

1 HONG KONG LEGISLATIVE COUNCIL -- 31 May 1989

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 31 May 1989

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)  
SIR DAVID CLIVE WILSON, K.C.M.G.

THE CHIEF SECRETARY  
THE HONOURABLE PIERS JACOBS, O.B.E., J.P.

THE FINANCIAL SECRETARY  
THE HONOURABLE DAVID ALAN CHALLONER NENDICK, J.P.

THE ATTORNEY GENERAL  
THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.  
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION

THE HONOURABLE CHAU TAK-HAY, J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.  
SECRETARY FOR SECURITY

THE HONOURABLE KENNETH KWOK WAI-KAI, O.B.E., J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE ADOLF HSU HSUNG, J.P.  
SECRETARY FOR DISTRICT ADMINISTRATION

ABSENT

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation

L.N. No.

Immigration Ordinance

Immigration (Places of Detention)

(Amendment)(No. 4) Order 1989..... 153/89

Legal Practitioners Ordinance

Solicitors' Practice (Amendment)

Rules

1989..... 154/89

Sessional Papers 1988-89

No. 73 -- Report of changes to the approved Estimates of Expenditure  
approved during the third quarter of 1988-89

Public Finance Ordinance: Section 8

No. 74 -- Report of the Police Complaints Committee 1988

Green Paper

Green Paper on Transport Policy in Hong Kong

Addresses by Members

Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1988-89

Public Finance Ordinance: Section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8)(b) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved estimates of expenditure for the third quarter of the financial year 1988-89.

Supplementary provision of \$264.7 million was approved. This included \$151 million for the purchase of water from China. The provision was fully offset either by savings under the same or other heads of expenditure or by the deletion of funds under the Additional Commitments subheads.

Approved non-recurrent commitments were increased by \$74.9 million during the period, and new non-recurrent commitments of \$276.5 million were also approved.

In the same period, a net increase of 1 361 posts was approved.

Items in the summary have been approved either by Finance Committee or under delegated authority. The latter have been reported to the Finance Committee in accordance with section 8(8)(a) of the Public Finance Ordinance.

Report of the Police Complaints Committee 1988

DR. TSE: Sir, on behalf of the Police Complaints Committee, may I table the committee's Annual Report for 1988.

The committee is an independent group appointed by you, Sir, to monitor and review the investigation of complaints by the public against the police. This is the third report compiled by the committee since its establishment in 1986 to take over the work previously carried out by the former UMELCO Police Group.

Sir, I am pleased to report that the number of complaints has continued to drop. In 1988, 3 230 complaint cases were registered by the Complaints Against the Police Office (CAPO) of the Royal Hong Kong Police Force. This represented a 16.9 % decrease over the 3 885 cases registered in 1987 and a 28.9 % decrease over the figure of 4 544 in 1986.

Through the support of an independent secretariat, the committee had been able to vet in detail each and every complaint case processed by the Complaints Against the Police Office. During the year under report, the committee had reviewed a total of 3 516 complaint cases including cases carried over from 1987, embracing 5 451 allegations. In the process of vetting and endorsing these complaint cases, the committee had proposed a number of reviews of, and changes to, police practices, procedures and instructions. It is hoped that the committee's proposals would help to improve the overall effectiveness of the complaints system and assist the Commissioner of Police in identifying and rectifying areas which were perceived as conducive to the generation of public complaints.

Arising from these complaint cases, various forms of legal, disciplinary and internal action had been taken and advice given against 1 210 police officers in 1988. However, these figures should be seen and interpreted in the light of at least 3.3 million potential police-public confrontation situations, including 1.9 million persons stopped and checked through the Police Operational Nominal Index Computer System (PONICS) and 1.4 million traffic summonses and tickets issued by the police, in the same year. The difficult nature of the front-line duties, which the police are tasked to perform to protect the community, should be borne in mind. Having said this, the committee would like to pledge its continued determination to safeguard the integrity of investigations into complaints against the police and to exert its utmost to be worthy of the trust that you, Sir, have placed in the committee.

I would like to take this opportunity to thank all the government departments concerned, in particular the Commissioner of Police and all officers in his Complaints and Internal Investigations Branch for the co-operation and assistance rendered to the committee and its secretariat. I would also like to record my appreciation of the contribution and support by Members of this Council. Thank you.

#### Green Paper on Transport Policy in Hong Kong

SECRETARY FOR TRANSPORT: Sir, I have much pleasure to introduce today the Green Paper on Transport Policy in Hong Kong. It sets out for public consultation a long-term strategy to keep our transport system moving into the 21st century.

Transport does more than moving people and goods. It links the family and the individual to economic, social and recreational activities. It is, above all,

essential to the continued prosperity and dynamic growth of Hong Kong.

I should first emphasize that the publication of the Green Paper should not be seen that there is a need to change the basic principles of our transport policy. These basic principles, first set out in the 1979 White paper, have stood the test of time. They are: first, to improve the transport infrastructure; second, to expand and improve public transport; and third, to make more economic use of the road system. Nevertheless, it is useful from time to time to take stock of past progress and to review future strategy. This is why we commissioned the Second Comprehensive Transport Study (CTS-2) in 1986 to project growth in transport demand up to 2001, and to appraise transport infrastructure and policy options to meet future challenges. The Green Paper was prepared based on the CTS-2 findings.

Continuous forward planning is the key to our success in coping with the rapid growth in transport demand. For example, between 1976 when the first Comprehensive Transport Study was undertaken and 1988, our vehicle fleet increased by 75%, public transport patronage by some 65% and the total volume of travel more than doubled.

The Government remains committed to a comprehensive and long-term infrastructure building programme. Most of the projects recommended by the first study in 1976 have now been completed. The road and rail projects for the next 10 years outlined in this Green Paper will require an estimated total investment of \$29 billion. These are tailored to meet the anticipated need for linking the new towns and the urban areas, and providing additional harbour crossings and cross border routes. But we simply cannot build ourselves out of congestion.

Road and rail construction has become more expensive and difficult. Now we often have to reclaim land, build tunnels and elevated roads to improve our road network. This is borne out by the fact that four major tunnels will be completed progressively between now and 1991. Also, we cannot build indiscriminately, as consideration will need to be given to preserving and improving our environment.

Our public transport system has been and will continue to be one of the key elements of our transport strategy. Indeed, we have a public transport system that is second to none in providing a comprehensive network, with a wide choice of modes at reasonable fares. Despite heavy congestion at peak hours, it is still easier to travel around in Hong Kong than London, Tokyo and many other cities.



The basic philosophy of our public transport system is that the operation of different modes should be carried out on commercial lines by private sector or by public corporations operating on commercial lines, with the Government providing a statutory framework, monitoring and co-ordination. The inter-modal co-ordination policy will continue to be the basis for maintaining a balanced and efficient system. This maintains a good range of public transport services; encourages the use of off-street modes; keeps travelling cost low and gives due weight to consumer comfort and convenience. The policy will continue to be applied flexibly to meet changing demands and developments.

But again, no matter how many roads we build and how much we improve our public transport services, the problem of road congestion at certain places and times of the day will remain. This is simply because the demand for road use far exceeds the road capacity. This calls for effective management measures without which vehicular traffic could overload the infrastructure. This would impede the smooth flow of goods, seriously undermine the efficiency of road-based public transport and hold up emergency vehicles such as ambulances, fire-engines and police cars.

Looking ahead, Hong Kong's transport problems are becoming increasingly complex and solutions are subject to rising cost and physical constraints. Economic success also generates an enormous demand for goods movements. The rapid growth in recent years of cross border goods vehicle traffic imposes further strains on the road network. The need to manage the growth of goods vehicle traffic is obvious, but the measures should be aiming at minimizing any adverse effect on the economy. At the same time, increasing affluence generates a natural demand for high quality means of travel and car ownership. This calls for constant upgrading of public transport services, and management measures which aim at more efficient use of road space.

The Green Paper tabled today sets out a wide range of possible measures to achieve more effective use of road space by giving priority to the more efficient and essential road users, and managing travel demand to a level with which the road system can cope.

The need for and the consideration of the options for better management of road use must be viewed alongside the mammoth task of keeping Hong Kong moving. In the past 20 years, Hong Kong has emerged as a major world centre of industry and finance. In total Gross Domestic Product, Hong Kong now ranks 42nd in the world out of 211 nations; when just 10 years ago we ranked 60th. There are now 324 000 licensed vehicles, or about 230 vehicles for every kilometre of road, one of the highest

densities of traffic anywhere in the world. In fact, we have more commercial vehicles per kilometre of road than most other countries have total vehicles per kilometre. The total patronage of public transport is fast approaching 10 million boardings per day. Yet most of these activities are concentrated into a built-up area of less than 100 square kilometres, containing some of the highest density residential areas in the world.

Some congestion is inevitable. The task before us is to keep it within acceptable limits in terms of time and cost to the community.

Of course, better co-ordination of land use and transport planning will help reduce the pressure on the transport system. This means, for example, locating employment opportunities close to residential areas, placing port and freight terminals near ware-houses and industries, and reducing the density of land development. These issues are being addressed in other studies such as the Metroplan and harbour reclamations, and require the closest and fullest co-operation between transport and town planners.

But the tackling of traffic congestion is not just a government effort. The community can and should play an active part in reducing peak hour congestion by, for example, supporting a greater use of flexi-time and staggered working hours. The Government is keen to explore any such methods to reduce the need for regulation and restraints. Thus one of the main purposes of this consultation is to find out how the community can help and what practical incentives Government can provide to bring this about.

Sir, the Green Paper on Transport Policy only sets out possible alternatives in tackling the transport problems over the next 10 years. The Government needs public views to help determine the practicability and acceptability of these alternatives and fully welcomes any suggestions on other options. I hope that the Green Paper will generate full and constructive discussion and debate over the next four months so that a balanced transport strategy in the overall interest of Hong Kong can be finalized.

Motions

HONG KONG EXPORT CREDIT INSURANCE CORPORATION ORDINANCE

THE FINANCIAL SECRETARY move the following motion:

"That the contingent liability of the Hong Kong Export Credit Insurance Corporation under contracts of insurance shall not at any time exceed the sum of 6,000 million dollars."

He said: Sir, I move the first motion standing in my name in the Order Paper.

In February 1988, the maximum contingent liability of the Hong Kong Export Credit Insurance Corporation was increased from \$4,200 million by \$800 million to \$5,000 million. Since then, the corporation's liability under contracts of insurance has risen at a rate of about \$130 million per quarter. As at 31 March 1989, the figure stood at \$4,682 million. In addition, there is potential commitment in respect of new policies and policies pending renewal totalling \$152 million, leaving only \$166 million for new business.

Given this rate of increase, the corporation's advisory board estimates that the existing statutory limit may be reached shortly. It is therefore recommended that the maximum contingent liability ceiling be increased by \$1,000 million to \$6,000 million. Failure to raise this limit could result in the corporation having to turn away further business and hence to discourage our exports.

I would like to stress that the maximum liability is a theoretical contingent amount. It is never likely to be at risk as a whole at any one time.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

#### TELEPHONE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:

"That with effect from 1 June 1989, the Schedule to the Telephone Ordinance be amended

--

(a) in Part I by adding after item 7(b) --

"(c) removal within the same building \$275 per line.

(d) removal to a different building --

(i) for the first 20 lines \$600 per line.

(ii) for the next 180 lines \$450 per line.

(iii) for additional lines \$300 per line.".

(b) in Part V, item 4 by repealing paragraphs (a) and (b) and substituting -

"(a) For changing a telephone instrument or socket at subscriber's premises at request of subscriber \$140.

(b) For each additional telephone changed at the same time \$ 50.

(c) For changing a telephone instrument at request of subscriber (changed instrument to be collected by subscriber) \$ 50.";

(c) in the provisions in column 1 of the following table by repealing the amounts and words in column 2 and substituting respectively the amounts and words in column 3 --

TABLE

Provision	Repeal	Substitution
Part I		
1(a)	\$792	\$840

2(a)	\$516	\$576		
3		\$960	\$1,080	
4			\$2,700	\$2,880
5(b)			\$250	\$275
7(b)(i)			\$1,260	\$1,308
7(b)(ii)			\$1,140	\$1,188
7(b)(iii)			\$1,020	\$1,068
7(b)(iv)			\$840	\$888

Part II

2(b)			\$250	\$275
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Part III

1 Provision			\$60 Repeal	\$72 Substitution
2(a)			\$2,400	\$2,640
3(b)			\$250	\$275
4(b)			\$350	\$600
4(c)			\$250	\$275
7(b)			\$250	\$275
8(b)(i), (ii), (iii), (iv) & (v)			\$350	\$600

8(c)(i), (ii), (iii), (iv) & (v)	\$250	\$275
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Part V

1(b)(i)	\$216	\$180
1(b)(ii)	\$156	\$180
1(b)(iii)	\$168	\$180
1(b)(iv)	\$168	\$180
1(b)(v)	\$264	\$288
1(b)(vi)	\$192	\$180
5	\$220	\$240

Part VII

1(a)	\$72 per annum	Free of charge
1(c)	\$250	\$275
2(a)	\$240	\$264
3(a)(viii)	\$100	Free of charge
4(a)(i)	\$1,440	\$1,560
4(b)(i)	\$2,640	\$2,880
Provision	Repeal	Substitution
4(c)(i)	\$3,960	\$4,320
6(a)(ii)	\$250	\$275

6(b)(ii)                                 \$250     \$275

6(r)(ii)                                 \$250     \$275

10   \$2     \$3

He said: Sir, I move the second motion standing in my name in the Order Paper. Section 26(2) of the Telephone Ordinance gives this Council the power to amend, by resolution, the Schedule to that Ordinance of maximum charges that may be levied by the Hong Kong Telephone Company.

Charges for line rentals and installation, and other miscellaneous charges were last increased, by resolution of this Council, with effect from 1 October 1985. At that time, Members were informed, based on projections then available, that a further round of increases would not be required until early 1988. It has been possible to delay these increases by over a year as a result of higher than expected sales, and improved productivity and operating efficiency on the part of the company. It is worth noting that over the past 10 years, telephone tariffs have risen by less than half the rate of inflation.

In February, the company submitted an application to increase its tariffs by an overall average of 7% in order to meet increased operating costs, to maintain its high standard of service and to keep pace with growing demand. The application has been thoroughly examined and the items in the resolution now before this Council are considered to be justified.

The major items are the increases in exchange line rental charges. The effect on ordinary business and residential subscribers will be modest: the monthly cost of an ordinary exchange line for business use will be increased from \$66 to \$70, and for a residential exchange line from \$43 to \$48. The proposed increase in the monthly rental charge for a standard telephone from \$5 to \$6 a month to cover the cost of an upgrading programme is significant in percentage terms. In monetary terms, however, the \$1 a month increase is modest. The present charges of \$72 per annum for the rental of an internal extension, and of \$100 for the connection and change of "Starline" features are to be abolished.

The resolution proposes that the new charges, the first increases for over three and a half years, should take effect from 1 June 1989. Based on current projections,

there is unlikely to be any requirement for further increases until 1991.

Sir, I beg to move.

At this point, Mr. David LI declared his interest as a director of the Hong Kong Telecommunications Company.

Question on the motion proposed, put and agreed to.

#### First Reading of Bills

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) (AMENDMENT) BILL 1989

CONTROL OF EXEMPTION CLAUSES BILL 1989

PEAK TRAMWAY (AMENDMENT) BILL 1989

ROAD TRAFFIC (AMENDMENT) BILL 1989

IMMIGRATION (AMENDMENT) BILL 1989

IMMIGRATION (AMENDMENT) (NO.2) BILL 1989

OZONE LAYER PROTECTION BILL 1989

TEMPORARY CONTROL OF DENSITY OF BUILDING DEVELOPMENT (KOWLOON) BILL 1989

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

#### Second Reading of Bills

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Animals and Plants (Protection of Endangered Species) Ordinance."



He said: Sir, I move that the Animals and Plants (Protection of Endangered Species) (Amendment) Bill 1989 be read a Second time.

The purpose of this Bill is to prohibit trade in medicines containing rhinoceros derivatives or ingredients, to tighten control on trade in endangered species in general and to increase the maximum fine to provide the necessary deterrent.

The Animals and Plants (Protection of Endangered Species) Ordinance and its Schedules were enacted in 1976, giving effect to the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), to which Hong Kong is a party through ratification by the United Kingdom.

