

1 HONG KONG LEGISLATIVE COUNCIL -- 18 December 1991

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OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 December 1991

The Council met at half-past Two o'clock

PRESENT

THE DEPUTY PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

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

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

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

THE HONOURABLE DAVID LI KWOK-PO, 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 TAM YIU-CHUNG

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

PROF THE HONOURABLE EDWARD CHEN KWAN-YIU

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE MISS EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

PROF THE HONOURABLE FELICE LIEH MAK, O.B.E., J.P.

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE NG MING-YUM

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

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

THE HONOURABLE SZETO WAH

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

DR THE HONOURABLE PHILIP WONG YU-HONG

IN ATTENDANCE

MRS ANSON CHAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR YEUNG KAI-YIN, J.P.
SECRETARY FOR THE TREASURY

MR MICHAEL SUEN MING-YEUNG, J.P.

SECRETARY FOR HOME AFFAIRS

MR MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

MR IAN ROBERT STRACHAN, J.P.
SECRETARY FOR SECURITY

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.

Public Health and Municipal Services (Public Markets) (Cancellation of Designation) (No. 2) Order 1991.....	437/91
Public Order Curfew (Variation) (No. 4) Order 1991.....	438/91
Securities (Stock Exchange Listing) (Amendment) Rules 1991.....	439/91
Securities (Stock Exchange Listing) (Amendment) Rules 1991 (Commencement) Notice 1991.....	440/91
Declaration of Markets in the Regional Council	

Area (Amendment) (No. 3) Declaration 1991..... 441/91

Declaration of Markets in the Regional Council

Area (Amendment) (No. 4) Declaration 1991..... 442/91

Sessional Paper 1991-92

No. 27 -- The Accounts of the Lotteries Fund 1990-91

No. 28 -- Queen Elizabeth Foundation for the Mentally
Handicapped Report and Accounts 1990-91

No. 29 -- Chinese Temples Fund Income and Expenditure with
Balance Sheet and Certificate of the Director of Audit
for the year ended 31 March 1991

No. 30 -- General Chinese Charities Fund Income and Expenditure
Account with Balance Sheet and Certificate of the
Director of Audit for the year ended 31 March 1991

No. 31 -- Sir Murray MacLehose Trust Fund Trustee's Report
for the period 1 April 1990 to 31 March 1991

No. 32 -- Grantham Scholarships Fund Income and Expenditure
Account with Balance Sheet and Certificate of the
Director of Audit for the year ended 31 August 1991

No. 33 -- Sir Edward Youde Memorial Fund
Report of the Board of Trustees for the period
1 April 1990 to 31 March 1991

No. 34 -- Emergency Relief Fund
Annual Report by the Trustee for the year ending
on 31 March 1991

No. 35 -- Social Work Training Fund
Thirtieth Annual Report by the Trustee for
the year ending on 31 March 1991

Oral answers to questions

Legislative Council's role in implementing JLG agreements

1. MISS EMILY LAU asked: Since agreements reached by the Sino-British Joint Liaison Group apparently cannot be altered or renegotiated, and this Council will not be consulted upon them in advance, what action will Government take to ensure that this Council's duty to scrutinize proposed legislation implementing such agreements does not become a mere rubber stamping exercise?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, Article VII(I) of the Letters Patent provides for the Governor to make laws in Hong Kong with the advice and consent of the Legislative Council. Whenever draft legislation is put before it, the Council decides whether to approve or otherwise. This Council's scrutiny of legislation has always been thorough and conscientious and, I have no doubt, will remain so.

For the purpose of facilitating this Council's scrutiny of legislation before it, the Administration will continue to provide as much information and explanation to this Council as can properly be provided. Members will, I trust, recognize that in doing this we have to observe the provision on confidentiality of proceedings of the Joint Liaison Group laid down in Annex II to the Sino-British Joint Declaration.

MISS EMILY LAU: Mr Deputy President, in order to get around the problem of breaching confidentiality of JLG proceedings, will the Administration undertake to consult this Council on all major matters, no matter whether they will come up in JLG discussions or not, as this will ensure that the Government will always have a firm grasp of the feeling of this Council whenever they discuss matters within the JLG meetings?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the terms of reference of the Joint Liaison Group are clearly set out in Annex II to the Joint Declaration. Its functions are to conduct consultations on the implementation of the Joint Declaration, to discuss matters relating to the smooth transfer of government in 1997,

and to exchange information. The function of the Legislative Council is to enact laws and to approve funds where it is necessary to implement such agreements. I think it would not be helpful to confuse the roles of the two bodies. We do not, however, preclude sharing with Members of the Legislative Council our ideas on issues which have yet to be presented to the Joint Liaison Group and we shall do our best to do so in the future.

MR CHEUNG MAN-KWONG (in Cantonese): Will the Administration inform this Council whether, in the event of an agreement reached by the Joint Liaison Group being contrary to the views of this Council, the Administration will bring up the matter afresh with the Joint Liaison Group in order to reflect the views of this Council and of the public that this Council represent?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the British side of the Joint Liaison Group receives instructions which have been discussed and considered by the Government of Hong Kong in consultation with the Executive Council. We endeavour through that process to arrive at negotiating positions which will be acceptable, on the whole, to this Council and the people of Hong Kong.

MR RONALD ARCULLI: Mr Deputy President, regarding the recent discussions in Maastricht on the future of the European Community, Her Majesty's Government held a debate in the House of Commons where members of the House were able to express their views on certain key issues relating to those discussions and negotiations. Would the Administration here consider the possibility of initiating motion debates on matters that may arise in discussions in the Joint Liaison Group so that Members of this Council would be afforded an opportunity of expressing their views?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I am not familiar with the discussions referred to by Mr ARCULLI but I shall certainly study that. I think in the process of discussion within this Council we should be careful not to do it in a way that will make negotiations in the Joint Liaison Group difficult, for example, by publicly discussing our negotiating position. That, to my mind, would not be in the interests of Hong Kong.

MR SIMON IP: Mr Deputy President, the Joint Declaration says that the proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides. Could I ask whether there has been any discussion between the two sides as to when or under what circumstances it might be appropriate for that confidentiality not to be observed as there must be occasions when issues are less sensitive than other issues? That is the first part of my question.

The second part of my question is: Is it possible for the Hong Kong Government to identify in advance for this Council the matters which may or are likely to be the subject of discussion between the two sides of the Joint Liaison Group, so that Members of this Council may have time to deliberate on those issues and perhaps express a view?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, as to whether both sides of the Joint Liaison Group could decide that certain matters need not be kept confidential, I think this may arise from time to time. If from time to time the two sides decided that those proceedings need not be kept confidential, then I think this could be done.

On the second part of the question as to whether or not we could have certain issues debated in this Council before they go to the Joint Liaison Group, I think I have already answered that question in that we do not preclude sharing our ideas on certain issues with Members of this Council; but then we must remember not to do it in such a way as to make negotiations in future difficult, for example, by disclosing our negotiating positions publicly.

DR YEUNG SUM (in Cantonese): I have before me a report of the parliamentary debate on Hong Kong held on 5 December 1984 where the then Foreign Secretary Sir Geoffrey HOWE said and I quote "There will continue to be the fullest consultation with the Executive Council and other representatives of the people of Hong Kong". Will the Administration inform this Council whether, apart from consulting the Executive Council, there are other avenues open to the British-Hong Kong side of the Joint Liaison Group to fully consult Members of this Council who are representatives of the people of Hong Kong?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the Hong Kong Government fully consults the Executive Council on the preparation of the British side's objectives and at every stage of the negotiations. I think the key here is to strengthen the link between the Executive Council and the Legislative Council. The Governor, in making recent appointments to the Executive Council, had that aim in mind. All Executive Council Members play their part in representing the views of the Legislative Council and the community on vital issues affecting Hong Kong's future.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, it would seem that the Secretary failed to make sufficient answer to Dr YEUNG Sum's question. Dr YEUNG's question relates to former Foreign Secretary Sir Geoffrey HOWE's undertaking made before the House of Commons in 1984 that regarding discussions in the Joint Liaison Group there would be consultation with the Executive Council and furthermore with representatives of the Hong Kong people. The answer given by Mr SZE a moment ago failed entirely to address this point. Could I ask who were those the British and Hong Kong Governments were saying they would consult as being the representatives of Hong Kong people? In the matter of the Court of Final Appeal last discussed, what other representatives had been consulted apart from the Executive Council?

DEPUTY PRESIDENT: Mr LEE, I do not think the Secretary can really answer in the context of a 1984 quotation which you put at this late moment to him; but subject to that, Secretary, can you answer?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I am not sure whether that particular statement was made in the context of discussions within the Joint Liaison Group.

Functional constituency election system

2. MR JIMMY MCGREGOR asked: Will Government undertake a detailed examination of the structure and operation of the internal election systems in use by functional constituencies to ensure that these are fair and democratic and that they do not pose

any threat to the impartiality and credibility of the election by these constituencies of Members of the Legislative Council?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the short answer to the question is yes. The Government will, in the context of the current review of electoral arrangements, conduct a root and branch review of the functional constituency election system to ensure that elections in these constituencies take place, as in the case of all other elections, in a fair and impartial manner. In doing so, the Government will take into account the experience of the elections in the functional constituencies earlier this year.

MR JIMMY MCGREGOR: Mr Deputy President, will the Secretary note that the recent elections indicated at least one serious loophole in the operation of certain functional constituencies, which would allow companies to join the representative organizations in order to vote for one particular candidate? Will the Secretary also note the view that the governing body of any functional constituency should not be permitted to endorse or, as a body, support any one candidate in a contested election?

DEPUTY PRESIDENT: Sorry, is that a question, Mr MCGREGOR?

MR JIMMY MCGREGOR: Yes, it is a question, Mr Deputy President. I started by asking "Will the Secretary note?". (Laughter)

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the Government is aware that membership criteria do exist in the constitutions of the various representative organizations. We will nevertheless be looking at, in the context of an electoral review, the issues raised by Mr MCGREGOR.

MR HENRY TANG (in Cantonese): Although the election expenses set at a level of \$50,000 for functional constituency election and \$200,000 for direct election have all along been criticized as insufficient, nobody ever exceeded these limits according to the declared election expenses. Can the Administration inform this Council whether the

figures on the book can reflect the actual expenses, and whether the Administration will consider initiating investigations if suspicious items are found?

DEPUTY PRESIDENT: Does that really arise in the context of the main answer, Mr TANG?

MR HENRY TANG: Mr Deputy President, I think it is in the context of the answer.

DEPUTY PRESIDENT: Are you able to bring that within that context, Secretary?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the electoral review that the Government is conducting covers a wide variety of topics, and this would include the expenditure in general elections.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, is this Council aware that in reviewing the impartiality of the electoral system, due regard should be given to Article 22 of the Bill of Rights Ordinance which provides that everybody should have equal suffrage?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, we will definitely bear in mind the provisions in the Bill of Rights Ordinance.

DR LEONG CHE-HUNG: Mr Deputy President, will the Secretary inform this Council whether the Administration intends to seek advice from the functional constituencies through direct contact with the members, and not just by asking the governing bodies of the organizations for their views, in other words, to have an open survey?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I think we would definitely intend to consult as widely as possible, but we would wish also to encourage members of these bodies to take the initiative and send their views to us.

MR MICHAEL HO (in Cantonese): Mr Deputy President, in my health care functional constituency, either professional qualifications or membership of certain societies would entitle members to a voting right. Can the Administration inform this Council how we can put an end to the situation where members are made to join certain associations in order to obtain a voting right? We may accept that if it happened in 1988 when it was the first time the health care functional constituency had had its election, but if no improvement is made in 1991 or even in 1995, can the Administration inform us when and in what way improvements will be made?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the Government prefers voting by individuals as opposed to voting by bodies. Wherever there are identifiable individual electors, I think that is the criteria. We will be conducting a detailed examination, in our current review, of how this could be achieved in the various constituencies.

DR YEUNG SUM (in Cantonese): Mr Deputy President, as far as voting is concerned, the Bill of Rights Ordinance provides for "one person, one vote". The practice of the social services functional constituency however is "one organization, one vote" instead of "one person, one vote". Can the Administration explain whether this is in breach of the Ordinance? Besides, if the social services functional constituency really practises "one person, one vote", will this be a problem for the Administration?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the Government has conducted a detailed study into this aspect and our conclusion is that the electoral arrangements in functional constituencies are not inconsistent with the provisions in the Bill of Rights Ordinance. As to the particular voting arrangements in the social services functional constituency, we will, as I have just said, be conducting a study into whether or not there is scope for switching from voting by organizations to voting by individual social workers.

MR FRED LI (in Cantonese): Mr Deputy President, my question is simple and straight-forward. Will the Administration inform this Council whether there are any problems with the election system of our functional constituencies?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I think the way the question is framed seems to suggest that there are problems. I think it would be difficult for me, before the completion of the review that I have in hand at the moment, to give a litany as to what the problems are.

Extradition arrangements with China

3. MR JAMES TO asked (in Cantonese): Will the Government inform this Council:

(a) following the provision in the Basic Law on the SAR's judicial relations with Mainland China whether the Government will start to negotiate with China on extradition arrangements; if so, what principles are to be adopted in these negotiations and whether the agreement thus reached will still be applicable after 1997; and

(b) whether there are any existing provisions forbidding the extradition of people for political reasons to Mainland China and what the Government will do to ensure that these provisions are still applicable after 1997?

SECRETARY FOR SECURITY: Mr Deputy President,

(a) The question of whether the Government should negotiate an agreement with China on the surrender of fugitive offenders is under consideration. If a decision is taken to begin negotiations, they will be conducted within the framework of the Joint Liaison Group (JLG) and the normal safeguards will be preserved.

(b) The only relevant Hong Kong legislation is the Chinese Extradition Ordinance. This is not in use. It provides that a person shall not be surrendered for offences of a political character.

If this Ordinance was to be extended beyond 1997, then we would wish to discuss this in negotiations within the framework of the JLG.

MR JAMES TO (in Cantonese): The Secretary has mentioned that the question of whether

the Government should negotiate such an agreement with China is under consideration. What criteria does the Government use when considering whether it should begin negotiations? It has also been mentioned that "the normal safeguards will be preserved". Could I ask what the "normal safeguards" are? How could we know that these safeguards would be preserved before negotiating?

SECRETARY FOR SECURITY: Mr Deputy President, the normal safeguards are four-fold:

(1) The act in respect of which the fugitive's return is requested must constitute a crime in both jurisdictions at the time it was committed. This is known as the double criminality rule.

(2) That there is a prima facie case against the person whose return is requested when that person has not been convicted.

(3) That the returned fugitive will not be tried for any offence other than that for which he was surrendered. This is known as the speciality rule.

(4) That the return may be refused by the requested party if the offence in question is a political offence.

MR JAMES TO (in Cantonese): The Secretary did not answer the second part of my question. How could we know that these safeguards would be preserved before negotiating?

SECRETARY FOR SECURITY: Mr Deputy President, before negotiating we cannot be sure.

PROF FELICE LIEH MAK: Mr Deputy President, in discussing this issue will the Administration inform this Council how the possible repeal of the death penalty in Hong Kong will affect extradition arrangements in the future?

SECRETARY FOR SECURITY: Mr Deputy President, we would seek to ensure, through negotiations where possible, that the death penalty is not used in negotiations with other countries.

MR NG MING-YUM (in Cantonese): Mr Deputy President, the Secretary has mentioned in the second paragraph of his reply that the only relevant Hong Kong legislation is the Chinese Extradition Ordinance but it is not in use. Could I ask the Secretary why it is not in use or whether it is not in force?

SECRETARY FOR SECURITY: Mr Deputy President, this Ordinance refers to the Treaty of Tientsin which was made in 1858. Article 21 of the Treaty provides that criminals shall be delivered up upon due requisition by the Chinese authorities. The Chinese authorities have not been making requests pursuant to this Treaty.

MR JAMES TO (in Cantonese): The "Chinese authorities" mentioned in the Chinese Extradition Ordinance which the Secretary has cited actually referred to the then "Government of the Republic of China". Could I ask the Secretary whether the Ordinance is still applicable in Hong Kong or is relevant revision necessary?

SECRETARY FOR SECURITY: Mr Deputy President, this Ordinance is still in effect.

Written answers to questions

Silting of watercourses in Tuen Mun and Yuen Long

4. MR NG MING-YUM asked: Will the Administration inform this Council:

(a) whether silting has ever occurred in any of the rivers and streams in Tuen Mun and Yuen Long over the past five years; if so, how serious the problem of silting was and how the problem was caused;

(b) how the farmland and residential structures in the vicinity of these silted-up rivers and streams were affected; what damage has been caused; whether any compensation of monetary assistance has been offered; if so, what the details are;

(c) what measures have been taken and what resources have been used to improve

the situation of such rivers and streams;

(d) what measures and resources are and will be employed now and in the foreseeable future to alleviate the silting problem of such rivers and streams; and

(e) whether consideration would be given to taking further steps to solve the problem of silting at source; and if so, what are they?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, silting of rivers and streams is a common occurrence in Tuen Mun and Yuen Long. The causes of this problem are many-fold; some silting is a natural process and some has been caused or exacerbated by man. Siltation occurs when heavy rain falls and washes away the topsoil and even subsoil into the streams. If hillside fires have occurred in the area, the protective ground cover will be removed and more silt will be washed away. These natural causes of siltation are common in Hong Kong. Development and farming are other major factors. Frequently developers strip away all the natural vegetation before starting excavation, and heavy rain will then easily move silt. Likewise if a site is filled to a higher level, there is a danger for the loose filling being washed away. Animals graze land and remove the protective vegetation. As a result, rain can wash away the silt. Some farmers wash their animal wastes into streams and rivers; this further aggravates the problem. The seriousness of the problem of silting varies: the problem is notably serious in San Tin, Yuen Long and is generally under control in Tuen Mun.

The main consequence of silting is to block watercourse, thus causing flooding. Hence, farmland and to a lesser extent residential structures in the vicinity of silted up rivers have been affected by flooding. This was particularly the case in 1988 with Typhoon Warren and in 1989 with Typhoon Brenda. Areas in Ha Tsuen were seriously affected as the rain coincided with a time of extensive filling of fishponds and blocking of watercourses by private developers. Typhoon Warren in 1988 flooded about 40 hectares of mainly agricultural land. Typhoon Brenda in May 1989 caused major flooding in the districts which inundated some 910 hectares of cultivated land and fishponds and it was estimated that some 1 300 of the 3 300 properties situated within the flooded area were damaged. The total damage in the Yuen Long and Tuen Mun districts was estimated to be in the region of \$29 million (\$16 million to agriculture and \$13 million to property). About \$2.0 million was paid out to farmers in the Yuen Long area following these two events. It should also be noted that

contractors have occasionally accepted liability for flooding and paid compensation. But the sums paid are not known and these flooding incidents are not necessarily caused by siltation.

Three main measures have been taken to alleviate the problem of silting. First, the Planning Department has introduced stricter controls on private developers through recent amendments to the Town Planning Ordinance whereby developers are now required to submit development proposals for approval before carrying out filling works. Second, the Environmental Protection Department is progressively introducing livestock waste control measures under the Waste Disposal Ordinance whereby the Yuen Long environs became part of the livestock waste control areas on 1 June 1991. It will however take some time before improvements can be seen. Third, the Drainage Services Department has introduced Drainage Impact Assessments as from December 1990 as a requirement for all new developments. No permission will be given to any development which will further aggravate the flooding problem in the concerned localities. The Drainage Services Department also carries out regular programmes of desilting rivers and stream courses in Tuen Mun and Yuen Long amounting to about \$8.0 million in the current financial year.

In addition, the Tuen Mun and Yuen Long District Offices have carried out 68 desilting/drainage improvement projects costing \$1.34 million since April 1989. Works have also commenced since August 1990 to remove the pollutants and contaminated silt in the Tuen Mun Nullah at an estimated cost of \$12 million. The District Lands Offices, the Territory Development Department and the Regional Services Department have also taken part regularly in desilting some of the streamcourses.

The Administration has reckoned that the long-term structural solution to the silting problem is to undertake major drainage improvement and flood protection schemes in these areas. Some \$580 million have therefore been spent in the past five years in major flood protection works in Tin Shui Wai and Yuen Long areas, including Tai River diversion culvert, improvement to western drainage channel and eastern culvert, flood pumping schemes for Kiu Tau Wai, Sik Kong Tsuen, Sik Kong Wai, Lo Uk Tsuen, Ha Mei San Tsuen and Sheung Cheung Wai.

A \$125.3 million flood protection project which will improve the drainage channels near Hung Uk Tsuen, Fu Sha Wai, Tai To Tsuen, Tin Sam, Sik Kong Wai, Tseung Kong Wai, Hung Shui Kiu and Tan Kwai Tsuen is scheduled for completion by mid-1992. In addition, there are long-term plans to improve the existing major rivers and to

construct more channels to alleviate the problem of silting and flooding in Yuen Long, Kam Tin, Ngau Tam Mei and San Tin areas. Implementation of these plans will cost some \$1,233 million. Works will start progressively from August 1992 for completion by 1998. Detailed planning and design are also in hand for village flood protection works at Ha Mei San Tsuen, Sheung Cheung Wai and at Yuen Long and Kam Tin areas, costing altogether some \$412 million.

In addition to the measures mentioned above, the Administration is in the process of preparing a new legislation on land drainage. As most of the watercourses in the northwest New Territories are in private ownership, attempts by government departments to gain access to maintain these watercourses have often been frustrated because of the reluctance of the owners to permit access. The new Bill will seek to empower the departments concerned to gain access to private land for watercourse maintenance. We hope to introduce the Bill to the Legislative Council next year.

Juvenile crime prevention

5. PROF FELICE LIEH MAK asked: As effective crime prevention entails proper identification of potential offenders, will the Administration inform this Council what are the characteristics of juveniles at risk for engaging in crime; and if such groups have been identified, what action is taken to prevent these young people from engaging in criminal activities?

SECRETARY FOR SECURITY: Mr Deputy President, the vast majority of juveniles committing crimes participate in either shop or miscellaneous thefts, which account for over 43% of juvenile crime. The predominant category of juveniles involved in crime are students.

Experience indicates that persons from broken homes, families of drug addicts or convicted criminals, or persons brought up in an overcrowded and socially and economically depressed environment have a greater tendency to become youths at risk.

As for preventive measures, shop theft has been the subject of various police advisory programmes to major shopping outlets. Such programmes warn youngsters of the risks of being prosecuted should they engage in shop theft. One new idea we are considering is the production of cardboard cut-out policeman figures to be

displayed in major stores. This measure has been used in a number of countries and has resulted in a drastic decrease in shop theft in premises where they are displayed.

In relation to students, all police districts have School Liaison Officers who regularly visit schools to discuss and advise on juvenile problems. A Working Party on Juvenile Crime was set up within the police in 1988 to identify and implement means to counter juvenile crimes through improved publicity, awareness, prevention and detection.

