different government departments to exercise other types of political control. In 1994, the colonial government started to dispose of the secret files held by the Special Branch. Reportedly, many of the sensitive files, including those on dissidents and other underground movements, as well as those on matters related solely to the responsibilities of the British Government, would be stored in Britain's new Hong Kong Consulate. Some files would be destroyed. But most were to be turned over to the new HKSAR Government.⁵⁵

Restructuring Branch Functions in the 1970s

The official description of Special Branch functions changed gradually during the 1970s, becoming less political. In the 1974 Report of the Hong Kong Police Force, the Special Branch was said to exist in order to prevent and detect "subversive activities and for the collection, collation, assessment and dissemination of intelligence necessary for the maintenance of good internal security".⁵⁶ In the 1976 report, their mission statement was changed to "prevention and detection of subversive and espionage activities and the collection, collation, assessment and dissemination of intelligence".⁵⁷ The decreased prominence of internal security in the second description is seemingly balanced by broader reference to intelligence duties.

⁵⁴ "Political Activists Begin to Recognise the Tell-tale Signs", *Hong Kong Standard*, 20 Sept 1999.

⁵⁵ Chris Dobson, "Sensitive Documents to be Destroyed Before 1997: Classified Files Destined for UK", *SCMP*, 23 Jan 1994. The Security Wing is still in possession of many sensitive personal files. It has files on members of the April Fifth Action Group, and was willing to disclose a copy of the personal file on one of the members when he complained that he had been subjected to heavy police surveillance. May Sin-mi Hon, "Security Chiefs Allow Protester To View His File: Complaint Over Police Surveillance", *SCMP*, 2 Mar 1998.

⁵⁶ *Annual Report on Hong Kong Police Force 1973–1974*, p 10.

⁵⁷ *Annual Report on Hong Kong Police Force 1976*, p 25.

Anticipating Re-unification with Mainland China

From 1983 on, official descriptions of the Special Branch ceased to mention its customary role in the prevention and detection of subversive activities and intelligence gathering, largely in response to Sino-British negotiations on the transfer of sovereignty over Hong Kong back to China. Thereafter, the Special Branch was simply described as undertaking "the duties normal to a Special Branch including VIP protection, counter-terrorism and security co-ordination".⁵⁸

By 1987, the Hong Kong Government was seriously reviewing the future role of the Special Branch. It was clear that monitoring of leftist activities and pro-China individuals and organisations would not be relevant after the handover. There were also other reasons to restructure the Branch. First, the Government wanted to prevent potentially embarrassing and sensitive information from being revealed to the new Government after July 1997. Something needed to be done to protect those who served in the Branch, as well as the huge number of files in their possession. In addition, the fear of prosecution after reunification was rife among Branch officers who had worked in the frontline against communist sympathisers, despite repeated assurances from China that police officers would not be punished for their previous anti-communist activities.⁵⁹

Phasing Out the Special Branch

Towards the end of the 1980s, the Government decided that the Special Branch would be gradually phased out. In 1988, the Special Branch reported that it had completely halted any new recruitment. The Government set up a HK\$600 million premature retirement fund so that the 1,000 Branch officers, most of whom were privy to sensitive information, could resettle in the United Kingdom, along with their families.⁶⁰ The pre-handover Government was determined to disband the Branch, hoping it would be only a distant memory by the time reunification occurred.

But there was a need for at least some Branch functions to be taken over by other government departments. It was clear that counter-terrorism, counter-intelligence and vetting functions would still need to be performed. Even the Preparatory Working Committee (PWC) suggested that it might be possible to re-establish the Special Branch after its disbandment to deal with Taiwan-related and other overseas affairs.⁶¹ In 1993, the police started to make public

⁵⁸ *Annual Report on Hong Kong Police Force 1983*, p 48.

⁵⁹ "The Special Branch of the Police will not be disbanded but will just be renamed after '97", *Huaqiao Daily*, 16 Sept 1993. H. L. Fu, "The Form and Substance of Legal Interaction Between Hong Kong and Mainland China: Towards Hong Kong's New Legal Sovereignty", in Raymond Wacks (ed), *The New Legal Order in Hong Kong* (Hong Kong: Hong Kong University Press, 1999).

⁶⁰ S. Y. Yue, "Chart Backs Ex-Special Branch Officers' Passport Bid; Officers Performed 'Sensitive' Duties", *SCMP*, 30 July 1994.

⁶¹ "The Special Branch May Be Restored After 1997", *Sing Tao Daily*, 24 June 1995.

statements that the Special Branch was to stay in one form or another, and new recruits replaced those who settled in the United Kingdom.⁶² By year's end, the police force was undergoing a restructuring. Following recommendations by consultants Coopers & Lybrand, the Operations Department of the police was divided in two. A new position, titled Director of Crime and Security, was created to share the work of the Director of Operations. A Security Wing, loosely styled on the FBI, would assume responsibility for some Special Branch tasks after the latter disbanded in 1995.⁶³

Apart from rationalising the structure of the force, another important reason for creating the Security Wing, according to a police source, was:

“to find a convenient home for Special Branch officers when the department [disbanded] in 1995. Since there are certain similarities between the [Special Branch] and the [Criminal Investigation Division] it [was] reasonable and appropriate for the former to come under [the] new Crime and Security Wing.”⁶⁴

Disbanding the Special Branch

The Special Branch was formally dissolved in 1995. Effective 1 July 1995, the Director of Crime and Security assumed official responsibility for the former Branch's work. The view then was that the Security Wing would be able to cope with the future security requirements of Hong Kong. Allegedly, its functions have remained essentially the same since the 1995 re-organisation.⁶⁵ At the end of 1997, the Security Wing of the HKSAR Police Force had 429 staff members, including 86 civilians, working under the Director of Crime and Security.⁶⁶ By 2001, the total number of staff in the Wing fell to 411, but reportedly had still “fluctuated around that level since 1996–97”.⁶⁷

Vetting of Government Officials in Hong Kong

Combined Roles – The Special Branch and ICAC

Prior to 1994, before an applicant to a civil service position could be appointed or a government official promoted, he or she had to be investigated. The process included a check for any criminal records the applicant or official might have, as well as a review called political or security vetting.⁶⁸

⁶² Marçal Joanilho, “Secretive Squad To Stay In '97”, *Hong Kong Standard*, 27 Jan 1992.

⁶³ *Provisional Legislative Council Panel on Security Minutes (PLC Paper No. CB(2) 976)*, 18 Dec 1997, available at <http://www.legco.gov.hk>. Jimmy Leung, “New Post As Police Force Sees Big Revamp”, *SCMP*, 15 Dec 1993.

