HONG KONG LEGISLATIVE COUNCIL -- 24 June 1992 1

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 24 June 1992

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 DAVID ALAN CHALLONER NENDICK, C.B.E., J.P.

THE ATTORNEY GENERAL
THE HONOURABLE JAMES KERR FINDLAY, O.B.E., Q.C., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., 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 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 SZETO WAH

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, O.B.E., J.P.

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

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

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

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E.

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 HONOURALBE MAN SAI-CHEONG

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 PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

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

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

IN ATTENDANCE

MR DAVID ALAN CHALLONER NENDICK, C.B.E., J.P.
SECRETARY FOR MONETARY AFFAIRS who also acted as Financial Secretary

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR TRANSPORT

MR JOHN CHAN CHO-CHAK, L.V.O., O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

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

MR ANTHONY GORDON EASON, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR PETER LAI HING-LING, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation L.N. No.

Building (Planning) (Amendment) (No. 2)
Regulation
1992.. 170/92

Merchant Shipping (Prevention of Oil Pollution)
(Amendment) Regulation 1992....................................
171/92

Merchant Shipping (Safety) (Minimum Safe
Manning Certificate) Regulation...................................
172/92

Prison (Amendment) Rules 1992...
173/92

Prisons (Amendment) Order 1992.......................................

174/92

Immigration (Vietnamese Boat People) (Detention Centres) (Designation) (Amendment) (No.3) Order 1992................................ 175/92

Immigration (Vietnamese Boat People) (Detention Centres) (Amendment) (No. 3) Rules 1992..................... 176/92

Immigration (Vietnamese Boat People) (Tai A Chau Detention Centre) (Amendment) Rules 1992.. 177/92

Registrar General (Establishment) (Amendment of Second Schedule) Order 1992.................................. 178/92

Securities (Accounts and Audit) (Amendment) Rules 1992.. 179/92

Securities (Miscellaneous) (Amendment) Rule 1992................ 180/92

Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) (Amendment) Notice 1992.. 181/92

Wild Animals Protection Ordinance (Amendment of Second Schedule) Order 1992................................ 182/92

Commissioner for Administrative Complaints Ordinance (Amendment of Schedule 1) Order 1992... 183/92

Revised Edition of the Laws (Correction of Errors) (No. 3) Order 1992.. 184/92

Building (Administration) (Amendment) Regulation 1992... 185/92

Medical Practitioners (Registration and Disciplinary Procedure) (Amendment) (No. 2) Regulation 1992... 186/92

Dangerous Drugs (Amendment of Second Schedule) Order 1992.. 187/92

Designation of Libraries (Urban Council Area) Order 1992.. 188/92

Designation of Libraries (Urban Council Area) (No. 2) Order 1992.. 189/92

Hong Kong Airport (Restricted Areas and Tenant Restricted Areas) Order... 190/92

Pleasure Grounds (Urban Council) (Amendment) Bylaw 1992.. 191/92

Specification of Public Offices.. 192/92

Sessional Paper 1991-92

No. 81 -- Traffic Accident Victims Assistance Fund
Annual Report by the Director of
Social Welfare Incorporated for the year from
1 April 1990 to 31 March 1991

Obituary

DEPUTY PRESIDENT: It is my sad duty to speak today to mark the death of our colleague, Stephen NG Ming-yum, and to pay respect to his memory. He was taken from us at the early age of thirty-six after a courageous fight against illness, despite the sustained efforts of his medical team and the loving support of his wife, family and friends.

Stephen was elected to this Council after dedicated public service as an elected member of the District Board and Regional Council. Already he was making his mark in this Council when he was stricken. He continued to take an intense interest in our proceedings to which he contributed with many questions.

To his widow, children and family, I offer our sincerest condolences. After other Members have spoken, I will ask that we all stand and observe silence for one minute in honour of his memory.

MR ALLEN LEE (in Cantonese): Mr Deputy President, the death of Mr NG Ming-yum is a loss not only to this Council but also to Hong Kong. Harbouring great aspirations, Mr NG served on the district board, on the Regional Council, and, on the current term Legislative Council, having been returned to it through direct election last year. What a pity that when his career had taken off and been soaring from height to height he became stricken with leukemia and passed away. We all feel sorry for his death. Though we have not worked with him for long in this Council, his participation in the Council's business demonstrated his concern for our community's affairs. To his wife and his children I extend our deepest sympathy for their bereavement, and wish them a prosperous future.

MR MARTIN LEE: Mr Deputy President, for the first time in my life, I am making a speech that I do not want to make, as it is a speech that no one likes to hear. The speech that I had deeply looked forward to making was one to welcome NG Ming-yum back to this Chamber, not to bid him farewell.

There are many things that I will forever remember about Ming-yum, a respected colleague, a true friend and a beloved brother. I will remember his personal courage in the face of adversity, the smiling face from a hospital bed in October 1985 that told his attackers: you can beat my body but you will never break my spirit. I will remember his intellect and his balanced judgment which contributed so much to our deliberations. And I will remember his strong principles that never wavered in times when the whole world seemed to be against us.