Within schools, every effort is made to ensure that the education provided is positive and rewarding so that students are less vulnerable to bad influences. Guidance is given to students at risk. Such guidance and counselling work has been strengthened by the establishment of student guidance officers and school social workers.

In order to have a clearer idea on what causes juvenile delinquency in the present environment, the Standing Committee on Young Offenders set up under the Fight Crime Committee, plans to commission a study on the social causes of juvenile delinquency. It is hoped that the study will give further insight into the problem so that better preventive measures can be taken. This study will commence early in 1992.

Equal pay for women

6. MISS EMILY LAU asked: Will Government inform this Council whether it will introduce the necessary legislation to ensure equal pay for women for equal work, in order to comply with the Bill of Rights' guarantee against sexual discrimination?
SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, we have no plans to introduce any legislation on equal pay for women for equal work. The relevant article of the Bill of Rights (Article 22) is concerned to ensure that legislation is not discriminatory in its content or application. Legal advice is that there is no need to introduce legislation to comply with the Bill of Rights.

Vacant public housing units

7. MR PANG CHUN-HOI asked: Will Government inform this Council:

(a) of the existing number of vacant public housing units in various districts;

(b) of how many of these units have been rejected by tenants after allocation and left vacant for three months or more, and the distribution of these vacant units; and

(c) how the Administration detect cases in which tenants have not surrendered their units upon moving out, so that such units can be re-allocated as soon as possible to applicants on the waiting list?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, as at the end of November 1991, there were a total of 27 381 vacant public housing rental units in various districts. Of these, 5 965 were not in a suitable state for letting, 10 127 were being offered or processed for letting, and the remaining 11 289 reserved for redevelopment, major repairs and clearance use. A detailed breakdown of the current position is at Annex A.

A total of 8 106 units have been left vacant for three months or more as a result of their having been rejected by prospective tenants. The distribution of these units by district is at Annex B.

Cases of non-occupation of public rental units are detected by Housing Authority's estate management staff during their regular visits and flat inspections, or by unreasonably low utility meter readings, disconnected telephone lines, reports or feedback from cleansing workers and neighbours and so on. Where there is sufficient evidence to prove non-occupancy, prompt action will be taken to terminate the tenancy with a view to recovering the unit for reallocation.

Annex B

Distribution of Public Housing Units Vacant
for Three Months and above
Position as at 30.11.91

District	No. of Units
Fanling	80
Hong Kong East	460
Hong Kong West	730
Island	32
Kowloon Central	1333
Kowloon East	1639
Kowloon West	205
Tseung Kwan O	1090
Shatin	657
Tuen Mun	839
Tai Po	891
Yuen Long	150

Total	8106
=====	

Police deployment in Sok Kwu Wan

8. MRS PEGGY LAM asked: Will the Government inform this council:

(a) whether it is the current practice to station police officers round the clock in Sok Kwu Wan on Lamma Island; and

(b) if not, what specific measures are in place for the police to ensure the safety of the local residents and visitors and their properties in case of crimes or

accidents?

SECRETARY FOR SECURITY: Mr Deputy President, police officers are not deployed round the clock in Sok Kwu Wan at present.

To make the best use of police manpower, police commanders review regularly the deployment of police officers in their districts in the light of the current situation. Sok Kwu Wan has a very low crime rate, with only nine crimes reported this year up to November 1991. As a result, the previous 24-hour coverage has been reduced to two men from noon to 10:00 pm daily with effect from 1 December 1991. Sok Kwu Wan is however frequently visited by police launches and patrols are put ashore. Yung Shue Wan, which is nearby, continues to be covered 24 hours a day.

In the event of emergency, police launches on patrol in the vicinity or launches from the Aberdeen Marine Police Base, just 15 minutes cruising time away, will be directed to Sok Kwu Wan.

Police coverage at Sok Kwu Wan will be maintained at a level commensurate with the local requirements. If the situation there warrants greater police attention in future, police presence will be increased.

Unlawful possession of firearms and ammunition

9. MRS PEGGY LAM asked: Will the Government inform this Council if there are plans or measures to help juveniles understand the seriousness of unlawful possession of firearms and ammunition, so that they would not be used by unruly elements to keep and transport firearms and ammunition?

SECRETARY FOR SECURITY: Mr Deputy President, the penalties for possession of firearms and ammunition are fairly well known and are frequently reinforced by well publicized sentences handed down by the courts. Possession without a licence can result in imprisonment for up to 14 years, whilst possession with intent to endanger life, carrying arms or ammunition with criminal intent or resisting arrest or committing an offence whilst in possession can result in life imprisonment. It is clear therefore that the courts take a very serious view of illegal possession and use of firearms.

The police maintain close liaison with all schools through School Liaison Officers based in every district police station. During their frequent visits to schools, these officers emphasize the dangers of involvement in crime and association with unruly elements. By and large this liaison is successful. Whilst the number of students involved in crime over the past few years has been between 4 000 and 5 000 annually, this represents a very small proportion of the total juvenile population. The Government will continue to give wide publicity to the public in general and young people in particular to discourage unlawful possession and use of both firearms and ammunition.

Black Point power plant

10. MR TAM YIU-CHUNG asked: Under the Scheme of Control Agreement, the China Light and Power Company and its associated companies are allowed profit returns of up to 15% of their average net fixed assets. Will the Government inform this Council whether the companies' planned investment (estimated to be around \$60 billion) in developing a new power station at Black Point will lead to increases in electricity charges, and if so, what the projected rate of increases will be?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, under the Scheme of Control Agreement (SCA) with China Light and Power Company Limited, Exxon Energy Limited and their associated generating companies (the Companies) the shareholders receive a Net Return on their investment calculated as follows:

13.5% of the total value of their Average Net Fixed Assets and
1.5% of the shareholders' investments made after 30 September 1978

less interest on long-term borrowed capital of up to 8% on each loan and,
interest at 8% on the average Development Fund balance for that year.

The only circumstances under which the Companies could receive 15% Net Return would be if 100% of the assets were financed from shareholders' investments (that is there were no loans) and the Development Fund balance was zero. Over the period of the current SCA, the actual return received by the Companies has averaged only 11%.

The total estimated generating capacity of the proposed Black Point power station is about 6 000 MW, which is almost the same as the Companies' existing capacity. The cost of \$60 billion quoted by the Companies represents the estimated total project cost based on coal fired generating units, in money of the day terms, that is after allowing for future inflation. The project will be phased over a considerable number of years (at least 10) according to the growth in demand.

Under the terms of the SCA, when proposals for major additions to the Companies' system have been finalized the Companies must submit them by way of a Financing Review for Government's approval. This review sets out details of the Companies' demand forecasts, proposals to meet that demand, sales forecasts, estimates of costs and revenue, and the resulting tariff implications. In the case of a major development such as Black Point each phase of the development will require justification through a separate Financing Review.

No Financing Review has yet been submitted by the Companies for the first phase of Black Point; therefore Government does not have any projections of future tariff levels. Tariff levels will be determined by the capital costs of the generating plants, the type and cost of fuel used, prevailing interest rates, inflation and unit sales.

It is too early to say whether or not the development of Black Point will lead to increased tariffs and if so by how much. It would, however, be unrealistic to expect the Companies' average basic tariffs to remain unchanged for a further eight years as they have done since 1983.

All proposals put forward by the Companies will be subject to rigorous scrutiny by the Administration, with the assistance of international consultants, to ensure that consumers continue to receive an efficient and reliable electricity supply at a reasonable cost.

Tertiary places

11. MR ERIC LI asked: At the annual debate on the Governor's policy address on 6 November 1991, the Secretary for Education and Manpower stated, "greater accessibility has now enabled the tertiary institutions to accept candidates who are less over-qualified than before, but nevertheless well qualified, for the courses

they seek to undertake." In this connection, will the Government inform this Council:

(a) of the method employed by the Government to fix the number of tertiary places for the future so that supply would meet demand; whether the number of students in matriculation classes are used yearly as the basis to project the number of candidates who will meet the minimum entry requirements of tertiary institutions; and

(b) of the expected number of tertiary places which are in demand and its corresponding supply in Hong Kong for the next two years?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, Government sets the target of tertiary places mainly in relation to estimates of the economy's future requirement for graduate manpower. Account is also taken of a number of other factors including, for example, the community's aspirations, the level of ability of the local student population to benefit from tertiary education (as indicated by the supply of matriculants) and the level of tertiary provision in other countries and territories at a broadly similar stage of economic development to our own. The 1990 projection of the requirement for, and the supply of, manpower at different levels of education in the 1990s has just been updated. The requirement has been projected in respect of different occupational groups, and the projections of supply take into account emigration and natural attrition as well as the new supply of local and overseas graduates.

Since the provision of tertiary education is determined with reference to the future manpower needs of the economy, the planning target is not to meet the year to year demand for tertiary places and thus no assessment has been made of the demand for tertiary places for the next two years. Rather, our plan is to increase the provision of first-year first-degree places from 10 570 this year (1991-92) to 15 000 by the 1994-95 academic year. Even with this expansion programme, we estimate that the output from local tertiary institutions will account for only 41% of the new supply of graduate workers required for the period from 1990 to 1996.

Flushing water supply

12. DR HUANG CHEN-YA asked: Will the Government inform this council:

(a) how many times the supply of flushing water was suspended in various public housing estates in the western region of the Hong Kong Island during the past year, and what the causes of such suspensions were?

(b) how this flushing water supply problem compares with that in public housing estates in other areas; and

(c) whether the Administration has any measures to minimize the recurrence of such incidents?

SECRETARY FOR WORKS: Mr Deputy President, flushing water supply to public housing estates may be interrupted by --

(a) scheduled mainlaying works carried out on the distribution system (as the suspension of supply is foreseen, all affected premises are notified in advance);

or (b) mains burst or leaks occurring in the distribution system (emergency work, no notice given);

or (c) faults in the internal distribution systems of the public housing estates.

Category (c) work is undertaken by the Housing Department and no records are kept by the Water Supplies Department (WSD). For categories (a) and (b), WSD's records show that the supply of flushing water to public housing estates in the western region was suspended six times last financial year, five times due to emergency repairs as a result of mains bursts or leaks and once for scheduled mainlaying work.

Of the 171 public housing estates in the stated territory, three are situated in the western region. As stated, these three housing estates have been affected six times in the past year. This compares with 150 cases in all the other estates during the same period.

At the Legislative Council meeting on 13 November 1991, an account of the measures taken by the Government to minimize mains bursts and leaks were explained to Members. Both potable water and flushing water mains are laid in the same conditions underground so that the measures considered appropriate for the prevention of fresh water mains bursts or leaks apply equally to flushing water mains.

Quality of teaching in UPGC-funded institutions

13. MRS RITA FAN asked: In view of the considerable expansion in degree places in tertiary institutions funded by the University and Polytechnic Grants Committee (UPGC), and the recent reports that teaching ability does not feature in the promotion criteria of academic staff in one of the institutions, will the Government inform this Council:

(a) what measures have been taken by the UPGC-funded institutions to improve the quality of teaching in the past two years;

(b) whether teaching ability is a significant factor for consideration for promotion purposes: whether it is given more, less or equal weight as research activities, administrative ability and so on; and

(c) what plans there are to improve the teaching and learning methodology in the institutions as students of a wider range of abilities are admitted into the institutions in the next few years?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the University and Polytechnic Grants Committee (UPGC) has always stressed to the institutions the importance of maintaining academic standards in general, and teaching standards in particular. To ensure the maintenance of the highest possible quality in teaching, the Committee emphasizes that the institutions should recruit staff of the right calibre, provide them with appropriate intellectual and professional development opportunities, and fully involve external advisers, assessors or examiners in such a way that they can have an effective influence on the system.

During the past two academic years (1989-90 and 1990-91), the UPGC-funded institutions have implemented a number of measures as part of their ongoing effort to maintain and improve the quality of teaching. These include:

(a) regular evaluations on a course/department/faculty basis;

(b) inclusion of student feedback as part of the regular evaluation process, in addition to the long-standing system of external examiners;

(c) provision of in-service training courses and increased opportunities for further studies; and

(d) setting up of staff resource centres and promotion of a variety of staff development activities.

Among the promotion criteria for academic staff in the UPGC-funded institutions, satisfactory performance in teaching is emphasized, as well as research, scholarship and administrative ability. The institutions attach weight to each of these attributes according to the needs of the individual appointments.

The institutions are aware of the challenge to teachers posed by the widening of the catchment area of their student intake. While they will continue with a variety of staff development activities, greater emphasis will be placed on meeting the demands of new students. The institutions are actively considering possible means to improve the learning ability of students. The priority areas are the introduction of learning techniques, language enhancement and strengthening of counselling resources.

Medical equipment in hospitals

14. DR CONRAD LAM asked: What comprehensive plan the Hospital Authority has in hand to ensure that the medical equipment in hospitals is properly maintained so that it functions without interruption and it is replaced and replenished at suitable times to keep up with the advancement of modern technology in medical treatment?

SECRETARY FOR HEALTH AND WELFARE: The Hospital Authority has developed a comprehensive Medical Equipment Management System which aims at ensuring that medical equipment in hospitals are functioning optimally and that there is a planned programme for equipment replacement. A summary of the objectives and key components of the system is at Annex.

In addition, the Hospital Authority has set up a management group to review the provision of medical equipment in public hospitals. The first phase of this review comprises an urgent examination of the current situation in the provision and

utilization of major medical equipment such as CT scanners. It is expected that this will be completed within four weeks. The group will then proceed to examine other key issues, for example introduction of new medical technology, and will recommend an appropriate strategy for implementation.

Annex

Medical Equipment Management System

System objectives

1. An effective Medical Equipment Management System for the Hospital Authority shall be able to address all necessary issues associated throughout the entire life cycle of a piece of medical equipment both microscopically down to specific details of a single piece of equipment within a particular hospital and macroscopically on policy matters relating to all public hospitals.
2. Equipment management within a public hospital (hospital level) shall cover the following aspects starting right from the initiation of equipment purchase to its final disposal:
 - (i) Identification of clinical need and urgency;
 - (ii) Equipment specifications preparation and justification;
 - (iii) Budgetary estimate preparation and justification;
 - (iv) "Value for money" purchase through appropriate procurement exercise;
 - (v) Equipment installation/commissioning supervision and co-ordination;
 - (vi) Equipment utilization and cost of operation monitoring;
 - (vii) Quality assurance and maintenance scheduling;
 - (viii) Equipment replacement scheduling;
 - (ix) Additional requirements screening and justification;

(x) Safe-keeping of equipment stock;

(xi) Disposal of equipment at end of life cycle.

3. Equipment management at Hospital Authority Head Office (headquarters level) shall ensure that all public hospitals comply with the management guidelines detailed in clause (1.2). Besides, the following equipment management objectives shall also be met:

(i) consistent equipment management practices among all public hospitals;

(ii) overall cost-effective operation and maintenance for the entire Hong Kong community;

(iii) rational and optimal allocation and utilization of resources;

(iv) quality and safe operation throughout all public hospitals;

(v) more efficient equipment utilization such as redevelopment of equipment on an inter- and/or intra-departmental/hospital basis; and

(vi) overall equipment acquisition, operation, maintenance and replacement costs budgeting, control and management.

4. The Medical Equipment Management System shall also be able to assist the clinical staff in the following aspects:

(i) to be fully aware of the kind and quantity of equipment which is available for use within a ward, a clinical unit or a department;

(ii) to be fully informed of the equipment condition as well as equipment replacement schedule within a ward, a clinical unit or a department; and

(iii) to be promptly alerted of any equipment hazard or incident relating to the medical equipment currently in use.

Extradition arrangements with China and Taiwan

15. MR JAMES TO asked: Will the Government inform this Council:

(a) whether there are any existing conventions or agreements or unwritten agreements on the extradition of criminals between Hong Kong and China and Taiwan; if so, what they are;

(b) how many extradition cases between Hong Kong and Mainland China and between Hong Kong and Taiwan there were each year in the past five years and what categories of crimes were involved?

SECRETARY FOR SECURITY: Mr Deputy President,

(a) The Chinese Extradition Ordinance of 1889 provides for the extradition to China of Chinese criminals who have taken refuge in Hong Kong. It refers to the Treaty of Tientsin of 1858 and has fallen into disuse since 1949. There are no bilateral agreements or any unwritten agreements governing extradition between Hong Kong and China. Hong Kong has no arrangements with Taiwan in relation to extradition.

(b) There have been no requests for extradition between Hong Kong and China or between Hong Kong and Taiwan in the last five years.

Tertiary institution minimum entry requirements

16. MR ERIC LI asked: Will the Government inform this Council:

(a) how the minimum entry requirements are set by the seven tertiary institutions in Hong Kong; and in setting such requirements, whether reference has been made to the minimum entry requirements of universities in other countries; if so, please give the details; and

(b) of the number of candidates who met the minimum entry requirements of these institutions but were not admitted in 1990-91?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the minimum entry

requirements for degree courses at the seven UPGC-funded institutions are set by the governing councils of the institutions. In doing so, an institution normally takes into account:

(a) the minimum standard required of a new entrant to ensure that he would benefit from the course of study in question and would be able to complete his studies successfully;

(b) the curriculum structure in local secondary schools and the public examination systems in Hong Kong;

(c) the entry requirements of universities in other countries, especially the United Kingdom where the public examination systems are similar to those in Hong Kong; and

(d) current education policies and planned developments in Hong Kong.

In 1990-91, a total of 23 056 applications were received by the Hong Kong Baptist College, the Chinese University of Hong Kong and the University of Hong Kong from candidates who met the minimum entry requirements for admission to their degree courses. Of these, 18 629 applications were not successful. It has not been possible in the limited time available to provide the same information in respect of the Hong Kong Polytechnic and the City Polytechnic of Hong Kong, both of which were also offering first-year first-degree places that year. I shall submit the information as soon as it becomes available. (Annex I)

Motions

TELEPHONE ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That the Schedule to the Telephone Ordinance be amended -

(a) in Part II -

(i) in item 3(a) and (b) by repealing "usage" and substituting "use";

(ii) by adding after item 3 -

"4. (a) For an Integrated Digital
Access (IDA) system
(see Note 5) between
PMRS and PSTN

(i) for the first \$46,200
8 systems per system
per annum
(see Note 2)

(ii) for additional \$39,000
systems at the per system
same location per annum

(see Note 2)

(b) For an Integrated Digital
Access (IDA) system
(see Note 5) between
VAS and PSTN

(i) for the first \$46,200
8 systems per system
per annum
(see Note 3)

(ii) for additional \$39,000
systems at the per system
same location per annum
(see Note 3)

5. Associated charges for item 4 -

(a) connection or \$3,000
removal to a per system
different building (see Notes

2, 3 and 6)

(b) removal within \$1,500
the same building per system
(see Notes
2, 3 and 7)

6. (a) For use of an 9 cents
Integrated Digital per minute
Access (IDA) system subject to
(see Note 5) Notes 2 and 4
between PMRS and
PSTN

(b) For use of an 9 cents
Integrated Digital per minute
Access (IDA) subject to
system (see Note 5) Notes 3
between VAS and and 4'';
PSTN

(iii) by repealing Note 4 and substituting -

"4. In items 3 and 6, the charge for use is calculated monthly on the accumulated number of minutes for which the interconnection line or Integrated Digital Access (IDA) system is used, rounded up to the nearest minute.

5. An Integrated Digital Access system provides a digital connection with 24 channel -law coded PCM, operating at 1.544 Mbps, using the CCITT G.703 electrical interface between a subscriber and one of the Company's exchanges.

6. A maximum charge of \$25,000 per location per order applies for connection or removal to locations at another building.

7. A maximum charge of \$10,000 per location per order applies for removal within the same building.'';

(b) in Part V -

(i) by repealing item 23(c) and substituting -

"(c) (i) For use of an \$1
interconnection per minute
line to provide (see Note 4)
a chargeable
information
service to callers

(ii) For use of an 30 cents
interconnection per minute
line to provide (see Note 4)";
a free-of-charge
information
service to callers

(ii) by adding after item 26 -

"27. For a barring service \$60 per
against outgoing annum".
IDD calls, Infoline
calls and incoming
collect calls

She said: Mr Deputy President, I move the motion standing in my name on the Order Paper.

Under section 26(1) of the Telephone Ordinance, the Hong Kong Telephone Company may levy charges for its services only at levels which do not exceed the limits shown in the Schedule to the Ordinance. Section 26(2) of the Ordinance empowers this Council to amend the schedule of charges by resolution.

The company wishes to provide three new services, an Integrated Digital Access

Service, a Free Infoline Service, and a Barring Service. The maximum charges for these services need to be added to the schedule of charges to allow the company to charge for the services.

The Integrated Digital Access Service would enhance the link between the public telephone network and cellular telephone and value added service networks. It would provide a digital connection offering better quality links between networks. It would also offer greater voice security for cellular telephone users.

The Free Infoline Service would allow callers to obtain information free of charge from information service providers. The Telephone Company would charge the service providers 30 cents per minute for the calls, but the latter could recover costs through sponsorship by suppliers of products about which information would be given.

The Barring Service would allow subscribers to have their telephone lines barred to unauthorized outgoing IDD calls, Infoline calls and incoming collect calls.

The proposed maximum charges for these services are set out in detail in the resolution before this Council. The Administration has examined the proposed charges, and considers them to be a reasonable reflection of the cost of providing the services.

Mr Deputy President, I beg to move.

At this point Mr David LI declared interest as the deputy chairman of the Hong Kong Telecommunications Limited.

Question on the motion proposed, put and agreed to.

DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

"That the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1991, made by the Governor in Council on 3 December 1991, be approved."

He said: Mr Deputy President, I move the motion standing in my name on the Order Paper.

The Drug Trafficking (Recovery of Proceeds) Ordinance, enacted on 12 July 1989, has strengthened our ability to combat domestic and international drug trafficking by providing the means for us to trace, restrain and confiscate the proceeds of drug trafficking. Section 28(1) of the Ordinance provides for the Governor in Council, with the approval of the Legislative Council, to designate countries and territories outside Hong Kong to enable their confiscation and related orders to be enforced here, and allows assistance to be provided in relation to their drug trafficking investigations.

Late last year, Hong Kong concluded nine arrangements with Australia, Canada, the United States, the United Kingdom jurisdictions of England and Wales, Scotland, Northern Ireland, Jersey, Guernsey and the Isle of Man. The Governor in Council, with the approval of the Legislative Council by resolution, designated these nine jurisdictions by a designation order under the Drug Trafficking (Recovery of Proceeds) Ordinance in January this year. Eight of these arrangements, with the exception of Guernsey which has yet to designate Hong Kong under its legislation, have been brought into operation. Members may wish to know that, as a result, about \$290 million worth of assets have been seized in Hong Kong, with almost \$250 million, or 86%, arising from orders made in these jurisdictions.

We have now concluded arrangements with Gibraltar by an exchange of letters. The arrangements will come into effect when both Hong Kong and Gibraltar have notified each other that all of the necessary legislative amendments have been completed. Gibraltar has already designated Hong Kong under its legislation.