⁶⁴ *Provisional Legislative Council Panel on Security Minutes*, *ibid.* and Jimmy Leung, *ibid.*

⁶⁵ *Provisional Legislative Council Panel on Security Minutes*, *ibid.*

⁶⁶ *Ibid.* and Jimmy Leung (n 63 above).

⁶⁷ Glenn Schloss, “Return of Big Brother?”, *SCMP*, 8 Mar 2001.

⁶⁸ *Report of the ICAC Review Committee (Dec 1994)*, ch 17. See also Luo Ya (n 31 above), pp 242–245.

Responsibility for the criminal record check rested with the police, while “political vetting” was entrusted to the Special Branch. After it was established, the Independent Commission Against Corruption (ICAC) also shared some responsibility for the vetting process,⁶⁹ but its role was limited to matters relating to corruption.⁷⁰

The vetting process included a detailed check of the applicant or official’s political background to see, among other things, whether he or she had organised any student movements in school or had relatives working in leftist organisations.⁷¹ Those with any connection to the left would have their application or promotion rejected.⁷² After the decision to formally disband the Special Branch in 1995, the Government had to find another body to take over the vetting function of the Special Branch. The ICAC was the natural candidate.

Proposed ICAC Assumption of Vetting Function

In November 1993, Jim Buckle, then Acting Commissioner of the ICAC, proposed to the Legislative Council (LegCo) Establishment Sub-committee that the ICAC take up the Special Branch’s vetting responsibilities.⁷³ His proposal included the creation of a new position, termed Deputy Director of Operations. The vetting role would apparently be filled by the Operations Department of the ICAC. Other government officials also indicated that this shift was about to occur. The Director of Administration, Mr Richard Hoare, stated in 1994 that the ICAC would be given responsibility for political vetting, although the transfer of Special Branch functions would not be accompanied by the transfer of classified files.⁷⁴

The LegCo received the proposal with suspicion. Although the legislators endorsed the ICAC’s request, they expressed clearly their concern that the ICAC might abuse its new powers. The legislators took up the issues on 10 January 1994. They were worried that the ICAC could become a new “secret police force” in Hong Kong. Emily Lau questioned why the vetting role should be passed to the ICAC and not other units of the Hong Kong Police.⁷⁵ The legislators common concern was that the ICAC, an independent anti-corruption body, might be politicised if it was asked to vet government officials.

⁶⁹ *Report of the ICAC Review Committee* (Dec 1994), ch 17. See also, Luo Ya, *ibid.*, pp 242–245.

⁷⁰ The ICAC Commissioner, Bertrand de Speville, said that the ICAC then performed only “integrity” checks. Connie Law, “Doubts On ICAC Vetting Role”, SCMP, 11 Jan 1994.

⁷¹ Wen Sicheng (n 34 above), p 8.

⁷² Wen Sicheng, *ibid.*, p 8.

⁷³ Linda Choy, “ICAC Extends Vetting Role. Concern At Screening Of Top Civil Service Appointments”, SCMP, 17 Nov 1993.

⁷⁴ Chris Dobson, “Sensitive Documents To Be Destroyed Before 1997: Classified Files Destined For UK”, SCMP, 23 Jan 1994.

⁷⁵ Connie Law, “Doubts on ICAC Vetting Role”, SCMP, 11 Jan 1994.

The legislators demanded that if the ICAC was to take over the vetting function, the LegCo should have control over the appointment of the ICAC Commissioner.⁷⁶

To allay these fears, the Government insisted that the ICAC would only undertake “integrity” (ie corruption-related, and not political) checking. Both the ICAC and the Security Bureau pledged that the ICAC would not undertake any type of political monitoring. The Deputy Secretary for Security at the time, Jim Morris, claimed that “no political element would be involved in the vetting and the ICAC would not undertake political monitoring of any type”.⁷⁷ In a letter to *Sing Tao Daily*, the ICAC affirmed that it had only been performing integrity vetting, and its future function would be limited to that role.⁷⁸ LegCo was told that “the ICAC was interested only in checking people’s background, through their records, for possible corruption”.⁷⁹ “Integrity” would only be checked against the ICAC’s records and information provided by the civil servants themselves, followed by interviews.⁸⁰

Many felt the distinction drawn by the ICAC between integrity vetting and political vetting was dubious. As legislator James To pointed out, “integrity may include a person’s political inclination”. It was always possible that information about integrity could be deployed for political purposes.⁸¹ Leftist organisations were equally suspicious. *Wen Wei Po* alleged that the ICAC had already played a political policing role in Hong Kong, noting that some pro-China agitators were silenced after “being invited for coffee” by the ICAC, while some even began vocally attacking their fellow pro-China people.⁸²

The Tsui Affair

A subsequent scandal confirmed the suspicions of Legco members. After dismissal from his position as the Deputy Director of Operations of the ICAC on 10 November 1993, Alex Tsui appeared before LegCo to deliver some electrifying – but largely expected – testimony.⁸³ According to Tsui, as the Special Branch scaled down its activities, the ICAC was expanding its own intelligence role. In this way, the ICAC was in the process of becoming Hong Kong’s new political police. He further alleged that another secret department, the Technological Services Branch, had been established in the ICAC in

⁷⁶ “Several Political Parties Discuss ICAC Work”, *Xin Bao*, 30 Jan 1994.

⁷⁷ Connie Law (n 75 above).

⁷⁸ “ICAC Has Not Taken Over The Special Branch”, *Sing Tao Daily*, 3 Mar 1995.

⁷⁹ Linda Choy (n 73 above).

⁸⁰ Michael Smith, “‘Special Branch’ is under scrutiny”, *Hong Kong Standard*, 11 Jan 1994.

⁸¹ Zhong Jian, “Suspicion over the ICAC and the Special Branch”, *Hong Kong Economic Times*, 18 Apr 1994.

⁸² Wen Sicheng, “The Special Branch after the Transitional Period”, *Wen Wei Po*, 17 May 1994.

⁸³ Tsui purported that one of the reasons for his sudden dismissal was that he objected to imposition of Special Branch-style political vetting functions on the ICAC, as ordered by his superior.

response to the anticipated disbandment of the Special Branch.⁸⁴ He claimed as an example of this shift that the ICAC had tapped the phones of senior government officials, including that of former Executive Councillor, Rita Fan. In another instance, the ICAC had investigated a senior government officer, Yeung Kai-yin, for his close relationship with Xinhua News Agency, prompting him to resign from his post as the Secretary for Transport.

More seriously, Tsui alleged that the ICAC was collecting evidence of "dirty doing[s]" by businessmen and politicians, to be used by the British Government after reunification.⁸⁵ The Governor and the ICAC Commissioner categorically denied that the Commission's work had been politicised in any way.