Yet, the quality I will remember above all is his total commitment to our community. His one object in life was to make our community a better place for all, particularly those who have little, and he was willing to sacrifice himself for our community right up to the very last days of his life, even scribbling Legislative Council questions from his bed in his Room 7 in J8 of the Queen Mary Hospital. His commitment required great personal sacrifices, and I admire and am grateful to his family for the support they gave him, for it was they who suffered from his devotion to community service.

Ming-yum knew that our community was not limited only to Hong Kong. He loved his country as a whole, and he cared deeply about its future. He realized that Hong Kong and China are separated into two systems, but he knew that we are one country. And, he constantly stressed that what we do in Hong Kong is not just for our territory but for our country.

To many, the death of Ming-yum at such a young age is a great tragedy, for he appeared to have lived only half of his life. But life is not measured by the number of years that one has lived, but rather by one's contribution to the community and what one has left behind. Judged by this yardstick, Ming-yum has lived a very full life indeed.

Before Ming-yum passed away, he told us what his last wish would be. And, I would like to close with that today:

Remember, man, thou art dust;
And into dust thou shalt return.

Yes, Lord, let it be.
But let my dust be scattered in
the rolling waters of the Yellow River.
And, when my friends celebrate the triumph of democracy
in our great country of China,
I will know then that the millions of candles
lit in Tiananmen Square will burn for me;

I will glow in their brightness;
And, the bells in the churches will toll for me.

For though I've run but half my race,
I know my brothers will finish it for me.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, first I would like to begin my speech by borrowing a few opening lines from a poem by John DONNE:

"Death, be not proud,
though some have called thee
Mighty and dreadful, for
thou art not so;
For those whom thou thinkst
thou dost overthrow
Die not, poor Death,
nor yet canst thou kill me."

Ming-yum, our good brother, a vanguard of the pro-democracy camp, lived a short life of only 36 years. Yet his 36 short years are glorious, and will always remain so in the hearts of Hong Kong people. The vicious hand of Death grabbed Ming-yum's body when he was only 36. Yet, his zeal for democracy, freedom, human rights and the rule of law will never die. If one could extract by chemical means the elements of democracy and freedom from Ming-yum's body, then I am afraid there would not be much left behind.

Ming-yum has been known to us for well over ten years. To talk about his deeds, his every word and smile would take, I am afraid, far more time than is allowed here;

so I will just cite one or two incidents to illustrate his perseverance and courage in the quest for democracy, freedom and the betterment of people's livelihood.

In 1985, upholding the banner of the pro-democracy camp in a determined move to challenge the vastly influential yet conservative rural interests, Ming-yum stood for election to the Tuen Mun District Board. He sowed the seeds of democracy, but at the same time antagonized local scoundrels. As a result, subsequent to the 1985 elections, he was one day assaulted and hospitalized for serious injuries after meeting his constituents in a City and New Territories Administration Office. Despite this, his determination to fight for democracy remained unwavered; courageously and steadfastly he forged ahead in his political career, seeking more democratic political reforms. This February Ming-yum unfortunately became stricken with leukemia. With unparalleled resolve and will power he fought the battle against cancer. During this period, I know he had never stopped working for a single day. At times he was very tired, yet he would still press on with his questions on democratic development and people's livelihood. His major concerns were, of course, the 1995 Legislative Council elections and the cost overrun of the University of Science and Technology.

I remember Ming-yum's condition took a turn for the worse on the third anniversary of the June 4 incident because he had developed hepatitis. It did not, however, prevent him from asking us to send a wreath for him to the candlelight vigil in Victoria Park to mourn the compatriots who laid down their lives in the June 4 incident.

Now Ming-yum has left us. He had two last wishes, which we will never forget. First, it was his earnest wish to be able to see a free and democratic Hong Kong one day and also a free and democratic China. Second, he hoped we would visit his grave as soon as the Chinese Government reverses its stand on the June 4 incident to tell him the news, and if possible, send a wreath to Tiananmen Square on his behalf.

We are bidding farewell to Ming-yum, but we will always miss him. It is only his body that has left us; his spirit is always alive in every heart that cherishes freedom and democracy.

As Jean CHRISTOPHER puts it: "many of the living in our world are more lifeless than the dead." I take a good look at the people around, and I am convinced how true this saying is. Ming-yum, may you rest in peace!

DEPUTY PRESDIENT: May I ask all present to stand and observe silence for one minute.

The Council observed one minute's silence

Oral answers to questions

Services for the deaf

1. MR LAU CHIN-SHEK asked (in Cantonese): Will the Government inform this Council:

(a) what measures and facilities (such as faxlines for 999 calls) are currently made available to the deaf for making emergency calls;

(b) whether the Government has considered enacting legislation to require TV stations to produce subtitles in Chinese for all news bulletins and information programmes or to provide sign language interpretation services for emergency announcements, so as to facilitate deaf people's access to public information and community news; and

(c) whether the Government has considered providing sign language interpretation services in those government departments engaged in the provision of public services to the community, so as to facilitate better utilization of those services by the deaf?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, this question cuts across the policy purviews of three Branches, that is, Security, Recreation and Culture, as well as Health and Welfare. My reply, therefore, includes input from the other two Branches.

