

1 HONG KONG LEGISLATIVE COUNCIL -- 5 June 1991

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 5 June 1991

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

SIR DAVID CLIVE WILSON, G.C.M.G.

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

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

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

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

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

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

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, 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, O.B.E., 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, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

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

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

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, O.B.E., 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 KINGSLEY SIT HO-YIN

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

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

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

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE CHRISTINE CHOW KWAN-TAI, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE IAN ROBERT STRACHAN, J.P.
SECRETARY FOR SECURITY

THE HONOURABLE MRS ELIZABETH MARGARET BOSHER, J.P.
SECRETARY FOR ECONOMIC SERVICES

ABSENT

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

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

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

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

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

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.

Building (Administration) (Amendment) (No. 2) 1991.....	Regulations 209/91
Building (Oil Storage Installations) 1991.....	(Amendment) Regulations 210/91
Road Traffic (Public Service Vehicles) Regulations 1991.....	(Amendment) (No. 2) 211/91
Military Installations Closed Areas 1991.....	(Amendment) Order 212/91
Public Order Curfew (Variation) (No. 2) Order 1991..... 213/91
Sha Tin-Meisha Ferry Terminal Boundaries 1991.....	(Repeal) Order 214/91
Sha Tin-Meisha Ferry Terminal Restricted Area (Repeal) Notice 1991.....	Boundaries 215/91
Electoral Provisions (Amendment) Ordinance	1991 (Commencement)

Notice 1991..... 216/91

Hotel and Guesthouse Accommodation Ordinance 1991
(Commencement) Notice 1991..... 217/91

Public Health and Municipal Services (Public Pleasure Grounds)
(Amendment of Fourth
Schedule) (No. 3) Order 1991
Corrigendum.....
218/91

Sessional Papers 1990-91

No. 73 -- Report of the Police Complaints Committee 1990

No. 74 -- Report of changes to the approved estimates of expenditure approved during the third quarter of 1990-91 Public Finance Ordinance : Section 8

No. 75 -- Secretary for Home Affairs Incorporated Statement of Accounts for the year ended 31 March 90

Miscellaneous

The first review of progress on the 1989 White Paper on Pollution

Addresses by Members

Report of changes to the approved estimates of expenditure approved during the third quarter of 1990-91

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 1990-91.

Supplementary provision of \$875.1 million was approved. It 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. This included \$448.4 million for the five University and Polytechnic Grants Committee-funded institutions to award salary increases or allowances to their academic and non-academic staff, \$109.7 million for the Hong Kong University of Science and Technology to purchase general teaching equipment, and \$86.1 million for the Hospital Authority to establish its Headquarters and to meet the costs for up-front systems and consultancies.

Approved non-recurrent commitments were increased by \$73.7 million during the period, and new non-recurrent commitments of \$224.4 million were also approved.

In the same period, a net increase of 703 posts was approved.

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

The first review of progress on the 1989 White Paper on Pollution

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, today is World Environment Day. Two years ago today the White Paper on Pollution was published. We said at that time that a review of progress would be published after two years, and I commend to you the First Review which is tabled today. Members are already acquainted with the review, so I will be brief.

As with the review itself, most of the very tight deadlines we imposed upon ourselves, we met. As a result, over the past two years we have produced some encouraging results:

- we have substantially reduced air pollution;
- we have made good progress on implementing a new waste disposal strategy;
- we have reduced noise disturbance generally; and
- we have achieved our targets so far in water pollution and sewerage.

Sir, there can be few other White Paper that have been subject to such rigorous implementation and monitoring, and I believe Hong Kong can be proud of what we have achieved so far.

We have created a fair amount of momentum in these first two years. We now have to maintain this momentum. To meet our future objectives we will have to adapt to changing circumstances, and tailor our suit to fit the cloth. But in the same way that Hong Kong has met the challenges of the first two years, I believe that we will continue to find ways of achieving our objectives, and that, with Members' support, the record of the next two years will show that we have continued to move forward in the battle to save our environment with renewed determination and vigour.

I do not think that the people of Hong Kong will let us do otherwise. Indeed, I sincerely hope that they will not.

Report of the Police Complaints Committee 1990

DR TSE: Sir, on behalf of the Police Complaints Committee, may I table the Committee's Annual Report for 1990.

The Committee is an independent body appointed by you, Sir, to monitor and review the investigation of complaints by the public against the police. This is the fifth Report compiled by the Committee since its establishment in 1986.

During the year under review, the Committee has reviewed and endorsed a total of 3 620 complaint cases, embracing 5 159 allegations. With the support of an independent Secretariat, the Committee has been able to vet in detail each and every complaint case. Arising from these complaints, various forms of legal, disciplinary and internal actions have been taken and advice given against 537 police officers. In addition, the Committee has proposed a number of reviews of, and changes to, police practices, procedures and instructions. It is hoped that the Commissioner of Police has found the Committee's proposals helpful in identifying and rectifying areas which lead or might lead to complaints.

I reported last year in this Council that the declining trend in the number of complaints since April 1987 has somewhat stabilized. In 1990, a total of 3 437 complaints were received by the Complaints Against the Police Office of the Royal

Hong Kong Police Force, an increase of 216 cases or 6.7% over the number registered in 1989. Nevertheless, the 1990 figure still represents an 11.2 % decrease over the figure for 1987.

The 3 437 complaints received in 1990 should be viewed in the context of at least 2.69 million potential police-public confrontation situations in the year. These included 1.18 million persons stopped and checked through the Police Operational Nominal Index Computer System (PONICS), and 1.51 million traffic summonses and tickets issued by the police. The difficult nature of the front-line duties of police work to protect the community should also be borne in mind.

Sir, of particular concern to the Committee was that the increase in the number of allegations of police assault continued into 1990. During the year, a total of 1 659 reports were made, representing a 26.4 % and 49.5 % increase over 1989 and 1988 respectively. It is, however, worth noting that a significant number of the allegations of assault were later withdrawn or not pursued by the complainants. In 1990, 78.2% of these allegations were classified as withdrawn or not pursuable and endorsed as such by the Committee.

The Committee has studied the trend relating to allegations of assault over the past few years with the assistance of the Complaints Against the Police Office. There appears to be some correlation between the increase in assault allegations and the increase in reported crime with consequential crime arrests. The Complaints Against the Police Office has brought the matter to the attention of Formation Commanders of Police Districts to seek their assistance to reverse the escalating trend. The Committee will monitor the situation very closely.

Finally, the Committee would like to pledge its continued determination to safeguard the integrity of investigation into complaints against the police, and to exert its utmost to be worthy of the trust that you, Sir, have placed in the Committee.

With your permission, Sir, I would like to take this opportunity to thank the government departments concerned, in particular the Commissioner of Police and all officers in his Complaints and Internal Investigations Branch for their 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.

Oral answers to questions

Medical examination of public vehicle drivers

1. MR CHUNG asked (in Cantonese): It has been reported that in the verdict returned by the jury of the coroner's court recently in relation to a fatal traffic accident caused by the sudden illness of a bus driver whilst on duty, it has been recommended that the Government should introduce legislative control to require drivers of public vehicles to undergo annual medical examination when they reach a prescribed age. Will Government inform this Council whether legislative measures will be introduced in response to the recommendation of the coroner's court so as to minimize the occurrence of similar incidents?

SECRETARY FOR TRANSPORT: Sir, last December, in response to a question on a similar topic, we considered whether there was a need to require public transport companies to produce medical certificates for employees above a certain age, certifying their fitness to drive. Having regard to the road accident records of drivers employed by public transport companies, their age profile, and the management controls already exercised by these companies in terms of retirement age and medical checks, we concluded at that time that it was not necessary to recommend the introduction of legal medical checks.

Nevertheless, as part of our regular review of road safety measures, a review of practices elsewhere is now being conducted, with particular regard to requirements for drivers of public service vehicles and heavy goods vehicles to undergo medical checks. The recent recommendations of the coroner's court will be considered in the context of this review.

MR CHUNG: Sir, will the Secretary for Transport inform this Council when the review of practices elsewhere will be completed and the results thereof made known to the public?

SECRETARY FOR TRANSPORT: Sir, the Transport Department expects to finish the review by the last quarter of this year. We will then seek the advice of the Road Safety Council and thereafter the Transport Advisory Committee, and depending on the advice, we will make the results known to the public.

Television game-contest programmes

2. MR DAVID CHEUNG asked (in Cantonese): Will the Administration inform this Council of its policy on TV game-contest programmes which has recently shown an increasing tendency to advocate chance-taking and sheer luck, and advise whether there is any plan by Government to control and limit the broadcast of such programmes in view of the undersirable effect that it may cause to our youngsters?

SECRETARY FOR HOME AFFAIRS: Sir, if the implications of Mr CHEUNG's question are that the television games shows referred to by him amount to some form of minor gambling, I would like to assure him that under the Gambling Ordinance such shows are incapable of this interpretation.

However, the television stations are required to adhere to the Code of Practice for Programme Standards issued by the Broadcasting Authority. This Code states, and I quote:

"Any contest included in a programme must offer an opportunity for all contestants to win on the basis of skill or knowledge and not purely by chance."

Monitoring of the output of the two television stations confirms that the television stations are following the legislation and Code of Practice.

The Government, Sir, is of course concerned about anything that might have an undesirable effect on our young people, but it is our belief that under the present regulatory environment television games shows and contests would not represent a threat to the development of our youngsters.

MR DAVID CHEUNG (in Cantonese): Sir, the Secretary has not answered the second part of my question. Would the Administration inform this Council whether, of the total air time of our TV stations, a suitable limit on the quantity of this type of programmes will be imposed?

SECRETARY FOR HOME AFFAIRS: Sir, the total quantum of this type of show accounts for

about 1% to 1.5% of total air time on both stations. So I do not think the quantity is either excessive or uncontrolled.

Non-Commonwealth doctors

3. MR BARROW asked: Will the Government inform this Council what progress has been made on the proposal that non-Commonwealth doctors should be allowed to practise in Hong Kong to serve certain special groups, such as Vietnamese in detention centres and students of the Japanese School?

SECRETARY FOR HEALTH AND WELFARE: Sir, I am pleased to inform that the Medical Council of Hong Kong has agreed to my suggestion to amend the Medical Registration Ordinance by adding to it a provision for limited registration. This would allow doctors, not otherwise registrable in Hong Kong, to practise amongst special groups under conditions to be specified by the Medical Council.

It is my intention, Sir, to introduce a Bill to this effect early in the next legislative session and I look forward to this Council's support.

MR BARROW: Sir, this is welcome news and I am grateful to the Secretary and the Medical Council for their perseverance. I am sure that this decision will support the efforts to promote and strengthen Hong Kong as an international city. Could the Secretary clarify the type of conditions which she envisages will be specified by the Medical Council? Will she be able to ensure that the conditions are sufficiently flexible?

SECRETARY FOR HEALTH AND WELFARE: Thank you, Sir. As limited registration is different from exemption or full registration under the law, I envisage first of all that the law, when amended, will be sufficiently flexible so as not to fetter the discretion of the Medical Council; secondly, that the conditions to be specified by the Medical Council will serve the particular needs of a special group and will be so circumscribed for that purpose; and thirdly, that in drawing up the criteria for limited registration there is need for transparency so as to conform to the principles of the General Agreement on Trade and Services and this has already been brought to the attention of the Medical Council.

MR MCGREGOR: Sir, given the present very unsatisfactory situation with the medical services in the camps, and the fact that missionary doctors are able and willing to come here at relatively short notice, is it not possible for Government to introduce amendment to legislation now with the intention of having it passed into law before the end of this Session?

SECRETARY FOR HEALTH AND WELFARE: We have, over the last three years, explored various options, and the amendment to the Medical Registration Ordinance is the most appropriate vehicle to effect an amendment.

DR LEONG: Sir, can the Secretary confirm that the suggested amendment mentioned in the reply is not the result of political pressure, for example, from the UNHCR, and that the standard of medical services in Hong Kong will not be thus affected?

SECRETARY FOR HEALTH AND WELFARE: I can so confirm, Sir. I am not under any pressure other than my own in terms of providing a service to the community of Hong Kong.

As regards the second part of Dr LEONG's question on standards, I would say that the maintenance of professional standards is the responsibility of the Medical Council. The intention is that the Medical Council will grant limited registration only to unregistrable doctors whose qualifications, training, experience and special skills are considered suitable for the group being served. Standards will not be compromised and the question of lowering standards does not arise.

MR MCGREGOR: Sir, with respect, I do not think the Secretary has answered my question. I was asking about the timing for this legislation. If this matter has been examined in detail before, there should not be great difficulty in putting forward amendment to the legislation during this Session. Would the Secretary not agree with me on that?

SECRETARY FOR HEALTH AND WELFARE: No, Sir, I do not agree with Mr MCGREGOR.

Written answers to questions

Return of stolen cars from China

4. MR DAVID CHEUNG asked: Knowing that the five stolen cars had been returned from China without any strings attached, will Government inform this Council whether the same would apply in future?

SECRETARY FOR SECURITY: Sir, the answer is "Yes". The Government will continue to co-operate with the Chinese authorities for the unconditional return of the cars stolen from Hong Kong and subsequently identified as such in China.

Student guidance service

5. MRS LAM asked: In view of the several suicide cases committed by school children under mental stress this year, will Government inform this Council whether consideration will be given to increasing the allocation for the student guidance service so that a student guidance officer can be employed in each school to assist and look after those students in need of help to prevent the recurrence of similar tragic incidents?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Government is presently considering recommendations made by the Education Commission in its Report No. 4 (ECR4) to upgrade guidance services in schools, some of which include improvements to the manning ratio for Student Guidance Officers (SGO) in primary schools. The present provision is one SGO to 3 000 pupils in the urban area and one SGO to 2 000 pupils in rural areas. This allows one SGO to serve an average of four school sessions.

ECR4 recommends that the present mode of provision, that is, Education Department-based SGOs serving up to four schools each, be changed to a "whole school approach", whereby all teachers in a school actively participate in assisting students resolve their developmental problems. Most SGO posts in Education Department should be transferred gradually to schools as additional posts to enable school heads to choose one of their teachers as a Student Guidance Teachers (SGT).

One SGT should be shared by two or more schools under the same sponsoring body. The manning ratio of 1:2 500 should be adopted as an initial step in 1992, and a review be carried out in 1994 to consider whether the improved manning ratio of 1:1 350 should be adopted, the ultimate aim being to have one SGT/SGO for each standard-sized primary school, that is, 24-classroom or 30-classroom primary school.

The Administration is at present assessing feedback from the ECR4 public consultation exercise and will shortly be going to the Executive Council for advice as to whether the Education Commission's recommendations should be accepted.

In the meantime, the Education Department is developing preventative measures to minimize the possibility of the incidence of suicide attempts by school children. It proposes to organize parent education programmes on a school basis to help parents communicate better with their children and to alert them to the symptoms of children under mental stress. The programmes will also encourage parents to seek professional help where appropriate.

Aircraft deviating from flight path

6. MRS LAM asked: Will Government inform this Council:

(a) whether there were any incidents of aircraft deviating from their flight paths upon their approach to or departure from the Kai Tak Airport in the past year, and the reasons for such incidents, if any;

(b) whether the present manpower and facilities of the Kai Tak Airport are adequate in terms of quality and quantity to ensure the safe movement of aircraft in their take-off and landing; and

(c) what contingency measures are available in case of accidents?

SECRETARY FOR ECONOMIC SERVICES: Sir, in the past year, there has been one occasion where an aircraft deviated from the normal landing or departure flight paths. This occurred on 15 May 1991 when an aircraft approaching Kai Tak from the west was found to be flying south of the normal flight path before final approach to land on the runway. The air traffic controller monitoring the flight immediately instructed the aircraft to abort the approach; a second approach was made and successfully executed.

This incident was due to the pilot not aligning the aircraft properly with the runway. However, as he was in clear visual contact with the surface and was closely monitored by the air traffic controller, there was no degradation of flight safety.

Both manpower and facilities at Kai Tak Airport are adequate in terms of quality and quantity to ensure the safe movement of aircraft. Loss of manpower in the air traffic controller grade due to emigration, retirement and normal wastage has been made up by training local officers and direct appointment of experienced controllers from overseas. All these officers meet the stringent standards set by the International Civil Aviation Organization (ICAO). In terms of facilities, the Hong Kong International Airport is well equipped with visual and electronic aids and follows the recommendations of ICAO in providing navigational guidance to aircraft approaching to and departing from Kai Tak.

There are well laid down emergency procedures to be followed by the Civil Aviation Department, Fire Services Department, the police and other relevant agencies in the event of an accident on or in the vicinity of the airport. Specialized equipment has been acquired for search and rescue, salvage of aircraft and so on. All contingency plans are kept fully up-to-date and exercises are conducted periodically in order to maintain a high state of readiness to react to any situation.

Vietnamese boat people arriving undetected

7. MR POON CHI-FAI asked: On 15 May, more than a hundred Vietnamese boat people sailed smoothly into the harbour waterfront in Kennedy Town, Western District in a wooden motor vessel, as if they had entered unpatrolled waters and were not intercepted until their arrival was discovered by some nearby residents who reported the case to the police. Will Government inform this Council:

(a) the reasons for such glaring loophole in our patrol operations to the intrusion of a wooden motor vessel into the waters of the territory without any interception by the Marine Police; and

(b) what remedial measures are available to prevent the recurrence of similar incidents?

SECRETARY FOR SECURITY: Sir, most Vietnamese boats are intercepted near the sea boundary in the vicinity of Tai Ah Chau and Fan Lau. Some are intercepted as near as Cheung Chau. The exact location depends on the route they take.

The boat referred to in the question was not intercepted until its arrival was sighted and reported by local residents because:

(a) it entered Hong Kong waters at night, during a thunderstorm and in poor visibility; and

(b) the arrival of four other boats earlier in the day with 164 Vietnamese migrants on board had drawn some of the police launches away from their usual patrol areas for considerable periods of time. The process of intercepting, questioning and escorting these other boats to the first landing at Green Island had taken time.

The incident does need to be seen in a wider perspective. The police, whether patrolling on land or sea, cannot be everywhere at once. There are more than 8 000 vessel movements in the waters of Hong Kong each day. The vast majority of these vessels are small craft. In the southern sector of the Marine Police Region, which covers the waters south of Hong Kong Island from Po Toi and north to Tsing Yi, there are five police vessels on patrol on any given day. The fact that the vast majority of Vietnamese boats are intercepted well before they reach built-up areas is a reflection of the efficiency of our Marine Police.

Salary tax

8. MR POON CHI-FAI asked: Given the personal allowance of \$41,000 for a single person, anyone earning a monthly salary of \$3,154 is required to pay salary tax when his year-end double pay is added to his total monthly salaries in a year. However, a breakdown of the monthly basic expenditure of a single person in general indicates that about \$1,500 goes to rent and water and electricity charges, and some \$1,900 goes to foodstuffs, travelling and miscellaneous expenses, thus making a total expenditure of \$3,400. As such, a single person living alone with an annual income of \$41,000 can hardly make both ends meet, not to mention the payment of his tax bill. Will Government inform this Council:

(a) whether people who cannot afford to pay their salary tax can apply for

exemption for such payment from the Inland Revenue Department; and

(b) how would the Administration deal with such applicants?

FINANCIAL SECRETARY: Sir, I shall not comment on Mr POON's assumptions regarding the monthly expenditure of a single person. In answer to his specific question, there is no provision in law for the Commissioner of Inland Revenue to exempt taxpayers from payment of tax that has been properly assessed. In exceptional circumstances and for genuine reasons, the Commissioner may exercise his discretion to allow a taxpayer, upon application, to pay the tax due by instalments.

A single person earning an annual income of \$41,000 in 1991-92 pays no salaries tax. Even if his or her income is slightly above \$41,000, the tax bill is still very small. For instance, on an annual income of \$50,000, the tax payable by a single person is \$180. When income increases to \$60,000, the tax payable is only \$380. At such low levels of tax, the tax bill is clearly not an undue burden.

Traffic congestion at Lion Rock Tunnel

9. MR CHOW asked: Will Government inform this Council whether the existing measures taken to tackle traffic congestion in the Lion Rock Tunnel are effective and adequate, and whether consideration will be given to improving the close-circuit system and the contingency measures of the Lion Rock Tunnel, so that incidents like that on May 19 will not recur?

SECRETARY FOR TRANSPORT: Sir, a number of measures are now being implemented to help ease traffic congestion at the Lion Rock Tunnel. These include:

(a) adopting traffic management schemes such as the tidal flow arrangement, the controlled merging of vehicles, and the lengthening of bus-only lanes in the approaches to the tunnel; and

(b) providing additional toll booths and exact toll lanes to improve traffic flow.

In addition, the widening of Tai Po Road and opening of the Shing Mun Tunnels

have reduced the volume of traffic using Lion Rock Tunnel from 104 000 vehicles per day in March 1990 to about 97 000 vehicles per day at present. A substantial improvement can be expected with the opening of the Tate's Cairn Tunnel on 1 July.

The closed circuit television system installed in 1978 is now reaching the end of its economic life and will be replaced early next year. The new system will provide for better surveillance and monitoring of traffic.

The incident on 19 May was rather unique. At 8.10 am on that day, a tipper lorry accidentally dropped its load of rubble in the northbound tube of the tunnel. The rubble scattered over a 900-metre stretch of the slow lane, which had to be closed for safety reasons. Although the incident was quickly spotted by tunnel staff using the closed circuit television system, it proved difficult for them to clear the rubble manually because of the sheer size of the obstruction, affecting some 3 000 square metres of road surface. Traffic congestion was further exacerbated by the breakdown of a heavy goods vehicle in the southbound tube at 8.35 am. Special equipment had to be deployed from the Highways Department to clear the rubble. The lane was finally reopened at about 12 noon.

Contingency plans have since been reviewed and fresh procedures introduced to speed up the response to any future occurrences of this sort.

Housing Subsidy Policy

10. MR TAM asked: Will Government inform this Council whether the Housing Subsidy Policy will soon be reviewed; whether the scope of the review will cover the continuation of the policy, the definition of "well-off tenants" and the method of calculating total household income; whether public consultation will be carried out on this issue and, if so, how the consultation exercise will be conducted?

SECRETARY FOR HOME AFFAIRS: Sir, on 11 July 1991 the Housing Authority will be asked to endorse a recommendation made by its Management and Operations Committee that an ad hoc committee should be appointed to review the Housing Subsidy Policy. The Housing Authority will also be asked to decide, among other things, on the scope of the review and how the public should be consulted.

Motions

ROAD TRAFFIC ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

"That the period for which there remains in force the limit on the number of motor vehicles which may be registered as taxis specified in the Taxis (Limitation on Number) Notice 1990 published as Legal Notice No. 432 of 1990, be extended to 7 July 1992."

He said: Sir, I move the motion standing in my name on the Order Paper. Under section 23 of the Road Traffic Ordinance, a period is specified during which the number of vehicles, which may be licensed as taxis, is limited. This motion proposes that the period be extended by 12 months up to 7 July 1992 in accordance with section 23(3) of the Ordinance.

The effect of this extension is that the total number of vehicles which may be registered and licensed as taxis will remain at 15 150 in the case of urban taxis, 2 838 in the case of New Territories taxis and 40 in the case of Lantau taxis, as ordered by the Governor in Council on 11 December 1990.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

ROAD TRAFFIC ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

"That the period for which there remains in force the limit on the number of vehicles which may be registered as public light buses specified in the Public Light Buses (Limitation on Number) Notice published as Legal Notice No. 146 of 1986 and extended to 20 June 1989 by Legal Notice No. 155 of 1987 and to 20 June 1991 by Legal Notice No. 152 of 1989, be further extended to 20 June 1993."

He said: Sir, I move the motion standing in my name on the Order Paper. Under section 23 of the Road Traffic Ordinance, a period is specified during which the number of

vehicles, which may be licensed as public light buses, is limited. This motion proposes that the period be extended for two years up to 20 June 1993 in accordance with section 23(3) of the Ordinance.

The effect of this extension is that the total number of vehicles which may be registered and licensed as public light buses will remain at 4 350, as ordered by the Governor in Council on 10 June 1986.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

OATHS AND DECLARATIONS (AMENDMENT) BILL 1991

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1991

OZONE LAYER PROTECTION (AMENDMENT) BILL 1991

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1991

ROAD TRAFFIC (AMENDMENT) (NO. 3) BILL 1991

POLICE CHILDREN'S EDUCATION TRUST (AMENDMENT) BILL 1991

POLICE EDUCATION AND WELFARE TRUST (AMENDMENT) BILL 1991

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

Second Reading of Bills

OATHS AND DECLARATIONS (AMENDMENT) BILL 1991

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Oaths and Declarations Ordinance."

He said: Sir, I move that the Oaths and Declarations (Amendment) Bill 1991 be read a Second time.

The object of this Bill is two-fold. First, section 19 of the principal Ordinance at present provides that the Oath of Allegiance or the Legislative Council Oath for Members of the Council shall be tendered by the Governor or other Member presiding. Clause 2 of the Bill seeks to amend this section so that the oaths will be tendered by the President or Deputy President of the Council or other Member presiding.

This amendment will bring the Ordinance into line with the Legislative Council (Powers and Privileges) Ordinance and the Standing Orders of the Council, both of which draw a distinction between the executive role of the Governor and his role as the President of the Council. The amendment will also help to establish the identity of the President of the Council in preparation for an elected President in 1995.

The second object of the Bill relates to the wish of Members to amend section 22(3A) of the principal Ordinance so as to allow the Standing Orders to require Members to take their oaths afresh after a general election of the Council. At present section 22(3A) provides that no Member of the Council who has already taken an oath shall be required to take it again. This object will be achieved by clause 3 of the Bill.

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

Question on the adjournment proposed, put and agreed to.

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Import and Export Ordinance."

He said: Sir, I move that the Import and Export (Amendment) (No. 2) Bill 1991 be read the Second time. This Bill seeks to introduce controls over weapons and related items in transit through Hong Kong.

The scope of the new controls will be limited to specified munitions and items

for use relating to nuclear, chemical or biological weapons. Other goods in transit will remain free from control.

This action is taken in response to a growing international consensus that controls are necessary to help check the proliferation of such weapons. I would stress, however, that this is intended to be a preventive measure. There is no indication that weapons of the type to be controlled are being shipped through Hong Kong. Therefore, the new powers will be used only sparingly, if at all.

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

Question on the adjournment proposed, put and agreed to.

OZONE LAYER PROTECTION (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Ozone Layer Protection Ordinance."

He said: Sir, I move that the Ozone Layer Protection (Amendment) Bill 1991 be read the Second time.

This Bill seeks to ensure the trading of such substances which fall under the control of the principal Ordinance will remain outside the scope of control while transitting Hong Kong. The provisions are consequential amendments to the Import the Export (Amendment) (No. 2) Bill 1991 which I introduced earlier.

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

Question on the adjournment proposed, put and agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Securities and Futures Commission Ordinance."

He said: Sir, I move that the Securities and Futures Commission (Amendment) Bill 1991

be read the Second time.

This Bill seeks to facilitate co-operation between the Securities and Futures Commission and other financial market regulators through a limited relaxation of the existing secrecy requirements, but without prejudicing the general confidentiality of information obtained by the Commission for regulatory purposes.

Under the Securities and Futures Commission Ordinance, the Commission can disclose information to other regulators only if disclosure is considered desirable or expedient in the interests of the investing public or in the public interest. The Commission cannot disclose information to other regulators merely for the purposes of co-operation or assistance. This has created difficulties for Hong Kong securities companies conducting business overseas because overseas regulators often wish to seek the assistance of the regulatory authorities in Hong Kong. The restriction has also on occasions hampered the effective regulation of financial institutions in Hong Kong.

This Bill proposes to include a new function for the Commission to co-operate with and assist other regulators, both domestic and overseas. It seeks to allow the Commission to disclose information to other regulators to enable them to perform their functions, provided they are subject to adequate secrecy provisions and provided the disclosure is not contrary to the interests of the investing public or to the public interest.

The opportunity is taken to include a few refinements to the existing secrecy requirements in an attempt to remove certain operational difficulties being experienced by the Commission.

In formulating these amendments, we have given due consideration to the need for adequate legal and administrative controls to guard against improper disclosure of information by the Commission or recipients of such information.

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

Question on the adjournment proposed, put and agreed to.

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

He said: I move the Second Reading of the Road Traffic (Amendment) (No. 3) Bill 1991.

This Bill provides for the designation of expressways, and for the use, control and management of these roads.

Expressways differ from other roads in that they are designed to carry large volumes of traffic at higher speeds. Tolo Highway, Island Eastern Corridor and Tuen Mun Highway are examples of roads which will be designated as expressways under this new legislation. At present, the Road Traffic Ordinance does not provide sufficient control over the use of such roads, particularly with regard to safety standards.

The major provisions of the Bill are contained in clause 6, which adds a new part to the Road Traffic Ordinance. It empowers the Commissioner for Transport to designate roads as expressways and determine their boundaries. It regulates the implementation of roadworks on expressways, provides for the removal of plant and equipment causing an obstruction, and restricts access to and exit from these roads. Furthermore, the Bill enables the Governor in Council to make regulations, for example concerning the types of vehicles permitted to use expressways and the new driving rules applicable. The emphasis in the new regulations will be on measures to improve the safety of expressways, for example with regard to lane discipline.

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

Question on the adjournment proposed, put and agreed to.

POLICE CHILDREN'S EDUCATION TRUST (AMENDMENT) BILL 1991

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Police Children's Education Trust Ordinance."

He said: Sir, I move that the Police Children's Education Trust (Amendment) Bill 1991 be read a Second time.

The Bill seeks to amend section 10(3) of the Police Children's Education Trust Ordinance to extend by three months the period within which the annual audited statement of accounts and report of the trustee on the administration of the fund under the Ordinance must be tabled in this Council. At present, the Commissioner of Police, who is the trustee, is allowed six months to prepare his submission each year. This has proved to be insufficient given the considerable assets and transactions involved. A total of 1 700 students and officers received assistance from this Trust and from the Police Education and Welfare Trust in 1989-90. The revised deadline will allow the Commissioner a more reasonable time to submit his reports so as to avoid late submissions.

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

Question on the adjournment proposed, put and agreed to.

POLICE EDUCATION AND WELFARE TRUST (AMENDMENT) BILL 1991

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Police Education and Welfare Trust Ordinance."

He said: Sir, I move that the Police Education and Welfare Trust (Amendment) Bill 1991 be read a Second time.

The Bill seeks to amend section 10(3) of the Police Education and Welfare Trust Ordinance to extend by three months the period within which the annual audited statement of accounts and report of the trustee on the administration of the fund under the Ordinance must be tabled in this Council. The rationale of the proposal is similar to that of the Police Children's Education Trust (Amendment) Bill 1991 which I moved earlier.

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

Question on the adjournment proposed, put and agreed to.

HONG KONG BILL OF RIGHTS BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MRS CHOW: Sir, almost one year after the debate on the White Bill of the Hong Kong Bill of Rights, we are once again debating on the subject here today, this time with the view to passing the Bill into law.

This long drawn out process has tested our patience at times, but looking back it is time well spent; for comparing the final version of the Bill to the original Blue Bill, with all its amendments to be moved at Committee stage, it has embraced almost all of the changes that our ad hoc group and the Legislative Council In-House meeting, by majority, have decided to introduce. For this, we must thank the very open and receptive attitude that the team in the Administration headed by Mr Michael SUEN has chosen to adopt throughout the course of our deliberation.

Naturally we are appreciative also of the valuable opinions put forward to us by groups and individuals. Their views, which they have all kindly agreed to present in public, have been well reported by our conscientious members of the media, and in turn has fulfilled a most useful function in educating the public as well as generating discussions on the Bill.

One of the major successes in persuasion on our part is to secure from the Administration the agreement to accept the amendment to allow the Bill to come into operation immediately after it has been passed and gazetted, instead of the original proposal to have a blanket freeze for one year and possibly a partial freeze for another year. As a result of this concession on the part of the Administration, Hong Kong will have our Bill of Rights in operation from 8 June. Six Ordinances, which are mainly laws related to security and law and order, will be frozen for one year, with the provision for this Council to grant another year should it be convinced that there is need for it.

As I have gone into detail the question of entrenchment in our debate on the draft Bill last year, I do not intend to go over old grounds. Suffice it to say that the indirect entrenchment of the Bill through an amendment to the Letters Patent, which has been effected in March this year, is accepted by our members as the best possible compromise that can be achieved, given that it is at this stage unrealistic to expect an amendment to the Basic Law to entrench the Bill directly. That is not to say that

we should not hope to work towards this at a later stage, but allow me to go into that a little later.

The third big issue tackled by the ad hoc group is whether inter-citizen rights should be included or taken out from the Bill. Referring once again to our previous conclusion on this as contained in our report on the White Bill, members recommended that inter-citizen rights should be deferred until the Bill has been given adequate time to operate between Government and individuals. This recommendation resulted from repeated representation from the business sector as well as legal practitioners.

This recommendation, however, was not taken on board by the Administration in the Blue Bill, and this gave rise to renewed representation. After months of discussion, the Administration finally came round to the view, though rather late in the day, that inter-citizen application of the Bill should be excluded at this stage, to the relief of those who fought long and hard for it. Amendments will be moved during Committee stage to cover this change. However members agreed that Government should work towards specific legislation to combat the intrusion of essential rights in the private sector.

Consideration has also been given to a number of less contentious issues.

There was discussion concerning clause 5 which deals with derogation to be allowed from the Bill. The question was whether the phrase "the life of the nation" should be substituted by "the life of Hong Kong". In the end members accepted that given there is safeguard built in against the derogation of certain internationally prescribed rights, and that measures to be taken are limited by "the extent strictly required by the exigencies of the situation", the proposed amendment to ensure that measures should be taken in accordance with law is an acceptable compromise.

Representation regarding Part III of the Bill, that is, Exception and Savings, went along two lines. Some continued to press for the exclusion of this part, which aims to include in the Bill the reservations attached to the Covenant. Members however accepted the reservations, as their inclusion reflects the ICCPR as applied to Hong Kong but does not preclude developments which go beyond the reservations in the future as and when circumstances allow them to be lifted. Others felt the word "reservations" was preferable because it did not imply an acceptance of a principle or something of a permanent nature. As this was more a cosmetic rather than a substantive point, members agreed to retain the original phrase of "Exceptions and

Savings".

There was some public criticism of the omission of the International Covenant on Economic, Social and Cultural Rights from the Bill. Our members' view on this has remained unchanged. We felt the present Bill should be enacted as soon as possible, and any attempt to include the ICESCR would for certain delay the present Bill. However we urge the Administration to explore ways and means, administrative and legislative, to protect rights enshrined in the ICESCR.

As for the review of Ordinances which are frozen, we are sensitive to concerns still nagging the public as to whether the Bill of Rights might adversely affect the effective enforcement of law and order. Another Ordinance which the legal fraternity has consistently raised question on is the Crown Proceedings Ordinance. It appears the urgent attention of the Administration is required, and the result of study and proposed action need to be made public as soon as possible to allay uncertainties and concern.

A separate and related issue is the formation of the Human Rights Commission. The ad hoc group itself has divided views on the issue. However the unanimous view was that disagreement on the function and terms of reference of this body should not delay the passage of this Bill.

In the meantime we would urge Government to fulfil its promise to study the matter with sincerity and expediency, so that a conclusion acceptable to most can be arrived at and made public soon.

Having recapitulate the work and conclusions of our ad hoc group, I would now like to say a few words on my own personal views on the Bill.

The Bill before us is by no means ideal or perfect. But then very few things in life are and I believe that given the political and constitutional constraint of the Basic Law, we have a document which is at least adequate enough to provide us with a reasonable start to establish a tradition of respect and a legal framework of protection for what is essential in the way of rights and freedoms for all of us. We do not have, as other jurisdictions do, the luxury of time. We have to wrangle with legislative, constitutional and political complexities and constraints. But as a community we have the will to preserve the rights of the individual. This Bill, if nothing else, enables us to be on our way.

When the concept of the Human Rights Commission was debated in this Council, much of its value was seen to be educational. Personally I maintain that such a body is desirable. However I do recognize the doubt that may be harboured by perhaps the more conservative-minded whether such a body would not be politically too sensitive or too confrontational. I am therefore inclined to accept the Administration's proposal to form an advisory body as a first step, perhaps along the lines of the Consumer Council, where the educational role can be expanded to include advice to citizens, and investigation into complaints, particularly with regard to disputes between private citizens and concerns. The latter could rely on the public exposure of malpractice or blatant disregard of not just this Bill but also the ICESCR, and can prove inspiring to the adoption of specific legislation and other government measures to counteract contravention.

Sir, after one and a half years of living with this Bill and its previous White Bill, I take the greatest pleasure in supporting the motion.

MISS TAM: Sir, once again, I support the enactment of the Hong Kong Bill of Rights. I welcome the one-year freeze on the six existing legislations which may contain provisions inconsistent with the Bill of Rights, and I would urge that any civic or public education measures on human rights must be presented with proper emphasis on responsibilities towards the community and under the law.

Although not enshrined in any specific legislation, basic human rights have long been observed in Hong Kong. They are now even recognized by the incorporation of these rights in the Basic Law following the provisions of the Joint Declaration. The Bill before Council today does no more than transform the contents of the International Covenant on Civil and Political Rights, as it is applied to Hong Kong, into a local piece of legislation to make such provisions enforceable in the courts of Hong Kong, and I believe we have not contravened the Basic Law. I believe this to be a proper arrangement in safeguarding the rights of those who live in this territory now and in the years to come.

In respect of the freeze period on the six legislations, however, I would urge that some degree of flexibility be allowed as to its implementation.

Law and order in Hong Kong is increasingly difficult to maintain. The choice

for us is simple: accept some constraints or tie up the hands of law enforcement officers and be caught at times unprepared for an onslaught of imported criminal activities or rising triad activities.

In some ways 1997 has created a sense of helplessness among many who have a growing desire -- which we do not endorse -- to grab as much money as possible and leave Hong Kong before that date. The ICAC needs the support of legislation to conduct its investigations effectively and to deal with corruption activities. To even suggest that their powers under the existing anti-corruption laws should be done away with at this point in time is a somewhat naive, if not irresponsible, approach to solving the problem before us.