On 11 May 1994, LegCo again addressed the vetting of senior civil servants by the ICAC,⁸⁶ particularly the type of checking termed "extended checking".⁸⁷ During the debate, the Secretary for the Civil Service repeated that the ICAC was involved solely in integrity checking. According to the Secretary, "[t]he purpose of integrity checking is to ensure that the Civil Service is staffed by persons of high integrity".⁸⁸ He also stated that "the ICAC has a role to play in ensuring a clean civil service. Integrity checking was no more than an extension of their corruption prevention function."⁸⁹ Furthermore, under the proposed integrity checking system, it was legal for "the ICAC to co-ordinate the record checks and to conduct interviews".⁹⁰ However, in his written answer to a question raised by legislator James To, the Secretary made clear that "[i]t would be unlawful if the [ICAC] were to use its statutory powers in the integrity checking process".⁹¹ As far as extended checking was concerned, he claimed the process "depends on information provided by the civil servant voluntarily. The information provided will be confirmed (or otherwise) at interviews with referees nominated by the subject and his senior officers."⁹² Vetting would be carried out by a team of civilians working under the police Director of Criminal Investigations, subject to the authority of the Civil Service Branch (CSB).⁹³ In considering

⁸⁴ Louis Ng and Greg Torode, "ICAC 'A Secret Service'", *SCMP*, 28 Apr 1994.

⁸⁵ Louis Ng and Linda Choy, "Tsui Accused ICAC Of Political Vetting", *SCMP*, 15 Apr 1994.

⁸⁶ *Hong Kong Hansard*, 11 May 1994, 3665–3669.

⁸⁷ It is understood that extended checking only applies to officials at the D5 level (ie department heads) who seek promotion or transfer, and to those who have held senior posts for at least five years. Chris Dobson, "Civilians Carrying Out Policy; Committee Given More Time To Consider Shift In Vetting Duty To ICAC", *SCMP*, 9 Oct 1994.

⁸⁸ *Hong Kong Hansard*, 11 May 1994.

⁸⁹ *Ibid.*, 3667.

⁹⁰ *Ibid.* In the Report of the ICAC Review Committee, it was stated that the Administration claimed that the role of vetting by the ICAC was in compliance with s 12(d)–(f) of the Independent Commission Against Corruption Ordinance. *Report of the ICAC Review Committee* (Dec 1994), para 17.8.

⁹¹ *Hong Kong Hansard*, 11 May 1994, Annex I.

⁹² *Ibid.*

⁹³ Chris Dobson, "Civilians Carrying Out Policy; Committee Given More Time To Consider Shift In Vetting Duty To ICAC", *SCMP*, 9 Oct 1994.

the issue, the ICAC Operations Review Committee advised the ICAC to continue performing its existing responsibilities, but warned it would be inappropriate for it to adopt the extended check duties previously reserved for the Special Branch.⁹⁴

The Inquiry into Leung's Resignation

The forced early retirement of Immigration Director Laurence Leung further illustrated the difficulties of distinguishing between political and integrity vetting. On 6 July 1996, the Government announced that the former Director of Immigration would retire for personal reasons, effective that same day. Leung also claimed that his retirement was prompted by personal reasons. Nonetheless, his sudden retirement aroused much concern and speculation. The LegCo appointed a select committee on 23 October 1996 to inquire into the circumstances behind Leung's suspicious departure.⁹⁵

Initially, the Government continued to assert under inquiry that Leung retired on his own initiative, for personal reasons. Government witnesses refused to disclose details of Leung's personal circumstances on the grounds of confidentiality, the Personal Data (Privacy) Ordinance and public interest immunity.⁹⁶ However, they were quickly put on the offensive after Leung disclosed in his LegCo testimony that he was, in fact, forced to retire because the Secretary for Civil Service told him the Hong Kong Government no longer trusted him. The Chief Secretary alleged that the Government's contemplation of Leung's retirement was based on information gathered by the ICAC.⁹⁷ In a draft letter (intended to be issued to Leung if he refused to retire voluntarily) the Secretary for Civil Service stated that the ICAC had uncovered four incidents "which caused the Government to have doubts about Mr Leung's personality, integrity and judgement as a senior officer and his suitability to remain in the service", though no criminal offence was substantiated after an ICAC investigation.⁹⁸ According to the Government, these four findings were confirmed during an extended check of Leung conducted in November 1995.⁹⁹

⁹⁴ *Report of the ICAC Review Committee* (Dec 1994), para 17.12.

⁹⁵ Legislative Council, *Report of the Select Committee to Inquire into the Circumstances Surrounding the Departure of Mr. Leung Ming-yin From the Government and Related Issues, Vol. I: Report and Minutes of Proceedings* (June 1997).

⁹⁶ *Ibid.*, ch 2.

⁹⁷ *Ibid.*, para 2.24.

⁹⁸ *Ibid.*, ch 2.

⁹⁹ The Government alleged four examples of misconduct, namely Leung's failure to: (a) report to the Civil Service Branch or repay a loan obtained from the Government, under the Housing Loan Scheme, to purchase property in Canada in a timely manner; (b) fully disclose his investments in several private companies; (c) fully disclose to the Secretary for Security a business relationship he entered into with a Member of LegCo; and (d) adequately report to the Secretary for Security an investment he made in a mainland advertising company (which was later wound up for failure to obtain a business licence). *Ibid.*, para 2.32.

After the announcement of Leung's retirement, however, many media comments, "particularly in the British press", suggested there might be political motives behind the incident.¹⁰⁰ It was reported that Leung had leaked confidential information to the Chinese authorities without permission. The reports further alleged that Leung had:

- 1 given the right to print HKSAR passports to a pro-China company;
- 2 disclosed sensitive information to Chinese officials, primarily relating to Chinese dissidents in Hong Kong, the nationality status and overseas right of abode of senior Hong Kong Government officials and the beneficiaries of the British Nationality Selection Scheme; and
- 3 reached an agreement to increase the quota of "one-way permits" for, and permitted the unauthorised provision of such permits to, mainland Chinese who wished to settle in Hong Kong.¹⁰¹

The Government and Leung denied the allegations. However, the conclusion reached by the Select Committee was that:

"the Committee has not been able to conduct a thorough investigation into these claims outside the territory due to the lack of the necessary lawful authority and the resources to do so, [therefore] the Committee is unable to arrive at a definitive conclusion concerning the truth or otherwise of the claims."¹⁰²

Ultimately, the Committee equivocated, saying that, "[o]n the basis of the evidence received, the Committee cannot conclude that political motives were involved in the circumstances surrounding Mr Leung's departure from the Government, although it is unable to rule out that possibility".¹⁰³

Vetting Procedures

Upon the request of the Select Committee, the CSB produced a letter setting out details of the vetting system.¹⁰⁴ In the letter, the CSB first made clear that "security vetting" had ceased to exist in 1994.¹⁰⁵ Thereafter, only "integrity checking" had been performed: "The purpose of the integrity checking system is to ensure that serving and potential employees are of good character and high integrity. The system serves to contribute to public confidence in

¹⁰⁰ *Ibid.*, ch 4.