Perhaps I should begin by a general brief mention of the different degrees of hearing impairment. With adequate training and assistance of modern technology such as hearing aids, persons suffering from mild to severe hearing impairment can be taught to communicate orally. Some are also able to communicate through the telephone. However, oral communication remains a problem with some hearing-impaired persons, who are severely hearing-impaired, those who are profoundly hearing-impaired.

As regards part (a) of the question, if a deaf person asks for help through the 999 emergency hotline, his messages will be acted upon as normal 999 emergency calls. Should there be indications that the caller was unable to communicate or should there be other suspicious circumstances, the police will take automatic action to locate the caller, or any other action that is appropriate. 999 emergency calls will not thus present a problem for the police. However, since we know those with serious hearing problem do not normally use telephones, the very existence of 999 emergency call facility may not provide sufficient assurance to them and cater to their needs.

The introduction of emergency telephone-communication service for hearing-impaired persons seems a very good idea. The possibility of installing faxlines for making 999 emergency calls will be pursued.

As regards part (b) of the question, a Radio Television Hong Kong (RTHK) programme, known as News Review, is currently presented with sign-languages and captions. This programme is televised every Sunday morning between 8:30 am and 9 am. Subtitling is already quite common in TV programmes, particularly on the English channels. The Government is sympathetic to the needs of hearing-impaired persons. We consider that such service should be extended. We urge that RTHK's public affairs programmes for instance be so subtitled. We will also urge local television broadcasters to provide subtitles or sign language interpretation for more programmes as a community service. We favour a voluntary approach instead of making it mandatory as I understand these stations themselves are already trending towards such service.

As regards part (c) of the question, the Government keeps a list of sign interpreters currently available in Hong Kong. Government departments requiring sign interpretation service may ask for assistance from these sign interpreters. The existing "pool" system, which is also adopted by countries such as the United Kingdom and the United States, provides a practical and effective service to deaf persons.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, will the Administration inform this Council whether, in considering the feasibility of installing faxlines for making 999 emergency calls and in the eventual implementation, it will provide assistance to those deaf persons, who need the service but financially incapable, to purchase these fax machines?

SECRETARY FOR HEALTH AND WELFARE: Indeed, Hong Kong, as the forerunner in adopting new telecommunications technology, is considering many options of enabling deaf persons to communicate through the telephone. According to the information from the Hong Kong Telephone Company, special equipment already exists on the market, with visual rather than acoustic indications; so the various telecommunications technology is available, except that there are certain devices which are not available in the local language. Telecommunications devices for the deaf, known as TTD, can only handle alpha-numeric data but not Chinese characters. I understand that a research project is being sponsored to explore its application. So in other words, in terms of timing, we will do it as quickly as we can; we are exploring all the possibilities. As regards sponsorship or government funding, I think we will explore all avenues.

DR YEUNG SUM (in Cantonese): Mr Deputy President, some deaf persons told me that they had mistaken what they saw in the news reports about the recent rainstorm in Hong Kong as scenes of floodings in Huadong of China. What specific plans does the Administration have to encourage television stations to provide Chinese captioning in news reports?

SECRETARY FOR HEALTH AND WELFARE: I did say in the main reply that we do not favour putting in place a regulatory framework to compel local television stations to enforce minimum hours of broadcasting, through either caption or sign language. However, I am aware, and I think it is right to say, that Hong Kong television stations are particularly receptive of public opinion. So I feel that if the demand is there, if there is a public view which considers this to be necessary, then the television stations will probably respond very quickly. As I also said in my main reply, they are already trending towards captioning.

MR ERIC LI (in Cantonese): Mr Deputy President, I understand that the Administration has recently approved the provision of a service called "Tele-tex" by the two local television stations. With this service, basically television stations may broadcast programmes with subtitles by way of another system, thus enabling viewers to choose between programmes with or without the subtitles. Nowadays, technology has made it possible to provide subtitles without affecting the other viewers. What effort has

the Administration made, in approving the use of such technology, to encourage the two television stations to help deaf persons?

SECRETARY FOR HEALTH AND WELFARE: Indeed, there are many technological devices, including the Tele-tex; and in the United Kingdom there is a system called "Mini-Comtex". These are all systems which enable, say, deaf persons, to have access to the telephone system by typewritten script rather than verbal, audio script. As I say, the technology is there. The application really depends very much on the demand and the public perception, more particularly, on the application of technology in the local context, because the alpha-numeric data system cannot be easily interpreted in the Chinese language; so research is being conducted in that area.