The existing legislation provides for the control of trade in live specimens and readily recognizable parts and derivatives. It does not, however, adequately cover rhinoceros derivatives or ingredients in certain Chinese medicines. It is therefore necessary to take action to prohibit trade in medicines containing such ingredients in order to comply with our obligations under CITES.

In addition, the Bill seeks to introduce additional provisions on transit, identification of specimens, powers of search, forfeiture and disposal of live and perishable specimens in order to facilitate the enforcement of the Ordinance.

The Bill also introduces new fines of \$10,000 for giving false information to obtain a licence and making false claims in respect of scheduled species and controlled medicine as a deterrent. As to the existing fines, which were fixed in 1976, the Bill seeks to increase them five fold to restore their deterrent effect.

The proposed amendments have been drawn up in close consultation with the Endangered Species Advisory Committee. We have consulted also the trade associations representing importers and vendors of traditional Chinese medicines. They have voiced no objection to the proposed ban provided sufficient time is given for the disposal of existing stock. We will ensure that sufficient advance notice is given before the prohibition on rhinoceros ingredients comes into operation.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

## CONTROL OF EXEMPTION CLAUSES BILL 1989

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to limit the extent to which civil liability for the breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise; and to restrict the enforceability of arbitration agreements."

He said: Sir, I move that the Control of Exemption Clauses Bill 1989 be read the Second time.

The Bill is concerned with those exemption clauses in contracts and notices which seek to exclude liability for negligence or breach of contract. The Bill closely follows the recommendations of the Law Reform Commission's Report on the Control of Exemption Clauses. This report was published in December 1986 and recommended that legislation be introduced in Hong Kong based on the English Unfair Contract Terms Act 1977. The Bill, if enacted, would have a significant effect on the law of contract and of negligence.

Sir, I would like to pay tribute to the thoroughness of the work carried out by the Law Reform Commission and its sub-committee, chaired by Mr. Arjan SAKHRANI, Q.C., on this very important and complex subject.

The Law Reform Commission consulted widely before publishing its report and the Administration has carried out further consultation with the major chambers of commerce, major business associations and the legal profession. In certain areas some associations have expressed concern about effects of the proposal on their business but the general response is favourable.

Exemption clauses are often used to exclude or restrict liability for breach of contract or negligence. They are sometimes used to deny a person's legitimate rights and expectations, for example, where one party in a strong bargaining position imposes on a weaker or less sophisticated party a clause excluding liability for negligence.

The Law Reform Commission concluded that the use of exemption clauses leads to abuse, particularly where the parties to a contract do not have equal bargaining strength. The commission believed that the benefits of some measure of control outweighed any economic disadvantages which may be caused by this limited interference with the freedom of contract.

I would like to summarize the main features of the Bill. Part II, which is the heart of the Bill, provides that certain types of exemption clauses are automatically ineffective and certain other types are subject to a reasonableness test.

The four types of clauses that are automatically ineffective are those that cannot, under any circumstances, be justified. They are as follows:

First, an exemption clause relating to death or personal injury resulting from negligence. For example, there are notices displayed in some children's playgrounds purporting to exclude liability for injuries caused by the negligence of the playground operator. There can be no justification in that, or any other situation, for denying a person a remedy for injuries caused by another person's negligence. The Bill will, therefore, put an end to the unfairness caused by such clauses.

Secondly, an exemption clause in a guarantee of consumer goods. At present, many so-called "guarantees" in fact take away greater rights than they give and are therefore traps for consumers. The Bill will prevent guarantees operating in this way.

Thirdly, a clause in a contract for the sale of goods excluding the seller's liability for selling goods which did not belong to him. It is considered unfair for any buyer to have to bear the loss caused by such a wrongful act of the seller and, in this respect, the Bill replaces a provision that already exists in the Sale of Goods Ordinance.

Fourthly, a clause in a consumer contract for the sale or supply of goods excluding the supplier's liability if the goods are defective or do not correspond with the contract description. The Bill here protects only parties who are consumers, since where a person obtains goods in the course of business, there may be situations in which it is reasonable for him to take the risk of the goods being defective. The Sale of Goods Ordinance already contains a provision to this effect in relation to sales and the Bill extends the protection to supply contracts, for example, contracts of hire and hire-purchase agreements.

The types of clause that are subject to a reasonableness test are those that may or may not be justifiable depending on all the circumstances of that case. For example, such a clause may be legitimate as between parties who are legally advised and who deal at arm's length, but may be quite unfair as between a large company and consumer

who simply signs a contract form without reading it. The Bill enables the court to determine the effectiveness of such a clause in a flexible manner.

The test of reasonableness applies to the following types of exemption clause.

First, a clause purporting to exclude liability for loss or damage (other than death or personal injury) resulting from negligence. For example, a clause by which a surveyor of property purports to exclude liability for a negligent survey. Given the infinite variety of circumstances in which such a clause could exist, it cannot be said that such a clause would in all cases be unjustified, even against a consumer. An automatic ban on such clauses is not therefore thought appropriate.

Secondly, a clause which excludes liability to a consumer for breach of contract. Such clauses clearly operate against the interests of consumers and ought to be controlled.

Thirdly, a clause in a contract made on written standard terms which excludes liability for breach of that contract by the party who prepared those terms. The inclusion of this type of clause within the reasonableness test will protect not only consumers but also businessmen who accept written standard terms of contract offered to them. The absence of negotiation, which is often a feature of such contracts, and the fact that small businesses are often in no stronger bargaining position than consumers, suggests the need for such protection.

Fourthly, a clause in a non-consumer contract for the sale of goods excluding liability in respect of the quality of goods, and a clause in a non-consumer contract for the supply of goods excluding liability in respect of the title to or the quality of the goods. Businessmen are again protected by the inclusion of this type of clause within the reasonableness test. There is thought to be a need for this since the small businessman may be forced to obtain goods subject to such a clause and also because, if he supplied those goods himself to a consumer, he would be unable to exclude his own liability in respect of those goods.

The reasonableness test also applies to two types of clauses which, though not in law exemption clauses, have a similar effect to exemption clauses.

The first type is a clause which purports to entitle a party to a contract not to perform any obligation under the contract, or to perform it in a way that was

substantially different from that which was reasonably expected of him. For example, a tour agent arranges a cruise for a person on one ship but provides, in conveniently small print, that if that ship is fully booked the person must accept the cruise on another ship. The Bill provides that this type of clause is subject to the reasonableness test if it is used against a consumer or by a party contracting on his own written standard terms of business.

The second type is a clause by which a consumer promises to compensate another person in respect of that other person's liability for negligence or breach of contract. An example of this is found when a valet parking service includes a term requiring the owner of the car to indemnify the supplier of the service if the driver negligently damages property belonging to a third party. This type of clause will be once again subject to the reasonableness test.

In applying the test of reasonableness, the courts are required in all cases to have regard to the language in which the terms are expressed. In relation to contracts for the supply of goods, the Bill specifies other matters to which the court must have regard, including the strength of the bargaining position of the parties to the contract; whether the customer received any inducement to enter the contracts and whether the customer knew or should have known of the existence of the exemption clause.

The Bill would also prevent arbitration clauses from being enforced against a consumer unless the consumer consented to its enforcement after differences had arisen, or the consumer had recourse to arbitration in pursuance of the agreement. The Administration supports the use of arbitration by parties to a contract who consciously choose that method of dispute resolution in the knowledge of all its implications. However, in the case of a consumer contract, it is possible that the consumer agreed to an arbitration clause either without knowing of its existence or without realizing its implications. The consumer may then discover that it is much more costly for him to refer a dispute under the contract to arbitration than it would be for him to refer it to the courts. For these reasons the Administration supports the recommendation of the Law Reform Commission that arbitration clauses in consumer contracts be subject to a form of control.

Sir, there are a number of types of contract that are excluded from certain statutory controls. Perhaps the most important of these are contracts relating to insurance, and to the creation or transfer of an interest in land.

Contracts relating to insurance have been excluded on the basis that the insurance industry has proposed a scheme of self-regulation relating to insurance contracts. Such a scheme could have greater advantages for consumers than inclusion of the insurance industry within the scope of this Bill, because of the special nature of insurance contracts. The industry's proposals are now being considered by the Administration and it is hoped that the arrangements will be completed within this year.

Exemption clauses in conveyancing documents have been excluded because of the need for certainty. Those contemplating purchasing property should always seek legal advice. However, it should be noted that exemption clauses relating to matters which are preliminary to the purchase of buildings will be subject to the controls in the Bill.

Sir, this Bill is technical and complex. If it is enacted, we intend to delay implementation for at least 12 months, so as to allow the business community to consider their use of contracts and to make any necessary amendments.

The technicalities of the Bill should not blind us to its social significance as a major piece of consumer protection legislation. The Bill seeks to achieve fairness while at the same time minimizing uncertainty, and I commend it to this Council.

Sir, I move that the debate on the motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

PEAK TRAMWAY (AMENDMENT) BILL 1989

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Peak Tramway Ordinance."

He said: Sir, I move the Second Reading of the Peak Tramway (Amendment) Bill 1989.

The main purpose of the Bill is to require the Peak Tramways Company Ltd. to run and operate the tramway in compliance with the safety requirements stipulated by the

Government.

Before going into the details of the Bill, I would like to describe briefly the background leading to the present amendments.

In September 1988, the Government further extended the franchise of the Peak Tramways Company Ltd. to run and operate the tramway for 10 years, with effect from 1 January 1994. This is subject to the commitment of the company to embark on a major modernization scheme for the tramway.

The modernization works of the tramway, approved by the Governor in Council under sections 4 and 5 of the Peak Tramway Ordinance and started since May, will conform to the latest international standards for funicular railways and will involve substantial changes to the tramway system including the haulage equipment, the control and signalling system, and the design of the tram-cars. Legislative amendments to the Peak Tramway Ordinance are now required to ensure the safe operation of the modernized tramway, which will be inaugurated in August this year. The opportunity is also taken to update the Ordinance.

Turning now to the main points of the Bill. Clause 4 provides that under new sections 14 and 14A, the tramway shall be designed and constructed with due regard to safety and in accordance with a code of practice to be issued by the Government.

Under new sections 14B and 14C, the Secretary for Transport can appoint inspectors to test and examine the tramway, to ensure its safety and to investigate accidents.

New sections 14D and 14E empower the Secretary for Transport to direct the company to remedy defects on the tramway or order the full or partial closure of the tramway for safety reasons. Under new section 14F, the company may close or partially close the tramway for repairs and alterations but must notify the Secretary of any such closure forthwith.

New section 14G increases the maximum penalty for wilful interference with the tramway from the present fine of \$100 to \$5,000 and imprisonment for six months. Under new section 14H, an employee of the company commits an offence if negligence in his work endangers or is likely to endanger safety on the tramway. The maximum penalty will be a fine of \$5,000 and imprisonment for six months.

Clause 5 of the Bill provides for the making of subsidiary legislations, including safety regulations and by-laws to cope with the modernized tramway.

Clause 6 stipulates that whilst the company may continue to fix its own fares, monthly tickets will continue to be issued to regular commuters at a charge not exceeding 25 times the standard adult single journey fare.

Clause 7 provides that the authority of the Governor in Council under the Ordinance to approve the technical matters of the tramway will be delegated to the Secretary for Transport.

With these amendments, the safe operation of the modernized tramway will be ensured so that members of the public and tourists may continue to enjoy this very popular recreational and transport facility for Hong Kong in improved safety and comfort.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

#### ROAD TRAFFIC (AMENDMENT) BILL 1989

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Road Traffic Ordinance."

He said: Sir, I move the Second Reading of the Road Traffic (Amendment) Bill 1989.

The purpose of this Bill is to empower the Commissioner for Transport to designate driver training schools and to regulate their operation. There is at present no legislation governing such schools and the driving course contents. Indirect control is imposed through the lease conditions on two driving schools now operating on leased sites on government land. However, such control is not adequate. If an operator chooses to operate a driving school on private land, even such indirect control cannot be exercised.

As a result of Government's policy to encourage off-street driver training, more



learner drivers are now taking their lessons in driving schools. In 1987, some 34 000 or 24% of learner drivers attended driving schools. This figure rose to 37% or over 56 000 last year. Regulations will be made to require learner motor-cyclists to undertake basic mandatory off-street training in driving schools before they are allowed to practise on the streets. With the introduction of this requirement, more driving schools are likely to open. It is therefore necessary to establish a proper legal framework to authorize the Commissioner for Transport to designate driving schools and to regulate their operation.

This Bill empowers the commissioner to designate driving schools for a maximum period of five years upon receipt of a designation fee and to lay down conditions regarding the necessary requirements, procedures and standards. These include the content and duration of driving courses, driver training facilities, and safety measures and equipment. The commissioner is also authorized to specify the tuition fees for mandatory off-street motor-cycle and motor tricycle training, and to inspect designated driving schools. If an operator is in breach of the conditions for designation or any relevant legal provisions, the commissioner may revoke the designation. But the operator will be given the right of appeal to the Transport Tribunal to review the commissioner's decision.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### IMMIGRATION (AMENDMENT) BILL 1989

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Immigration Ordinance."

SECRETARY FOR SECURITY: Sir, I move that the Immigration (Amendment) Bill 1989 be read a Second time.

In the first four months of this year, nearly 4 500 illegal immigrants have been arrested, an average of 38 a day. Some have succeeded in obtaining employment during their stay in Hong Kong. The Bill seeks to make it easier to bring a successful prosecution against those who employ illegal immigrants.

Clause 4 of the Bill makes it clear that labour inspectors have the authority to require an employer to produce for inspection the record of his employees. If the employer is suspected of having employed illegal immigrants, labour inspectors will be empowered to seize evidence to substantiate this, such as the record of employees. The employer will be entitled to take a photocopy of the record for his retention, and will be given a receipt for the original.

If the employer is not present during the inspection of a place of employment, clause 5 of the Bill will enable a labour inspector to require production of the records within 72 hours by notice in writing served on the employer.

Clause 3 of the Bill will enable evidence that a person is not lawfully employable to be brought by means of a certificate signed by the Director of Immigration. This will avoid the need for lengthy detention of illegal immigrants simply for the purpose of enabling a prosecution to be brought against an employer.

Finally, clause 2 of the Bill makes it clear that holders of two-way permits issued by the Chinese Government are not lawfully employable in Hong Kong.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

IMMIGRATION (AMENDMENT) (NO.2) BILL 1989

THE SECRETARY FOR SECURITY move the Second Reading of: "A Bill to amend the Immigration Ordinance."

He said: Sir, I move that the Immigration (Amendment) (No. 2) Bill 1989 be read a Second time.

The purpose of this Bill is to establish new refugee status review boards to consider and decide objection from Vietnamese asylum seekers against an initial decision to refuse them refugee status.

Since the implementation of screening in June 1988, over 20 000 Vietnamese boat people have arrived in Hong Kong. Of these some 1 600 have been screened. Refugee

status has been granted to 165 persons. The remainder have been refused refugee status.

Under the law as it stands, Vietnamese boat people who have been refused refugee status may object against that decision to the Governor in Council. So far, all those refused refugee status have lodged objections against the decision.

It has been apparent for some time that the number and complexity of the cases makes it unreasonable and impractical for the Governor in Council to be involved in determining objections. Moreover, unless and until we can complete the entire screening and objection process, we are unlikely to be able to achieve repatriation on any appreciable scale.

The Administration has, therefore, reviewed the present screening and appeal procedures, with the aim of completing the process within 12 months for all outstanding cases and three months for all new arrivals. This re-estimate will require completion of the entire process for 400 persons per week. Dedicated, full-time review boards are necessary to achieve this objective.

The Bill therefore provides for asylum seekers from Vietnam to have, in place of the present right of objection to the Governor in Council under section 53 of the Immigration Ordinance, a right to apply to have their cases reviewed by a refugee status review board.

I should like at this stage to say a few words about the composition and method of operation of the boards of review. It is intended that there will be one chairman of all the boards. He, as well as the deputy chairmen and other members of the boards, will be appointed by the Governor. They will include non-officials. In practice, each board will consist of the chairman, or a deputy chairman, and one other member. The practice and procedure of the boards will be as prescribed by regulations by the Governor in Council.

In considering objections, a board will act in an administrative capacity. It will be entitled to take into account any information or material at its absolute discretion, and to confirm or review the first instance decision as it thinks fit. Its decision shall not be subject to appeal or review.