Hong Kong has a peculiar problem in that it is being "invaded" by people from Vietnam and the mainland. To dilute the powers of the immigration authorities or to strip the police force of effective crime prevention powers would only leave our citizens open to losing their property and even put at risk their personal safety.

Let me make it clear that the responsibility of striking the right balance between protecting one individual's freedom and another individual's life and limb is on the shoulders of the legislators. The police do not make the law. They only execute police duties according to the law. If the law says that the police have no power to conduct stop and search or to check identification cards, I have no doubt they will comply. Under such circumstances, however, no one can blame them if guns and offensive weapons are carried around by illegal immigrants in our streets, looking for an innocent victim to rob.

I believe that a careful eye must be kept on the law and order situation in Hong Kong in this one-year freeze period. I know that there is some flexibility in this area and let us not be afraid to use it if it is for the common good.

Finally I come to rights with responsibility. The Hong Kong Bill of Rights gives protection to individual human rights through proceedings in the courts. It must not be misunderstood that the forum of enforcing such rights is on the street. I have read at times from the press that some have declared that they are prepared to hold public rallies and demonstrations without getting police permits -- because it is their "right" to do so. We perfectly accept the fact that sometimes the size of processions are rightly beyond the control of the police and they have not only tolerated it but managed it with great skill, and not bothering about compliance with

licensing laws. Sir, I fully support this attitude. I think it is a wise exercise of police discretion. But ultimately I think it is public education that would definitely strike the right balance on how to use our civic and human rights with a full sense of responsibility of ultimately keeping the law of our community binding and effective. No doubt, the advisory committee will do a great deal in this particular aspect.

Sir, I have not spoken on the substance of the Bill because it is by now very familiar to us all. I would however congratulate Mrs CHOW and the ad hoc group for a splendid mission accomplished, knowing the difficult problems they have to tackle, and I support the Bill in the form proposed by the ad hoc group to this Council.

MR SZETO (in Cantonese): Sir, not only human beings but also pigs, dogs, cats and all kinds of animals must eat to live. If one does not eat, one starves. If one starves for a long time, one dies. This is why having enough to eat in order to live is not a human right. It is merely an animal right or a right of beasts.

Human beings are different from animals. Sometimes, they will not eat even when there are things to eat. They would rather starve and die.

During the reign of Yin of the Shang Dynasty, two brothers Boyi and Shuqi remained loyal to their tribe and were ashamed to eat the grain of the Zhou Dynasty. They starved themselves to death on Mount Shou Yang.

Another well-known historical tale tells of "a rude invitation to a meal." A man about to die of starvation wanted to maintain his human dignity. He refused to eat the meal that was doled out to him in contempt. He would rather die of starvation.

Our ancient sages, by giving personal examples, drew us a clear line that distinguished man from animals.

The mouth of a man is different from that of an animal. It is used not only for eating but also for speaking and for expressing thoughts and sentiments, for man does have thoughts and sentiments. For this reason, the freedom of speech, and the freedom to express one's thoughts and sentiments are the rights to be enjoyed by man alone. Man not only should have the freedom of speech but also the freedom of silence. Further, he should have the right to be free from coercion and the right to refuse to speak against his conscience. This is the more important human right.

Of course, human rights also include a wealth of other things. The most basic principles of human rights are respect for the person, respect for human dignity and equality among all men. If the human person and human dignity are given due respect and there is equality among all men in community, men will have a sense of belonging in the community and will be motivated to play a positive role, and that community will prosper, flourish and people living in it will lead a happy life. This in turn will bring about a higher spiritual civilization and material civilization. This is why all developed countries are countries that, relatively speaking, have more respect for human rights and countries where human rights are being increasingly enhanced.

The Bill of Rights to be passed today, despite its various shortcomings, is a sign that the people of Hong Kong, unlike animals which merely want to eat and remain alive, want to live like human beings. This is a milestone in our history. We must move towards another milestone and go on to rectify the various deficiencies in the Bill of Rights Bill passed today.

With a Bill of Rights, we still have to exert great efforts to teach human rights to our six million citizens, propagate the idea of human rights and build up a strong moral force that fights for, protects, respects and treasures human rights. A strong moral force is the shield and the buckler of the law. This is why it is essential to establish a Human Rights Commission.

Today is 5 June, the morrow of a painful date. The passing of the Bill of Rights today is a coincidence. It is, however, a very meaningful and thought-provoking coincidence.

Sir, with these remarks, I support the motion for the Second Reading of the Bill. I will also support the Honourable Martin LEE's motion for amendment at the Committee stage.

MRS TAM (in Cantonese): Sir, after nearly two years of deliberations and thorough examination since the drafting of, and consultation on the Hong Kong Bill of Rights Bill, this Council has now completed its scrutiny of the Bill. As a member of the Legislative Council ad hoc group studying the Bill, I realize the magnitude of the work involved, as well as the considerable efforts and time spent by colleagues in

this Council. May I take this opportunity to congratulate the Honourable Mrs Selina CHOW LIANG Shuk-ye and the Honourable Ronald ARCULLI, convener and deputy convener of the ad hoc group respectively.

The passage and implementation of the Hong Kong Bill of Rights Bill signifies the beginning of a new era in the history of Hong Kong's human rights development. While supporting this Bill, I would also like to reiterate my appeal to the Administration to emphasize the importance of education on human rights. As some of my honourable colleagues will elaborate on other aspects of the Bill, I have no intention to harp on what they are going to say and shall therefore concentrate on the subject of human rights education in my speech today.

From the legislators' point of view, it appears that the task has been completed with the enactment of the Bill. But in fact we are just making a start in the realm of human rights education.

In last year's debate on the Bill, I specifically pointed out that education on human rights among young people should be promoted as soon as possible, so as to help our young people cultivate through personality development their respect for, and recognition of the value of human rights, as well as to make them aware of the importance of the rule of law and the need for maintaining social order.

In passing this Bill, I wish to draw particular attention to two points in regard to the promotion of human rights education.

First, the Administration should attach importance to popularizing education on the concept of human rights.

In previous discussions on the Human Rights Bill, I have noticed that groups and individuals expressing concern or taking part in the discussion were mostly from the legal profession. More importantly, the dissemination in no unclear fashion of the essence of the new legislation upon enactment of the rigid provisions contained therein should be a long-term objective in educating the public; otherwise, the legislation will be little more than window-dressing which cannot reflect the community's progress in developing the concept of human rights.

In the past, Government efforts made to popularize legal education have been far from adequate. I think when promoting the new legislation in the future, the

Government should make the public realize the rights and obligations involved, instead of just focussing its attention on the legislation's promulgation, enactment and implementation. This will ensure that the term "human rights" will not be misused or abused by members of the public.

Second, the Government and non-governmental voluntary agencies or organizations from the legal profession should work together to educate the general public and the younger generation on human rights through different channels and levels of work. Judicial and law enforcement departments within the Government should be issued with guidelines as soon as possible on the implementation of the Bill. Besides, educational bodies and organizations from the legal profession should promote the new concept of human rights at the grass roots level and in schools through civic education. In this way, not only will the public be made aware of the protection afforded to them by the law, the foundation of human rights education in Hong Kong will also be further strengthened.

With these remarks, Sir, I support the motion.

MR TAM (in Cantonese): Sir, I have clearly stated my basic position on the Hong Kong Bill of Rights Bill 1990 in the past debate and do not intend to repeat my arguments today. Instead, I wish to point out its flaws and omissions.

The Bill states in the very beginning that it is a Bill to "implement further the International Covenant on Civil and Political Rights as applied to Hong Kong; and for ancillary and connected matters". As we all know, the British Government has signed this international covenant in 1976 and extended its application to all territories under her jurisdiction, including Hong Kong. However, not until today did the Government decide to implement further the Covenant by means of local law. No wonder there is some doubt as to the motive of the Administration and its sincerity in protecting human rights. Even if we do not speculate on the motive of the Government, the Bill itself as drafted is far from being satisfactory because it only covers political rights and not economic or labour rights.

At present, the introduction of the Hong Kong Bill of Rights is based on two considerations: first, the international covenant on human rights signed by Britain in 1976 on behalf of Hong Kong; and second, Article 39 of the Basic Law which states that "The provisions of the International Covenant on Civil and Political

Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the Laws of the Hong Kong Special Administrative Region". According to the Government, these two considerations are mainly to ensure that the Bill of Rights will continue to be in force after 1997 and indirectly enjoy a status superior to other Ordinances. However, both the international covenant on human rights signed by Britain in 1976 on behalf of Hong Kong and Article 39 of the Basic Law include the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). In other words, no matter the Administration intends to implement further the international covenant on human rights signed by Britain in 1976 on behalf of Hong Kong or enforce in advance Article 39 of the Basic Law, the Bill of Rights should incorporate the two international covenants and not the ICCPR only. In this case why did the Administration exclude the ICESCR from the Bill of Rights? Is it that the existing protection for the economic, social and cultural rights of our citizens is very adequate and it is no longer necessary for the Government to implement such an international covenant? The answer is, of course, in the negative. If we look at the tenants of cage houses, the street-sleepers, the elderly who have no one to depend on and make a living by picking odds and ends from refuse heaps, and the existing labour legislation which fails to provide adequate protection, we will see that for the citizens at the grassroots level, economic, social and cultural rights are very important but inadequate.

However, the Administration has excluded these important basic rights from the Bill for an untenable reason. It claims that if the rights enshrined in the ICESCR are incorporated, the enactment of the Bill of Rights will be delayed. Here I would like to ask the Administration whether it will promise to introduce a new Ordinance for the implementation of the ICESCR after the passage of the Bill of Rights and allow it to have similar legal effect. I believe the answer is in the negative.

The Administration has not only excluded the ICESCR from the Bill of Rights but also, under the persuasion of the industrial and commercial sector, amended clause 7 which may to a certain extent safeguard the interests of local workers. Consequently, the covenant on human rights no longer has any binding effect on private companies and individuals.

According to clause 7 of the Hong Kong Bill of Rights Bill 1990, the following provisions may, to a certain extent, provide protection for workers:

(1) Article 22 "Equality before and equal protection of Law"

The effect of this article may deter private companies or individuals from performing unfair and discriminating acts, so that employers cannot treat their employees unfairly or discriminate against them.

(2) Article 4 "No slavery or servitude"

Some scholars have pointed out that the term servitude in this provision may be interpreted as employing and exploiting illegal immigrants as well as prohibiting employees from changing employers by means of employment contract.

(3) Article 16 "Freedom of opinion and expression"

By virtue of this article, employers cannot prohibit their employees from criticizing them in public.

There is only a likelihood that the above provisions will provide protection for the labour sector because they are merely a possible extension of political rights and their enactment is not really for the purpose of safeguarding the interests of workers. Nevertheless, the Administration will readily abandon the relevant provision even though the protection probably provided is limited in scope. It shows that the Government is not so sincere in protecting the interests of the citizens at the grassroots level. Actually, I believe that for most Hong Kong people, it will be more important and urgent to have protection for their rights during work. For example, they will not be dismissed by their employers in retaliation for their complaints against the employers and they will be treated with proper respect during work. However, the Administration does not care to provide such protection.

It is not surprising that the general public of Hong Kong have been indifferent and shown no interest throughout the drafting process of the Bill of Rights. I believe that the Bill will be popular among our citizens if the following provisions are incorporated: "Everyone has the right to work", "Everyone has the right to enjoy fair and good conditions of service", "Everyone has the right to enjoy social security, including social insurance benefits", "Everyone has the right to enjoy for the sake of his own and his family a proper standard of living, including proper provision of clothing, food, housing and a continuous improvement in living environment". Of

course, I am sure the Administration will not and has no intention to apply these provisions to Hong Kong. Otherwise, what excuse can the Administration have for not introducing a comprehensive social security scheme? How can it implement the importation of foreign labour policy which affects the working right of local workers?

Sir, the fact that the Bill of Rights only covers political rights and not economic, social and cultural rights has regrettably reflected the Administration's neglect of the interests of the citizens at the grassroots level in formulating its policies. And I cannot agree to the amendment made to clause 7 of the Bill by which the Bill of Rights no longer has binding effect on private companies and individuals. Therefore, I abstain from voting.

MR ANDREW WONG (in Cantonese): Sir, I rise to speak in support of the Second Reading of the Bill of Rights Bill. There is nothing new in my reasons for supporting the Bill of Rights. These reasons were canvassed at length during this Council's debate of 27 June last year on the Honourable Mrs Selina CHOW's motion "That this Council supports the enactment of a Bill of Rights" At that time, I refuted what I considered to be the six fallacious arguments of those opposed to the Bill of Rights.

However, since last year these six fallacious arguments of the opponents to the Bill have continued to hold sway over certain sectors of public opinion. It really looked as if they were hoping that a falsehood repeated a hundred or a thousand times would become the truth. The six fallacious arguments are briefly as follows:

The first of these views is to this effect: "Why do we still need a Bill of Rights this late?" or "Why can't we go about it at a slower pace now that it's going to be late anyway?" or "Why didn't we have it over and done with earlier but instead choose a particularly sensitive moment as now to get started?"

The second of these fallacious views is to this effect: "The human rights concept Chinese people hold is radically different from that of the west. The people of Hong Kong basically do not identify themselves with the western concept of human rights. Western criteria on human rights should not therefore be imported, or, if ever, they should at least be imported in a gradual manner."

The third of these fallacious views is to this effect: "The common law already affords adequate protection for human rights; why should a Bill of Rights be enacted?"

or "The United Kingdom does not have a Bill of Rights; why should Hong Kong have one?"

The fourth of these fallacious views is to this effect: "The Bill of Rights will be superior to the Basic Law" or "It will reduce the Basic Law to nonentity" or "It will conflict with the Basic Law" or "The Basic Law already provides adequate safeguards for human rights; why should a Bill of Rights be enacted?"

The fifth of these fallacious views is to this effect: "The measures to safeguard human rights as provided in the Bill of Rights Bill being neither entrenched nor accorded an over riding status, they will not be the best means to achieve the intended purpose; why should such lame measures be adopted?"

The sixth of these fallacious views is to this effect: "Many of the existing Ordinances are inconsistent with the Bill of rights and if the Bill is passed into law enormous social repercussions will ensue. Therefore it will not be advisable to enact a Bill of Rights, or, at least, not to have it enacted in haste".

Sir, I am again citing the arguments of the opponents, though going over them hurriedly. It would appear that I am speaking for the opponents. My real intention is to hit out at them again for these are arguments which I consider to be fallacious. However, because my time is limited, I will not speak at length. I shall invite all my honourable colleagues and citizens to read Pages 1402-1404 of the Chinese language edition of the Hansard of 1990. (Pages 1802-1806 of the English language edition.)

Sir, among my many respected colleagues who just spoke, two stand out most conspicuously. One is the Honourable Y.C. TAM. Although he said that he would not repeat his words of last time, he did in fact repeat them. Furthermore, his speech could be said to be "flying the red flag but yet opposing it". The second is the Honourable W. SZETO. I think that he is best able to illustrate the importance of human rights and to explain what human rights are and what animal rights are. I hereby salute the Honourable W. SZETO. I agree with every word that he said, except for the last two sentences where he said in advance that he would support the Honourable Martin LEE's arguments for amendments to the Bill at the Committee stage.

Sir, permit me to repeat the conclusion that I stated last year: "We should not merely wait for a better tomorrow. We should work hand in hand to create a better tomorrow."

Sir, I support the motion for the Second Reading of the Bill of Rights Bill.

MR ARCULLI: Sir, my honourable colleagues have covered most, if not all of the important issues concerning the Bill of Rights today and in our previous debate, and I shall therefore restrict really my comments to only one point which is the absence of inter-citizen rights in the Bill of Rights. In layman's terms this means that the Bill does not deal with infringement of a person's rights under the Bill by another person or body that is not the Government or a public authority. I would like to remind ourselves that the Legislative Council In-House, in its report on the White Bill in June 1990, had this to say, and I quote:

"The ICCPR recognizes the inter-citizen rights".

The ad hoc group felt that the right of action as between private individuals could be deferred for the time being. The ad hoc group went on to recommend that the rights of action as between private individuals should be handled by a Human Rights Commission. Subsequently, there was much discussion about inter-citizen rights and a Human Rights Commission. These discussions led to the present situation of taking inter-citizen rights out of the Bill completely, and not incorporating a Human Rights Commission. I made known my views on the absence of rights as between individuals in a previous debate and I shall not repeat my argument. I would have preferred the Bill to have included such rights but, sadly, I was unable to persuade my honourable colleagues of the folly of their conviction.

With the promise that specific legislation would be introduced to give private individuals protection of their rights, I find it would be wrong for me to vote against the Bill or even to abstain from voting today. As for the Human Rights Commission, the Administration has raised a point which I believe would merit our examining whether we should proceed with the Human Rights Commission at this point. It simply deals with the point that if one were to have a commission which exactly functions and which would include the powers of investigation and mediation, such a commission would require to have legislative backing. I do not believe that we should delay today the passage of this Bill for the establishment of such a commission.

A short cut is to set up an Advisory Committee first, and we can then look at the issue again when we have gathered a little experience.

Sir, that is perhaps proceeding with a little caution, but that, in my view, is the Hong Kong way.

Sir, with these comments, I support the Bill.

MR CHOW (in Cantonese): Sir, the United Nations making reference to the 40 freedom indicators in the publication "World Human Rights" measured the performance of 88 countries and territories in the field of human rights. Hong Kong only ranked 25th. I hope that after the enactment of the Bill of Rights Bill, human rights and freedom in Hong Kong will be given a boost.

However, the Bill to be enacted today contains a lot of inadequacies to which we must not turn a blind eye.

First, I do not agree to having one year's freeze period for the Bill. I also do not favour the exemption of six Ordinances, including the Immigration Ordinance, Societies Ordinance, Crimes Ordinance, Prevention of Bribery Ordinance, Independent Commission Against Corruption Ordinance and Police Force Ordinance, from being subject to challenge by the Bill of Rights Bill.

From the inception of the Bill to its Second Reading, one year has lapsed. The Law Reform Commission should have had adequate time to deal with the Ordinances that are in conflict with the Bill of Rights and should not shelve the issue. The freeze of one year is a dangerous precedent. If the six Ordinances have not been amended next year, does it mean that Legislative Council would have to extend the freeze period year in, year out?

I think that the one year period of freezing is superfluous. For Ordinances that are in conflict with the Bill of Rights, they should be referred to the Court or the Human Rights Commission. Only by so doing can the human rights of the citizens be protected.

The scope of protection under the the Bill includes only the rights under the International Covenant on Civil and Political Rights but not the rights under the International Covenant on Economic, Social and Cultural Rights. The Government's arguments are not convincing. The rights included in the International Covenant on Economic, Social and Cultural Rights are not included. Therefore the Bill of Rights

as we now have is fragmented and not comprehensive. Many important human rights, for example the rights to strike, the rights to education and work are ignored. Moreover, the protection of the rights against discrimination are inadequate. Some provisions, for example those that would safeguard the rights of females and AIDS carriers are lacking. This is a deficiency in the Bill.

Finally, it is another deficiency that the Bill denies the establishment of the Human Rights Commission for the promotion of education and mediation of personal disputes. The Government must reconsider whether this decision is appropriate. In fact, the Ontario Human Rights Commission functions well. Its achievement in dealing with discrimination cases can be affirmed. If we do not want the Human Rights Bill to become a "flower vase", we must set up a Human Rights Commission. The Commission will promote and publicize human rights and its duty will be heavy and meaningful. Moreover, the Commission will play an important role in dealing with inter-citizen rights disputes. Most of the members of the ad hoc group are in support of the establishment of the Human Rights Commission. I really do not understand why the Government should veto such a proposal?

Sir, the protection of human rights is the obligation of a responsible government. If the Bill of Rights attaches importance to packaging and not the real function of protecting human rights, this will only be the hypocrisy on the part of the Government.

Sir, I support this debate. I will also support the amendment motion that will be moved by Mr Martin LEE in the Committee stage. That is something Mr Andrew WONG would not like to hear.

MRS FONG: Sir, when the White Bill of Rights was discussed at the Legislative Council in June last year, I expressed my reservations because of several issues. Today I will briefly re-visit them.

The fundamental concern I have with respect to the Bill of Rights is that it should not weaken the ability of Hong Kong to maintain its law and order. In this connection, I am glad that the Administration has proposed a one-year freeze period in relation to several laws namely: the Prevention of Bribery Ordinance, the Independent Commission Against Corruption Ordinance, the Immigration Ordinance, the Police Force Ordinance, the Societies Ordinance and the Crimes Ordinance. The one-year freeze period is important today but it will be equally important when an extension of the

period has to be considered.

All of these Ordinances are extremely important to the maintenance of law and order and the welfare of our citizens, society and livelihood. I have to sound my warning to the Administration that we cannot let these laws become diluted and weakened in their statutory powers because we wish to accommodate the Bill of Rights.

Next, I do not know if our Administration has discussed with the Chinese Government on this Bill of Rights. My expectation is that since the Bill of Rights does not conflict with the Joint Declaration, or with Article 39 of the Basic Law, the Chinese Government should view it as the domestic legislation which seeks to implement the International Covenant on Civil and Political Rights. Clearly, if we are passing this Bill of Rights today, we would certainly want it to continue beyond 1997. I believe that this can be done and thus do not let the issue overshadow my assessment of the benefits that can be achieved.

I continue to believe that it is not absolutely necessary for the Bill of Rights to become part of the local legislation, because such "rights" are already provided for in Annex I to the Joint Declaration and Article 39 of the Basic Law. However, I have come to accept that having the rights written into the domestic legislation does help to clarify the matter and can provide more certainty for the Hong Kong community.

With respect to the role that has been played by the Administration in guiding this Bill of Rights, I must acknowledge and applaud the wisdom it has shown. I am in total agreement that the Bill should not include inter-citizen rights. If rights between private citizens in any specific areas need to be addressed, the related provisions should be included in a separate piece of legislation.

If I had doubts that my fundamental concern with the maintenance of law and order could in any way be prejudiced by the Bill of Rights, I could not support the Bill. My position is very clear. I would not compromise the law and order in this territory for a Bill of Rights. Because of that basic fundamental position, I cannot support the amendments proposed by Mr Martin LEE.

Sir, I value the freedoms our citizens already possess. We must protect our existing values and our way of life. A piece of legislation like the Bill of Rights will not by itself maintain these for us. They will be maintained only by co-

ordinated and comprehensive efforts to maintain law and order in our community, to maintain our economic strength in the world arena and, of equal importance, to maintain good relations with China.

Sir, with these remarks, I support the Bill.

MRS LAU (in Cantonese): Sir, a total of nine meetings were held by the Legislative Council working group on the Chinese text of the Hong Kong Bill of Rights Bill 1990.

Following the usual practice of scrutinizing the Chinese text of other pieces of legislation, the group carefully compared the English and Chinese texts of the Bill to ensure that there are no discrepancies in meaning between the two texts.

The Hong Kong Bill of Rights Bill is composed of three parts. Part II is to enact the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong as domestic law. In so doing, it is of course necessary to avoid references to party states as they appear in the original text and insert wording suitable for local legislation. Apart from this, the provisions of the covenant should be fully adopted. Parts I and III of the Bill contain the preliminary and the exceptions and savings respectively. The former elaborates on the commencement date, interpretation, effect on existing legislation, binding effect, and so on while the latter provides for the conditions under which the Bill of Rights does not apply in relation to the reservations and statements made on Hong Kong by the United Kingdom when it signed the ICCPR. Parts I and III are mainly for the purpose of incorporating the ICCPR as applied to Hong Kong into domestic law and most of the provisions therein do not affect the contents of the ICCPR.

After preliminary study, the group found that there were a lot of discrepancies in meaning between the English and Chinese text of the Bill, especially those provisions in Part II in relation to human rights. There are also terms and phrases which are unfamiliar to the people of Hong Kong and may be confused with the legal terms commonly used in Hong Kong. To cite an example, the word "shall" occurs in the English text a number of times. In common law, the word "shall" implies the meaning of "obligatory" or "mandatory". Its equivalent in the Chinese text, however, is "應". As we understand, the Chinese character "應" means "應該" (should) without the implication of "必定要" (an imperative sense). Meanwhile, it is also not correct that the word "may" in the English text is rendered as "得" in the Chinese text.

Besides, terms such as "審判官" (judge) "裁判所" (tribunal) "良心拒絕兵役" (conscientious objectors) and "囚犯改造" (reformation) are not easily acceptable to the people of Hong Kong.

The views were reflected to the Administration by the group. Subsequently, it was discovered that there were actually two versions in respect of the Chinese text of the ICCPR. One is the "Treaty Versions" deposited in the archives of the United Nations in 1976. The other is the "UN Publication" as published by the Centre for Human Rights of the United Nations in 1988. The latter is used as the reference and basis for the Chinese text of the Hong Kong Bill of Rights Bill. Why are there two versions? As far as the group knows, even the United Nations Human Rights Centre cannot give a positive explanation on the matter. The centre, however, has advised that both texts are considered as authentic in the sense that they are both originated from the United Nations Official Records Translation and Edition Section. The centre also believes that any discrepancies which may exist between the two versions should be in style but not in substance. The Administration is of the view that the Hong Kong Bill of Rights should adopt the relevant provisions in the "Treaty Version" because it is the authentic Chinese text appended to the covenant ratified by the party states in 1976 and it is the only authentic Chinese text with legal effect internationally.

The group has carefully studied the details of the "Treaty Version" and found that although some of the terms used in the "Treaty Version" were more accurate than those in the "UN Publication", there were still a number of discrepancies between the Treaty Version and the English text and certain terms were unfamiliar to the people of Hong Kong. For example, the problem in relation to the word "shall" and its Chinese equivalent "應" as mentioned above also exists in the "Treaty Version". Besides, the phrase "be represented before" in Article 9 of Part II which deals with human rights is rendered as "委託代理人到場申訴" in the Chinese text of the Bill. The Chinese rendition seems to denote that the proxy is required to make representations "in physical presence". The English text, however, obviously carries a broader meaning. As regards the term "arbitrary arrest" in Article 5 in relation to human rights, it is rendered as "無理予以逮捕" in the "Treaty Version" and "任意逮捕" in the "UN Publication". Apart from the fact that the term "任意" is more appropriate for "arbitrary", the Chinese term "無理" has been used as an equivalent for the word "unreasonable" in Article 25 of the "Treaty Version".

It may cause confusion when the same term is used to convey the meaning of "arbitrary". The English version of Article 12 which deals with human rights reads: "If subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby." The provision is rendered as "犯罪後之法律規定減科判罰者(1)從有利於行爲人之法律" in the "Treaty Version", while the "UN Publication" reads, "如果在犯罪之後依法規定了應處以較輕的刑罰犯罪者應予減刑". Obviously, the latter is more precise and comprehensible. There are also a number of wordings such as "具報" "國本" "處遇" "公設辯論人", and so on in the "Treaty Version" which are unfamiliar to the Hong Kong people.

The ideal approach is, of course, to make up the deficiencies in the "Treaty Version" by the merits of the "UN Publication". However, as the "Treaty Version" is the official and authentic text deposited in the archives of the United Nations, any amendment may be criticized as deviating from the Joint Declaration or contradicting the Basic Law. We must not forget that the aim of enacting the Bill of Rights is to implement the two international covenants as applied to Hong Kong through the domestic law. Thus the Bill of Right must strictly follow the texts of the international covenants. Considering the fact that the Sino-British Joint Declaration was signed in 1984 and the "UN Publication" had not been published until 1988, we from a legal point of view, can only adopt the "Treaty Version". In regard to the discrepancies in meaning of certain terms and phrases between the Chinese and English texts of the "Treaty Version", it will be left to the court to give suitable interpretation on their true meaning. Since both the English and Chinese texts are authentic versions, neither the law drafters nor the legislators are in a position to make arbitrary decisions on which text carries the most accurate meaning.

After careful deliberation and study, the group finally decided that all provisions in relation to human rights should fully adopt the "Treaty Version". Though after amendment all provisions will be originated from the "Treaty Version", both the Sino-British Joint Declaration and the Basic Law have referred to the ICCPR as "公民權利和政治權利國際公約". So this title must be mentioned in the Hong Kong Bill of Rights. In order to relate the substance of the "Treaty Version" yet with the "UN Publication" title, the group proposed that a new provision should be added to the Bill to make it clear that the title "公民權利和政治權利國際公約" mentioned in the Bill refers to "公民及政治權利國際盟約".

The group also proposed some amendments to Parts I and III of the Bill, so that the Chinese text can reflect the meaning of the English text more accurately. Clause

5 of the Bill, which deals with derogation of human rights, is worth mentioning. Although it is stated in the Bill that the clause is corresponding to Article 4 of the ICCPR, it is in fact redrafted by Hong Kong law drafters with the addition that measures should be taken in accordance with the law. The English text of this clause reads: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed..... measures may be taken derogating from the Bill of Rights.....".

If the "Treaty Version" were adopted for the Chinese text of this Article, the wordings would have been, "如經當局正式宣佈緊急狀態危及國本(1)得……採取措施減免履行依人權法案所負的義務". It is clearly stated in the English text that human rights may be derogated only when public emergency exists and its existence is officially proclaimed. However, the Chinese text of the "Treaty Version" can be interpreted as only the official proclamation and not the existence of public emergency is required. The group considers that as the clause has been redrafted by law drafters, it is not necessary to fully adopt the wordings of the "Treaty Version" in the Chinese text. It is more important to set out clearly the conditions under which human rights may be derogated.

Sir, from the legal point of view, the amended Chinese text of the Hong Kong Bill of Rights Ordinance is acceptable. Admittedly, there may be inconsistencies between the English and Chinese texts, but such inconsistencies also exist in the "Treaty Version". The problem cannot be answered by legislators and has to be dealt with by the court in future.

Sir, with these remarks, I support the Hong Kong Bill of Rights Bill.

MR MCGREGOR: Sir, like all other members of the Bill of Rights' ad hoc group, I have laboured long and hard over this essential legislation. I have tried to understand the legal ramifications and especially the very tricky relationship between the Bill of Rights and the Basic Law, also the changing circumstances and situation of Hong Kong. I believed for a long time that for a Bill of Rights to be effective here it would have to have paramountcy over all other legislation. It would also have to establish and protect all the human rights which are enshrined in the ICCPR. I could not envisage a Bill of Rights which would begin its legislative journey with serious imperfections and be open to subsequent change and abuse. I felt that this legislation should be the bedrock of the legal and moral protection

of the rights of all of the people of Hong Kong without fear, favour or discrimination, binding the Hong Kong Government and later the Special Administrative Region Government to an internationally recognized code of human rights and behaviour.

During the long and sometimes acrimonious discussions on this Bill, I came to the realization that perfection is not possible in Hong Kong's circumstances. We have existing legislation which seeks to protect the people against serious crimes and which has been effective in doing so but which is not wholly in accordance with the Bill of Rights. That legislation will have to be amended within a year and I can only pray that the amended legislation will not open up our society again to the scale of crime we had to endure before draconian measures were legally adopted.

I have argued strongly myself for the removal of inter-citizen rights from this Bill, basically because I could see considerable difficulties for the Hong Kong business sector and system in the application of Articles 14, 16 and 22. However, I am also seeking a government assurance that inter-citizen rights will be fully and separately protected by appropriate legislation.

It is also true that some of us who feel strongly about this matter have failed to get the Government to agree to set up a Human Rights Commission with statutory authority and the right to conduct investigations and to respond to complaints, along the lines of other similar institutions in advanced countries. I believe that a Human Rights Commission is certainly necessary as an integral element in human rights protection in Hong Kong. What is now proposed is a committee and this will have to do the job until a commission can be set up, hopefully within a relatively short time.

I am also not sure about the ability of this Bill to protect women fully. The complicated situation of the indigenous women of the New Territories has not been clarified by this Bill nor has there been very specific discussion on this contentious issue by members of the ad hoc group. I hold the personal view that all human beings are born equal before the law and in the sight of God. They must remain so and should not have equal rights removed by custom or regulation. I hope the courts will eventually ensure that this principle prevails.

The interpretation of public authorities could, I believe, cause legal problems and it would have been better in my view for there to have been a list of such bodies attached to the Bill as has been done with other legislation. I think this should be considered as early as possible.

The lack of any protection against changes in this legislation after 1997 is the most serious flaw, in my view, in the Bill of Rights. By its nature, the Bill should be paramount and should ensure that the rights it confers on each and every citizen of Hong Kong are sacrosanct so that the people of Hong Kong can feel secure against violation of their basic human rights.

This Bill has not such characteristic and is therefore, in my view, seriously flawed. Nevertheless, it represents the best we can do in the circumstances of Hong Kong and, given several years of active operation during which its provisions will be tested fairly and fully in the Hong Kong courts, we shall have a body of legal opinion, system, and decisions which should ensure that there will be no need for change after 1997.

I should like to congratulate the convener of the ad hoc group which considered this Bill, Mrs Selina CHOW, for her leadership, patience and skill in bringing the Bill into law. She has had a most difficult job to do and she has done it successfully and with good humour.

Sir, I support the Bill.

MR PETER WONG: Sir, I support the Bill as an essential safeguard of our inherent basic human rights in the years to come. As a shield to guard against excesses of governments, it is an appropriate legislative measure. But there are real dangers that it can be turned into a sword to achieve individual aims and oppress others in the name of public good and personal freedom. We must guard against such abuse of power granted by the Bill. We must ensure that law and order is maintained to upkeep Hong Kong's stability and well-being.

For those who contemplate using this Bill as a sword to fight for their own vested interests, I must warn that this sword can be doubled-edged. Use it wisely, the world will applaud. Use it selfishly, the world will unite to put us down.

With these words, I support the Bill and do not support Mr Martin LEE's yet-to-be introduced amendments.

MR MARTIN LEE: Sir, I apologize for not having been here when you were about to call upon me earlier, but I suppose, like the Bill of Rights, it is better late than never.

Sir, the passage of the Bill of Rights today will mark a landmark in the history of Hong Kong. In passing the Bill of Rights, we will join the community of modern nations that has accepted that all people have inherent rights that their government cannot take away or abridge except under a very limited range of circumstances. With the approach of 1997, we, the people of Hong Kong, are entering into an era when we will have to look after our own civil and political rights rather than relying on Great Britain.

We must remember that the Bill of Rights does not offer an ironclad guarantee of all our rights. Rather, the rights enshrined in the Bill only establish a baseline that over 80 countries around the world have agreed to be the absolute minimum that human beings are entitled to have. Whether this most basic level of human rights protection is upheld in Hong Kong will depend ultimately on how far we as a community are prepared to commit ourselves to making certain that the Bill will work in practice. In addition, the passage of the Bill vividly reminds us that the most basic of all rights and the right which underpins all other rights -- that is, the right to elect democratically our own government -- is still denied to the people of Hong Kong.

There is no question that the Hong Kong Government deserves credit for the introduction and passage of this Bill, for the Bill has the potential to be a very positive influence upon Hong Kong. In addition, I am pleased that the Administration and the ad hoc group have been able to make several improvements to the draft Bill presented to this Council last March, in particular, the amendment to clause 6 on remedies.

At the same time, however, the Bill as it stands has several flaws that need to be corrected. Even more important, I am deeply disappointed by the lack of leadership on this issue provided by the Government and by the Government's unchanging hostility to protection of fundamental human rights in practice. Since the introduction of this Bill to the Legislative Council almost a year ago, the Government has been virtually silent on the significance of this Bill. Though the passage of the Bill today marks a landmark in the legislative history of Hong Kong, many citizens still are not even aware of it.

In addition, the Government has demonstrated little concern as to how the rights

in the Bill will actually be protected in practice. I am afraid, Sir, that the present attitude of the Government is to treat the Bill of Rights and human rights in general as an unwanted albatross that has been forced around its neck, something that should be ignored whenever possible.

Two years ago, when the Government first announced its intention to enact a Bill of Rights, I had hoped that it would fundamentally alter its attitude towards its human rights obligations under the International Covenant on Civil and Political Rights. Yet, I regret that nothing has changed. For 15 years, the ICCPR has applied to Hong Kong; yet the Government has taken virtually no action whatsoever in these 15 long years to bring its laws and practices in line with this international human rights baseline.

For years, the ICCPR was not publicized, and until very recently, it was not even available in our public libraries. The Government made no efforts whatsoever on public education about human rights. In its reports to the United Nations Human Rights Committee, the Government steadfastly maintained that all laws in Hong Kong were fully consistent with the ICCPR; yet now when the ICCPR is to be implemented through the Bill of Rights, today the Government calls for a freeze period to revise laws that it admits at least by implication to be in violation of the ICCPR.

What is most distressing is that this cavalier attitude has grown worse in the two years since the Government announced its intention to enact the present Bill. During this time, we saw the shameful letter of the political adviser to the New China News Agency in October 1989, in which he stated the Government was willing to compromise the rule of law in deference to good relations with China. And, last year, we saw the selective prosecution of the five leaders of the United Democrats of Hong Kong -- although, unfortunately, I was not included -- under the ludicrous charge of having used a loudhailer without the prior written consent of the Commissioner of Police -- a prosecution so offensive that it was thrown out of court in January of this year by the Chief Justice on appeal. When, Sir, is this attitude going to change? One place that would be appropriate to start would be to amend immediately the proposed Summary Offences (Amendment) Bill, so that internationally accepted political activities in the form of fund-raising in public will no longer be banned contrary to the Bill of Rights.

The area in which the attitude and commitment of the Government will be most clearly put to test is the area of access to justice for citizens who feel that their

rights under this Bill have been infringed. In other words, will citizens be really able to have their rights under this Bill enforced by law? This fundamental right of legal access is enshrined in Article 2 of the ICCPR itself, in which signatories to the Covenant undertake "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violations has been committed by persons acting in an official capacity."

I am afraid, however, in the context of our current legal system that many citizens will have no true access to the rights in this Bill and that they will be unable to obtain the effective remedy that they are entitled to. Take the case of a filmmaker who finds that his documentary has been censored for political reasons. Under the Bill, he would have a right to seek to have the censor's decision overturned in the courts on the grounds that such censorship is in violation of the right to free expression in Article 16. If the filmmaker wished to undertake such an action, he would first have to engage lawyers. But there is the intimidating prospect that, if he lost in his action, he would have also to pay for all the legal costs of the Government. Faced with such a daunting financial risk, it is highly unlikely that the filmmaker would be willing to undertake the suit at all and would be forced in practice to drop it. He would thereby be deprived of any effective remedy for the Government's violation of his right to free expression.