MR ANDREW WONG (in Cantonese): Mr Deputy President, many government departments like the Immigration Department, and a number of institutions which are ex-government departments but still under government control like hospitals, have frequent contact with the public. In such departments or hospitals, the names of the persons awaiting service or the numbers of their chips are usually called out through the public announcement system when it comes to their turn. Such an arrangement is very inconvenient to deaf persons. Has the Administration considered installing some electronic display boards at those public facilities?

SECRETARY FOR HEALTH AND WELFARE: This is being done, Mr Deputy President. The Department of Health has already installed a Digital Display System at each of the five consultation rooms at the Ngau Tau Kok Jockey Club Clinic. It is a pilot scheme; if found successful it will be applied throughout the Hong Kong Government's outpatient clinics. This system in fact replaces the previous arrangement where people call out the patients' names. This is a system which displays a number, which of course was the Honourable Andrew WONG's question. It is an electronic panel which notifies the patient holding the corresponding number through visual display. As regards public hospitals, I am informed that Kwong Wah Hospital is actively considering the installation of a similar device at its Outpatient Department. Given the Hospital Authority's own flexibility in the use of its funds, I think it will help the individual public hospitals, if they so decide, to improve their services in this direction.

Visa policy

2. MR MARTIN BARROW asked: Will the Government inform this Council whether it is its policy to welcome tourists and business visitors from all over the world and, if so, what steps have been taken to ensure that British visa offices are notified of such policy?

SECRETARY FOR SECURITY: Mr Deputy President, as a regional and world centre for finance, trade, manufacturing and tourism, it is our general policy to welcome tourists and business visitors from all over the world. British visa offices receive regular notification of any changes in Hong Kong's visa requirements which are consistent with this general policy.

MR MARTIN BARROW: Mr Deputy President, the Secretary will recall announcing to this Council in January 1992 that the visa issue time for former Soviet Union citizens will be seven working days for visits of no more than seven days. Could he therefore explain why British visa posts in London, Canada, New Zealand, France and the United States are still informing such potential visitors that it takes six to eight weeks; and would he undertake a complete review of Hong Kong's policy towards such visitors, assuming he agrees that the "Cold War" is over?

SECRETARY FOR SECURITY: Mr Deputy President, I am quite confident that all visa posts are well aware of the present policy which is that nationals of the former Soviet Union can visit Hong Kong for up to seven days and that those visas can be issued within seven working days. We have seen a rapidly changing situation in the former Soviet bloc, and particularly in the former Soviet Union. We have made a number of changes to our visa policy in response to those changes over the last few years. This is an area that we will keep under regular review and we are in fact looking at the matter again now.

MR LAU WAH-SUM: Mr Deputy President, could the Secretary explain why a citizen of the former Soviet Union can be issued within one day a 28-day visa to visit the United Kingdom at British visa posts in the former Soviet Union, whereas it takes seven

working days for the visitor to obtain a visa to Hong Kong; can Hong Kong not follow the United Kingdom's more liberal practice?

SECRETARY FOR SECURITY: Mr Deputy President, I cannot comment on the British visa requirements. I do not think that visas are normally issued within one day. All I can say is that our seven working days is related essentially to the time taken to communicate.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, I think the original question concerns the tourism industry of Hong Kong because issuing of visas and tourism are closely related. My question is: can the Hong Kong Government consider installing more television sets in waiting lounges of the airport to provide more programmes to visitors on transit or travellers waiting for departure so that they would not feel bored in Hong Kong? This may also benefit the tourism industry of Hong Kong.

DEPUTY PRESIDENT: It is generally within the question but are you able to answer it, Secretary for Security?

SECRETARY FOR SECURITY: I think probably what is being referred to is the transit lounge at the airport. This is not something that I am responsible for; I will pass this on to the Director of Civil Aviation to consider.

PROF FELICE LIEH MAK: Mr Deputy President, will the Secretary for Security consider issuing visas at the airport for individuals who require a visa but have not obtained it from the country of origin?

SECRETARY FOR SECURITY: Mr Deputy President, in exceptional circumstances this can be done but it is certainly not something that we would wish to encourage. It is very wasteful of staff time, and the time of the visitors; it holds up queues at the airport which are already long enough. We would wish to resist that as far as possible. We believe that it is far more cost-effective that when visas are required they should be obtained before coming to Hong Kong.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, the number of tourists and business visitors coming to Hong Kong from Taiwan is increasing and this is significant to the economy of Hong Kong. Can the Administration advise this Council whether it will improve its visa policy towards visitors from Taiwan, or even waive the requirement that an applicant may stay in Hong Kong for not more than seven days so as to encourage more people to come to Hong Kong?

SECRETARY FOR SECURITY: Mr Deputy President, we have indeed revised the visa procedure for residents of Taiwan within the last two years. We now issue multiple permits to Taiwanese visitors which are valid for two years, which can be renewed within two days, and which allow unlimited entry into Hong Kong for up to 14 days each time within the validity period of the visa.