¹⁰¹ *Ibid.*, ch 4.

¹⁰² *Ibid.*, ch 5.

¹⁰³ *Ibid.*, para 5.3.

¹⁰⁴ Legislative Council, *Report of the Select Committee to Inquire into the Circumstances Surrounding the Departure of Mr. Leung Ming-yin From the Government and Related Issues, Vol. II: Minutes of Evidence*, (June 1997), Doc No. SE/E/010.

¹⁰⁵ *Ibid.*

the civil service.”¹⁰⁶ According to the CSB, the vetting system could be divided into three levels of checks: appointment, normal and extended.

Appointment checking is performed on all applicants for civil service posts. At this level, only “checks against criminal and ICAC records of details provided by applicants” are required.¹⁰⁷ Normal checking applies to “candidates or serving officers who are being considered for appointment to ranks or posts having access to material which offers scope for possible corrupt activities or other forms of pressure on the officer”.¹⁰⁸ Like appointment checking, this process depends on the co-operation of applicants / officers, because only information provided by them will be checked.¹⁰⁹ Finally, extended checking is reserved for “[o]fficers who are being considered for appointment to very senior posts or posts requiring a particularly high degree of trust and integrity”.¹¹⁰ This level of checking is the most thorough and does not rely upon the co-operation of the person being checked: “The checks are requested by the Secretary for Civil Service, as necessary, and comprise interviews with the candidate, his referees and superiors[,] as well as record checks.”¹¹¹

Telephone Tapping

Under Section 33 of the Telecommunications Ordinance 1966

The Hong Kong Government has extensive power to intercept communications. The governing legislation is section 33 of the Telecommunication Ordinance (TO), enacted in 1962 and based on a similar law in the United Kingdom.¹¹² When the section was first read to LegCo, the Government did not explain clearly what the legal basis for telephone tapping was, and it went unchallenged.¹¹³ Section 33 provides:

“Whenever he considers that the public interest so requires, the Governor, or any public officer authorised in that behalf by the Governor either generally or for any particular occasion, may order that any message or any class of messages brought for transmission by telecommunication shall not be transmitted or that any message or any class of messages brought for

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* Deputy Commissioner of Inland Revenue Agnes Sin Law Yuk-lin and her husband were prosecuted for deception in relation to a housing allowance. The evidence was gathered during Agnes Sin’s candidacy vetting for the Commissioner of Inland Revenue position. Chris Wong, “Tax Boss Escapes Jail Term”, SCMP, 19 Dec 2000.

¹¹¹ Legislative Council, *ibid.*. The police were in charge of extended checking. Mr Tsang Yam-pui, Deputy Commissioner of Police, briefed a LegCo Select Committee on the operational procedures of the checking system. *Ibid.*, para. 2.33.

¹¹² *Hong Kong Hansard*, 28 Nov 1962, pp 332–335.

¹¹³ *Hong Kong Hansard*, 19 Dec 1962, pp 333 and 349–350.

transmission, or transmitted or received or being transmitted, by telecommunication, shall be intercepted or detained or disclosed to the Government or to the public officer specified in the order.¹¹⁴

Defining the "Public Interest"

"Public interest" is the only ground section 33 requires before the Governor (now the Chief Executive) may approve telephone taps. The Secretary for Security stated in LegCo on 11 November 1992 that "orders under section 33 of the Telecommunication Ordinance to intercept telephone transmissions are made only when the public interest so requires and only in cases involving the prevention or detection of serious crime, including corruption, or in the interests of the security of Hong Kong".¹¹⁵

This grant of expansive power to tap telephone lines has been criticised, primarily because it requires that applications be tendered to the Governor (or the Chief Secretary) instead of to a court. The Governor, before granting a given request, is to examine personally whether public interest requirements are met.¹¹⁶ However, it is difficult, if not impossible, to expect the Governor to strike a fair balance between an individual's rights and the Government's interest.¹¹⁷ As a result, his tapping powers have frequently been exercised against those who simply did not follow the same line (in respect of political and / or economic standpoints) as the Government. They were more especially used against political rivals of the ruling government.¹¹⁸ As mentioned above, during the LegCo inquiry into his dismissal, Alex Tsui alleged that the ICAC had tapped the telephones of political figures in Hong Kong.¹¹⁹ Democratic legislator Lau Chin-shek also claimed he knew that the telephone at his workplace was always tapped.¹²⁰ Even as recently as the year 2000, Democratic Party politicians were allegedly informed that their phones were being tapped. The tip-off, from unidentified "security officials", attributed the taps in part to the right-of-abode controversy then dividing the Government.¹²¹

In practice, once an application was made on the grounds of "public interest" no further details were required.¹²² This broad latitude in tapping criteria could easily be exploited by the Government. Further compounding the problem, in 1995 the ICAC's physical capacity for telephone tapping was increased. Reports then alleged that in order to increase its surveillance potential, the ICAC had bought new tapping facilities and recruited more

¹¹⁴ Section 33, TO.

¹¹⁵ *Hong Kong Hansard*, 11 Nov 1992, p 634.

¹¹⁶ *Ibid.*

¹¹⁷ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1492.

¹¹⁸ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1500.

¹¹⁹ "ICAC Raises Capacity For Telephone Tapping", SCMP, 9 July 1995.

¹²⁰ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1490.

¹²¹ Glenn Schloss, "Careful - They May Hear You", SCMP, 21 Aug 2000.