Mr Deputy President, this motion seeks the Council's approval to the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) (Amendment) Order 1991, made by the Governor in Council on 3 December, now before this Council.

The Amendment Order will add Gibraltar to the Designation Order made last January. The Designation Order applies the provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance, with certain modifications, to orders made by courts or other proceedings in the designated jurisdictions, enabling courts in Hong Kong to confiscate the proceeds of drug trafficking. In particular it enables the High Court to:

- (a) order the restraint in Hong Kong of property required to enforce a

confiscation order made in one of the designated jurisdictions; and

(b) register and enforce a confiscation order made by a court in one of the designated jurisdictions.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

IMMIGRATION ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

"That section 18(3) and Parts VIIA and VIIB of the Immigration Ordinance shall expire on 31 December 1992."

He said: Mr Deputy President, I move the motion standing in my name on the Order Paper. It seeks to extend section 18(3) and Parts VIIA and VIIB of the Immigration Ordinance for a further year.

Section 18(3) of the Immigration Ordinance was enacted in January 1979 to enable the Government to deal with the problem of Vietnamese asylum seekers. It removes the limit of two months during which an immigration officer may remove a person refused permission to land in Hong Kong, if it appears to the Director of Immigration that that person was previously resident in Vietnam. This subsection has been re-enacted annually and will expire on 31 December this year unless extended by resolution of this Council.

Parts VIIA and VIIB of the Ordinance were enacted in August 1979 to provide more effective sanctions against the traffic in illegal immigrants. Under these provisions, any person who aids illegal immigrants to enter Hong Kong commits an offence. Offenders are liable on conviction to a fine up to \$5 million and imprisonment for life, while the ships and other property involved are liable to forfeiture. These two parts have also been re-enacted annually and will expire on 31 December 1991 unless extended. I believe these provisions are still necessary.

The conclusion of a memorandum of understanding with Vietnam will allow the

repatriation of screened-out Vietnamese migrants. This is most encouraging and has put in place the final piece of the Comprehensive Plan of Action for asylum seekers from Vietnam. We can at last see a clear way ahead to solving this long-standing problem. By screening new arrivals as soon as they come to Hong Kong and immediately returning the screened-out to Vietnam, we hope to discourage and stop the outflow of non-refugees.

However, this process takes time. Even assuming no or very few new arrivals, it is likely to take some three years to repatriate tens of thousands of non-refugees. We, therefore, need to retain section 18(3) to give ourselves and the UNHCR time to make repatriation work.

Mr Deputy President, we must also make arrangements with the Chinese to return as illegal immigrants all those Vietnamese, of whom there are now 145 in Hong Kong, who have come here after previously being settled in China. We aim to secure their repatriation as early as possible, but this process too will take time.

Illegal immigrants from China remain a problem. The tough legislation which we introduced in November 1990 proved effective at first: up to the end of July the number of arrests fell by some 22% against the same period last year. But, since August, the numbers began to increase, matching -- and in some months overtaking -- the 1990 levels. The main cause has been the illusion of jobs on the new airport site and other major projects, encouraged as always by deliberate misrepresentation and the spreading of false rumours by the "snakeheads" who traffick in illegal immigrants. It is necessary to retain strong sanctions against those who engage in this illicit trade.

It is against this background that we need to retain these provisions in the Immigration Ordinance for at least one more year. We shall review the situation again in late 1992.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

PHARMACY AND POISONS ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE moved the following motion:

"That the Pharmacy and Poisons (Amendment) (No. 2) Regulations 1991, made by the Pharmacy and Poisons Board on 12 October 1991, be approved."

She said: Mr Deputy President, I move the motion standing in my name on the Order Paper in respect of the Pharmacy and Poisons (Amendment) (No. 2) Regulations 1991.

Under section 29 of the Pharmacy and Poisons Ordinance, the Pharmacy and Poisons Board, subject to the approval of this Council, may make regulations providing for the licensing of manufacturers and prescribing relevant fees.

Under existing regulations, the Board may issue a Free Sale Certificate of Pharmaceutical Product to a licensed manufacturer to facilitate the export of his products. The certificate includes a clause which reads "the manufacturer conforms to requirements for good practices in the manufacture and quality control, as recommended by the World Health Organization, in respect of products to be sold or distributed within the country of origin or to be exported". Certificates issued to manufacturers who are unable to meet World Health Organization requirements have this statement crossed out.

Some countries, however, have refused to accept such modified certificates for registration of imported pharmaceutical products. Their main concern is the registration status of the product in the country of origin rather than the standards of practice of the manufacturer. To meet this requirement, the Department of Health has been issuing letters to certify those products which are manufactured and approved for sale in Hong Kong. At present, such letters are not prescribed in the Pharmacy and Poisons Regulations and hence are not issued by the Board or subject to a fee.

The Pharmacy and Poisons Board has recently agreed to amend the regulations to provide for the issue of a "Certificate of Pharmaceutical Product" to serve the same purpose as the letter. The Board has also taken the opportunity to amend slightly the wording used in the Free Sale Certificate of Pharmaceutical Product.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

LEGAL PRACTITIONERS (AMENDMENT) (NO. 2) BILL 1991

PRINCE PHILIP DENTAL HOSPITAL (AMENDMENT) BILL 1991

CRIMES (TORTURE) BILL

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

Second Reading of Bills

LEGAL PRACTITIONERS (AMENDMENT) (NO. 2) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Legal Practitioners Ordinance."

He said: Mr Deputy President, I move that the Legal Practitioners (Amendment) (No. 2) Bill 1991 be read a Second time.

At present only the University of Hong Kong's law degree and Postgraduate Certificate in Laws are recognized as qualifications for a person to become a legal practitioner. This Bill will, for the purpose of admission as barristers, extend such recognition to the City Polytechnic of Hong Kong's law degree and Postgraduate Certificate in Laws.

The City Polytechnic started its law degree courses in September 1988 and began its Postgraduate Certificate in Laws programme in October this year. Both the degree and certificate courses have been approved by the Law Society and Bar Association. The first batch of students from the Postgraduate Certificate in Laws programme will graduate in June next year. The Bill, if enacted, will enable their qualifications to be recognized for the purpose of being admitted as barristers.

The academic qualifications necessary for admission as a solicitor will be similarly amended and will be contained in the Trainee Solicitors Rules to be made

by the Law Society.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

PRINCE PHILIP DENTAL HOSPITAL (AMENDMENT) BILL 1991

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Prince Philip Dental Hospital Ordinance."

She said: Mr Deputy President, I move that the Prince Philip Dental Hospital (Amendment) Bill 1991 be read the Second time.

The Bill seeks to empower the Chairman of the Board of Governors of the Hospital to appoint an Acting Director when the Director is absent from Hong Kong or is unable to perform his functions.

At present, under the Ordinance, there is no provision for such an acting appointment to be made. The practice hitherto has been for the comptroller to assume the role of de facto Director during the absence of the Director. The comptroller, however, need not be qualified in dentistry.

The Board of Governors considers that this might not be the best arrangement especially when urgent decisions requiring professional judgment have to be made by the Director.

The Bill therefore seeks to empower the Chairman of the Board to appoint an Acting Director during the absence of the Director.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

CRIMES (TORTURE) BILL

THE SECRETARY FOR CONSTITUTIONAL AFFAIRS moved the Second Reading of: "A Bill to create the offence of torture and to provide for related matters".

He said: Mr Deputy President, I move that the Crimes (Torture) Bill 1991 be read the Second time.

The Bill is intended to give effect to provisions in the United Nations Convention against Torture, Inhuman and Degrading Treatment or Punishment (in short, the Torture Convention). Its enactment will enable the Convention to be extended to Hong Kong.

The purpose of the Torture Convention is to elaborate and strengthen the guarantee under the International Covenant on Civil and Political Rights (ICCPR), which is already applied in Hong Kong, Article 7 of which specifies: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Following the enactment of the necessary legislation to implement the Convention, that is, the Criminal Justice Act 1988, the United Kingdom ratified the Convention in December 1988.

The Government believes that in order to demonstrate to the international community our determination to condemn acts of torture and other inhuman and degrading treatment, Hong Kong should seek to be included in the United Kingdom's ratification of the Convention. Indeed, this is a logical step after the application of the ICCPR to Hong Kong upon enactment of the Bill of Rights Ordinance earlier this year.

The Bill put before this Council today broadly follows the approach taken in sections 134 to 138 of the Criminal Justice Act 1988. The reason for this is simple: these actions of the Act have been designed to meet effectively the United Kingdom's obligations under the Convention and therefore provide a good model for our drafting purpose.

The Bill provides that, if any public official or person acting in an official capacity intentionally inflicts severe pain or suffering on another, whether physical or mental, in the performance or purported performance of his official duties, he commits the offence of torture.

Any other person who inflicts severe pain or suffering on another at the instigation of or with the consent or acquiescence of a public official or person

acting in an official capacity, either of whom is in the performance or purported performance of his official duties, will also be caught by the provisions of the Bill.

As stipulated in the Torture Convention, pain and suffering inflicted by the use of reasonable force by law enforcement officers in the course of maintaining law and order should not be classified as torture. Hence, the Bill provides for a defence based on "lawful authority, justification, or excuse" against the charge of torture. The same defence is provided in the 1988 Act in the United Kingdom.

To conform with the Convention and following the approach of the 1988 Act, the Bill makes an act of torture committed outside Hong Kong an offence under the Bill.

The Bill also permits extradition to be granted to States Parties to the Convention, whether having an extradition relationship with Hong Kong or not, for offences created by the Bill. This is necessary to fulfil the obligations under Article 8 of the Torture Convention.

The proposed maximum punishment for the offence of torture is imprisonment for life.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

Member's motion

WHITE BILL ON ORGANIZED CRIME

MRS RITA FAN moved the following motion:

"That this Council supports the Administration in its efforts to combat organized crime and urges the Administration to take into careful consideration the views of Members of this Council and the public on the White Bill on Organized Crime published on 9 August 1991, and to ensure that its final proposals for legislation take full account of Bill of Rights implications so that the legislation achieves maximum effectiveness."

MRS RITA FAN: Mr Deputy President, I move the motion standing in my name on the Order Paper. The motion states "That this Council supports the Administration in its efforts to combat organized crime and urges the Administration to take into careful consideration the views of Members of this Council and the public on the White Bill on Organized Crime published on 9 August 1991, and to ensure that its final proposals for legislation take full account of Bill of Rights implications so that the legislation achieves maximum effectiveness."

The above motion consists of three parts. In its first part, I am asking Members of this Council to support the Administration in fighting organized crime. There is no doubt that our community is very concerned and worried about the activities of triads and gangs. They threaten the daily lives of our people. Their influence spreads far and wide. Everyone, no matter young or old, rich or poor, strong or weak, may become their victims. Where there is money to be made, organized crime groups will use whatever means to grab it. Breaking the law does not deter them. Violence and cruelty are all in a day's work. Other people's lives are not matters for consideration. Ill-gotten gains enable them to extend their sphere of influence, recruit more members, and engage in a wider range of illegal activities for more gains. The people who mastermind the operations are often not involved in the dirty work. Others execute the plans. If these front-line operatives are caught, it does not affect the top brass, apart from a small monetary loss. If the operation is successful, the big brothers enjoy the major share of the loot. These syndicates, triads, gangs, coming under the common name of Organized Crime Groups must be controlled and their leaders must be forced out of action. If they are allowed to flourish, the stability of our community is at risk. Anyone who has witnessed the manner in which they challenge the law enforcement agencies openly and publicly can be in no doubt that this situation cannot be allowed to continue. We must give our full backing to the Administration, in particular, the law enforcement agencies, in their efforts to crack down on organized crime.

The public and Members of this Council have been waiting for some time for this White Bill. Some Members, including me, had repeatedly pressed for the early publication of this White Bill in the last Session in order that public views on this very important matter can be gathered as soon as practicable, thereby enabling a Blue Bill to be drafted and introduced into this Council. We were keen to put into effect a piece of legislation which can be used as an effective tool for the Administration to reduce the sinister and insidious influence of organized crime and for the

judiciary to pass sentences on the offenders which appropriately reflect the seriousness of their crime.

The second part of today's motion is to ask the Administration to carefully consider the views expressed by Members in this debate, and also the feedback from the public consultation. Members interested in the White Bill formed an ad hoc group in mid-October. Although the group had about two months to study the White Bill, the latter is a very complicated legal document, so I doubt if anyone of us would claim that we have studied it fully and exhaustively. Indeed, public submissions are still coming in, and only yesterday we received a submission from the Local Crown Counsel Association. Mr Deputy President, I shall therefore speak on the points that had been discussed in the ad hoc group and on which general consensus has been reached. Other Members will no doubt express their individual views which may or may not have been fully aired in the ad hoc group.

The White Bill defines an Organized Crime Group (OCG) as a triad society or a group of two or more persons associated together solely or partly for the purpose of repeatedly committing acts, which are offences listed in Schedule 1. In the light of police experience that groups of undesirable elements comprising two individuals had been found to pose serious threat and the definition of conspiracy in common law, the ad hoc group agrees with the definition of a group as two persons or more. However, we believe that the repeatedly committed acts should be proven to be offences. On the offences listed in Schedule 1, which are offences commonly committed by OCGs, we suggest that "criminal intimidation" should be included to cover activities such as unauthorized monopolies.

The ad hoc group supports the concept of aggravated offences, that is, additional penalties for members of OCGs who committed offences under Schedule 2. We feel that this provision would reflect the gravity of OCG membership and the Schedule 2 offences. This is an effective way to send the deterrent message to the public. As the Bill only prescribes the maximum penalty, judicial discretion will be maintained. We noted that the Attorney General has the discretion to prosecute for offences under clauses 3, 4 and 5. While some Members expressed concern over the lack of a check and balance mechanism over the Attorney General's discretion, particularly when he may decide not to prosecute, in the absence of a better alternative, the ad hoc group agreed to accept the Attorney General's discretionary power.

The ad hoc group holds the view that provisions on money laundering and

confiscation should serve as effective tools to deprive OCGs of the profit of their activities. We noted the concern expressed by some members of the public, for example, the Hong Kong General Chamber of Commerce. We understand that the relevant clauses in the White Bill are modelled on the Drug Trafficking (Recovery of Proceeds) Ordinance which is now under review. We shall reserve our comment on this until the Blue Bill is introduced into this Council.

Members of the ad hoc group in general support the proposed amendments to the rules on joinder of charges, as this will enable the prosecutor to place before the Court the full picture of the criminality involved.

A number of other issues were also discussed by Members, such as allowing previously convicted offences prior to the enactment of the Bill to be used to establish a charge under clause 5, the treatment of accomplice evidence, the scope of Schedule 1 offences, and so on. However, as no consensus is reached on these issues, individual Members will probably want to express their own views.

The third part of the motion urges the Administration to ensure that the final proposal, that is the Blue Bill, will be an effective tool against organized crime. A point that was repeatedly raised is the possible inconsistency that the White Bill may have with the Bill of Rights. Members had reservation on some provisions of the Bill, for example, clauses 5, 32 and 33 which may be in conflict with the Bill of Rights. However, in view of the passage of the Bill of Rights in June this year and Article VII(3) of the Letters Patent, it goes without saying that any clause which can be construed to contravene the Bill of Rights cannot stand. The question then becomes, "Can the remaining parts of the Bill still be effective to combat organized crime?" A well known Queen's Counsel in Hong Kong has this to say, "It is quite possible that with the Bill of Rights as its midwife, the proposed Organized Crime Ordinance will emerge, if not stillborn, at least horribly maimed." Members were concerned about the implications of the Bill of Rights, but more importantly, we want to see a proper balance between the Organized Crime Bill and the Bill of Rights. In other words, what is needed is an Organized Crime Bill which can stand the test of the Bill of Rights and, at the same time, achieve maximum effectiveness. For example, if presumptions are to be used in the Blue Bill to make it effective then these presumptions have to pass the tests of rationality and proportionality -- which are the yardsticks set down by the Court of Appeal in the Sin Yau Ming case.

Mr Deputy President, Hong Kong needs an Organized Crime Bill that works. The

community deserves a Bill that is effective. Our law enforcement agencies need the teeth if they are to crack down on organized crime and take the big boys before the courts. The judiciary should be given the discretion to mete out heavy sentences to the leaders of OCGs. It would be tragic if this Bill is allowed to be bogged down by endless arguments between our best legal minds. I cannot believe anyone, who is not involved in organized crime, would like to see OCGs getting more and more powerful by feeding on innocent victims. Nor can I understand why our best legal minds, inside and outside the Government, cannot put their minds together to formulate an effective and workable piece of legislation to protect hardworking law-abiding citizens from being squeezed by OCGs and live in fear day in day out. Surely we must work together in our efforts to combat organized crime. Only in this way can we have a chance of success.

Mr Deputy President, I beg to move.

Question on the motion proposed.

MRS SELINA CHOW (in Cantonese): Mr Deputy President, councillors on the ad hoc group to study the Organized Crime Bill 1991 (White Bill) have scrutinized and considered the issue on different levels. In my view, we must first make sure whether the problem of organized activities is so serious that we need a special Bill to counter and combat it. If there is such a need, we have to decide whether the Bill proposed by the Government will effectively achieve the purpose. And then, we need to consider the fact that the people of Hong Kong at present can have their rights protected by the Bill of Rights and to see whether this new Bill is compatible with the Bill of Rights. Lastly, we have to consider whether this Bill alone may address the existing problem.

Undeniably, organized crime has been escalating in recent years. We are all shocked by the number of cases, the acts of violence and the frequent use of firearms. Although the police has been putting in a great deal of efforts, the criminals have been ganging up and very often the police seems helpless. Since the Government is of the view that the police needs greater support on the legal front, the Legislative Council should offer a helping hand.

Can the White Bill effectively achieve the purpose of combating organized crime? A lot of people have commented differently on this issue. The legal sector are particularly interested in it. I think the Bill is indeed a very complicated one.

It is not easy for those who are not in the legal field to understand the legal implications of the Bill and the consequences it will bring. There have been many legal views on this subject. The divergent opinions may bring along worries that whether the Bill which is originally very effective will be improperly amended and eventually become ineffective. Particularly on the question as to whether or not the Bill conflicts with the Bill of Rights, will we be able to strike the proper balance between both Bills?

Last year, when we scrutinized the Bill of Rights in the Legislative Council, we have this principle discussed in great depth. As a result, overwhelming majority of the Members had agreed to the following proposal in the Legislative In-House meeting:

"(We) urge the Government to consider carefully how legislation can be amended so that while maintaining law and order, the provisions will not conflict with the Bill of Rights and at the same time offer safeguard to the community."

In preparing such a proposal, we have fully recognized and taken into account the importance attached by the public to law and order and emphasized the significance of upholding public security and protecting human rights. Many people are of the view that a good state of order is the basis for a contented and peaceful living and is conducive to consolidation of their confidence in Hong Kong. The Government should therefore take heed of public opinion as far as possible and adjust the provisions which go against the Bill of Rights to an acceptable level so that the enacted legislation will not be repealed by the court. I of course understand that legal practitioners have independent thinking and it is difficult to find a mainstream of views among them. An ad hoc group has been formed in the Legal Department to study the relationship between the Bill of Rights and other legislation. I call upon those responsible for the drafting of the Organized Crime Bill to fully consult and consider the proposals of the departmental ad hoc group and the human rights experts so that amendment may be made shortly and the Blue Bill can therefore be finalized at an earlier date.

If we think this Bill with amendment alone is able to solve the problem of rampant organized crime, we are too optimistic. Even though the law is in place, we need effective enforcement of it. As far as law enforcement is concerned, we must rely on the police. I believe that our police force are of high calibre and have loyalty. However, we may see that they have been suffering from increasing pressure and there is morale problem in the force which urgently needs to be addressed. I

wish that the Government and the senior managerial staff may pay attention to the problem and show their concern. I have confidence that my colleagues and members of the community will express strong support for the efforts made by the authority concerned on this front, including support in the form of provision of reasonable resources.

Offenders of organized crime resort to intimidation from time to time to bully the weak and the victims dare not report the crime for fear they may get avenged. This may pose impediment to the fight against the out-laws. In my view, there is a need for the police to seek to an effective arrangement under which witnesses may overcome their psychological impact. In this way, the concerted efforts of the police and the public to combat crime by organized syndicates will be promoted. The police may make reference to the reporting procedures and the measures for protecting witnesses adopted by the Independent Commission Against Corruption which have been deemed to be relatively successful.

Furthermore, the court is also required to review the sentences given to offenders of organized crime and fully consider the public response so that the penalty for such offenders will not be out of line of what the community think fit. A recent piece of news shows that 43% of suspected drug traffickers jump bail. Since cases of drug trafficking have to wait more than six months before they are heard in the court, there is no reason not to grant bail to such suspects. This is indeed an unsatisfactory situation which is in urgent need of rectification by the Judiciary.

Mr Deputy President, yesterday this Council received from the chairman of the local crown counsel a submission which gave us great insight into the subject under discussion. The executive committee of the association, having regard to the psychological fear residents and witnesses may have towards organized crime and the inadequacy of the existing system and practice, has put forward a very comprehensive view with analyses made in the areas of procedures and legislation. As to specific matters such as investigation, prosecution and sentencing, the committee has provided in great detail some reasonable and positive recommendations. It is hoped that the Administration, in recommending the passage and the subsequent implementation of the Bill, will take other effective measures to lead the community in a united effort to adopt a comprehensive strategy to counteract organized crimes.

Mr Deputy President, I support the motion.

MR MARTIN LEE (in Cantonese): Mr Deputy President, before I speak, I have to thank, first of all, Mrs Rita FAN for her appreciation of the United Democrats' concern over the incompatibility of some of the provisions of the White Bill with the Bill of Rights. It is for this reason that she has added to her motion the following clause, "and to ensure that its final proposals for legislation take full account of Bill of Rights implications so that the legislation achieves maximum effectiveness." The United Democrats therefore will not move an amendment motion and I also hope that there is no need for us to push the button when we proceed to the vote.

Whereas the Secretary for Security has reiterated on repeated occasions that, compared with other major cities in the world, Hong Kong is still a relatively safe place, there is in fact a common perception among Hong Kong people in these days that the crime rate has been on the increase and serious and organized crimes are now matters of particular concern.

Indeed, triad activities have always seriously affected the public sense of security. However, for fear of triad reprisal, members of the public are quite reluctant to report crimes which happened to them. This is what accounts for the low triad-related crime figures reported over a long period of time.

It is up to us to face reality and admit the seriousness of the local crime situation before a comprehensive and long-term policy to combat crime can be formulated. It is only after we have acknowledged the problem that we can begin to solve it. Fear and complacency will only aggravate the problem. It is for this reason that we need more and better police officers of high efficiency and morale. We have to let our people know that the police have the means to protect them. Meanwhile, it is also upon us to simplify the procedure for reporting a crime and improve the way the person making the report is treated while at the same time stepping up the protection of that person and witnesses. We believe that it is only through the investment, and effective use, of more resources, and community support generally, that the objective of effectively combatting criminal activities can be achieved.