MR HOWARD YOUNG: Mr Deputy President, in order to translate that welcome mentioned by the Security for Security into reality, can the Secretary undertake to compare both the visa requirements and the issue time required between Hong Kong and the United Kingdom to see whether any anomalies exist will would put us in a less welcoming light to businessmen and tourists?

SECRETARY FOR SECURITY: Mr Deputy President, yes, we do it whenever we review our visa procedures -- that is certainly something which we do and will continue to do. I would just like to say as a general point that Hong Kong has a very liberal visa regime in comparison with almost any other country. Nationals of about 30 countries require visas to come to Hong Kong; nationals of about 150 countries do not require visit visas.

MR JIMMY McGREGOR: Mr Deputy President, could the Secretary advise if the general policy also applies to seamen? And if so, could he explain why 21 Russian seamen on board the St. Petersburg Senator at Kwai Chung for the past 24 hours have not been allowed ashore?

SECRETARY FOR SECURITY: Mr Deputy President, no, I cannot explain that. I am not aware of the case but I will look into it.

Police overtime work

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

(a) the number of hours of overtime work that have been accumulated by police officers of various ranks in the Police Force; the number of years since these overtime working hours have been accumulated and the number of police officers involved;

(b) how the Government deals with these accumulated overtime working hours; what compensation will be given in respect of the overtime working hours accumulated by a police officer who is killed on duty; and

(c) whether there are any plans to reduce the overtime work of the police officers?

SECRETARY FOR SECURITY: Mr Deputy President, as at 1 May 1992, the total amount of overtime work accumulated by police officers was 880 127 hours. This figure has been accumulated by some 20 000 officers, in all ranks from constable to Chief Inspector. Some officers have accumulated their overtime over a period of years. It is, however, not possible to give an overall historical picture. This is because the system for recording and calculating overtime has been modified over the years and the total number of accumulated overtime hours fluctuates on a daily basis.

Overtime work is compensated for in accordance with Civil Service Regulations. Compensation is normally by way of time-off in lieu within a reasonable period of time. An individual Police District Commander will take into consideration the deployment needs and manpower situation in his district in granting time-off. Where time-off cannot be granted within a reasonable period of time, Disciplined Services Overtime Allowance (DSOA) may be paid for hours of overtime worked. As far as I am aware, there has been only one case of an officer killed on duty who had accumulated overtime hours. In that case, an ex gratia payment was made to the estate of the officer equivalent to the cash value of the outstanding accumulated time-off hours.

The Police Force has recently issued revised orders to achieve better management of overtime. These orders clarify and simplify the procedures for recording overtime, and the conditions for time-off in lieu or payment of DSOA. They are designed to ensure that all officers receive prompt and accurate recompense for any overtime worked, and to prevent the build-up of large balances of unrecompensed overtime.

MR JAMES TO (in Cantonese): Mr Deputy President, the Secretary mentioned in the second paragraph of his reply that the officers concerned would be granted time-off in lieu within a reasonable period of time and that where time-off could not be granted within a reasonable period of time, DSOA would be paid. But I believe "you cannot eat your cake and have it". By "overtime allowance within a reasonable period of time", it means cash compensation. What exactly is a "reasonable period of time"? Also, the Secretary said a Police District Commander will take into consideration the deployment needs and manpower situation. Would it be difficult for officers to be paid overtime allowance when deployment needs and manpower situation are both tense?

SECRETARY FOR SECURITY: Mr Deputy President, I suppose that "reasonable" is a flexible concept. I think what I would say though is that the Police Force management have made considerable progress over the past year in reducing the backlog of overtime by granting time-off. In this way, the total backlog has been reduced over the past 12 months from 1.3 million hours to about 0.8 million hours. The Police Force management intend to treat as far as possible all officers with accumulated overtime on the same basis and to continue as far as possible to reduce the backlog by granting time-off in lieu.

MRS MIRIAM LAU: Mr Deputy President, can the Secretary inform this Council whether the effort to prevent the build-up of large balances of unrecompensed overtime, referred to in the last paragraph of his answer, would involve encouraging more officers to take time-off in lieu? If so, in the light of the current manpower shortage within the Police Force, can the Secretary explain how this is possible without compromising the ability of the police to maintain law and order?

SECRETARY FOR SECURITY: Mr Deputy President, I think what I meant was that the police intend to manage the whole process better by ensuring that the criteria for granting

overtime is consistently applied throughout the force, that is to say, overtime is granted only when it is absolutely necessary, only when the duties cannot be deferred and only when they cannot be performed by another officer not required to perform overtime.

As regards the second part of the question, I am quite confident that the Police Force management are well able to manage this problem in the way that they have been doing to achieve both a reduction in the backlog of overtime by granting time-off in lieu and to maintain an adequate police presence on the streets.

DR YEUNG SUM (in Cantonese): Mr Deputy President, according to the information collected by the Security Policy Group of the United Democrats of Hong Kong, the present situation of overtime in the police is very serious. This will obviously affect the morale of police officers in performing their duties. Would the Administration inform this Council whether there are any ways to alleviate this situation?