In addition, the Bill also seeks to make some minor amendments to the Immigration

Ordinance to clarify some of the existing provisions relating to Vietnamese boat people.

I should now like to turn to the legislative proposals themselves.

Clauses 4 and 5 of the Bill will introduce two new sections to the Immigration Ordinance. Section 13F will provide for the review of an initial decision to refuse refugee status by a refugee status review board, while section 13G provides for the establishment of such boards.

Clause 2(b) will provide that persons detained under section 13(D) of the Ordinance are not to be treated as ordinarily resident in Hong Kong. This clarifies the status of Vietnamese boat people during their stay in Hong Kong.

Section 13A of the Immigration Ordinance as it stands enables children born outside Vietnam to former residents of Vietnam to be permitted to remain in Hong Kong as refugees. At present the detention of such children is authorized under the general provisions of the Ordinance. Clause 3(a) of the Bill provides that in future the detention of such children shall be authorized under section 13D(1), the section under which former residents of Vietnam are themselves detained.

Clause 3(b) will provide for written notice of determination in a form specified by the Director of Immigration to be served on asylum seekers. Notice may be given to the asylum seeker in person, or by displaying it in such a manner that it may conveniently be read by him.

Clause 6 of the Bill will provide that outstanding appeals which have yet to be submitted to the Governor in Council will be considered by the refugee status review boards.

Sir, it is intended that the new arrangements should be brought into operation before the middle of June, as soon as regulations prescribing the practice and procedures of the refugee status review boards are approved by the Governor in Council. It is for this reason that I am asking Members to agree that all stages of the Bill should be taken at today's meeting of the Council.

Sir, I beg to move.

Question on Second Reading proposed.

MR. CHEONG: Sir, I rise to support the Immigration (Amendment) (No. 2) Bill 1989. The purpose of this Bill is twofold. First, it seeks to speed up screening procedures on Vietnamese boat people. Second, it seeks to set up a number of specialized appeal boards to handle more efficiently subsequent appeals made against the screening results. The decision to streamline existing procedures is essential to cope with the increasing number of boat people arriving in Hong Kong. After all, the success of repatriation, be it voluntary or mandatory, depends upon the efficient handling of screening and appeal procedures.

I would like to emphasize again that the Administration should seek to secure international acceptance of mandatory repatriation as quickly as possible. It is clear to all of us that most boat people now arriving in Hong Kong, or indeed other places of first asylum, are economic migrants rather than genuine refugees. Mandatory repatriation is a crucial element in the successful implementation of the screening policy.

The Bill provides that an appellant will not have the right to be present or be legally represented when his case is reviewed by the appeal boards. In spite of the fact that Hong Kong is genuinely sick and tired of the Vietnamese boat people problem, we still need to try our best to uphold those principles that we treasure in our system and therefore I urge that, as far as practicable, a suitable number of legally qualified persons should be appointed to serve on the boards. This will ensure that the appeal cases can have the necessary input from the legal profession. In addition, lay persons other than civil servants should as far as possible be recruited to serve on the boards. My colleagues have suggested, for example, that the help of Justices of the Peace and district board members could be solicited. I do realize that it may not be possible to recruit lay persons to fill all positions on the boards but it is important in my view to ensure that membership of the boards fully reflects their ability to function impartially.

Sir, with these remarks, I support the motion.

MR. MARTIN LEE: Sir, the people of Hong Kong have demonstrated by their recent actions their firm commitment to upholding human rights and the rule of law. But the rule of law does not mean rule by any law which those in power might choose to

enact. For the rule of law is meaningless unless the laws we pass in this Council are fair and just.

Sir, human rights and the rule of law are universal values. They apply to all including unwanted visitors such as Vietnamese boat people.

The Immigration Amendment (No. 2) Bill 1989 provides that neither the applicant nor his representative be entitled to be present when his case is reviewed by the refugees status review board. It also provides that the board when considering any review shall act in an administrative or executive capacity and that the board is not required to give any reason for its decision which shall not be subject to review or appeal in any court.

The Bar Association and the Law Society have expressed their disquiet both at the content of the Bill and at the speed of its proposed passage.

I join them in deprecating the provision that neither the applicant nor his representative may be present at the review. It is in clear breach of an important rule of natural justice that both sides should be heard: and this provision is particularly oppressive since the board's decision is final.

This Bill seeks to relieve the Governor in Council of the tremendous burden of having to deal with thousands of appeals and seeks to create an administrative tribunal to take up these appeals by way of review. But I suppose that the review is in the nature of a re-hearing. And bearing in mind the applicant has been screened out without the benefit of prior legal assistance, is not given the reasons for the "verdict", and is not given the right to appear before the tribunal to clarify points contained in his case for review, one really wonders how the tribunal can be expected to do justice to his case? Sir, this Bill makes a mockery of the system of justice that we hold so dear.

For these reasons, I am unable to support it and would strongly urge the Government to reconsider it.

ATTORNEY GENERAL: Sir, I would like to respond to certain points made by Mr. Martin LEE in his speech. Mr. LEE has made three points on which I would like to comment. He claims that the Bill breaches fundamental rules of natural justice in that it denies

the appellant and his legal representative an oral hearing before the Refugee Status Review Board. He also says that the appellant is not given the benefit of legal assistance and is not given the reasons for the decision of the Immigration Officer. I would like, if I may, to take those points. In considering the question of natural justice, it is important to bear in mind that the rules of natural justice require that there should be a fair hearing. But that does not include the right to an oral hearing, provided the appellant, in this case the person seeking refugee status, is given the opportunity to comment on the submissions on the case prepared by the Immigration Officer. What I have just said is a matter of settled law supported by the decisions of the courts, and to repeat it, that the right to a fair hearing does not mean a right to an oral hearing. As to the point about not being given reasons for decisions, the Bill confers a regulation-making power. Under subsection (5) of the proposed new section 13G, power is given to make regulations and it is intended that regulations made under that power will provide that the decision of the Immigration Officer, his reasons and the material on which he has based his decision will be made available to the applicant or his representative. That leads on to the third point made that the applicant, when screened out, is denied the benefit of legal assistance. The proposed new section 13F(3) says--

"In preparing his case for review under this section an applicant shall be permitted all reasonable facilities to enable him to obtain the assistance of--

(a) his legal representative, if he has one; or

(b) in any other case, a prescribed person,

and such representative or person shall be afforded all reasonable facilities to enable him to render such assistance."

MR. MARTIN LEE: Would the honourable Member give way? Sir, I think the learned Attorney General has misunderstood the point here. What I am complaining about is that the applicant has not been given legal advice before the review.

HIS EXCELLENCY THE PRESIDENT: Just very briefly please, Mr. LEE, on a point of clarification.

MR. MARTIN LEE: Sir, the point is that the applicant has not been given legal advice prior to the screening.

ATTORNEY GENERAL: I am grateful for that clarification. Perhaps I could continue, if Mr. LEE would bear with me, to make the point that I was making about the right of the applicant to legal assistance for the purposes of formulating his appeal against the decision of the Immigration Officer. I think, with respect to Mr. LEE, that that is the issue in relation to the Bill. The points I was going to make are, firstly, the Bill will provide the applicant with full access to his legal representative for the purposes of framing his appeal to the Refugee Status Review Board; and secondly, as a matter of general and now settled practice, the representative will in general be an appeals counsellor appointed by the Agency for Voluntary Services which is the UNHCR's participating agency providing assistance to those who are claiming refugee status. I should perhaps add here that I believe that many of the appeals counsellors, who have been recruited on a full-time basis by the UNHCR, are indeed legally qualified.

Sir, the points, I think, that are important to bear in mind in considering whether or not this Bill is in breach of fundamental rules of natural justice are these: first of all the Bill makes full and adequate provision for those wishing to appeal to see the reasons for the Immigration Officer's decision; secondly they are given full and adequate opportunity to have access to legal advice for the purposes of framing their appeals to the Refugee Status Review Board; and thirdly they are given full and adequate opportunity to comment on the submissions and views of the Immigration Officer. Sir, I am satisfied that this Bill does not breach the rules of natural justice as has been asserted, and I support the Bill.

SECRETARY FOR SECURITY: Sir, I am grateful to Mr. CHEONG for his support of this Bill and I agree with his remarks. In particular, I can assure him that the Hong Kong Government will be pressing as hard as it can for the mandatory repatriation to Vietnam of those found not to be refugees following screening. I accept also the point he made that there is a need for a qualified legal presence on the board. We shall be trying to obtain a qualified lawyer as chairman of the board.

I accept also the need which he referred to for the presence of lay persons on the board. We shall endeavour to include suitable persons to serve on the board from outside the ranks of officials, for example, as he suggests, from the ranks of the non-official Justices of the Peace.



Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### OZONE LAYER PROTECTION BILL 1989

THE SECRETARY FOR LANDS AND WORKS moved the Second Reading of: "A Bill to give effect to Hong Kong's international obligations under the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer; to provide for the prohibition of the manufacture of, and to control the importation and exportation of, substances that deplete the ozone layer and of products containing or made with those substances; and to provide for related matters."

He said: Sir, I move the Second Reading of the Ozone Layer Protection Bill 1989.

The ozone layer protects the earth and its inhabitants from the sun's ultra-violet rays. Since the mid-1970s, scientists have observed a gradual depletion of this protective layer, resulting in harmful effects which include increases in the incidence of skin cancer, suppression of human immune responses and impeded growth of living matters.

Scientific research has shown that destruction of the ozone layer is caused by certain chlorine compounds, namely chlorofluorocarbons -- which are commonly known as CFCs for short -- and halons. CFCs are used in refrigeration, air conditioning, packaging, and as solvent and aerosol propellants. Halons are used mainly in fire fighting. Apart from depleting the ozone layer, CFCs also contribute substantially to the "greenhouse effect" on global warming.

In view of the threat of ozone depletion, the Vienna Convention for the Protection of the Ozone Layer was drawn up in 1985 to provide an international framework to address the problem. Under the provisions of the convention, the Montreal Protocol on Substances that Deplete the Ozone Layer was concluded in September 1987, stipulating more specific controls. Hong Kong was party to both agreements.

The Montreal Protocol, which only came into effect on 1 January this year, calls

for a freeze and subsequent reductions in the production and consumption of CFCs and halons. Signatories of the protocol have agreed to freeze at their 1986 levels the production and consumption of CFCs with effect from 1 July 1989, and halons with effect from 1 January 1992. The consumption of CFCs is also to be reduced by 50% over a period of 10 years.

To fulfil Hong Kong's international obligations under the protocol, this Ozone Layer Protection Bill was drawn up. Hong Kong does not produce any CFCs or halons but clause 3 of the Bill provides for prohibition against the future manufacture of such substances. At the same time, we are obliged to restrict the consumptions. Under provisions in the Bill, all importers and exporters are required to register with the Director of Environmental Protection and obtain a licence before importing or exporting the controlled substances. We shall first introduce control on the consumption of CFCs by putting in place an administrative quota system to ensure that the 1986 levels are not exceeded. The control of the import and export of halons will be implemented at a later stage.

To ensure that registration and licensing are being implemented in a fair and reasonable manner, clause 8 of the Bill provides for appeal to the Governor by notice in writing addressed to the Chief Secretary. The Bill also provides powers for the Governor in Council to make regulations for control of products containing or made with the controlled substances and for the use, recovery, recycling or disposal of such substances. This also provides the framework to introduce other measures as may be endorsed by the international community.

Sir, the restriction on import and export of the controlled substances is unlikely to have a significant impact on the economy as they constitute a very small proportion of Hong Kong's overall trade. The effect on local consumers would not be great, as substitutes are already available for many CFC uses. Better housekeeping and recycling can also substantially reduce dependence on CFCs.

Sir, I move that the debate on this motion be now adjourned.

Question on adjournment proposed, put and agreed to.

THE SECRETARY FOR LANDS AND WORKS moved the Second Reading of: "A Bill to control temporarily the density of building development in certain areas of Kowloon."

He said: Sir, I move the Second Reading of the Temporary Control of Density of Building Development (Kowloon) Bill 1989.

The Civil Aviation Department has recently completed a review of airport height restrictions in the Territory. This was initiated as a result of changes to the International Civil Aviation Organization guidance on the construction of flight procedures, the need to tie in with new navigational aids, as well as the need to determine development height restrictions for newly formed land. The review has recommended that airport height restrictions in many areas of Kowloon can be relaxed by varying degrees which may result in permitting greater density for building development.

Sir, notwithstanding this, the question of how to tackle the problems of development densities comprehensively in the urban areas is being addressed by the Metroplan study, which is expected to be completed by the end of the calendar year and will take a further year to implement through town plans. In order that Metroplan's aims are not frustrated, or expectations of increased development potential not unduly raised, it is considered necessary to temporarily continue to limit building development densities (where the present airport height restrictions may be relaxed) to their presently permitted levels.

Clause 3(1) of the Bill therefore requires the Building Authority to refuse approval of building plans of buildings in these areas which exceed the presently permitted plot ratios.

Clause 4, however, states that these provisions will cease to be in force by 31 December 1990 unless amended by resolution of this Council. This coincides with the date by which it is expected that Metroplan's recommendations, particularly those relating to density controls, will have been implemented.

These controls are designed to restrict development densities to their presently permitted levels, but will permit greater flexibility of design by allowing developers, once the present airport height restrictions are relaxed, to put up higher buildings than are currently permitted.

Sir, I move that the debate on this motion be adjourned.

Question on adjournment proposed, put and agreed to.

Committee stage of Bill

Council went into Committee

IMMIGRATION (AMENDMENT) (NO.2) BILL 1989

Clauses 1 to 6 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

IMMIGRATION (AMENDMENT) (NO.2) BILL 1989

had passed through Committee without amendment and moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

Member's motion

THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA (DRAFT)

MR. ALLEN LEE moved the following motion:

"That this Council calls on the people of Hong Kong to express their views on 'The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)' and urges the authorities concerned to take such views fully into account before the promulgation of the Basic Law."

MR. ALLEN LEE: Sir, I rise to move the motion standing in my name on the Order Paper.

Seldom has a debate in the Legislative Council been more timely. What my honourable colleagues will say today and tomorrow in this Chamber will, I hope, provide inspiration and a focus for the community in their study of the draft Basic Law, and assist them in coming to a view on what they want to see enshrined in the Basic Law, so that they can ensure that the principle of "one country, two systems" promised in the Sino-British Joint Declaration will be adhered to, and to form a government that is truly "Hong Kong people ruling Hong Kong".

Our objective in addressing the complex issues raised in the second draft of the Basic Law is clear: based on our experience of the present system of government, we hope to recommend to the drafters certain changes to the second draft that, in our view, will produce a workable political system that will preserve our economic prosperity and ensure our freedom, justice and democracy in the 50 years beyond 1997.

We also felt that there was a need to lay down clear objectives on major issues raised in the draft Basic Law so that the community could study it with a better understanding of these objectives. Whilst recent events in Hong Kong have clearly shown that our community is not politically apathetic, we recognize that there is a need to provide people with a focus on major issues to which they can turn.

It was with this aim in mind that Members of the Executive and Legislative Councils, under the chairmanship of Dame Lydia DUNN, set out to study the second draft in detail soon after its publication. It was recognized at the outset that whilst the second draft was an improvement over the first, a number of articles as drafted remain unclear, and a number of issues left not addressed. Views on these articles were often polarized, but after weeks of soul-searching and discussion, I feel really proud of my colleagues. Whilst representing different interests and holding diverse and strong personal views, they have recognized the need to come together with a unity of purpose in the overall interest of Hong Kong. I am glad to say we have reached broad agreement on certain major issues, and agreed on various recommendations to the drafters. I will now spell out our recommendations in the major areas where we have reached agreement, and

briefly explain the reasons for the recommendations. I shall concentrate on sections in the second draft of the Basic Law concerning the political structure of the future Hong Kong Special Administrative Region.

## Political Structure

### (a) Relationship between the executive and the legislature

As a matter of principle, we feel that the Basic Law should provide for a co-operative working relationship between the executive and the legislature, and at the same time provide sufficient checks and balances against possible abuse of power by either organ of power. We feel that the model proposed in the second draft does not define this relationship clearly. The Basic Law model is largely based on the existing system, with the Executive Council being responsible for policy decisions and the Legislative Council being responsible for enacting legislation to support policy. However, the existing government structure has many unwritten conventions, for example, close consultation between the Administration and OMELCO panels and Legislative Council ad hoc groups, overlapping membership between the Executive Council and the Legislative Council, and a wide consultation process through an extensive network of advisory boards and committees prior to the making of policy decisions by the Executive Council. These conventions have proved to be effective in encouraging a co-operative working relationship and we feel that these conventions should be formalized and preserved.