Sir, the establishment of a human rights commission has the support of the ad hoc group as well as all the non-government Members or most of the non-government Members of this Council who had adopted recommendation of the ad hoc group in an In-House meeting earlier. In addition to vital educational and advisory functions, this human rights commission would have the power to mediate and arbitrate in human rights disputes. If the commission were given this essential arbitration power, citizens who do not have the money to initiate lawsuits would still have access to an effective legal remedy. The establishment of such a commission would also save the Government a considerable amount of money, since cases could be resolved by the commission in an inexpensive manner.

The establishment of a human rights commission with the power to arbitrate has been a fundamental aspect of human rights protection in Canada, Australia, and Europe. In all of these countries, the human rights commission has the power to arbitrate in human rights matters between citizens and the government. Hong Kong should not be an exception to this standard international practice, if the Government truly wishes that human rights in Hong Kong are to be protected to the same degree they

are in other modern nations. I understand, of course, that no government likes to be taken to the court and no government likes to be told that its laws and practices violate human rights; yet the essence of a Bill of Rights is that it is there to protect against inevitable intrusions by the government on the rights of individual citizens. That is why all these other governments have established human rights commissions -- so that citizens can have an effective means of redress on matters that the community believes to be of fundamental importance.

Hence, I urge Honourable Members of this Council to persist in their demand for the establishment of a human rights commission with arbitration powers. We must not allow ourselves to be forced by the Administration into giving up what we know to be right and vital. As for the Administration, I hope the Attorney General will inform this Council why the Government is unwilling to abide by the international practice and accept the establishment of a human rights commission similar to the ones in Europe, Canada, and Australia.

Even in the absence of a human rights commission with arbitration powers, there are two other steps worthy of our immediate consideration. The first is to give a discretion to the Director of Legal Aid to grant legal aid to an applicant with a meritorious human rights claim, even though he or she may not pass the rigid means test. The second is to provide that costs would not be awarded against plaintiffs who have failed in actions under the Bill unless the court believes the actions to have been brought frivolously, vexatiously or maliciously. Both of these measures are very worthy of our consideration; and I hope that right after the passage of this Bill the legal profession, Members of this Council and the Administration can work out together the most appropriate method of solving this practical problem.

Until this happens, I call upon the Attorney General to make a pledge in this Council today that the Government will not seek an order for costs against any unsuccessful plaintiff in a claim under the Bill of Rights unless the claim be frivolous, vexatious or malicious. For, to seek costs against such citizens is to penalize them for bringing actions, whereas the Government ought instead to be encouraging them to do so, as in Canada, Australia and in some different way, the United States. I hope my honourable colleague the Attorney General will make that pledge today.

In short, I cannot put enough emphasis, Sir, on the point that a satisfactory resolution of the matter of access to justice in human rights issues is of the highest

importance. I realize that making justice available to our citizens will force the Government to spend money. Yet, we must ask ourselves: how serious are we about protecting the rights of our citizens, especially now in the context of 1997? If we are serious, we must be prepared to commit the necessary resources, just as all other countries with Bills of Rights have done, in order to give citizens effective access to justice and to develop a body of case law around the Bill of Rights that will endure beyond 1997.

While the question of access to justice is the most important, there are four other areas I would like to touch on very briefly: the question of entrenchment, inter-citizen legislation, the definition of public authorities, and the long-term status of the ICCPR. I will address the subject of the freeze period during the Committee stage later this afternoon.

Supremacy

During the discussions of the ad hoc group, the Bar Association suggested that the Letters Patent be amended by the addition of an article identical in terms to Article 39 of the Basic Law, which provides for supremacy of the ICCPR and therefore the Bill of Rights after 1997 in effect. I fully support this idea. For, it is imperative that our courts have the earliest possible opportunity to interpret this Article and determine whether it affords supremacy to the relevant provisions of the ICCPR as enshrined in the Bill of Rights. If yes, all well and good. But if not, then we will urgently seek to have Article 39 amended. Since, moreover, a body of case law built on an article in the Letters Patent which is different from Article 39 of the Basic Law may not be followed by the courts after 1997, it is imperative that the new article in the Letters Patent be identical to Article 39 of the Basic Law so that there will be certainty in the case law. I hope that this Council can persuade the British Government to change its mind.

Inter-citizen rights

This subject was hotly debated during the meetings of the ad hoc group. Unlike my honourable colleague Mr ARCULLI, I am disappointed that the majority of the ad hoc group and the Government finally agreed to eliminate all inter-citizen rights from the Bill. The failure to include inter-citizen rights in the Bill adds urgency to the need to draft legislation to protect against discrimination and invasion of privacy. Just yesterday, I received a complaint from OMELCO from two members of the

Indian community in Hong Kong, who were recently denied entry to a bar in Central on the sole grounds of their race. This type of racial discrimination is utterly unacceptable and morally repugnant, and I call on the Government to come forward with anti-discriminatory laws that will prevent it. Similarly, the Government has delayed for too long any action to implement the United Nations Covenant on the Elimination of All Forms of Discrimination Against Women. And I am sure I have the support of all my honourable lady colleagues and most of my honourable gentlemanly colleagues on this point.

Definition of "public authorities"

As the Law Society has correctly pointed out, the Bill suffers from a failure to define what is meant by the term "public authorities" in clause 7, with the result that many organizations would wonder whether they are effected by the Bill of Rights. What the Administration should do is to list all applicable public authorities in a schedule. Such a schedule can be found, for example, in the Prevention of Bribery Ordinance. The omission creates unnecessary confusion, and I call upon the Government to rectify the problem as soon as possible.

Future of the ICCPR in Hong Kong

During the course of the ad hoc group meetings, many organizations expressed their opposition to the inclusion in the Bill of a permanent category of Exceptions and Savings. When Britain lodged a number of reservations at the time of its signing the ICCPR in 1976, these reservations were not supposed to deny human rights in perpetuity. Yet, now the Government here wishes to make those reservations permanent and even enshrine them in this Bill of Rights. This is totally unacceptable. I call on the Government to work immediately towards lifting the reservations and to hold consultations with the PRC Government to persuade the PRC of the necessity of removing these human rights loopholes. In addition, the Joint Liaison Group should make certain that Hong Kong will continue to make reports to and be monitored by the United Nations Committee on Human Rights after 1997.

In conclusion, I must stress that if the Bill of Rights is to serve as a cornerstone of human rights protection both now and in the future, we must make sure that these rights do not become rights on papers only, but real, enforceable guarantees. And we can only do this when our community as a whole is prepared to make a personal and financial commitment to making the Bill work in practice; and we must be prepared

to spend whatever money that is necessary to ensure that all our human rights will be protected under the rule of law. For only then can we carry out the obligation cast upon us, that is, to recognize that certain rights are fundamental to us as human beings and must never be taken away from us if we are to remain human beings.

ATTORNEY GENERAL: Sir, since its introduction this Bill has been the subject of intense scrutiny and comment as evidenced by the debate here this afternoon. The ad hoc group has met on numerous occasions, has received representations from many sections of the community and has pressed the Administration firmly and constructively about aspects of the Bill which have caused it concern. The Bill has received careful and comprehensive attention by Members of this Council. For that, this Administration, and no doubt the community at large, are deeply indebted. The enactment of this Bill of Rights will constitute a statement in one instrument of fundamental rights and freedoms, justiciable before an independent judiciary, and it is a signal of the importance attached by this Administration and by Members of this Council to those fundamental freedoms that so much time has been spent on this measure.

As a result of the extensive discussion and debate to which I have paid tribute, there will be moved this afternoon a number of Committee stage amendments. They reflect by their number and nature a wide variety of concerns. Some are put forward to allay concerns as to clarity of purpose. Others are broader, reflecting more fundamental worries. No doubt the two with the most impact relate, first, to the question of inter-citizen rights and, second, to the proposal to freeze, for a while, the effect of the Bill of Rights on our existing laws -- there are a small number of them. The Administration supports the amendments to be moved later this afternoon by Mrs Selina CHOW in respect of these two aspects, and the Chief Secretary will outline the reasoning behind that support. It falls to me, Sir, to address those Committee stage amendments to be moved by the Administration and to comment, if I may, on some of the amendments to be proposed by Members and on some of the comments made more generally this afternoon.

As to the amendments initiated by the Administration, I draw the attention of Members first to clause 2(3) of the Bill: the clause which stipulates, for the benefit of the courts, the purpose of the Ordinance.

It is proposed that clause 2(3) be amended by replacing the phrase "the purpose

of this Ordinance is to implement further the International Covenant on Civil and Political Rights as applied to Hong Kong" with this expression "the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters." We feel that, Sir, the phrase "to implement further" is not, in all the circumstances, the best phrase to describe the purpose of the Bill. A similar amendment to the long title is also proposed. The International Covenant as applied to Hong Kong has hitherto been implemented in Hong Kong through the common law, legislation and administrative measures. That being so, the text of the Preamble might create a misleading impression that a Bill of Rights, as a matter of law, is required to implement the Covenant here. The Administration therefore proposes to delete the Preamble. None of these amendments is intended to change the substance, the underlying purpose, of the Bill.

Members will have noted that clause 4 provides that all future legislation is to be construed, so far as possible, as being subject to the Bill of Rights. The use of the phrase "subject to" has given rise to concern that thereby the Bill of Rights will attain a status in law as some kind of superior constitutional instrument, competing perhaps with the Basic Law. That was not the intention. To make this more clear, the Chief Secretary will move an amendment to clause 4, the effect of which will be to provide for interpretation to be consistent, if possible, with the Covenant. Such a clause will, we believe, sit well with the provisions of the Joint Declaration and the Basic Law.

Clause 6 is the remedies clause. There was some concern that the clause as presently drawn did not make clear the circumstances in which an action involving a breach of the Bill of Rights might be brought, and in particular that it was intended to permit an action where the sole complaint might be a breach of the Bill of Rights. The amendment to clause 6 which is proposed by Members will serve to clarify the fact that there are two basic situations where a remedy may be granted under the Bill. The first is where an action is brought relating solely to a violation of any one of the Articles in Part II of the Bill. The second situation is where a violation is relevant in the course of proceedings, but there is no action based solely on the Bill of Rights.

I turn now, Sir, to the question of costs. It has been urged upon me this afternoon that in litigation involving the Bill of Rights I should refrain, in cases where a plaintiff is unsuccessful in an action against the Government, from seeking

an award of costs in the normal way. I have to say that that proposition would cause me very great difficulty.

Sir, I should start by explaining the background. The long established rules of procedure applied in our courts are that the courts have full discretion in making orders as to payment of costs. And the normal rule is that costs follow the event. If you win, you get your costs. If you lose, you have to pay your opponents. That is a long standing rule of procedure well understood by the courts, by lawyers and those who practise in the courts. If I were to be asked to accede to the proposal put to me this afternoon, I would be departing from well-established procedures in a situation where it is not clear to me that a case has been made out for so doing. The proposal, if I understood it correctly, would mean that if a case was barely arguable, but not frivolous, there would be no costs. The costs would have to be borne by the taxpayers. Members might like to reflect on that with me that it might encourage nuisance litigation and that it might encourage publicity-seeking litigation that has no underlying real purpose, in other words, it would encourage litigation that has no other purpose than to seek publicity. The rule as to costs is a well-founded rule designed to ensure that litigation is properly brought and soundly brought. That, I would suggest, is a very good reason founded in public policy for adhering to the rule. I would add that many of the rights in the Bill of Rights are already protected by existing legislation in the common law and in actions as against the Government and public authorities. It would be a very odd situation indeed if the same breach were treated differently, simply because an action were brought under the Bill of Rights. Legal aid is available for persons with limited means. If a legal-aided person is unsuccessful, liability for costs would be limited to the amount of contribution, if any, that that person is liable to pay. If I understood it correctly, the waiver of costs that was urged upon would apply even to very wealthy litigants who, if unsuccessful, would be subsidized by the taxpayers. Having regard to all those circumstances, Sir, I repeat that I have great difficulty in seeing how I could possibly accede to the invitation that was given to me this afternoon.

Upon enactment, it will be for the courts to interpret and apply this Ordinance. Those in practice before the courts will no doubt find a wealth of learning and existing case law, not only in connection with the International Covenant itself, but also from decisions on other multi-lateral conventions and other charters of rights. For the rights enumerated in the International Covenant and, therefore, in our Bill of Rights, are common to most such instruments. That should come as no

surprise, since they are but a list of fundamental freedoms. They echo those principles developed in the common law world, to which Hong Kong belongs.

Sir, I support the motion.

CHIEF SECRETARY: Sir, today's debate marks the culmination of detailed and prolonged consideration of legislation the introduction of which you, Sir, signalled in the autumn of 1989. It is legislation which has been subject to intense consultation, first with the publication of the White Bill in March 1990, and then with the introduction of the Bill to the legislature in July 1990. Since July last year, members of the ad hoc group have been busy considering the Bill, its broad approach and its fine details, receiving representations and discussing its views with the Administration. The amendments to be moved during the Committee stage reflect the results of those discussions and of the full consideration given by the Administration to representations received since the Bill was introduced.

Sir, I am most grateful indeed to Mrs Selina CHOW and to the ad hoc group for the vital task which they have undertaken with such diligence. That, and the speeches by Members this afternoon, reflect the considerable interest of the community in this important piece of legislation.

The Administration has paid careful attention to the contentions of disparate groups: including those eager for a broader statement of rights; and those who have argued for limited application; those concerned lest the Bill of Rights be given a status superior to our laws, competing in prominence with the Letters Patent, or after 1997 with the Basic Law; and those, on the other hand, who point to the needs for special status normally given to instruments of this nature. We are aware too that there are those who say that such a Bill is unnecessary, and those who on the other hand complain that it is long overdue and in any event is encumbered by reservations and by a freeze.

Sir, in answer to these competing views, I would like to address the background and our objectives.

Since 1976, we have had an obligation in international law to give effect to the International Covenant on Civil and Political Rights. That obligation existed before the Joint Declaration and long before the promulgation of the Basic Law.

Although it is possible to give effect to the International Covenant through various laws, the international obligation, highlighted by the Joint Declaration and the Basic Law, is more readily given clear effect by a law of this kind. These two instruments have highlighted the international obligation. And indeed the Bill of Rights does no more than implement in readily accessible form those obligations as a clear part of our domestic law.

But there has also been growing in the community the desire for a law of this kind. That momentum came at a time when representative government was developing and when the community was giving greater voice to those aspirations which are common to all societies in the throes of such evolution. A Bill of Rights was a natural consequence of those aspirations.

The Administration had a number of key objectives:

First, to ensure that the Bill of Rights reflected the provisions of the International Covenant as applied to Hong Kong; Secondly, to ensure that the Bill of Rights would be a practical and effective law;

Thirdly, to ensure that legitimate concerns were fully taken into account;

Fourthly, to ensure that the Bill of Rights was in full compliance with the Joint Declaration;

Finally, to meet apparent concerns about the status of the Bill of Rights, particularly as regards the Basic Law.

To satisfy the last objective, we have made sure that the Bill has, as a matter of law, a status the same as other Ordinances, and we will introduce certain amendments at the Committee stage to make that clear. We have ensured that the substance of the Bill is fully consistent with the ICCPR as applied to Hong Kong. That is particularly important, for both the Joint Declaration and the Basic Law make specific reference to that Covenant, requiring its continued application beyond 1997. And we have tried to ensure that there are no procedural clauses which run the risk of conflict with the Basic Law.

It is equally important to appreciate the manner in which this Bill fits into
a

wider mosaic which will serve to provide an effective safeguard for civil rights. The scheme of safeguards operates in three phases. The Bill of Rights itself will have an impact on existing laws. Existing laws which are inconsistent with the Bill of Rights will be amended or repealed by it to the extent of any such inconsistency. This is a normal rule of interpretation as to the effect of laws on earlier laws. This rule is made clear by clause 3(2) of the Bill. As to the future, I announced in July 1990 that Her Majesty's Government intended to amend the Letters Patent to provide that no law shall be made after such amendment that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with the International Covenant as applied to Hong Kong. I can now tell Members that Her Majesty's Privy Council has approved such an amendment. That amendment will come into operation at the same time as this Bill of Rights. The amendment is a reflection of a similar provision, namely Article 39, of the Basic Law. Therefore, new laws enacted hereafter cannot contravene the Covenant. That position is ensured before 1997 by the amended Letters Patent. After 1997 it is quite separately ensured by Article 39 of the Basic Law. So, as a matter of domestic law the machinery will soon be in place whereby the rights in the Covenant as applied to Hong Kong will be well ensconced in our system.

There has been much comment during the consultation process (and indeed in today's debate) about the provision, now in clause 14 of the Bill, which has become known as the freeze provision. There has been pressure against any such provision, even though there is ample precedent for it elsewhere. The inclusion of such a provision has always been viewed by the Administration as a prudent measure, a responsible course of action to take to avoid operational vacuums, particularly in the sphere of law enforcement, in the event of a finding by the courts having the effect of striking down a key provision of legislation.

The Administration took full note of the ad hoc group's unhappiness with the idea of a blanket freeze for a year, renewable for a further year, on all existing legislation. We have now identified those areas where operational vacuums of this kind might be particularly unfortunate, and with the strength of concern evident over the issue, the Administration has decided to accept the ad hoc group's recommendation for a selected freeze of Ordinances listed in a Schedule. Should that recommendation be adopted, those Ordinances alone will be immune from the operation of the Bill of Rights for one year, subject only to an extension for a further year in respect of any or all of the listed Ordinances, by approval of this Council. Whether any particular provisions of our law turn out to conflict with the Bill is ultimately

a matter for our courts, and inclusion of an Ordinance in the Schedule does not mean that the Ordinance or any part of it is in fact in conflict.

It has been said that we have had long enough to ensure that our laws comply with the Covenant and, further, that we need to ensure that the courts may begin as soon as possible to develop their Bill of Rights jurisprudence. We have indeed been long aware of our international obligations and they have not been ignored. The plain fact is that the ability of the courts to address these obligations directly requires that we seek to make doubly sure that in certain core areas we will not be found wanting. The measure is a precautionary one. The period is short, and the Ordinances listed are few. The Administration has moved considerably from its original position, in deference to the strength of views expressed by the ad hoc group and others, and I would urge this Council to adopt the recommendation of the ad hoc group.

Sir, whether the Bill of Rights should govern obligations between individuals is a difficult and controversial subject. In the light of concerns expressed by the community during the public consultation process, the Administration agreed, when the Bill was introduced into this Council, to defer the application to the private sector of Article 14, that is, the right to privacy.

Nevertheless, general concern, especially that of the financial and banking community, remains about the legal uncertainty created by applying the Bill to the private sector, and it has been emphasized that certain areas of conduct between individuals and private bodies covered by the Bill lend themselves to detailed legislation, rather than to the broad provisions of certain Articles of the International Covenant. The ad hoc group have expressed their wish for some solution to be put forward to allay such concern.

The Administration accepts that there is nothing in the Covenant which requires State Parties to impose obligations upon, and enable claims to be made against, individuals through the vehicle of a Bill of Rights. Clause 7 of the Bill is unusual and Bills of Rights usually apply only to Governments and public authorities. In these circumstances and in view of the depth of concern expressed, the Administration has re-examined the need for and desirability of providing for inter-citizen rights under the Bill of Rights. We note particularly that fears about the uncertain effects of the Bill of Rights could undermine the very confidence that the Bill was designed to strengthen.

There are two broad options which might address this concern: either to defer the application of those particular Articles most likely to affect inter-citizen relationships, or to take out all direct inter-citizen rights from the Bill of Rights. We prefer the latter approach. It is tidier, and will avoid the uncertainty as to which aspects of conduct are covered and which are not. It also meets the main objective of any Bill of Rights, namely, to cater for violations of fundamental rights by the Government and public authorities. We therefore agree to exclude from the operation of Bill of Rights all inter-citizen rights and obligations, and that the Ordinance shall bind only the Government and all public authorities.

Sir, the question which has, quite naturally, followed the decision to exclude inter-citizen rights concerns the alternative steps proposed to cater for the protection of infringement by individuals of the rights of other individuals and some Members have made reference to this today. In the sphere of civil liberties, the categories of private infringement which call for particular attention in most jurisdictions are those relating to privacy and discrimination.

As to the former, the Law Reform Commission is already well advanced with its comprehensive study of privacy, with a view to making recommendations for detailed legislation. The Administration has already started consideration of the question of discrimination in connection with its study on the application of the United Nations Convention for the Elimination of All Forms of Discrimination Against Women. The legal, social and economic implications of detailed anti-discrimination legislation are complex and they need to be carefully studied before mature decision can be taken. We would wish to reach an informed policy position on the basis of such detailed studies.

Sir, many Members have referred to the establishment of a Human Rights Commission and we have studied most carefully the Bill which has been put to us. When it was still our intention to retain inter-citizen rights in the Bill, there were suggestions that such a Commission might act as a filter to stem the flow of inter-citizen actions in the courts. The perceived role was that of arbitration, mediation, investigation and perhaps a right to enforce decisions. Indeed the Administration took the view that in order to perform the envisaged role effectively, such a Commission would have to have powers to provide effective remedies. The establishment of such a body, were it to perform effectively, would of course have had financial implications and one would wish carefully to determine the nature of its composition, bearing in mind always the desirability of adhering to the type of

machinery recognized by our present system of law. These difficulties aside, however, the fact is that a decision has been taken to exclude inter-citizen rights from the Bill, so that the case for establishing a Human Rights Commission with the arbitration or mediation or decision making role envisaged is considerably weakened. I have indicated that the question of protection of rights from infringement by individuals will be considered. Whether any particular mechanism for dealing with those issues will prove desirable should await that consideration.

Sir, the Administration does, however, perceive the need for a body whose function it would be to further human rights education and many Members have referred to the need for it this afternoon. Members may be aware that the Committee on the Promotion of Civic Education has in recent years pursued an active programme to promote as one of its major themes public awareness of the rule of law and human rights protection. However, there would be benefit in the concentration of expertise in this important area, which would also serve to under-score the importance which the Administration attaches to the protection of human rights. We believe that the public education role of such a body would be important for the Bill to produce the desired impact. I can confirm that we are now considering the establishment of such an advisory committee.

There has been reference today to the International Covenant on Economic, Social and Cultural Rights, and to the fact that the Bill does not incorporate provisions of that Covenant. There were several reasons for not taking that step. The rights enshrined in the ICCPR and those in the ICESCR are different in nature and it was in recognition of this difference that the rights were included in two separate Covenants. Many of the rights in the Economic Covenant are not capable of precise legal definition and States Parties are only obliged to realize the rights and freedoms contained in that Covenant progressively, according to available resources. That said, Sir, in Hong Kong many such rights have already been taken care of by our existing social service programmes and legislative measures. Furthermore, we are satisfied that many of the civil and political rights which are made justiciable in the Bill of Rights will indeed protect the ICESCR rights and freedoms, albeit indirectly. I agree with Mrs Selina CHOW that selection of rights from the ICESCR to be included in the Bill of Rights would have entailed extensive consultation and prolonged debate about which rights should be included and which excluded and that this would have delayed significantly the enactment of this Bill. I do have to take full note however of the concern by Members that the Administration should address further the question of rights in the Economic and Social Covenant.

Sir, the enactment of this Bill represents further evidence of the Administration's commitment to the preservation of human rights in this territory. I say "further evidence" for there is, I believe, cause to recognize the fact that our record in the field is one of which we should be readily proud. It has been suggested today that this Administration is regressive when it comes to civil rights. That is an allegation that does not bear rational examination. Our human rights record is a good one, and it is progressive and there is ample evidence to show it.

Sir, I remind those who may be sceptical of some key current or recent examples: the present preparation of a Torture Bill, to give effect to the Convention against Torture; the abolition of judicial corporal punishment; the repeal of part of the Education Ordinance dealing with political activities in schools; the proposal to amend our laws on homosexuality; the examination by our Law Reform Commission of police powers of arrest, detention, search and seizure, and the laws relating to illegitimacy and to the protection of privacy. This is a catalogue, I suggest, of an administration well committed to the safeguarding of human rights. And to that catalogue, we now add a Bill of Rights for Hong Kong. Sir, it is vaguely absurd to suggest that the Administration regards this Bill as something of an albatross around our neck. We, after all, took the initiative to introduce it. We have worked closely with the ad hoc group to improve it and we will vote for it enthusiastically today.

Sir, I referred at the outset to the key objectives which we have had to bear in mind in the drafting of this Bill of Rights. At the end of the day, I am satisfied that it meets those objectives, and in particular that it faithfully incorporates relevant provisions of the International Covenant on Civil and Political Rights, as that Covenant is applied to Hong Kong.

It would be as well to remember at all times that that Covenant is the international community's statement that there are certain standards to which we should adhere. But, more than that, the standards itemized in the Covenant are merely the minimum standards. Complaints that the Bill of Rights may impact adversely on our ability to take this step or that are therefore tantamount to assertions that we should not adhere to those minimum standards.

Sir, concerns have, I know, been expressed that the Bill of Rights might have an adverse effect on the efficiency of enforcement agencies. I would point out that, regardless of the Bill of Rights, Hong Kong has an international obligation to ensure that its laws are in conformity with the International Covenant. The Administration

is very conscious of the need to maintain the efficiency of the law enforcement agencies. But we are satisfied that the Bill of Rights will not diminish operational efficiency in this or in other areas. The freeze period in relation to the schedule of Ordinances is designed to allow sufficient time to examine these Ordinances affecting law enforcement and, should it prove necessary, to replace provisions so the operational vacuums do not arise, and which provisions are at the same time consistent with the Bill of Rights and, consequently, with the ICCPR.

As I pointed out in moving the Second Reading of the Bill, there are a number of countries where law enforcement agencies have to operate within constitutional guarantees for basic human rights and freedoms. These are highly advanced and civilized communities where law and order is maintained.

Sir, we are not embarked on some unique adventure. There are many jurisdictions, particularly in the common law world, with their own charter of rights. It is a feature of almost all Commonwealth jurisdictions. The value of such a law is, I believe, clear: it serves as a yardstick, a focal point, and it is a vital educative tool, bringing home to the consciousness of private individual and public official alike the importance of essential rights and freedoms, which in a free society we are always in danger of taking for granted.

Sir, I support the motion.

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).

5.08 pm

HIS EXCELLENCY THE PRESIDENT: The Council still has a good deal of business to get through this afternoon today. Members would, I am sure, welcome a break at this point.

5.40 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume. We will continue with Second

Reading debates.

ARBITRATION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 22 May 1991

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

Bill read the Second time.

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

CLUBS (SAFETY OF PREMISES) BILL 1991

Resumption of debate on Second Reading which was moved on 8 May 1991

Question on Second Reading proposed.

MR CHUNG: Sir, the Clubs (Safety of Premises) Bill 1991 seeks to establish a certification scheme to be administered by the Secretary for Home Affairs. The main purpose of the proposed certification scheme is to enable Government to impose necessary requirements and standards regulating the fire and structural safety of club premises. The Bill was introduced into the Legislative Council on 8 May 1991.

Following the raising of an oral question on karaoke centres by my honourable friend Mrs Elsie TU at the sitting of this Council on 8 May 1991, Members decided to form an ad hoc group to consider, among other things, whether karaoke centres could be included for control under the Bill.

In examining this area in greater detail, the ad hoc group noted that since most of the karaoke centres would either serve food and alcoholic drinks or were being run as clubs, they were, or would be, subject to legislative control in one way or another insofar as fire and structural safety were concerned. As for noise control and other social problems which might be brought about by karaoke centres, Members agreed that they were strictly speaking outside the original scope of the Clubs (Safety of Premises) Bill 1991. After discussion, it was agreed by Members that a

new legislation to enable specific control on karaoke centres should be considered separately in future. And in the meantime, the Administration should continue to closely monitor the operation of such centres.

As regards the present Bill itself, the ad hoc group had made a few points:

(a) first, despite the definition of clubs provided in the Bill, it should be made clearer as to which type of premises the legislation intended to control and regulate;

(b) second, a reasonable period of time should be given for the necessary modification and alteration works to existing club-houses to comply with the requirement imposed; and

(c) third, a few minor amendments to the Chinese text of the Bill were necessary to improve its clarity.

In response to the first two points made by the ad hoc group, the Administration confirmed that the Bill was targeted primarily at proprietary or sham clubs as opposed to other genuine social clubs such as kai fong associations and labour unions which were normally non-profit making in nature. Members were also assured by the Administration that a reasonable period of time, depending on the circumstances and merits of individual cases, would be given if modification works to club-houses were necessary. The Secretary for Home Affairs will no doubt clarify these two points in his speech later.

Sir, with these remarks, I support the Bill.

SECRETARY FOR HOME AFFAIRS: Sir, I am most grateful for the support that Mr CHUNG Pui-lam and members of the ad hoc group have given to this Bill.

When I introduced this Bill to this Council on 8 May, I said that the certification scheme would be implemented in phases, and I can confirm that the first phase would be targetted at proprietary or sham clubs which use their club-houses as ordinary business premises. In response to the ad hoc group's request, I will elaborate on this scope of control and the various types of clubs to be affected.

At present, clubs are generally registered in two ways. They may be formed under the Societies Ordinance Chapter 151. Exemption from registration under this Ordinance is given to trade unions, credit unions, owners' corporations, and mutual aid committees.

Clubs may also be formed under the Companies Ordinance Chapter 32. They usually take the form of a company with liabilities limited by members' guarantee.

The scope of control will embrace all these clubs which have club-houses. However, the certification scheme will, first of all, be implemented against proprietary or sham clubs which are usually a purely commercial undertaking in which the so-called members are no more than customers of the proprietor. This form of club is popular with operators of mahjong parlours, eating establishments, and karaoke centres in order to avoid licensing control under other Ordinances.

Non-proprietary clubs will be temporarily exempt from the certification scheme. They are, however, required to register with the authority for a certificate of exemption.

The ad hoc group has expressed concern about the time to be given to existing club-houses to upgrade their safety measures and to regularize any deficiency in compliance with the statutory standards. I would like to emphasize that a reasonable and adequate period of time will be given, depending on the size and extent of the improvement works. Furthermore, any aggrieved club operator may appeal to the Appeal Board under Part VI of the Bill.

As mentioned by Mr CHUNG a related issue which had received much attention during our discussions with the ad hoc group was the subject of karaoke centres. We had considered the practicability of enlarging the ambit of this Bill to make them, and other club-like establishments, subject to the safety requirements of the certification system. However, we had to drop this proposal after receiving advice from counsel that such proposal would be inadmissible under Standing Order 45 for exceeding the scope of this Bill.

Other options are being explored. We shall monitor the effect of this Bill on karaoke centres before firming up our decision.

Sir, I beg to move.

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).

QUEEN ELIZABETH FOUNDATION FOR THE MENTALLY HANDICAPPED (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 22 May 1991

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).

Committee stage of Bills

Council went into Committee.

HONG KONG BILL OF RIGHTS BILL 1990

Clauses 3 and 13 were agreed to.

Clauses 1, 6, 7 and 11

MRS CHOW: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 1 new subclause (1) updates the title of the Ordinance and new subclause (2) provides the Ordinance to take effect after publication in the Gazette, that is, 8 June 1991. The proposed amendments for clause 6, the reasons of which have been gone into fully by the Attorney General earlier, stand as I propose in the said circulated paper. The amendment to clause 7 is to take inter-citizen rights out of the Bill of Rights. The proposed amendment to clause 11 is made in response to

concerns that the original clause 7 seemd to imply that the Bill of Rights is of a lower status than the immigration legislation.

Sir, I so move.

Proposed amendments

Clause 1

That clause 1 be amended --

(a) in subclause (1) by deleting "1990" and substituting "1991";

(b) by deleting subclause (2) and substituting--

"(2) This Ordinance shall come into operation on 8 June 1991.".

Clause 6

That clause 6 be amended --

(a) by deleting subclause (1) and substituting --

"(1) A court or tribunal -

(a) in proceedings within its jurisdiction in an action for breach of this Ordinance; and

(b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,

may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.";

(b) in subclause (2), by adding "held to be" after "be".

Clause 7

That clause 7 be amended, by deleting the clause and substituting--

"7. Binding effect of Ordinance

(1) This Ordinance binds only -

(a) the Government and all public authorities; and

(b) any person acting on behalf of the Government or a public authority.

(2) In this section -

"person" (人) includes any body of persons, corporate or unincorporate."

Clause 11

That clause 11 be amended, by deleting the clause and substituting--

"11. Immigration legislation

As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation."

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 6, 7 and 11, as amended, proposed, put and agreed to.

Clause 2

MRS CHOW: Sir, I move that clause 2 be amended as set out under my name in the paper circulated to Members. This consequential amendment is as a result of amendment to clause 1(1) and because now there is to be no blanket freeze.

Sir, I so move.

Proposed amendment

Clause 2

That clause 2(1) be amended, in the definition of "commencement date", by deleting "the provisions of this Ordinance other than section 3 come into operation" and substituting "this Ordinance comes into operation".

Question on the amendment proposed, put and agreed to.

CHIEF SECRETARY: Sir, I move that clause 2 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 2

That clause 2(3) be further amended, by deleting "implement further the International Covenant on Civil and Political Rights as applied to Hong Kong" and substituting--
"provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters".

Question on the amendment proposed, put and agreed to.

MRS LAU (in Cantonese): I move that clause 2 be further amended as set out under my name in the paper circulated to Members. The purpose of the amendment is to incorporate into the Bill of Rights Bill the wording of the relevant clauses or

articles in the Treaty version I referred to earlier in my Second Reading debate speech and also to state explicitly that 公民權利和政治權利國際公約 is equivalent to 公民及政治權利國際盟約.

Proposed amendment

Clause 2

That clause 2 be further amended --

(a) by deleting subclause (4) and substituting -

○ぎ 本條例不得解釋為政府或任何主管當局⑩團體或個人有權從事活動或
實行行 為(1)破壞人權法案確認之任何一種權利與自由(1)或限制此種權利與自由逾越人
權法案規 定之程度⑨〔比照〔公民權利和政治權利國際公約〕第五條〕一⑧

(b) by deleting subclause (5) and substituting -

○く 香港境內依法律 ⑩ 公約 ⑩ 條例或習俗而承認或存在之任何基本人
權(1)不得 藉口人權法案未予確認或確認之範圍較狹(1)而加以限制或減免義務⑨〔比
照〔公民權利 和政治權利國際公約〕第五條〕一⑧

(c) by adding after subclause (6) -

○け(2)凡在本條例中提述〔公民權利和政治權利國際公約〕(1)即提述已交存聯
合國 檔庫的〔公民及政治權利國際盟約〕文件⑨一。

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Clause 4

CHIEF SECRETARY: Sir, I move that clause 4 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 4

That clause 4 be amended, by deleting the clause and substituting--

"4. Interpretation of subsequent legislation

All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong."

Question on the amendment proposed, put and agreed to.

Question on clause 4, as amended, proposed, put and agreed to.

Clause 5

MRS LAU (in Cantonese): Sir, I move that clause 5 be amended as set out under my name in the paper circulated to Members. The purpose of the amendment is to incorporate into the Bill of Rights Bill the wording of the relevant clauses or articles in the Treaty.

Proposed amendment

Clause 5

That clause 5 be amended --

(a) by deleting the heading and substituting "緊急狀態";

(b) by deleting subclause (2) and substituting -

○が 根據第4款採取之措施不得(2)(4)

國 ウ 抵觸依國際法所負並適用於香港之義務(1)但依 [公民權利和政治權利國際公約] 所負之義務除外⑧

⑧ ウ(2)引起純粹以種族⑩膚色⑩性別⑩語言⑩宗教或社會階級為根據之歧視
或

十 エ(2)減免履行人權法案第二⑩三⑩四④一③及④二③⑩七⑩十二⑩十三及
五條之規定⑨

〔比照〔公民權利和政治權利國際公約〕第四條〕一

Question on the amendment proposed, put and agreed to.

MRS CHOW: Sir, I move that clause 5 be further amended as set out under my name in the paper circulated to Members. The addition is to help allay fears and provides that even in times of public emergency, only lawful measures may be taken.

Sir, I so move.

Proposed amendment

Clause 5

That clause 5(1) be amended, by adding after "situation"--

", but these measures shall be taken in accordance with law".

Question on the amendment, proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

Clauses 8, 9, 10, 12

MRS LAU (in Cantonese): Sir, I move that clauses 8, 9, 10 and 12 be amended as set out under my name in the paper airculated to Members.

The purpose of amending clause 8 of the Bill, that is, Part 2 relating to human rights provisions, is to wholly adopt the wording of the relevant clauses/articles

in the Treaty. The purpose of amending clauses 9, 10 and 12 is to bring out the meaning of the clauses more clearly.