SECRETARY FOR SECURITY: Mr Deputy President, I think I have covered that in the main answer. The police are endeavouring to reduce this backlog and are doing so with some considerable success by gradually granting time-off in lieu to those officers who have accumulated large balances and by a new system of management which endeavours to ensure that such large balances will not be accumulated in future. I should, perhaps, just add that the recruitment situation in the police has improved quite markedly in recent months. As new officers come out of the Police Training School and are deployed on the streets, it should be easier for the police to continue with this practice.

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, it would seriously affect their morale if police officers work overtime without being granted DSOA. In his reply, the Secretary mentioned that time-off in lieu would be granted under reasonable circumstances, and DSOA would be paid if the granting of time-off in lieu proved to be impossible. For how long on average does a police officer normally have to work overtime before the payment of DSOA is considered? Would the Secretary also inform this Council how many hours of overtime were recompensed by way of DSOA payment in the past year?

DEPUTY PRESIDENT: That is two questions, Secretary for Security.

SECRETARY FOR SECURITY: Yes, Mr Deputy President. I cannot say when any individual officer -- or even all officers -- will be paid overtime or will receive time-off in lieu. That will depend very much on the circumstances of the individual case and on the situations within the particular formations in which officers are serving. But I would like to make it clear that overtime is regularly paid. For example, in the last financial year some $270 million in DSOA was paid to police officers.

I am sorry, Mr Deputy President, I forget the second part of the question.

DEPUTY PRESIDENT: Strictly, he was entitled to one question only.

MR MOSES CHENG: Mr Deputy President, will the Administration advise this Council whether the Police Force management have set a level of permitted accumulation of overtime work, taking into consideration the force size, the operational needs and the time targeted for the present backlog to be reduced to such level?

SECRETARY FOR SECURITY: Mr Deputy President, what the Police Force management are endeavouring to achieve is that each officer will be allowed to accumulate and carry forward only a specified maximum of overtime. And, they are trying to work towards that.

China Motor Bus

4. MR WONG WAI-YIN asked (in Cantonese): In view of the Government's recent announcement to extend the franchise of the China Motor Bus Company (CMB) by two years, to discontinue the Company's existing profit control scheme as from 1 September, 1993 and to put 26 routes presently operated by the Company to public tender, will Government inform this Council:

(a) after abolishing the CMB's profit control scheme, what changes will be made to the mechanism to monitor the operations of CMB and the future successful bidders;

(b) what criteria will be adopted in setting future bus fares;

(c) what measures will be adopted to encourage the bus companies to improve their operational efficiency;

(d) how such changes will protect the interests of consumers; and

(e) whether the Government has plans to phase out the profit control schemes of other public transport companies?

SECRETARY FOR TRANSPORT: Mr Deputy President, the answers to Mr WONG's five-part question are as follows:

(a) First, changes to strengthen the monitoring mechanism under the Public Bus Services Ordinance will include provisions prescribing the formation of passenger liaison groups, the establishment of a trust for pension funds, a computer link giving the Government instant access to operational information, transitional arrangements governing the disposal of any surplus in the Development Fund and other assets, and the shared use of bus stops and terminal facilities.

(b) Second, all public transport operators except CMB and KMB do not have a profit control scheme. In considering their fare increase applications, the Government normally allows them to recover costs and earn a reasonable profit, having regard to factors including service quality, commitment to further investments, previous profit levels, changes in the operating environment, inflation and other socio-economic conditions.

(c) Third, apart from strengthening the monitoring mechanism and making the supply of franchised bus services more competitive, we are improving the current system of regular performance appraisals. These cover service availability, punctuality, maintenance, safety, planning and development, as well as general management. The results will be released for public information and scrutiny. The objective is to encourage the bus companies to become more accountable to their customers.

In addition, we also intend to strengthen the penalty provisions in the Public Bus Services Ordinance to prevent the cost of penalties from being passed on to passengers.

(d) Fourth, closer monitoring and greater transparency are expected to deter avoidable cost escalation. Wider exposure to market forces will make the bus companies more customer-oriented and result in better value for money for passengers.

(e) Finally, as and when a franchise is due for renewal, the Government will consider carefully whether existing franchise terms, including any profit control scheme, should be rolled forward in their present form.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, currently the franchised bus companies including KMB and CMB have individual five-year plans which make longer-term planning for development of bus routes within their respective areas of operation. Would the overall formulation of plans for bus service on the Hong Kong Island be switched to the Government, should the Island have more than one bus companies providing service?

SECRETARY FOR TRANSPORT: Mr Deputy President, the short answer is no. The Government and the transport operators will together plan the future development of routes in consultation, as always, with the district boards concerned. Under the existing arrangements, the CMB will be given another two-year extension. The future plans on a five-year basis will carry on but the main objective is to have these plans rolled forward on an annual basis. In other words, there will be a firm plan for the coming year but there will be only a forecast plan for the next four years. It has been our practice every year to consult district boards on the immediate plan for the coming year. The same arrangement will apply to the new franchised operators on the Island as regards these forward planning programmes, which will be drawn up together with the government department concerned and in consultation with district boards.