We recommend, therefore, in relation to article 55, that the Chief Executive should appoint at least half of the Executive Council Members from among Members of the Legislative Council. This requirement would ensure that the Chief Executive has reasonable support in a fully elected legislature, and that the legislature has influence in the policy making process. The Members of the Executive Council appointed from the Legislative Council should help to explain and obtain support on the one hand and act as a check on Executive Council policy making process on the other.

During our deliberations on article 65, it was also recognized that advisory boards and committees play an important part in the decision making process, and that it is important for the Legislative Council Members to be involved at an early stage before major policy decisions are made in Executive Council. This would strengthen the link between the legislature and the executive. However, in view of the large

number of advisory bodies and the relatively small number of Legislative Council Members, we feel that it is only necessary to specify that the latter should be appointed to advisory committees in major policy areas which will be decided by the Chief Executive in accordance with the community's needs at the time.

(b) Formation and composition of the legislature

Moving on to the formation and composition of the future legislature, we agree with the intention stipulated in the draft Basic Law that we should move ultimately towards universal suffrage for the election of all Members of the Legislative Council. The question is how soon. Understandably, views on the timing are diverse, but in the overwhelming urge to strengthen our overall recommendations to the Basic Law drafters, we have agreed to support the timetable to introduce 50% directly elected seats in 1997 and 100% directly elected seats in 2003. We have also agreed that this clear timetable is needed to provide a focus towards which the community could work, and that the referendum envisaged in Annex II of the second draft would therefore not be necessary.

In considering the development towards our ultimate aim of having all Members directly elected in 2003, we have taken into account the need for orderly progression to avoid abrupt changes which could be unsettling. We have also recognized the need to retain functional constituency seats during the transition period and in the early years of the Hong Kong Special Administrative Region. Although these seats are indirectly elected, experience has shown that functional constituency representatives have a distinct and effective contribution to the work of the legislature, and it would suit Hong Kong's unique circumstances to retain these seats until 2003 while the community prepares itself for a fully directly elected legislature.

We therefore recommend that in 1997, of the total 60 seats, 30 should be filled by direct elections and 30 from functional constituencies, that is, 50% of the seats should be filled by direct elections. In 1999, the second term of the Special Administrative Region Legislature, the number of directly elected seats should increase from 30 to 60, while the number of functional constituency seats should remain unchanged. In this way there would be a total of 90 seats, 66% of which would be filled by direct elections. In 2003, the third term, the number of directly elected

seats should be further increased by 30, that is, from 60 to 90. This will make up the entire legislature, thereby achieving 100% universal suffrage. The size of the Legislative Council will be slightly larger than that proposed in the Basic Law draft in order to accommodate the changes we recommend and to cope with the workload envisaged.

(c) Selection of the Chief Executive

I now come to an area in the draft Basic Law which has been much debated among Members, that is, the selection of the Chief Executive. I refer to Annex I of the second draft. Only last evening did Members of the Executive and Legislative Councils come to a unanimous view that the Chief Executive should be elected by universal suffrage no later than 2003. Following this consensus, Members of both Councils will now proceed to scrutinize and discuss the details related to the selection of the Chief Executive, and where necessary to consult the organizations which they represent.

Before leaving this subject, I wish to mention the significance of the electoral law which will prescribe the specific election method in selecting the Chief Executive. We recommend that the electoral law should clearly enshrine the principle of one-person-one-vote and other principles essential in a truly democratic election.

Sir, so far I have reflected the major points related to the future political structure and on which we have reached broad agreement. Mr. Andrew WONG who will speak immediately after me, and other honourable colleagues who will be speaking during this debate, will be touching on other equally important areas of the draft Basic Law, and no doubt will be expressing their individual views on various points. Those Members who have decided not to speak today have asked me to say that they support the agreement reached on the major issues.

Before concluding, I would like to emphasize the important role played by advisory boards and committees in the existing as well as future political structure of Hong Kong. As I recently said before the Foreign Affairs Committee of the House of Commons, the network of advisory boards and committees has been an important ingredient in the success story of Hong Kong, and an essential part of our consultative system of government. Views put forward through the various boards and committees have contributed significantly to the decision making process, and all my honourable colleagues who have had experience either serving on or chairing these boards and



committees will agree they provide useful sounding boards before policy decisions are made. Hence it is of utmost importance that in addition to what we have recommended for the Basic Law, the future Special Administrative Region government devises a means to continue tapping the specialist advice and expertise that comes from these boards and committees. But it is not my intention today to repeat what I said before the Foreign Affairs Committee, for that represents only my personal views on possible practical working arrangements of the Hong Kong Special Administrative Region government.

## Conclusion

To conclude, I commend to the community the recommendations agreed by my honourable colleagues on the political structure of the future Hong Kong Special Administrative Region government. I hope they will be studied carefully by all. On our part, Members of the Executive and Legislative Councils will continue to study the draft Basic Law in detail and will strive to reach further consensus on other important areas not already covered. It is of utmost importance in the overall interest of Hong Kong that we can present a unified view to the Basic Law drafters.

Recent events in China and Hong Kong have brought home to us all that the assurance of the principle of "one country, two systems" is more necessary than ever. Whilst the events have understandably led to confusion and anxiety for many, they have also brought the community together in an unprecedented way. Never before has the community expressed their concern on an issue with such unity of purpose. I hope that when views by members of the community reach the Basic Law drafters, they will carry one voice: the voice of unity which we have now clearly heard in Hong Kong. As I said earlier, let us move forward together to ensure freedom, justice and democracy.

Sir, I beg to move.

Question on the motion proposed.

MR. ANDREW WONG (in Cantonese): Sir, I wholeheartedly support the motion of our Senior Member the Honourable Allen LEE in calling upon the people of Hong Kong to express their views on "The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)" and urging the authorities concerned to take such views fully into account before the promulgation of the Basic Law.

First of all, may I in my capacity as Convener of the OMELCO Standing Panel on Constitutional Development pay tribute and express my thanks to members of the panel and all the honourable non-government Members of the Executive and Legislative Councils. Before the publication of the second draft of the Basic Law, the panel held five meetings during the period from the end of the last year to early this year to discuss the issue of human rights and the proposal (commonly known as Cha-Cha proposal) put forth by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region. At that time, we had already considered the proposal too conservative. We maintained that the timetable as proposed for political development was too slow going. According to that timetable, we could only have universal suffrage in the elections of the Legislative Council and the Chief Executive by 2011 and 2012 (22 and 23 years later) respectively. The proposal also suggested that before the introduction of universal suffrage, a referendum should be held with the approval of the Legislative Council, the Chief Executive and the Standing Committee of the National People's Congress, and the result of the referendum should only be valid and effective with the affirmative vote of more than 30% of the eligible voters, otherwise there would be a 10-year interval before the next referendum was to be held. We found these proposed arrangements tantamount to hurdles in deterring political development. Our preliminary conclusion then was that the proposal should be revised to provide a fixed timetable where the time taken to introduce universal suffrage in the elections of the entire Legislative Council and the Chief Executive would be advanced. As regards subsequent discussions in meetings of the panel and of the OMELCO in-house and our subsequent conclusions on the issue of the political structure, the Honourable Allen LEE has just elaborated in some detail. Members support that half of the seats of the Legislative Council should be returned by general election in 1997, that all of the seats of the Legislative Council should be returned by general election in 2003 (14 years from now), and that the Chief Executive should be elected by general election not later than 2003. I am not going to repeat the details. Here, I take this opportunity to call on the people of Hong Kong to remain open-minded and to seek consensual proposals so that we may, as I said last year in my speech in the debate on the Basic Law (for solicitation of opinions) draft, succeed in building and rebuilding Hong Kong as "Rome was not built by one, but by many".

Sir, allow me to further report on the work of the Constitutional Development Panel and the OMELCO in-house meetings on the study of the Basic Law. Since the publication of the second draft of the Basic Law in late February 1989, the panel has held a total of 17 meetings during which all articles, preamble, annexes and appendices of the second draft of the Basic Law have been discussed and examined

closely article by article and item by item. Our work has not yet come to an end. Furthermore, under the leadership of Dame Lydia DUNN, Senior Member of the Executive Council, five OMELCO in-house meetings have been held to discuss the key issues of the political structure as contained in the second draft of the Basic Law. Although significant consensual conclusions have been reached on issues concerning the Legislative Council, the Chief Executive and the relationship between the executive and the legislature, as elaborated earlier by the Honourable Allen LEE, more work needs to be done. As a result, the OMELCO report on the second draft of the Basic Law cannot be ready today as scheduled, and may have to be delayed for about a month, which still meets the deadline of the end of July 1989 set by the Basic Law Drafting Committee for the consultation period.

Sir, allow me to take advantage of this public and solemn occasion to report to the people of Hong Kong the views of the Constitutional Development Panel on six other major issues in the second draft of the Basic Law, other than those of the political structure. These issues are in no way less important or may even be regarded as more important than those of the political structure.

First, the inter-relationship of the Basic Law, the Sino-British Joint Declaration and the Constitution of the People's Republic of China. The second draft only makes two direct references to the Joint Declaration, that is, paragraph 1 of the Preamble which says "the Chinese and British Governments signed the Joint Declaration on the Question of Hong Kong" and paragraph 2 which says "the basic policies of the People's Republic of China regarding Hong Kong have been elaborated by our Government in the Sino-British Joint Declaration". It is uncertain whether the Preamble will have any legal effect under the Chinese legal system. The panel therefore doubts if this is sufficient to safeguard that the Basic Law will be in full accord with the Joint Declaration. Furthermore, although paragraph 2 of the Preamble states that the Special Administrative Region will be established "in accordance with the provisions of article 31 of the Constitution of the People's Republic of China", and although article 11 of the second draft also states that the region will be established "in accordance with article 31 of the Constitution of the People's Republic of China", article 11 goes on to provide that "the systems and policies practised in the Hong Kong Special Administrative Region, including . . . , shall be based on the provisions of this (Basic) Law" and paragraph 3 of the Preamble stipulates that the Basic Law is enacted "in accordance with the Constitution of the People's Republic of China (no specific reference to article 31 has been made) . . . , prescribing the systems to be practised in the Hong Kong Special Administrative

Region". The panel is therefore wary of the possibility that certain elements of the Chinese Constitution may be introduced into the interpretation of and future amendments to the Basic Law, such as: in the Preamble, the four cardinal principles (1. leadership of the Communist Party of China, 2. Marxism-Leninism and Mao Zedong Thought, 3. people's democratic dictatorship, 4. socialist road); in article 1, "a socialist (state) under the people's democratic dictatorship"; in article 3, "apply the principle of democratic centralism", and "the central and local state organs ... under the unified leadership of the central authorities"; in article 5, "upholds ... the socialist legal system" and "no laws or administrative or local rules and regulations shall contravene the Constitution"; and so on.

The panel maintains that it is necessary to rewrite the Preamble of the Basic Law, irrespective of whether or not it has legal effect, so as to establish in definite terms a corresponding relationship between the Basic Law and the Joint Declaration and confine the Basic Law's relationship with Chinese Constitution to article 31 of the Constitution only. The panel therefore proposes to amend paragraph 3 of the Preamble possibly to read as follows: "In order to implement the basic policies of the People's Republic of China regarding Hong Kong as elaborated by our Government in the Sino-British Joint Declaration, to establish the Hong Kong Special Administrative Region, and to prescribe the systems to be practised in the Hong Kong Special Administrative Region, the National People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China in accordance with article 31 and article 62(13) (which empowers that the National People's Congress to "decide on the establishment of special administrative regions and the systems to be instituted there") of the Constitution of the People's Republic of China."

Second, the definition of a high degree of autonomy. The conception of article 2 of the second draft is different from that of the Joint Declaration. It is stipulated in section 3(2) of the Joint Declaration that: "The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government". Title I, paragraph 2 of Annex I to the Joint Declaration states that: "The Hong Kong Special Administrative Region... shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication". The panel submits that it is imperative to define in the provisions

of the Basic Law the "high degree of autonomy". It is therefore proposed to amend article 2 to read possibly as follows: "The National People's Congress hereby vests the Hong Kong Special Administrative Region with a high degree of autonomy except in foreign and defence affairs, and with executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law".

Third, the interpretation of the Basic Law. Section 1 of article 157 states that: "The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress". The panel notes that according to article 67(4) of the Chinese Constitution, "to interpret laws" is one of the powers and functions of the standing committee. Section 2 of article 157 "authorize(s) the courts of the Hong Kong Administrative Region to interpret on their own, in adjudicating cases before them, the provisions of this Law which are within the limits of the autonomy of the region." Section 3 gives permission to the effect that "the courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law (the provisions on central affairs and provisions on central-regional relationship) in adjudicating cases before them." These are much welcomed by the panel. However, section 3 of article 157 also states that "if such interpretation (of the aforesaid provisions) will affect the judgements on the cases," then "the courts of the region shall, before making their final judgements which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the region." The panel is most concerned about such an arrangement, all because the Standing Committee of the National People's Congress is a legislature. Although the system of legislative interpretation which vests the power of interpreting the Constitution and laws in the legislature is commonplace in socialist countries and territories, it is alien to Hong Kong and other capitalist countries and territories where the established practice is a system of judicial interpretation which vests the power of interpretation in the courts with the legislature having no part to play other than making amendments to legislation. This difference may threaten the promise that Hong Kong's capitalist system and life-style shall remain unchanged for 50 years.

The panel therefore considers that the power to interpret all provisions of the Basic Law should be delegated to the Court of Final Appeal of the Hong Kong Special Administrative Region which is to exercise such power in the place of or on behalf of the standing committee. The panel considers that article 157 should be rewritten

possibly as follows: "In accordance with article 62(13) and (15) of the Constitution of the People's Republic of China, the National People's Congress hereby authorizes the courts of the Hong Kong Special Administrative Region to interpret this Law and the Court of Final Appeal of the Hong Kong Special Administration Region to render final interpretation".

If this formulation is adopted, the provision similar to a power of disallowance as stipulated in section 3 of article 17, which provides for the standing committee to return any law enacted by the region which it considers to be not in conformity with the provisions of the Basic Law on central affairs or on central-regional relationship can be deleted while, at the same time, there will still be safeguards to ensure that the legislation of the region will not be in contravention of the provisions of the Basic Law.

Fourth, amendments to the Basic Law. Article 158 specifies that "amendment proposals from the Hong Kong Special Administration Region" should obtain "the consent of two-thirds of the deputies of the region to the National People's Congress, two-thirds of all the members of the Legislative Council of the region and the Chief Executive of the region". In view of this role to be played by the deputies of the region to the National People's Congress in making amendment proposals, there exists the fear that they may become an organ of power. In this respect, it is understood that all the deputies to the National People's Congress from the provinces come from their respective provincial People's Congresses which are organs of power.

The panel therefore considers that the power of proposing amendments to the Basic Law should be vested in the Standing Committee of the National People's Congress and the Hong Kong Special Administrative Region. The standing committee should consult the Committee for the Basic Law and obtain consent of two-thirds of all the members of the Legislative Council and the Chief Executive of the Hong Kong Special Administrative Region before any amendment proposals to the Basic Law can be made. If the Hong Kong Special Administrative Region wishes to propose any amendment to the Basic Law, the consent of two-thirds of all the Legislative Councillors and the Chief Executive will be required. Such amendment proposal should then be submitted to the Standing Committee of the National People's Congress which shall consult the Committee for the Basic Law on whether the proposal should be put to the National People's Congress on behalf of the Hong Kong Special Administrative Region. In any case, this procedure should not involve the deputies of the Hong Kong Special Administrative Region to the National People's Congress.

Fifth, the question of curfew and martial law. The panel welcomes the amendment to article 18 which specifies that national laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to the Basic Law. But the panel has grave concern about section 4 of article 18. According to section 4 of article 18, the Central People's Government (the State Council) may decree the application of national laws in the Hong Kong Special Administrative Region in either of the following circumstances: the Standing Committee of the National People's Congress decides to declare a state of war, or the Standing Committee of the National People's Congress, by reason of turmoil within the Hong Kong Special Administrative Region which is "beyond the control of the region", decides that the region is in a state of emergency, in other words, the imposition of curfew or martial law.