Proposed amendments

Clause 8

That clause 8 be amended, by deleting the clause and substituting --

○ 々(2)香港人權法案

(2)(2)(2)香港人權法案如下所列⑨

第一條

享受權利不分區別

(2)(2)(2)④一③(2)人人得享受人權法案所確認之權利(1)無分種族⑩膚色⑩性別⑩語言 ⑩宗教 ⑩政見或其他主張⑩民族本源或社會階級⑩財產⑩出生或其他身分等等⑨

(2)(2)(2)④二③(2)人權法案所載一切公民及政治權利之享受 (1) 男女權利 (1) 一律平等⑨

[比照 [公民權利和政治權利國際公約] 第二及三條]

第二條

生存的權利

④一③(2)人人皆有天賦之生存權 ⑨ 此種權利應受法律保障 ⑨ 任何人之生命不得無理剝奪⑨

④二③(2)非犯情節最重大之罪(1)且依照犯罪時有效並與人權法案規定及 [防止及懲治殘害人羣罪公約] 不抵觸之法律 (1)不得科處死刑 ⑨死刑非依管轄法院終局判決(1)不得執行⑨

④三③(2)生命之剝奪構成殘害人羣罪時(1)不得認為本條授權以任何方式減免依 [防止及懲治殘害人羣罪公約] 規定所負之任何義務⑨

④四③(2)受死刑宣告者(1)有請求特赦或減刑之權⑨一切判處死刑之案件均得邀大赦
⑩特赦或減刑⑨

④五③(2)未滿 歲之人犯罪(1)不得判處死刑⑧懷胎婦女被判死刑(1)不得執行其刑
⑨

④六③(2)不得援引本條(1)而延緩或阻止在香港廢除死刑⑨

〔比照〔公民權利和政治權利國際公約〕第六條〕

第三條

不得施以酷刑或不人道處遇
亦不得未經同意而施以試驗

任何人不得施以酷刑(1)或予以殘忍⑩不人道或侮辱之處遇或懲罰⑨非經本人自願同
意(1) 尤不得對任何人作醫學或科學試驗⑨

〔比照〔公民權利和政治權利國際公約〕第七條〕

第四條

不得使充奴隸或奴工

④一③(2)任何人不得使充奴隸⑧奴隸制度及奴隸販賣(1)不論出於何種方式(1)悉應禁
止⑨

④二③(2)任何人不得使充奴工⑨

④三③(2)④甲③(2)任何人不得使服強迫或強制之勞役⑨

(2)(2)(2)(2) (2)(2)(2)(2)④乙③(2)本項所稱○強迫或強制勞役一不包括下列各項(2)(4)

(2)(2)(2)(2) (2)(2)(2)(2)(2)(2)(2)(2)ツ 經法院依法命令拘禁之人(1)或在此種拘禁假釋期間
之人(1)通常 必須擔任之工作或服役⑧

(2)(2)(2)(2) (2)(2)(2)(2)(2)(2)(2)(2)ヅ 任何軍事性質之服役(1)及在承認人民可以本其信念

反對服兵役之

情況下(1)依法對此種人徵服之國民服役⑧

(2)(2)(2)(2) (2)(2)(2)(2)(2)(2)(2)(2)テ
之服役⑧

遇有緊急危難或災害禍患危及社會生命安寧時徵召

(2)(2)(2)(2) (2)(2)(2)(2)(2)(2)(2)(2)テ

為正常公民義務一部分之工作或服役⑨

〔比照〔公民權利和政治權利國際公約〕第八條〕

第五條

人身自由和安全

④一③(2)人人有權享有身體自由及人身安全⑨任何人不得無理予以逮捕或拘禁⑨非
依法 定理由及程序(1)不得剝奪任何人之自由⑨

④二③(2)執行逮捕時(1)應當場向被捕人宣告逮捕原因(1)並應隨即告知被控案由⑨

④三③(2)因刑事罪名而被逮捕或拘禁之人(1)應迅即解送法官或依法執行司法權力之
其他 官員 (1)並應於合理期間內審訊或釋放 ⑨候訊人通常不得加以羈押 (1)但釋放得令
具報 (1) 於審訊 時 ⑩於司法程序之任何其他階段⑩並於一旦執行判決時(1)候傳到場⑨

④四③(2)任何人因逮捕或拘禁而被奪自由時(1)有權聲請法院提審(1)以迅速決定其拘
禁是 否合法(1)如屬非法(1)應即令釋放⑨

④五③(2)任何人受非法逮捕或拘禁者(1)有權要求執行損害賠償⑨

〔比照〔公民權利和政治權利國際公約〕第九條〕

第六條

被剝奪自由的人的權利

④一③(2)自由被剝奪之人(1)應受合於人道及尊重其天賦人格尊嚴之處遇⑨

④二③(2)④甲③(2)除特殊情形外(1)被告應與判決有罪之人分別羈押(1)且應另予與其

未經 (2)(2)(2)判決有罪之身分相稱之處遇⑨
(2)(2)(2)(2)④乙③(2)少年被告應與成年被告分別羈押(1)並應儘速即予判決⑨

④三③(2)監獄制度所定監犯之處遇 (1) 應以使其--狙泵習 s (1) 重適社會生活為基本目的⑨
(2)(2)少年犯人應與成年犯人分別拘禁(1)且其處遇應與其年齡及法律身分相稱⑨

〔比照 [公民權利和政治權利國際公約] 第十條〕

第七條

不得因違約而被監禁

任何人不得僅因無力履行契約義務(1)即予監禁⑨

〔比照 [公民權利和政治權利國際公約] 第十一條〕

第八條

遷徙往來的自由

④一③(2)合法處在香港境內的人(1)在香港境內有遷徙往來之自由及擇居之自由⑨

④二③(2)人人應有自由離去香港

④三③(2)上列權利不得限制(1)但法律所規定⑩保護國家安全⑩公共秩序⑩公共无生或風 化 ⑩ 或他人權利與自由所必要 (1)且與人權法案所確認之其他權利不抵觸之限制(1)不在此限⑨

④四③(2)具有香港居留權的人進入香港之權(1)不得無理褫奪⑨

〔比照 [公民權利和政治權利國際公約] 第十二條〕

第九條

驅逐出香港的限制

合法處在香港境內但沒有香港居留權的人(1)非經依法判定(1)不得驅逐出境(1)且除事關國家安全必須急速處分者外(1)應准其提出不服驅逐出境之理由(1)及聲請主管當局或主管當局特別指定之人員予以覆判(1)並為此目的委託代理人到場申訴(9)

[比照 [公民權利和政治權利國際公約] 第十三條]

第十條

在法院前平等及接受公正
公開審問的權利

人人在法院或法庭之前(1)悉屬平等(9)任何人受刑事控告或因其權利義務涉訟須予判定

時(1)應有權受獨立無私之法定管轄法庭公正公開審問(9)法院得因民主社會之風化(10)公共秩序或國家安全關係(1)或於保護當事人私生活有此必要時(1)或因情形特殊公開審判勢必影響司法而在其認為絕對必要之限度內(1)禁止新聞界及公眾旁聽審判程序之全部或一部(8)但除保護少年有此必要(1)或事關婚姻爭執或子女監護問題外(1)刑事民事之判決應一律公開宣示(9)

[比照 [公民權利和政治權利國際公約] 第十四條]

第十一條

被控告或判定犯有刑事罪的人的權利

④一③(2)受刑事控告之人(1)未經依法確定有罪以前(1)應假定其無罪(9)

④二③(2)審判被控刑事罪時(1)被告一律有權平等享受下列最低限度之保障(2)
(4)

(2)(2)(2)(2)④甲③(2)迅即以其通曉之語言(1)詳細告知被控罪名及案由(8)

(2)(2)(2)(2)④乙③(2)給予充分之時間及便利(1)準備答辯並與其選任之辯護人聯絡(8)

(2)(2)(2)(2)④丙③(2)立即受審(1)不得無故稽延(8)

者(1) 辯護 (2)(2)(2)(2)④丁③(2)到庭受審(1)及親自答辯或由其選任辯護人答辯⑧未經選任辯護人 (2)(2)(2)應告以有此權利⑧法院認為審判有此必要時(1)應為其指定公設

(2)人(1)如被告無資力酬償(1)得免付之⑧

證人 (2)(2)(2)(2)④戊③(2)得親自或間接詰問他造證人(1)並得聲請法院傳喚其證人在與他造 (2)(2)(2)同等條件下出庭作證⑧

(2)(2)(2)(2)④己③(2)如不通曉或不能使用法院所用之語言(1)應免費為備通譯協助之⑧

(2)(2)(2)(2)④庚③(2)不得強迫被告自供或認罪⑨

④三③(2)少年之審判 (1)應顧念被告年齡及宜使其重適社會生活 (1) 而酌定程序⑨

④四③(2)經判定犯罪者 (1) 有權聲請上級法院依法覆判其有罪判決及所科刑罰⑨

④五③(2)經終局判決判定犯罪(1)如後因提出新證據或因發見新證據(1)確實證明原判 錯誤 而經撤銷原判或免刑者 (1) 除經證明有關證據之未能及時披露 (1)應由其本人全部 或局部負責者 外(1)因此判決而服刑之人應依法受損害賠償⑨

④六③(2)任何人依香港法律及刑事程序經終局判決判定有罪或無罪開釋者(1)不得就 同一 罪名再予審判或科刑⑨

〔比照 [公民權利和政治權利國際公約] 第十四々二至七條〕

第十二條

刑事罪及刑罰沒有追溯力

④一③ 任何人之行爲或不行爲(1)於發生當時依香港法律及國際法均不成罪者(1)不 爲 罪 ⑨刑罰不得重於犯罪時法律所規定⑨犯罪後之法律規定減科刑罰者(1)從有利於行爲 人之法 律⑨

④二③(2)任何人之行爲或不行爲(1)於發生當時依各國公認之一般法律原則為有罪者

(1)其 審判與刑罰不受本條規定之影響⑨

〔比照 [公民權利和政治權利國際公約] 第十五條〕

第十三條

被承認為法律人格的權利

人人在任何所在有被承認為法律人格之權利⑨

〔比照 [公民權利和政治權利國際公約] 第十六條〕

第十四條

對私生活⑩家庭⑩住宅⑩通信⑩名譽及信用的保護

④一③(2)任何人之私生活⑩家庭⑩住宅或通信(1)不得無理或非法侵擾(1)其名譽及信用(1)亦不得非法破壞⑨

④二③(2)對於此種侵擾或破壞(1)人人有受法律保護之權利⑨

〔比照 [公民權利和政治權利國際公約] 第十七條〕

第十五條

思想⑩信念及宗教自由

④一③(2)人人有思想⑩信念及宗教之自由⑨此種權利包括保有或採奉自擇之宗教或信仰之自由 (1)及單獨或集體 ⑩公開或私自以禮拜 ⑩戒律⑩躬行及講授表示其宗教或信仰之自由⑨

④二③(2)任何人所享保有或採奉自擇之宗教或信仰之自由(1)不得以脅迫侵害之⑨

④三③(2)人人表示其宗教或信仰之自由(1)非依法律(1)不受限制(1)此項限制以保障公共安全⑩秩序⑩無生或風化或他人之基本權利自由所必要者為限⑨

④四③(2)父母或法定監護人確保子女接受符合其本人信仰之宗教及道德教育之自由
(1)得 受尊重⑨

〔比照 [公民權利和政治權利國際公約] 第十八條〕

第十六條

意見和發表的自由

④一③(2)人人有保持意見不受干預之權利⑨

④二③(2)人人有發表自由之權利 ⑧此種權利包括以語言 ⑩文字或出版物 ⑩藝術
或自己選 擇之其他方式(1)不分國界(1)尋求⑩接受及傳播各種消息及思想之自由⑨

④三③(2)本條第④二③項所載權利之行使(1)附有特別責任及義務(1)故得予以某種限
制(1) 但此種限制以經法律規定(1)且為下列各項所必要者為限(2)(4)

(2)(2)(2)(2)④甲③(2)尊重他人權利或名譽⑧或

(2)(2)(2)(2)④乙③(2)保障國家安全或公共秩序⑩或公共无生或風化⑨

〔比照 [公民權利和政治權利國際公約] 第十九條〕

第十七條

和平集會的權利

和平集會之權利(1)應予確認⑨除依法律之規定(1)且為民主社會維護國家安全或公共
安

寧 ⑩公共秩序 ⑩維持公共无生或風化⑩或保障他人權利自由所必要者外(1)不得限制此
種權利之 行使⑨

〔比照 [公民權利和政治權利國際公約] 第二十一條〕

第十八條

結社的自由

④一③(2)人人有自由結社之權利(1)包括為保障其本身利益而組織及加入工會之權利
⑨

④二③(2)除依法律之規定(1)且為民主社會維護國家安全或公共安寧⑩公共秩序⑩維持公
共無生或風化⑩或保障他人權利自由所必要者外(1)不得限制此種權利之行使⑨本條
並不禁止對 軍警人員行使此種權利(1)加以合法限制⑨

④三③(2)本條並不授權採取立法措施或應用法律(1)妨礙 [關於結社自由及保障組織
權利 之國際勞工組織 一九四八年公約] 中適用於 香港的規定所規定之保證⑨

[比照 [公民權利和政治權利國際公約] 第二十二條]

第十九條

關於結婚和家庭的權利

④一③(2)家庭為社會之自然基本團體單位(1)應受社會及國家之保護⑨

④二③(2)男女已達結婚年齡者(1)其結婚及成立家庭之權利應予確認⑨

④三③(2)婚姻非經婚嫁雙方自由完全同意(1)不得締結⑨

④四③(2)夫妻在婚姻方面(1)在婚姻關係存續期間(1)以及在婚姻關係消滅時(1)雙方權
利責任平等⑨婚姻關係消滅時(1)應訂定辦法(1)對子女予以必要之保護⑨

[比照 [公民權利和政治權利國際公約] 第二十三條]

第二十條

兒童的權利

④一③(2)所有兒童有權享受家庭⑩社會及國家為其未成年身分給予之必需保護措施

(1)不 因種族 ⑩膚色 ⑩性別⑩語言⑩宗教⑩民族本源或社會階級⑩財產或出生而受歧視
⑨

④二③(2)所有兒童出生後應立予登記(1)並取得名字⑨

〔比照 [公民權利和政治權利國際公約] 第二十四條〕

第二十一條

參與公眾生活的權利

④一③(2)凡屬永久性居民(1)無分人權法案第一④一③條所列之任何區別(1)不受無理
限

制(1)均應有權利及機會(2)(4)

(2)(2)(2)(2)④甲③(2)直接或經由自由選擇之代表參與政事⑧

(2)(2)(2)(2)④乙③(2)在真正⑩定期之選舉中投票及被選⑨選舉權必須普及而平等(1)選
舉應 (2)(2)(2)以無記名投票法行之(1)以保證選民意志之自由表現⑧

(2)(2)(2)(2)④丙③(2)以一般平等之條件(1)服香港公職⑨

〔比照 [公民權利和政治權利國際公約] 第二十五條〕

第二十二條

在法律前平等及受法律平等保護

人人在法律上一律平等 (1)且應受法律平等保護 (1)無所歧視 ⑨在此方面(1)法律應
禁止任何 歧視(1)並保證人人享受平等而有效之保護 (1)以防因種族 ⑩膚色⑩性別 ⑩語
言 ⑩宗教 ⑩政見或 其他主張⑩民族本源或社會階級⑩財產⑩出生或其他身分而生之歧視
⑨

〔比照 [公民權利和政治權利國際公約] 第二十六條〕

第二十三條

少數人的權利

屬於種族^⑩宗教或語言少數團體之人(1)與團體中其他分子共同享受其固有文化(1)信奉躬行其固有宗教或使用其固有語言之權利(1)不得剝奪之^⑨

〔比照〔公民權利和政治權利國際公約〕第二十七條〕

Clause 9

That clause 9 be amended, by deleting ○合法拘禁在任何性質的懲治機構內一 and substituting ○在任何性質的懲治機構內受合法拘禁一.

Clause 10

That clause 10 be amended, by deleting ○成人一 and substituting ○成年人一.

Clause 12

That clause 12 be amended, by deleting all the words after ○他出境的一 and substituting ○判定要求覆判的權利(1)亦不賦予他爲此目的而委託代理人向主管當局到場申訴的權利^⑨一.

Question on the amendments proposed, put and agreed to.

Question on clauses 8, 9, 10, 12, as amended, proposed, put and agreed to.

Clause 14

MRS CHOW: Sir, I move that clause 14 be amended as set out under my name in the paper circulated to Members. The proposed deletion and substitution of this clause is necessary because there is now not to be a blanket freeze for all legislation, but only a selective freeze for the six Ordinances set out in the schedule. Clause 14(1) is necessary to reflect the selective freeze period. Clause 14(2) provides that in addition to any act done, any omission is included in the Bill. This is in response

to Members' concern. Clause 14(3) provides the Legislative Council with the right to approve or disapprove a further extension of the selective freeze period by no more than one year.

Sir, I so move.

Proposed amendment

Clause 14

That clause 14 be amended, by deleting the clause and substituting --

"14. Temporary savings

(1) For a period of 1 year beginning on the commencement date, this Ordinance is subject to the Ordinance listed in the Schedule.

(2) This Ordinance does not affect--

(a) any act done (including any act done in the exercise of a discretion); or

(b) any omission authorized or required, or occurring in the exercise of a discretion,

before the first anniversary of the commencement date, under or by any Ordinance listed in the Schedule.

(3) The Legislative Council may before the first anniversary of the commencement date by resolution amend this section for all or any of the following purposes -

(a) to provide that, for a period of 1 year beginning on the first anniversary of the commencement date, this Ordinance is subject to such of the Ordinances listed in the Schedule as are specified in the amendment;

(b) to provide that this Ordinance does not affect -

(i) any act done (including any act done in the exercise of a discretion); or

(ii) any omission authorized or required, or occurring in the exercise of a discretion,

before the second anniversary of the commencement date, under or by any Ordinance listed in the Schedule that is specified in the amendment; and

(c) to repeal this subsection.

(4) In this section, a reference to an Ordinance includes a reference to any subsidiary legislation made under that Ordinance.

(5) This section operates notwithstanding section 3."

Question on the amendment proposed.

MR MARTIN LEE: Sir, I would take this opportunity to speak on the Honourable Mrs CHOW's proposed amendment, for you, Sir, have made clear that if it be approved, the Council will not be allowed to consider the amendment which I have tabled to clause 14 and the Schedule.

Sir, since the Government first advanced the idea of a blanket freeze on the operation of the Bill of Rights, there has been forceful opposition from many in our community, and particularly those in the legal sector. Both the Hong Kong Bar Association and the Law Society of Hong Kong rejected the idea of a blanket freeze and stated that, if any freeze is to be legislated, it should only apply to selected provisions of certain Ordinances and for the shortest possible time.

Other organizations such as the Hong Kong Human Rights Commission and the Hong Kong Journalists Association also spoke out strongly against the freeze. These organizations have stressed that the rights protected in the Bill are minimum standards accepted internationally; and hence we ought not countenance continuing

violations of these fundamental rights. For any existing law that contravenes any applicable provision of the ICCPR is bad law and to agree to freeze such a law, even for one day, is one day too long, and the Government has actually been given a grace period of 15 years. How can the Administration now ask for one more year and possibly even two? The Honourable Chief Secretary has said earlier in the resumed debate on the Second Reading of the Bill that the number of Ordinances to be frozen is small and the time for the freeze is short. With respect to him, such a statement would put *Oliver Twist* to shame, and would make Charles Dickens, his creator, twist in his grave. So I warned the Administration, even when the White Bill was published, that they must not assume that there would be any freeze period for any Ordinance at all and that they must start amending all offending laws.

Sir, the need to amend offending laws is nothing new. Such an exercise ought to have been undertaken 15 years ago when the ICCPR was first extended to Hong Kong in 1976; or, in 1984, when Britain and China agreed in the Joint Declaration that the rights in the Covenant already applicable to Hong Kong would continue to be protected after 1997. But this was simply not done. And, the Government has lost a further two years since announcing its intention in 1989 to implement the ICCPR into domestic law. Thus, for 15 years, the Government has not amended a single offending Ordinance. Not one. How can anyone in this Council have confidence that it will not use the freeze period to further delay and evade its responsibilities?

For every lawyer knows only too well that if he is given one year to do something, he will put it aside until the year is over, and then ask for another year, as the Government will be allowed to do under the amendment proposed by the Honourable Mrs CHOW. And if entire Ordinances are frozen as proposed, then practising lawyers, including those, no doubt, in the Attorney General's Chambers, and those in the Bar, Judges and magistrates would not concern themselves with them and so we will all be losing precious time to get ourselves used to this new branch of the law.

In order to meet any fears of the Government, the Law Society and the Bar Association both advocated a limited freeze on specific clauses in certain Ordinances. The Government refused and insisted on freezing entire Ordinances. Such a formula is unacceptable and it has therefore led me to initiate my amendment to eliminate the freeze period altogether. I hope Members will vote against Mrs CHOW's amendment, and vote instead to eliminate the freeze period altogether so that the human rights of our citizens can be protected right now.

For this reason, Sir, I oppose the Honourable Mrs Selina CHOW's proposed amendment to clause 14 but I do urge honourable Members to vote against her amendment only if they are prepared to support my amendment in due course, otherwise I may be put in a very unhappy position of having caused the Honourable Mrs CHOW's amendment to be defeated only to find that my own amendment is also defeated, with that disastrous result that clause 14 of the Bill and the Schedule will stand in their unamended form.

If, however, Mrs CHOW's amendment is carried, then I call upon the Attorney General to make a public statement today that he will not institute any prosecution under a section of a frozen Ordinance that he has reason to believe to be or may be construed by the Court to be in violation of the Bill of Rights.

For the reason given to the ad hoc group for wanting this freeze was to avoid any possible vacuum in the law regarding the powers of our law enforcement agencies in relation to the search of premises, arrest and the detention of suspects, it is therefore no reason why the prosecuting authorities should take advantage of the freeze and prosecute our citizens under any frozen Ordinance which those in the Attorney General's Chambers have reason to believe may infringe the Bill of Rights.

MR CHEONG: Sir, thank you very much for allowing me to speak. I too was unaware that if Mrs CHOW's amendment were to be carried then Mr Martin LEE's amendment would not have to be debated in this Council.

Sir, the reason why I have to say something is that this afternoon, prior to this particular Legislative Council session, as the most senior Member after Mr Allen LEE -- and he happens to be away -- I received some representations from some groups of citizens outside the Legislative Council Chamber, and I have been asked to convey to my colleagues that these groups of representatives simply wish that Mr Martin LEE's amendment be supported, that is to say, they are not agreeable to the freeze of one year. I feel I have a duty, Sir, to report to my colleagues, before they vote on the amendment, what the representations are about.

Insofar as I myself am concerned, I firmly support Mrs Selina CHOW's amendment because I think it is a very good pragmatic approach to address many of the fears of members of the community over the question of whether or not the Bill of Rights with its present provision is going to damage our law and order situation. We can talk about ideals -- whether we should be humans or animals and the difference between

a human and an animal as so eloquently expounded by Mr SZETO Wah just now -- but at the end of the day, what Hong Kong is about is that everyone of us wishes to live in a relatively stable environment. And unfortunately, given the means of instantaneous communication at the disposal of the print media and the electronic media, many suggestive actions have been put to our citizens that may unnecessarily endanger the stability and the security of this territory if the police were not given the necessary powers to carry out their task. And for that matter, I commend the Administration for at least agreeing to halve the freeze period from two to one year in an effort to address this particular issue. Thank you, Sir.

6.00 pm

HIS EXCELLENCY THE CHAIRMAN: It is now 6 o'clock and under Standing Order 8(2) the Council should resume and then adjourn.

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

Question proposed, put and agreed to.

HIS EXCELLENCY THE CHAIRMAN: Council is now in Committee again.

Question on the amendment put and agreed to.

HIS EXCELLENCY THE CHAIRMAN: The Committee has now agreed that clause 14 should be amended as proposed by Mrs Selina CHOW. That means the Committee has taken a decision on clause 14. Mr Martin LEE, as he mentioned when speaking just now, has also given notice to move an amendment to this clause. But I cannot call on him to move his amendment because the Committee has already made a decision on this clause.

Question on clause 14, as amended, proposed, put and agreed to.

Schedule

MRS CHOW: Sir, I move that the schedule be amended as set out under my name in the paper circulated to Members. These Ordinances in the schedule are included in the schedule so that the Administration can examine them in detail during the selective freeze period and to amend or repeal any section of them if necessary.

Sir, I so move.

Proposed amendment

Schedule

That schedule be amended, by deleting "PROVISIONS TO WHICH SECTION 14(3) AND (4) APPLIES" and substituting--

"PROVISIONS TO WHICH SECTION 14(1) AND (2) APPLIES

Immigration Ordinance (Cap. 115)

Societies Ordinance (Cap. 151)

Crimes Ordinance (Cap. 200)

Prevention of Bribery Ordinance (Cap. 201)

Independent Commission Against Corruption
Ordinance (Cap. 204)

Police Force Ordinance (Cap. 232)".

Question on the amendment proposed, put and agreed to.

HIS EXCELLENCY THE CHAIRMAN: The Committee has now agreed that the schedule be amended as proposed by Mrs CHOW, in other words, the Committee has taken a decision on the schedule. But again, as before, I will not call upon Mr Martin LEE to move his amendment because it is not compatible with the decision as taken by the Committee.

Question on schedule, as amended, proposed, put and agreed to.

Preamble

CHIEF SECRETARY: Sir, I move that Standing Order 46(8) be suspended under Standing Order 68 so as to allow this Council to consider an amendment to the preamble to the Hong Kong Bill of Rights Bill 1990 which is not made necessary by a previous amendment to the Bill.

Question on the motion to suspend Standing Order 46(8) proposed, put and agreed to.

CHIEF SECRETARY: Sir, I move that the preamble be amended as set out in the paper circulated to Members.

Proposed amendment

Preamble

That preamble be amended

(a) by deleting--

"WHEREAS the International Covenant on Civil and Political Rights as applied to Hong Kong includes an undertaking to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in that Covenant:

NOW THEREFORE BE IT";

(b) by deleting ", as follows -" and substituting a full stop.

Question on the amendment proposed, put and agreed to.

Question on preamble, as amended, proposed, put and agreed to.

Title

CHIEF SECRETARY: Sir, I move that the title be amended as set out in the paper circulated to Members.

Proposed amendment

Title

That title be amended, by deleting "Implement further" and substituting--

"Provide for the incorporation into the law of Hong Kong of provisions of".

Question on the amendment proposed, put and agreed to.

Question on title, as amended, proposed, put and agreed to.

ARBITRATION (AMENDMENT) BILL 1991

Clauses 1 to 3 were agreed to.

CLUBS (SAFETY OF PREMISES) BILL 1991

Clauses 1 to 7, 10 to 14, 16, 19 and 20 were agreed to.

Clauses 8, 9, 15, 17, 18, 21 and 22

MRS LAM (in Cantonese): Sir, the clauses in the English and Chinese texts of the present Bill are mainly derived from the Hotel and Guesthouse Accommodation Bill. When the latter Bill was enacted as law by this Council on 1 May 1991 I had moved certain amendments to the Chinese text of the Bill so that it would fully import the legal connotations implicit in the English text. When I scrutinized the present Bill, I found that imperfections which had first existed in the Hotel and Guesthouse Accommodation Bill were still to be found in the present Bill. The purpose of the amendments that I am moving is to achieve uniformity of wording, where appropriate, with the Chinese text of the Hotel and Guesthouse Accommodation Bill. Sir, I move that the specified clauses be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 8

That clause 8(2)(c) be amended, by deleting "監督" and substituting "督導".

Clause 9

That clause 9(4) be amended, by deleting "之日" and substituting "日的".

That clause 9(6) be amended, by deleting "該日" and substituting "期滿日的".

Clause 15

That clause 15(7)(c) be amended, by adding "委員" before "會判".

Clause 17

That clause 17(2) be amended, by adding "案件" before "述要修改".

Clause 18

That clause 18(1)(a) be amended, by deleting "任何" where it first appears.

Clause 21

That clause 21(2)(b) be amended, by deleting "監督" and substituting "督導".

Clause 22

That clause 22(1)(f) be amended, by adding "以" before "及上訴".

Question on the amendments proposed, put and agreed to,

Question on clauses 8, 9, 15, 17, 18, 21 and 22, as amended, proposed, put and agreed to.

QUEEN ELIZABETH FOUNDATION FOR THE MENTALLY HANDICAPPED (AMENDMENT) BILL 1991

Clauses 1 to 3 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

HONG KONG BILL OF RIGHTS BILL 1991, the original short title of which was the HONG KONG BILL OF RIGHTS BILL 1990 and

CLUBS (SAFETY OF PREMISES) BILL 1991

had passed through Committee with amendments and the

ARBITRATION (AMENDMENT) BILL 1991 and

QUEEN ELIZABETH FOUNDATION FOR THE MENTALLY HANDICAPPED (AMENDMENT) BILL 1991

had passed through Committee without amendment and move the Third Reading of the Bills.

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

Bills read the Third time and passed.

Members' motions

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS NELLIE FONG moved the following motion:

"That the Building (Administration) (Amendment) Regulations 1991, published as Legal Notice No. 120 of 1991 and laid on the table of the Legislative Council on 17 April 1991, be amended by repealing regulation 5 and substituting -

5. Fees

Regulation 42 is amended in the table of fees -

(a) by repealing item 7 and substituting -

"7. For the purposes of regulations 6(2), 29 and 33 -

	(a) for the first	Free		
	5 resubmissions			
subsequent	(b) for any other	Applicant	\$1,250 for	
	each size of		resubmission	841 mm
		by 594 mm or		
		part thereof		
		of the plan		

For the purposes of this paragraph, a resubmission means -

(i) a further submission of a plan of building works or an amendment plan of an approved plan under regulation 6(2); or

(ii) a submission of an amendment plan of an approved

plan of building works under regulation 29 or 33.

(b) by adding after item 7 -

"7A. For the purposes of regulations 29 and 33 -

(a) for a new plan
or a major revision
of such plan of
building works in
respect of -

(i) a proposed Applicant \$340 for
new every 100
industrial square
building metres or
of a gross part
floor area thereof,
of 20 000 subject to
square a minimum
metres or charge of
less \$1,110

(ii) a proposed Applicant \$270 for
new every 100
industrial square
building metres or
of a gross part
floor area thereof,
of more subject to
than a minimum
20 000 charge of
square \$68,000
metres

(iii) a proposed Applicant \$340 for
new every 100
building square

for which metres of
there is the area of
no the
accountable building or
gross part
floor thereof,
area, the subject to
area of a minimum
the building charge of
being \$1,110
20 000
square
metres or
less

(iv) a proposed Applicant \$270 for
new every 100
building square
for which metres of
there is the area of
no the
accountable building or
gross part
floor thereof,
area, the subject to
area of a minimum
the charge of
building \$68,000
being more
than 20 000
square
metres

(v) A proposed Applicant \$530 for
new non- every 100
industrial square
building metres or
of a gross part

floor area thereof,
of 10 000 subject to
square a minimum
metres or charge of
less \$1,110

(vi) a proposed Applicant \$430 for
new non- every 100
industrial square
building metre or
of a gross part
floor area thereof,
of more subject to
than a minimum
10 000 charge of
square \$53,000
metres

For the purposes of this paragraph, "industrial building" includes a factory, a workshop, a godown, a transformer station, an oil storage installation and a jetty.

(b) for a new plan Applicant \$1,850 for
or a major each size
revision of of 841 mm
such plan of by 594 mm
alteration and or part
addition works thereof of
or other the plan"
building works
not resulting
in a new
building

MRS FONG: Sir, I rise to move the resolution standing in my name on the Order Paper. The effect of the resolution is to further amend the Building (Administration) (Amendment) Regulations 1991 so as to simplify the method of collection of fees for processing building plans.

At present, applications for approval of building plans and for permission to commence works are processed free of charge. In accordance with the policy that those who use the service should pay for it, the Administration proposes to charge for the service for processing building plans. This is the purpose of the amendment regulations. The Administration also proposes to introduce the charges in steps, that is to recover 25% and 50% of the cost in the first and second year and the full cost in the third year. The Legislative Council ad hoc group set up to study the amendment regulations fully supports the Administration in the above proposals.

However, on the method of collecting the charges, the ad hoc group concludes that a system which creates certainty and is simple to administer and at the same time will not create conflicts amongst those who provide the service and those who use the service would be best for all concerned. It is generally recognized that the building industry in Hong Kong is extremely efficient and a high level of professionalism exists amongst the architects, engineers, surveyors and other related parties and it will be to nobody's interest if this efficiency is hampered in any way. My honourable colleague, Mr Edward HO, will speak on this in detail in his speech and I will not dwell on it here.

After hearing the views of the building industry and the Administration, the ad hoc group feels that the method of collecting the charges should be changed from the original proposal of charging a fee for each resubmission, other than the first one, to one which provides for the payment of an initial fee to cover five resubmissions. The group's proposal is detailed in the Annex to the Order Paper.

Members may have noticed that changes have been made to some of the charges in the revised Annex. This has been done on the advice of the Administration to reflect more accurately the costs to be charged.

Sir, the ad hoc group accepts that there is a degree of averaging whichever method of charging is adopted. The group is fully aware that its proposal may in the long run cause the cost-relation rule to be infringed if charges are to continue to be made under section 38 of the Buildings Ordinance. The simple answer to the problem lies in the inclusion of a "global cost provision" in the Ordinance and the group hopes that the opportunity will be taken to amend relevant section of the Ordinance to embody such a principle when the scheme is next reviewed in about six months' time.

Sir, with these remarks, I beg to move.

Question on the motion proposed.

MR EDWARD HO: Firstly, I wish to express my gratitude to the Honourable Mrs Nellie FONG and my other colleagues in this Council for supporting an issue which is not easily grasped by those who are not connected with the building industry.

Sir, the Building (Administration) (Amendment) Regulations 1991 were introduced into the Legislative Council despite strong objections from the building industry and the concerned professional institutions. In the Legislative Council Brief dated 20 March 1991, put out by the Planning, Environment and Lands Branch, it was stated that "the Land and Building Advisory Committee, the Real Estate Developers Association and other interested professional institutes have been consulted but, understandably, the proposals did not gain wide support". An examination of the minutes of the Land and Building Advisory Committee would have revealed that there was not any support as opposed to "did not gain wide support".

These are indeed "understandable" objections but for different reasons that are implied by the Administration. These objections are absolutely valid, and what the building industry is objecting to is not so much the principle of cost recovery but the industry is convinced that the proposed method of fee charging will have some fundamental problems.

Permit me to explain briefly to Members who may not be familiar with the workings of the building industry. For any project, the first submission to the Building Authority is the General Building Plans. These would be submitted at the earliest opportunity when the architect has finished his design, as the approval of the General Building Plans is essential in triggering off other building activities such as site formation, foundation or, even in some cases, the obtaining of finance from financial institutions for the project.

Now, it should be clear to anyone that it is only when the General Building Plans have been prepared that consultants of many other disciplines can design their respective part of the work: the structural engineer to design and calculate structural systems and members; the mechanical and electrical engineer to design the

electrical, plumbing, drainage, ventilation and air-conditioning systems and so on. Once these engineering designs have been completed, the architect will have to review his building plans to see whether the final structural, mechanical and electrical provisions have been incorporated in the original building plans and revisions and amendments are inevitable. Similarly, elevational design refinements are also normally carried out after the initial building plans have been approved.

All this is in the interest of the building industry's customary speed and efficiency as we must bear in mind that land cost is extremely high and delays have tremendous financing cost implications to the developer, and which cost will eventually be passed to the end users.

Since amendments to approved General Building Plans are inevitable steps in the design of buildings (and the Administration's own statistics have proven this), if we go along with the regulations as proposed by the Administration which charges a fee every time an amendment is made, then it can lead to disputes and potential liabilities which can be quite serious in nature, but totally not intended in the proposed regulations. The following undesirable consequences may also result:

(i) Projects would be unnecessarily delayed as Authorized Persons would not submit general plans until structural designs and mechanical/electrical designs and all other users' requirements are known and frozen to safeguard his liability to his client. This is because his client may contend that it was the responsibility of the Authorized Person to ensure that no resubmission or amendment would be made unless it is expressly authorized by him. This would give rise to needless disputes between the Authorized Persons and his client, and possibly the Authorized Persons and the Buildings Ordinance Office.

(ii) The Authorized Person would try to minimize as much amendments as possible in order to save fees and disputes. This would result in inefficient designs as designs would be based on oversized provisions of structural members, mechanical ducts, plant rooms and so on to avoid as much as possible the need to adjust later.

(iii) For the same reason, aesthetic design refinements such as for the building elevation or to the internal layouts would positively be discouraged. This should be a concern to those of us who care for the appearance of our city and the quality of our environment.

The proposed regulations allow one free resubmission. Let me explain that a resubmission is not an amendment: a resubmission is necessary when the General Building Plans have been rejected. Authorized Persons generally enjoy very good co-operation with officers of the Buildings Ordinance Office; but despite this co-operation, it is not unusual for plans to be resubmitted more than once due to a number of factors occasioned by any one of the many different government departments that have jurisdiction over the approval of building plans. In any case, the Buildings Ordinance Office only carries out curtailed checks on building plans and thus there is no assurance that, even after the first resubmission, all accounts have been taken of to avoid a further rejection.

Members of the ad hoc group feel that, whilst it can support the principle that government departments should recover the cost of services that they render to the public, it is desirable and possible to simplify the fee collection method to avoid the kind of potential problems that I have illustrated above. Consequently, it has been agreed that the Honourable Mrs Nellie FONG would propose an amendment to the proposed regulations which would allow the government departments to recover their costs and yet minimize the potential problems.

The Administration has informed the ad hoc group that its proposal would be ultra vires as it would depart from the "cost relation rule". The Administration's response is surprising because, if it is true (which I have no reason to doubt it), then its own proposal would not stand close scrutiny under the same "cost relation rule". The Administration's proposal to charge by gross floor area with some very broad categories does not "relate with reasonable accuracy to the cost of providing the services in question", as maintained by the Administration in a memo dated 22 May 1991 from the Secretary of Planning, Environment and Lands to the Secretary General of the OMELCO. The cost of checking the plans of a building of a complicated nature, such as a hospital or an entertainment and commercial building of a modest size, which commands a smaller fee can be much higher than the cost of checking a simple straightforward high-rise office building of many times the gross floor area which commands a much higher fee.

In any case, what the group proposes at this time would not go beyond the cost of the services provided as the regulations at this time would only recover 25% of the cost. I believe that the simple remedy to the Administration's concern of cost relation would be to amend the Buildings Ordinance to provide for a global cost

provision. Such types of provisions have been included in other Ordinances such as the ones on Film Censorship, Merchant Shipping, Shipping and Port Control and so on.

Sir, with these remarks, I support the motion.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I had not intended to speak because the Administration has already agreed to support Mrs FONG's motion, but I wish to pick up a single point in Mr HO's speech in which he said that the Administration maintained that Mrs FONG's amendments would be ultra vires.

I think the point made by the Administration is that the initial fees in the regulations are based on a percentage of the costs of the processing of applications, and it has always been intended that at a later stage the full cost of the processing of plans should be charged -- and I think this is a matter on which there is no dispute. As at the present stage both the regulations as gazetted and also the amendments proposed by Mrs FONG are certainly intra vires for the simple reason that the amount to be charged, being only a proportion of the full cost at this stage, certainly is not going to exceed the full cost of processing.

The problem is going to be later, as and when the full costs are charged and prescribed in the regulations; regulations which were based on Mrs FONG's amendment could then become ultra vires the Buildings Ordinance because in certain circumstances the fees which would be prescribed would almost certainly exceed the costs.

I apologize for the complication but I think it will come out more clearly in Hansard -- in the written record.

Question on the motion put and agreed to.