¹²² *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1491.

officers. With the addition of this equipment and manpower, the number of telephone lines which the ICAC could monitor at any one time increased from 50 to 80.¹²³

ICAC Review of 1994

Largely as a result of Tsui's allegations, the ICAC's telephone tapping powers were brought before the ICAC Review Committee in 1994. During the review process, the Head of the ICAC Operations Department claimed that the power of tapping was only used in the investigation of serious corruption cases where the requested information could not be obtained by other means.¹²⁴ The ICAC Commissioner also assured the Review Committee that the agency had never engaged in any political vetting, nor would it do so in the future.¹²⁵ The Review Committee acknowledged that tapping powers were important in the investigation of serious corruption cases, but emphasised that it was not fully satisfied with the accountability mechanism then in place. It suggested that in order to prevent the ICAC from abusing its power to tap telephones as part of general investigations, the nature of the crime to be investigated, the information to be obtained and the duration of the tap should be stated clearly in any application for a tapping warrant. In addition, the Review Committee suggested making a comparison with Australian and British tapping procedures for possible improvements.¹²⁶ In mid-1996, over a year after the Review Committee proposed amendments to the relevant laws, its Chairman publicly complained of the LegCo response, claiming "administrative changes had been made, but legal changes were lagging". She argued, "[t]he longer we delay, the [longer] ICAC power will stand as it is now rather than be amended in the way the [Review Committee] has recommended".¹²⁷ Serious concerns remain about the allocation of tapping powers in Hong Kong.

Right to Privacy

Legislators were right to trace the source of tapping abuses to the procedures under section 33 of the TO. These are regarded by some as inconsistent with Article 14 of the Bill of Rights Ordinance (BORO) and Article 30 of the Basic Law, which prohibit arbitrary and unlawful interference with the right to privacy. Former Governor Chris Patten pointed out that the TO was one of the laws he wished to review for possible conflicts with the BORO.¹²⁸ Many institutions, such as the Department of Justice, the Hong Kong Bar

¹²³ "ICAC Raises Capacity For Telephone Tapping", SCMP, 9 July 1995.

¹²⁴ *Report of the ICAC Review Committee* (Dec 1994), ch 17. See also, Luo Ya (n 31 above), para 6.6.

¹²⁵ *Report of the ICAC Review Committee*, *ibid.* See also Luo Ya, *ibid.*, para 6.29.

¹²⁶ *Report of the ICAC Review Committee*, *ibid.* See also Luo Ya, *ibid.*, para 6.30.

¹²⁷ Jonathon Hill, "Legco 'Failing to Curb ICAC'; Lawmakers Have Not Acted on Review, Watchdog Says", SCMP, 19 May 1996.

¹²⁸ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1488.

Association and international human rights organisations, urged the Government to provide greater legal protection against telephone tapping.¹²⁹ Legislators also repeatedly raised concerns about this issue in LegCo meetings.

Eventually, in 1996, the Privacy Sub-Committee of the Law Reform Commission of Hong Kong published a consultation paper on regulating the surveillance and interception of communications.¹³⁰ One of its objectives was to examine and improve procedures relating to telephone tapping by law enforcement agencies. A report on the consultation process (the Privacy Report) was then published in December 1996.¹³¹ The report concluded that the application procedure established under section 33 of the TO was unsatisfactory because it was not “sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in which and the conditions on which interceptions may be authorised”.¹³² In the Privacy Report, the Commission detailed nine specific problems it perceived in the section 33 procedures:

- 1 the grounds on which tapping might be carried out were not adequately specified;
- 2 no justification was required when tapping applications were made to the Governor (or Chief Secretary);
- 3 the authorising officer was not required to ensure that the information sought by the applicant could not reasonably be obtained by other, less intrusive means;
- 4 the duration of tapping warrants was not restricted;
- 5 blanket authorisation for tapping could be given, because there were no requirements for the appropriate content of an order;
- 6 no independent body was empowered to monitor on a regular basis the granting of warrants;
- 7 the officer “making” an order or warrant was not accountable to the public at large, nor was he required to report on its issuance or implementation;
- 8 no specific provisions were made for judicial or administrative review as to the legality of individual tapping warrants; and
- 9 no judicial or administrative remedies were provided for those who suffered from improperly authorised tapping.¹³³

¹²⁹ Law Reform Commission of Hong Kong, *Report on Privacy: Regulating the Interception of Communications* (Dec 1996) (Hong Kong: Government Printer, 1996) (hereinafter *Privacy Report*), para 45.

¹³⁰ Law Reform Commission of Hong Kong, *Privacy: Regulating Surveillance and the Interception of Communications—Privacy Sub-committee Consultation Paper* (Apr 1996) (Hong Kong: Government Printer, 1996).

¹³¹ Law Reform Commission of Hong Kong (n 129 above).

¹³² *Ibid.*, para 3.45.

¹³³ *Ibid.*, para 3.44.

Effect of UK Developments and Malone's Case

Developments in the United Kingdom also helped provide a catalyst for reform in Hong Kong. In *Malone v United Kingdom*¹³⁴ the European Court of Human Rights decided, in 1984, that the applicable UK law, which Hong Kong had followed, failed to "indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on public authorities. To that extent, the minimum degree of legal protection to which citizens are entitled under the rule of law in a democratic society is lacking."¹³⁵ The European Court decided that the power granted to the British Government to tap telephone conversations contravened Article 8 of the European Convention on Human Rights.¹³⁶ The UK Interception of Communications Act was passed in 1985 to bring UK law into conformity with this decision.

The combined impact of the European case and the Privacy Report forced the Hong Kong Government to issue a consultative White Bill on the Interception of Communications.¹³⁷ The Government refused to table the bill in LegCo, however, fearing it might not receive sufficient support.¹³⁸ Legislator James To then proposed a Private Member's Bill on Interception of Communications and tabled it himself for discussion on 23 April 1997.¹³⁹

Two Hong Kong Bills on Interception of Communications

There were substantial similarities between the two Bills. Both proposed the introduction of a warrant system controlled by the courts to replace the existing executive system. Yet there were serious concerns that such important legislation had not been introduced by the Government. Some legislators felt that the Government's White Bill was more specific in its terms. Some simply believed the Government was better equipped to draft it, because the subject matter required greater expertise and resources than could be offered by Private Member legislation.¹⁴⁰ Other legislators were concerned that the Council might pass the Bill too hastily, without adequate time for consultation. Nevertheless, most still agreed that some form of legislation on the interception of telecommunications should be introduced before reunification. Since

¹³⁴ *Malone v. United Kingdom* (1984) 7 E.H.R.R. 14. Applicant was charged with dishonest handling of stolen goods. At trial, it was found that his telephone conversations had been tapped by police. After his acquittal, the applicant instituted civil proceedings, seeking a declaration that the tapping of his telephone conversations had been unlawful.

¹³⁵ *Ibid.*, para 79.

¹³⁶ The problems in the pre-1985 tapping procedures in England pointed out by the European Court of Human Rights were more or less the same as the nine problem areas of s 33 listed in the *Privacy Report*.

¹³⁷ This Bill can be found in Special Supplement No 5 to the *Hong Kong Government Gazette*, Feb 28, 1997, E33.

¹³⁸ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>, p 1487.

¹³⁹ *Hong Kong Hansard*, 23 Apr 1997, pp 258–263.