The panel feels that separate arrangements should be made to deal with the two different situations: when a state of war is declared, and when there is turmoil within the Hong Kong Special Administrative Region. For the former, it should be clearly stated which parts of the national laws are applicable to the Hong Kong Special Administrative Region. As for the latter, the Hong Kong Special Administrative Region should be able to make its own decision as to what kind of action or measure should be taken, which includes seeking assistance from the Central People's Government. The panel doubts whether the application of national laws would be the best way to deal with internal turmoil. The panel therefore considers that the provision concerning turmoil in section 4 of article 18 should be deleted, and that the provision of section 3 of article 14 which states that "the Government of the Hong Kong Special Administrative Region may, in times of need, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief" should be sufficient to deal with turmoil within the region.

Sixth, the issue of human rights. The panel welcomes the amendment to article 39 by which the general limitation provision on human rights has now been removed.

It is the opinion of the panel that in order to give effect to the provisions of the Joint Declaration that the two international covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, "shall remain in force", there appears to be a need for the People's Republic of China to become a signatory to the two covenants, lest the

monitoring mechanism as currently provided in the two covenants will cease to apply to the Hong Kong Special Administrative Region after 1997. The panel also considers that a Bill of Rights should be promulgated in Hong Kong before 1997. The panel further considers that the Chinese and British Governments ought to strive for an early understanding through the Sino-British Joint Liaison Group so that the people of Hong Kong can rest assured at the earliest possible time that the covenants "shall remain in force".

Sir, I had originally wished to conclude my speech with the story of "Kua Fu" from the Tang Wen Chapter of the Book of Lie Zi. But I have already spoken for some time, and will have to leave it to a later date when the opportunity arises. Here, I merely wish to say: "Kua Fu set out to chase the (life engendering) sun", not because he overrated his strength, but because he was not mindful of the outcome and stood steadfast in his pursuit. Although "in his quest, he died of thirst", "his staff" (possibly a willow branch) which he dropped, "soaked in the remains of his body, grew into a forest called the Deng Forest. The Deng Forest spread until it covered several thousand miles". (How very true the Chinese saying: the incidental planting of a willow branch results in a canopy of shade!) Posterity was thereby afforded shelter and food, the fields and farms saved from turning into deserts.

Sir, I give you and the people of Hong Kong the quest of Kua Fu, and wholeheartedly support the motion of the Honourable Allen LEE.

MR. CHEONG (in Cantonese): Sir, the earthshaking strength created by the patriotic student movement that has been going on in China for over one month has reverberated through the Mainland Chinese people, the citizens of Hong Kong and Macau as well as overseas Chinese. Such a feeling of flesh-and-blood ties has rarely been realized by Hong Kong people for many years. During this period, we have become emotionally insecure for we are concerned about the developments in both China and Hong Kong and also care very much about our future. Such an emotional response is totally understandable.

The impact of the movement on Hong Kong is not confined to emotional reactions. It has also aroused the Hong Kong people's enthusiastic participation in a series of collective activities to express their discontent at the way the Chinese Government handles the event and to voice their views.



Nevertheless, we must be calm when considering whether the student movement and the way it is handled by the Chinese Government will bring about significant repercussions to Hong Kong's future.

Sir, I must first of all stress that being calm is not the same as being cold-blooded, nor do I mean that the spirit to strive for democracy should be cooled down. What I want to say is that excessively emotional reactions should be followed by sensible analyses. We should try to sort out the basic responsibilities and directions of Hong Kong people in future in the light of the impetus given by these historic events. The driving force generated by emotions has already been released, it is time for us to look at the strength to be drawn from rational thinking.

As we are disappointed at the way the Chinese Government handles the student movement, there are indications that Hong Kong people feel more worried about the future. Their interest in the Basic Law has flagged. Their confidence in the implementation of the Basic Law has been eroded. Such a frame of mind is again understandable. Nevertheless, we should give some thoughts to whether such a negative attitude will help solve the problem.

No matter whether we choose to stay here after 1997 or we cannot leave due to objective factors, we after all love our home and should try our best to strive for an acceptable future for this place where we are rooted. It is undeniable that the future of Hong Kong hinges on the successful implementation of the Sino-British Joint Declaration and the concept of "one country, two systems". We should realize that the destinies of Hong Kong and China are interwoven; but as China's modernization programmes have just gone off the starting point, it will take a considerably long time before she can catch up with the level of development in Hong Kong. Before that happens, Hong Kong people will definitely not like to see their progress being dragged down by a comparatively backward China after the handing-over of sovereignty. We shall be all the more unwilling and unhappy to see China having a chance to constantly and unduly intervene in the operation Hong Kong's free economy and its high degree of autonomy. That is why the concept of "one country, two system" should be the most realistic and the best way out for Hong Kong.

The Basic Law is the crucial document to ensure the realization of this concept. We all have a basic responsibility and right to express our views on this document. Instead of trying to evade our responsibility in this regard, the 5 million-odd Hong Kong citizens should rather help formulate this important document which has direct

bearings on future and our way of life.

The people of Hong Kong must not remain silent any longer. May I appeal to them not to hold a pessimistic attitude towards the Basic Law. For the future of Hong Kong as well as for that of China, we should participate actively in helping to work out our future constitution. I appeal to the members of the community who know the Basic Law well to put forward its outline, explain it to the public in simple terms, and give them guidance on how to study and discuss it. This is the way to spread the importance of the rule of law throughout the community and to enable the constitution to serve its function as the guidance and common language of the ruler and the ruled. When the spirit of legality has its roots in the consciousness of the public, the abuse of law can be avoided. Hong Kong people can then bring into play the power of solidarity and co-operation.

We can envisage that in the years to come, Hong Kong will have more difficulties and even more complicated problems to face. Yet, Hong Kong still has to survive and move forward. We must persevere and, at the same time, maintain social stability and the power to expand our economy, so that we can preserve our strength to pull through. Our objective is that we should always be ready to stand together.

May I urge all Hong Kong people, regardless of sector affiliation, to recognize their work and the role they play in the community, hold fast to their posts, and spare no effort to create a better future for Hong Kong.

In the past few years, due to the existence of too many divergent views, our strength has been divided. I hope that the recent events will awake the Hong Kong people, and that from now on we will pull our strength together on the the basis of mutual accommodation and mutual understanding to strive for the overall interests of the community and not to allow the enthusiastic efforts of the public to be wasted. Although in this realistic society, many people may consider my aspirations to be too idealistic, I firmly believe that we should stand together and bring into full play our potentials to overcome all difficulties. This is the only direction towards which we should all move. I would like to take this opportunity to report to the Council the position of the Executive Committee of the Federation of Hong Kong Industries on our future political structure. On hearing the Honourable James TIEN and I explaining the OMELCO's proposal at yesterday's meeting, all members of the executive committee agreed to give support to the urge for unity and the consensus which the OMELCO has arrived at on Hong Kong's political structure.

Sir, I would like to conclude my speech with the following encouraging words for your consideration:

Freedom and democracy, are what we want;

Prosperity and stability, are what we seek;

Let us put aside our differences and stand together,

Hold fast to our posts, give out our best, and move on together to create a better future for Hong Kong and China.

With these remarks, I support the motion.

4.28 pm

HIS EXCELLENCY THE PRESIDENT: Members might like to take a break at this point.

4.55 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume.

MR. CHEUNG YAN-LUNG (in Cantonese): Sir, while we are debating on the second draft of the Basic Law, I should like to call upon all of us to bear firmly in mind the response of the people of Hong Kong to the recent pro-democracy movement. The recent stunning massive public parades and rallies to echo the student movement in China will go down in the history of Hong Kong as monumental movements in its development of democracy. The calls for freedom and democracy have united the hearts of the people of Hong Kong who take to the streets and show their support. The enthusiastic and orderly participation of the public in the mass rallies and sit-ins have demonstrated the democratic spirit that enables tolerance and self-discipline to come into being in Hong Kong. In the face of these outpourings of democratic sentiments, we should be more cautious in our discussion of the Basic Law in order to ensure that the kind of freedom and democracy that the people want is enshrined and the aspirations of the people are put into effect. Thus the Basic Law should be formulated on the basis of a spirit of democracy. It should be a document which will ensure the autonomy of the Hong Kong Special Administrative Region and not an instrument with which the central government can tighten its control.

Look back on the drafting of the Basic Law, we note that during the previous round of consultation on the first draft of the Basic Law the general public undoubtedly showed their concern. However, people who actively took part in the consultation were confined to representatives from various sectors of the community, the people from opinion groups and other interested parties. For the purpose of maintaining the status quo of the HKSAR for another 50 years, an overall review on every facet of the Hong Kong society and the characteristics of different trades and professions was also conducted. The consultation exercise enabled the people of Hong Kong to take a fresh look at their society and the consultation report prepared by the Consultative Committee for the Basic Law also became valuable reference material for civic education because it had drawn the bottom lines of various social values which according to the views of the Hong Kong people should remain unchanged. In this connection, I wish to pay tribute to those who have worked hard during the consultation process. As regards the present round of consultation, I also wish to express my appreciation of the efforts of the Secretariat of the Consultative Committee for the Basic Law in their production of the clearly written and highly readable reference papers. Having studied the reference papers, I feel that some of the textual amendments to the draft Basic Law have been able to bring out the original meaning of the provisions. Moreover, a number of amended articles in the draft Basic Law, especially those on which consultation reports have been prepared in the reference papers, show that the drafting committee has been responsive to the views collected. Take for example, articles 17, 19, 45, 47 and 157 have generally been amended in line with the wishes of the Hong Kong people. This is an improvement. Apart from some controversial provisions on the subject of political structure, the entire draft Basic Law appears to be compact in its structure. Semantically every word and expression has been well-thought, and in terms of spirit, it has managed to enshrine the concept of "one country, two systems" and high degree of autonomy.

Sir, if a consensus on the political structure can be reached at an earlier date, the task of formulating the constitution for Hong Kong will soon be completed. Nevertheless, in the light of the recent pro-democracy movement in Mainland China, I wish to make the following two points.

Firstly, paragraph 4 of article 18 of the Basic Law (Draft) provides that in case the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which is beyond the control of the region, decides that the region is in a state of emergency, the State Council may decree the application of the relevant national laws

in the region. I understand that such provision is necessary and proper. But the word "turmoil" is not clearly defined. The controversy as to whether the student movement in Beijing is a "turmoil" or a "patriotic movement" has already triggered off a national crisis. Today, mass parades, slogan-chanting demonstrations, sit-ins, hunger strikes and so on are very common acts of protest in Hong Kong. Thus, the definition of "turmoil" is worthy of our attention.

Another point I would like to raise concerns article 21 which specifies that Chinese citizens who are residents of the Hong Kong Special Administrative Region shall be entitled to participate in state affairs in accordance with law. Judging from the events arising from the student movements in China, we can see that the people of Hong Kong are willing, and have enough zeal and ability to participate in state affairs. The question is that the draft Basic Law has not elaborated on what kind of state affairs we are allowed to participate in. For example, are the student movements in Beijing a kind of state affairs in which Hong Kong people are entitled to participate? Although the same provision also states that the people of Hong Kong shall locally elect deputies of the Hong Kong Special Administrative Region to the National People's Congress to participate in the work of the highest organ of state power, events in the wake of the student movements have revealed that the National People's Congress and the Standing Committee of the National People's Congress themselves are not competent enough in handling this sort of state affairs. It is important that Hong Kong people can participate in the National People's Congress because in future the relationship between the Hong Kong Special Administrative Region and the National People's Congress will definitely be very close. Laws enacted by the Hong Kong Special Administrative Region shall be reported to the Standing Committee of the National People's Congress for the record and the powers of the Special Administrative Region are to be granted by the National People's Congress, the Standing Committee of the National People's Congress and the Central People's Government. However, the Hong Kong Special Administrative Region will be prone to unforeseeable difficulties in handling its affairs if the National People's Congress and the Standing Committee of the National People's Congress fail to perform their normal functions under the Constitution of the People's Republic of China. On the contrary, if the National People's Congress and the Standing Committee of the National People's Congress can effectively provide checks and balances and play a monitoring role, the participation of Hong Kong people will truly have great significance. Deputies of the Hong Kong Special Administrative Region will then be in a very important position in persuading or influencing the Central People's Government to take care of the overall interest of Hong Kong. Therefore, I am of

the opinion that Hong Kong should have the right to participate in the discussion on the number of seats and the election method of its deputies. Apparently, this point is missed out in the draft Basic Law.

Sir, as regards the political structure proposed in the draft Basic Law, it has taken quite a long time for a consensus to be reached on the composition of the Legislative Council and the method for the selection of the Chief Executive. Remarkable progress has been made in a series of OMELCO in-house meetings convened by Dame Lydia DUNN. Although Members do not have an unanimous view on the method for the selection of the Chief Executive, consensus has been reached on the composition of the Legislative Council. The Senior Member of this Council has given a full report on the details and I do not intend to repeat them here. I only want to take this opportunity to express my appreciation of the efforts made by every one in striving for a common goal -- democracy. The fact that they trust each other and sincerely try to seek a consensus is indeed encouraging.

In summing up, I am glad that various sectors of the community are gradually working out a political structure which can be accepted by all. But on the other hand, what happened in China in recent days also clearly shows that the relationship between Hong Kong and Mainland China has become increasingly close. The two places are closely linked in economic as well as social, cultural and political aspects. Sir, I think this is a very natural development. And for this very reason, I have to emphasize that Hong Kong will become a special administrative region of China in 1997 and implement the "one country, two systems" concept as stipulated in the Sino-British Joint Declaration. The idea of "one country" has been clearly explained and set out in the draft Basic Law. But is the protection for the implementation of "two systems" adequate? For example, will future political changes in China affect the stability of our political structure and thus the economy and investment prospects of Hong Kong? The very concept of "one country, two systems" is to make possible the mutual accommodation and non-interference of two different systems within one country. In future, this tiny place which adheres to capitalist practices in its economy, political structure and social system will have to co-exist with Mainland China which practises the socialist system in a land area of several million square kilometres with a population of 1.1 billion. Compared with the vastness of China, the future Hong Kong Special Administrative Region is indeed insignificant. It is important that we should enshrine in the Basic Law the liberal spirit of the concept of "one country, two systems" and the guarantees made in the Joint Declaration. This is far more important than the issue of political structure and its development

in Hong Kong. I would strongly urge people from all sectors of our community, particularly those who are expert in law and foreign constitution, to put forward more valuable suggestions on this matter so that a right balance is struck between "one country" and "two systems".

Sir, with these remarks, I support the motion.

MR. CHAN (in Cantonese): Sir, I believe we all anticipate that during the run-up to 1997, some incidents which will deal a blow to the confidence of Hong Kong people will inevitably occur. The most striking event that has taken place so far is the recent student movement in Beijing. It has shaken China as well as the Hong Kong community.

At first, I was extremely worried about the future of China and Hong Kong. But after witnessing the two spontaneous protest marches of one million people which took place one after the other in Hong Kong, I began to set my mind at ease. I am confident that no matter how capricious the political situation in China may be, Hong Kong people will, at the critical moment, put aside their differences and voice their views in unity.

All along, Hong Kong people do not have much trust in the Basic Law, and now even more people have lost faith in it. We are alarmed by the Chinese leaders' attitude towards their constitution, and no one can say for sure that our Basic Law will not be treated in the same way in future.

However, I think that whether or not we have confidence in the Basic Law, we should ensure that it is drafted in the best possible way, so that we can have a good set of laws to base on in the future. For this reason, I have participated actively in the meetings of the OMELCO Constitutional Development Panel. I might not be able to make any contribution, but I would like to have a deeper understanding of the Basic Law. In this regard, may I take this opportunity to express my gratitude to my good teacher, the Honourable Andrew WONG, Convener of the Constitutional Development Panel. The panel has proposed a number of specific amendments to the draft Basic Law, particularly in the following major areas of concern: "the relationship between the central authorities and the Hong Kong Special Administrative Region", "the interpretation of the Basic Law" and "the link between the executive authorities and the legislature". These improvements will help to provide a better safeguard for

the future of Hong Kong.