Unfortunately, despite the repeated statements that the Administration is determined to fight crime, there has been no whole-hearted effort made to seriously and positively resolve this problem which has been the cause of the gravest public concern. On the contrary, the Administration, in wishing away the problem, is intent on conveying a wrong impression to the public that the problem is not as serious as it is imagined to be and that, therefore, it is not prepared to devote adequate

resources to the solution of the problem. While the police force is faced with the threat of manpower shortage, the Administration sees fit to cut back on its establishment. Though the explanation given is that only clerical and supporting staff will be cut, this will definitely have an impact on the overall efficiency of the force as a whole.

The United Democrats welcome the spirit of the White Bill on Organized Crime because the combatting of crime is the common wish of all Hong Kong people. But at the same time we cannot but be rather sceptical of the effectiveness of the White Bill.

It is a fact that, over the years, triad activities have been rather prevalent, but unfortunately, the Administration has never had any comprehensive plan in place to combat organized crime. The hasty introduction of the White Bill now, with all the publicity which goes with it, gives the wrong impression that it is some kind of instant panacea which will solve our problems once and for all. It seems that the Administration is trying to mislead the public into believing that, unless the White Bill is enacted, there is no other effective way to combat organized crime. And when it actually comes under the criticism that it contravenes the Bill of rights, then the public will mistakenly believe that human rights will have to be sacrificed for the sake of fighting crime. But the fact is that crime fighting is not incompatible with respect for human rights. We can in fact effectively combat all kinds of criminal activities while upholding human rights at the same time. Meanwhile, serious crime is not unknown in societies which have no respect for human rights.

Mr Deputy President, a significant part of the White Bill contains suggestions for new criminal charges to be created and severity of penalty doubled as a sanction against members of an Organized Crime Group convicted of a criminal offence. The United Democrats (UD) take the view that the inherent loopholes of the suggestions mean that the objective of the White Bill will not be achieved. A detailed analysis in this connection will be given by my UD colleagues. Indeed, triads engaging in the illegal activities are already sanctioned under the existing laws. The fact that the triads, particularly the ringleaders, have not been brought to justice is not the result of any problem with our existing laws. For example, in a case which happened last year involving the Sun Yee On triads, namely, *The Queen v. Chan Kai & Others* (1990) 1 HKLR 684, the defendants were found guilty by the High Court but their conviction was overturned by the Court of Appeal on the ground that the jury

was misdirected on a point of law by the trial judge. This is not something which can be rectified by the present Bill. More often than not, the difficulty about convicting a major triad ringleader is actually the difficulty in terms of producing sufficient evidence and tainted witnesses to testify against the defendant. If a tainted witness can be found to supply the necessary evidence, and he or she happens to be the key lieutenant of the ringleader, then the difficulty is already overcome. If the tainted witness can indeed be found to supply the necessary evidence, then the existing laws are already quite capable of convicting the ringleader involved. Of course, we are not saying that the present White Bill has nothing going for it. But given that the suggestions are actually innovations under the present system, it is up to us to be very careful about them in the scrutiny of the White Bill.

On the other hand, the United Democrats are opposed to the provisions pertaining to the proposed creation of major offences which are most likely to contravene the International Covenant on Civil and Political Rights and the Bill of Rights. To be sure, the public should be supportive of any government initiative to combat crime. But what we need is effective legislation rather than legislation which is merely geared to pacify public sentiment. Unfortunately, the White Bill will contravene the Bill of Rights in its implementation and this will only stifle the whole effort of combatting organized crime and further dampen the morale of our front-line police officers. We can imagine the futility of the police rounding up the organized criminals who cannot be convicted by the court due to the legal loopholes. With the Bill of Rights passed by this Council and forming an important part of our existing laws, it is up to Members of the Council to make sure that any Bills coming from the drafting team of the Administration will not be in breach of it.

As a matter of fact, not only the United Democrats, but legal experts also, have grave reservations regarding some of the proposed provisions. I propose that a working party composing of barristers specializing in criminal cases, solicitors, police officers and lawyers of the Legal Department should be set up to look at the problems which have arisen in this respect. Given the inter-related provisions of the present Bill, alteration made to any part may indeed affect the body as a whole. We need to proceed very cautiously and obtain the assistance of the relevant personnel to make sure that the White Bill will be effectively implemented after it has been enacted.

My other UD colleagues will speak at length on the effectiveness of the proposed amendments to the law under the provisions of the White Bill in terms of combatting

organized crime and the conflict of the White Bill with the Bill of Rights, respectively.

Mr Deputy President, we as elected Members have the obligation to reflect the extent of public concern and make sure that the Administration will formulate a comprehensive and effective policy to combat all kinds of criminal activities. It is up to the Government and the community as a whole to show determination and confidence in fighting crime effectively. We should not surrender under the threat of crime, nor can we afford to allow evil to prevail and erode our social fabric.

Mr Deputy President, with these remarks, I and the United Democrats support the motion.

MRS PEGGY LAM (in Cantonese):

Significance of the Ordinance

The Organized Crime Bill announced by the Government in August is of great significance in a positive sense especially at this time when the Legislative Council has passed the Bill of Rights and proposed the abolition of death penalty. The Organized Crime Bill will convey a clear and loud message to the organized crime groups, this is, the Government is determined to combat organized crime and organized crime groups will be given due punishment and can no longer seek refuge in the loopholes of the law.

I think the Bill gives substance to the concept of "organized crime". This is going to do much good to our future efforts in combating crimes. In fact, the main culprits for the worsening of the law and order situation in Hong Kong are not those criminals who act on sudden impulse but those syndicates which make money out of crimes. These syndicates are as well-organized and well-structured as legitimate companies. What is more, they have sufficient resources and organization ability to plan and commit serious crimes. The more powerful groups even plough the profits from crimes back into investment, diversifying their activities and eroding the prosperity and stability of Hong Kong day by day.

The Organized Crime Bill is meant to focus on the problem so that the organized crime groups, which we have to deal with, are revealed for what they are

and through plugging the loopholes in the existing law, the law enforcers can deal a heavy blow at them.

All along, I am of the opinion that police power should be maintained at an effective level and the police not be demoralized. I have already talked on these two points in the motion debate on "Law and Order in Hong Kong" held by the Legislative Council in February this year. I can predict that once the Organized Crime Bill has been passed, the power as well as the morale of the police will be enhanced.

This can be borne out by what has happened. Recently for the very first time, a marine police officer fired at a smuggling speedboat with a light machine gun for defence and threw a tear bomb. As a result, he successfully arrested two male suspects. This incident proves that when the police power can be exercised effectively, our well-trained police officers can repeatedly perform outstanding service. After this incident, the marine police said that they hoped the restrictions on use of firearms would be relaxed and the convicted be punished severely. This actually reflects the thinking of the law enforcers in general.

Protection and support for human rights

From the point of people's living, combating organized crimes accords with the will of the people and the general trend of public opinion. The tentacles of the organized crime groups are branching to every corner and every stratum of our society, including forced prostitution, extortion, infiltration of schools and film circles by triad societies and loan-sharking. The people gradually live with triad societies and consider them "necessary evils". This kind of attitude actually reflects the people's disappointment towards the Government and the police.

As this is a matter of urgency, we should not be tangled in vague and general discussions on whether the Bill will go against human rights. We have to be aware that organized crime groups are our number one public enemy because they directly threaten our basic rights -- freedom from fear and freedom from persecution. The Government is responsible for ensuring that these basic rights of the citizens would not be infringed. Therefore, a complete organized crime legislation actually gives protection and support for the Bill of Rights Ordinance.

Of course, while defending human rights, we cannot let the concept of human rights go to such an unmanageable extent that it affects the legislation. "Human

rights" is not a hollow and an all-embracing concept. We must clearly define the people's rights according to the Bill of Rights which has already been passed and see if the Organized Crime Bill really contravenes the Bill of Rights Ordinance. For instance, do the aggravated offence provisions and increased penalties for repeated offenders really contravene the Bill of Rights Ordinance which does not allow for double penalty? In addition, it appears to be reasonable that previous offences of the defendants should be taken into consideration. Does this really contravene the new crime provisions in the Bill of Rights Ordinance?

Besides, I would like to point out that since the Organized Crime Ordinance is going to have a rather wide application, there must be clear and rigid definitions for organized crime and members of organized crime groups, otherwise there will be a possibility of abuses.

Proper adjustment

Of course, the Organized Crime Ordinance should not be superior to the Bill of Rights Ordinance. We have to put forward constructive ideas so as to make the Bill better, particularly in line with the Bill of Rights which has just been passed. Undeniably, potential conflicts frequently exist between the power to prosecute and penalize the offenders and the citizens' rights. It is justifiable for the Government to ask the citizens to make some "sacrifice" in order to maintain the law and order situation. But these so-called "sacrifice" must only be restricted to a change to some habits of the people's daily lives (for example, bringing along identity cards) or fulfilment of civic responsibility and should not include deprivation of or trampling on the civil rights.

From this point of view, some people's worries that the Bill would go against the presumption of innocence in the common law and affect the defendants' rights to get a fair trial warrant the Government's attention.

Recently the Secretary for Security has expressed that the Government would consider amending some proposals in the Bill so as to avoid conflicts with the Bill of Rights Ordinance. I am very glad about this. We have to catch "tigers" instead of "flies".

Recent discussions by people of various walks of life on the Bill seem to concentrate excessively on whether the Bill was in conflict with the Bill of Rights

Ordinance and neglected the aim and the effectiveness of the Bill itself.

As I have emphasized on several occasions, the crimes committed by organized crime groups are well-planned and the main culprits are the backstage leaders. Therefore, "in order to catch the bandits, first catch the ringleaders". The Bill should be directed against the leaders of these organized crime groups and should impose heavy penalties on the convicted so as to serve a warning on others. Only by this effective means can serious crimes be eradicated.

Mr Deputy President, with these remarks, I support the motion.

MRS MIRIAM LAU: Hong Kong has long been troubled by the existence of organized crime in our territory. If the public saw the need in 1986 to adopt measures to tackle organized crime, all the more urgent is such a need in the present-day context when we are facing a deteriorating law and order situation.

The White Bill on Organized Crime is overdue. Actually the Bill itself is overdue. Recent open challenges made by triads, gangs and organized crime groups against law and order clearly indicate that we cannot afford to brush aside the problem any longer. We know as a matter of fact that the majority of armed robberies occurring in our territory are organized and carried out by gangs of criminals. We also know that a large proportion of crimes involving smuggling, car thefts, loan sharking, extortions, illegal gambling, prostitution and dangerous drugs are operated or controlled by criminal syndicates. The menace posed by such organized crime groups directly undermines our social fabric and is fast approaching the stage of intolerability. The problem is that by reason of deficiency in our existing laws our law enforcement agencies have not been able to deal with organized criminal activities adequately. Procedural and evidentiary rules under our existing criminal justice system do not permit the presentation of the full context of organized criminal activities to the courts. The inadequate sanctions that follow do not measure up to the harm which organized crime is inflicting on our society. The result is that our existing laws do not serve as any deterrent to those who engage in organized crimes. In order to effectively combat organized crimes, we must be prepared to equip our law enforcement agencies with adequate tools and weapons to enable them to fight the battle. The Organized Crime Bill is one of such weapons. Draconian as the proposed legislation may be, I believe that it will serve as a potent device to prosecute and punish those organized criminals who the public believes ought to be

prosecuted and punished. Hopefully such a stringent law will deter people from further engagement in organized criminal activities. The public have been looking forward to the Organized Crime Bill for a long time; they see in it the hope of a solution to our long-standing organized crime problem.

Since publication of the draft Bill, considerable concern has been expressed in regard to possible conflicts of its provisions with the guarantees contained in our Bill of Rights. I have no doubt that at the time when the Bill was drafted up to the time when it was put out for public consultation, the Administration was satisfied that the provisions contained in the draft Bill were not inconsistent with the Bill of Rights. However recent court decisions show that certain provisions in the Bill may have to be reviewed. Presumptions are common in our criminal statute. They have served as a convenient prosecutorial tool. However following the case of R v Sin Yau Ming, it is clear that presumptions will not survive the Bill of Rights unless they satisfy the tests of reasonableness and proportionality. It is quite probable that section 33 of the draft Bill will not pass such tests. This is unfortunate but in a sense it is better for us to identify the problem now at this early stage. Personally I am not in favour of presumptions. I am not convinced that the legislation would be less effective without the presumption under section 33. After all, the presumption is a rebuttable one so that in any event the prosecution should be ready and prepared to produce the necessary evidence to prove the defendant's association with an organized crime group in case the presumption fails. To allow a case to go forward without such evidentiary proof is indeed precarious. To the best of my knowledge, the RICO legislation, upon which the draft Bill is based, did not contain presumptions and I am not aware that the absence of such created any serious problem for the United States prosecuting authorities. Even if the Administration should decide on retaining section 33 but convert it into a permissive presumption, I believe that there should be a fixed time limit between the prior offence under the Societies Ordinance and the date of the alleged membership of the OCG. To leave the question of the relevance or otherwise of the prior triad association, even if that had happened in the distant past, to the judge or jury is in my view grossly unfair to the defendant.

I am aware that there is also concern as to whether sections 25 and 26 of the draft Bill confer wider powers than are necessary on the law enforcement agencies, and whether these provisions infringe the guarantee of freedom from arbitrary interference with one's privacy under the Bill of Rights. Personally I am convinced that sufficient investigating powers must be given to the law enforcement agencies

if they are to efficiently collect evidence and effectively prosecute. The sections in question follow closely sections 20 and 21 of the Drug Trafficking (Recovery of Proceeds) Ordinance which successfully resisted a Bill of Rights challenge in the courts recently. If these powers are necessary for drug trafficking which may be but one mode of organized crime, there is no doubt in my mind that we need such powers to deal with organized crimes in the macro context.

Mr Deputy President, much objection has also been made in regard to the use of evidence of previous convictions or previous criminal acts to ground a charge under section 5. The objection relates to retrospectivity of the provision and possible prejudice to the defendant. Section 5 enables the whole of the defendant's criminality to be brought before the courts, which if proven would attract greatly enhanced penalties. In my view, our law has never been such that previous convictions or criminal acts (if proven) are irrelevant, particularly when it comes to imposing sentence. Clause 5 only applies if at least one of the section 3 or 4 offences is committed after commencement of the Ordinance. Provided no further offence is committed after the Ordinance comes into effect, it matters not how many previous convictions the individual had or how bad his previous record is. To legislate otherwise would mean that our society would have to suffer the recidivist offender committing at least two further criminal acts before we can net him under the enhanced penalty provision. That would clearly water down the deterrent effect of the Bill. Having said that, I agree that we may have difficulty with the possible defences of *autrefois acquit* and *autrefois convict* which have long existed in our criminal justice system. As I understand it, the RICO legislation permits account being taken of the defendant's previous criminal acts and association. Perhaps the Administration should carry out further research into RICO to see how this objection was addressed under the United States laws. Of course we must bear in mind that when we import legislation of foreign origin, we must ensure that they do not infringe basic principles of our English common law system. On the other hand, the Administration must not compromise our need for a piece of legislation that can achieve immediate deterrent effect.

Mr Deputy President, I appreciate the concerns expressed in regard to possible violations against the Bill of Rights. In the final analysis, the genuine concern is whether or not the draft Bill, when enacted, would be capable of withstanding challenges made to it on the ground of the Bill of Rights. Clearly we need an effective legislation to fight organized crime. I have no doubt that the draft Bill intended to be such an effective legislation. But if the provisions or any of them

should suffer the fate of being struck down by the courts, the effectiveness of the legislation will be eroded. This is not to mention that substantial resources will be wasted in carrying out futile prosecutions and, more importantly, it will have severe demoralizing effects on the law enforcement agencies who work so hard to bring about the prosecutions. It is therefore of paramount importance that we should do all that we can to ensure the tenacity of the intended provisions vis-a-vis the Bill of Rights. Where there is likely to be conflict, the provisions must be rewritten to avoid confrontation. If the provision clearly cannot stand, it must be abandoned and some alternative provision put in place. But I cannot sufficiently emphasize the importance of doing this without prejudicing the effectiveness of the legislation. I believe that this can be done as the Bill of Rights is not and has never been intended to provide shelter for those who break the law. The question is how to achieve the right balance so that we can preserve our power and capability to maintain law and order and at the same time continue to uphold human rights. Now more than ever is the Administration put to task on this important balancing exercise.

Mr Deputy President, I fully support the spirit behind the Bill and I see the need to have such stringent laws in our statute books to deal specifically with organized crime. The draft Bill transcends conventional criminal statutes. The breadth of its provisions and its departure from traditional rules under our criminal justice system are probably the cause of many of the concerns raised and objections. I agree that these concerns and objections must be carefully considered and properly addressed but I must urge that whatever modifications are to be made to the draft Bill, we must ensure that the final product is capable of effectively and efficiently serving the purpose for which the draft Bill was originally designed.

Mr Deputy President, with these remarks, I support the motion.

MR MOSES CHENG: Mr Deputy President, I rise to speak in support of the motion. Ask anyone who is residing in Hong Kong, he would undoubtedly be prepared to lend the same support as honourable colleagues of this Council render to the Administration in its efforts to combat organized crime in Hong Kong. Although the crime rate of 1 420 per 100 000 population for Hong Kong in 1989 compares favourably with other major cities of the world, it is unquestionable that the ever increasing violent organized crimes in Hong Kong are actually causing grievous concern to everybody here. Reports of carefully planned and executed robberies, using genuine or imitation firearms, as well as incidents of shooting in crowded areas such as the Central

District are most alarming. Equally alarming are triad-related criminal activities on the streets, and in the neighbourhood of the homes of our citizens, as well as the infiltration of triads into educational establishments and schools. All of us agree that we have an important issue to address.

The publication of the White Bill on Organized Crime on 9 August this year for consultation should be viewed as a determined move by the Administration to combat organized crime. My initial reaction, on perusal of the White Bill, leads me to question whether the provisions therein are actually combating organized crime. What the White Bill seeks to deal with are offences committed by persons who are either triad society members or members of an organized crime group, or by other persons in a conspiracy with members of an organized crime group, in respect of which the offence is part of the criminal activities of that organized crime group.

In the explanatory notes on the White Bill it was stated that the complex rules governing criminal evidence and procedure at trial designed to grant protection to an accused also have the effect of limiting the power of the prosecution to effectively show the involvement of those who run major organized crime syndicates -- that is the criminal godfathers. Let me reiterate that the fundamental principle which upholds the right of an individual to a fair trial, and to be proven guilty, is guaranteed under the Bill of Rights, and therefore cannot and should not be neglected in our efforts to fight crime.

I must also point out that I cannot identify any provisions in the White Bill which are designed to go after the criminal godfathers. The proposed departure from the established rules does not appear to lend any further assistance to the prosecution in proving a case against the "big fish". Whilst on the rules of evidence, let me state clearly that I am not ready to support the proposed change to the rule relating to corroboration on evidence given by an accomplice. It was alleged that such rule makes it difficult for the court to convict on the evidence of an accomplice if it is the only evidence available. In practice, what is required is that the court would have to warn itself of the fact that the witness accusing the defendant of a particular offence is an accomplice. It does not mean that the court is not allowed to rely on his evidence to convict the defendant, even if it believes that such witness is telling the truth. Very often, we see cases in which the court has convicted the defendant on the sole evidence of an accomplice. The rule relating to corroboration is a necessary and fundamental rule under the common law system, and it is submitted that the case substantiating the need for departure therefrom has not been established.

In England, we were informed that the law is under examination by the Law Commission. The findings of the Law Commission would undoubtedly be a valuable reference to us in deciding the direction in which we should go.

Clauses 3, 4 and 5 of the White Bill can be seen as rather innovative steps to be taken. Although the spirit behind stepping up the deterrent against organized criminal activities deserves the support of all, yet the provisions contained therein are not without problems. The Administration holds strong views that such provisions can survive the possible challenge under the principle that a man should not be punished twice or three times for the same act. Nevertheless, one can never stop being tempted to construe such provisions to be having such effects. The introduction of evidence of previous convictions, bad character, or criminal association in establishing an offence under clause 5 will be negotiating on the accused's rights to a fair trial, which again is a departure from the basic rules.

I urge the Administration to attempt approaching it from another perspective, that is, amending the rules so that such evidence, in much greater detail, could be adduced after the court has convicted the accused, so that the court may have more evidence to base on in arriving at the appropriate sentence.

I fully appreciate the general feeling and comments towards the sentences imposed by the court. However, the independence of the court in imposing the appropriate sentence is again a very important and fundamental rule which we should uphold. If the maximum penalty for a particular offence is seen to be inadequate, steps should be taken to increase the same.

Provisions of the White Bill permit the introduction of criminal acts committed before the commencement date of the legislation, and using the same for the establishment of an offence under clauses 3, 4 and 5. This is undoubtedly contradictory to the prohibition against retrospective criminal sanction. Such provisions must be scrutinized against very carefully.

I must express my surprise that the offence of criminal intimidation is not included in the Schedule 1 offences. If the intention is to combat triad activities in the neighbourhood, the inclusion of blackmail and not criminal intimidation in Schedule 1 is, in my submission, insufficient. The absence of any requirement of proof of linkage between a Schedule 2 offence and the organized crime group in establishing an offence under clauses 3, 4 and 5 shall also be looked at again.

Although it is appreciated that what the White Bill seeks to do is to cast the widest possible net, yet we should ensure that the net is not unnecessarily wide so as to work injustice.

The use of presumption in establishing an offence has been commonly used in Hong Kong. This has been subject to challenge in the courts since the passing of the Bill of Rights. In the light of the Court of Appeal decision in the case of R v Sin Yau Ming, we can see that the use of presumptions in the provisions of the White Bill are inconsistent or difficult to reconcile with such decision.

The Legislative Council ad hoc group set up to study the White Bill has been assured by the Administration that it is its duty to ensure that all legislation passed by the Legislative Council must comply with the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong by the Bill of Rights.

I therefore deem it not appropriate at this stage to go into detail comments on the presumption contained in the White Bill, except to urge the Administration, once again, to try as much as possible to resort to proof by evidence rather than relying on presumptions, and to scrutinize stringently the presumptions to be included in the Blue Bill.

In general, I feel that I can support the provision in relation to the laundering offence under clause 7, and the provisions in relation to confiscation of crime proceeds. However, the extension of the power of confiscation to cover benefits received before the commencement of the legislation is again contrary to the prohibition against retrospective criminal sanctions.

Mr Deputy President, more often than not we think that a problem is solved by legislating on it. I urge the Administration to concurrently improve the effectiveness and resources on investigation and enforcement to supplement its efforts to combat organized crime. We know that we are facing the problem of increasing organized crimes which are affecting our livelihood, our safety and the stability of our community. We know that we do support the Administration in its efforts to combat organized crime. Recognizing these objectives is a relatively easier part of our task; realizing our responsibility to take in the greater consideration upholding our Bill of Rights and preserving civil liberty and justice demands greater perspective.