¹⁴⁰ *Hong Kong Hansard*, 27 June 1997 available at <http://www.legco.gov.hk>.

the Government clearly had no intention of introducing its own Bill, the legislators eventually agreed to To's private proposal, amending it as best they could.

The Interception of Communications Bill was read for the third time on 27 June 1997.¹⁴¹ The final result was a compromise between the two earlier Bills. Interception was to be allowed only for the purpose of investigating a "serious crime", defined as "any offence punishable by a maximum period of imprisonment of not less than 7 years". The duration of the court order would be 90 days from issuance, with the possibility of one renewal for a further 90 days.¹⁴² Most importantly, authorisation to intercept would require a court order from the High Court.¹⁴³

To date, the law is still not in effect. The HKSAR Government has so far refused to sign the Interception of Communications Bill, claiming the amendment was proposed without sufficient consultation with law enforcement agencies. If implemented, the Bill would "seriously affect the ability of the law enforcement agencies to fight serious crime and to safeguard the security of Hong Kong". The Government says it needs time to review the law and study its feasibility before implementation.¹⁴⁴ James To has in turn threatened to seek judicial review of the Government's reluctance to implement it.¹⁴⁵ In August 2000, however, the Administration's review of the authorisation system was said to be "off the agenda" for the time being.¹⁴⁶

Tapping in Hong Kong Today

Telephone tapping continues in the HKSAR. The *Hong Kong Standard* claimed in 1999 that more than 100 telephones were eavesdropped daily by the Government, up to double the average number at any given time during the colonial administration. Most of the tapping is related to the investigation of corruption suspects, but some also relates to unspecified Hong Kong "security matters".¹⁴⁷ Despite long-running debate with LegCo on the proper bounds of its tapping authority, the Government still refuses to officially disclose the number of taps conducted annually.¹⁴⁸

Police and ICAC tapping resources and personnel were consolidated in a "joint venture" agency, opaquely termed the Technical Services Department (TSD), soon after dissolution of the Special Branch. Little is known of its

¹⁴¹ *Ibid.*

¹⁴² Section 6, ICO.

¹⁴³ Section 5, ICO.

¹⁴⁴ HKSAR Government Press Release, "Review of the Interception of Communications Underway", 10 Nov 1999, available at <http://www.info.gov.hk/gia/general/199911/10/110179.htm>.

¹⁴⁵ "Legal Bid To Push Bill On Bugging", *Hong Kong Standard*, 27 Aug 1999. Michael Chungani and Lillian Kwok, "Tung Stalls On Implementing Intrusion Law", *Hong Kong Standard*, 20 Sept 1999.

¹⁴⁶ Glenn Schloss, "Careful – They May Hear You", *SCMP*, 21 Aug 2000.

¹⁴⁷ Michael Chugani, "More Than 100 Phone Taps Daily", *Hong Kong Standard*, 29 Sept 1999.

¹⁴⁸ Glenn Schloss (n 146 above).

operations, except that the number of staff was around 176 during the last four years of the 1990s, despite an increase of almost 40 per cent in annual operating budgets over that period. Even this information, elicited by concerned legislator James To, is inconclusive with regard to wire-tapping, as it is believed some unknown portion of the TSD budget is allocated to other forms of security operations.¹⁴⁹

Overseas Developments in Political Policing

The United States – The FBI Changes its Role

What has changed since the handover with regard to political policing in Hong Kong, and who now performs these functions? Before answering these questions, it is worth reviewing developments in political policing elsewhere. In the United States, the FBI shifted the focus of its monitoring efforts in 1976 from monitoring based on ideological grounds to specific sets of activities. Priority targets for information gathering changed from subversive organisations or individuals to criminal enterprises and terrorism. By 1983, it could be said that “the FBI’s domestic security role is criminal law enforcement against terrorist violence and not the collection of political intelligence about the expression of unorthodox opinions”.¹⁵⁰

However, the Bureau’s change of focus from controlling internal subversion to thwarting terrorism and criminal enterprise did not mean it would no longer investigate the former. The change only meant that counter-subversion work became hidden – lost in, or more precisely absorbed by, other mandates. The substance remains the same, albeit in new forms.

Although the FBI may have quantitatively reduced its surveillance activities during the late 1970s and early 1980s, the underlying criterion governing earlier investigations – the political beliefs of the individual or group – continues to shape the Bureau’s surveillance policy. Although the FBI now rationalises its surveillance activities under the rubric of “terrorism” and “foreign intelligence”, these activities do not seem substantively different from those it had justified in the 1940s, 1950s and 1960s under the rubric of “subversive activities”.¹⁵¹

Australia – ASIO and Similar Shifts in its Functions

A similar shift of priorities occurred in Australia. When the Australian Security Intelligence Organisation (ASIO) was first established, “national security was viewed in terms of radicalism” – left-wing organisations and individuals

¹⁴⁹ *Ibid.*

¹⁵⁰ John T. Elliff, “The Attorney General’s Guidelines for FBI Investigations” (1984) 69 *Cornell Law Review* 785, 797.

¹⁵¹ Anthon G. Theoharis, “FBI Surveillance: Past and Present” (1984) 69 *Cornell Law Review* 883, 884.

were regarded as subversive and thus detrimental to national security. As in the United States, the declining political viability of subversion as a rhetorical basis for security operations has driven ASIO to emphasise the monitoring of threats that seem more immediate, including terrorism and “politically motivated violence”.¹⁵² This change in terminology has not affected ASIO’s concerns with subversion, however. “Politically motivated violence”, as ASIO defines it, includes:

“acts that (i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and (ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the Government or the constitutional system of government of the Commonwealth or of a State or Territory.”¹⁵³

This is no more than a modified restatement of the definition of subversion. It is restrictive in the sense that it deletes the term “ultimately leads to” from the description of acts in part (ii), presumably requiring that there be greater immediacy to any potential threat to the State. Similarly, the 1986 reforms of the ASIO Act focused on actual or prospective violence on political grounds, a recognition of the right to political advocacy and legitimate dissent.¹⁵⁴ Critics are quick to add, however, that the concept of “politically motivated violence” remains just as vague as “subversion” – it also includes acts that “threaten or endanger any person or class of persons specified by the Minister”. A loose interpretation could provide justification for ASIO interfering with otherwise lawful political advocacy and other civil activities that are not legitimate security concerns.¹⁵⁵

Canada – Restructuring Counter-intelligence and Counter-terrorism

The Canadian Government dissolved the Counter-Subversion Branch of the Canadian Security and Intelligence Service (CSIS) in 1988, following the recommendation of a government-established committee. Many of its personnel were simply diverted to two sister branches: Counter-Intelligence and Counter-Terrorism. Franks argued that disbanding the Counter-Subversion Branch had not eliminated the problem of subversion, which the CSIS still faced.¹⁵⁶ The restructured CSIS would still have to investigate subversive

¹⁵² Jenny Hocking, “Charting Political Space: Surveillance and the Rule of Law” (1994) 21 *Social Justice* 66.