PROF EDWARD CHEN: Mr Deputy President, from the Administration's answer it is evident that a great deal of the monitoring work falls on the Government. My question relates not only to the Secretary for Transport but also to the Secretary for Economic Services. Unfortunately, the latter Secretary is not here but perhaps the Secretary for Transport could answer my question. Will the Administration inform this Council

whether it thinks there is sufficient expertise in the Government to monitor public utilities, especially in the case of transport companies? It is because when it comes to the increase of fares, assessment of development plans, renewal of franchise and so on, all would depend on the Government's assessment and I doubt very much if the Government has sufficient expertise. Would the Administration inform this Council how many professional staff there are within the Government to perform this job and what their background, qualification and specialization are?

DEPUTY PRESIDENT: Secretary for Transport, in so far as you are able to.

SECRETARY FOR TRANSPORT: Thank you, Mr Deputy President. I can only answer in so far as the question relates to transport. The general answer to Prof CHEN's question is that the Government does have expertise both in the financial monitoring unit of the Economic Services Branch and in the Transport Department which has a team of professional officers who are fully qualified to assess bus operations. We also commission consultants from time to time to give advice in the particular areas where we need further improvements. I cannot give details today on the number of staff but I will supply that in writing separately. (Annex I)

MRS MIRIAM LAU: Mr Deputy President, can the Secretary inform this Council what penalties will be in place to deal with non-compliance by franchisees with the provisions referred to under paragraph (a) of his answer; whether there will be earlier termination of the franchise or whether there will be merely non-renewal of the franchise upon expiration?

SECRETARY FOR TRANSPORT: Mr Deputy President, the penalties I have in mind are mainly on the financial side. In other words, we are going to increase the fines for the bus company in the case of failure to deliver services, and these fines are intended to be very high so as to ensure that they are effective as a deterrent.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, can the Secretary inform this Council if the Administration would take into account questions of improper operation or management, in addition to the factors mentioned in the main reply, when

considering fare increase applications? If not, why not? If yes, how is the monitoring conducted?

SECRETARY FOR TRANSPORT: Mr Deputy President, the answer, I think, I have already given in my main reply. In other words, we do have a system of performance appraisals and this system is now being refined to give more clear-cut indicators of performance covering such details as service quality, punctuality, safety, maintenance and so on. These will be combined with our fare increase application assessments in the coming year to ensure that the operators must satisfy the Government, when their fare increase applications are considered, that they are delivering a service which is efficient and acceptable. So the short answer is that there are sufficient safeguards to ensure that the quality of service is maintained at a satisfactory level before we support operators' fare increase applications.

MR ANDREW WONG (in Cantonese): Mr Deputy President, an amendment was proposed in 1974 and subsequently passed in 1975 to the Public Bus Services Ordinance and hence its present form. In that original Ordinance before the amendment in 1974, there was a section stipulating to the effect that if a bus company should make excessive profits, the Government shall derive extra tax revenue from it. But this section was repealed by the amendment and substituted with the scheme of profit control. Given that the Administration does not have a scheme of profit control for CMB, there will be none for the other Island bus company as well. Will the Government then propose an amendment again to add that particular clause to the existing Public Bus Services Ordinance?

SECRETARY FOR TRANSPORT: Mr Deputy President, I believe that the basic objective is to ensure that the passengers are getting value for money in that they are getting good quality services at fares which are reasonable. I do not believe the Government should derive more tax revenue from the extra income of the bus companies themselves. I believe the operators themselves should have the incentive to make sure that their services are effective, and to plough back any extra income into their operations so as to continue to provide good quality services. I do not think the Government is intending to get revenue out of these operations.

Discrimination against women

5. MR ANDREW WONG asked (in Cantonese): Will the Government inform this Council of measures taken to eliminate discrimination against women, including progress in the following:

(a) the work of the inter-departmental working group on sex discrimination problem in employment;

(b) the setting up of a women's commission; and

(c) the extension of the United Nations' "Convention on the Elimination of All Forms of Discrimination against Women" to Hong Kong?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the inter-departmental working group on sex discrimination in employment, chaired by the Secretary for Education and Manpower, was set up in March of this year. Its work is to ascertain the extent to which discrimination in employment based on sex is a problem in Hong Kong, and to consider what government measures, if any, should be taken to tackle it. The working group will also advise the Government whether, in so far as employment matters are concerned, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) should be extended to Hong Kong.

The working group has consulted relevant academic studies, established dialogue with interested women's groups and is examining a number of subjects related to sex discrimination in employment. Since the working group is still in the process of deliberation, it is premature for me to say what its findings and recommendations will be.

The proposal that a "Women's Commission" should be set up to advise the Government on policies for women was put forward by some women's groups back in 1991. An ad hoc group of this Council has recently completed a study on the need to establish a Women's Commission in Hong Kong. In a recent In-House meeting of this Council, Members were in favour of the setting up of an advisory committee. The proposal was conveyed to the Administration in May this year and is now being carefully studied.