VIETNAMESE BOAT PEOPLE

MR POON CHI-FAI moved the following motion:

"That, having regard to the continuous influx of Vietnamese boat people (VBP), the stalling of the mandatory repatriation scheme, the lack of progress of voluntary

repatriation, the reduction in the intake of Vietnamese refugees (VR) and in financial assistance for VBP stranded in Hong Kong by resettlement countries, and the fact that a large number of recent arrivals are not genuine political refugees and also include ex-voluntary returnees, this Council urges the Hong Kong Government :

(a) to strongly request the UK Government to ask the United Nations to revise the policy on VBP and cancel the port of first asylum policy immediately;

(b) to request the United Kingdom and the United States and other resettlement countries to increase their financial assistance in meeting the expenses incurred by the VBP in Hong Kong and expedite their resettlement of VR stranded in Hong Kong; and

(c) to formulate an effective and practicable strategy to curb the influx of VBP and expedite the repatriation of all VBP stranded in the territory."

MR POON CHI-FAI (in Cantonese): Sir, I rise to move the motion standing in my name on the Order Paper.

"That, having regard to the continuous influx of Vietnamese boat people (VBP), the stalling of the mandatory repatriation scheme, the lack of progress of voluntary repatriation, the reduction in the intake of Vietnamese refugees (VR) and in financial assistance for VBP stranded in Hong Kong by resettlement countries, and the fact that a large number of recent arrivals are not genuine political refugees and also include ex-voluntary returnees, this Council urges the Hong Kong Government :

(a) to strongly request the UK Government to ask the United Nations to revise the policy on VBP and cancel the port of first asylum policy immediately;

(b) to request the United Kingdom and the United States and other resettlement countries to increase their financial assistance in meeting the expenses incurred by the VBP in Hong Kong and expedite their resettlement of VR stranded in Hong Kong; and

(c) to formulate an effective and practicable strategy to curb the influx of VBP and expedite the repatriation of all VBP stranded in the territory."

Sir, since Hong Kong became the port of first asylum, the influx of Vietnamese

boat people has been incessant. Their number has risen and never fallen. They have become a serious social, economic and political problem for Hong Kong. All along, for accommodating Vietnamese boat people and paying for their upkeep, the citizens of Hong Kong have had to make all kinds of sacrifices: paying more tax, cutting social welfare services and postponing or cancelling some community development projects. In recent years, large-scale fighting and disturbances have been frequent in centres for Vietnamese boat people. There have been organized "anti-repatriation" actions of a violent kind. Large numbers of lethal weapons have been found during searches. Some boat people have escaped from their centres to commit robberies and disturb the peace for the citizens of Hong Kong. Such incessant occurrences have deepened the citizens' discontent with, and complaint about, Government's weakness and incompetence, its submission to external pressure and its desperate effort to protect the interests of the United Kingdom even as it remains indifferent to whether the people of Hong Kong live or die. The conditions described above have in the past two or three years caused rare situations of confrontation between Government and people. The recent massive influx of Vietnamese boat people has increased the VBP population in Hong Kong to over 50 000. Hong Kong's centres for Vietnamese boat people and human resources for dealing with them have been stretched to the utmost limit. In Hong Kong recently, the inflation problem has been serious: increases in prices, taxes and rates have been sharp; civil servants and workers have been unhappy because their salary increases have been kept low; and taxi drivers are opposing the abolition of the fuel surcharge in fare. These problems caused by economic slowdown have made the people of Hong Kong feel that they can no longer afford to support the Vietnamese boat people. They are at the end of their tolerance and at the end of their patience. If the problem is not quickly solved, Hong Kong's stability and prosperity will suffer. The general public of Hong Kong will then be unable to enjoy happy living and working in Hong Kong.

Sir, the Executive Council and this Council recently decided "to refrain from appropriating further funds for building new centres for boat people" and "to send representatives to the United Kingdom to seek assistance in implementing the mandatory repatriation of Vietnamese boat people." These are simply unrealistic decisions that are illusory and deceptive. Nor will they solve Hong Kong's Vietnamese boat people problem. In fact, if we continue to tolerate indefinitely the massive influx of Vietnamese boat people, then, when the centres for the boat people are filled to capacity, are we to let boat people sleep in the streets or wander about instead of being accommodated and confined, until Hong Kong's law and order situation becomes intolerable? Three years ago, my honourable colleague Mrs Rita

FAN already pointed out that there would be social unrest unless the time bomb - - the Vietnamese boat people problem -- was removed in time. In August 1989, the Honourable Senior Member, on behalf of this Council, wrote to Government pointing out, "The Legislative Council will not appropriate further funds for meeting the expenses on the boat people. Should there be further financial need for handling the Vietnamese boat people problem, the United Nations and the United Kingdom should take up that responsibility." However, reality and wish are at variance. Has not this Council continued to appropriate hundreds of millions of dollars every year for meeting the expenses on the Vietnamese boat people? Having regard to the indifference of countries like the United Kingdom and the United States and the fact that the UNHCR is still behind in paying back the Hong Kong Government for the boat people expenses that had been advanced, the hope that the United Kingdom and the United Nations will shoulder all the expenses for building centres for boat people is but childish and totally unrealistic wishful thinking. Because of this, many citizens think that this announcement of the decision "to refrain from appropriating further funds" is but a way of going through the motions for temporarily pacifying the public at a time when feelings are running high. As for the request for assistance from the United Kingdom in implementing mandatory repatriation, the United Kingdom has always acted more or less in line with the United States in the handling of the Vietnamese boat people, ready to sacrifice the interests of Hong Kong for good relations with the West, particularly with the United States. Because of this, I believe that there is a big question mark in the minds of the people of Hong Kong that the United Kingdom will, despite the displeasure of the United States, really make a policy in the interests of Hong Kong for solving Hong Kong's Vietnamese boat people problem. No wonder an article in the Oriental Daily on 27 May commented that the Legislative Council Members' visit to the United Kingdom would be futile and wasteful of public funds and that it was just better than nothing. Sir, even supposing that the United Kingdom's full support is miraculously won, mandatory repatriation alone really cannot solve Hong Kong's boat people problem, considering that there will be more in-comers than out-goers because of the present slow screening, the incessant massive influx of boat people and Vietnam's policy of "conditionally" taking back boat people. In fact, without the cancellation of first asylum as a complementary measure for stopping the waves of boat people coming in day and night, the repatriation of boat people, who are given help and money to settle down after returning to Vietnam, may encourage even more Vietnamese to try to come to Hong Kong with the premeditated intent of receiving more help and more money. This is precisely proven by the fact that some of the boat people recently arriving at Hong Kong are ones who were voluntarily or forcibly repatriated in the past and who have come back

bringing more family members.

Sir, we all know that Hong Kong is a small place with a large population, that it is already suffering from overcrowding and that it simply does not have the resources for dealing with the endless influx of boat people. Also, such a small place as Hong Kong has very limited financial resources. The Vietnamese boat people are already becoming an unreasonably heavy burden for Hong Kong, with a huge impact on Hong Kong's social welfare, transport, housing, education, medical service and law and order. In Hong Kong at present, there are still tens of thousands of citizens living in wretched, overcrowded wooden huts, temporary housing and "cage" apartments. In front of hospitals are long queues of out-patients. Special schools are not providing enough school places. All this precisely shows that Hong Kong still has many problems of its own which badly need to be solved. How, then, can Hong Kong externally brag about humanitarianism? Hong Kong will come to harm if, at a time when it still has many problems of its own, when its economic outlook is not bright and when other countries are reducing their intake of refugees, it should pretend that it is a fat man whose swollen face is not caused by slapping, or place itself at the disposal of other people and endlessly take in and look after Vietnamese boat people.

For more than 10 years in the past, out of a humanitarian heart, Hong Kong never said no to Vietnamese boat people but took them in and looked after them. However, with the passage of time, what has happened is that the majority of the boat people arriving at Hong Kong in recent years are no longer refugees who were politically persecuted and who, in desperation, had to escape by risking the angry waves of the sea. They are just economic refugees seeking a better life. Under these circumstances, some countries have reduced or even stopped their intake of boat people. The original first asylum policy should be terminated in the light of the fact that the status of the refugees has changed and that the resettlement countries have stopped or reduced their intake of boat people. In fact, one who seeks emigration in quest of a better life should follow the proper procedure and be fair enough to wait in line. One should not ignore other countries' laws. Nor should one, when life becomes hard, join others in swarming into richer countries. Nor should a country, when its economy is in bad shape, export boat people massively in the hope of gaining in return foreign aid for improving the economy. If everybody does so, the world will become a chaotic place. Sir, because of the above considerations, I have reservations about the amendment that the Honourable Stephen CHEONG will later move to amend my motion by asking the United States to take steps to improve Vietnam's

economy. My argument is that the poor shape of an economy can never be used as an excuse for exporting boat people or forcing others to help to improve that economy. Every country should rely on its own resources. If other countries provide assistance, that should only be voluntary assistance provided on humanitarian or moral grounds. It should not be a forcibly imposed responsibility. Also distant water is useless for fighting a fire nearby. Improving Vietnam's economy is not the practical answer to the pressing boat people problem.

Sir, continuing to take in Vietnamese boat people and to help them settle down overseas will only ignite the flame of desire of more Vietnamese boat people to flee by sea in search of paradise. It will only encourage them to take a chance and to achieve the hoped-for objective of being screened and found eligible for refugee status. This will only increase the chances of more Vietnamese people drowning in the angry sea. On 17 June 1989, a boat carrying Vietnamese boat people was attacked by pirates. This tragedy, in which 150 people lost their lives, was indirectly the result of "first asylum."

Sir, I saw on TV the tragic scene in which Hong Kong citizen WONG Pak Kan with his 79-year-old father went on a hunger strike for several days, sitting silently outside the Government Secretariat, but still unable to win permission for his wife and daughter to remain in Hong Kong. I saw on TV those boat brides and undocumented mothers who had to suffer separation from husbands and children. I then thought of those new-born babies who at the most needful moments could not receive the care and love of their mothers. Those poor little illegal immigrants. Young as they were, they risked their lives to smuggle themselves into Hong Kong so as to be together with their most beloved parents and to share a happy family life. They, too, had to be re-separated, crying and kicking, from their parents, thus becoming worlds apart. My heart really ached. Sir, when I saw those illegal immigrants from the Chinese mainland -- who, like us, were members of the Chinese nation and "descendants of the Dragon" -- pursued by army and police dogs, arrested and locked up, or standing precariously on bamboo scaffoldings up to a hundred feet high, risking the possibility of a fatal fall, pleading for mercy and receiving none, I am sure the people of Hong Kong cannot accept and will never forget Government's heart of stone in so treating the illegal immigrants from the mainland and in sharp contrast to this its high-sounding humanitarianism towards the Vietnamese boat people. Honourable colleagues, please forgive me for the liberty I am taking. We understand that Hong Kong's economy cannot afford to maintain the boat people. We know that the majority of the boat people are here simply to seek a better life. They are illegal immigrants who cannot

be considered as refugees. I really cannot understand some of my honourable colleagues who continue to oppose strongly the cancellation of first asylum but who have all along maintained the "silence is gold" approach to the unequal treatment for the illegal immigrants from the Chinese mainland. Are they not feeling inwardly sorry? Will they not be bothered by their conscience? Sir, using double standards in dealing with illegal immigrants from Vietnam and those from the Chinese mainland not only is unfair and unreasonable but also hurts the feelings of our fellow countrymen in China and is detrimental to the friendship between the people of China and Hong Kong. In fact, our fellow countrymen in China living near Hong Kong in Dougguan, Huiyang and Shenzhen see in Hong Kong's TV broadcasts illegal immigrants from the mainland pursued by army and police dogs, having their hands tied behind them with hand-cuffs, or standing on bamboo scaffoldings over a hundred feet high in a confrontation with the police, and the Government of Hong Kong spending large sums of public money to build accommodations for, and to look after the life of, Vietnamese boat people. How can they not feel their hearts ache and blame us the people of Hong Kong?

Sir, some of my honourable colleagues oppose the cancellation of first asylum, thinking that the move will hurt Hong Kong's international image and incur international sanctions. I want to ask them if they are aware of the following: Hong Kong's neighbours Taiwan, Macau, South Korea, the Philippines, Singapore and others, have they been shamed or brought into disrepute or condemned by the world for refusing to offer first asylum? Singapore took resolute steps 10 years ago to deny entry to Vietnamese people, with machine guns fired in warning. Singapore has not been condemned, isolated or made a target of sanctions as a result. It may be recalled that, two years ago, when I visited Singapore with members of the Housing Panel, I had occasion to talk with several members of Parliament there. One of the questions I asked them was how they dealt with the Vietnamese boat people problem. They pointed outside the window and said to me that there, where the sea was, was where they turned back the first Vietnamese boat that ventured in, and that was why they were very happy not to have to deal with any boat people today. Sir, Hong Kong in the past tried wholeheartedly and with all its resources to help boat people. Now that it cannot single-handedly deal with the situation, if the cancellation of first asylum for reasons of survival should incur international condemnation or sanctions, that simply would not be in accordance with God's logic.

Sir, after becoming the port of first asylum, Hong Kong not only failed to win international respect and support for taking in boat people but was repeatedly betrayed and deceived. Take for instance the United Kingdom, Hong Kong's present

sovereign state. The United Kingdom has closed the door to, and kept at arm's length, Hong Kong people who hold British passports. In 1988, the United Kingdom announced that it would take in more refugees only if other receiving countries made similar commitments. Hong Kong students in the United Kingdom receive no favourable treatment but have to pay tuition fees as alien students. Only recently, after being criticized, did the United Kingdom reluctantly agree to share the burden 50-50 between the Ministry of Education and the Hong Kong Government in the form of loans. In contrast, residents of Macau, our next door neighbour, who hold Portuguese passports and study in the United Kingdom are eligible to pay the cheaper tuition fees, same as local students. In the past, during the textile negotiations of the European Common Market, the United Kingdom not only failed to assist Hong Kong or protect its interests but added insult to injury by putting Hong Kong time and again in a difficult situation. During the evacuation of nationals in the Gulf war, those Hong Kong residents who were stranded there received no help at all from the United Kingdom. To leave Kuwait, they could depend only on China which made the arrangements for them, and on Canada which had spare seats on aeroplanes used for evacuating Canadian nationals and made such seats available to Hong Kong residents as Commonwealth nationals. It was in this way that all of them were able to leave safely. How can we expect the United Kingdom, Hong Kong's sovereign state, to give serious help to us for solving the Vietnamese boat people problem, a problem of little concern to it? As for the United States, during the 1990 meeting on Indo-Chinese refugees, it cited the fact that "the American Constitution does not allow the grant of asylum to persons who do not have refugee status" and the fact that "the American burden would be increased" as grounds for refusing to establish a centre for boat people on Guam to provide accommodation for those boat people in Hong Kong who were screened and found to be non-refugees. The United States Constitution does not permit the grant of asylum to non-refugees. Is one to assume that Hong Kong has an Ordinance providing for a responsibility to grant asylum to illegal immigrants? The United States is a big and rich country. Even it finds that giving accommodation to non-refugees in Hong Kong will be an excessive burden. Still, it firmly opposes Hong Kong's cancellation of first asylum and mandatory repatriation of boat people. Is it not bullying and taking advantage of Hong Kong? Sir, on 11 May 1989, the Honourable Mrs Rita FAN pointed out, "Government should not submit to international evaluation of Hong Kong's reputation or to the demand of the United Nations High Commissioner for Refugees; it should review the existing refugee policy, giving the first and foremost consideration to Hong Kong's stability and to its citizens' interests." Sir, while international reputation is important, the fact is that the Vietnamese boat people problem has for 16 years damaged Hong Kong's interests and caused social unrest

in Hong Kong. How, then, can such "international reputation" deserve to be treasured and protected by us?

Sir, some of my honourable colleagues think that the denial of entry to illegal boat people is inhumane and difficult to implement and may cause boat people to sink their boats, resulting in loss of lives at sea. Sir, we admit that cancellation of first asylum is not an easy job and, by the same token, mandatory repatriation is hard to carry out. Our worry that illegal immigrants may sink their boats should not be reason for failing to stop illegal immigrants from entering. The truth is that there are indeed many examples of success in denying landing to boat people. In September 1989, the United States Coast Guards drove back to Haiti a Haitian boat with 103 Haitian boat people on board despite the fact that the boat was not seaworthy and the boat people threatened to throw seven infants into the sea. If it is alleged that stopping the influx of boat people may endanger their safety, or if, as the Senior Member warned on 20 May 1989, the question is, "Would Members be prepared to bear the consequences if boat people would rather commit suicide than submit to repatriation?", are we then to refrain from stopping illegal entrants or refrain from carrying out mandatory repatriation? Sir, and honourable colleagues, if we worry that denying entry to boat people may endanger their safety, have we given consideration to the safety of the illegal entrant from the Chinese mainland who, pursued by police acting under orders, perched precariously on bamboo scaffoldings of over a hundred feet high and in constant danger of falling to his death?

Sir, we do not have enough resources of our own. Despite this, we are continuing to take in boat people. We cannot provide proper accommodation to them. We merely imprison them indefinitely in overcrowded closed camps or leave them on inaccessible islands to fend for themselves. This is the more inhumane and more irresponsible action. It is more likely to incur the discontent of the people of Hong Kong and of the Vietnamese boat people and international condemnation. In fact, on the night of "security vacuum" on 27 August 1989, when the police was forced to abandon their guard duties on Tai A Chau, where more than 5 000 boat people lived, many innocent boat people on the helpless island were left at the mercy of violent attackers and spent a night in terror, a night that would never be forgotten, a night of hell on earth. Was it out of humanitarianism that the boat people were put in such a situation? Was it not rather the result of Government acting beyond its means and continuing to take in boat people? Sir, apart from this, is it out of humanitarianism and justice that the Government continues to take in boat people and thus to cause more of them to die in the angry sea while repatriating baby illegal immigrants, undocumented

mothers and boat brides to China?

Sir, the Honourable Mrs Rita FAN thinks that, with the cancellation of first asylum, all boat people arriving at Hong Kong will be regarded as illegal entrants and will receive no help from the United Nations High Commissioner for Refugees, and those boat people who have been screened and found to be refugees eligible for resettlement in a third country will never be able to leave Hong Kong and may become Hong Kong's burden. Sir, the United Nations has an unshirkable responsibility for those refugee boat people who were taken in by Hong Kong as the port of first asylum at the request of the United Nations. Hong Kong's cancellation of first asylum because of its inability to continue to bear the burden cannot become a reason for the United Nations to shirk or abandon this responsibility. This is like borrowing from the bank. The bank's refusal to grant a new loan cannot become a reason for the borrower to get angry, to repudiate his debt or to refuse to repay the original loan. Where is justice? After cancelling first asylum, Hong Kong should, like Singapore, deny entry to illegal boat people. Of course, in carrying out the policy of cancellation of first asylum, the authorities can adopt a flexible approach. They need not invariably refuse to save a life even at the last minute. However, there should be criminal punishment for those boat people who sink their boats deliberately in disregard of the lives of others on board. As for dealing with those boat people who try to land by force, the authorities may seek assistance from China so that they may be repatriated to the Vietnamese border or coast by land or sea via China. Sir, there are indeed many examples of foreign countries successfully denying illegal landing to boat people. If one merely talks about worrying for the safety of boat people and does not propose a better way, or if one worries about this and that and other and waits passively for the worst to happen, one will not be making out a convincing case of the people of Hong Kong.

Sir, before concluding, I would like to make, for your reference, a simple comparative analysis of the difference between my motion and the amendment to be proposed by the Honourable Stephen CHEONG. The primary point of my motion is a request to cancel first asylum. The facts are quite clear. Hong Kong can no longer afford to handle the influx of boat people. Hong Kong is already suffering socially, economically and also on the law and order front. Without the cancellation of first asylum as a complementary measure for stopping the endless influx of boat people, mandatory repatriation alone is not going to be able to solve the boat people problem. To save itself, Hong Kong cannot but request cancellation of first asylum from the United Kingdom and from the United Nations. In fact, Governor Sir Edward YOUDE, in

his 8 October 1986 policy address to this Council, already pointed out clearly that if the international community no longer recognizes that the boat people still fleeing Vietnam are genuine refugees and no longer thinks that resettlement countries are willing to take in more refugees, then Hong Kong can hardly continue to shoulder the responsibilities of first asylum. This is the principle of the policy. Sir, and honourable colleagues, almost all of the boat people arriving at Hong Kong today are economic migrants. At the same time, as more of them swarm into Hong Kong, fewer of them are taken in by the resettlement countries. The condition stated by Sir Edward as the prime principle underlying the policy of not "continuing to shoulder the responsibilities of first asylum" has already been met. On 2 June, in a signature campaign in Kwun Tong, I collected in over half a day the signatures of over 22 000 citizens favouring the cancellation of first asylum. Many of these citizens, when signing their names, said frankly that first asylum should have been cancelled a long time ago. Some warm-hearted citizens spontaneously provided beverages to the campaign workers and helped in the campaign. That was evidence of the citizens' opposition to first asylum.

As for the Honourable Stephen CHEONG's amendment, it primarily is about urging the United States Government to take appropriate steps to improve the economy of Vietnam. At the same time, he opposes the cancellation of first asylum. However, it will surely take a rather long period of time for the United States to improve the economy of Vietnam through economic assistance. Distant water is useless for fighting a fire nearby. The boat people problem confronting Hong Kong must be solved without further delay. Besides, the United States has already, out of fear of assuming a greater burden, refused to establish a temporary refugee centre on Guam. How can we, then, expect it to try single-handedly to help to improve the economy of Vietnam? How can we believe that urging the United States to help in improving the economy of Vietnam will thoroughly solve Hong Kong's Vietnamese boat people problem?

Sir, and honourable colleagues, only cancellation of first asylum can thoroughly solve Hong Kong's Vietnamese boat people problem. I, too, will quote from the "Fai Yu" column of the Express: "The boat people problem confronting Hong Kong must be solved immediately and without delay. An ill-conceived sort of kindness does harm to oneself and to others." It is hoped that the Honourable Stephen CHEONG and other opponents to the cancellation of first asylum will carefully reconsider the matter. At the same time, I earnestly ask my colleagues in this Council to support my motion out of such important considerations as the economy of Hong Kong, the sufferings of

the poor and the overall interests of Hong Kong.

Sir, I beg to move.

Question on the motion proposed.

HIS EXCELLENCY THE PRESIDENT: Mr Stephen CHEONG, you have given notice to move an amendment to the motion. You may now speak to the question and also move your amendment.

MR STEPHEN CHEONG moved an amendment to the motion:

That Mr POON Chi-fai's motion be amended, after the words "voluntary repatriation", by deleting the rest of the sentence and substituting the following:

"the virtual non-existence of financial assistance from the international community for Vietnamese boat people stranded in Hong Kong, and the fact that the great majority of arrivals in recent years have not been genuine refugees and that these also included ex-voluntary returnees, this Council urges the Hong Kong Government to strongly request HMG -

(a) to formulate an effective and practicable strategy to curb the influx of Vietnamese boat people and expedite the repatriation of all non-refugee Vietnamese boat people stranded in the territory;

(b) to contribute to the expenses incurred resulting from the Vietnamese boat people in Hong Kong and encourage other countries such as the United States to make similar contribution; and

(c) to press the United States to take appropriate action to facilitate the improvement of the Vietnamese economy which is the root cause of the boat people problem."

MR CHEONG (in Cantonese): Sir, I propose that the Honourable POON Chi-fai's motion be amended as set out in the Order Paper by deleting, after the words "voluntary repatriation," the rest of the sentence and substituting the following:

"the virtual non-existence of financial assistance from the international community for Vietnamese boat people stranded in Hong Kong, and the fact that the great majority of arrivals in recent years have not been genuine refugees and that these also included ex-voluntary returnees, this Council urges the Hong Kong Government to strongly request HMG:

(a) to formulate an effective and practicable strategy to curb the influx of Vietnamese boat people and expedite the repatriation of all non-refugee Vietnamese boat people stranded in the territory;

(b) to contribute to the expenses incurred resulting from the Vietnamese boat people in Hong Kong and encourage other countries such as the United States to make similar contributions; and

(c) to press the United States to take appropriate action to facilitate the improvement of the Vietnamese economy which is the root cause of the boat people problem."

Sir, the spirit of the motion for a debate on Vietnamese boat people (VBP) is worth supporting. The problem, among those difficult ones which Hong Kong faces, is an issue of concern to the majority of people in Hong Kong. It is commonly known that the VBP problem is an international problem in a wider context at the diplomatic level, which involves international agreement, and has something to do with Hong Kong's major trading partners such as United States of America, China and United Kingdom. We all well understand that it is not a problem that can be solved by the Hong Kong Government alone.

Nevertheless, with the impending Legislative Council election in September, it is understandable that hot topics of public interest will be raised for discussion again. I believe there will be debates of this nature coming up from now on till the end of this Legislative Council Session. In fact, similar situations also occurred during the last two terms towards the end of their sessions. I think my colleagues are not amazed at this but have got used to it instead.

As far as Honourable POON Chi-fai's proposal to cancel the port of first asylum policy is concerned, I believe a majority of citizens will definitely be misled into believing that this will be the best solution since Hong Kong is facing such a heavy burden arising from the VBP problem. Such action, which simplifies the problem but

is drastic in nature, is readily acceptable by the people of Hong Kong who have borne the psychological burden for a long time. However, is it necessary to cancel the port of first asylum policy in order to solve the VBP problem? As leaders of our community, Members of this Council have the need and duty to understand the problem better so as to explain clearly to the people the complex levels involved and consequences as a result of each and every policy. We should not be so unreasonable as to make any decision that may have a bearing on the interest of Hong Kong. If we just generalize the problem in a simple and superficial way, misleading people in their understanding of the problem, we are liable to dereliction of duty.

First of all, we have to understand clearly the wider context of diplomatic policy in which the VBP problem is involved. Firstly, Hong Kong is not, and never will be, an independent nation. Any issue at the diplomatic level should be dealt with by its sovereign state. The proposal to cancel the port of first asylum policy should be endorsed by United Kingdom as the sovereign state of Hong Kong, and then announced to all signatories to the Geneva Agreement. It is not only unfair but also impracticable for Hong Kong to seek solution for this international issue on its own.

If the proposal to cancel the port of first asylum policy comes true, should we consider its consequences carefully? If VBP continue to arrive at Hong Kong, is the Government going to tow them out to the international waters? Who will be responsible for the towing, the British Royal Navy or the Hong Kong Marine Police? Are we going to do nothing about it if their boats sink? Can we bear the international criticisms as a result of cancelling the port of first asylum policy and being alleged of not saving the dying, disregarding people's lives and their human rights? Will the international image of Hong Kong be jeopardized if the above pictures are covered by local and international media? Will countries that uphold human rights impose any sanction on Hong Kong because of such treatment on the VBP? We should at least find the answers to the above questions, otherwise, it may not be an effective and practical strategy to cancel the port of first asylum policy by Hong Kong alone.

My proposed amendments to the motion seek to solve the VBP problem in two ways. I must emphasize that my motive is to point out an international issue that should be solved by all nations, and not to be decided by Hong Kong alone, bearing in mind that Hong Kong is a member of this large, international family.

As the United Kingdom is our sovereign state, we have to request the United Kingdom Government to formulate an effective and practicable strategy to curb the influx of

VBP and expedite the repatriation of all non-refugee VBP. Various solution on the VBP problem have been put forth by our community and it is the United Kingdom Government's duty to decide for Hong Kong on the right strategy.

As the VBP problem is recognized by all countries as an international issue, the expenses incurred resulting from the VBP should not be borne by Hong Kong alone. The United Kingdom Government should encourage other countries to make their contributions. As a signatory to the Geneva Agreement, the United Kingdom not only has a commitment to this international issue, but is also obliged to contribute to the expenses incurred resulting from VBP. Otherwise, the United Kingdom as the sovereign state of Hong Kong will impair its own dignity by unfairly drawing the resources of Hong Kong to pay the price on this international issue.

In the final analysis, the influx of VBP is due to the poor economy of Vietnam. People leave their country in order to seek a better living. United States's insistence on sanctioning Vietnam economically is one of the factors underlying this international issue. If the economy of Vietnam can be improved, there will be a chance to solve the VBP problem. As the American Chamber of Commerce has admitted, if United States cancels its economic sanction on Vietnam, it will help improve the economy of Vietnam effectively and hence people will not have to leave their country. While United States is trying to help VBP, its policy in another area is intensifying this international issue. If the United Kingdom Government does not exert pressure on United States for its position on VBP, the vicious circle will go on and on forever, so that the interest of Hong Kong may be sacrificed innocently.

Sir, lastly, I would like to clarify one point. Various recipient countries (apart from United Kingdom) have tried their best to achieve their commitment of receiving Vietnamese refugees in the past. Those stranded in the territory are mostly non-refugee VBP that no country will receive. I hope my colleagues could take note of that and this is the subject of our discussion today.

Sir, with these remarks, I move the amendment motion.

Question on Mr CHEONG's amendment proposed.

HIS EXCELLENCY THE PRESIDENT: I doubt if I need now remind Members of the rules in these cases, but just in case, let me remind you that those who now speak will be

considered as speaking both to the original motion and to the amendment which means that they cannot then speak again after the amendment has been dealt with. If Members wish not to speak to the amendment they then have a chance to do so later after the amendment has been dealt with. Could I have the names of Members who wish to speak? Would they please keep their hands up for a moment?

MR CHAN (in Cantonese): Sir, the motion moved by the Honourable POON Chi-fai calling for cancellation of the port of first asylum policy can be taken to reflect local sentiments. The Eastern District Board which I represent has passed a resolution to call on OMELCO to put an end to the port of first asylum policy, and members of the Wanchai District Board have also staged a petition outside the Legislative Council. Besides, editorial comments in many Chinese-language newspapers also support the call for an end to first asylum. Public opinion is loud and clear. This notwithstanding, three points are open to question before we embark on such a move, and it is for this reason that this Council should not pass the motion today. First, we should learn a lesson from the screening policy introduced in 1989 which resulted in a massive influx of boat people into Hong Kong as the news leaked out beforehand.

Second, as an international issue, the refugee problem should be the responsibility of the international community. Should Hong Kong unilaterally end its status as a port of first asylum, it will have to bear this responsibility all on its own. Is it worth giving up what the international community is committed over this problem?

Third, I can never accept any suggestion to drag the boat people to high seas and make them run their course at their own expense. Such an unreasonable and illegal move would be most disadvantageous to Hong Kong. Nor can we hold the refugees in the camps indefinitely because this is a violation of human rights and will make the Hong Kong Government liable to indictment. In the end, would not Hong Kong be turned into a port of asylum itself?

After considering these three points, I think this Council should continue to strive for mandatory repatriation. In order not to begin at the wrong end, any agreement on mandatory repatriation must be reached before first asylum is put to an end.

In fact, one and a half years have elapsed since the first mandatory repatriation

of boat people. We should not give up all hope or relinquish our claim. Hong Kong has looked after the refugees for 16 years. We should not just seize the day and the hour while putting our reputation at risk.

Mandatory repatriation is a course of action agreed to by parties involved in the Comprehensive Plan of Action, with the United States being the only opponent of this form of repatriation. The United States objection to the mandatory repatriation programme is a grossly irresponsible act. First, the United States verbal gesture of humanitarianism has given the economic migrants the false impression that once they flee from Vietnam, they will be given resettlement places in the West. This has triggered off a steady influx of boat people into Hong Kong.

Recently, a United States congressman has suggested that Vietnamese refugees be sent to Kuwait to assist in the country's post-war reconstruction work. This has immediately set off a new exodus of boat people from Vietnam.

Second, the Americans do not hold themselves responsible for the continual influx of Vietnamese boat people into Hong Kong. With the United States taking the lead, other countries have been drastically cutting back on the intake of refugees from Hong Kong since 1983. This has prompted the territory to introduce a screening policy in 1989. According to the outcome of screening, the ratio of political refugees and economic migrants is roughly one to four. While the United States accepts only a portion of the refugees, Hong Kong has to look after all the boat people. The United States has not taken the lead in helping Hong Kong.

Third, the United States must realize that many boat people have become militant and bellicose after all those war-ridden years in Vietnam. These people will leave no means untried to get whatever they want. This has resulted in quite a number of violent incidents. A football match in the camps will very easily be turned into a violent incident which may attract attention from around the world. Violent fightings used to break out between North and South Vietnamese, but now brawls causing casualties usually take place among the North Vietnamese themselves. Although the Vietnamese account for only 5% of Hong Kong's prison population, 90% of incidents in our prisons can be attributed to this category of inmates.

Fourth, the United States must realize that Hong Kong is facing the prospect of closed camps reaching full capacity very soon. With some two to three thousand babies born each year, conditions in the camps have become all the more over crowded. Such

a situation will give rise to more violent incidents. As no additional sites are now available in Hong Kong to erect refugee camps, the United States really has not much ground for refusing to accept mandatory repatriation. In case the United States should maintain its stance as an opponent of forced repatriation, I propose an alternative plan as follows: All stranded boat people should be sent back to a holding camp in Vietnam run by the United Nations High Commissioner for Refugees and efforts should then be made to gather evidence of their persecution. Upon production of such evidence, arrangements should be made by the United Nations to find resettlement places for them overseas. With such a process put in train, the boat people may accept mandatory repatriation. This will help soften the United States' strong objections to the programme.

As regards Mr POON Chi-fai's motion. I have said that the Legislative Council is fighting for mandatory repatriation and therefore today is not the right time to discuss whether or not the first asylum policy should be scrapped. I should have moved my own amendment motion but what pleases me may not please other Members. I had better abstain from voting.

MRS FAN (in Cantonese): Sir, Hong Kong has been harassed by the Vietnamese boat people problem for 16 years. It has become an issue that depletes our manpower and resources. Despite the numerous efforts made in tackling the problem, we still cannot find an effective solution. Instead, the situation has been deteriorating, posing a greater burden on the people of Hong Kong. There is an earnest hope both inside and outside this Council that the influx of boat people to Hong Kong will reduce while those stranded here will leave for other countries, so that Hong Kong will not be worn down by this problem. As it is an immediate issue of grave concern, different views and proposals have been expressed. These views, diversified as they may be, are actually made in the sincere hope that Hong Kong will be relieved of its heavy burden as soon as possible. The motion moved by the Honourable POON Chi-fai and the amendment proposed by the Honourable Stephen CHEONG today aim at finding the most effective solution to the problem. I support the amended motion by the Honourable Stephen CHEONG as it is more comprehensive and well-balanced, pointing to the right direction in taking short-term measures and in solving the problem on a long-term basis and putting the responsibility back on the shoulder of United Kingdom, our sovereign state.

In order to solve a problem, we should first of all define it. What we are faced

now is not a refugee problem but one concerns with boat people who cannot be repatriated. Those screened out as non-refugees cannot resettle in other countries and should be returned to Vietnam in accordance with international practice. However, as the Vietnamese Government refuses to accept these illegal immigrants from Vietnam, the Hong Kong Government has great difficulties in implementing the mandatory repatriation scheme unilaterally. The western countries have not been active in providing assistance to relieve the difficulties faced by Hong Kong. Some of them even try to evade the issue central to the problem and confuse people with the misnomer of "refugees" for boat people. As a result, people in other countries have the impression that Hong Kong is trying to repatriate refugees. During his visit in Hong Kong, the Prime Minister of Canada called upon the western countries to accept more refugees. It gives some Hong Kong people the impression that something has gone wrong with the intake rate of refugees by other resettlement countries. In fact, this is not the case. Mr POON Chi-fai also has the same misunderstanding. If not, he would not have asked other countries to take in more refugees. In fact, Mr Stephen CHEONG has just talked about that. With the exception of Britain, all resettlement countries have accepted refugees up to the level they have promised. Some of them continue to receive refugees even when their intake quota has been filled. The Prime Minister of Canada highlighted the refugee problem without mentioning Vietnamese illegal immigrants and showed little interest in repatriation arrangements. I wonder whether the shift of emphasis in his remarks are intentional or not. Nonetheless, there are numerous foreign press reports which confuse the non-refugee boat people issue for the refugee problem and criticize Hong Kong for requesting to implement the repatriation scheme. I believe such argument is welcome by those countries opposing mandatory repatriation and it will not be a surprise if they covertly encourage and promote these ideas. As we all know, there is a western super power which, in the name of "human right, humanity and justice", has in many ways obstructed Hong Kong in the implementation of the mandatory repatriation scheme of Vietnamese illegal immigrants. Yet on the other hand, this very country uses all means to drive away the illegal immigrants from her territory and it is not unusual for her to resort to force in the repatriation exercise. What sheer hypocrisy and pretensions are these. Yet, this country has a good record of receiving refugees. The mixing up of refugees for non-refugees has been successful concealment for its double standard. The people of Hong Kong must expose such tricks and draw a clear line between refugees and illegal immigrants to leave no room for misleading ideas. The wording of the motion proposed by the Honourable POON Chi-fai is not well-defined enough and may give rise to misunderstanding on the intake rate of refugees. The amendment put forward by the Honourable Stephen CHEONG, on the other hand, is more

succinctly formulated, pin-pointing the boat people problem.