Now I would like to talk about the OMELCO proposals just introduced by the Honourable Allen LEE. It is most encouraging to learn that OMELCO Members have reached a consensus on those areas of the Basic Law, and I fully support the proposals. All along I have been advocating direct elections and now the protest marches of a million citizens have repudiated the allegation that "Hong Kong people only care about money". I have heard with my own ears the chanting of "long live democracy" which indicates that Hong Kong people are not lacking in political consciousness, they remain silent only because they will not make a fuss about nothing.

Finally, I am very happy to report to my honourable colleagues the results of my consultation with members of the Eastern and Wanchai District Boards on the OMELCO proposal concerning the formation of the future Legislative Council. Out of the 37 district board members (about 80% of the total) whom I had contacted, 28 members or 76% of the interviewees expressed support for the proposal; eight expressed reservations or objection, of which six considered the pace of introducing direct elections to be too slow, one considered it too fast, and one opined that the design of that proposal was not comprehensive enough; in addition, one other member refrained from expressing his/her views and would not discuss the matter until the student movement in Beijing was over.

Sir, with these remarks, I support the motion.

MR. CHUNG (in Cantonese): Sir, the most important question before us now is whether the imposition of martial law and curfew by the Chinese Administration against the Beijing student movement will lead to a new confidence crisis in Hong Kong and how we are going to minimize the resulting effect which may be detrimental to the future of Hong Kong after 1997. I believe it is a matter of utmost concern for all the people in Hong Kong and the Chinese Government.

For our part, faced with political earthquakes in China in the context of our future after 1997, all we can do now is to take precautionary measures to strengthen the provisions regarding the safeguards for human rights and the high degree of autonomy laid down in the Basic Law.

Whether the Basic Law can withstand the test under a grim situation depends on



whether the Chinese Government can spell out the principle of "one country, two systems" explicitly and specify the way of its implementation. Therefore the map showing the extent of the Hong Kong Special Administrative Region (HKSAR) with clear indication of its boundary of border defence should be added as an annex to article 1 under Chapter I: General Principles.

The provisions under the chapter on Relationship between the Central Authorities and the Hong Kong Special Administrative Region should be the fundamental rules in giving effect to the principle of "one country, two systems". The provision relating to the movement of the garrison under article 14 is a highly sensitive issue to the people of Hong Kong. Hence the appropriate text of this article should be amended to read: "The Government of the Hong Kong Special Administrative Region may, in times of need, ask the Central People's Government for assistance from the garrison in disaster relief; and subject to a resolution endorsed by over half of the members of the Legislature, ask the Central People's Government for assistance from the garrison in the maintenance of public order." In other words, the request for assistance from the garrison in the maintenance of public order is subject to an endorsement of the Legislative Council.

Under article 18, the laws listed in Annex III to the Basic Law (the national laws) shall be applied locally in the HKSAR by way of legislation, not just promulgation.

Moreover, unless endorsed by a majority in the legislature of the region, no inclusions of laws or legal documents other than those related to defence and foreign affairs listed in Annex III shall take effect.

The article should also clearly stipulate that in case of turmoil within the Hong Kong Special Administrative Region which is beyond the control of the region, and a state of emergency is declared, the Central People's Government may decree the application of the relevant national laws in the region subject to the request made by the HKSAR with a majority endorsement in the Legislature.

Furthermore, there is the need for a specific definition for turmoil. Will a peaceful gathering or march by a million people be considered a turmoil? Under what circumstances will the state of emergency or related orders be declared, suspended and withdrawn?

Regarding article 19, in order to fulfil the Central Government's promise that "there will be an independent judiciary and right of final adjudication without interference in the HKSAR", section 3 of this article should be amended to read:

Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to the acts of state. However, cases relating to the "acts of state" which occurred in Hong Kong shall only be affirmed by the rule of court through the judicial system and legal procedures in Hong Kong.....

Article 23 in its present form provides that "the Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition or theft of state secrets." The legal terms in this article should be clearly defined. Otherwise the following may happen:

1 Among the permanent residents in Hong Kong, half of the ethnic Chinese are holding foreign travel documents and/or they are working for foreigners. Should certain circumstances come into being, some may have to live in fear of being charged with "treason".

2 What is the meaning of "sedition"? If its definition is not clear enough, our freedom of speech and press will be affected.

3 There is also some problem in the expression of "theft of state secrets". In some countries, certain high technology and economic information are considered state secrets. Anyone attempting to obtain them can be regarded as a special agent. However, in Hong Kong, these information and materials are regarded as commercial information which can be transacted legally in a free and competitive environment. Therefore this expression in the article should be clearly defined, or else the normal development of the industries and commerce in Hong Kong will be hampered.

In the chapter on the Fundamental Rights and Duties of the Residents, article 31 stipulates that Hong Kong residents shall have the freedom of movement and freedom of entry and exit. This is very important. However, this article should be amended to read:

..... Hong Kong residents shall have the freedom to travel and the freedom of entry and exit and the right to demand and be issued proper travel documents to facilitate entry and exit. Unless restrained by law due to problems of their own, Hong Kong residents who hold valid travel documents shall be free to leave the region without

special authorization. This is to prevent imposition of restrictions on applications for travel documents.

Sir, the draft Basic Law puts the articles concerning the executive authorities, the legislature and the judicial organs under the chapter on Political Structure, indicating that the fundamental political structure of the HKSAR will be executive-led. But under the principle of a high degree of autonomy by the Hong Kong people, OMELCO Members have recently reached a preliminary consensus on the election method of the Chief Executive, his terms of reference, the possibility of deviation from popular will and the need for a more reasonable and fair check and balance to be exercised by the legislature on the future executive authorities. I support the views expressed by the Senior Member, Honourable Allen LEE, on the part concerning the political structure in the Basic Law.

Although OMELCO Members have reached a preliminary consensus on the political structure of the HKSAR and the method of election of the Chief Executive and Legislature, I believe we still have to consult various professional bodies and the public for their opinions on the Basic Law.

Now, I want to be more specific with article 72. In my opinion, the power of the Legislative Council under this provision should be expanded to include the following:

If there are any important issues concerning public interest, the Legislative Council should have the right to appoint special committees if necessary to conduct independent investigations and hearings and then to submit their findings to the Legislative Council for necessary action.

The purpose of delegating such power to the Legislative Council is to substantively reinforce public participation in the monitoring of the government machinery and public affairs in order to achieve more effective control.

Concerning the power of amendment of the Basic Law, article 158 stipulates that such power shall be vested in the National People's Congress (NPC). No amendment to the Basic Law, however, shall contravene the established basic policies of China regarding Hong Kong, that is, the provisions of the Sino-British Joint Declaration. Such stipulation is acceptable. However, some may worry that the Basic Law may be amended at any time in the future.

In my opinion, in the composition of the Committee for the Basic Law of the Hong Kong Special Administrative Region, Hong Kong members should be in the majority. Furthermore, article 158 should stipulate that the Legislative Council of HKSAR shall have full power to make amendment proposals to the Basic Law. Any proposals concerning Hong Kong, including those put forth by the Legislative Councillors or Hong Kong deputies to NPC, shall first be endorsed by the Legislative Council. All proposals so endorsed should be subject to the consent of the Chief Executive before they are submitted to the NPC by the Hong Kong deputies to NPC.

The rationale behind such addition is by unifying the Special Administrative Region's power to propose amendments to the Basic Law, it will be able to avoid the formation of two power centres, namely, the "Legislative Councillors" and the "Hong Kong deputies to NPC". It will also be in line with the needs of the central and local governments to set up a reasonable legislative system.

We all know that the Basic Law has not yet been finalized and the second round of consultation on the draft is still under way in Hong Kong. However, before the student movement in Beijing and incidents at the Tiananmen Square are settled, we learn that individual members of the Basic Law Drafting Committee (BLDC) and Basic Law Consultative Committee (BLCC) have tendered their resignation. It is most regrettable and their resignation has caused much public concern. In my opinion, if it is felt that the Chinese Communist Party and the high-ranking Chinese officials have mishandled the student movement in Beijing and ignored the demand for democracy, it would only highlight more evidently the importance to fight for democracy and the rule of law for our future generations on the part of members of the BLDC and BLCC. This is an undeniable duty of the times. I hope the public will offer more encouragement and opinions.

Sir, with the above proposed amendments to the Basic Law, together with the opinions from the public and various sectors as well as the endeavours of the BLDC and BLCC, I believe the content of the Basic Law will even be more reasonable and realistic. No matter what reshuffle there will be in Beijing, on the basis of the provisions of the Joint Declaration and the principle of "one country, two systems", the Basic Law will be able to maintain our confidence on Hong Kong's future beyond 1997.

With these remarks, Sir, I support the motion.

MR. HO SAI-CHU (in Cantonese): Sir, the present round of consultation on the second draft of the Basic Law, which began in late February this year to solicit the views of Hong Kong people for a second time, is a crucial process in the formulation of the Basic Law.

During this period when extensive consultation on the draft of the Basic Law is in progress, large-scale student movements surged in Beijing and other major cities of China. The news of these movements has produced enormous impact on the people of Hong Kong. Apart from triggering off mass parades in support of the students in China, it has also affected the consultation on the draft Basic Law. I have no intention to comment on the situation in China. I simply want to talk about the attitude that should be taken towards the present consultation.

First, I must reiterate that in accordance with the provision of the Sino-British Joint Declaration, the sovereignty of Hong Kong will be handed back to China on 1 July 1997 and the Basic Law of the Hong Kong Special Administrative Region will be the constitution which governs Hong Kong. This is a policy stipulated by both the Chinese and British Governments in the Joint Declaration and so far there is no sign of any change.

Some may worry that even if the Basic Law is in its best formulation it will only be a nominal piece of constitutional document if there is no democracy and the rule of law is not strictly enforced in the Mainland. While it is understandable that the situation in the Mainland has undermined the confidence of some people, the enactment of the Basic Law remains a task to which we should spare no efforts. For each of us who is prepared to make Hong Kong our permanent home and is concerned about Hong Kong's future, this task should be considered as the mission of our times.

I have mentioned in different forums that the enactment of the Basic Law mainly hinges upon the concept of "one country, two systems". Mainland China is practising the socialist system but Hong Kong will maintain its capitalist system. The distinction between the two systems is absolutely clear and there will not be any intermeddling. Geographically speaking, Hong Kong is insignificant compared with the large expanse of the Chinese territory. Given this sharp contrast in size, it is the hope of the Hong Kong people that China will not interfere in Hong Kong's affairs. The "four insistencies" are the principles that China is upholding in its

decision-making and administration; whereas in Hong Kong, the existing system and lifestyle will remain and the people of Hong Kong will be allowed to make their own decision on future changes, if any. The people of Hong Kong should be satisfied with such a scenario. So far the Chinese leadership have not broken any promises given to the people of Hong Kong nor have they interfered with the internal affairs of Hong Kong. As all the major principles and policies remain intact, there is no convincing justification to assume that the Basic Law will only be a nominal piece of document.

Obviously, it is unrealistic to expect that Mainland China will change and bring in freedom and democracy of western capitalist provenance. After all, such a change will not be in line with the "one country, two systems" concept. To exert ourselves to take up such an impractical cause will only be disadvantageous to the interest of Hong Kong.

I therefore urge that the political situation in China should be viewed separately from that in Hong Kong and that the confidence and the actual task before us should be treated as separate issues. In this connection, the drafting of the Basic Law is our fundamental job. That some people have lost their confidence is purely a personal matter and they are free to make their own choice. However, the Basic Law concerns the long-term interest of Hong Kong as a whole and the well-being as well of our future generations. For the future of Hong Kong, a positive approach in striving for a good Basic Law is better than a negative approach of giving up. I hope that all of us will make concerted efforts to see it through and continue to fulfil our responsibility by enthusiastically putting forward our views, so that the drafting process of Basic Law will be completed satisfactorily.

Sir, with these remarks, I support the motion.

MR. HUI (in Cantonese): Sir, when many people were worrying that the Basic Law (Draft) would meet with the coolest ever response from Hong Kong residents during the second round of consultation, the most magnificent democratic liberal movement in the history of China staged by hundreds of thousands of university students in Beijing erupted in Tiananmen Square. Under the influences of that movement, the people of Hong Kong, who are far away from Beijing, also witnessed two exciting and touching historic mass parades in each of which about one million people participated.

I think that it is mainly due to the following two reasons that activities

organized here in Hong Kong in support of the Beijing student movement can easily attract hundreds of thousands of people who feel obliged to put aside their normal daily work to participate in such activities:

Firstly, as Hong Kong people have long been enjoying liberty and freedom, they can hardly imagine the extent of freedom that the residents will be allowed to enjoy after 1997 under the rule of the Chinese Communist Party. When the silent majority see how a handful of autocratic Chinese leaders use various means to suppress the call for democracy and freedom from millions of people, they can no longer be silent. Apart from expressing loudly with one righteous voice their sympathy for the students, they also clearly realize that what happens in China today is a reflection of what will occur to Hong Kong in future. If they do not show their support and fight for their demands now, when will they have a better chance?

Secondly, since the monarchical system was established in China, the nation has never been put under democratic rule. Thus when the largest democratic movement broke out in China, Chinese people all over the world, driven by nationalism and a sense of mission, stand up together and show their support. They all hope that their compatriots in China can lead a better life at an early date. So the fight for democracy is not only a global trend, but also a commitment of Hong Kong people to the interests of the Chinese race. As Hong Kong and China have already become mutually dependent, Hong Kong will surely become one of the Chinese communities receiving the widest attention in the world because of its future democratic development.

From the discipline of the parading processions and the spontaneity with which people from various sectors make banners and placards as well as coin slogans, it can be seen that most people possess very high political wisdom. They can not only distinguish between good and evil, but also have a great affection for their nation. In the past, Hong Kong people seemed to be politically apathetic just because they could not find out the most convenient channel to express their feelings, or the political nature of those events was not important enough as to be able to drive the masses into taking action to express their views. Traditionally, Chinese people are inclined to be politically passive and reserved.

From now on certain people can no longer try to suppress the natural democratic development of the local political system on the pretext of "Hong Kong people are apathetic towards politics", "direct elections will lead to unrest" and so forth,

for local residents actually treasure very much their hard-earned prosperity and stability, democracy and freedom. In fact, as I have previously pointed out, Hong Kong should speed up the democratization of its political structure, not as a means to offer resistance to communism, but to keep in line with its own economic development. In capitalist countries, politics are always used to serve the economy, for only by so doing can society make steady progress. In China the situation is just reversed, and the Chinese Government has just learnt an unforgettable lesson in this respect.

It is on this basis that the vast majority of my colleagues in the social services sector and I will hold even more steadfastly to our democratic views in regard to the provisions on the political structure in the Basic Law (Draft) which have yet to be finalized. Our demands are clearly reflected by the three questionnaire opinion surveys which I conducted respectively in 1987 with regard to the Green Paper on Representative Government, in 1988 with regard to the draft Basic Law (For Solicitation of Opinions) and in 1989 with regard to the Basic Law (Draft). The conclusions of the three surveys are rather consistent too.

First of all, regarding the composition of the Legislative Council of the future Hong Kong Special Administrative Region (HKSAR), out of a total of 151 valid returns received in the current survey, 71% maintained that half of the members of the first Legislative Council should be returned by direct elections. This coincides with the unanimous view of the OMELCO Members.

However, views are still slightly divided over the timing of the introduction of a fully directly elected legislature. While the OMELCO Members have reached a consensus that a fully elected legislature should not be introduced until 2003, that is, the third Legislative Council, the findings of my survey indicated that 63% of the interviewees supported the idea of holding a referendum within the first term of the Legislative Council to decide whether all members of the legislature shall be selected by general election in the following term. Although we have now ruled out the option of holding a referendum to decide the matter, the majority of my colleagues in the social work sector and I are inclined to support the early introduction of a fully directly elected legislature, the sooner the better.

As for the selection of the Chief Executive, it is more difficult to reach a consensus. My survey revealed that 56% of the respondents considered it appropriate to introduce general election from the very beginning for the selection of the first Chief Executive, whereas 36% opined that general election should start with the second



Chief Executive. In other words, over 90% of the interviewees are of the view that the selection of the Chief Executive by general election should be introduced no later than 2002, that is, for the selection of the second Chief Executive. In the light of the above findings, I think the proposal broadly agreed by the OMELCO Members that the Chief Executive shall be elected by general election from 2003 can be reluctantly accepted.