In affirming the virtue of these two objectives and the need to pursue both, we must conclude that the White Bill's present language falls unacceptably short of each.

I am happy to acknowledge my support for the Administration's efforts to combat crime, but this endorsement is not exclusive. I support any and all efforts to fight crime, as long as the fight is consistent with our laws, our rights, and carries the moral strength of protecting people so that they may prosper without fear. It is our obligation and duty to design an appropriate means that heightens the effectiveness of our struggle.

I look forward to the Administration's efforts in coming up with an effective Organized Crime Bill that rises to the challenge.

With these remarks, I support the motion.

MRS ELSIE TU: Mr Deputy President, I shall not speak on the legal aspects to the Bill, but leave that to the lawyers to do. After fighting for action against organized crime throughout my 40 years in Hong Kong, and after seeking human rights for the underprivileged for an equal number of years, it seems unlikely that I would fail to support any effort by the Administration to combat organized crime.

I wish I could feel confident about this Bill; when it comes, I wish I could feel confident that the Bill will really protect the public from organized crime, which presumably it is intended to do. My greatest fear is that we may see this effort dwindling into an exercise in arresting youngsters who collaborate in petty offences, or who are used by others, while the Bill of Rights will save the skins of those bigger gangsters who can afford to engage lawyers skilled in finding the technical faults in the law to let them off the hook.

It is a fact that the Hong Kong public, especially those living in public housing estates, live in fear of organized gangs. They are afraid that their children will be forced to join gangs controlled by big triad organizations whose leaders remain faceless and fearless in their luxurious homes and offices. Small Hong Kong shopkeepers are also afraid of those who intimidate them for protection money by threatening arson or looting if they do not submit to their demands. Minibus drivers too are fed up with reporting broken windscreens or burst tyres if they fail to pay for the privilege of operating their minibuses. Most reports end up with the same

result. The damage is admitted but there is no evidence as to who did it. The big gangsters will continue to enjoy their luxuries, and the young people who act as their tools will occasionally be arrested to prove that action has been taken.

I cannot see how this Bill, if enacted, will deal with the real situation. I am afraid that the small fry will continue to be caught and the big fish escape. This is especially so because of the Bill of Rights. The small fry do not know the law and are unlikely to be able to engage lawyers who can tell them of the extraordinary rights that can be claimed through the Bill of Rights. But the real victims are the general public, because the law seems to have become the enemy of justice.

No one can accuse me of opposition to human rights. But my demand for human rights extends only to an accused person who is not guilty, and to the victims whom the law seldom seems to address. When the Bill of Rights came before this Council, I did not support it, because I could see that it would open a can of worms, which in fact it did. Drug traffickers can now evade charges; debtors can escape their debts by going abroad; gangsters can be let loose on bail. And the victim or the public have to suffer. Instead of an open-ended Bill of Rights I would have preferred, and actually proposed, a revision of existing laws rather than a sudden opening of the floodgates to crime.

I find it difficult to speak on this proposed Bill. Lawyers have already pointed out how it contravenes the Bill of Rights. The public is left in confusion as to whether this Bill will do anything at all to combat crimes after it has been defanged by the Bill of Rights.

Mr Deputy President, I will support today's motion, only because I want to see efforts to combat organized crime. My grave doubts as to whether this Bill will do so remain.

MR SIMON IP: Mr Deputy President, the crime rate in Hong Kong has risen steadily in recent years. In particular, robbery with violence and crimes involving the use of firearms are occurring with disturbing frequency. Shoot-outs between criminals and the police, once virtually unknown in Hong Kong, are now commonplace. We wake up in the mornings to news of high speed chases at sea, surprised only by the determination of smugglers to evade arrest and their use of faster and stronger vessels for their getaway, sometimes with tragic results. These and other serious

crimes are perpetrated by organized crime syndicates which threaten the lives and safety of our people. I, therefore, welcome efforts by the Government to combat organized crime and to maintain law and order. These efforts have come not a moment too soon. The aims and objectives of the Organized Crime Bill are laudable and I am glad that the Government has sought public views on the Bill's complex provisions.

This is neither the time nor place to undertake a detailed analysis of the legal and technical intricacies of the White Bill or of complex rules of evidence and procedure. That is better left to working sessions between the Government and interested parties. The legal profession has made detailed submissions on the Bill and is ready and willing to assist the Government in tackling this complex issue. I, therefore, seriously urge the Government, before presenting a Blue Bill to this Council, to examine in depth the very detailed opinions on the White Bill. Today, I wish only to highlight some of the serious reservations expressed by the legal profession.

We are not convinced of the need for creating the so-called "aggravated offences" under clauses 3, 4 and 5 of the Bill or of the effectiveness of those proposed offences in combating organized crime. As proposed, the offences themselves and the manner in which they are proposed to be proved in a court of law are likely to run foul of the International Covenant on Civil and Political Rights (ICCPR).

Various presumptions under the White Bill are likely to be held to violate the ICCPR, a fact already acknowledged by the Government after publication of the White Bill. Those provisions of the ICCPR which may be infringed are the right to be presumed innocent until proved guilty, the right against retrospective punishment, the right against self-incrimination and the right not to be punished twice for an offence.

Part III of the White Bill deals with confiscation of proceeds of crime and empowers the Court to issue confiscation orders against convicted criminals. This objective is a good one, but as defined in the Bill, proceeds of crime could include benefits received by the convicted criminal before the commencement of the Organized Crime Ordinance. This would violate Article 15 of the ICCPR as it allows retrospective operation of a criminal sanction. Further, clause 9 of the Bill entitles the Court to make an assumption that any property transferred to the defendant at any time within six years before the institution of proceedings against him was derived from crime. This seems to me to be neither reasonable nor rational

and is likely, in my view, to be struck down by the Courts because of the judgment of the Court of Appeal in the Queen v Sin Yau Ming.

Clause 15 of the Bill enables the High Court to make a Restraint Order prohibiting any person from dealing with any realizable property, subject to such conditions as may be specified in the Order. The effect of a Restraint Order is to freeze all realizable property of the accused pending his trial. However, there is no requirement for the prosecution to show a prima facie case that the prosecution would succeed or that unless restrained, the accused's realizable property would be put out of the reach of the authorities. I think that consideration should be given to including such a requirement.

Clause 25 of the Bill enables an investigator to obtain an Order for access to and production of material from a third party, if that material is likely to be of substantial value to the investigation. Clause 25 (9)(b) provides that an order under the section shall have effect notwithstanding any obligation as to secrecy imposed by statute or otherwise. This would mean, for example, that the information provided to the Inland Revenue by a person protected by a duty of confidentiality under the Inland Revenue Ordinance could be obtained for the purpose of an investigation against that person. I think this provision goes too far. The reason for the duty of confidentiality imposed under the Inland Revenue Ordinance is to protect the privacy of individuals and to encourage them to provide full information without fear that the information provided could be obtained and used against them. I do not, therefore, believe that a duty of confidentiality imposed by statute or otherwise should be removed. Apart from the many technical difficulties which will be faced by the Bill, its major shortcoming is that it targets the perpetrators of crime rather than the architects or organizers of crime. Those who give the orders remain insulated while those who implement the orders and against whom the existing law is an adequate weapon are exposed to harsher penalties. Accordingly, one of the Bill's stated objectives, that of catching the "criminal godfathers", is unlikely to be fulfilled.

In the final analysis, there is no substitute for effective detection and investigation of organized criminal activities. This requires greater human and financial resources in the form of the creation of task forces, enhancement of intelligence and the availability of better training and equipment. Despite the Government's austerity programme, greater resources must be devoted to these areas. Legal creativity alone will not produce the desired results. Worse would be the

creation of draconian laws which will not withstand the test of the ICCPR and thus render abortive the whole well-intentioned attempt to fight organized crime.

Mr Deputy President, the White Bill requires radical re-examination in the light of the ICCPR and existing criminal jurisprudence. This task should be carried out as soon as possible after public views have been fully digested and absorbed. The legal profession stands ready and willing to assist in this task and I hope the Government will accept its offer of assistance.

Mr Deputy President, I support the motion.

MR ERIC LI (in Cantonese):

Stability: a primary concern

The future of Hong Kong is founded on two words. The same two words also provide the common grounds of understanding between China, Hong Kong and the United Kingdom. Those words are of course "stability" and "prosperity". It is not for us to go out of the way to find stability and prosperity, which Hong Kong is presently enjoying.

Stability is the primary need of society; it is even more important than prosperity. In managing a healthy and stable society, it is important that legislation should be considered from the perspectives of both rationality and reasonableness; a touch of idealism is also essential in order to achieve the state of perfection. This view has been manifested recently in the calls by public figures for the protection of the destitute, for the maintenance of law and order, and even for the protection of human rights. To be sure, legislation which is solely oriented towards achieving the maximum effect, without regard to common sense and human rights, errs on the side of cynicism. The nobility of spirit, provided it is not pursued blindly, will bring hope to our young people and contribute to social progress. It is not my intention today to go into the legal technicalities and the creation of checks and balances for the protection of human rights, which many legal experts have discussed just now. I will, instead, limit myself to presenting the impact of the legislation on our young people and what it means in human terms

Triad infiltration among youth

A number of recent surveys indicated that our citizens regard "law and order"

as one of the priority areas for the Government to focus its attention on. Law and order ranks higher in importance than the airport project, the political reform and the protection of human rights. This is a reflection on the extent of our social stability and our young people are feeling the same way. They share the same view not entirely because of adult influence; we must give credit to their independent thinking. They react in the same way because they can also feel the presence of triad activities in their real world.

Young people face coercion and temptation

Many of our youth are attracted by curiosity to the mysterious rules and organization of triad societies. They are falsely led to believe that triad societies are gatherings of "heroes" who will fend for each other out of a sense of brotherhood and that triad membership is something to be proud of; so they join the societies voluntarily. There are also innocent young people who are intimidated by triad members into joining. There are still others who would fall prey to the temptation of material gain and become triads and engage in illegal activities.

The spirit of the Bill

I support the spirit of the White Bill for the following reasons:

1. The White Bill can actually reveal the seamy side of the triads and the various kinds of activities, which are listed in Schedules 1 and 2, which they engage in. There is nothing heroic behind their mask of mystery.
2. The White Bill conveys a strong message to the community that triads are not to be tolerated by society. It is hoped that its enactment will be a heavy blow to whether credibility of the triads may have in the minds of our young people.
3. In a stable society, there are lots of ways to make money legally. The White Bill clearly makes the point that there are high risks, that is, stiff penalties, associated with making money by illegal means.

Impact of the Bill on young criminals

Whereas the spirit of the White Bill is commendable and the deterrent effect is certainly there, it is more applicable to adult repeat criminals and clearly not

applicable to most young people. "To catch the thief, it is important to catch the leader of the thieving gang," the Chinese proverb says. Young criminals are small fries for the most part who commit crimes either out of curiosity or on impulse; they find it hard to resist the intimidation and monetary temptation of adult criminals. Indeed, the White Bill with its emphasis on severe punishment is not in line with the spirit of our present judicial system to reform young criminals through coaching, rehabilitation and assistance in re-integrating into society.

There are three issues arising from the White Bill which are of particular concern to youth workers. Firstly, the offences which are listed in Schedule 2, such as making off without payment, sexual and related crimes, unlawful assembly and acting in a disorderly manner at a public gathering in a public assembly, are those to which the young people are most liable. Secondly, the Bill states that no one will be able to renounce his or her triad membership upon becoming, however young and innocent the person involved at the time, a member of the triad society. Thirdly, the minor players involved in the marginal activities will mostly be young people.

Different suggestions previously considered

Those parties concerned with youth development had previously considered two approaches to redress the problems. Firstly, whether those under 25 should be given a chance to renounce their triad membership. Secondly, whether or not it should be stated clearly in the Bill that certain sections with heavy penalties should not apply to young offenders. In the end, based on the following considerations, they would rather leave it to the discretion of the independent judicial system and the fair adjudication of the judge:

- (i) Young people should be made to understand that they have to have a sense of responsibility as individuals;
- (ii) Triads should be prevented, in recruiting new blood, from deceiving them that young offenders will never get a prison sentence; and
- (iii) Young people should not be given the wrong impression that they will be able to get scot free even if they commit a crime again.

Suggestions

Members may get the impression that there is a lot of contradiction in what I am saying today. On the one hand, the White Bill may deter young offenders not to commit a crime again, but on the other hand, it should in its application give young people who are ignorant and unable to protect themselves a chance to turn over a new leaf. Many colleagues have stated that a balance has to be struck between deterrence and reasonable deal. I also wish this Council to strike a balance between deterrence and human rights in keeping with the spirit of the Chinese saying that the law exists to guarantee a reasonable deal for all.

I hope that the Government, in introducing the Blue Bill, will clearly reaffirm the principle of rehabilitation of young offenders so that the severe provisions in this Bill will not be invoked lightly by the Attorney General and that verdicts will have this principle to base upon.

Mr Deputy President, with these words, I support the motion.

PROF FELICE LIEH MAK: Mr Deputy President, since 1842 which marked the first year when Hong Kong passed legislation to stop the triads, nearly 150 years have passed and we are still drafting legislation. Unfortunately, criminal groups have become more powerful. We have been lulled into complacency by the low number of opportunistic and petty crime in Hong Kong, while organized crime has boomed with Hong Kong's economy. With the opening up of China the economic success of Hong Kong in the industrial growth in southern China has created greater opportunities for protection rackets, smuggling, drug trafficking and armed robbery. Like other Hong Kong businesses, criminal syndicates have taken advantage of the economy's shift from manufacturing to service industries by introducing their own services and exploiting others.

Hong Kong's international finance system, together with Macau's casinos, has made the territory an ideal site for money laundering. Using sophisticated technology and techniques, organized crime has become one of Hong Kong's most profitable and efficient businesses.

Criminal business is expanding. Protection racket, which is a form of taxation to finance criminal activities, is the traditional business of organized crime. Small shopkeepers, for instance in Yuen Long and Tuen Mun, usually pay about \$400 per month as tea money. Almost every disco, nightclub and bar in Tsim Sha Tsui East

and Yau Ma Tei pays for protection. Protection from syndicate vandals for construction sites can cost up to \$20,000 per month depending on the size of the site. Criminally operated or protected decorators harass tenants at newly-built housing estates to employ them. Our yellow and red public light buses pay a tax to the station master who controls the line-up and ensures protection against vandalism. A movie crew must pay money to film at certain public locations. Syndicates even obtain money from smugglers, taking a cut for the uninhibited use of a container or loading site. Criminal labour importation schemes are another source of income; armed Chinese illegal immigrants are smuggled into the territory in order to heist a bank or rob a jewellery store. Syndicates take a cut of the proceeds and keep the weapons left behind, while the Chinese criminal returns to China with usually about a hundred thousand dollars and retires.

Incidence of robbery with firearms increased by 267% between 1982 and 1990. The trend continues. In the final two weeks of November there were nine armed robberies and nine armed illegal immigrants were caught -- undoubtedly many others escaped. The losses in those two weeks alone totalled \$22.5 million. But the real money is in heroin and Hong Kong is quickly becoming the business centre for the international heroin trade. As the heroin trade expands more drug money is finding its way to Hong Kong and the territories around this area. Cocaine's popularity is declining; Americans no longer like cocaine and therefore the Columbian drug cartel is now investing in Asia's heroin by putting their money into regional banks.

Hong Kong's international financial system makes it possible to pay every person along the drug route, from the gang leader in the city of New York to the manufacturer in Thailand. One estimate states that the syndicate's profits from heroin are about \$80 billion every year -- and the authorities have only managed to confiscate \$4 million and restrain \$350 million.

The amount of heroin leaving Southeast Asia every year reportedly equals the street value of US\$150 billion, or one-half of the estimated US\$300 billion worldwide annual drug revenue. Increasing amounts of heroin are being smuggled through Hong Kong. Opiates from the Golden Triangle are trafficked through China's Yunnan Province, down to Guangzhou and across the border, leaving behind at every step of the way an increasing number of opium addicts, heroin users, and people infected with the HIV virus. 85% of the people in China with the HIV virus live in Yunnan Province, and 99% of them were infected by contaminated heroin needles.

While drugs are trafficked into Hong Kong, luxury cars and electronic equipment are being smuggled into China. Recently, the WHO had a team which met with the Chinese across the border; and it is believed that drugs and goods are being exchanged across the border.

Hong Kong's waters have become the site of conflict between smugglers, some opportunistic members of the Chinese People's Armed Police (PAP), and the Hong Kong Marine Police. Unfortunately, our Marine Police are losing the battle. With faster speedboats, bullet-proof shields, PAP protection in some instances, the smugglers are relatively unstoppable. It is estimated that every night 60 boats illegally enter Hong Kong waters, load up a shipment and return to China. The contraband of a boat captured by the police was valued at \$1.2 million, and by calculation the potential accumulative value of smuggled goods in Hong Kong waters could be as high as \$75 million every night.

Overland smuggling might be worse. A police stake-out of a suspected loading site near the border witnessed 35 truckloads of unknown materials being driven towards the border. The following night the police ambushed the site and captured three trucks. The total goods heaved from the trucks valued \$3.5 million; and according to that estimate, \$35 million to \$40 million would have crossed the border that night alone, and from this particular site.

One of the failures in fighting organized crime has been a limited understanding of the problem, or acknowledgement of the problem. In the past we have perceived organized crime to be only a limited menace in Hong Kong -- only a triad menace which can be easily controlled by the Hong Kong police. This is no longer a reality, Hong Kong's organized crime is in collusion with criminal syndicates around the world. A successful attack on organized crime will require international co-operation, expertise, financial backing and supportive legislation.

The Organized Crime Bill is one of the many weapons to combat crime. To ensure maximum effectiveness the final proposal for legislation should take full account of the Bill of Rights so that the Organized Crime Bill will not be rendered toothless by conflicts with the Bill of Rights. The Organized Crime Bill by itself is inadequate; in addition there is a need to increase law enforcement resources through the creation of a special task force against organized crime. This is an expensive option but if we look at all the money that is and will be going through Hong Kong now and in the future and consider what will happen if this money is used to control

Hong Kong, we will agree that we need a task force to help us. The task force has been proven to be effective in fighting organized crime. For instance, in South Florida, task forces combining the expertise of agents from the Drug Enforcement Agency, the FBI, Immigration Department and local police squads have achieved great success and become the standard upon which the United States has formed other task forces.

We can no longer depend on a very laid-back attitude in our fight against organized crime. We can no longer depend on just a few police officers to fight against a very powerful international army and expect positive results. Tough legislation however will not be the only solution. We need our best people, the most effective laws, the most sophisticated technology and international co-operation to fight organized crime.

The integrity and the dedication of the task force should be ensured. I would suggest here that we have a five-year task force to be created comprising handpicked immigration and task officers, Independent Commission Against Corruption members, criminal law specialists, drug enforcement agencies and organized crime specialists from overseas as well as our own government experts.

It is time to focus not only on the organized crime locally but its ramifications with international organized crime, because it exerts a corrupting influence on all levels of society. We should take action now before criminal activities become too tightly woven into the fabric of our society.

With these remarks, I support the motion.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, the United Democrats of Hong Kong (UDHK) has all along supported the combating of crimes, especially the combating of organized and serious crimes. Therefore, we support the spirit behind the Organized Crime Bill although we wonder if the amendments proposed by the Bill can effectively combat organized crimes.

There are three main aspects in the law reform for the Organized Crime Ordinance:

Firstly, the Bill creates five major offences and doubles the penalty imposed on

members of organized crime groups who commit such offences;

Secondly, the Bill proposes to strengthen the power of the police in their investigations into organized crimes and crime groups;

Thirdly, the Bill empowers the court to forfeit and confiscate the proceeds an offender has obtained from crimes. It also provides for the court to issue restraint and charging orders to prevent the offender's assets from disappearing.

As stated in paragraph 13 of the Explanatory Notes on the Organized Crime Bill, the aims of the legislation are (1) to deter organized criminal activity by heavy penalties; (2) to make possible the effective prosecution and punishment of individuals who participate in such activities at all levels; and (3) to destroy the power of criminal syndicates by confiscating their criminal profits. The United Democrats fully supports Aims (2) and (3) as stated above, but has reservations on the principle behind Aim (1). It is because heavy penalties may not always deter crimes. As it stands, penalties for organized crimes are not slight at all, thus the maximum penalty for controlling prostitutes is 14 years' jail and that for drug trafficking is life imprisonment. As such, we believe doubling the penalties for such crimes would not be a deterrent for the criminals concerned.

Nevertheless, we fully agree to Aims (2) and (3). Now the court has to prosecute an offender committing a series of crimes in separate trials. So if the Bill creates other offences to prosecute the ultimate culprits of organized crimes, it is possible that such criminals will get the penalties they deserve. We also agree to forfeit the assets of organized crime offenders because only such would strip the crime syndicates of financial resources and deal a heavy blow on them. We are surely in support of punishing launderers of criminal proceeds. However, we believe the concern of the general public is whether the Bill can really achieve its objectives in curbing organized crimes. As a matter of fact, we doubt if the Bill will be really effective in this respect.

First of all, the Bill does not even provide a definition for the term "organized crime". It will serve only in penalizing two categories of people: members of organized crime groups (probably triad society members) who commit offences listed in Schedule 2 of the Bill, and groups of two or more persons associated together for the purpose of engaging repeatedly in offences listed in Schedule 1. We do not think such will be the right cure because the prosecution is not targeted

upon leaders of criminal syndicates. In fact, the Government admitted in a discussion document entitled "Options for changes in the Law and in the Administration of the Law to Counter the Triad Problem" published in 1986 that the police has always failed to arrest the real leaders of triad societies. The ones prosecuted were usually their underlings because criminal "godfathers" generally distance themselves from the daily operation of triad societies. As such, those to be confirmed by the police as members of triad societies are mainly peripheral operating members. Thus the proposed measures of the Bill will only net those operators instead of uprooting the criminal syndicates, and the amount of forfeited assets will be quite limited.

While the offences listed in Schedule 2 of the Bill are wide-ranging, many of them may not be related to triad activities. Such may bring injustice to people with triad background. Moreover, the groups of two or more persons engaging repeatedly in offences listed in Schedule 1 may not necessarily be members of organized gangs. Under the proposals contained in the Bill, those penalized would probably be former triad society members who have committed crimes unrelated to triad activities, for example, making off without paying for a meal, or groups of two or three youngsters who have robbed for their pocket money. It should be reminded that such crimes are not the ones we want to combat most. Such could result only in imposing harsh penalties on peripheral operators of criminal syndicates, that is, "catching the small fry while letting the big fish off the hook".

In fact, the changes to the law proposed by the Bill, such as the creation of offences under clauses 3 to 5, aiming primarily to increase penalties, do not necessitate the creation of such offences. If the Government believes severe punishment will combat crimes, it may achieve its aim by increasing penalties for offences commonly committed by triad societies. As it stands, the court has been considering offenders' criminal records in meting out sentences so that harsher penalties are imposed on those with criminal records. So it is not necessary for the Government to penalize perpetrators by creating new offences, especially when we consider that such new offences will probably impose unduly harsh penalties on certain activities unrelated to triad societies.