As far as Hong Kong is concerned, the paramount task is to extricate ourselves from the present difficulties. The short-term objective is to reduce the number of boat people. It is therefore necessary to have an effective and feasible strategy which can deter the influx of Vietnamese boat people on the one hand, and expedite the repatriation of boat people on the other. The scrapping of the port of first asylum policy, as Mr Stephen CHEONG earlier on has said, may or may not deter the influx of boat people. The actual effect has to be tested. Mr POON Chi-fai has given me the impression that even when we see boat people drowning themselves, we should not go to their rescue. Therefore no more refugees will come. A question has then cropped up in my mind -- who is going to do it? We Hong Kong people? Would the proponent himself be willing to do it? If no one is willing to do it, it will just be empty talk. I am afraid it will not work even in the future. But we must save ourselves. If no other alternatives are available we cannot guarantee that we will not cancel the port of first asylum. I am of the view that it should be our last resort which should not be used unless we are driven to extremity because it will involve great difficulties and Hong Kong will have to pay a high price. Hong Kong cannot introduce such measure on her own without the worry that it will backfire, nor can we ensure that the negative effects will be reduced and the measure will be absolutely workable. If mandatory repatriation can be introduced, it will to a certain extent deter those Vietnamese who intend to come to Hong Kong and the number of Vietnamese boat people stranded in Hong Kong will be reduced. With the exception of the United States and Vietnam, all other countries have accepted that this is an effective measure in compliance with the international law. If the United States and Vietnam insist on opposing the mandatory repatriation scheme, they should be requested to allocate a site somewhere for the setting up of reception centres to receive the boat people transferred from Hong Kong, thereby alleviating our plight. I have repeated these words many times but they have fallen on deaf ears. Those who are in a position to make decision do not listen or they simply do not want to hear. As they do not live in Hong Kong, naturally they can hardly share our anxieties. I have pointed out in the motion debate on Vietnamese boat people in 1989 that "the Vietnamese boat people problem (and its associated policies) are matters of foreign affairs and therefore the responsibility rests with our sovereign state, the United Kingdom." I would like to reiterate the above standpoint today. I cannot agree to the reply given by the Secretary for Security in response to my question raised in this Council a few weeks ago, in which he intended to give an evasive answer on the responsibilities of the British Government and generate the impression that the

Vietnamese boat people problem is at the discretion of the Hong Kong Government. May I refer the Secretary for Security to the letter written to me by the then Minister of Foreign Affairs in 1987, in which it was clearly stated that it was the constitutional responsibility of Her Majesty's Government to solve the VBP problem. In other words, it is the responsibility of Britain to decide how to solve this problem. As a matter of fact, it is also beyond the means of the Hong Kong Government to tackle this problem alone. The officials of the Hong Kong Government attend all meetings, be it a United Nations meeting or a bilateral meeting, as members of the British delegation led by the officials of the Foreign and Commonwealth Office of the United Kingdom. To cite an example, the Hong Kong Government has rendered its full support to the mandatory repatriation scheme and pressed hard its implementation but the outcome has been obvious to all of us. I firmly believe that the Hong Kong Government shared the same views with the people of Hong Kong. The Administration has to face a difficult but thankless task and bear the blame and harassment. They are the ones to carry out the policies and yet have no way to participate in the formulation of the policies that they have to enforce. They have to follow the policies strictly or speak in their defence even if they do not agree to them. The situation is akin to the Chinese saying that a dumb person swallows the leek and keep all the suffering to himself. We are more fortunate for at least we can openly denounce the Hong Kong Government and criticize the United States and Vietnamese Governments, or debate the issue at Legislative Council or district board meetings. Thus, I believe that the Hong Kong Government is anxious to solve the problem, and yet it is beyond its capability to do so. Therefore, we must identify our goals and strongly press Her Majesty's Government to fulfil her responsibility as our sovereign state and deal with this problem. It is appropriate for the amended motion put forward by the Honourable Stephen CHEONG to place the responsibility on the British Government.

Britain, being an influential western power as well as the best ally of the United States on the international political scene, should spare no effort to make the United States discontinue its policy of unreasonable intervention. If the British Government manages to find some feasible means to alleviate and eventually solve the problem, I believe that the people of Hong Kong would not insist on scrapping the port of first asylum policy. We would render full support to any measures adopted by the British Government as long as they are effective in reducing the number of boat people. However, should the British Government allow the problem to drag on, it will be unacceptable to the people of Hong Kong.

Vietnam's desperate economic condition is the root cause for driving the

Vietnamese boat people out to head for Hong Kong. The enthusiasm of the western countries in the early 1980s to accept the boat people for permanent settlement also lures the Vietnamese to flee their country. Over the past decade, Hong Kong has been innocently victimized by this problem caused by the western superpowers and the Vietnamese Government. Up till now, Hong Kong is still heavy laden with this perplexing problem. A durable solution to the problem is to improve the living conditions in Vietnam, by then the Vietnamese will be willing to stay in their own country. In revenge for its defeat in the Vietnamese war, the United States has imposed economic sanction on Vietnam and made life difficult in Vietnam. Consequently, a growing number of Vietnamese take to the sea to seek resettlement in the western countries. Too many human tragedies have been brought about by this economic sanction. It should not be imposed any longer. If the United States could slightly change its policy towards the Vietnamese Government, such as stop exercising its veto power in the World Bank and allow the Vietnamese Government to receive the badly needed loans for the implementation of infrastructural development programmes, it would be conducive to the economic redevelopment of Vietnam. If the British Prime Minister can successfully persuade the United States President to pursue its policy in this direction, it will definitely help solve the Vietnamese boat people problem in the long run. Without long-term measures to tackle the problem at root, the implementation of mandatory repatriation may not successfully stamp out the problem. In order to attain a brighter future and to alleviate the sufferings of the Vietnamese people, the British Government should press the United States, the "kingpin", to be more open-minded and to act, as superpowers should, with statesmanship so that this perturbing problem in relation to the embargo can be solved. If the amended motion of the Honourable Stephen CHEONG is passed today, it shows that the Legislative Councillors of Hong Kong are by no means parochial in outlook. We have a clear understanding of the international situation and as a group of far-sighted and reasonable people, we are striving for a more harmonious world.

I would like to tell the whole world, particularly those who flaunt the banner of humanity and human rights, that Hong Kong people are sympathetic and willing to help others. With regard to the problem of Vietnamese boat people, we have given the most and yet we receive the least in return. We are not good at publicizing our good deeds. Nor have we demanded appreciation or reward. We simply do what our conscience tells us.

Nevertheless, Hong Kong alone cannot take care of this problem indefinitely and it is not our obligation to do so. Leaders of certain western countries and spokesmen

of some western civic organizations should ask themselves some soul-searching questions: what have they done and what contributions are they making? Are they trying to solve the problem or are they aggravating it and creating more miseries? I wish they could sensibly face the practical situation with a sense of moral obligation and no longer hide behind the mask of human rights and humanity by shifting the responsibility onto Hong Kong.

MR HUI (in Cantonese): Sir, ever since 1985 when elected seats were introduced to this Council, this Council has held a number of debates on the Vietnamese refugees and the boat people issue upon the public's requests and today's is already the fourth one. Unfortunately, all the previous debates could neither change Government's policy nor bring forth a glimmer of hope to this external problem which has been harassing Hong Kong for over 10 years. Instead, these debates have only brought about frustration and disappointment over and over again. What is most depressing is the cowardly and indecisive attitude of the Government which has doubtlessly allowed the phoney international humanitarianism to gain momentum. I hope that today's debate can bring about major breakthroughs in the present impasse.

We all know that the phoney international humanitarianism was engineered by the United Kingdom and the United States politicians. Even the Vietnamese Government which endeavours to extort international help by letting its people flee the country has put on a mask of humanitarianism and stops taking back its boat people returned under mandatory repatriation. We end up in such a situation primarily because Hong Kong is not an independent sovereign state and does not have any power to enter into negotiations. In other words, Hong Kong is at others' mercy. Among all the ports of first asylum in South East Asia, Hong Kong is the smallest one in terms of area. Yet, Hong Kong is still facing the greatest pressure while the other ports of first asylum have already taken tough measures to curb the influx of refugees. As a result, though the number of Vietnamese fleeing the country has dropped recently, the number of boat people taken in by Hong Kong accounts for over 90% of the total number taken in by all ports of asylum. It therefore shows that Hong Kong Government which is in lack of diplomatic power to enter into negotiations must toughen its stand, face reality and stand up to pressure with confidence.

Sir, the reality that Hong Kong has to face at present is that the comprehensive plan of action agreed in June 1989 by the international conferences on Indo-China refugees has proved to be a total failure after being implemented for two years mainly

because even Hong Kong disregards the fact that other ports of first asylum have already toughened their stand on the boat people and persistently fulfils its moral obligation of indiscriminate intake, it has still to face the grim reality that those boat people screened out as non-refugees have nowhere else to go.

According to the stipulations of the comprehensive plan of action, all boat people arriving in Hong Kong are to be repatriated to Vietnam eventually. At present, there are two kinds of repatriation, namely, voluntary repatriation and non-voluntary repatriation. Unfortunately, both have proved to be failures. For the former, ever since it was introduced, only 7 000 boat people have been repatriated to Vietnam. As for the latter, the result was even more disappointing. However, during the same period, over 43 700 boat people have arrived in Hong Kong, including 4 900 new born babies. Though we believe that the 5 000-odd refugees now stranded in Hong Kong will be resettled overseas eventually, we have to bear in mind that among the Vietnamese arrivals in Hong Kong in recent years, less than 20% has been screened out as refugees. In other words, if the Government does not change its current policy, the number of non-refugees stranded in Hong Kong will keep increasing, leaving the problem unsolved forever.

On the other hand, as the Legislative Council has decided not to appropriate funds to the Government for the construction of new VBP camps, the total population of all the VBP camps in Hong Kong will not exceed 54 000. Yet as at May, the population of boat people has already exceeded 51 000. With several thousand boat people arriving in Hong Kong each month, the VBP camps will definitely reach its capacity before the end of this summer. By that time, the management of these VBP camps and the law and order of the territory will surely be threatened. If my fellow colleagues are not too forgetful, they should recall distinctly that when the influx of refugees was at its height in 1989, there was massive unrest in many VBP camps and Hong Kong people have been subject to repeated disturbances.

As a matter of fact, Hong Kong must try to break the stalemate as soon as possible. Our primary aim is to reinstate the mandatory repatriation programme once enforced in December 1989. In fact, it is evident that the number of boat people arriving in Hong Kong last year dropped drastically, demonstrating that the scheme has, to a certain extent, brought about deterrent effect. Coupled with the fact that we have already given international community sufficient time to try out the comprehensive plan of action, we are all the more justified than in the past to reinstate the mandatory repatriation programme.

I think that in dealing with the refugees and the boat people, Hong Kong has already done what is humanely possible to help. For those countries which have criticized Hong Kong for implementing the mandatory repatriation scheme and those individual phoney humanitarians, they should feel ashamed in the face of the efforts devoted by Hong Kong. These countries have neither fulfilled their responsibilities in rendering economic assistance nor helped in expediting the repatriation of the boat people. The United Kingdom and the United States in particular deserve denunciation. It was exactly the United Kingdom, the sovereign state of Hong Kong, which has dragged Hong Kong into this international problem. It can be said that in the past, the United Kingdom has never been concerned with expediting the repatriation of boat people stranded in Hong Kong or whether Hong Kong has enough resources to cope with the problem. Instead, it only cares about safeguarding its relations with the United States and dares not apply pressure on it. While objecting to Hong Kong's implementation of mandatory repatriation, the United States has kept repatriating the Mexican and Haitian illegal immigrants back to their countries of origin. In view of this, the United States should feel ashamed of its double standard and should no longer deserve the reputation of a major democratic state.

Therefore, I feel that the Hong Kong Government should reinstate the mandatory repatriation programme as soon as possible to bring out its deterrent effect. But we should try some nicer means before resorting to the tough stand. This time the OMELCO delegation to the United Kingdom is to explain clearly our stance and the plight we are now facing. The United Kingdom must fulfill its commitment towards Hong Kong by fighting for the implementation of mandatory repatriation and providing us with more resources required by our continuous intake of boat people.

If the above measures are still thwarted by the United States and Vietnam, I think that the Hong Kong Government should seriously consider scrapping the port of first asylum policy. To achieve this aim, there are two steps: first, scrap the screening system so that Vietnamese arriving in Hong Kong will no longer be subject to screening, but being locked up in VBP camps instead. The advantage of this measure is that we can officially declare to the Vietnamese people that Hong Kong can no longer be their "springboard" for emigrating to foreign countries. However, there is a risk that it will take longer time to repatriate through diplomatic means all the boat people stranded in Hong Kong.

The second step is to blockade the port to intercept boat people who attempt to

enter Hong Kong waters. If the boat people are willing to go to some other countries or places, we can act humanely by providing them with the necessary replenishments and even by repairing their vessels. Indeed, most of the ports of first asylum in South East Asia have either secretly or openly adopted this measure and Hong Kong only follows suit when it is in the most desperate or helpless state which entails self-saving measures. Even if the boat people still insist forcing their way into Hong Kong or go so far as to scuttle their vessels as a means of blackmail, the Hong Kong Government should not bow to the pressure of criticisms. Of course, for those boat people who have fallen into the sea, our officers will try their best to save them. I believe that it will only take no more than a few of these unfortunate incidents, then we can have the message that Hong Kong has already scrapped its port of first asylum policy get across in the entire Vietnam through international mass media. Since Hong Kong has decided not to take in boat people, there is no reason why the Chinese Government should refuse to order its people dwelling on the borders and along the coastal area to stop assisting the Vietnamese people who plan to come to Hong Kong, especially with regard to providing them with vessels and conditional help. In fact, if the Chinese Government really cares about the interests of the future SAR Government and the safety of the Vietnamese people, it should have helped Hong Kong intercept these illegal immigrants both along the land route and water route long ago.

I think that we should not be too worried over the reaction of the international community to our decision, the reasons of which have already been spelled out explicitly in the first part of my speech. I even think that the Government should take practical actions to warn the United States and those headed by it to object to our decision that Hong Kong is not pretending at all and indeed things have already come to a stage where we have to save ourselves. Otherwise, the boat people issue will give rise to serious social unrest. In addition, I now appeal to members of the public that apart from reflecting their views to the OMELCO, they should also point the finger at the American Consulate General, clarifying that Hong Kong people strongly request the port of first asylum policy be scrapped for fear that the boat people issue may give rise to social unrest.

Finally, I would like to advise those minority colleagues who still object to our adoption of a tough stand that our first and foremost mission is to reflect the genuine picture of public opinions to the Government, though it may mean that we have to sacrifice our personal interests. As early as 1989 when the boat people influx was at its height, Hong Kong people and the Legislative Council have already made

it clear and requested that the Government should act quickly to introduce mandatory repatriation programme or scrap the port of first asylum. However, since the Legislative Council failed to reach a consensus, things have turned worse and worse after two years' delay.

Furthermore, I believe I have the responsibility to remind my fellow colleagues that procrastination and toleration cannot solve problems. If we miss the opportunity of taking unanimous action to force the Government to act quickly, I am afraid that the painful lesson of 1989 may repeat itself later. By then, the Legislative Council has increased for the first time 18 directly elected seats, the Administration cannot but respond to public opinions to the effect that the Government will be forced to take a tough stand. Since the result will be the same no matter which way things go, why should we not force the Government to take action before social unrest emerges?

Sir, the four-member OMELCO delegation has held a discussion before leaving for the United Kingdom and has decided to take a unanimous stand on this issue. With these remarks, Sir, I support Mr CHEONG Kam-chuen's amended motion.

7.52 pm

MR MARTIN LEE: Sir, I regret to say that I do not believe you have got a quorum.

HIS EXCELLENCY THE PRESIDENT: Mr LEE, if you will please sit down. A Member has said that there is no quorum present. It is quite correct that there is no quorum present. That does not matter unless a Member draws the attention of the Chair to that fact. Since that has been done, I will suspend the Council for 10 minutes to see whether a quorum is available.

Council suspended.

8.07 pm

HIS EXCELLENCY THE PRESIDENT: We appear now to have a quorum, some of it moving around. (Laughter) So the Council will resume.

MR MARTIN LEE: Sir, during this debate today, I urge Members of this Council to address the real issue at hand, and that is not the quorum. That issue is: the Hong Kong Government has no power or authority constitutionally to resolve the problem of the Vietnamese boat people.

Since the questions of first asylum and repatriation are matters pertaining to foreign affairs, only the United Kingdom Government in London has the power to make decisions on them. Yet, for its own entirely self-serving reasons, the British Government has sought internationally to place all the blame and responsibility for the problems relating to the Vietnamese boat people on Hong Kong. And shamefully and irresponsibly, the colonial Government here has been all too happy to sacrifice our interests in favour of the interests of the United Kingdom. Let not, however, this Council be fooled. For we in this Council has a duty towards the people of Hong Kong not to let them receive the opprobrium of the international community for decisions taken by the United Kingdom Government and followed by its colonial servants in Hong Kong.

The disingenuousness of the Hong Kong Government today is the more striking in that it is contradicting its own long-held positions. It has only been recently, when the United Kingdom Government did not wish to take responsibility for politically difficult decisions on matters such as screening and mandatory repatriation, that the United Kingdom and Hong Kong Governments have taken the public relations position that matters relating to the Vietnamese boat people are to be decided by Hong Kong.

This certainly was not the case four years ago. For at that time, the Administration explicitly told this Council that the question of screening and mandatory repatriation were issues to be decided in London by the British Government. On 8 April 1987, the then Secretary for Security, Mr David JEAFFERSON, responded to my question in this Council by stating, "This issue involves Hong Kong's external affairs, and Hong Kong's external relations are the responsibility of Her Majesty's Government."

Yet, this honesty had dissipated by the time the Chief Secretary told this Council a year later that it was the Hong Kong Government that had decided to implement the screening policy. And, since then, the British Government has expended a great deal of effort in trying to wash its hands of this difficult situation. For example, in

addressing the major International Conference, on Indo-Chinese Refugees in June 1989, the then Foreign Secretary, Sir Geoffrey HOWE, sought to place the blame on Hong Kong for any decision to end first asylum. Somehow seeming to forget that the decision was in fact his to make, Sir Geoffrey blustered, "Without an early agreement on these steps, I have to warn that Hong Kong will simply be unable any longer to maintain the policy of first asylum. Hong Kong would not take this step lightly." In the two years following that conference, London has consistently sought to ignore that it is the British and not the Hong Kong Government which is a signatory to the Comprehensive Plan of Action.

A similar shifting of the responsibility and the blame to Hong Kong has been the long-standing practice of the British Embassy in Washington, DC. As a colony, Hong Kong of course has no representative in Washington to counter this disinformation campaign. A typical statement was that made by British Ambassador Antony ACLAND in an article in the Washington Post newspaper in November 1989 at a time when the United States was opposing the forced repatriation of Vietnamese. Mr ACLAND wrote, "There would be no question of the Hong Kong Government's sending people involuntarily back to Vietnam without adequate assurances." Was the British Ambassador unaware that the decision in fact was one made by Her Majesty's Government, and not by the Hong Kong Government?

Sadly, the colonial Government here has done nothing to set the record straight internationally. It seems only too willing to have the people of Hong Kong accept the blame for unpopular decisions made by the sovereign United Kingdom Government. Only three weeks ago, the Secretary for Security contradicted his predecessor and himself in this very Council. In reply to the Honourable Mrs Rita FAN's question, he stated, "I would like to make clear that Hong Kong's policy on the Vietnamese boat people has been made by the Hong Kong Government." Moments later, however, when asked by the Honourable Stephen CHEONG if this meant that the Hong Kong Government could decide on policy for itself, the Secretary replied, "No, I do not think I said that the Hong Kong Government makes policy on Vietnamese boat people." Maybe the Honourable Secretary could have a third chance today to make up his mind.

During that same question period three weeks ago, the Secretary for Security also strongly defended the record of the British Government on this issue, saying, "I believe that the United Kingdom Government has done all it can to seek a resolution of this problem." Is the Honourable Secretary truly satisfied with the pittance that the United Kingdom Government has contributed towards the resolution of this problem?

In the last fiscal year, the United Kingdom Government contributed only \$131 million, which was less than one-seventh of the money paid by Hong Kong! This \$131 million with which the Hong Kong Government is so satisfied compares very unfavourably with the \$230 million that this Council in February voted to give the British Government for its short-term efforts in the Gulf war. Indeed this one-time grant of \$230 million given by Hong Kong represents a full two-thirds of the total sum given to Hong Kong by Great Britain in all 12 years of the refugee crisis!

Yet, perhaps even more unfortunate than Britain's selfishness is the degree to which some Members of this Council have allowed themselves to be taken in by the strategy of the United Kingdom and Hong Kong Governments. For example, in a major speech in the United States last year, a leading Member of this Council stated that Britain's decision to repatriate 51 Vietnamese in December 1989 was in fact made in Hong Kong, and said, "It should be stressed that the decision was not one which we in Hong Kong took lightly or willingly." I respectfully submit, Sir, that the decision was one which we in Hong Kong did not take at all.

We in this Council today must do far more to make clear that under our colonial system of government, the question of the Vietnamese boat people is the responsibility of the sovereign United Kingdom Government. Since both repatriation and first asylum pertain to foreign affairs, we in Hong Kong cannot solve the problems ourselves, yet until now Britain has had little incentive to stick its neck out on a problem that it has successfully convinced international public opinion to be the responsibility of the people of Hong Kong. It is no wonder that the British Government has spent so little time or political capital trying to convince the United States to accept repatriation of non-refugees to Vietnam. Why should they suffer in the eyes of the world when they can so easily pass the blame on to Hong Kong?

Surely, we must realize by now that until we make the British Government pay, it will do nothing to solve the problem. I therefore propose today, as I proposed in this Chamber two years ago, that the Hong Kong Government place the responsibility where it rightfully lies, and force the British Government to pay for the upkeep of the Vietnamese boat people in Hong Kong. If Britain refuses to pay for what is legally its responsibility, then I suggest that the Finance Committee of this Council take the money we regularly pay to the United Kingdom Government under the Defence Costs Agreement and use it to pay for boat people camps. Were the situation thus, I have little doubt that Britain would intensify its efforts in Washington.

Hence, I urge Honourable Members of this Council to be fully aware of our constitutional status as a colony when they discuss the question of first asylum this afternoon, and indeed this evening. It is true that we can make a recommendation to the United Kingdom -- in the same way that we recommended not so long ago a faster pace of democratization in Hong Kong -- but ultimately the decision will be made by London. At the same time, we should realize that London will continue to pretend to the international community that we in Hong Kong are making the final decision, rather than just a recommendation.

In making our recommendation, moreover, we should be aware of the harm that Hong Kong could suffer were Britain to end the port of first asylum policy. In practice, such a decision would be unenforceable. When boats come to Hong Kong and refuse to leave, or if people jump off boats, are we just to stand by and watch people drown? Think then of the terrible harm internationally that the people of Hong Kong would suffer, for it is certain that the international media will be there in full force to record the event for the world to see, in the same way that they reported the forcible repatriation of the 51 boat people in December 1989.

Some Members may complain that the international community holds Hong Kong to a far more stringent standard than countries such as Thailand and Malaysia, which have all but stopped serving as ports of first asylum. This may well be true, but I am afraid it is a price that we have to pay if we wish to continue to be an internationally respected economic centre. For the very values that have won us the respect of the world -- the rule of law, the protection of the rights of individuals, and the honest, hard-working nature of our people -- are the ones which would be hurt most severely were Britain to abandon the policy of first asylum.

At a time when Hong Kong is particularly dependent on the international community on a wide range of issues including trade, participation in multi-lateral organizations like APEC, extended and flexible immigration policies, and MFN for China, we must be acutely aware of our own image and reputation in the international community. And, there are few things that could do greater harm to that reputation than an abandonment of the policy of first asylum. I agree with the Honourable Stephen CHEONG that to suggest that the abandonment of the policy of first asylum will solve all our problems regarding the VBP issue is over-simplistic. If our citizens were asked this question: "Do you support the abandonment of the policy of first asylum?", I expect most of them would say "yes". But if they were asked a second question: "Do you support the renewal of MFN to China?", I expect the same people

would also say "yes". But do they know that the two may be mutually exclusive for the reasons which my honourable colleague, Mr Martin BARROW, will give in due course. And I thank him for letting me have an advance copy of his draft speech.

Rather than urge the United Kingdom to abandon the policy of first asylum, we should push instead for the full implementation of the Comprehensive Plan of Action. The CPA states that "persons determined not to be refugees should return to their country of origin". Clearly it would be best if all non-refugees were to return home voluntarily, yet since this currently does not seem to be likely, Hong Kong must inevitably implement a policy of mandatory repatriation in accordance with the CPA and international law.

This critical aspect of the CPA, however, continues to be blocked by the United States Government. As I discovered on my own trip to the United States last year, the United States Government and the public at large are very ignorant of the true situation in Hong Kong, and part of the blame for this must fall on the lack-lustre and reluctant efforts of the British Embassy in Washington. In every audience I spoke to the first two questions were always "What do you think will happen after 1997?" and "Why are the people of Hong Kong sending back boat people from Vietnam?"

During my trip to the United States last year, I made clear to audiences how Hong Kong has taken in over 170 000 boat people in the last 12 years and how no boat has ever been turned away. Just as important, the Americans must be made to realize that the nature of boat people arriving in Hong Kong has changed fundamentally since 1979. While at the outset of the crisis, almost all the boat people were either ethnically Chinese or from South Vietnam, the vast majority of boat people in the camps today are Vietnamese from North Vietnam.

The United States does not recognize these North Vietnamese to be refugees and hence will not accept them for resettlement. At the same time, the United States will neither allow for their mandatory repatriation nor pay for their upkeep in Hong Kong. This completely negative policy is irresponsible and harmful to the boat people themselves. As I stressed in my meetings with officials in the State Department and the National Security Council, the United States must stop frustrating the implementation of the CPA and allow for repatriation of non-refugees under the United Nations Protocol on the Status of Refugees. I was pleased that many Americans, including those who attended the annual conference of Refugees International last year in Washington, reacted favourably to my suggestions, yet, the United States

Government remains unmoved to this day. The British Government will have to expend far more energy and political capital if it is to persuade its ally of a need for change.

In addition, I hope the United States will agree to lift its embargo on all trade with Vietnam, and I applaud the efforts of my honourable colleague, Mr Martin BARROW, and the American Chamber of Commerce on this subject. For, the only long-term solution to the crisis is to promote economic growth and reform inside Vietnam itself. A lifting of the trade embargo, moreover, might prove to be a catalyst in persuading non-refugees in Hong Kong to return home.

Finally, I would like to discuss what we in Hong Kong can do here to deal with the situation. Screening has improved substantially in the 18 months since November 1989 when I objected to the planned mandatory repatriation, and now the UNHCR has said that it accepts the validity of the screening decisions. We ought to invite back groups like Amnesty International that have in the past been critical of the screening process so that they can re-evaluate it.

The Government must realize that improvements to the screening process are very much in our own self-interest. The better our screening process is, the more it will benefit Hong Kong in both the short and long term. If more people are screened as refugees under the improved screening process, then these people will be resettled overseas. And, if the international community recognizes our screening process as being of a high standard, then the United States will not be able to use the inadequacy of the screening process as a justification for opposing mandatory repatriation of non-refugees.

If countries such as the United States continue to object to certain aspects of our screening process, then I urge the Government to allow these countries the same power that the UNHCR now has to declare certain boat people to be refugees. If the United States believes any Vietnamese to have been wrongly screened out, then it could declare that person to be a refugee and resettle him in the United States. Likewise, I would encourage the United States to contribute money that could be used to further improve the screening process, for example, to allow an asylum seeker to be represented by a lawyer or other person during the initial screening interview or to have his or her own interpreter.

At the same time, the Government here must commit itself to preserving the rule

of law in all cases involving the Vietnamese boat people. We must not have a repeat of the flouting of the rule of law that we saw in the case of the 111 boat people who were granted habeas corpus, nor of recent efforts to deny asylum seekers the right to judicial review to challenge flaws in the screening process.

While these are the steps that I hope the Government will take, I hope that our community can continue to deal with this serious problem with compassion and reason. As frustrated as we may be by the positions of the British and American Governments, let us not take out these frustrations on the boat people themselves. We should give genuine refugees the fullest possible chance to prove their case, and we should make sure that the unfortunate boat people in the camps are able to live under humane conditions.

Sir, I believe that the people of Hong Kong are generous and compassionate. I call on all of our citizens to continue to exhibit charity towards the boat people and work constructively towards a solution but at the expense of the British Government. And above all, we in this Council must not further mislead our people into thinking that we can decide for ourselves the abandonment of the policy of first asylum, and thereby shooting ourselves in the foot internationally by grabbing the baby from the lap of the British Government and taking over its headaches as well. We must instead render to Caesar what is Caesar's by letting the British Government decide for us in relation to this difficult problem and so letting it pay for its own decision, whichever way it goes.

Sir, for these reasons, I am disposed to support the Honourable Stephen CHEONG's amendment if we have a quorum by then.

PROF. POON (in Cantonese): Sir, the VBP problem has had far-reaching and painful effects on Hong Kong society. I believe that every single member of our community has had personal experience of some of these effects and I do not propose here to dwell on them. Looking back on the past ten year, we will find that the United Kingdom Government has not been too keen to make a positive effort to devise ways and means to resolve our difficulties. Nor has it done its best to secure international support for Hong Kong. Therefore, the amendment proposed by the Honourable Stephen CHEONG is basically the right thing because the VBP problem is one which the Hong Kong Government cannot solve on its own. We must earnestly urge the United Kingdom Government to fulfill its obligation towards Hong Kong in getting for us more support

from the international community in order that an effective, practicable strategy can be devised as soon as possible to stem the boat people influx and to repatriate the boat people from Hong Kong to Vietnam.

At the same time, this Council must get the United Kingdom Government to share in greater measure the huge burden that Hong Kong at present bears. The financial contribution the United Kingdom Government has so far made towards the costs of maintaining the VBP here in Hong Kong is like piddle in a big pool and is of miniscule help in easing Hong Kong's heavy burden. If the United Kingdom Government does not face up to its obligations in making a firmer commitment, how can it hope to convince other countries to come together to help?

Finally, I also agree with the last point in the Honourable Stephen CHEONG's amendment which urges the United Kingdom Government to mount an all-out diplomatic effort to press the United States to positively and effectively help the Vietnamese Government to rebuild Vietnam's war-devastated economy so as to improve the living conditions of the Vietnamese people. Only in so doing will all parties concerned be able to come to grips with the root of the VBP problem and radically secure a solution.

Sir, I support Mr Stephen CHEONG's amendment.

MR TAM (in Cantonese): Sir, I do not think I need to elaborate on the burden and the trouble caused to the Hong Kong community by Vietnamese boat people as they are fully understood by every Hong Kong citizen.

It goes without saying that Vietnamese refugees or boat people are unfortunate in their experiences and they merit the sympathy and assistance of the international community. Like the Kurds refugees, they have aroused the sympathy and concern of countries across the world. It is in this spirit that for more than ten years Hong Kong has been trying hard to fulfill its international obligation by accommodating Vietnamese. By now, however, the port of first asylum has almost become the only port of asylum. Since western countries refuse to take in more Vietnamese refugees, the Hong Kong community has to shoulder an increasing burden and the people of Hong Kong feel more and more strongly that it is grossly unfair that the five million people of Hong Kong alone have to shoulder so heavy an international burden while various western powers just stand by with folded arms. Thus there is a growing public outcry

in the society requesting that the port of first asylum should be abandoned.

As a matter of fact, the present first asylum policy and the hypocritical behaviour of western countries, especially the United States, is creating an illusion to Vietnameses that they can have the opportunity to settle in the west and look for new hopes. Under such incentive, they leave their hometown for Hong Kong in order to wait for resettlement. However, the present situation is: as soon as the stance of humanitarianism which western countries always speak of comes into conflict with the interests of these countries, the so called humanitarianism will be put aside. As a matter of fact, the United States is one of the culprits responsible for the exodus of Vietnameses. If the United States is sincere in upholding morality and justice, it should take up the major responsibility for Vietnamese boat people. However, while shirking responsibility it has ridiculously stood in the way of the mandatory repatriation scheme.

A more important issue is: as the society of Hong Kong cannot accommodate a large number of Vietnameses, we should disclose to them the hypocrisy of the western countries, dispel their illusion and clearly point out to them the western countries will not accommodate them and that they can only rely on themselves in the pursuit of a better life instead of expecting help from others.

I think it is good to both the people of Hong Kong and Vietnameses to disclose the actual fact and the abandonment of the port of first asylum is the best way to do so. In so doing, we clearly show Vietnameses that there is no more the so called port of first asylum and it is futile for them to wait in the reception centres for boat people where there is no liberty. The only way out is to return to their country.

Of course, Hong Kong cannot abandon the port of first asylum unilaterally. As the United Kingdom Government has signed an agreement of the port of first asylum in the United Nations on behalf of Hong Kong, it naturally is obliged to request the United Nations to allow Hong Kong to abandon the first asylum policy. Meanwhile, as I mentioned earlier, the United States must be held partly responsible for the present difficult situation in Vietnam. This, in addition to its repeated obstruction to Hong Kong's mandatory repatriation scheme on humanitarian ground, has made it reasonable for the United Kingdom and the United States share the expenditure incurred by Vietnamese boat people and expedite the intake of Vietnamese boat people in Hong Kong. After all, the United States and the United Kingdom cannot request others to implement humanitarian policies on the one hand, but contribute nothing on the other.

I also agree to Mr Stephen CHEONG's demand that the United Kingdom Government should urge the United States to take suitable measures in order to improve the economy of Vietnam. As a matter of fact, if the United States has the slightest intention to repent of its crimes committed during the Vietnam war, it should help Vietnamese rebuild their homeland. This is also the radical solution to the Vietnamese boat people problem.

Sir, it has already come to the crunch and we need talk to the British Government. I agree to Mr Stephen CHEONG's demand as put forward in his motion. But I think that the abandonment of the first asylum policy is a critical step in tackling the Vietnamese boat people problem in Hong Kong. Mr Stephen CHEONG's motion, however, does not include this point. I therefore support the motion of Mr POON Chi-fai.

MR ANDREW WONG (in Cantonese): Sir, I rise to speak in support of the amendment of the Honourable Stephen CHEONG, and in opposition to the original motion moved by the Honourable POON Chi-fai.

I support Mr CHEONG's amendment, half out of helplessness, and half out of pleasure. First on the pleasure side, I think Mr CHEONG's amendment is more positive.

In the first place, in respect of item (b), Mr POON and Mr CHEONG are generally similar; both have the same proposal. Regarding funding, the United Kingdom and the United States should bear a larger part. The second point, that is, item (c), is basically to help Vietnam economically, which was raised by Mr CHEONG but was not touched upon by Mr POON. I think this is the only way to deal with the problem at source. In other words, even if it would take a long time for the economy to recover and to build up, as long as there are prospects of recovery, naturally the boat people will not lightly escape. The third point, that is, item (a), was raised by Mr POON but not by Mr CHEONG, which is to cancel the port of first asylum. Many colleagues who spoke just now said this would be unworkable.

First, this is a diplomatic problem; secondly, it will be very difficult to implement. I think if the port of first asylum must be cancelled, it could be argued that this point is also included in Mr Stephen CHEONG's motion. However, we should understand that any policy change would do well to have an element of surprise, which means there must be "surprise attack at unexpected points", otherwise possibly it will be like what the Honourable Martin LEE said "To lift a stone to hit one's own

foot".

As a matter of fact Mr POON pointed out in his speech saying "I really wonder whether those Members of this Council, who remain strongly opposed to the cancellation of the port of first asylum policy but yet always maintain the silence-is-gold stance on the unjust treatment to illegal immigrants from the Mainland, would feel sorry and uneasy in their heart?" Now that Mr POON has made that point, I think I must respond. The policy that illegal immigrants from the Mainland are not allowed to stay in Hong Kong was implemented in 1979 when the touch-base policy was cancelled. I clearly remember that when the Government was considering cancelling the touch-base policy, the Honourable Maria TAM of this Council and myself (not yet a Member at that time) had a debate at the City Forum. Miss TAM supported the cancellation of the touch-base policy while I objected to it. I think my stance was basically consistent. The success of Hong Kong was created entirely by immigrants. If we are humane to others, we can integrate them into the Hong Kong community and make them part of the population, which is what we should do, not to mention that they are our compatriots.

Sir, I now turn to the helplessness aspect. In the motion debates the past two weeks, that is, the one on speculation in property on 22 May and the one on inflation on 29 May, I pointed out twice that there should not be so many amendment motions. It would be better to have an adjournment debate, and I also mentioned it would be better to hold an adjournment debate on emergency issues without time limit according to Standing Orders 9(2) and (3). However this time, on the contrary, I tend to think that this will not do because adjournment debates might not be good either. If I remember correctly, it seemed that during the past five or six years, whenever we were turning up the heat, that is to say when we were limbering up for action and adopting a higher profile, it probably resulted in more boat people coming to Hong Kong.

Before the introduction of election to the Legislative Council, there was an adjournment debate on the VBP question on 12 May 1985 proposed by the Honourable HO Kam-fai. I forgot what happened at that time because I was not a Member and was not privy to it. On 7 January 1987, the Honourable Mrs Rita FAN proposed an adjournment debate. Then the Honourable Allen LEE proposed a motion debate on 17 May 1989, and later on he proposed another motion debate on 29 November 1989. Today is 5 June and Mr POON Chi-fai proposed the present motion debate. I remember that before or after each debate, or when a debate was brewing, public emotions ran high, particularly at debates in the district boards. But it was possible that each time the Vietnamese

boat people (the Vietnamese) were made to think that a change of policy in Hong Kong was imminent, and such apprehension exacerbated the problem. Therefore I appreciated what Mr Martin LEE said a moment ago "To lift a stone to hit one's own foot." The whole problem should be solved through diplomatic channels and in low-key manner. Conversely, we might not be able to solve it if we adopt a high profile. Even if we could find one solution, we might not be able to solve the problem in a comprehensive way. Thus we only add to our burden every time. To put it in a nutshell, no matter whether Mr POON Chi-fai's motion will be passed or Mr Stephen CHEONG's amendment will be passed, basically either way the signal will be vague. If passed, the policy will have to be changed, but this is the policy of the United Kingdom which we are powerless to change. Then again large numbers of boat people will pour in. If not passed, at least there will be a strong voice in this Council demanding a change, which also signals a change in the policy, and will also attract large numbers of boat people to rush in. Therefore, Sir, I think the problem will worsen the more ado we have about it.

I have announced that I will stand for election on 15 September 1991 to contest the New Territories East seat of this Council. My platform has included the boat people problem. Here I say the problem of Vietnamese boat people should be solved through diplomatic channels and consultations. We should not get emotional. Although I know if I propose cancellation of the port of first asylum policy, I would win much public support, yet I have gathered my courage to make known my view on this issue because I think this is my duty.

I would appeal to the Honourable POON Chi-fai and other Members, in particular the Honourable HUI Yin-fat, to reconsider once more whether we are "lifting a stone to hit our own feet?" If so, should we not deal with this matter in a low key manner?

Sir, with these words, I support the amendment of the Honourable Stephen CHEONG.

MR BARROW: Sir, I rise to support the Honourable Stephen CHEONG's amended motion and let me begin by explaining why his amendment should be endorsed.