While we are moving towards a consensus regarding the composition of the Legislative Council and the selection of the Chief Executive, we should not overlook the importance of the relationship between the future executive authorities and the legislature. If a proper link between these two bodies has not been established, no matter how many directly elected seats are made available in the legislature, there is still no way to realize the principle that the executive authorities should be accountable to the legislature. I think the adoption of a ministerial system similar to that established in western democratic countries would be a more prudent approach and would be compatible with our present consultation structure.

Finally, regarding social welfare, 85% of the interviewees considered it necessary to amend the first sentence of article 36 of the draft Basic Law to read: "Hong Kong residents shall have the right to social welfare and retirement security" so as to further safeguard the right to retirement benefits. Moreover, 82% of the respondents proposed to amend article 4 by adding the following sentence: "The Government of the HKSAR shall, within the scope of this Law, take measures to promote the general well-being of the residents of the HKSAR and ensure that they can maintain a basic standard of living."

Being the mini-constitution of the future HKSAR, the Basic Law should fully reflect the wishes of Hong Kong people. The active participation of the local residents in various political activities recently not only demonstrates their potential political wisdom, but also reveals their strong desire for democracy and freedom. The Chinese leaders and members of the Basic Law Drafting Committee should heed these facts and amend the Basic Law (Draft) in accordance with the general wishes of the Hong Kong people, so that this mini-constitution can truly realize the concept of "one country, two systems" and help maintain a society which will enjoy a high degree of democracy and freedom. May I reiterate that the Basic Law will need the trust and support of the general public before it can serve a positive purpose. Of course, if a complete change can be made to the present situation in China where the party dominates the government and the government dominates the law, it will be so

much the better.

Sir, with these remarks, I support the motion.

MR. MARTIN LEE: Sir, the movement for democracy in China has received very active support from Hong Kong; but the imposition of martial law and the news ban in Beijing have brought about great concern and worry to our people.

As we look towards 1997, it is perfectly plain that the best scenario is for China herself to have an open and democratic system of government so that human rights and press freedom can be protected. For in that event, the people of Hong Kong need not fear that their much cherished freedoms would be infringed, for example, by the imposition of martial law.

But if that cannot materialize, and the present indications are that it will take a long time before China will have democracy, then we must make sure that the Basic Law will be effective in separating the Hong Kong Special Administrative Region from Mainland China under the policy of "one country, two systems." And that is why we should devote our greatest attention to the drafting of the Basic Law.

Of course, there are cynics who say that no matter how good the Basic Law is, China may not follow it. As to that, we must wait and see. But if the Basic Law is not even a good constitutional document, then people will not even wait to see. I therefore submit that even if we take the cynical approach, we must still do our best to improve on the present draft Basic Law and hope that its terms will be honoured by China after 1997.

Sir, article 35 of the Constitution of the People's Republic of China (PRC) provides:

"Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

But we have seen how these constitutional rights were swept away when the leadership of the Chinese Communist Party declared the peaceful and orderly demonstrations to be "turmoil" and imposed martial law.

It is therefore our duty as Members of the Legislative Council and leaders of the community to ensure that the Basic Law will give to our people a system of government which will, as far as possible, prevent similar occurrences from happening after 1997.

It is significant to note what the paramount leader of China, Mr. DENG Xiaoping, had to say in a recent speech:

"The students are using the rights of democracy and freedom in the constitution to impose limitations on us."

But Members should not be surprised with such a statement, for it is in accordance with one of the four basic principles of the Constitution: " ", of the PRC, which upholds the leadership of the Chinese Communist Party. So how can it be right for the students to use democracy or freedom to impose limitations on the party?

But the people of Hong Kong are understandably worried that if the Communist Party leaders can do this to their very own students, in the heart of their own capital, what is there to stop them from doing it to us after 1997? And how can the recent massive demonstrations in the past two Sundays be tolerated, even though they were conducted in a perfectly orderly manner?

I therefore suggest that the Constitution of the PRC be amended by stating clearly that the four basic principles and in particular that of the leadership of the Chinese Communist Party will not apply to the Hong Kong Special Administrative Region (HKSAR). Moreover, it is abundantly clear that we need a new chapter in the Basic Law to deal with the imposition of martial law and the declaration of a state of emergency in the HKSAR. There may be three possibilities for emergencies to arise:

First, if the HKSAR is in a state of emergency because the PRC is at war with another country, then according to paragraphs 18 and 20 of article 67 of the Constitution of the PRC, the Standing Committee of the National People's Congress (NPC) may proclaim a state of war or decide to enforce martial law throughout the whole country. In such eventuality, the garrison stationed in the region may be ordered to defend the region and help to maintain law and order in it.

There will be some restrictions on the powers of the HKSAR Government, but this is acceptable because the HKSAR Government is unable to cope with such emergency

situations on its own.

And under article 18 of the draft Basic Law, the Central People's Government may, by decree, apply certain nationwide laws to the region. However, such nationwide laws must not be allowed to override the basic human rights expressly entrenched in the International Covenant on Civil and Political Rights, even in these emergencies, such as the right to life, and the right against torture.

Secondly, there may be a state of emergency in the region (due either to turmoil in the areas outside the region, spilling into it, or disturbances within the region itself). But the HKSAR Government is able to contain it. In this situation, article 14 of the draft Basic Law stipulates that the military forces to be stationed in the HKSAR shall play no part in the maintenance of public order of the region, unless its assistance is requested by the HKSAR Government.

Thirdly, the state of emergency may deteriorate to such an extent that it is beyond the control of the HKSAR Government.

Paragraph 20 of article 67 of the Constitution of the PRC provides that the Standing Committee of the NPC may decide to enforce martial law in particular provinces, autonomous regions or municipalities directly under the Central Government; and paragraph 16 of article 89 empowers the State Council to decide on the enforcement of martial law in parts of provinces, autonomous regions or municipalities directly under the Central Government. But neither article makes any reference to "special administrative regions". Accordingly, neither the Standing Committee of the NPC, nor the State Council, is empowered under the Constitution of the PRC, to impose martial law in the HKSAR, or send in the troops.

And since all internal disturbances of the region shall first be dealt with by the HKSAR Government, the HKSAR Government would be in the best position to determine whether a particular disturbance has gone beyond its control.

The Basic Law should therefore stipulate that when the Chief Executive of the region determines that the turmoil in the region has become uncontrollable, he may, under article 14 of the Basic Law, invite the garrison to assist in restoring law and order to the region.

The invitation must be endorsed by the Legislative Council within three days. And if the Legislative Council were to refuse to endorse the invitation, or decided

that the HKSAR could handle the situation by itself, then it should be given power to order the troops to return to their barracks.

We should insist that even when the HKSAR is in a state of emergency, the right to administer the region should still be vested in the HKSAR Government. And the garrison's duty is to restore law and order to the region when requested to do so, and not to administer the region, even under martial law. This is essential to the region's high degree of autonomy.

In dealing with emergency situations, several basic principles must be followed:

- (a) The Chief Executive should be solely responsible for declaring a state of emergency, as he can respond faster. But as the Legislative Council will not be given any opportunity to debate it beforehand, the period of emergency must be short. I would suggest three days.
- (b) The decision of whether to prolong the period of emergency should be vested in the Legislative Council, so as to provide the necessary check on the emergency powers of the Chief Executive.
- (c) Even in times of emergency, some basic human rights must not be infringed, such as the right to life and the right against torture.
- (d) Even in times of emergency, the administration of the HKSAR should still be left with the HKSAR Government. And the garrison must confine its role to restoring law and order, and not to interfere in the local affairs of the region as provided in article 14 of the draft Basic Law.

Sir, I now turn to the political structure of the HKSAR. A lot of re-thinking has taken place both inside and outside this Chamber because of recent events in China and in Hong Kong.

The people of Hong Kong are now more convinced than ever before that the future Chief Executive and legislature must not be under the influence or control of the central authorities or the Chinese Communist Party.

And many Members of OMELCO are willing to support a more democratic political structure, as mentioned by the Honourable Mr. Allen LEE. Indeed, Members of OMELCO

realize that our people are ready for democracy and that the myth that Hong Kong people are apathetic towards politics and are only interested in making money is finally exploded.

However, many of my honourable colleagues still hold the view that the first Chief Executive should not be elected by universal adult suffrage.

When this issue was debated at our in-house meetings behind closed doors, I listened with care, but I did not hear a single convincing argument in support of that view.

Of course, the issue of sovereignty was put forth as an argument against having the first Chief Executive elected on universal adult suffrage. But with the "Lo Wu Solution" to the Legislative Council, I cannot see how this argument can stand. For just as Members of this Council who retire from office on 30 June 1997 are eligible to serve on the first legislature of the HKSAR, so long as they support the Basic Law, are willing to loyally serve the HKSAR, and meet the requirements set forth in the Basic Law, so the first Chief Executive can be elected before the 1 July 1997, and be appointed on that date, provided he fulfils the same three requirements.

The second argument put forth was that such a major election during the transition period would disturb the smooth transfer of sovereignty. But if the Chief Executive were elected in the latter part of 1996 or the early part of 1997, on the understanding that he would assume office on 1 July 1997, it would engender more confidence in the people, and lead to a more smooth handover of government. Besides, which is a more difficult election to run: to elect one person as Chief Executive, or to elect 400 or 800 members of the electoral college called the Election Committee?

The third argument was that China might not agree that the first Chief Executive be elected by universal adult suffrage. This argument appears to have found favour with many of my honourable colleagues. But I regret to say that it is a thoroughly bad argument.

Now it is accepted that in order to sell their proposal to the people of Hong Kong, that is before the year 2003, a Chief Executive would only be elected by an electoral college, the Basic Law must ensure that the members of the electoral college would be democratically elected, so that Beijing would have no control or influence over his election.

On that premise, let us look at China's position. If China does not want to control the election of the Chief Executive, she will not object either to having the first Chief Executive elected by universal adult suffrage, or by an electoral college as per OMELCO's majority model. But the people of Hong Kong will clearly prefer the former because they need not wait for the enactment of electoral laws to assure them that members of the electoral college will really be democratically elected.

On the other hand, if China does want to control the election of the first Chief Executive, then Beijing will reject both models. On that ground alone, Members should support having the first Chief Executive elected by universal adult suffrage.

Sir, I appeal to honourable members that we must think only for the people of Hong Kong who have recently demonstrated quite conclusively that they care for their future and that they are ready for democracy. And we must stop trying to second guess China for the simple reason that we do not know whether Beijing has a bottom-line, and if so, what it is, and whether this bottom-line, if any, can be changed. Indeed, we owe it to our people to ensure that the model finally contained in the Basic Law will be acceptable to them.

Sir, thousands of university students have held a hunger strike -- a long hunger strike -- in Beijing, wanting democracy. And if we also want democracy in Hong Kong, can we really face them when we do not adopt a truly democratic model in the Basic Law?

Sir, it is quite clear from recent events, that nobody in Hong Kong wants to have a Chief Executive who takes orders no matter how unreasonable, from the leadership of the Chinese Communist Party. And nobody wants to see their constitutional rights of freedom of speech, of the press, of assembly, of association, of procession, and of demonstration, to be taken away at the whim of the party leaders. I therefore believe that the people of Hong Kong will not accept the OMELCO majority model, that the Chief Executive will not be directly elected until the year 2003, because the first Chief Executive is the most important of all Chief Executives, for he may entrench laws and systems during his term of office thus rendering all subsequent governments undemocratic.

Sir, although OMELCO is unable to reach complete consensus at this point of time, I do not think it matters greatly because I hope the consultation period on the draft

Basic Law will be prolonged in the light of recent events. Further, the Basic Law Consultative Committee should immediately resume its duty in canvassing the views of the public because the whole of Hong Kong will be looking at the draft Basic Law in a completely new light.

Sir, apart from the political structure of the HKSAR, I have always stressed the importance of the relationship between the executive authorities and the legislature. And I am glad that OMELCO has reached consensus on greater accountability on the part of the executive authorities and the necessity of giving more power to the legislature so as to enable it to provide the necessary checks and balances on the executive authorities.

As to the relationship between the central authorities and the HKSAR, I fully endorse the position reached by OMELCO. I wish only to add here that counter-revolutionary offences in China must not be introduced to the HKSAR whether as a nationwide law under article 18, or by any other means whatsoever.

Sir, may I end by quoting from my own speech delivered to this Council on 5 November 1986, on direct election:

"... many people are more convinced now, more than ever before, that direct election is our only hope. And before long, it will grow into the most powerful chorus people have ever heard; and people all over the world will hear it reverberating across our valleys, over our hills and beyond our seas. For this is the true voice of our people. For this is the voice of Hong Kong."

MR. SZETO (in Cantonese): Sir, the patriotic movement for democracy started by the students of Beijing has shaken heaven and earth and moved gods and spirits to tears. As blood is thicker than water, this movement has wakened all Chinese throughout the world. They have united into a large and mighty army of support. The Hong Kong citizens of whom more than 98% are Chinese marched in the forefront of this army.

In the past month or so, hundreds of thousands and even a million Hong Kong people have time and again joined peaceful actions in a highly emotional yet soberly restrained manner. Their nationalistic passion, democratic aspiration and admirable sense of rationality that were long debased have been given abundant expression. Who can still say that they are the politically apathetic silent



majority or a population who blindly seek for the benefit of "free lunch"?

Although there are people who refuse to accept the idea of holding a referendum on the draft Basic Law, recently, the people of Hong Kong have, as a matter of fact, taken part vigorously in a number of referenda. The ballot results are crystal clear. An overwhelmingly absolute majority demands that the pace of democratic development should be quickened and that the Basic Law must provide for a democratic system of government to safeguard the prosperity, stability, freedom, human rights and the rule of law after the year 1997 and to turn the empty promise of "one country, two systems" into a workable formula more likely to come to pass.

The harsh facts of reality have taught us a lesson that we cannot rely on sincerity alone, that absolute power will, in its inevitable course of development, breed absolute corruption, that prosperity, stability, freedom, human rights and the rule of law can be truly protected only by means of a democratic system of government, and that the fulfilment of the "one country, two systems" policy is not an imperial gift but something which all the people in Hong Kong must make concerted efforts to fight for.

The people of Hong Kong who have been awakened and united by the patriotic movement of the Beijing students for democracy must continue to stay awake, strengthen their bond of solidarity and seize every opportunity to press their demand for a democratic Basic Law. I am willing to work to the best of my ability for this cause and even lay down my life for this mission.

This is a time of darkness. This is a time of light. This is a time when darkness and light are engaged in a decisive battle. Let all of us in Hong Kong mobilize in unity to shape our own destiny and strive for democracy, freedom, human rights, the rule of law, prosperity, stability and a better tomorrow.

Sir, with these remarks, I support the motion.

MR. TAM ( in Cantonese): Sir, after the publication in of the first draft of the Basic Law for solicitation of opinions last year, the Legislative Council held a motion debate to discuss the issue. Regrettably I did not take part in the debate due to my absence from Hong Kong. Now this Council holds a motion debate on the draft Basic Law again. However on this occasion, the debate coincides with the occurrence

of the massive patriotic pro-democracy movement mounted by Beijing students. A majority of the Hong Kong people actively give support to the Beijing student movement and show concern for the development in China. What is the meaning of holding discussions on the Basic Law at this historic moment? What sort of outlook will be held by Hong Kong people?

Some people are of the opinion that the hardline measures taken by the Chinese Government against students seriously dampen Hong Kong people's confidence in the Chinese Government and Hong Kong's future; they worry that the Basic law will be no more than a meaningless piece of paper after 1997. They refer to the increasing number of people emigrating from Hong Kong and the volatile situation of the stock market as evidences of the confidence crisis in Hong Kong. On the other hand, some people consider that the Basic Law is of vital importance because it is a legal document that gives effect to the principle of "one country, two system with high degree of autonomy" and stipulates the future relationship between China and Hong Kong. Accordingly they think that it is the time to strive for the formulation of the Basic Law in such a manner that will allow for the implementation of high degree of autonomy to the fullest extent in the future Hong Kong Special Administrative Region.

The foregoing two schools of thinking represent the existing attitudes of many Hong Kong people towards the Basic Law. Undeniably these thinkings are generally justified. If we consider the matter in a longer term and on the basis of the direction towards which we are heading, I am still optimistic of Hong Kong's future development. So long as the Basic Law can adequately fulfil the common demands of the Hong Kong people, I believe the Basic Law can still win the recognition and support of the Hong Kong community.

Hereunder I wish to touch on several aspects of the existing draft Basic Law that are worthy of note in the hope that my comments will provide some food for thought in our discussion.