The UDHK believes that more effective changes to the law should be amendments to the Indictment Rules and the rule on corroboration so that comprehensive information on criminal syndicates and organized crimes concerned can be provided by the prosecution during the trials to enable the court to consider and refer to all evidences concerned, so as to tackle the trials on organized crimes more effectively. I think the legal reform should be concentrated on more effective

conviction of serious crime offenders rather than increasing the penalties.

The UDHK asks the Government to amend the Bill and clearly define "organized crime" by, for example, stipulating in the form of a schedule certain crimes as serious crimes, which are masterminded or committed in conspiracy by a group of people on purpose resulting in serious disruption of the law and order of our society. We also suggest that Schedule 1 and Schedule 2 be merged and the minor crimes unrelated to triad activities be deleted from Schedule 2. These proposed amendments will ensure that the Bill is targeted at triad members instead of imposing excessive penalties on minor offenders. Meanwhile, confiscation orders to forfeit criminal proceeds should be made only when "organized crime" offenders are convicted, whereas the assets of occasional crime offenders should not be treated likewise.

Besides, we would like to propose some other amendments. For example, those affected by restraint orders and charging orders should be provided by law with reasonable protection and opportunities for appeal. At the moment, the Bill provides that an acquitted defendant will be compensated only when it is proved that the investigation has been seriously flawed. We think this is unreasonable because it is almost impossible for the one affected to prove such. In our opinion, this provision should be amended such that if the one being investigated suffers genuine losses he should be compensated. As regards amendments to clauses in the Bill that contravene the Bill of Rights, the Honourable James TO, UDHK's speaker on security policies, will elaborate later.

Based on the above reasons, I support the Administration's attempt to combat crime though I also hope that the Administration will reconsider some of our proposals. For this reason, I support the motion.

MR JAMES TO (in Cantonese): Mr Deputy President, we are here today to discuss the Organized Crime Bill together because the community has been worried and concerned about the social unrest caused by crimes of organized criminal syndicates.

The United Democrats of Hong Kong maintain that the Government should actively combat organized crime. But with regard to the Organized Crime Bill, our position is that we hope the Bill will be really effective in combating organized crime and consideration will be given to ensure compatibility of the Bill with human rights.

Looking at the present Organized Crime Bill, I find that it cannot realize the

aim of combating organized criminal activity both in respect of enforcement and practical achievable effects.

I would first comment on the definition of "organized crime group" in the Organized Crime Bill. The Bill expounds that "organized crime group" means a triad society or a combination of two or more individuals associated together for the purpose of repeatedly committing acts which are Schedule 1 offences, that is, offences considered as commonly committed by ordinary organized crime groups.

It can be seen that the Bill does not give any definition of "organized crime". It only focuses on offences committed by persons who have criminal organization background. The offences committed by these persons may not be related to their membership of certain organizations. For example, a person with criminal records of triad offences may be involved in fighting arising from contention about a seat in a restaurant or, as the Honourable MAN Sai-cheong has said, "making off without paying for a meal" which have nothing to do with triad society.

On the other hand, the Bill mentions that "any member of an organized crime group" who commits a Schedule 2 offence shall be liable to a maximum term of imprisonment which shall be double the original term of imprisonment. In other words, any member of an organized criminal syndicate who commits an offence shall be liable to a maximum term of imprisonment which shall be double the original term. It is thus obvious that the Bill has not created fresh offences. Instead, it only has the penalty to certain persons who commit offences double.

An ordinary person who commits an offence shall be liable to penalty while a member of an organized criminal syndicate who commits an offence can be liable to double penalty. The subject of the Bill is therefore basically about the possibility of imposing double penalty.

However, to combat organized criminal activity does not mean to only take on persons with criminal organization background. In view of the fact that the cause of social unrest lies in organized criminal activity, in order to tackle organized criminal syndicates we should take aim at the masterminds of organized criminal activity instead of dealing with unimportant figures of some organizations.

Moreover, will the efforts of the police be constrained, despite the introduction of this legislation, by its limited manpower and resources? As the Bill may very

likely impose heavy penalties on "underlings", it is imaginable that "underlings" of organized criminal syndicates will become the major target of combat. Although so doing will increase the number of cases of combating organized criminal activity, it does not necessarily mean that there will be actual progress and achievements in fighting against organized criminal activity. The result may be but a false impression. Given the limited resources available to the police, I am therefore of the view that the police should make more efforts in improving the deployment of police manpower, conduct in-depth investigation into cases which really are major organized criminal cases, arrest the masterminds and inflict heavy penalties on them. If we only deal with "underlings", organized criminal syndicates will be encouraged to recruit more youngsters who have no previous criminal records. We should therefore pinpoint the masterminds in fighting against organized criminal syndicates. Although the number of organized criminal syndicates tackled within a year may be smaller than that of dealing with "underlings", we shall find that fighting against masterminds of organized criminal syndicates is far more effective than dealing with "underlings".

The UDHK is therefore skeptical of the effect of the Bill of combating organized crimes. It also notes that the Bill will be inconsistent with the Bill of Rights when it is enforced. The major inconsistencies of the Bill with the Bill of Rights falls into three areas: first, the prejudice arising from the presentation of criminal record; secondly, the presumption of membership of a criminal syndicate; and thirdly, repeated penalty and retrospective effect.

Unfair trial

The Bill deals with the commission of offences by members of criminal syndicates. To do this, the first thing is to prove their membership of criminal syndicates. Clause 33 requires that a person who has previous conviction of or claimed to be a trial member is presumed to be a member of an organized criminal syndicate. Clause 32 also allows the presentation of a person's previous triad conviction record.

The objective of common law is to ensure fair trial. It provides that previous conviction records of a suspect cannot be presented in court as so doing will lead to prejudice on the part of judge who will believe that the defendant is a criminal, thus accepting the evidence put forward by the prosecutor rather than the defendant. Clause 32 has contradicted the principle of ensuring fair trial in common law.

The presumption of membership of criminal syndicate

It is quite unreasonable to presume that a triad member is always a member of a criminal syndicate as proposed in clause 33 of the Bill. In the first place, a triad member practically has no legal channel to withdraw from the triad society since the termination of the Triad Renunciation Scheme. A case has it that according to the triad code, once a person joins the triad society he is always a triad member. In the second place, a person may be a triad member long time ago. But the Bill provides that he is presumed to be a member of a criminal syndicate unless he can prove the contrary. It must be noted that to prove the negative is very difficult. In the third place, such presumption is inconsistent with the principle of the benefit of the doubt in the Bill of Rights and the conditions in respect of the presumptions laid down in the recent Sin Yau Ming case because it is not compact enough and is too extensive. In the fourth place, given that the membership of a criminal syndicate is indispensable to defining organized crimes in the Bill, it is unsafe and undesirable to be dependent upon such presumption to presume the identity of a person in passing sentence. In the fifth place, although triad background may be related to membership of a criminal syndicate, a more reasonable arrangement is to let the judge decide whether to make such presumption in consideration of the triad background of the defendant and the facts of the case rather than accepting a coercive presumption. In the United States, organized crime legislation does not carry presumption provisions of a similar nature.

Furthermore, the Bill does not require the prosecutor to prove that the commission of an offence by a certain person is related to his membership of a criminal syndicate. Since the spirit of the Bill is about offences committed by criminal syndicates, we are justified to request the prosecutor to prove that the suspect commits an offence in an organized manner in the position of a member of a criminal syndicate and that it is not ordinary and individual offence.

Overlapping of penalties and retrospective effect

The offences mentioned in clause 3 will easily give rise to overlapping of penalties. For instance, a triad member who is charged with fighting in a public place may be at the same time charged with a more serious offence of commissioning an organized crime offence in clause 3. Clause 6(3) points out that if the defendant is charged with two offences at one time, the judge shall first sentence the defendant in respect of the offence of fighting in a public place and shall take into account

of that sentence in determining the sentence in respect of the organized crime (which is also fighting). In spite of that, the defendant is likely to be sentenced two times in respect of the same series of facts of case.

The above analysis is also applicable to clauses 4 and 5.

Clause 5 deals with repeated commission (three times or above) of organized crimes (offences under sections 3 and 4) by imposing severe penalties, including imprisonment for life and a fine of \$10,000,000. Assume that the defendant is a triad member with criminal records of fighting on two occasions. After the passage of the Bill, a further charge with fighting means the commission of an offence under clause 5 and he shall be liable to heavy penalty. Two problems arise from this:

(1) Clause 5(3) provides that a person who has relevant criminal records would be considered as having committed those organized crimes under sections 3 and 4 in the Bill. This is a provision with retrospective effect which treats previous acts as current offences, contradicting the principle of non-retrospectivity in respect of criminal law in the Bill of Rights.

(2) Any person who commits a Schedule 2 offence three times or above shall be liable to severe penalties regardless the seriousness of the offence. This is inconsistent with the basic principle of passing sentence in respect of the criminality of offence.

Regarding the confiscation of the defendant's property acquired before the passage of the Bill, this will again be in contravention of the principle of non-retrospectivity and, as mentioned before, will be incompatible with the Bill of Rights. Schedule 1 offences are made use of in defining criminal syndicates other than triad societies because they are considered as offences commonly committed by criminal syndicates. Schedule 1 offences are more serious offences, the number of which is smaller than those in Schedule 2. A combination of two or more individuals the purpose of which is repeatedly committing Schedule 1 offences is a very serious criminal syndicate. It is strange that being a member of such criminal syndicate is not an offence under the present Bill. I am of the view that taking into account the construction of the Bill, being a member of such criminal syndicate, that is, repeatedly committing Schedule 1 offences, should be a serious offence, more serious than ordinary conspiracy.

It is not mentioned in the explanatory notes of the Bill the yardstick for deciding

Schedule 2 offences. Schedule 2 covers a wide range of offences, from very serious offences like murder and robbery to minor ones like fighting in a public place, shoplifting as well as ordinary assault.

The commission of Schedule 2 offences by a criminal syndicate is a new offence. A Schedule 2 offence is therefore the principal body of an act while the membership of a criminal syndicate is the background of the defendant. Given the extensive area of reference in Schedule 2, the arrangement that the commission of any of the offences shall be deemed to be the commission of organized crime is unreasonable.

Furthermore, the Bill requires that the maximum term of imprisonment prescribed for a Schedule 2 offence shall be double. The term of imprisonment for such serious offences as murder and robbery is already very long and it makes little difference whether it is double. As for minor offences, for example, fighting, the effect will not be great even though the maximum term of imprisonment is double.

To sum up my discussion on the Organized Crime Bill, I believe that the Bill fails to deal with the core problem -- organized crime. In view of this, UDHK put forward several proposals with the object of combating organized criminal activities.

(1) The Government must first define "organized crime". We suggest that "organized crime" should mean serious offences committed through collective activity or systematic planning by a group of persons associated together (listed in the form of schedule) and the offences must be indictable offences commonly committed by criminal syndicates and have serious effects on the tranquillity and order of our society.

(2) The Government should prove with separate evidence that the defendant does take part in committing an organized crime. Previous records of offences can only be presented to a limited degree and should not be treated as coercive presumption as mentioned in the Bill.

(3) When there is prosecution for "organized crime", the prosecutor must prove that the commission of the offence by the defendant is related to the latter's membership of a criminal syndicate or under the support and instruction of a criminal syndicate.

(4) If the commission of the offence is proved to be related to a criminal syndicate, the sentence should be for a very serious organized crime rather than an individual

offence. If the relation of membership of a syndicate cannot be proved, the sentence should be for individual offence or being member of an organized criminal syndicate, depending on the circumstance.

(5) The offences listed in Schedules are important part of the law and should be amended by the Legislative Council rather than the Governor in Council as said in the Bill.

Finally, the United Democrats are of the view that the proposed confiscation of property is an effective means to combat organized crime and is therefore worthy of support. Upon conviction, any property acquired within the six-year period by the defendant will be considered proceeds of crimes unless the defendant proves otherwise. Legislation drafted in such a way is, as a matter of fact, rather harsh and draconian. Similar provisions relating to proceeds of drug trafficking are also found in the Drug Trafficking (Recovery of Proceeds) Ordinance. Drug trafficking is a serious offence and the public's acceptance of such draconian legislation is therefore understandable and worthy of support. But in the case of the Organized Crime Bill, offences under Schedule 2 are wide-ranging, including, for example, fighting and shoplifting. As such, a defendant may be subject to confiscation of property acquired within the six-year period regardless of the seriousness of the offence. Application of this scope is indeed too wide for a piece of legislation. In fact, we believe that the crux of the problem may be the resources of the police in terms of, for example, equipment, training, funds, intelligence, undercover agents, long time efforts, and so on. It is hoped that the Government, after careful consideration of the various proposals, will come up with the effective legislation which will put into action the Government's determination in combating organized crime.

With these remarks, I support the motion.

5.10 pm

DEPUTY PRESIDENT: We will take a short break.

5.37 pm

DEPUTY PRESIDENT: Council will resume.

DR YEUNG SUM (in Cantonese): Mr Deputy President, the United Democrats of Hong Kong fully supports the Government's objective to fight crime and to uphold law and order. This is also the common wish of the general public. Hence the United Democrats who are Members of this Council will all vote for the motion.

To uphold law and order the Government must implement a wide range of co-ordinated policies including long-term and short-term ones. It is important that we should strengthen the organization, morale and capability of the police force. In the medium term, appropriate law reform should be introduced so that law enforcement officers can effectively and fairly carry out their duties to track down crime and bring offenders to justice. In the long term, we must promote civic education and community services, enhance the civic consciousness of the young people, and improve counselling services for offenders and discharged prisoners. These measures would all help reduce the criminal tendency of some people and prevent crime.

The purpose of the Organized Crime Bill introduced today is to mete out double penalty through legislation to criminals who have organized crime background and to further empower the court to confiscate the proceeds and assets procured in criminal activity.

In studying and making comment on this Bill, the UDHK adheres to two basic principles:

(1) whether the measures proposed in the Bill, which include the introduction of new offences, strengthening of the investigative power of the police and empowering the court to confiscate the assets of criminals, can effectively deal with organized crime and crime syndicates; and

(2) whether these measures contravene the present Bill of Rights which has been consolidated by the Letters Patent, resulting in some sections of the Bill, which are in conflict with the Bill of Rights, nullified in court.

Based on the two criteria mentioned above, the UDHK has written a submission to the Government, incorporating our comments and recommendations on the Bill as a whole. Just now, our chairman and two of our colleagues have separately expressed our views and standpoint and I do not wish to repeat them. Basically, we support some of the proposals in the Bill, for example, to empower the court to freeze or even to

confiscate proceeds procured in crime and to deter criminals from money laundering activities. We have also made a number of specific suggestions to protect innocent citizens against infringement of their rights. However we have to express our reservation or even objection to the offences under clauses 3, 4 and 5 of the Bill.

Firstly, we cannot only resort to heavy penalty to stop crime. At present the maximum penalty of many serious crimes is very heavy already and it does not make much sense if the penalty is further increased. Secondly, these provisions do not deal with organized crime effectively because there is no need for the prosecution to prove the relationship between an individual's commission of an offence and his membership of an organized crime group. These provisions might be used against persons who have triad background and conviction records and have repeatedly committed some minor offences. These persons are no more than the peripheral members of organized crime groups. The provisions in actual fact fail to penalize the masterminds and core elements of organized crime groups.

However, what I do not understand is that clauses 3, 4 and 5 and other related provisions blatantly infringe on basic human rights, contravene the fundamental principles of the common law and violate the Bill of Rights of Hong Kong as well as the International Covenant on Civil and Political Rights. We cannot accept, say, the incorporation of provisions with retrospective effect into the Bill and provisions which contravene the principle of "presumption of innocence" and the idea of not giving repeated penalty for the same offence.

At present many people in Hong Kong have a misconception. That is that the Bill of Rights is giving too much protection to human rights at the expense of the investigative power of the police as well as law and order. The Bill of Rights and law and order therefore do not go together. This way of saying is in fact open to question. If we have a look at countries where Bills of Rights have been introduced and the situation in some backward totalitarian states where punishment without trial and death penalty is the order of the day and then compare the state of law and order between the two, we will have a fair answer.

I must repeat that the UDHK supports appropriate legal reform to improve the capability of the Government in fighting crime and upholding law and order but any legal reform should conform to the Bill of Rights. I do not believe for a moment that in the normal social climate of today the people of Hong Kong are willing to sacrifice our human rights and freedoms for the sake of the investigative power of

the police. We do not want to live in a society where on the surface there is law and order but inside there is fear of the Government and the police and nobody is feeling safe. We must bear in mind that the human rights and freedoms enshrined in the Bill of Rights are interrelated. If we abandon one or two of them, others will come off like the skin of a tree being peeled off. Therefore we should not abandon any one of them causally.

Mr Deputy President, I would like to urge the Government to accept Mr Martin LEE's proposal of setting up a working group to examine in detail the White Bill on Organized Crime. It is hoped that the Blue Bill, when submitted to this Council, will have the support of every Member in this Council. To fight crime is everybody's obligation. Thank you.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, there is a Chinese saying which goes, "There is nothing greater than realizing one's mistake and rectifying it." It was a very mistaken decision taken by the police force to disband the Triad Society Bureau in the belief then that the triads had all been brought under control. The proliferation of triad activities, and the grave public concern which it has raised, has led to the setting up by the police, acting by force of circumstance, of an Organized and Serious Crime Bureau again. Meanwhile, the Administration has also brought the White Bill now before this Council to show its determination to fight triad-related syndicated crime. It is a move which should be supported and welcomed.

First of all, leaving aside the issue of conflict with the Bill of Rights, Meeting Point supports the spirit of the White Bill and welcomes its proposals to increase the severity of sentence, like confiscating the proceeds of the crime of an offender. The question here is whether the White Bill as such is really an effective weapon in comprehensively combatting triad-related crimes. I believe this question is what community figures and Hong Kong people generally are most concerned with. We worry that the White Bill is only good enough to kill the flies, but not the tigers. The triad ringleader normally will not actively engage in illegal activities, which are mostly carried out by their subordinates and outsiders. By outsiders I actually refer to the child gangs which are becoming a very serious social problem today.

Being a social worker, I am very concerned about the problem of child gangs which has appeared in Tuen Mun and Yuen Long of the western New Territories. In order to cope with the intensified police actions, it is likely that the triads will recruit

the child gangs as new blood and get these teenagers at risk to engage in illegal activities, through intimidation and monetary reward. When a child gang has been rounded up by the police, they will quickly replenish with a new gang. It may turn out that organized crime is not only difficult to eradicate but this will actually lead to the aggravation of the problem of child gangs. Take my constituency, western New Territories which comprises Tuen Mun and Yuen Long, as an example. One third of the district population is under the age of 20, numbering well over 218 000 in all. The problem of child gangs is a cause of grave concern to the residents. We actually know from a recent spate of criminal cases that a leader of a child gang operating in Tuen Mun happens to be a teenager of 12 years old. The young criminals involved in a series of burglaries which happened at a shopping arcade in Yuen Long are in their early teens. It can be seen therefore that the problem of child gangs is very serious indeed. In this light, it is a point worth considering that, in combatting organized crime, counselling work has to be stepped up and co-ordinated such that young people who have gone astray will have a chance to turn over a new leaf and be re-integrated as useful members of our community, instead of becoming a burden to society. But the unfortunate fact is that Boys' Homes and Girls' Homes are regarded to be no more than "places of higher learning" in criminal ways for their inmates. This is an attitude which the authorities concerned would do well to reflect on.

Characteristics of a new town are high concentration of housing estates, a large young population and parents who are so busy working to make ends meet that they do not have time for proper child rearing. Inadequate communication between parents and school and inadequate supporting services make for easy triad recruitment of young people to join their ranks. It is for this reason that Meeting Point considers that there is a need for supporting services to be stepped up in new towns, such as the provision of outreach social workers and school social workers, and youth centres, in order for the youths at risk to return to normal life style instead of being recruited by the triads. It is of course necessary to bring the ringleaders of syndicated crime to justice in the fight against organized crime. It follows that the leaders of syndicated crime should be brought to justice. Given that smuggling and drug trafficking have become quite commonplace and they even tend to be conducted internationally, we should step up international co-operation, and the co-operation between Hong Kong and China particularly, in order that the authorities concerned may be able to exchange information. I do not wish to go into details on these points which have already been dealt with by other colleagues.

Finally, Meeting Point is as concerned about the conflict between police powers and human rights as many people of Hong Kong. This is an issue which should be looked at and which calls for improvement to be made. However, we also suggest that the police should provide education and training for its rank and file in respect of the human rights legislation in order to reduce misunderstanding and conflict between police and public on the one hand and strengthen co-operation on the other. It is up to the authorities concerned to make sure that no effort should be spared in fighting crime and upholding the law.

Mr Deputy President, with these remarks, I support the motion.

ATTORNEY GENERAL: Mr Deputy President, this Council's resolve to put a halt to organized crime is well demonstrated by the overwhelming support by Members this afternoon for the motion moved by Mrs Rita FAN. I am most grateful for the many valuable comments expressed by Members today. I would also like to thank all those individuals and organizations, including the Bar Association and the Law Society, who have made submissions to the Administration during the consultation period for the White Bill.

The Bill represents a concerted approach by the Administration to tackle the problem of organized crime. It includes penal provisions of great severity. We believe it is only right that those who seek to undermine the fabric of society, consistently and in an organized way, should be punished heavily.

The Bill provides power for the courts to deprive an offender of his profits. The message to criminals will be simple and uncompromising -- crime does not pay -- and we intend to make sure that is the case.

The Secretary for Security will shortly address Members on the rationale underlying the White Bill, its broad principles and the way ahead. I shall confine myself mainly to the concern expressed by Members and some commentators on the question of consistency between the White Bill and the International Covenant on Civil and Political Rights as applied to Hong Kong. As Members know, this consistency is required by Article VII of the Letters Patent. The rights contained in the Covenant are mirrored in the Bill of Rights Ordinance which came into operation in June of this year.

The White Bill on Organized Crime was published after a thorough study of the

methods adopted in other countries. In preparing the Bill, the need to conform with the International Covenant on Civil and Political Rights was taken into account. That said, it must be understood that the case law on human rights, both at the international level and here in Hong Kong, is still developing. In many areas the law on human rights has yet to be settled. This is particularly true in Hong Kong, where the Bill of Rights Ordinance has only been in force for six months and the courts have only just begun building a body of jurisprudence around it.

It would, Mr Deputy President, be premature for me to give a definitive view today as to which of the clauses in the White Bill may need to be amended or replaced by reason of inconsistency with the Covenant as mirrored in the Bill of Rights, and as to the manner of any amendment proposed. That is a matter that we are examining at present. In particular, we are looking carefully and anxiously at those areas where the court has already expressed a view in relation to similar legislation, and where legal commentators have identified possible issues of incompatibility. Some preliminary thoughts, however, have been formed on these matters and I am happy to indicate what they are.