Progress in resettlement of refugees

Firstly, the Honourable POON Chi-fai's motion implies, incorrectly, that the number of refugees leaving Hong Kong has decreased. Last year 7 656 refugees were

resettled, the highest since 1982. Departures this year are running at around the same rate. The United Kingdom, however, is lagging behind in its commitment to take 2 000 refugees during 1989-1991 -- so far they have taken only 809. Clearly they must be pressed to take the balance.

The policy of first asylum

Secondly, Mr POON's motion calls for the ending of first asylum. Notwithstanding Hong Kong's problems, the ending of first asylum is neither practical nor in Hong Kong's wider interest. As Mrs Rita FAN has asked, has anyone who is recommending this change really thought it through; who is going to carry out the policy of preventing the boats from coming into Hong Kong? The result of a change of policy would be the scuttling of boats and the need to rescue men, women and children from the sea. The new policy could very quickly collapse. In addition, the Marine Police have made it clear that they would not carry out any policy which endangered lives. It has been argued by Mr POON that Hong Kong is following a different policy from others in Southeast Asia where "push offs" occurred. This may be the case, but Hong Kong must face the reality that we are in a different position; we do not have alternative destinations in neighbouring countries.

More importantly, the world's spotlight is on Hong Kong, as it prepares for its imminent change of sovereignty. The standards which we have set ourselves cannot lightly be cast aside. If such a change of policy was announced, the international media would gather in Hong Kong to rent every available helicopter in order to wait for the sight of the first women and children being pushed out to sea. I cannot believe that that is what our community really wants. I cannot believe that that is the image we wish to convey to the world.

In his concluding remarks Mr POON asked us to consider the Hong Kong economy. I agree with him. At a time when MFN renewal is No. 1 priority for preserving our economy, we must be particularly careful in not providing an opportunity for criticism from the United States on the grounds of human rights abuses. Those in the United States Administration sympathetic to Hong Kong on both MFN and the boat people have reminded us that Congress is watching Hong Kong's attitude. This was confirmed to me at 6:30 this morning, in a telephone conversation with a senior official in Washington who warned that emotional rhetoric about ending first asylum could just

cost us vital votes on MFN. I hope the community agrees that the loss of MFN would be much more damaging to the people of Hong Kong than the burden of looking after the boat people. Members who plan to vote for the ending of first asylum bear a heavy responsibility. I urge them to consider these wider issues.

A further argument against ending first asylum and thus abandoning the Comprehensive Plan of Action is that we would then be left with the 50 000 boat people and no basis for returning them to Vietnam. If we break faith with the international community we can hardly complain if they refuse to take those left in Hong Kong. Finally, I believe that the talk of ending first asylum has already been picked up in Vietnam and may be one of the reasons for the influx we are seeing today.

The root cause of the problem

The third point in favour of Mr Stephen CHEONG's amended motion is the inclusion of his clause C. This gets to the root cause of the boat people problem, which is that it is an international issue.

There is now recognition that the solution to the region's boat people problem is closely bound up with American policy. If that can be directed to the rehabilitation of Vietnam with resumed diplomatic and trade relations rather than to its continued isolation, there is hope of cutting off the exodus at source. Moreover, the re-admission of Vietnam to the international community and resumed economic growth will provide the much needed psychological boost to those now in the camps in Hong Kong, and elsewhere in the region, to return to Vietnam under repatriation programmes.

As you are aware, Sir, I have been arguing this case for the last year or two. It is said that normalization will not necessarily mean a quick change in Vietnam itself. That of course is correct. The economy will take time to pick up and the international community can only do so much to support action by the Vietnamese themselves; but what normalization will provide is a sense of hope for the people stranded in Hong Kong. From my own discussions in Vietnam on a visit there last year and in the camps and with those closely involved with the boat people here, it is clear that counselling efforts to get people to return would be very much easier if it could be demonstrated that change in Vietnam is in prospect.

There have been some encouraging moves, with a growing dialogue between the US and Vietnam over the past year. The agreement to place a permanent US representative in Hanoi to handle MIA issues and the start of a very modest aid program should be the harbinger of diplomatic relations to come. Now that the recent success in the Middle East has laid the ghost of the Vietnam war, Britain and the European Community as well as the Government of Southeast Asia should press the US Government to speed up this process. It is, however, disappointing that despite growing interest in Vietnam, there is very little reference to the direct linkage between the boat people problem and US-Vietnam relations.

It is impossible to address this issue without straying into the wider politics of Southeast Asia. The American concerns over Cambodia are understood; but even Senator McCain (who was himself shot down over Hanoi during the Vietnam war) agreed, in his testimony before the Senate sub-committee on 25 April, that Vietnamese complaints of the US moving the goal posts had some validity. A so-called "road map" for normalization is now in place, but this is far too slow for our purposes. The first major breakthrough should be non-renewal of the trade embargo in September this year. US business is actively working on this, including the Chamber of Commerce here in Hong Kong. Hong Kong must find ways and means of joining in this lobbying effort, probably with professional help in Washington, although care must be taken not to confuse the MFN issue. An appropriate delegation, perhaps including Members of this Council, should visit Washington at an appropriate time.

The Hong Kong Government can also play a role through the early resumption of direct commercial flights between Hong Kong and Vietnam and encouragement of expanded economic links.

The current situation

Let me now turn to the current situation. Many reasons have been given for the recent surge in arrivals and for the fall-off in repatriation, after reaching a peak of almost 1 000 in November last year. A much deeper understanding of the situation is still needed and this must include knowledge of what is going on in Vietnam itself. I wonder if the British Embassy there is adequately staffed to carry out this task. Possibly there should be additional people despatched to Hanoi, including secondees from Hong Kong who have a thorough understanding of the situation at this end.

The major reason appears to be the economic situation in Northern Vietnam combined

with groundless rumours, including the extraordinary idea of job opportunities in Kuwait. Without a full understanding, it is difficult to generate the professional public relations and propaganda strategy which is needed. We are after all, Sir, in a state of psychological warfare, dealing not only with the boat people in the camps, but also with the people in Vietnam, the people of the United States, as well as our own citizens here in Hong Kong. To put it into the context of the business world, it is a question of "marketing"; it is complex marketing, Sir, but it must be done. Are we, for example, satisfied with the marketing effort in Vietnam to discourage departures? I believe current initiatives in that area are too piecemeal and inadequate. If the United Nations is unable to function in this role, the United Kingdom must step up its publicity efforts to demonstrate the futility of setting off for Hong Kong.

The mood here in Hong Kong in the camps is tense. In recent weeks, I visited five camps where the increasing numbers could give us a long hot summer. I wonder if we are making enough use of the combined knowledge of the disciplined services and the voluntary agencies who work in the camps on a daily basis. They should be able to give a better feel of the motivation and mood of those stranded in Hong Kong. Let the Hong Kong Government bring together all interested parties for regular dialogue in the interest of better co-ordination. I would also encourage the OMELCO Security Panel to meet these groups.

Repatriation

Turning now to the question of repatriation, how we can achieve a return rate of at least 1 000 per month? The boat people themselves must be left under no illusion. There must be no false hopes. Their future must lie in Vietnam itself and we must find a way of convincing them to return with dignity. One major weakness seems to be the almost total lack of counselling efforts, with only 20 UNHCR counsellors for 50 000 boat people. There needs to be a vastly stepped up effort, not just in terms of manpower, but also of "marketing" material whether it be videos, posters, leaflets or anything which can lay out the whole picture for the boat people. Many of these 20 counsellors are, I understand, unqualified and only one of them speaks Vietnamese. I question whether they really have their hearts in the job. The number of interpreters is also inadequate.

With over 1.5 million Vietnamese overseas it must be possible to find some who are willing to help; although understandably most overseas Vietnamese would not find

it easy to encourage their fellow countrymen to return home.

If the UNHCR are unable to strengthen their efforts, the Hong Kong Government will have to take on this role directly and the Finance Committee should be willing to vote funds for any schemes which will speed up repatriation. We should also consider inviting overseas Vietnamese who have visited Vietnam to come here, as well as UN officials from Vietnam and possibly some who have returned voluntarily. Dr KHOA, the respected head of IRAC based in Washington, made his first return visit to Vietnam in May. He reported his satisfaction with the condition of returnees and spoke up accordingly to the media on his way through Hong Kong. Such people can be helpful voices for Hong Kong in Washington.

As expected the United States has not withdrawn its opposition to forced repatriation. It is perhaps ironic that if United States withdrawal of opposition to non-voluntary repatriation was achieved and properly explained in the camps, it could lead to a large increase in the number who would be prepared to return on an orderly basis. The vast majority of people in the camps are holding on to the hope that neither the United States Government nor the Vietnamese Government will change their position of not agreeing to any repatriation which is involuntary. In other words, a public change of position by the United States could actually result in a dramatic increase in voluntary returns.

Sir, recently I visited the Green Island Reception Centre where I saw for myself Vietnamese who had just arrived in Hong Kong. Although I have heard reports that some of them arrived in poor condition, all those whom I saw and spoke to were in reasonably good health, appeared to be well-fed and showed no obvious signs of deprivation. They appeared to be aware of the screening policy in Hong Kong. The leader of one group which had just arrived said that he had left Vietnam because taxation was so severe that the family faced jail if they were unable to pay. He said life in Hong Kong's camps would be better than in Vietnam. These are people who are clearly candidates for early repatriation, which can probably be achieved more easily than those who have settled into the camps.

I was pleased to learn therefore that the staff in the Correctional Services Department are now interviewing these arrivals and advising them of the future which faces them if they are screened out and forced to remain in Hong Kong indefinitely. As a result of the CSD's efforts a number have volunteered to return directly to Vietnam.

Sir, I think that this speedy repatriation or revolving door policy has much to commend it. In 1987 when we were inundated with an influx of Vietnamese who had previously settled in China, the arrivals stopped only when we began to return them to China. Immediate repatriation cut off the flow immediately. Our co-operative links with the Chinese authorities greatly assisted our efforts to stem the flow and there are lessons to learn from this.

At present the Vietnamese authorities have to send officials to Hong Kong to confirm that those returning are genuine volunteers and to issue visas. If they were here permanently then the whole process could be speeded up and repatriation could take place much more quickly. The Government should press for a permanent presence of Vietnamese consular officials. Although a revolving door policy is probably too much to hope for, a speedy return to Vietnam would certainly go some way towards helping reduce the present pace of arrivals in the territory.

The voluntary agencies can also play their role in encouraging repatriation. Many of them were at one time critical of the screening process, but are now more satisfied with the arrangements. I urge them to speak up publicly and to explain Hong Kong's dilemma to their overseas connections.

Conclusion

In conclusion, Sir, such measures alone will not solve the central dilemma of Hong Kong, where the frustrations and the lack of a permanent solution lie close to the surface in a community which is apprehensive about its own future and contrast the short shrift given to illegal immigrants from China with the expensive provision made for the boat people. At the same time, Hong Kong's disciplined services, who despite manpower shortage have the unenviable task of running the camps under extraordinary testing conditions, are also being placed under continuing stress.

As Mr Stephen CHEONG has said, we have a responsibility to ensure our community understands the complexities involved in trying to reach solutions. In recent polls of public opinion the boat people have not even featured as an issue -- I appreciate that the recent high level of arrivals could change this but nevertheless we should be responsible in not stirring up public concerns. It would be sad for Hong Kong if this issue was allowed to become a major element in the forthcoming elections. After all, probably less than 5% of our population have ever seen a Vietnamese boat

person.

Understandable though Hong Kong's frustrations are, its search for solutions must recognize that wider issues are involved. In particular, as I said earlier, we are in the midst of MFN renewal and I urge Members to think long and hard about their position. I hope Members will accept that this is not the time for voting to end first asylum.

More than any other territory, Hong Kong must be sensitive to the need to retain international respect and support. As a major trading economy which is critically dependent also on tourism, Hong Kong must do nothing which detracts from its efforts to promote its image as an international city. The damage which could be done to that image and the drama associated with any policy which would generate negative publicity and the perceptions which it would shape are issues which simply cannot be overlooked. Whilst the boat people must recognize that their future lies in Vietnam, it must be hoped that their return can be achieved under an orderly repatriation programme.

Sir, with these words, I support the amended motion.

MR PAUL CHENG: Sir, I will try to average down the time we are spending on this debate by making only one point.

I have just returned from leading a delegation of local business people and concerned citizens to Washington to lobby for the renewal of MFN status for China. The delegation included representatives from the Hong Kong General Chamber of Commerce, the Hong Kong Federation of Industries, Shippers' Council, Exporters' Association, the Federation of Garment Manufacturers, and a citizens' concern group called Vision 2047. Among all the arguments we used, we highlighted the fact that Hong Kong handles 70% of China's export and non-renewal of MFN would seriously affect the Hong Kong economy.

The point I would like to emphasize is that in discussing the first asylum policy we must not lose sight of the bigger international picture. In our MFN lobbying effort we appealed to the United States to listen to the Hong Kong story; so we must not provide United States politicians and the international media with any opportunity to question our stands on the human rights front, no matter how frustrated we may

feel about the Vietnamese boat people problem.

Based on our meetings with some 35 US politicians and officials, I can say in no uncertain terms that the human rights issue is by far the most emotional one surrounding the MFN renewal debate in Washington.

Sir, there are obviously other considerations but since it is rather late in the day I will not duplicate some of these other dimensions already expressed by my colleagues in this Council. I would simply say that I support the Honourable Stephen CHEONG's amendment to Mr POON Chi-fai's motion because it contains some pragmatic suggestions towards the resolution of the boat people problem. Sir, with these remarks I support the amended motion.

HIS EXCELLENCY THE PRESIDENT: I still have the names of eight Members who wish to speak. The time which this session ends will depend on the extent to which they follow the example of Mr Paul CHENG.

MR MICHAEL CHENG (in Cantonese): Sir, this is the third motion debate on the Vietnamese boat people issue in this Council within its current session. It simply reflects the growing seriousness of this problem. These boat people have continued to flock into Hong Kong recently. The number of new arrivals in May has exceeded the figure recorded in the corresponding period last year by almost six times. The arrivals in the first five months of this year alone have already outnumbered their forerunners throughout the whole of previous year, thus threatening Hong Kong with yet another mass influx of boat people. The boat people stranded here are frequently involved in armed fighting, riots and robbery cases. As a result, their existence has posed a menace to the lives and property of the general public and created tremendous pressure for the work of maintaining law and order in this territory. At the same time, Hong Kong is greatly affected by the presence of these boat people who are now taking up an extraordinarily large share of the already inadequate community facilities and, in particular, the medical facilities. Under the pressure of high inflation and rapidly rising prices, the local population is very much like a tortoise on its back, which has great difficulty in climbing out of its own trouble. If Hong Kong is to continue bearing the enormous cost of keeping these boat people, it will inevitably give rise to widespread dissatisfaction and put the stability of the whole community in jeopardy.

A comprehensive plan of action was passed at the International Conference on

Indo-Chinese Refugees to arrange for the resettlement of the genuine refugees in recipient countries and the repatriation of the non-refugees to their countries of origin soon after they have undergone their screening tests. It was hoped that the adoption of such measures would be able to help Hong Kong solve its boat people problem. After a lapse of two years, not all the screen-outs have yet been repatriated to Vietnam. With the incessant inflow of new arrivals, the population of stranded Vietnamese boat people in Hong Kong has kept on growing instead of shrinking and is now well over 57 000. All these have sufficiently proved the complete failure of this comprehensive plan of action. To the great discontent and disappointment of the general public, Britain has so far failed to fulfil her obligation and responsibility as the sovereign state of Hong Kong in taking any contingent and concrete actions to help Hong Kong resolve its boat people problem. I consider it an imperative necessity that mandatory repatriation should be immediately implemented to enable early return of all stranded boat people to Vietnam. For those screen-ins who are still staying here, Britain and the United States should bear the full cost of maintaining them and make prompt arrangements to resettle them on their own soil. Furthermore, in order to expedite the screening process for all newly arrived boat people, funding should be provided by Britain and the United Nations for recruiting additional staff. To ease the existing pressure on Hong Kong, a working schedule should also be set to ensure that the resettlement exercise will be completed in two or three years' time.

Presently, Hong Kong is paying more than \$800 million every year for the recurrent expenditure on the Vietnamese boat people and refugees. If this huge sum of public money is spent on the local community and the general public, it will surely be able to bring about a great improvement of the social welfare in Hong Kong. A mere look at the newly constructed Tai Ah Chau Detention Centre, a well appointed holding centre for the boat people with an excellent environment, will readily show the great disparity between it and the appalling living condition of the average person of the lower stratum in Hong Kong. As the boat people here are well taken care of by the Hong Kong Government, it is no wonder that many Vietnamese are anxious to leave for Hong Kong. Even when it is clear that they will stand no chance of gaining admittance to any recipient countries such as the United States, Canada, Britain and Australia, they still try to make their way to Hong Kong by all possible means. They just want to live the kind of easy life that is now being enjoyed by the boat people here who are well-fed and well-clad without having to work. As a matter of fact, over 60% of the recent arrivals are those who have earlier on returned to Vietnam under the voluntary repatriation scheme before visiting here again. Hong Kong holds a special

attraction for these people because it is a place where they are provided with entertainment in addition to free boarding and lodging. When they agree to go back to their home country, they are given cash allowance and gifts and may even take a jumbo jet as if they were returning home after a sight-seeing trip. Who would not like to come here then?

The repatriation scheme has now been proved ineffective in checking the influx of boat people who are still crashing the gate of Hong Kong. The most straight forward approach to end such a situation once and for all is to abolish the policy of making Hong Kong a port of first asylum. This is the wish of the majority people in Hong Kong. If Hong Kong does not take resolute steps to stem the flow of boat people, there will be more and more of them. Hong Kong will need to spend a larger sum of money and resources to construct and manage more boat people centres and to provide them with food and clothing. By that time, the Hong Kong Government will have to lobby the Legislative Councillors into approving the necessary fund. It is believed that there will be no problem about the application of fund being approved at the end of the day. It will, however, indirectly encourage more boat people to come to Hong Kong.

In abolishing its status of a port of first asylum, Hong Kong will probably be criticized for being inhumane. Yet, can it be considered a humane policy to let these boat people embark on a hazardous journey without their wives and children and face all possible mishaps that may occur to them on their way to Hong Kong? The United States and Britain have been talking in humanitarian terms all day. Why should not they take in all the boat people stranded here instead of opposing the implementation of mandatory repatriation which is in compliance with international practices and leaving these boat people who have lost their freedom here to be kept away from their homeland in the detention centres indefinitely? Can such an arrangement be justified on humanitarian grounds? I wonder whether the United States and Britain are sincere in practising humanitarianism and would like to know if these countries are willing to accept and take care of all the boat people stranded in Hong Kong when they are sent to their own territory.

Sir, with the foregoing remarks, I support the Honourable POON Chi-fai's motion.

With regard to point (a) of the Honourable Stephen CHEONG amended motion which urges the British Government to formulate an effective and practicable strategy to curb the influx of Vietnamese boat people, I think it is too vague in meaning and

lacks practical suggestion. Statements of this kind have been raised and discussed for many years without avail. Since there is no other alternative to replace the repatriation scheme which has failed to achieve its intended purpose, the abolition of the port of first asylum policy is believed to be the only way out and the key solution to this problem. In fact, the people of Hong Kong have been calling upon the Government to abolish its first asylum policy. Hong Kong has been disturbed by this open-ended issue for 12 years and can hardly bear with it any longer.

As for point (b) of the amended motion, the words "contribute" and "encourage" are too weak. Since the Vietnamese boat people problem that has been worrying Hong Kong so much was mainly created by Britain and the United States, it is only right that these two countries should be held fully responsible for this issue. Should Britain refuse to abolish the policy of maintaining Hong Kong's first asylum status, it will be fair enough that it should fulfil its obligation and responsibility as a sovereign state by bearing the full cost of keeping these boat people and refugees in Hong Kong.

For these reasons, Sir, I oppose the Honourable Stephen CHEONG's amended motion.

MR CHOW (in Cantonese): Sir, at the Legislative Council sitting on 29 November 1989, I pointed out that the Vietnamese Boat People (VBP) problem would become a subject of annual debate such as those on the Policy Address and the Budget if the Government was not going to take decisive measures to solve the problem. Unfortunately, the "nightmare" has come true. To date, the VBP arrivals up to this month is 9 000 which is higher than the figure for the whole of last year. I doubt if the VBP centre that was closed has to be re-opened in order to barely accommodate the influx. According to the supplementary information attached to the Third Regular Report submitted by Hong Kong in accordance with Article 40 of the International Covenant on Civil and Political Rights, the Hong Kong Government has spent about HK\$3.5 billion from 1979 to 1991 in taking care of the VBP stranded in Hong Kong. Since September 1988 when UNHCR had undertaken to reimburse the Hong Kong Government the expenses directly related to taking care of and maintaining the livelihood of the boat people, the sum accumulated so far amounts to only HK\$456 million, but the outstanding amount owed by UNHCR to the Hong Kong Government up to January 1991 is HK\$238 million. In 1990-91, the expenses incurred by the Government in screening the status of refugees is estimated at HK\$75 million. Moreover, over 2 000 civil servants at different ranks are deployed daily to perform duties relating to taking care of those who seek asylum.

The reason I quote the above figures is that I hope the Government could take regard of every dollar and cent collected from taxpayers and review whether the expenses incurred in taking care of the VBP are appropriate. We all know that the most serious problems faced by the general public are soaring prices and reduction of real wages caused by inflation. We can be quite sure that these, together with the massive infrastructural projects, will make it unavoidable for people to tighten their belts and have a hard time in the years to come. My colleagues in this Council asked the Government to constrain its public expenditure during the debate on inflation, and the Financial Secretary indicated that certain public works projects would have to roll over to the next financial year. All these substantiate that the Government have to handle various expenditure with care.

However, hundreds of VBP arrived daily by sea, and this ruin the budget of the Government. Although it has been agreed at the Legislative Council In-house to stop endorsing the funding for the construction of new VBP reception centres, other expenses in relation to taking care of the VBP will have to be disbursed any way. Therefore, it is more a gesture than a real action to stop funding the construction of reception centre, and it is not of much help in relieving the VBP burden. Rather, I worry how long this line of last defence will be guarded if there is continued influx.

Sir, I am not a Hong Kong chauvinist who just look at things for Hong Kong's own good. I will also take account of the disastrous impact and the jeopardy of its international reputation if Hong Kong were to cancel the first asylum policy. So, without other measures to supplement it, I think it is not feasible to simply cancel the first asylum policy. Yet, the VBP problem has to be solved because the VBP cannot stay here permanently, and it is not their will either. Most VBP do not wish to return to where they have come from and they just want to seek new life in the Western world. Hong Kong has a moral obligation to help them achieve their goal. Nevertheless, this does not mean that the Hong Kong Government can detain them in the inhumane reception centres forever, because this is not only a waste of public money and social resources, but also unfair and inhumane to the VBP. While Hong Kong is spending the money and making the efforts, it is accused by other countries, spoiling its international reputation.

The Hong Kong Government's acceptance of the first asylum policy was just a sacrifice as a result of the United Kingdom Government's generosity on behalf of another. It was not the will of Hong Kong people, and the Hong Kong Government did

not consult the people on the issue. This is the best example of Government's disregard of public opinion.

What is done cannot be undone. As there is no way that the first asylum policy can be cancelled, the Government has to find a solution to tackle the VBP problem in Hong Kong as soon as possible, without affecting the international reputation of Hong Kong and having regard to the ultimate wish of the VBP to seek freedom.

Views from different sectors have been focussing on whether the first asylum policy should be cancelled; requesting various Governments to increase their quotas of receiving Vietnamese refugees stranded in Hong Kong; the commitment of United Kingdom Government to bear part or all of the expenses in relation to the refugees and boat people stranded in Hong Kong..... But are these suggestions the best solutions with a view to effectively solving the problems of VBP stranded in Hong Kong?

On the other hand, there is, in short, only one trick underlying the measures taken by the Government in solving the VBP problem in Hong Kong. It is under the name of humanitarianism, but is indeed not humane at all. The Government thinks out all sorts of unreasonable and inhumane methods, such as policies under the flowery names of mandatory repatriation, voluntary repatriation and even involuntary repatriation without objection. These destroy the dream of VBP seeking freedom. They will be repatriated to the places where they have come from, the places where they do not want to continue to live in.

The way in which the Government deals with the VBP problem is contrary to the Hong Kong Bill of Rights Bill which this Council enacts today. While it wants to make a great leap forward in the development of human rights and freedom through the enactment of the Bill of Rights Bill, the Government has been doing disappointing things which disregard human rights in dealing with the VBP problem. Actually, the Government's disregard of human rights and maladministration have a lot to do with the prolonged non-settlement of the VBP problem.

Article 13 of the International Bill of Human Rights states that "everyone shall have the right to leave any country, including his own, and the right to return to his own country". It is also stipulated in paragraph 2 of Article 12 of the International Covenant on Civil and Political Rights signed in 1966 that "everyone shall be free to leave any country, including his own....." Therefore, moving to

other countries is a basic human right of the VBP. The Hong Kong Government has no authority to intervene with them.

Moreover, Article 26 under Chapter 5 of the United Nations Convention Relating to the Status of Refugees, which concerns the freedom of action, stipulates that "The States Parties to the Convention shall give the refugees who legally stay within their territories the right to choose their residence and the right to liberty of movement within their territories....." Article 33 of the same Convention provides that "A State Party to the Convention shall not, by any means, expulse or return refugees to the territories where their lives or freedom shall be threatened for reasons of race, religion, nationality, membership of particular social group or political opinion".

The above two articles indicate that the Hong Kong Government has obviously contravened the provisions of the convention relating to refugees. Firstly, under the Convention, the definition of a refugee is "a person, who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country". Categorizing Vietnamese refugees into boat people and refugees is basically an administrative means taken by the Government on its own that is against the international agreement. Secondly, the Refugee Convention stipulates that a refugee has the right to choose his residence and the right to liberty of movement in the territory of temporary residence. The Hong Kong Government, however, locks up the VBP in the detention centres and this obviously contravenes the international agreement.

From the provisions of the Refugee Convention, it can be deduced that the Government has made two mistakes in tackling the VBP problem. First, the Hong Kong Government has no authority whatsoever to detain the refugees. Instead, it should make every effort to allow the VBP to reach the countries they wish to go. Second, the refugees have the right to liberty in movement in Hong Kong. Detaining the VBP in detention centres or transit centres is inhumane and in breach of the international convention. Furthermore, when the refugees land, the Government destroys their boats. This deprives the refugees of their right to continue with their journey to the recipient countries that they aspire. Actually, the Government may consider repairing the boats for the refugees so that they are able to sail on to their destinations they have hoped for. Only this can serve the purpose of humanity and

complying with the international convention. Under the circumstances, it will no longer be important whether to cancel the first asylum policy.

Sir, to sum up, there must be a radical change in the methods and attitude adopted by the Government in treating and handling the VBP. All the Government has to do is to allocate the necessary resources, providing replenishment or technical support for the arriving VBP. I believe most Vietnamese boat people or refugees are willing to sail on until they reach their destinations. The benefit in this way of tackling the increasing influx of VBP is that there is no need for the Government to spend substantial efforts and resources in screening the VBP as well as building and managing detention centres. After all, once the refugees are determined as boat people, the Government has to make arrangements on its own in sending them away, whether in the form of voluntary repatriation, mandatory repatriation, forced repatriation, or involuntary but with no objection to repatriation. Or it has to lock them up in detention centres. While these measures cannot solve the problem of VBP stranded in Hong Kong, they attract much international criticisms. The Government has indeed spend a huge amount of resources, yet it can still please nobody. This can be best described by a Cantonese analogy of "picking worms", meaning to invite trouble.

Sir, in order to have a radical solution to the increasing influx of VBP, we must let those Vietnamese who come to Hong Kong by boats know that the Hong Kong Government is not an off-shore ambassador of the Vietnam Government. Our Government will only provide those Vietnamese passing by Hong Kong with replenishment or will only repair their boats to assist them in reaching their destinations. As long as they are aware of this, I believe they will not sail close to the Hong Kong waters or will just regard Hong Kong as a replenishing point. If the VBP no longer regard Hong Kong as a waiting room for migrating overseas, and if the Government is not troubled by an international issue as far as the handling of the first asylum policy is concerned, we will not fall into a trap of dilemma.

Sir, it is highly unrealistic to deter the boat people by screening. This is a complete failure.

As the initiator of the refugee policy for Hong Kong, the United Kingdom Government has a duty to take care of more than 50 000 Vietnamese refugees and boat people stranded in Hong Kong. But the United Kingdom Government has only accepted 163 refugees this year, and the figure is even less than those of Bataan, Philippines

as well as Canada. As the sovereign state of Hong Kong before 1997, United Kingdom compelled Hong Kong to be a port of first asylum with no turning back, but it does not take the lead in accepting refugees. Is the United Kingdom acting in the best interest of the people of Hong Kong?

As far as financial commitment for the refugees and boat people is concerned, the United Kingdom Government has only allocated 8 million to pay for half of the construction cost for the new Tai A Chau Detention Centre. The amount is equivalent to just HK\$100 million, which is still a great difference from the HK\$47 million incurred annually in managing Tai A Chau Detention Centre. The figure has not taken account of the expenses incurred by various departments in additional staff and administrative fees and in screening the boat people. Hence, the United Kingdom Government should not just stand there doing nothing about the Vietnamese refugees and boat people problem. Its responsibility is no less than that of the United States. Therefore, to make it fair, before we ask the United States to increase its quota for accepting refugees and boat people stranded in Hong Kong and to allocate additional fund for dealing with the boat people in Hong Kong, we have to urge the United Kingdom Government to take the lead in rendering the efforts mentioned above. We need the doer to undo what he has done. We need the one who has "picked the worm" to get rid of it. Indeed, who is the "worm-picker" of Hong Kong?

Sir, for these reasons we are caught in a dilemma as to whether we should scrap the first asylum policy. We have now been in deep trouble and we cannot afford to talk the first asylum policy anymore. However, I am more inclined to take Mr Stephen CHEONG's amended motion. But Mr CHEONG failed to highlight the responsibility the British Government should take up in the matter. The British Government started the trouble and therefore cannot shirk its responsibility. For these reasons, I shall abstain from voting on the motion and the amendment.

MRS LAM (in Cantonese): Sir, the problem of Vietnamese boat people first inflicted Hong Kong on 4 May 1975 when the Danish ship Clara Maersk brought 3 900 refugees here. Luckily, as aids were immediately offered by the international community, these refugees could be quickly resettled abroad, causing no great problems to Hong Kong. However, ever since the cargo vessel MV Huey Fong brought over 3 000 boat people to Hong Kong in 1978, the problem of Vietnamese boat people has perplexed every citizen of Hong Kong. The Legislative Council alone has held several debates on this issue, and money spent on maintaining the boat people has already exceeded \$2 billion. Our

social resources are more tightly stretched. Our police and staff of the Correctional Services Department are tired out by the incessant fightings among the boat people. The injured boat people and the uncontrolled birth rate also further strain our already insufficient medical facilities. Yesterday, when the Wan Chai District Board discussed the VBP problem, District Board members were particularly concerned about the high birth rate within the camps. They asked me to mention this point in my speech today and they hoped that the Administration would review the effectiveness of the birth control services now provided in the camps. Recently, the Administration also has to shoulder the expenses on providing legal aid to the boat people. All this has aroused public resentment.

It can be said that the people of Hong Kong have done all that can be done for the Vietnamese boat people. Being a port of first asylum, we have not only fed and clothed the boat people, but also provided them with free entertainment, recreation, medical services as well as education. The people of Hong Kong have borne the burden of the boat people for more than a decade. Do we see any signs of a solution to the problem?

The people of Hong Kong have pinned hopes on various schemes reached at international conferences, such as Comprehensive Plan of Action, Mandatory Repatriation, Voluntary repatriation, No objection and non-voluntary repatriation and so on. Unfortunately these schemes are either infeasible, or impracticable due to pressures from certain parties. Can the people of Hong Kong tolerate any further?

Last month, about 5 000 Vietnamese boat people arrived Hong Kong. This is the highest number of arrivals in a month for the past two years. The alarm of another surge of boat people has sounded again.

As the problem of Vietnamese boat people again draws general concern, the people of Hong Kong cannot help wondering if Hong Kong can solve this international problem alone. Being the sovereign state of Hong Kong, Britain in effect has the obligation to solve this thorny problem for Hong Kong. The United States, because of its guilt towards the Vietnamese and its double standard on humanitarianism, not only objects the mandatory repatriation of the screen-outs Vietnamese boat people, but also refuses to take in these people who crave for emigrating to the United States. Can we find justification for this stand-point?

In December 1989, the Hong Kong Government implemented the mandatory repatriation scheme reached with the Vietnamese Government by sending 51 boat people back to

Vietnam. Such a move was immediately denounced by countries which talked glibly about humanitarianism. In order to allay international criticisms and maintain the relationship with our trading partners, the Government of Hong Kong was forced to give in the mandatory repatriation scheme.

Last September, an agreement on "No objection and non-voluntary repatriation Scheme" was signed by the Governments of Hong Kong, Britain and Vietnam and the UNHCR. The first batch of boat people was repatriated last December under this scheme. However, the number of participants who actually boarded the plane was dramatically dropped from the original 110 to 23, turning the action into a farce. Owing to the poor response of the scheme, no other similar repatriation action has been arranged.

From the above, it can be concluded that if we cannot stop the boat people from arriving Hong Kong, mandatory repatriation is the only possible way out. In fact, the Comprehensive Plan of Action, reached at the International Conference on Indo-Chinese Refugees in June 1989, involves 4 key aspects: (1) port of first asylum; (2) screening of boat people; (3) resettlement of refugees abroad; (4) repatriation of non-refugees. These four measures must be implemented simultaneously. Without resettlement of refugees and repatriation of non-refugees, the Comprehensive Plan of Action can be regarded as failure and the port of first asylum can hardly fulfil its obligation.

Regrettably, Hong Kong and other Southeast countries which also act as the port of first asylum fail to reach an agreement with the United States and Vietnam on mandatory repatriation. Nothing was achieved during the two meetings held last year. Although all ports of first asylum once strongly declared that if the United States rejects mandatory repatriation, they may unilaterally scrap the policy on first asylum, yet no concrete actions have been taken and it is believed that these actions are indeed not feasible. The policy of mandatory repatriation has thus been shelved.

Sir, I think the problem of Vietnamese boat people has reached a point that warrants immediate solution. Otherwise, the burden will become heavier and the public will be more discontent. The administrative authority of the Government will definitely be undermined as well. We must seize every possible opportunity to solve the problem.

The Secretary for Security, Mr ASPREY and the Refugee Co-ordinator, Mr LEEKS have been in the United States to meet some United States officials concerned. Before

they left for the United States, the OMELCO Delegation to the United Kingdom have requested them to urge the United States Government to change its anti mandatory repatriation stance but whether or not it will work is a doubt. Sir, about 9 000 boat people have arrived Hong Kong in the past five months, pushing the number of boat people now stranded in the territory to 53 000. The facts mentioned above clearly indicate that the people of Hong Kong are discontent about the boat people situation. However, should we immediately abolish the policy of first asylum? I think this measure should only be the last resort.

Honourable POON Chi-fai said that the OMELCO Delegation to the United Kingdom is self-deceiving and futile. Yet, as a positive Legislative Councillor, we should not be discouraged but should make persistent efforts to reflect to our sovereign state the grievances of the people of Hong Kong, and to remind the United Kingdom Government that, being the sovereign state of Hong Kong, it is obliged to solve the boat people problem. The United Kingdom Government must again try every means to persuade the United States Government not to object the implementation of mandatory repatriation.

Thus, the OMELCO Delegation to the United Kingdom can make the following statements to the MPs, the government ministries and the mass media.

(1) Hong Kong people has found the burden of the Vietnamese boat people intolerable. Since we adopt the policy of immediate repatriation on Chinese illegal immigrants, why should we allow the boat people, who are neither refugees nor subject to presecution, stay in Hong Kong for a indefinite period of time?

(2) Since Hong Kong has limited resources, it cannot afford the increasing cost in caring for the boat people. The OMELCO has decided not to vote funds for building new refugees camps. There are also strong voices in society requesting the Government not to pay in advance the cost for running the refugee camps.

(3) Although I just said that the abolition of the port of first asylum policy should be the last resort, yet, if mandatory repatriation cannot be implemented and if there are no other feasible solutions or financial assistances, we have no choice but to give up fulfilling the obligation of the port of first asylum.

(4) The western countries, headed by the US, should help Vietnam improve its economy as a basic solution of stopping the Vietnamese from fleeing their country.

(5) As the sovereign state of Hong Kong, Britain should be obliged to find and implement feasible measures to solve the problem of the influx of Vietnamese boat people to Hong Kong.

(6) As the sovereign state of Hong Kong, Britain is obliged to shoulder the expenses spent by the Hong Kong Government on maintaining the boat people. It should also encourage the United States and other countries to follow suit.

(7) Britain should exert pressure on the United States to adopt appropriate measures to help Vietnam improve its economy.

Sir, with these remarks, I support the amended motion proposed by Honourable Stephen CHEONG because what I have just mentioned is similar to what he has said.

MR MCGREGOR: Sir, I have spoken in this Council several times during the last three years about the distressing problem of the Vietnamese boat people. They constitute a problem that has been thoroughly discussed during the many years of their arrival here; their impact on the Hong Kong community has been divisive. I think it is true to say that many people who took an initial view based on sympathy and understanding of their wretched condition and plight have over the years changed to a view based on anger and intolerance.

All the efforts of the Hong Kong authorities and the United Nations institutions have failed to find a political answer. They have also failed to find any other answer which will allow the Vietnamese to leave Hong Kong and either proceed on their journey or go home. I need not attempt to set out the many initiatives taken, the many hopes raised, or indeed the many disappointments suffered. At the end of the day, and despite all of the work done by all of the people involved, we have over 50 000 Vietnamese here with no sign of any breakthrough and with every sign of an increasingly hostile local reaction to these repeated failures. To cap it all, we have evidence of a further substantial inflow which will stretch our holding resources to the limit.