¹⁵³ Section 2, ASIO Amendment Act 1986 (Cth Aust.).

¹⁵⁴ Greg Carne, “ASIO and Economic Espionage: The New ‘Subversion?’” (1993) 19 *Alternative Law Journal* 117, 119.

¹⁵⁵ Jenny Hocking, “Charting Political Space: Surveillance and the Rule of Law” (1994) 21 *Social Justice* 66; Greg Carne, *ibid.*

¹⁵⁶ C. E. S. Franks (n 5 above), p 4.

activities. According to Gill, "it could be argued that removing separate organisational status from counter subversion will mean that, to the extent that the Service believes it necessary, the work will become hidden or 'lost' in counter terrorism or counter intelligence".¹⁵⁷ The reality of a continuing CSIS concern with subversion is illustrated by the fact that the erstwhile Branch's subversion files were not destroyed, but simply transferred to other departments, along with its personnel.

Despite the lack of transparency in the changes involved, these examples seem to highlight a shift in the underlying rationale of political policing operations in more economically advanced political jurisdictions. This shift has been towards a somewhat clearer statement of purpose and emphasis on activities which more concretely threaten the State or general public order, but away from terming "subversive" any activities which simply "might lead to" possible threats to the State.

Security Wing of the Hong Kong Police Force

The Security Wing's Funding and Relationship with LegCo

Unfortunately, the Hong Kong Government has refused to release any information on the reorganised security and intelligence structure in Hong Kong. In March 1996, when the Appropriation Bill was tabled in the LegCo for approval, the Secretary for Security requested HK\$156.4 million in funding for the 456 members of the new Security Wing of the Hong Kong Police Force. The Secretary initially refused to explain the work of the Security Wing to LegCo members on the grounds of confidentiality and sensitivity.¹⁵⁸ He stated only that "[t]he Security Wing's duties are to maintain Hong Kong's internal security".¹⁵⁹ Not satisfied with this answer, LegCo Security Panel Chairman James To threatened to reject the funding request.¹⁶⁰ Under strong pressure from legislators, the police finally agreed to brief them on the work of the Security Wing on condition of confidentiality.¹⁶¹

After the briefing, James To acknowledged that certain duties of the Security Wing, such as witness protection and anti-terrorist activities, were necessary and deserving of support.¹⁶² Furthermore, "if all the 456 posts were to be deleted, those which are needed to carry out work that should be

¹⁵⁷ Peter Gill, "Defining Subversion: The Canadian Experience Since 1977" (1989) *Public Law* 617, 633, 630.

¹⁵⁸ Angela Li, "Security Wing Funding Challenge Dropped", *SCMP*, 3 Apr 1996.

¹⁵⁹ Angela Li, "Secrecy Sparks Funding Threat", *SCMP*, 22 Mar 1996.

¹⁶⁰ *Ibid.*

¹⁶¹ Fung Wai-kong, "Legco Win In Row Over Role Of Police Wing", *SCMP*, 26 Mar 1996. See also *Hong Kong Hansard*, 3 Apr 1996, p 110.

¹⁶² *Hong Kong Hansard*, 3 Apr 1996, p 107.

supported would also be deleted".¹⁶³ As a result, he withdrew his motion to reject the funding on 3 April 1996. Other LegCo members who attended the police briefing noted, however, that what they had heard was only "some basic information",¹⁶⁴ and "not sensitive information at all".¹⁶⁵

Accountability

While approving the funding, To and other legislators expressed concerns over the accountability of the Security Wing. They put forward two major criticisms. First, at least some of the functions of the Security Wing "are vaguely defined, subject to different interpretations by different authorities. As a result, [this ambiguity] may lead to abuse of authority, thus adversely affecting the right and freedom of the public."¹⁶⁶ Second, the Security Wing lacks an effective accountability system. According to James To, "neither is the work of the Security Wing governed by legislation, nor is there any machinery to monitor its work".¹⁶⁷ The Wing does not even produce an internal annual report.¹⁶⁸ Emily Lau has suggested the establishment, as in other democratic countries, of a special committee within or outside the legislature to "monitor the work of secretive intelligence agencies on behalf of the community, and ... submit reports to the legislature".¹⁶⁹

The Government's response was to affirm that:

"the Security Wing, just like other formations of the Police Force, is governed by the Police Force Ordinance and that all of its work is carried out strictly in accordance with the laws of Hong Kong. The Commissioner of Police and [the Secretary for Security] are accountable to [the Legislative Council] for what it does or does not do and how effectively it performs its role."¹⁷⁰

Succession to the Special Branch

After the establishment of the HKSAR, members of the Provisional Legislative Council (PLC) expressed concern about possible detriments to Hong

¹⁶³ *Ibid.*, p 108.

¹⁶⁴ *Ibid.*, p 109.

¹⁶⁵ *Ibid.*, p 108.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*, p 109.

¹⁶⁹ *Ibid.* In common law jurisdictions, judicial control over national security agencies is traditionally weak. As Lord Diplock stated in the GCHQ case: "National security is the responsibility of the executive government". *Council of Civil Service Unions v Minister for Civil Service* [1984] 3 WLR 1174, p 1198. But, with the exception of the US, the national security agencies in major Western democracies are separate entities and often placed on a statutory basis. There are statutory institutions (either ministerial or Parliamentary) to review the performance of these agencies and to hear complaints against the agencies. See Lustgarten and Leigh (n 1 above) and H. P. Lee, P. J. Hanks and V. Morabito, *In the Name of National Security: The Legal Dimensions* (LBC Information Services, 1995).

¹⁷⁰ *Hong Kong Hansard*, 3 Apr 1996, p 110.