A number of comments concern clauses 3 and 4 of the White Bill. These clauses deal with offences that have a connection with an organized crime group. It has been suggested that the manner in which the clauses have been drafted means that they will penalize repeat offenders but will not be effective against continuing criminal enterprises. It is argued that the introduction of evidence of previous convictions, bad character, or criminal associations during the course of a trial for an organized crime offence will have an adverse effect on an accused's right to a fair hearing. It is also suggested that the likelihood of prejudice will be aggravated by the lack of any requirement to prove a link between the organized crime group and any Schedule 2 offence. Similar concerns have been expressed in relation to clauses 5 and 32. We recognize the force of these criticisms and we will be addressing them anxiously, but we have not yet formed a definitive view on them.

Many of the comments concern clause 5 which deals with repeated commission of organized crime offences. There are criticisms that a charge under this clause can be based in part on offences which the defendant committed before the effective date of the legislation. For the Bill to have an immediate deterrent effect upon enactment, we believe it is essential that evidence of crimes committed before the commencement of the Ordinance should be admissible at trial. A number of Members have voiced concern about the apparent retrospective element in some provisions of the Bill. But

I would like to point out that a law is not retrospective merely because it has regard to events which occurred prior to the making of that law. Retrospectivity in the legal sense means in effect backdating a change in the law so that the legal rules applicable to certain events are changed after the events have occurred. This concept is reflected in the International Covenant which prohibits a person being convicted of a criminal offence on account of any act which did not constitute an offence when it was committed. The Covenant also prohibits a person when being dealt with for an offence from receiving a heavier penalty than the one that was applicable when the offence was committed. We believe that the Bill is generally consistent with these principles. But I have heard the criticisms that have been voiced this afternoon and by commentators and I am looking at them again.

Another criticism that has been raised is that clauses 3, 4 and 5, to the extent that they rely on offences of which a defendant has already been convicted, may violate the Covenant prohibition against double jeopardy and double punishment. Our present view is that this is not the case but once again we shall give this aspect close and anxious consideration.

Clause 33, which contains a presumption as to membership of an organized crime group, drew a great many comments. This clause was considered to be in order when we published the White Bill for consultation in August this year. However, as a result of a recent Court of Appeal ruling, it has become clear that this clause, in its present form, will not survive a challenge based on Article VII of the Letters Patent. We are carefully considering this question. Whether it will be necessary to delete this clause altogether or whether an alternative formulation would be appropriate has yet to be decided.

Apart from the questions concerning consistency with the International Covenant, many commentators have raised other issues of a legal nature, such as the power of confiscation, investigative powers, the use of accomplice evidence and the definition of organized crime group. These issues raise complex legal questions which will be carefully considered.

Mr Deputy President, I would now like to turn to a concern which has been expressed here today which concerns the exercise of my discretion to prosecute. Some Members have expressed the fear that young offenders who are loosely associated together to commit petty offences may be liable to prosecution and harsh punishment under the Bill. Let me assure Members that the White Bill is targeted at organized crime and organized crime only. My consent is required for any prosecution under the Bill and

it will only be given after all the circumstances of a case have been thoroughly and most carefully examined.

Throughout the preparation of the White Bill, the Administration has been fully alive to the need for a balance to be struck between the rights and freedoms of the individual and the requirements of an effective and workable Bill. Before the Blue Bill is introduced into this Council, we will of course ensure, to the best of our ability and knowledge, that it complies with the Letters Patent and is consistent with the International Covenant on Civil and Political Rights as mirrored in the Bill of Rights. Equally important, we will ensure that the Bill is one which is truly effective and workable.

Mr Deputy President, I support the motion.

SECRETARY FOR SECURITY: Mr Deputy President, I have listened very carefully to the views expressed by Members this afternoon on the Organized Crime White Bill. Like the Attorney General, I thank Members for their support for this vital legislation and the many insightful comments made. We have not rushed this Bill, nor do we naively believe that the Bill will solve all the problems we face with organized crime.

Tonight marks in effect the end of the consultative period on the White Bill. Over the past five months we have received around 30 written submissions from the public on the Bill -- quite a number have been from professional bodies and concerned groups. These are in addition to the views expressed when we have visited district boards and District Fight Crime Committees. We are impressed by the quality of the submissions, as indeed by the quality of the debate this afternoon.

We all agree that organized crime is a serious problem in Hong Kong. Public concern about the threat from triads is real, and it is valid. Although much organized crime is the work of triad groups, not all such crime is perpetrated by members of criminal syndicates bound together by triad rituals. There are other non-triad crime groups who engage in organized crime. Some of these groups are constituted by a few criminals who associate together to commit crimes repeatedly.

The definition of organized crime group in the Bill has been drawn up with these characteristics in mind. Some Members are concerned that the definition is too wide and potentially open to abuse. My response to this is that we believe the definition

reflects the reality of organized crime groups in Hong Kong. The Bill will only be used in respect of persons who have committed the offences set out in the Bill, as the Attorney General has just stated.

The Bill defines an organized crime group as a triad society or two or more individuals associated together to repeatedly commit the offences set out in Schedule 1 of the Bill. Mrs FAN has suggested that what "repeatedly commit" means should be clarified. I agree that there is merit in this suggestion and we will bear it in mind. Mr MAN Sai-cheong and Mr James TO have indicated that we have not defined organized crime. I believe we have; this is implicit in the definition of an organized crime group as one which repeatedly commits the offences in Schedule 1 of the Bill. Schedule 1 lists the offences which are commonly engaged in by such groups. Sometimes the objectives of organized crime are based on a desire for revenge or to inculcate fear in ordinary citizens. However the primary objective is a financial one. Organized crime groups engage in a range of illegal business enterprises which yield profits. In Hong Kong such enterprises range from drug trafficking, as Prof LIEH MAK has noted, to operating illegal gambling, robbery and blackmail. These offences are set out in Schedule 1 of the Bill.

Mr Moses CHENG has suggested that this Schedule should be expanded to include criminal intimidation. Others have suggested burglary, and illegal import and sale of firearms. Certainly, we will take into consideration these comments when revising the Bill.

Mr Deputy President, organized crime represents a particularly insidious threat to law and stability in our society. Mrs FAN and Prof LIEH MAK have described this threat very vividly: the extortionate demands made on hawkers, shopkeepers, public light bus drivers and others who wish to conduct their daily business without being subjected to threat or fear from those who engage in organized crime. Given this serious criminal environment, the Bill proposes tough penalties for persons who commit the organized crime offences. The Bill provides for a doubling of the maximum period of imprisonment for persons who are associated with or are members of organized crime groups, and who have committed the offences specified in Schedule 2 of the Bill.

A number of Members doubt whether the proposed doubling of the imprisonment period is necessary. They point out that some of the Schedule 2 offences can already be punished by life imprisonment. Some suggest that heavier sentences should be imposed on the main offender rather than accomplices. Let me assure Members that we will

not include in the organized crime legislation any provision which will result in the defendant being punished twice. The court will no doubt take into account the circumstances of each case before handing down sentences. Our objective is to prescribe penalties appropriate to the gravity of the offence. From the comments we have received from the public we know that there is support for the penalties proposed.

A notable feature of organized crime is that it can generate enormous profits for the perpetrators. In many cases these profits are laundered into legitimate businesses. The Bill makes it an offence to launder money for a member of an organized crime group. The Bill also has provisions to deprive offenders of their benefits from crime. These provisions are based on the experience we have had over the past two years with the Drug Trafficking (Recovery of Proceeds) Ordinance, Cap 405, and are intended to help destroy the economic power of organized crime syndicates. This is a primary objective of the legislation we propose.

There is general support for the money laundering and confiscation provisions in the Bill. The main comment we have received is that it would be difficult for employees of banks and other financial institutions to identify whether their clients are members of an organized crime group. Some believe that the requirement to report would create an unnecessary burden for financial institutions. There is a suggestion that banks should not be vicariously liable for the acts of their employer. Let me make the position clear: the Bill creates a new money laundering offence, not a new reporting duty. If a person fails to report a suspicious activity, he does not commit an offence. In fact the reporting system in the Bill seeks to safeguard financial institutions from incurring legal liabilities should they report a suspicious transaction.

On the confiscation provisions, some Members have suggested that judging from the experience of Cap 405, confiscation orders are difficult to enforce. The initial freezing of assets could be followed by long drawn out procedures with no certainty of success, and there should be general money laundering and confiscation legislation targeted at all serious crimes.

My response to these comments is that amendments to Cap 405, including inter alia the money laundering and confiscation provisions therein, are being finalized with a view to making them more effective. We are giving consideration as to whether it would be appropriate to incorporate the amendments into the organized crime legislation.

In a separate development there may be challenges to the money laundering, confiscation and investigation powers provisions of Cap 405 early in 1992. As the courts consider these matters we will be in a position to examine the judgments to obtain guidance as to how the Bill of Rights is to be interpreted in Hong Kong. It may well be that we will have to modify our proposals in this legislation in these areas in the light of court rulings.

We are also examining the possibility of drawing up general money laundering and confiscation legislation in respect of all crimes.

May I reassure Mr Simon IP on his comments in Parts III, IV and V of the White Bill that these will be carefully considered.

A very large number of Members have said that they are very concerned that the Bill will not be effective in dealing with godfathers. This Bill intends to tackle members at all levels of organized crime, including the godfathers. I do agree that it is easier to arrest and prosecute young people. Young people tend to be the foot soldiers of the organized crime groups. We must warn them away; we must help them to be rehabilitated, as Mr Eric LI has suggested. But if the generals do not have foot soldiers, they themselves will not be effective. Let me assure Members that it is the Government's intention to arrest and prosecute godfathers whenever possible, no matter how respectable they may appear to have become in Hong Kong's society today.

We hope that the proposal on corroboration will help us to effectively prosecute godfathers. And we are also confident that clause 4 of the Bill which makes it an offence to conspire with and assist organized crime group members to commit Schedule 2 offences will strike at the architects of organized crime.

There is support for the proposal to amend the rules on joinder charges to enable the prosecution to present a full picture of the criminality charged. Some Members, however, consider that this may have a prejudicial effect on the defendant, and also that this could lead to longer and more complex trials. These are valid concerns. Mr James TO and Mr Eric LI have proposed that there should be proper channels for triad members to renounce their triad membership so that they will not be caught by the Bill. To this end there are calls that the Triad Renunciation Scheme should be reactivated. My view is that if a triad member has genuinely severed his links with a triad society, has not engaged in criminal activity, and has since led a proper

life, the evidence of such will obviously work in his favour when the court comes to decide if he has relinquished his triad links. The Triad Renunciation Scheme has ended; because to allow it to exist on a long-term basis would encourage triad members to delay in coming forward to renounce their membership. We are also concerned that triad members might abuse the scheme by renouncing their membership to avoid a specific prosecution, and once this was out of the way, thereafter rejoining the triad society.

Mrs Selina CHOW, Mr Martin LEE, Mr Simon IP and others are concerned about police morale and resources. The Bill has been motivated by the police themselves, and court prosecutors, who see the gap in our current legislation and the need to improve our fight against organized crime. I have no doubt that the enactment of this legislation will help police morale. Resources will be provided but the police must continue to use their existing resources efficiently.

Members have also been concerned about report procedures and the protection of witnesses. These are important considerations and are being examined by the Security Branch, the police and the Fight Crime Committee.

I am most grateful for Members' support for our efforts to combat organized crime. I will take fully into account the comments that Members have made this afternoon. As the Attorney General has said, we will also ensure that the revised Organized Crime Bill, which we would plan to introduce into Council next year, will take full account of the Bill of Rights implications.

With these remarks, Mr Deputy President, I support the motion.

MRS RITA FAN: Mr Deputy President, I am grateful to the Members who have participated in this debate and their support for the motion. Two messages came out very clearly in this debate. The first message is that legislators are prepared to support an effective Organized Crime Bill. By effective we mean that, firstly, the legislation is able to hit at the heart of organized crime and apprehend the godfathers of the underground rather than just the small fry, and secondly, the legislation must be able to stand the test of the Bill of Rights. On the latter point, there seemed to be two slightly different views; the difference is one of emphasis. One view is that any clause in the White Bill which, in the view of any Member, may sit uncomfortably with the Bill of Rights should be discarded. In other words, the clause concerned

should not have the chance of standing the test of the Bill of Rights in the courts because it simply will not be enacted. The other view is that the Organized Crime Bill should be drafted in such a way that the chances of its clauses being struck down by the Bill of Rights provisions are reduced to a bare minimum as far as possible and as far as practicable based on the most recent experiences and the most recent court rulings. The Bill and any of its clauses, when enacted, will stand the test of the Bill of Rights when challenged in court. Any lawyer can tell us that there is no sure win in any court case. But if we believe that on balance the odds are in favour of the Organized Crime Bill then we must face the test of the Bill of Rights with confidence. Personally, I support the latter view.

The second clear message is that we need a comprehensive strategy to fight organized crime. While legislation such as the Organized Crime Bill is an important tool, the intelligence system, the resources available to the police and other law enforcement agencies, their morale, their investigatory power, the creation of a relatively secure atmosphere for the witness, the length of sentences passed by the courts and many others are all equally important in keeping triads and gangs under control. However, we have to be realistic about the problem of organized crime -- the roots of triads go back a long way in history. The present-day organized crime groups are much more sophisticated. As we find new weapons to hit them, they are also finding new means to achieve their end. They make full use of the loopholes in the law; they buy top-class expert and professional advice to further their business. In some countries they are even able to buy politicians and officials. If we are to reduce their influence and keep them under control, we must be on guard at all times.

The fight against organized crime is a continuous one and we have a long way to go. Today's debate is just one step along that road. I sincerely hope that further steps taken on that road will be taken with courage and determination, in a resolute and firm manner and in the right direction, with the full support of the community.

Question on the motion put and agreed to.

Adjournment

CHIEF SECRETARY: I move that this Council do now adjourn.

DEPUTY PRESIDENT: Mr HUI Yin-fat has given notice to raise a matter for reply by the Government. Could I remind Members that in an adjournment debate there are 45 minutes for Members to speak. At that point or after all the Members wishing to speak have spoken, whichever is the earlier, I will call upon the Secretary for Health and Welfare to reply.

Measures to prevent children from being left unattended at home

6.18 pm

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, my original speech should last for eight minutes; but since more than 10 Members would like to speak on this subject, I will only dwell on the concern for this matter.

In Hong Kong, about 30 to 40 children under the age of 10 die annually as a result of being left unattended at home and that is why I raise this subject for today's adjournment debate. The Social Welfare Advisory Committee is also very concerned about this and has, after long deliberation, worked out a plan for public consultation. The four-pronged approach of the plan includes the improvement to child care and support services, the establishment of mutual help groups, the promotion of public education programmes and the enactment of legislation.

Despite the massive infrastructural project, the Government should not lessen its commitment to child care service; instead, more funds should be set aside for the expansion of this service. The Government should do its best to promote and help establish self-help groups, develop women's associations and encourage neighbourliness and mutual help. With the help of public education, the Government can, via the mass media, make the parents and the public realize the serious consequence of leaving children unattended at home and inform them of the necessary preventive measures and the availability of child care services.

As to the proposed enactment of legislation against leaving children unattended, the experience overseas shows that legislation can make parents aware of their responsibilities and discourage them from making hasty decisions just for a moment's convenience. Meanwhile, people in the same neighbourhood are also duty-bound to notify the Government or the voluntary sector of what has come to their knowledge

so that they may seek appropriate assistance when needed. The enactment of legislation may have a deterrent effect; it may also remind and educate parents against leaving children unattended at home.

To sum up, Mr Deputy President, the Government, parents and members of the public have a duty to care for the safety of young children and, more importantly, concerted efforts should be made to avert the occurrence of fatal accidents involving children being left unattended at home.

With these remarks, I raise this subject for discussion during the adjournment of this Council. May I also thank Honourable Members for their concern.

MRS SELINA CHOW (in Cantonese): Whether legislation should be introduced to force parents to look after their children is really a controversial issue. Those who oppose legislation have attempted to lobby the Legislative Councillors to support them. Both sides do have their reasons, whether they are against or for it.

I think it is natural and instinctive for parents to look after their children. Under normal circumstances, society should not force parents to fulfil their obligation by law. Therefore, I am, in principle, against the introduction of legislation to prevent parents from leaving children unattended at home. Existing child care facilities in the territory are very inadequate and parents therefore have no choice at all. Besides there is insufficient public education in Hong Kong. Unless the Government strives to strengthen its work or encourage other people and organizations to carry out the above two tasks, it will be unfair, simply through legislation, to put all the blame on parents without giving them any assistance.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, the Social Welfare Department's consultative paper on "Preventing Children from Being Left Unattended at Home" puts forward the possibility of penalizing the parents through legislation and generally arouses public and parents' concern over this problem. However, in view of the present inadequacy in supportive social services, legislation as a means to solve the problem of unattended children is a negative and an impractical approach.

Owing to financial needs, families with working couples have been a common phenomenon in various strata of our society. Many parents have no alternative but

to leave their children unattended at home. If the Government forces legislation through to punish parents who leave their children unattended at home, many families would be unduly affected and their financial burden would become heavier. In other words, the social problems created would be more than those solved.

Under certain circumstances, accidents happened to children are due to neglect on the part of the parents. But it is futile to punish these parents and legislation does not necessarily serve as an effective deterrent. No parents hope that their children will meet accidents and accidents happened to the children are the cruellest punishment to the parents already. Extra legal sanction is inhumane and unreasonable.

Once the legislation has been passed, great difficulties will be encountered in enforcement and there will be technical problems such as how to define the age of the children to be protected, how to define the responsibilities of the parents in caring for their children and who can actually enforce the new legislation.

Therefore, in view of the inadequacy in supportive social services, the Government should not resort to legislation in order to solve the problem of unattended children. The Government instead should

- (1) fully implement unisessionalism in kindergartens and primary schools, which may help the parents care for their children to a certain extent;
- (2) strengthen child care services. At present, child care services fall far short of demand. Therefore, the Government should develop various child care services at reasonable charges in line with the needs of parents, like kindergartens, creches, nurseries, after-school care programmes and occasional child care;
- (3) establish and strengthen mutual help network through district boards, area committees and district bodies in providing care for children; and
- (4) promote family and public education so as to arouse the parents' and the children's awareness of home safety.

Mr Deputy President, I so made my submission.

MRS MIRIAM LAU (in Cantonese): Mr Deputy President, for many years, Hong Kong has been faced with the problem of unattended children meeting with accidents. Over the past three years, 80 children were accidentally killed when left unattended. This is a distressing fact reflecting the seriousness of the problem.

We should protect our young ones from harm. This is the common desire of parents and the community at large as well as the right of the children. However, tragedies still happen every now and then.

In order to prevent recurrence of such tragedies, I think the Government, the community and parents should take up the responsibility and take actions in various aspects:

(1) Child care services should be stepped up. In this respect, I think the Government should improve the existing planning ratio for day nurseries and expand the child care services provided or subvented by the Government. In addition, the private sector should be positively encouraged to provide or arrange such services for their employees.

(2) Occasional child care services should be improved. At present, there are only 53 occasional child care centres providing 160 places throughout the territory. Though the provision of service falls far behind the actual demand, the utilization rate of occasional child care service is about 40% only. In my opinion, utilization is on the low side due to many factors which include lack of publicity, insufficient number of occasional child care centres, strict admission criteria and high charges. I think the Government should extend the facilities to more districts and increase the number of places, make use of the mass media to widely publicize the service, simplify the application procedures, reduce the charges and allow greater flexibility in the service hours so as to really give help to parents who are in need of occasional child care services.

(3) At the district level, we should encourage and promote the spirit of mutual aid among the neighbours who can take care of the children on an occasional basis. The Housing Department should be urged to allot suitable venues in various housing estates for the provision of occasional child care service which will be managed by voluntary agencies. Civic-minded residents will be encouraged to participate as volunteers on a shift basis.

(4) Family life education and home safety programmes should be further promoted, so that the public will be aware of the danger of leaving children unattended.

(5) Legislation should be introduced to alert parents to the problem. Actually, apart from the Government, parents should also take up the responsibility to protect their children. In the past, some accidents happened because of negligence on the part of parents. According to a survey recently conducted by the Government, some parents leave their children at home unattended merely for the sake of convenience. Some even do so because they go out to find entertainment themselves. They just do not feel that there is anything wrong with leaving children unattended at home; even if they do, they may perhaps be tempted to try their luck. For these parents, I think it is necessary to introduce appropriate legislation to educate and remind them. But in view of the fact that some parents are forced to leave their children unattended at home as they have to go out to work, the relevant legislation must not be too rigid. I believe it will, to a certain extent, have educational and deterrent effect if flexible provisions are introduced to stipulate that parents or guardians must not leave any child under a certain age unattended in any place unless appropriate arrangement has been made to protect the child from harm. To put it in another way, if arrangements have been made by the parents for their children, the act of leaving children unattended at home should not constitute an offence. The aim of legislative measure is prevention rather than punishment.

Mr Deputy President, these are my remarks.

MRS ELSIE TU: Mr Deputy President, I suggest that two actions are necessary on the problem of unattended children.

Parents could help themselves by family planning in the first place. If they know that one breadwinner cannot support several children they should either reduce the burden by having fewer children, or alternatively plan how their children will be properly taken care of. They could find out what services are available in their district, or arrange for relatives and friends to assist. But on no account can parents be excused for leaving the children at home unattended. The risk of death or injury is too great, and the risk of the children being led into gangs because they feel abandoned is too high. Fundamentally parents are responsible for making arrangements for their children's welfare once they have brought them into the world. If they wilfully fail to do so, I believe that they should be compelled by law to

face up to their responsibilities.

There is a problem, of course, of the one-parent family. Single parents deserve more sympathy after the loss of the spouse by death or divorce. The government departments will always refer such families for public assistance. But it is not the best way for most Hong Kong parents. By working, they can provide a better living for their children. By accepting public assistance they may find their children suffering from inferiority complex when they compare their lifestyles with that of their peers. Such children are always at moral risk. These are the children for whom the Government must make provision. I think social workers should be required to arrange for these children to be placed in day centres while the single parents work to provide the best possible lifestyle that they can afford.

Sometimes, the problem of the one-parent family can be solved by housing transfer. A young single parent living in public housing in the New Territories may have relatives or friends in the urban area who would be willing to take care of the children. Theoretically transfers can be provided, but it takes too long for the system to move, and sometimes it does not move at all.

Mr Deputy President, there must be the deterrent of possible punishment for parents who wilfully neglect their children, and there must be a more caring attitude by the Government in giving more urgent support to those parents who face with the problem of leaving their children unattended.

MR PETER WONG: Mr Deputy President, unattended children tend to belong to two kinds of parents -- the helpless and the ignorant. Mrs CHAN, aged 35, a hawker, looks after two children aged five and 10. Like many of the 100 000 single parents in Hong Kong, she is not endowed with domestic help that will ease her burden as a working mother. And like the average Chinese parents who adore and indulge their offspring, she would not willingly leave them alone at home to attend to urgent tasks if only she has an option. For parents like Mrs CHAN, legislation seeking penalty for child neglect would be a travesty.