#### Political structure

So far as the consultation of the draft Basic Law is concerned, the discussion on our future political structure has all along been a matter of major concern, in particular the selection of the Chief Executive and the formation of the legislature being the foci of attention. Although different sectors of the community basically

agree to democratic advances in the development of our political structure, there are diverse views on the pace and the speed of constitutional development. At the time of intensive exchange of views in the dialogue between the parties concerned to strive for a consensus on constitutional development at this final and crucial stage in the drafting of the Basic Law, great changes have taken place in our society.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: Mr. TAM, I am sorry I must interrupt you because it is now six o'clock and under Standing Order 8(2), the Council should now adjourn.

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

HIS EXCELLENCY THE PRESIDENT: Mr. TAM, please continue.

TAM YIU CHUNG (in Cantonese): In the past many people took the view that the civic awareness and desire for participation of the Hong Kong people were not strong enough, and thus argued that it was undesirable to introduce a democratic political structure too rapidly. It was also said that only by way of educating the public step by step that we can enhance their political awareness and concern and that we can have the prerequisite for setting up a democratic political structure. Therefore, the need to develop our political structure on the principle of orderly progression was advocated and it was thought that a democratic political structure with universal suffrage for the election of its Chief Executive and with all members of its legislative being directly elected can only come about gradually. However, tens of thousands of Hong Kong people have shown their concern in the recent political situation in China. Their enthusiasm for democracy and freedom shown in the spontaneous massive movement has prompted us to take note of a population that is capable of active participation. It is no longer appropriate for us to say that the Hong Kong people are politically apathetic, devoid of the desire for participation or indifferent to social, political and national issues. In fact, in the wake of the recent events in Hong Kong, many people now think that we should step up the pace for democratization and openness in Hong Kong's future political structure. The

people of Hong Kong and local bodies now tend to move towards a more united front to reach for a consensus. If the people of Hong Kong can be united on the basis of a common view, I believe the Basic Law Drafting Committee (BLDC) will entertain our proposal and make amendments accordingly.

#### A stage of emergency

In addition to the important issue of the development of a democratic political structure, the people of Hong Kong also cherish dearly the personal freedom we now enjoy and hope that the freedom of the residents of the future HKSAR can be adequately safeguarded under the Basic Law. The student movement in China and the imposition of martial law in Beijing have drawn people's attention to the provisions of the Basic Law concerning the declaration of a state of emergency. I think that the relevant articles of the Basic Law should be reviewed and that we should carefully consider and examine any problems that may arise from a state of emergency.

The only article of the Basic Law that refers to a state of emergency is article 18 which, inter alia, states: "In case the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which is beyond the control of the Region, decides that the Region is in a state of emergency, the State Council may decree the application of the relevant national laws in the Region." Although this article mainly provides for the condition of applying national laws in Hong Kong, Hong Kong citizen's freedom will certainly be restrained once a state of emergency is declared. I think the following points are worthy of note:

(1) The above-mentioned article does not provide for the conditions of declaring a state of emergency. Conditions such as the outbreak of war, internal turmoil and serious natural disasters may be regarded as the circumstantial factors for the declaration of a state of emergency. I feel that relevant conditions ought to be spelt out in the Basic Law.

(2) It appears that the Standing Committee of the National People's Congress is the sole authority to make decision on the declaration of a state of emergency. What role will the government of the HKSAR play and what position will it be placed when such circumstances arise? In the event that the Standing Committee of the National People's Congress decides that the country is in a state of war or martial law be imposed, invariably a state of emergency would also be declared in Hong Kong because

Hong Kong is part of China. However, how can it be decided that a turmoil is beyond the control of the HKSAR? Should the decision be made by NPC or HKSAR?

(3) Even if Hong Kong has a part to play in deciding and declaring the region to be in a state of emergency, there are no provisions governing the procedures of the declaration of a state of emergency and the monitoring measures. Normally it is the executive authority which exercises the power of declaring a state of emergency, hence it is essential that the exercise of such power by the executive authority should be examined and monitored by the legislature. Relevant provisions on such procedures should be clearly spelt out in the Basic Law.

(4) To safeguard the fundamental rights and freedom of Hong Kong residents, is it necessary to stipulate any rights and freedom which cannot be deprived of even when the region is declared to be in a state of emergency? The International Covenant on Civil and Political Rights that shall remain in force after 1997 has stipulated that certain freedom and rights should not be denied. As such, is it necessary to put down in black and white unequivocally the relevant provisions governing these safeguards.

(5) In what form should the provisions of the state of emergency be formulated in the Basic Law? Should these be specifically stated in a separate chapter or article, or would it suffice to lay down the provisions just in simple terms? How can we strike a balance and formulate provisions that are adequately clear and yet without going into great length unnecessarily? In any case, provisions on the state of emergency in the Basic Law are definitely essential.

Of course, the general public in Hong Kong cherish very much the freedom they now enjoy and wish that Hong Kong would never be declared to be in a state of emergency by reason of turmoil. But as a common saying goes, "Always be prepared for the worst"; thus it is of absolute necessity that the existing provisions in the draft Basic Law regarding the state of emergency be reviewed to introduce reasonable amendments. I shall raise questions on this issue in the coming BLDC meeting for discussion.

Provision on labour matters

The Hong Kong Government has all along advocated a policy of non-intervention in our economy and it is stressed that market force should come into play in solving our economic and social problems. Although the labour sector persistently strives

for revamping our labour laws in a bid to provide our labour force with better fundamental protection, it is regretted that the proposals which are supported by the labour sector have not been seriously and thoroughly implemented or introduced by the Administration. Judging from the Government's objection to the setting up of a Central Provident Fund and the absence of a comprehensive labour policy, we realize that the Government has not provided the workers with any protection so far, nor has due recognition and respect been given to the representativeness of the trade unions.

Being a representative of the labour sector in the Legislative Council, I have received numerous representations from a great number of trade unions and labour organizations seeking to improve workers' welfare and the status of trade unions as soon as possible. In these representations there are widespread requests for the inclusion in the Basic Law of the provisions governing the protection of pension benefits for workers and the right of collective bargaining. For the betterment of the livelihood and status of the workers, I therefore support the proposal for the right of collective bargaining to be added to article 27, and amendments to be added to article 36 to the effect that there will be legal protection for pension benefits.

Being the blueprint for the future of our society, the Basic Law is meant for promoting the general welfare of the residents of HKSAR. Hence there is a need for working out a social system that will reasonably balance the interests of all sectors of the community, provide the masses of workers in Hong Kong with the right of holding dialogue on equal terms and give them reasonable welfare and security.

The drafting and consultation of the Basic Law

In view of our prevailing changes, many provisions in the Basic Law will have to be discussed again in order that the needs for social development can be better fulfilled. Thus, there will be considerable work for the BLDC and Basic Law Consultative Committee members. There is only nine months to go before the coming plenary meeting of NPC which is to be held next year. If we fail to present this draft in time for scrutiny and endorsement by NPC, the examination of the draft will probably be postponed until another NPC meeting in the next session. It is hoped that the consultation and drafting work will be resumed as soon as possible to allow more time for discussion, scrutiny and a fresh review of the draft Basic Law, so that the Basic Law can be better formulated to the satisfaction of the people of the Hong Kong.

Sir, with these remarks, I support the motion.

DR. TSE (in Cantonese): Sir, over the past ten days or so, the people of Hong Kong experienced an unprecedented shock that worked on their emotion, mind and sentiments. The feelings of the Hong Kong people were stirred as they watched the development of the student movement in Beijing and the changes in the Chinese ruling hierarchy. This not only shows the close blood relationship among the Chinese but also highlights the intimate relation between the future of Hong Kong and the political outlook in China.

During the recent mass rallies and marches of unprecedented scale, the people of Hong Kong showed their noble sentiments, discipline, unity and generosity which we should all be proud of. Furthermore, it has proved that Hong Kong people have the potential for a high degree of autonomy. Judging from the angle of civic education, the impacts brought about by this student movement, using the jargons of martial art stories, have activated a stream of vitality in civic awareness of our community which was kept in a dormant state for many years. This stream of vitality in civic awareness can now circulate smoothly in the mind of people from different sectors. This is a golden opportunity which cannot be planned for. If we make good use of this opportunity to strengthen the awareness and knowledge of the public on democratic rights and obligations, to show more concern about the society and to take proper action in building a community with a stronger sense of belonging and solidarity in the development of a representative government, I believe in the next few years we will be able to establish gradually a political structure with wide representation to take up the responsibilities and meet the challenges when Hong Kong becomes a special administrative region with a high degree of autonomy.

It is on this belief that most of the Kowloon City District Board members and I support the consensus recently reached by the OMELCO Members on the formation of the legislature.

Sir, the purpose of Kowloon City District Board members in supporting the OMELCO proposal is not to strive for a faster pace in the introduction of confrontation politics in the formation of the legislature. As a matter of fact, no one can accurately forecast which option will be most suitable to cope with the situation in Hong Kong by 1997. None the less, with the political awakening of the public,

I believe that given a reasonable timetable for progress, the people of Hong Kong will have the ability and determination to speed up the adaptation process to meet the demand of the times and to elect legislators who can represent the overall interest of Hong Kong through direct election at an earlier date. For the same reason, we also agree to another mainstream opinion of the OMELCO in-house meeting that if we have a sound and open nomination system, the Chief Executive can also be elected by universal suffrage not later than 2003 so as to tie in with the development of the legislature.

However, a district board member pointed out during the process of consultation that if 50% of the Members of the Legislative Council in 1997 is to be directly elected, according to the so-called "Lo Wu" model, the same percentage of elected elements would also be required in the 1995 Legislative Council election. According to the existing Letters Patent and Royal Instructions, if 50% or more Legislative Councillors are returned by general election, it may bring about fundamental changes to the constitutional status and legislative power of the Legislative Council. The district board member therefore opined that proper arrangement should be devised in this respect. One possible solution would be to introduce some changes to the composition of the Legislative Council for 1995-97. While half of the elected seats will be returned by universal suffrage and the remaining half by functional constituencies, several seats should be reserved for the ex-officio members. In this way, the number of members returned by general election will still be less than 50% before 1997.

On the composition of the Executive Council and its relationship with the Legislative Council, most of the Kowloon City District Board members and I support the model proposed by the OMELCO in-house meeting. Our views, however, are closer to those of the Honourable Allen LEE in detail. We opine that major policy departments should be assisted by consultative committees. Chairmen of these committees who will be appointed by the Chief Executive should also be members of the Legislative and Executive Councils. In future, if secretaries of the departments do not accept the majority views of these consultative committees in formulating policies or making decisions of great importance, they have to submit substantial explanations to the Executive Council for consideration. Such arrangement will ensure that government officials will have to fulfil their duty in policy making. At the same time, chairmen of the consultative committees will, as Legislative Councillors, be indirectly accountable to the public for monitoring the decisions of the government.



Furthermore, we consider that consultative committees should also be set up to monitor the formulation of policies concerning financial, legal and security issues. Chairmen of these committees should be members of the Executive Council. They should not be Legislative Councillors in order to ensure that their professional advice is provided without having to take into account their political elections.

Sir, the aforesaid are my opinions as well as those of the majority of the Kowloon City District Board members on the development of political structure in the draft Basic Law.

With these remarks, I support the motion.

MR. EDWARD HO: In the 1930s, the famous Long March changed the history of China. Some 50 years later, on Sunday, 21 May 1989 (and again on 28 May 1989), Hong Kong had its own long march. Almost a million people, young and old, from all walks of life, marched through the streets of Hong Kong in a peaceful demonstration, with a unity of purpose, supporting the student movement in China in the call for democracy and freedom. Never in the history of Hong Kong was there such a free and spontaneous demonstration of solidarity of such a magnitude for a common cause.

The people of Hong Kong have finally and unequivocally demonstrated that they can unite together when there are issues that are of deep concern to them.

Sir, in my speech on the Basic Law in this Chamber last July, I pleaded for consensus in our community on the Basic Law especially in relation to the shaping of our future government.

For a while, I did not believe it was possible, but events in the past few weeks have given me the belief that, given the will, consensus is not beyond our reach. This belief has been further reinforced by the consensus that Members of the Executive and Legislative Councils were able to reach on some key issues on the political structure in the Basic Law. These have been enumerated by our Senior Legislative Council Member Mr. Allen LEE. I shall not repeat them, but I shall rather cover briefly several other aspects of the draft Basic Law.

Despite our concern over the current unsettling situation in China which no doubt

will influence our thinking on the Basic Law, the Basic Law is not about the present. Instead, it will prescribe the political, economic and social systems to be practised in the Hong Kong Special Administrative Region for 50 years after 1997. The Basic Law should ensure that the provisions contained in the Sino-British Joint Declaration be maintained, and that our present lifestyles and systems would remain essentially unchanged, and that Hong Kong's prosperity and stability shall continue up to the year 2047, and hopefully beyond. Sir, the point that I am now going to make has already been covered by Mr. Andrew WONG but as I feel very strongly about it, I shall nevertheless make it again.

The Preamble of the Basic Law has stated two very important principles:

1. that the establishment of the HKSAR will be in accordance with the provisions of article 31 of the Constitution of the People's Republic of China, and
2. that the basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration.

To me, these two cardinal principles are absolutely crucial as they provide the framework for the whole of the Basic Law. They provide the precepts to future interpretations of the Basic Law.

Therefore, the Preamble should be an integral part of the Basic Law, having the same legal effect as the body of the Basic Law.

In regard to the first principle: although having the status of a special administrative region, Hong Kong will be an integral part of the People's Republic of China, and hence its Basic Law would be governed by the Constitution of China. Under the principle of "one country, two systems", I question whether the provision of article 31 of the Constitution alone, as it stands, provides sufficient authority and clarity that there will not be any conflict between the Basic Law and the Constitution. In parallel with the efforts to draft the Basic Law, I urge that the Chinese Government should examine this very important aspect of the Constitution in detail. The slightest uncertainty can lead to chaos in the years to come.

In reading the draft Basic Law, it is difficult to construct in one's mind a model of government that would, on the one hand, have the necessary checks and balances between the executive and the legislative authorities of the government to prevent the abuse of power, and on the other hand, that the executive authorities would have

the necessary support from the legislature for the proper and effective functioning of a stable government.

I therefore endorse the proposals on the relationship between the executive and the legislative authorities which have been agreed amongst Members of the Executive and Legislative Councils. Again, these proposals have been ably explained by Mr. Allen LEE in his speech.

It cannot be denied that the most important and controversial elements of the Basic Law are the method of the selection of the Chief Executive and the formation of the Legislative Council.

In our attempt to reach consensus, the following factors have emerged:

1. that the people of Hong Kong want full democracy, that is, universal franchise, as the ultimate goal,
2. that the move towards that goal should be evolutionary and gradual to avoid disruption to our political stability; in this, Sir, I have the concurrence of my honourable colleague Prof. C.K. POON,
3. that whilst the pace of development of democracy should relate to the political maturity of the people, a clear timetable for such development will provide a much-needed certainty; this certainty will in turn forge a faster pace in the development of political maturity,
4. that in the pursuit of democracy as an abstract ideal, the unique nature of Hong Kong as a special administrative region in a "one country, two systems" situation and its complex layers of political, economic and social infrastructure that have given rise to its success as a vibrant economy, an international financial and tourist centre, and a vital industrial base should be recognized; Sir, my honourable colleague Mr. NGAI Shiu-kit has asked me to express his concurrence in this,
5. that whatever the model, it has to be accepted by all sectors of our community who combine to contribute to the prosperity and stability of Hong Kong, and
6. that Hong Kong people shall govern Hong Kong under the principle of "one country, two systems".

In any society, there will be inequalities of wealth and unequal opportunities. But the essence of capitalism is a well-functioning competitive market which engenders overall economic growth, and it is only through economic growth that opportunities can be provided to the common man. In fact, liberal democracy requires a market economy. There should be no hindrance and conflicts of interest for all sectors of our community to arrive at a consensus.

And the timing for such a consensus is now!

With these remarks, Sir, I support the motion.

Suspension of sitting

HIS EXCELLENCY THE PRESIDENT: That concludes today's session. In accordance with Standing Orders I suspend the Council until 2.30 pm tomorrow afternoon.

Suspended accordingly at twenty-four minutes past Six o'clock.

Note: The short titles of the Bills/motions listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.