This Council, in my view with a collective lack of wisdom, has already advised the Government that it will not vote further funds to expand the holding camps, so that incoming Vietnamese are in fact to be crammed in to existing camps with all the social, medical and psychological risks and damage that that foolish decision will entail. I am not sure who thought out this strategy but a large majority of

Councillors agreed to it. Speaking personally, I am ashamed of it -- ashamed that this attitude has been taken by a Council which is supposed to use its collective experience to ensure that our society remains based on decency, tolerance, sympathy and understanding towards others less fortunate than ourselves -- much less fortunate than ourselves. How can we sit here and see other human beings taken into close custody and locked away for years within a prison system which has attracted international criticism and often condemnation, and at the same time systematically worsen their already poor living conditions by refusing them basic human rights? The same human rights that we are so deeply concerned must apply within our own community. I want to go on public record today to say that I did not vote to deny funds to the Government to maintain the minimum standard of care that we provide to the Vietnamese. If the Government seeks such funds I will vote to provide them and I hope many other Councillors will do so.

Now we have another initiative to deal with. The Honourable POON Chi-fai thinks it is timely for the United Nations to scrap the port of first asylum policy in order to allow Hong Kong to push the Vietnamese boats back out to sea, presumably accepting the very real risk to men, women and children of drowning, piracy, of starvation or agonizing death from thirst and exposure. We are not talking about boats being scuttled, we are talking about boats foundering on the high seas as a result of storms and heavy seas. I wonder if Mr POON could be persuaded to push these boats out himself. If he did, and if the refugees drowned or died of thirst, how would Mr POON live with his conscience?

This is, Sir, a moral issue, is it not? I think, with respect to Mr POON, that his signature campaign also was aimed at one of the basest of all human characteristics, that of selfishness. Does Mr POON really believe that the United Nations, an organization based on international human rights, on compassion and integrity and on the dignity of the human being will listen to such a call? Will the British Government be prepared to pass on such a weird proposal thereby accepting that it may have some validity? Will the Hong Kong Government do so? They will do nothing of the kind, and Mr POON's proposal will never become a point for discussion -- even if supported by this Council. None of these things will happen because, thank God, compassion and love still motivate people and form the bed-rock for a just and caring world order.

When a problem has become so large that it threatens a society, desperate measures may ensue. Are we in this situation with the Vietnamese? As I have remarked before

in this Chamber, the vast majority of the people of Hong Kong have never seen a Vietnamese, and could not tell you, if you asked them, how much per capita or absolute cost was spent on keeping them here. I believe in fact that the total cost may be less than 1% of our annual expenditure. We are all anxious to see them go but we must not treat them cruelly or deny them sanctuary and succour. We seek international support and sympathy for Hong Kong, for Hong Kong people in their anxiety over the future. We should not deny basic human rights to the Vietnamese. We must continue patiently with the negotiations in which we have participated for so long. We must seek legitimate and honourable solutions and we must not stain our integrity as a community with the blood of those who sought our help.

I know that this is not a popular message for the people of Hong Kong; it is however, the only message a civilized society can be given by a responsible legislature.

I am very much opposed to Mr POON's motion for his reference to the port of first asylum policy. I support the motion, Sir, by the Honourable Stephen CHEONG.

MR SIT (in Cantonese): Sir, I am glad but tired. Glad because it is at last my turn to speak. Tired because this meeting has already lasted, up to now, for over seven hours.

The subject we are dealing with today is the problem of Vietnamese boat people. The Honourable POON Chi-fai, who has raised this motion debate, said that the policy of first asylum should have ended much earlier. If I understand it correctly, this statement holds true only within a certain time-frame. If the first asylum was really to be ended, this should have been done six to eight, or even 10 years ago, certainly not now in June 1991. The problem of Vietnamese boat people is deeply rooted here in Hong Kong. Can this problem which has become, as the Chinese say, so "complicated and convoluted", be solved by ending first asylum now? I am really concerned about this.

One of my teachers once told me, "Illness gets in through the mouth." In other words, to eat may cause illness. I then asked my teacher, "Does this mean that if we stop eating, we will never get ill?" My teacher answered, "SIT Ho-yin, you will be dead if you do not eat." When we eat, we should choose something good to our health. We should be careful in eating. Can the problem of Vietnamese refugees and boat people confronting Hong Kong be solved simply by bringing the policy of first asylum to an end? I think this alone cannot solve the problem. Last May, I visited Vietnam

for two weeks hoping to know more about the problem and to explore why the Vietnamese were willing to risk their lives to come to Hong Kong. Why Hong Kong and not other places? What I learnt from the visit was that there were three routes for the Vietnamese to flee their country. First, they can go north where they will find the socialist state of the People's Republic of China. Currently, there are over 200 000 Vietnamese in China. Secondly, they can go west where they will find Cambodia. Cambodia like India is suffering from poverty. The situation there is much worse than that of Vietnam. Thirdly, they can go east where they will find the Philippines and Malaysia further south. However, there are many pirates in that part of the world. I am afraid that the Vietnamese boats will sink in the Gulf of Siam even before they are towed out to international waters by Malaysia authorities or other countries. Therefore, the only place open to them is Hong Kong. We can neither change this fact nor ask the Vietnamese not to come. I have tried to find out why they risk their lives to come to Hong Kong. Does this have anything to do with the adoption of the policy of first asylum and that they are making use of the policy to get here? When I was in Vietnam, I met with many Vietnamese. Some had been to Hong Kong and some had tried to come by sea. And there were others who had been back from Hong Kong. Over 90% of them knew nothing about the policy. They only had one thing in mind -- to flee Vietnam for Hong Kong. If the weather was fine and calm, the journey would only take approximately 60 hours. If they took some sleeping and sea-sick pills, they would be able to see the Pearl of the Orient almost as soon as the effects of the pills were gone. Under such circumstances, will there be any help ending the first asylum? I had once been very firm on ending the first asylum thinking that it would solve the problem altogether. But when we give the problem deeper thought, we will realize that the problem is not that simple. In fact, the problem has three aspects to it:

First, what we should do to stop the Vietnamese from leaving Vietnam for Hong Kong. There are three ways of achieving this -- (1) To get the assistance of the Vietnamese Government who can stop people from fleeing the country; (2) To tell the Vietnamese that Hong Kong has already ended the policy of first asylum and (3) To improve the economy of Vietnam making those, who plan to leave because of economical reasons, willing to stay.

Secondly, the problem of managing the refugee camps. There are many refugee centres/boat people centres/refugee camps in Hong Kong. Why do the Hong Kong citizens feel so bad about the problem? The major reason lies in the management of the camps. A lot of disturbances affecting the neighbourhood were brought about by

the riots stirred up by the black sheep of the camps.

Thirdly, the repatriation. There are two types of repatriation -- mandatory and voluntary. Talking about repatriation, we are simply unable to do what we want to. Do not forget we have the largest number of Vietnamese refugees/boat people in South East Asia. We are in fact housing over half of the Vietnamese refugees/boat people in South East Asia. So, if the first asylum was ended, the impact on Hong Kong would be much greater than on other countries in the region. Talking about mandatory repatriation, we are in fact dealing with 50 000 boat people. If we return these 50 000 people by the oceanliner Elizabeth II, which can carry around 2 000 at one time, we will need a total of 50 trips. This will really be a serious logistical problem. In addition, we have to convince the Vietnamese Government to accept these returnees. I wonder what will happen if we bring the first asylum to an end only to find that boat people keep coming in while repatriation cannot be satisfactorily carried out and the Vietnamese Government refuses to accept the returnees. What can we do then? Do we want to follow Hitler? During World War II, the Jews were forced at gunpoint to board trains which sent them to concentration camps. Why were the Jews willing to board these trains? It was because they still thought that they might have a chance to escape in the camps. But the boat people here have no chance. Under such circumstances, I think it is not feasible to abolish the policy of first asylum. We of course have to take care of the feelings of the Hong Kong citizens. But we should bear in mind that even though the ending of first asylum may be a relief to our citizens temporarily, it cannot solve the problem.

To solve the problem, we may make use of today's "major international climate". Solutions can be reached through a dialogue between the British and American Governments. Hong Kong should try harder to get into direct dialogue with Vietnam on the boat people issue. When I was in Hanoi last year, I met with the officials of the British Embassy. The impression I got was they were short of manpower. With limited manpower, the British Embassy in Hanoi would never be able to help us even if they want to. I think it would be useful for us to set up an office in Hanoi to talk direct to the Vietnamese Government over the problem of boat people under the guidance of the British Government.

Addressing the problem of boat people, Sir, you said in your policy address on 12 October 1988, "The tragedy is that doors are no longer open for them. They are people on a journey to nowhere." I would like to quote this remark of you, Sir, to conclude my speech today. This has been a very long debate. But up to now, what

we come up with is only what you, Sir, said in your policy address: "nowhere". Though we have spent a lot of time discussing, we do not have the least idea what these discussions are leading us to. However, we must get the problem solved. But simply ending the first asylum will not help. It may even bring about adverse effects.

I have always been very supportive of Mr POON Chi-fai. But in this issue of ending the first asylum, I am afraid I cannot agree with him. I am not saying we should put this aside. What I am suggesting is that we should treat this as our "weapon" and this is not the right time to use it. Once we use it, we will be left with no other recourse. Members are going to vote later. I think there are good points in both Mr CHEONG's amendment motion and Mr POON's original motion. But to discuss them now is not appropriate. They are either outdated or too much of a rush. If possible, I would rather not discuss them now. But the debate is now under way and not to discuss them is already impossible. Therefore, Sir, with these remarks, I shall abstain from voting.

Thank you, Sir.

MRS SO (in Cantonese): Sir, the problem of Vietnamese boat people has been a trouble to Hong Kong for more than ten years. Members of this Council have conducted debates and raised questions on the issue. As the number of Vietnamese boat people arriving in Hong Kong last year is obviously smaller than that of 1989, it gives many people a wrong impression that we have passed the most difficult stage in regarding to the impacts of the Vietnamese boat people problem on Hong Kong. But the fact is not as we wished. For the first five months this year, the number of boat people arriving in Hong Kong exceeds the total number of arrivals last year. There are worries that another influx of boat people is imminent.

In the face of the continuous influx of boat people, the Government has changed its strategy a number of times. First, all comers are received indiscriminately. Then there is the screening policy, which is followed by the voluntary repatriation, and the involuntary but unopposed repatriation scheme. Yet, the problem still cannot be solved. For more than ten years, Hong Kong has been forced to provide a lot of manpower and resources to shoulder the heavy burden of accommodating boat people and the forbearance of the public is running out. Undeniably, the Government has made a lot of efforts in dealing with the boat people problem. But as the approach of "keeping the door wide open" has basically remained unchanged, it has been unable

to curb the influx of boat people into Hong Kong and send boat people stranded in Hong Kong back to Vietnam.

It has been 16 years since the end of the war in Vietnam. The great majority of boat people arriving in Hong Kong flee Vietnam not because they are prosecuted but mainly because of the economic reason and the hope of moving to more wealthy regions in order to have a better life. Thus we can only hope that there will be fundamental improvements to the economy of Vietnam to discourage Vietnamese from putting out to sea. This has to depend on the introduction of reforms and the implementation of the open door policy by the Vietnamese Government as well as assistance from the international community. Up to this day the United States Government has not normalized its relation with Vietnam and it is still imposing trade embargo on Vietnam. It may be a good idea to urge the United States Government to take appropriate actions to help Vietnam improve its economy. However, the economy of Vietnam cannot be fundamentally improved overnight as we cannot put out a fire with water in the distance.

The United States as well as other western countries have been all along paying lip service on the problem of Vietnamese boat people. This can be reflected in their slow intake of Vietnamese refugees stranded in Hong Kong and their opposition to the introduction of the mandatory repatriation scheme.

Considering the press from both Vietnam and the United States, the boat people problem will become more serious and jeopardize the prosperity and stability of Hong Kong if Hong Kong does not make up its mind to find another way out. This problem cannot be put off any longer. Earlier, it was decided in the In-house meeting of this Council that approval would not be given in future to allocation of additional funds for building more accommodation for boat people. However, if the influx of boat people continues and makes the existing accommodation for boat people become saturated it will be too late to look for remedies by then. A radical solution is to abandon the first asylum policy when necessary.

Although Hong Kong cannot directly abandon the first asylum policy, this Council may positively convey the wish of the general public for the abandonment of the policy in this debate so as to exert pressure on the United Kingdom Government. It is for certain that the abandonment of the first asylum policy will be opposed and accused by some countries, for example, the United States. In view of this, the Government and all of us in Hong Kong have to step up lobbying in order to enlist their

understanding and support. As regards the view that the international image of Hong Kong will be affected and the foreign trade relationship be undermined by such move, I think that the worry is unnecessary. Singapore and Malaysia are refusing entry to boat people and it seems that the harm to them is not so great.

Besides, both the United Kingdom and Hong Kong Governments should speed up discussion with Vietnam on repatriation of boat people. We must urge the United Kingdom to take up its duty as a suzerain state and increase the allocation of funds to Hong Kong for accommodating boat people.

Sir, with these remarks, I support the amended motion of Mr Stephen CHEONG.

MRS TU: Sir, I do not think that Hong Kong needs to defend itself against any criticism if we decide to take unilateral action in carrying out in full the Comprehensive Plan of Action which was accepted by the International Conference on Indo-Chinese Refugees in June 1989.

Hong Kong has co-operated in three of the four elements of that plan of action. But the United States Government has prevented us from carrying out the fourth element, that is, the repatriation of non-refugees to Vietnam. Hong Kong is therefore being victimized because of the so-called Vietnam syndrome that still causes the United States Government to strangle the economy of the country which it devastated two decades ago.

The British Government has allowed Hong Kong right from the beginning to be victimized in this way, and it is the full responsibility of the British Government to put an end to this victimization, which is depleting our resources in manpower, facilities and money, with no purpose at all except to keep tens of thousands of men, women and children in a living purgatory between hope and despair.

In principle, I see the possible eventuality of cancelling the port of first asylum policy. But I am disappointed that Mr POON did not explain how that could be achieved in practice. On the other hand, I do not accept in full some of Mr CHEONG's reasons for supporting his amended motion. However, I do support the amended motion and hope that we can use the arguments put forward today during our mission next week in the United Kingdom. Sir, the boat people issue must be settled now before the situation becomes totally unmanageable.

SECRETARY FOR SECURITY: Sir, it is very late and I shall try to be brief. However, it is incumbent on me to seek to answer some of the important and complex issues which Members have raised this evening. I am grateful to Members for the views they have expressed. In particular I am grateful for the support which Members have given in recognition of the very serious problem we now face with Vietnamese migrants. The Administration fully understands the depth of feeling which now exists in our community on this issue, reflected in strongly held views which Members have expressed powerfully today.

In wholly acknowledging this strength of feeling, I must however advise Members that I cannot support Mr POON Chi-fai's motion. I shall explain why later in this speech.

Mr CHEONG's motion is, however, more in line with Government's thinking. We are moving on all the fronts Mr CHEONG refers to, though not in the precise manner in which his motion is framed. I can support his motion.

Sir, our sense of frustration is well-justified. But it should not distract either ourselves or the international community from Hong Kong's record on first asylum. Herein we have much to be proud of. We are one of the most crowded places in the world. As Mr Martin LEE has noted, we have nevertheless accepted well over 180 000 asylum seekers from Vietnam since 1975. We have absorbed into our own community over 14 000 people from Indo-China. No asylum seeker has ever been turned away. All have been provided with refuge, food, clothing, medical care and whatever other limited services we have been able to give them.

We have stuck firmly by the international agreements reached in 1979 and 1989. The 1979 agreement acknowledged and accepted that persons leaving Vietnam seeking asylum elsewhere should be treated as refugees. They were to be resettled in third countries. This agreement began to break down in the mid-1980s when others, both places of asylum and places of resettlement, ceased to adhere to the 1979 agreement.

It was in this environment that the Comprehensive Plan of Action, agreed upon by over 70 governments in Geneva, was drawn up in 1989. Since then we have struggled under very difficult circumstances, which many Members have mentioned this evening, and resource limitations to maintain the CPA. It has remained the corner-stone of

the policies of both the British and Hong Kong Governments in handling this problem. Now the CPA is itself close to breaking point, and has indeed broken down in some countries in this region.

The message from Members is clear. Hong Kong's continuing ability to carry out the CPA cannot be taken for granted. The Vietnamese migrant problem is an international problem and has been recognized as such repeatedly in international conferences. Hong Kong has contributed more than its fair share towards the resolution of this problem. It is only right that the international community, including of course the United Kingdom and the United States, should share our burden and increase their assistance both financially and in practical terms to help resolve the problem. Members have suggested a number of specific measures which the Governments of the United Kingdom and the United States could take. One of these, noted by Mr BARROW, to encourage Her Majesty's Government to speed up its commitment to take 2 000 refugees before the end of 1991, is being actively pursued by this Administration.

As at 7.30 this morning, 9 173 Vietnamese migrants have arrived in Hong Kong this year. At the same time last year the figure was 2 324, an increase of 295%. The total number of arrivals in 1990 was 6 598. In 1991 Hong Kong has been receiving 95% of all migrants leaving Vietnam clandestinely. The total number of Vietnamese in our camps is 58 000; 6 300 are Vietnamese refugees; 52 000 are Vietnamese migrants of whom 17 000 are screened-out.

It is in this context that the world community must accept that the problem has changed beyond any recognition of what it was previously. Mr McGREGOR has noted this. In the late 1970s people were then fleeing from Vietnam mainly for reasons of political or racial persecution. Most recent arrivals in Hong Kong are leaving for clearly opportunistic reasons. Thus a new problem, which has evolved slowly but clearly, requires fresh consideration and quite new solutions.

Sir, the issue of abandoning first asylum has been a central one raised by Members this evening. It is important to recognize that to abandon the principle of first asylum would not be an easy or a cost-free decision for Hong Kong. Nor would it necessarily stop boats coming to Hong Kong. We would have to face the hard choice, as many Members have reminded us, of what to do if future arrivals sank their boats when they were refused permission to land here. Would we, as a community, be willing to let people drown? Surely not. I cannot believe that we could even suggest such

a course of action on the same day that this Council has passed the Bill of Rights. I endorse Mr McGREGOR's sentiments in this regard. If we were to end first asylum, we would also have to face an international outcry, which would put at risk our prospects for resettling the 6 000 refugees and the remaining 52 000 Vietnamese migrants now in Hong Kong. Mrs FAN and Mr BARROW have made this point well. We would also prejudice international attitudes towards Hong Kong in other areas, such as trade, finance and our future, areas in which we have very important interests, as Mr Paul CHENG has noted. Our ability to act unilaterally, even with the firm support of Her Majesty's Government, to resolve this problem is extremely limited, though of course, we are continually examining the options available to us.

Sir, if we are to maintain first asylum, the balance of obligations in the CPA must be implemented in full. Places of first asylum have to admit asylum seekers and determine their status; resettlement countries have to take genuine refugees; the country of origin and the international community as a whole have to accept that non-refugees must return home with assistance and guarantees as to their future treatment.

We have fulfilled our obligations to the letter. But others are not fulfilling theirs. We have provided asylum and continue at considerable expense to determine the status of many hundreds of new asylum seekers each week. Our screening system, which those with no responsibility for solving this problem have chosen often to criticize, has been found to be generally fair and accurate. We continue to improve it as far as we can.

And yet once status has been determined, what relief is there for Hong Kong and what prospects are there for the non-refugee? The Volunteer Scheme shows some signs of picking up again. However, we returned during May about half as many people as came as new arrivals on any one day in the same month. As I said earlier, we have over 17 000 Vietnamese who have been screened out as non-refugees. They are being held pending repatriation to Vietnam. Most of whom show no interest in the Volunteer Scheme. We are trying to get the international community to focus on this central issue. It is wholly wrong that many thousands of people and their children sit in our camps, in crowded and often difficult conditions, believing in some futile way that the immigration policies of the United States and others are going to change. Sooner, rather than later, these people must set aside all rumours and lies and face the reality that their future and that of their children lies back in Vietnam. The voluntary agencies in the camps, to which I wish to pay tribute this evening, have

a special role to play in this regard, in conjunction with the UNHCR and camp managements. CSD staff have been counselling at Green Island recently and this has demonstrated clearly what can be done: where there is a will, there is a way I shall look carefully at the many proposals on "marketing" or "counselling better" which Mr BARROW has made.

Mr SIT and Mr BARROW wondered whether the British Embassy in Hanoi is adequately staffed. May I reassure them that we have been well served by our Embassy there. The thorough understanding they seek is further achieved by the regular visits by HKG officials made to Vietnam.

The central issue of returning the screened out is tied to a wider problem which goes beyond the CPA itself: that of the economic conditions in Vietnam which these people are now fleeing. It is the view of the Hong Kong Government that the key point is that the economy of Vietnam should improve. This view is clearly shared by a number of Members including Mr CHEONG and Mrs FAN. This is only likely to happen through greater contact with the outside world. Hong Kong is doing what it can to ensure that this happens. We are expanding trade and air links and encouraging easier access to visas for Hong Kong's entrepreneurs and tourists to visit Vietnam.

In focusing the international community on this issue, Members will know that a United Kingdom/Hong Kong delegation has been in Washington these past two days searching for a solution to this very point. Mr Andrew BURNS, the leader of the delegation, noted during his discussions that the Vietnamese problem in Hong Kong was "top of HMG's agenda". I trust that those Members who have been critical of HMG will carefully note the statement. The consultations which have just concluded in Washington were envisaged by the recent meeting of the CPA Steering Committee to explore measures that could encourage greatly accelerated rates of return to Vietnam of those determined not to be refugees. The United States, the United Kingdom and Hong Kong have agreed that they remain committed to the CPA, especially first asylum and fair procedures to determine who is and who is not a refugee. The British and Hong Kong sides have informed the United States that they intend as a matter of urgency to seek bilateral discussions with Vietnam. These discussions could consider the establishment of an internationally managed centre on territory provided by Vietnam for those asylum seekers who are determined not to be refugees and who have not taken advantage of the existing Voluntary Return Programmes. These discussions will take place in close consultation with UNHCR and the International Organization for Migration. For those who have left Vietnam and who have now been screened out, there

will be no resettlement. The Washington talks also agreed that cutoff dates will remain in force and will in no circumstances be changed to a later date.

Sir, the Hong Kong Government has been trying to operate the full arrangements under the CPA for as long as we practically can. But Members have made very clear today that the community's patience has almost worn out. We need movement from others very soon so as to help us resolve the issue of the screened out and the related problem of economic deprivation in Vietnam. Others will need to invest more of their political will and resources in helping to resolve this twin problem, as Hong Kong has had to invest its political will and resources so heavily over the past 16 years. Otherwise, the CPA will simply fail.

Question on Mr CHEONG's amendment put and agreed to.

HIS EXCELLENCY THE PRESIDENT: As Mr Stephen CHEONG's amendment has been agreed, we now debate the motion as amended, that is to say, Mr POON Chi-fai's motion as amended by Mr Stephen CHEONG's amendment. Does any Member who has not spoken so far wish to speak? Mr POON, you have the right of reply if you wish to use it.

MR POON CHI-FAI (in Cantonese): Sir, I am sorry that at this late hour I still have to keep you and Honourable Members in this Chamber as I attempt to respond to a few points my honourable colleagues made in this debate. However, I believe the subject under debate today is very important to Hong Kong, which the public are very much concerned with, and I therefore ask for your indulgence.

First, I should like to respond to the views which my colleagues have expressed or their misunderstanding of the views that I put forward.

The Honourable Mrs Rita FAN mentioned that if one wanted to solve a problem, one has to make clear first what the problem was. The existing problem is not with the refugees, but with the boat people who cannot be repatriated. I as well as the common people of Hong Kong are very clear on this point. However we need to understand why boat people come to Hong Kong. It is because Hong Kong is the port of first asylum. In coming here, they hope that they would become refugees for resettlement abroad. Before they came, they did not even know whether they would be screened in as refugees or as boat people. The crux of the question lies in Hong Kong's present status of

being the port of first asylum. If the port of first asylum would not feed their mistaken hope that they could become refugees and resettled abroad, I believe no boat people or refugees would come our way. Therefore as long as this status is not withdrawn, there will be misleading signals. It would take a mere rumour, and large numbers of boat people or refugees would pour in.

The second point, which Mrs FAN has also mentioned, was that the Vietnamese boat people problem was a diplomatic problem, and the United Kingdom, as Hong Kong's sovereign state, had the responsibility to solve it. I agree entirely on this point. However, we must realize that on the problem of Vietnamese boat people, whenever policy or decision was touched upon, the Government never let us make any decision or raise further views on the pretext of diplomacy or sovereign state. Yet, when allocation of funds was discussed, not a word was mentioned about sovereign state or diplomatic power, but that it was a matter for Hong Kong. I do not know whether this was fair to Hong Kong people, but I feel that this is most unreasonable, and so I have to speak up.

The third point is that some colleagues said the wording of my motion was not clear enough, and the subject was not specifically defined. I do not quite agree with them. If it is said to be not clear or equivocal, I had checked and rechecked time and again, but still could not understand where it was not clear or equivocal. However, just as many of my honourable colleagues had said, my motion partly resembles that of the Honourable Stephen CHEONG. But the only point where I could see some vagueness or uncertainty or difference was that my motion principally urges for the abolition of the port of first asylum, whereas Mr CHEONG did not mention this point. As to the allegation that "responsibility" and "sovereign state" were not clear in that they failed to identify whether it was the responsibility of Hong Kong or of the United Kingdom, this was even farther from the mark. If Members would read it carefully once more, they would see that the wording of my motion went very clearly like this "This Council urges the Hong Kong Government: (a) to strongly request the United Kingdom Government to..... and so on." In other words, it was very clear that we urge the Hong Kong Government to represent Hong Kong to make the request to the United Kingdom Government (of course this must have the consent of the United Kingdom), to raise this on our behalf with the United Nations. Viewed in this order, therefore, no criticism was being directed at Hong Kong, and not the entire responsibility was being placed on Hong Kong. It is because I understood we had no such power, in particular Members of the Legislative Council had no power to raise this with the United Kingdom. The powers that be in the United Kingdom would not even listen, on

their own initiative, to the views raised by Members of the Legislative Council. The words still ring in our ears: many Members of this Council criticized the Chinese Government for not recognizing the Legislative Council last year. Yet just think; during the past three or four months, did the United Kingdom recognize us as the Legislative Council? For instance, on the airport question, the officials concerned only came to Hong Kong to pacify and had a little chat with us. After they returned from Beijing, did they report to Members of the Legislative Council? Did they talk to us about the part of the negotiations which could be revealed or could be made known? Although I agree that it was not necessary to let us know the whole contents of the negotiations, and I agree at the present stage it should be so, yet did they? Also when Mr Robin MacLAREN passed through Hong Kong as the new British Ambassador, had he talked with Members of the Legislative Council on his stopover at Hong Kong? Therefore it could be seen that it was not wrong for me to raise this request. We should ask the United Kingdom Government, through the Hong Kong Government and with the former's consent, to raise this request with the United Nations.

Some Honourable Members mentioned that as I only mentioned abolishing the port of first asylum, it was like lifting a stone to hit my own foot. Yet did my motion consist of only one sentence "To urge the Hong Kong Government to cancel the port of first asylum" without any other words? No. The latter part also mentioned how to expedite the repatriation of all Vietnamese boat people and allocation of funds. I therefore do not think that my motion only mentioned abolishing the port of first asylum and nothing else. Some of my colleagues said that whenever a debate on this subject was held it triggered an instant influx of boat people, both before and after the debate. The fact was, before we started the debate, a crowd already had poured in without our invitation. They would come no matter we hold a debate or not. Then we should get on without debate. There were also colleagues who repeatedly said that the arrival of the Vietnamese boat people could not be tolerated any longer. However regrettably this was not the last resort, and we had to wait for improvements from some quarters, to beg their favour to allow us to improve this situation. I feel this is somewhat contradictory.

In reality the whole problem was the result of mistakes of three sides. First, why did we accede when the United Kingdom accepted on our behalf the responsibility of the port of first asylum in Geneva? Of course, most colleagues here today were not Council Members then; so there is nothing to be said about it. Secondly, why it was decided to implement a screening policy to separate boat people from refugees which has caused an overwhelming number of the former remaining behind in Hong Kong

and those who could leave are only a very small number of refugees. Thirdly, many Hong Kong people, and many colleagues in the Council also, are wondering why it has been delayed until now before a determined effort is made to request the abolition of the port of first asylum or to solve the problem actively? Of course, if it was a mistake, we have to correct it. If Members, in the fight to solve the problem of Vietnamese boat people, followed the same spirit and direction of Baroness DUNN when she earlier led the fight to acquire the right of abode for Hong Kong people in Britain, I am sure that even this question of Vietnamese boat people could not have been completely solved. It would, I believe, have been greatly improved. However, it is better late than never, and I hope we should all consider this point.

Some colleagues asked why none of the alternatives were workable. This would not work, and that would not work; this could not be done and that could not be done. They even asked if the illegal immigrants sank their boats, how were we going to punish them? I do not know whether we can punish those illegal immigrants who sneaked into Hong Kong and were arrested after having committed robbery. I really do not know and I would ask the Secretary for Security to let us have his opinion.

On the question of the Most Favoured Nation (MFN), I trust all in this Council and the general public of Hong Kong are very much concerned. However if one should ask the people in the street that having put up with this major yet worsening problem of the VBP for 16 years without a solution whether they would choose to give up the MFN treatment with pride, or to cancel the port of first asylum? I dare not make a decision but I am confident that they would rather choose pride. Conversely why should we be afraid of the United States threatening to cancel our MFN treatment if we cancel the port of first asylum? Is it so simple to decide on giving MFN treatment to a country by just looking at Hong Kong without looking at the Mainland, or nothing else? If so, then in the past 16 years, we have done so much for the Vietnamese boat people, which was a problem wholly created by the United States, and after we have helped the United States so much by spending so much money, energy and time to discuss how to solve the problem, why then the United States has to review the MFN treatment once every year, instead of giving it to us once and for all?

Some colleagues asked (in particular the Honourable Jimmy McGREGOR) "Do you mean that you would rather see boat people jump into the sea and drown and you ignore them altogether?" I think people all have natural compassion and no one wants to do this. Even cats and dogs are entitled to live. Yet why Hong Kong has to request to cancel the port of first asylum to refuse entry to boat people? I think Members will

appreciate the feelings and mentality of the common middle or lower class people or those who are watching this problem every day. In spite of this, no one ever said that we should not lift a finger to save people from drowning. Just as I mentioned in my speech, the Government should handle this with flexibility. I also cited many examples, one of which took place in the United States. Why when the Haitians threatened to throw children into the sea, the United States coast guards could handle it with aplomb? Why Hong Kong could not handle it? Is it because other people are so clever and we are so stupid? However those Members who asked this question did not ask "Mr POON, why not cancel the policy of repatriating Mainland illegal immigrants who stood on the bamboo scaffoldings, for fear that they would jump to their death?" Nobody every spoke for them, but why mention was only made of the boat people threatening to jump into the sea and to scuttle their boats? These are basically unfair and biased speeches.

With regard to the statement that once the port of first asylum is cancelled, Hong Kong will have to deal on its own with those 40 000 to 50 000 boat people stranded here because Hong Kong unilaterally cancels this policy. Just as I said, first, I never proposed to cancel the first asylum policy unilaterally, but to raise the request in the proper manner through the Governments of Hong Kong and the United Kingdom. We would consider unilateral cancellation only after the Hong Kong does not accept it. In other words, we would have done all we could and would have served all parties concerned with sufficient notice. As to those 40 000 to 50 000 remaining behind, I would ask whether the Hong Kong people would like to solve the problem of the present 50 000, or accept more arrivals endlessly? I think many people wish to see that the number is frozen and accept these 50 000. Of course, must we accept them in toto? As far as reason and duty are concerned, Hong Kong has neither reason nor duty to do so, however one looks at the matter, because we all know that the Vietnamese boat people are entirely the making of the United States. Why should we have to accept the responsibility? Not to mention whether to cancel the port of first asylum policy, since the problem was created by the United States, why should we be asked to clean up the mess? Administratively, the United Kingdom committed a blunder by accepting this burden at the outset on behalf of Hong Kong people. Why then Hong Kong has to accept these 50 000-odd boat people?

The Secretary for Security mentioned the outstanding results of the first asylum policy. I do not know whether "outstanding" means credit to the United Kingdom or the United States, or to Hong Kong people? He mentioned the Bill of Rights which was passed earlier today and that we could not be so inhumane as to cancel the port

of first asylum. However, just as I had said, were we so inhumane? The work of 12 years had been done in vain! Now what we hear is only the words "inhumane, no human rights". If this is the case, then based on the points of view advanced just now, I would propose to this Council that we had better not discuss the Vietnamese boat people problem again in future, because nothing will be workable. We are afraid of people dying, of being blamed, or not being paid. Then what is the use of speaking out? It would be better simply to announce to Hong Kong people that we shall not do anything; and that they should continue to tolerate it, continue to pay.

Mr CHEONG mentioned that it was understandable that some hot issues were raised for discussion which the community was concerned with before the elections to the Legislative Council in September. I think even those with low IQ here today would understand his meaning and that is that discussions of hot topics are proposed mainly because of the elections in September. I personally take strong exception to this. I remember that in this Council some colleagues also mentioned this point. If discussing questions which the community is concerned with is because of election, I would then propose to the President and Members to make a ruling that a certain number of months before the elections Members are not allowed to express their views, because when they express their views, these would involve matters which the citizens are concerned with. If what the people are concerned with are all sensitive matters the discussion of which would score points in the elections then it would be better not to speak. With regard to the recent discussion on transport fare concessions to the aged, should we not discuss this also? The fact is that the eyes of the citizens, the press, the spectators from all walks of life who watch the proceedings from the galleries are discerning; their ears are listening clearly. I think they can distinguish between good and bad, between what are truly vote-getting gimmicks and what are real problems. I may mention a few points to prove that this is wrong.

First, I believe we all remember that since I joined this Council, I have never stopped from urging the Government to tighten up policies in various matters relating to Vietnamese boat people, including allocation of funds by this Council. I was also one of those Members who first raised the request not to allocate funds, and my principle has remained unchanged since then.

Secondly, as we all know, the recent situation of the Vietnamese boat people was not a question suddenly fabricated by us for debate in order to win votes. When the Vietnamese boat people left Vietnam, most of them came to Hong Kong. This is also what we all know. Is this not serious enough? Over 100 arrive every day, and there

have been more than 8 000 since the beginning of the year. Is this a small figure? I remember on Monday, 6 May 1991, when the Security Branch reported on the results of the Geneva meeting and that it was going to the United States to lobby a steering group, I had already found that the Geneva meeting was a failure and fruitless. The so-called steering group was also only a stop-gap expedient. I also queried the officials at the time what new message or viewpoint they were bringing with them to lobby with so as to change their immutable style in the past 12 or 16 years? At that time I heard nothing new. In other words, the impression I had was that no practical work of any sort would be done. Again on Friday, 10 May, the OMELCO panel concerned called a special emergency meeting because Vietnamese boat people were pouring in in larger and larger numbers. Hence the special meeting. On that day I also heard no clear, or long-term solution, except to go to the United Kingdom and to withhold funds. It was only based on this situation that I decided on that day to propose to cancel the port of first asylum. Of course, apart from this question, in my recent contact with many people, they urged that I must raise a strong request relating to the Vietnamese boat people for a solution by the Government. The absolute majority of them even requested to cancel the port of first asylum, which also prompted me to ask for a debate on this question. In the signature campaign on 2 June, I believe we could have seen the message from the people's hearts, which could also explain why I wished to debate this question. If Members thought that I proposed this debate with the ulterior motive of scoring points in the elections in September, why then did most Members present respond? It would have been easy to say that this was not a problem, a minor matter, and not worth responding, then there could have been no problem.

Mr CHEONG also mentioned that no drastic action should be adopted and that we should not get emotional over the matter. May I ask, after tolerating it for 16 years, whether this call is drastic action by the Hong Kong people (including myself)? Is this influenced by emotion? Is a request for debate in the Legislative Council drastic action? On the cancellation of the port of first asylum, is it drastic to consider a request to beg the United Kingdom Government through the Hong Kong Government to urge the United Nations to have pity in our difficulties so as to cancel the port of first asylum? It is really ridiculous to say that this question would affect Hong Kong's interests and thus to mislead the people. I think people in Hong Kong would be foolish indeed if they are so misled by one or two sentences spoken by us. In all the past 16 years, they have faced this question. Everyday, different Council Members, officials, newspapers and commentaries are analyzing the Vietnamese boat people problem. Only after so much analysis and understanding of the problem

from so many different angles, did they speak up from their hearts? Could one say that we are misleading them? This is rather an insult and underestimation of them.

Sir, there is a lot more I wish to say but I do not want to say it. There is only one concluding remark and that is that I would not be disappointed if my motion is defeated, because I had known this beforehand. A colleague of mine who work with the press had said to me "You are bound to lose. Why do you want to raise it?" This I could understand. However if this was the message from people's hearts and is what we understand to be right, then as a Member of the Legislative Council, why should I not raise it? Therefore even if I lose, I will resign myself to it and will not be disappointed. On the contrary, what I am disappointed at is that the message from people's hearts for so many years is not heeded. This is my only disappointment. Anyway I shall not cry because I have done nothing wrong. When one has done his best and has no guilty conscience, success or failure would not be important. I remember that Mr McGREGOR once raised a question to which the Secretary for Security gave a reply. It was a question on Vietnamese boat people. Mr McGREGOR asked whether the Secretary knew that not all Members of the Legislative Council were in favour of cancelling the port of first asylum. I think it is not necessarily of the first importance whether Members of the Legislative Council are in favour or not. The first importance is the opinion of the majority of the general public. People's eyes are discerning and they know what is right and what is wrong. They can tell whether for Hong Kong's interests as a whole the port of first asylum should be cancelled or be continued. They know this in their hearts. It is not important that my motion is defeated because one cannot defeat the will which every citizen cherishes at heart, namely, to cancel the port of first asylum.

Sir, I apologize for having taken up so much of your time. Thank you.

Question on Mr POON Chi-fai's motion, as amended by Mr Stephen CHEONG's amendment, put and agreed to.

HIS EXCELLENCY THE PRESIDENT: It is now quarter to eleven. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 12 June.

Adjourned accordingly at a quarter to Eleven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Ozone Layer Protection (Amendment) Bill 1991, the Securities and Futures Commission (Amendment) Bill 1991, the Hong Kong Bill of Rights Bill 1991 and the Clubs (Safety of Premises) Bill 1991, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.