On the other hand, Mrs WONG, aged 22, a part-time restaurant worker, often leaves her three-year-old daughter unattended, quite unaware of the danger to which her child is being exposed. It cannot be said that Mrs WONG wilfully neglects her child when she, applying the same child care method inherited from her mother, is not convinced

that her way of caring is wrong. We must face the reality that not all parents can, and will, take care of their children properly; and they will continue with their standard of care unless there is a law against it.

Under such circumstances, legislation is more effective than education in influencing people's thinking. Enacting legislation aimed at optimizing education and deterrent effects must be the first step to be taken by the Government to give children a normal childhood free from risks of physical injuries and loss of life. Caution should be taken that the legislation must be enacted in clearly understood terms if it is to be enforceable. Law drafters should also take heed that legislation will only have short-term deterrent effects if punishment is not enforced. However, bereaved parents whose children are injured due to negligence need no further punishment other than a nominal criminal sentence and fine in money. In this regard, penalty for offences ought to be lenient.

To enforce the legislation, more publicity efforts are needed to promote the legal provisions and the moral concepts behind it. In Hong Kong, unless disasters strike, people do not see the seriousness of the problem. What we need are long-term public education efforts to alert parents to the importance of responsible parenthood and the need for safety measures to protect young children.

For people like Mrs CHAN, direct subsidy is required to enable them to choose whatever child-minding services most suited to their needs. Efforts must be made to meet the urgent shortfall of 10 000 child care places. More occasional and temporary child care places with convenient opening hours and flexible charges should be made available at our schools, factories, offices, hospitals and all housing estates. In addition, I fully support the use of innovative support services in various formats, featuring a flexibility of approach and good use made of community resources.

In tackling the problem of unattended children, nothing short of a three-pronged approach featuring legislation, publicity and support services can give our children the kind of protected, healthy environment to which they are entitled.

PROF EDWARD CHEN: Mr Deputy President, in contrast to many of my colleagues, in my view, legislation is an effective measure to reduce the number of cases of children being left unattended at home, though admittedly it must not be the only measure to be undertaken. Prohibiting children left unattended at home is required not only

for the purpose of protecting the children. Legislation should have significant educative and deterrent effects and it can further be justified on the ground that the hazards, for example fire, arising from children left unattended at home can produce negative externalities or harmful effects on neighbours. This is analogous to drunken drivers being severely punished because of the danger imposed on others. Mandatory seat-belt fastening is required not only for the protection of individuals but also because unnecessary injuries will burden the community with extra medical resources and the economy with loss of man-hours.

For the legislation to have greater deterrent and educative effects, separate legislation specifically to prohibit parents from leaving children unattended should be introduced. The child's upper age limit can be set at 10 on the basis of the statistical finding that leaving children aged between two and 10 unattended at home is the most hazardous. The legislation should empower police officers and social welfare officers to enter premises for the purpose of investigation. The power of entry already existing in section 16 and section 44 of the Protection of Women and Juveniles Ordinance is only meant for serious cases of suspected child abuse. However, it is not advisable to impose a statutory obligation on all persons to report the cases of unattended children. This is difficult to enforce and is not in the spirit of Hong Kong Law. People should be educated about the seriousness of leaving children unattended at home and the potential hazards to neighbours so that they will be more conscious of reporting such cases.

It should be pointed out that in those countries where such legislation exists, prosecution is seldom undertaken. But this does not necessarily imply that policing and enforcement of the legislation are difficult or even impossible. It is largely because welfare departments in those countries prefer to settle the problems by informal, non-judicial measures.

Legislation must of course be accompanied by increases in the supply of child care service. But in some cases the problem arises from the planning and design rather than from an inadequate supply. The provision of occasional child care service is a case in point. When it was first introduced, the utilization rate was only 12%. With a greater geographical spread and simplification of admission procedures in the second phase, the rate went up to 44%. However, the provision of just 150 occasional child care places in the entire Hong Kong is grossly inadequate. This scheme must be expanded the soonest with the following changes undertaken: (1) the age group should be extended from two to six to two to 10; (2) the geographical

spread should be widened and more places be provided in the new towns where the 1991 census results indicate high proportion of younger and lower income population; (3) some of the youth centres can be integrated with the proposed child care centres to achieve economies of scale; (4) the existing charges of \$25 for a half-day and \$50 for a full-day care service should be made more flexible; I recommend that a charge of, say \$5 per hour be introduced so that parents could find it affordable to leave their children in these centres when they need to do some day-to-day errands.

The Government must recognize that better and more child care service is necessary not only for the promotion of child welfare, but also for the prevention of community hazards and the encouragement of female labour participation. In economics jargon, the provision of child care service generates significant externalities or external benefits and hence more government attention and subsidy in this area are perfectly legitimate.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, I am opposed to the enactment of legislation to punish the parents who leave their children unattended at home. However, I am in favour of the Government taking cognizance of and addressing the problem of children being left unattended at home.

With the proliferation of "nuclear" families in Hong Kong, care of children has fallen solely on the shoulders of parents and none other. Well-off families can afford to hire Filipina maids, or grandparents can be relied on to help if they are available. But in the case of low income parents they sometimes have no alternative but to leave their children unattended at home.

I have four points to make regarding this consultation paper. First, the authorities should furnish the relevant data so that the public will know the supply and demand as well as the location of the various support services or facilities. In the present circumstances of an acute shortage of support services, it would not be practicable to enact legislation to prohibit the leaving of children unattended at home.

Secondly, many of the parents who leave their children unattended at home do not do it out of wilful neglect: they do it because the need to go out for work to make a living has left them with no alternative. Not only would legislative sanctions fail to have an educative and deterrent effect, but they would also cast a punitive

shadow over the minds of parents, thus subjecting them to heavy stress.

Thirdly, if the authorities cherish the hope that the difficulty in enforcement could be overcome by neighbours' vigilance and willingness to report, I would point out that reporting would derogate from the spirit of establishing good neighbourhood relations and mutual help. Therefore I feel that the foremost thing the authorities should do is to provide sufficient support services and community education in order to foster the spirit of mutual help so that the function of taking care of children will be fulfilled through the family institution.

Fourthly, I am of the view that the law should be reviewed so that legal sanctions could be applied against a handful of irresponsible parents. We have laws on the statute books which could be invoked in dealing with the present problem. The key lies in the interpretation of the term "wilful harm". If we would look to our present laws to find ways to deal with the present problem, I think we would be able to find it.

Finally, I would call upon the people of Hong Kong to actively and positively discuss this problem and reflect their views to the Government directly.

DR LAM KUI-CHUN (in Cantonese): Mr Deputy President, I think we should consider, within the scope of this discussion, which kind of supporting service should be developed as a matter of priority. The first thing that we should think about is whether the child is more at risk being left alone at home by working parents who are away for long periods of time or by parents who are away for short periods of time, on a daily basis. The Government does not have statistics on this issue, but my guess is that, insofar as working parents are concerned, they will think of ways of looking after their children left at home, for example, in terms of taking care of their physical needs, from lunch at noon to toilet training, and so forth. The problem is really with parents who have to leave home for a short time to attend to some urgent business. It has never occurred to them that they could use occasional child care service which may be available. It is this category of parents which makes children left at home the more vulnerable. It is for this reason that I feel that there is a need for the supporting services to be developed with an emphasis on occasional child care service.

According to government figures, we have 53 occasional child care centres catering to a total of 159 infants at any one time, on a territory-wide basis. However,

it is estimated that each day there are about 25 000 people who want this kind of service. The service should have been as over-subscribed as newly completed housing flats, for which lots have to be drawn for allocation to home buyers. But in reality, these occasional child care centres are often under-utilized. Why is it that they remain to be under-utilized, despite stepped-up government publicity in recent months and the relaxation of their admission terms? Let us do some simple arithmetic here. With no more than three centres in each district, the occasional child care service is very inconvenient, and not tailored to the needs of the parents who are away for short periods of time. In order for the service to be made available to every needy parent, it has to be provided at a centre located at each housing estate/neighbourhood. This level of service provision is of course impracticable due to the vast amount of resources involved.

The only practicable way is for the neighbourhood to develop mutual help. I think the Government should set up some organizations at the neighbourhood level such that the neighbours may help each other with the baby sitting, in a spirit of mutual help, to put an end to the problem. Since we are talking about a spirit of mutual help and neighbourly goodwill, it may be counter-productive for us to legislate to achieve this. As Mr Frederick FUNG has said just now, legislation will lead to neighbours reporting on each other's failure to comply with the law, which will defeat the purpose of promoting neighbourly goodwill, and the whole thing may even backfire.

I have four reasons against legislation. First of all, to quote Mr FUNG again, "No one wants to bare their scarred head, unless he is bald." If I have a lot of money, I will hire a Thai maid to look after my son, and a Filipina maid to play with him, and this way he will certainly not be left unattended. The small child is left at home on his or her own just because the parents do not have the means to hire a baby sitter. Legislation will be most unfair to the lower income groups.

The other three reasons are in fact very simple. The Government has already made it clear that, even with the legislation in place, there is no precedent of prosecution anywhere in the world. If there will be no prosecution even with the legislation, there is no deterrence to speak of. Given that this is the case, the parents will probably react by saying, "We do not give a damn."

Meanwhile, let us look at the deterrence of the penalty. It is unrealistic to expect the parents to be more terrified of the fine of a few hundred to a thousand dollars than of the scenario of their family perishing in flames (due to their

negligence). It is equally ludicrous to think that locking up the offender in jail for a few days will achieve a deterrent effect that the scenario of the whole family perishing in flames cannot. Parents will probably react by saying, "Are you really serious?"

The last point I want to make has to do with police strength. Although I was not in this Council during its last Session, I understand that homosexuality was one of the issues which had been deliberated upon in much the same way as the present issue of young children being left at home on their own is being discussed in this Session. We understand that homosexuality may lead to AIDS whereas leaving children alone at home may lead to family tragedy. Death may be the result of both, but prosecution is very difficult. This Council decided in its last Session in favour of decriminalization on the ground that the police did not have adequate strength to deal with cases involving homosexuality but it seems that in this Session, it has decided to criminalize an act of negligence which has so far not been considered to be illegal, much to the bafflement of the police, I would have thought.

On the above grounds, Mr Deputy President, I think that neighbourly mutual help and public education will provide a major solution to the problem.

DEPUTY PRESIDENT: Yes, Mr WONG.

MR ANDREW WONG: Mr Deputy President, could I ask you to rule on Dr LAM's reference to the two types of female domestic helpers? I submit that the way the reference is worded might, in Cantonese, sound offensive and thus might call for your direction to have it struck out from Hansard.

DEPUTY PRESIDENT: I did not catch the Chinese version.

MR ANDREW WONG: Mr Deputy President, I would not like to repeat it, but I can write it out for you.

DEPUTY PRESIDENT: But what is the objection assuming that the language causes you concern, Mr WONG? Is it a point of order?

MR ANDREW WONG: It is a point of order, Mr Deputy President.

DEPUTY PRESIDENT: What is the point of order, Mr WONG?

MR ANDREW WONG: I would say it is unparliamentary language.

DEPUTY PRESIDENT: Mr WONG, I have had the benefit of assistance from the Clerk. As has been explained to me, I do not think the characters used are offensive. I am not prepared to rule that I should strike these out.

DR CONRAD LAM (in Cantonese): Mr Deputy President, theory and practice are two different things. I would only like to dwell on facts. Since the publication of the consultation paper, many individuals and group representatives in my constituency have come forward to express their views on this matter; these people share some common characteristics which are:

First, they are overwhelmingly enthusiastic; secondly, they are all females and some even came to me carrying children with them; thirdly, most of them are from lower income families; fourthly, they all have strong views against any legislation preventing children from being left unattended at home.

Mr Deputy President, the spirit of this consultation paper is child protection. Children are the future masters of our society; child protection is therefore not only the responsibility of the parents but also the Government's obligation. So it would be unfair if legislation were introduced to punish the children's minders who are in most cases mothers; or, in the same situation, should the fathers who have to go to work or the Government who has failed to provide adequate child care services be punished as well? Child care legislation may have undesirable effects in that educated or skilled women will have to return home from factories or offices to become full-time housewives, forcing them to stop contributing their services to the community. This would not only be a waste in human resources but also a deterioration of the quality of living for individual families. Statistics indicate that

government spending on child care services has been insufficient in the past 10 years. In this case, I would say that the Government should step up child care services so that occasional child care services, at a reasonable charge, will be provided at suitable venues such as multi-storey markets, community centres and housing estates. The Government should also, by way of tax relief, encourage employers of large companies to provide child care facilities at offices or factory places so that employees can bring along their children to work. The Government can also take the lead in providing the civil servants, if necessary, with suitable child care services.

Someone has told me that the wastage of nurses may be alleviated if child care services are provided in hospitals by the Hospital Authority.

Mr Deputy President, the 14 Members from the United Democrats of Hong Kong will not support any legislation preventing children from being left unattended at home which we consider to be not only a negative approach but unrealistic into the bargain. The United Democrats suggest that the Government should formulate a well-conceived child care policy and actively promote child care services with the object of realizing the spirit of protecting the future masters of our community.

MR NG MING-YUM (in Cantonese): Mr Deputy President, Dr the Honourable Conrad LAM told this Council a while ago of the views residents of the older urban areas had on this matter; I would however like to reflect the views of the new town residents who happen to be in accord with their urban counterparts against any legislation to penalize parents of unattended children. To put it in a few words, residents of the new towns consider that support services should be expanded while penalty to parents withdrawn.

The following are the residents' reactions which I gathered while attending several seminars or forums. Some people said, "This is typical government posturing -- important tasks are beyond the Administration's ability while small matters have been left unattended by them. Wouldn't it be superfluous to introduce legislation to penalize these parents?" Many housewives even came to me and said, "Who would like to leave their children behind if they can afford to do otherwise?" We wonder if there are parents who prefer leaving their children unattended at home. But reality is harsh; it gives us no choice. We have to earn a living and are virtually left without choice but to leave our children behind despite possible arrest and prosecution by the authority. Wait till it happens." These words may perhaps sound

a bit emotive but they are the true reflection of public feelings and reactions, to which due attention should be given.

Take for instance Tuen Mun, Yuen Long and other new towns. Many families in the districts are young families with four to five members. It is not uncommon that the housewives, though their husbands are out to work, have to take up part-time jobs to contribute to the household income. In the case of single-parent families, the father or mother has to perform a dual role of parenting; given no other alternatives, they have to leave their children unattended at home, though not without a gnawed conscience. If legislation were introduced to penalize these parents, would it not be too harsh on them as they would have to suffer double punishment?

Mr Deputy President, I would not like to dwell on theory; many of my colleagues have already spent quite some time on it, in particular Prof Edward CHEN who has expounded his views from a theoretical perspective. I would only like to reflect the position of the grassroots on this matter. As Dr Conrad LAM has mentioned before, the 14 Members from the United Democrats all agree that legislation should not be introduced to penalize these parents; on the other hand, the pressing task before us is to do the following:

1. occasional child care service be expanded and improved to the extent that it is available in every housing estate and delivered in a flexible manner in terms of hours of operation; application procedures be simplified and eligibility criteria or requirements for the service be relaxed;
2. publicity including that on home safety and occasional child care service be enhanced;
3. the existing policy on child care services be comprehensively reviewed.

Thank you, Mr Deputy President.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, what I am going to speak will also represent the views of the honourable colleagues from Meeting Point. Being directly elected Members, we have the responsibility to solicit the views of the public and have them reflected to the Government. Therefore, we had conducted in several public housing estates in the new towns a public opinion survey as to whether

legislation should be introduced to prevent parents from leaving children unattended at home. A total of 517 parents having children under 13 years of age had been interviewed and their views are mainly as follows:

(1) About 55% of the respondents agreed that legislation should be introduced to prevent parents from leaving children unattended at home. It is mainly because this will make parents more alert to the danger.

(2) About 30% of the respondents were against legislation because it will increase the burden of parents who will therefore have to take double penalty.

I would like to summarize in three points the findings of the above survey and the views reflected by the public in some seminars.

(1) Generally speaking, responsible parents do not oppose using legislation to increase the alertness of parents because it will minimize the unforeseeable risks of leaving children unattended at home.

(2) Given the inadequacy of support family services, legislation will certainly increase the burden of many families, particular those with working mothers and single parents.

(3) To introduce legislation against irresponsible parents merits consideration. But many families will be affected. Therefore, this issue needs to be considered more carefully. We believe now is not the right time to introduce legislation. We should go on with our legislation work, but support services and education should also be strengthened and more mutual aid organizations be established. The Honourable WONG Wai-yin will, on behalf of Meeting Point, talk about the difficulties and pressures some new town families are subject to in the matter of child care. Thank you.

MR HOWARD YOUNG: Mr Deputy President, after hearing the collective views of Meeting Point and the United Democrats, I feel relieved to talk about what I think myself. I think the four-prong approach to prevent children being unattended at home is commendable, particularly the first three in promoting good neighbourhood relationships and educating the parents and enhancing child care services. But I personally do not feel that the fourth prong, that is, using legislation to solve

the problem, is very practicable.

I am aware that there are laws in places, such as the United States of America, where it is illegal to leave young children unattended and it does appear to be effective. But in the context of Hong Kong, where people are very reluctant to poke into the affairs of their neighbours and are even more reluctant to come out and reprimand people for littering the streets -- things that one can see openly -- I doubt very much whether we can encourage neighbours to snoop on each other and to report to the police if they see that their next-door neighbour has left a child unattended, which of course is different from the cultural mentality that one finds in some western countries.

If the facts do show that most of the children who have encountered disasters while being left alone are from the lower income group of families and if we are going to rely on legislation, I think the only way that we will discover these cases of leaving children unattended is when a disaster has already happened, and this will be almost like shutting the stable door after the horse has bolted and be double penalty to many of our lower income family groups. Therefore I personally think that although the intention is commendable I fear legislation will not work and will not be enforceable.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, I shall be very brief because the Honourable NG Ming-yum who comes from the same constituency as mine has said most of what I am prepared to say.

New towns in the territory are characterized by a large number of young couples. Husbands have to go to work early in the morning and return home late in the night. Wives have to take on the responsibility and bear the pressure of doing all household chores and bringing up children. Parents living in new towns generally have several young children and a rather low education level. This phenomenon is probably the result of some Housing Department policies. Many new immigrants are eager to have more children because they want to fulfil the eligibility criteria for public housing -- the majority of the family be Hong Kong residents. The living environment of public housing estates is rather crowded and parents often have to let their children play in the corridor or leave them at home. Such being the case, accidents sometimes occur.

In fact, child care services in new towns are very inadequate and the operating hours of child care centres fail to meet parents' needs. As regards the Occasional Child Care Programme, factors like inadequate publicity, high charges, complicated application procedures, remote location, insufficient places, and so on, have made the programme impracticable. This will increase the difficulty and pressure of single-parent families. A saying has it that: "Animals as fierce as tigers will not eat their own children". I believe no parents would wish to see accidents happen to their children. In fact, most of the accidents were incidental. The purpose of legislation is to punish irresponsible parents. However, parents living in new towns will therefore have to face greater difficulties and bear greater pressure. What is more, legislation will have little deterrent effect on real irresponsible parents. Therefore, before the introduction of legislation, I think, the problems of bringing up children and the pressure of livelihood facing many new town families need to be carefully considered. It is hoped that parents be assisted in bringing up children, so that they can live and work happily.

Thank you, Mr Deputy President.

7.02 pm

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I am grateful for the views expressed in this timely debate. If I may hark back to a previous debate on a similar subject this year, in the debate on child care services in this Council on 17 July, some Members expressed concern about parents leaving their children unattended at home. I informed Members then that the public would be consulted on measures to prevent such cases. A three-month consultation has taken place since 1 October 1991. By the end of November, all district boards had discussed the issues set out in the relevant consultation paper. Professional legal bodies, the Hong Kong Council of Social Service, women associations and education groups have also been consulted. So far, the Social Welfare Department has given 77 briefings to local groups and received 15 written submissions. More submissions are expected to come in in the next two to three weeks. At the end of the consultation period, all views received will be assessed, and the advice of the Social Welfare Advisory Committee will be sought on the options in the light of public opinion.

Four major distinctive though not mutually exclusive approaches have been identified in the consultation process. Some urge that child care provision should be stepped up. Others support mutual help services and urge the promotion of better

education for parents. Views on whether or not there should be legislation are sharply divided. It appears that most are not in favour of legislation and I think I have lived long enough in life to appreciate that there are always more than two correct ways of looking at a problem.

I am very grateful that Members have decided to hold an adjournment debate today on this subject before the public consultation period is over. This certainly helps the community as a whole to focus its mind on the issue. I wish to reassure Members that child care is and will continue to be our primary concern. We look forward to receiving more feedback from the community. Talking about money, this year the recurrent funds for nursery and creche services is \$119.6 million and there will be an increase of \$10.5 million to some \$130.1 million next year for such services. This includes provision for 1 400 additional day nursery places. Additional day nursery places will be provided each year and every year until the demand is met in full.

Members have raised the question of education and publicity. I would like to mention that in addition to the extensive home safety and family life education programmes which are presented periodically, a new television API and posters with the specific message of "Don't Leave Children Unattended at Home" have been produced with the assistance of the Information Services Department. A major publicity campaign on child care is being launched. Obviously we need a sustained effort and I have taken heed of Members' advice. Indeed the whole consultation period itself might be regarded as a prolonged publicity and education period and has had a very beneficial effect in helping to spread the message to parents not to leave their children unattended at home. Recent cases have also demonstrated that the publicity does get through in the sense that it is heard; but acting on it and taking the appropriate precautions is probably another matter. Time will tell. Publicity and public education therefore have to be a continuous exercise and the Administration is committed to maintaining and to intensifying its efforts in this direction.

Members have mentioned the occasional child care service needs. The occasional child care service has been expanded during this year alone from being available initially at only 15 centres at the beginning of the year to some 53 centres today. The utilization rate has also improved from 12% to 40%. It is the intention to continue to develop this service and adopt the mode of operation to try to make it as convenient and accessible as possible. As advised by many Members, there should be more flexible forms of service in the community to cater to short-term needs. In this respect we will continue to work with the community to identify needs and to

develop approaches through which to build support networks and mutual help among local residents.

Mr Deputy President, I spoke at some length about our policy objectives and existing and planned services on child care during the debate in this Council on the subject on 17 July. I do not wish to speak more on this or to go over old grounds. I believe that Members expect me and my colleagues to listen to their views. This we have done. And we thank Members for their constructive views and invaluable advice. Thank you.

Question on the adjournment proposed, put and agreed to.

Next sitting

DEPUTY PRESIDENT: Before we adjourn I would like to wish all Members and all those attending Council a merry Christmas and a happy New Year. In accordance with Standing Orders I now adjourn the Council until 2.30 pm Wednesday, 15 January 1992.

Adjourned accordingly at ten minutes past Seven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Crimes (Torture) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.