Kong's security from the dissolution of the Special Branch. Legislator Ambrose Lau specifically asked if political policing work had been taken up by any other unit and, if so, whether that unit performed its job effectively. The Administration did not answer him directly. Deputy Secretary for Security Raymond Wong assured members of the PLC Panel on Security that "the existing structure of the Police Force had been operating smoothly and the Administration was satisfied that it could cope with the security requirements of Hong Kong".¹⁷¹ Tsang Yam-pui, Deputy Commissioner of Police (Management), evasively claimed the police had no basis for comparison, because it lacked records detailing the work of the former Special Branch. The in-camera briefing he arranged on current Security Wing responsibilities, mentioned above, was provided on condition that, pursuant to Police Internal Orders, information would only be disclosed on a "need-to-know basis".¹⁷² Members' subsequent frustration with the scope of the briefing confirmed that resolve. Responding to even more explicit questioning before the full Council, the Secretary for Security again claimed ignorance of the previous agency. He offered only a bland assurance that "the Police Force have the responsibility for the internal security of Hong Kong and are appropriately structured to perform that role".¹⁷³

Speculation and Inference on the Succession

Almost immediately after the handover, the press began to allege Government plans to organise a new political policing agency, effectively reconstituting the Special Branch. One magazine claimed that after 1997 the mainland Government had already sent multiple envoys to Hong Kong to discuss reviving the Special Branch. Embarrassment was the alleged motivation, because despite mainland intelligence agencies' free reign to operate in the SAR, lack of an institutional presence had reduced their ability to inspire local fear and awe.¹⁷⁴ The *Oriental Daily News* also reported that the Security Wing had recruited members of the police and other security departments for a new political "paparazzi" or surveillance team. Expected to begin full operations by July 1998, after assembling 100 or more members, the political surveillance team was described as "only the first step" in a plan to reorganise the Special Branch.¹⁷⁵ By 2001, other sources saw a recent increase in police inspectors

¹⁷¹ Provisional Legislative Council, Panel on Security (Minutes), 18 Dec 1997, para 14.

¹⁷² *Ibid.*, para 15. See also Jimmy Cheung, "Police to Monitor Debts Within Force", *Hong Kong Standard*, 19 Dec 1997.

¹⁷³ *Hong Kong Hansard*, 14 Jan 1998, p 41. See also Helen Luk, "Changes Backed Despite Intelligence Unit Mystery", *SCMP*, 15 Jan 1998.

¹⁷⁴ Lang Ming, "Zhonggong Qianghua Gang Tewu Wang: Yaoqiu Xianggang Huifu Zhengzhibu" (CPC Strengthening Hong Kong Spy Network: Seeks to Revive the Political Bureau), *Zheng Ming*, July 1998.

¹⁷⁵ "Hong Kong Political Paparazzi is Operating Again", *Tung Fang Jih Pao*, 18 May 1998, as excerpted in *BBC Summary of World Broadcasts*, 21 May 1998.

posted to the Security Wing as a sign it was “to be made responsible for dealing with the new workload which will be created by the Government’s new-found determination to monitor organisations such as Falun Gong, as well as the future implementation of Article 23 legislation”. Former Special Branch agents, returned from retirement in Britain, were allegedly among those swelling the Security Wing’s ranks.¹⁷⁶ Some claim the Administration, under pressure from the Mainland to tighten political control, has been emboldened by public apathy toward recent police crackdowns on right of abode and Falun Gong activists.¹⁷⁷ Each new wave of speculation has been met by Government denials of any plan to reorganise the Special Branch or empower another agency to perform its role in political policing.

Conclusion: the Need for Accountability and Balance in Political Policing in the HKSAR

The HKSAR Government has been firm in its denial of any plans to re-establish the Special Branch or restructure the current Police Security Wing.¹⁷⁸ Such assurances can only amount to splitting hairs. There must be an equivalent to the Special Branch in today’s Hong Kong. Professing tolerance toward legitimate dissent does not mean a government can afford to ignore developments in the political landscape. The Hong Kong Government has a legitimate right to collect intelligence on and watch certain radical political activities.¹⁷⁹ One would have to doubt the capacity and effectiveness of the Hong Kong Police if its Security Wing had no interest in the activities of organisations that Beijing deems subversive. This is particularly true of overseas dissidents who oppose the mainland regime, because of growing concerns from the Mainland that Hong Kong might be used as a base for its subversion. Likewise, the increasing activity of China’s national security establishment in Hong Kong encourages local prudence.¹⁸⁰

¹⁷⁶ Glenn Schloss, “Return of Big Brother”, SCMP, 8 Mar 2002.

¹⁷⁷ Chris Yeung, “The Politics of Public Order”, SCMP, 16 May 2002.

¹⁷⁸ Hong Kong Government Information Centre, “No Plans to Re-establish Special Branch”, *Daily Information Bulletin*, 23 Apr 1998, available at <http://www.info.gov.hk>.

¹⁷⁹ Some people allege that radical democracy activists, particularly the April Fifth Action Group, were put under close police surveillance after the transition. See “Political Activists Begin to Recognize the Tell-tale Signs”, *Hong Kong Standard*, 20 Sept 1999; Michael Chungani and Lilian Kwok, “‘Bad Policemen’ Give Boy Scare”, *Hong Kong Standard*, 13 Oct 1999; and Stella Lee, “Security Team ‘Tailed Activist’”, SCMP, 5 Oct 1999.

¹⁸⁰ Four ICAC officers in Hong Kong were dismissed for cultivating personal relations with national security officers from the Mainland. Magdalen Chow, “Ex-Officer Seeks ICAC Files to Clear Name”, SCMP, 17 June 2000. Cf Lang Ming, “Zhonggong Qianghua Gang Tewu Wang: Yaoqiu Xianggang Huiyu Zhengzhibu” (CPC Strengthening Hong Kong Spy Network: Seeks to Revive the Political Bureau), *Zheng Ming*, July 1998 (arguing that the mainland Ministry of State Security exploited China’s new visa approval powers to expand Hong Kong operations after reunification).

It is difficult to draw a line to protect legitimate dissident and political advocacy while reserving the Government some power to combat genuine threats to China's national security and Hong Kong's internal security. Nonetheless, it is imperative that the line be drawn such that Hong Kong remains free to pursue its democratic aspirations. The delicate balance that courts strike in trials of a political nature should not only bind them, but also the police who build the State's case. To ensure this occurs, the political police – whoever they are in Hong Kong – must be made accountable. Clear legislation could help by making explicit both the scope of police powers and the mechanisms for their accountability. Article 23 may be dangerous, in its way, because politically-motivated trials conducted under its auspices could prove repressive. But at least it will provide standardised court procedures, opening political judgments to public scrutiny. Covert political policing is even more dangerous to Hong Kong's way of life, because it affords no meaningful accountability. Hong Kong's "Big Brother" very clearly needs to be identified. Nor need the Government fear the loss of any legitimate power. Greater accountability can only strengthen the long-term legitimacy of Hong Kong's political police. That enhanced legitimacy will, in turn, strengthen their effectiveness. The positive impact made by the ICAC on Hong Kong life is rooted, among other things, in its political legitimacy. A similar show of good faith should be made by Hong Kong's political police. They might start by introducing themselves.