The question of whether the Convention on the Elimination of All Forms of

Discrimination Against Women should be applied to Hong Kong is being examined by the Administration. We have to make sure that Hong Kong can comply with the provisions of the Convention before we are in a position to ask the United Kingdom Government to extend the Convention to Hong Kong. The international obligations arising from the Convention are complex. It might lead to the enactment of anti-discrimination legislation applying to the private sector, which might create problems of enforcement as well as significant economic and social consequences.

Mr Deputy President, a major step against sex discrimination has been taken in June 1991 with the enactment by this Council of the Bill of Rights Ordinance. That Ordinance, together with the related amendment to the Letters Patent, prohibits discriminatory practices against women in the public sector, as well as discriminatory laws against women. I recognize that the Convention on the Elimination of All Forms of Discrimination Against Women goes further in outlawing discrimination in the private and public sectors. It is because the Convention, if implemented, would have such a direct and possibly serious impact on the public that a detailed study of the issues involved is required.

MR ANDREW WONG (in Cantonese): Mr Deputy President, the Secretary's reply cannot be regarded as a reply at all. He replied that the proposal to set up a "Women's Commission" is now being studied; that the question of whether the Convention on the Elimination of All Forms of Discrimination Against Women be extended to Hong Kong is being examined; and that the inter-departmental working group set up in March is also working. Mr Deputy President, I asked about the progress of the respective work, but the reply seemed to say that no progress has been made at all. If there is no progress now, then when shall we see some progress? What deadline has been set for the completion of studies on these priority items?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, the subject of anti-discrimination laws, which needs to be addressed in the context of assessing whether the Convention on the Elimination of All Forms of Discrimination Against Women should be adopted in Hong Kong, is a complex one. I do not agree that either the Administration or the inter-departmental working group chaired by the Secretary for Education and Manpower has made absolutely no progress at all. But we must accept that the matters being addressed are complex and varied. Amongst the many things to be examined, the inter-departmental working group has to look at the question of

women in employment, whether discrimination exists, the extent to which any such discrimination exists, the question of vocational training for women, the question of sex discrimination in job advertisements, and the question of protective legislation for women employed in industrial undertakings. We will also need to look at the possibility of legislation on equal employment opportunities for both sexes -- we have not got that in Hong Kong yet. We are looking at the experience of neighbouring and other countries. These are some of the examples that we have to look at. We are not in a position yet to announce any recommendations or findings because, by the very nature of the working group's deliberations, findings cannot really be available until after the deliberations are concluded.

On the question of timing, I can only assure the Honourable Member that the inter-departmental working group, and indeed the Administration generally, in looking at all the three issues mentioned by the Honourable Member, will do their best to ensure that the matter will be concluded as soon as practicable. I would certainly hope that the working group would complete their deliberations towards the end of the year.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, the New Territories Small House Policy adopted by the Government in 1972 applies only to male villagers aged above 18. Could the Government inform this Council whether it will set an example by abolishing this unequal treatment for men and women so that female villagers may be entitled to small house grants?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, as this Council was informed during the Second Reading of the Bill of Rights Bill on 25 July 1990, the fact that customary law in the New Territories treats women in a way different to men does not mean that the law is necessarily discriminatory under the Bill of Rights, or indeed under Hong Kong Law. The United Nations Human Rights Committee have observed that it is not mere differentiation of treatment that constitutes discrimination. If the grounds for the differentiation of treatment are reasonable and objective and the purpose is a legitimate one, then such treatment will not be regarded as discriminatory.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, I am very much worried by the

Secretary's remark in his reply that the adoption of anti-discrimination law in Hong Kong might create significant economic and social consequences. Could the Secretary please explain to this Council in detail why that is so?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I can only say at present that the adoption of positive anti-discrimination legislation in employment in Hong Kong will certainly have some effect on the wage structure in Hong Kong. The precise extent of any such effect -- and indeed the question of the desirability of such legislation in the light of its practical implication -- is a matter being looked into actively by the inter-departmental working group which I refer to in my main answer.

MISS EMILY LAU (in Cantonese): Mr Deputy President, I would like to follow up on Mr WONG Wai-yin's question. Since the Government thinks that an extension of the Convention to Hong Kong might create significant economic and social consequences, it means that the Government recognizes the existence of very serious discrimination against women in Hong Kong. In view of this recognition could the Government undertake immediately to introduce measures as soon as possible to remove all forms discrimination against women and to extend the Convention fully to Hong Kong as well?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, from the initial discussions and deliberations of the inter-departmental working group it is pretty clear that some evidence exists of some form of discrimination in Hong Kong. It is of course the work of the inter-departmental working group to find out the precise extent of such discrimination. I can only say, Mr Deputy President, in answer to the Honourable Member's question, that where effective, adaptable and practicable measures are available to deal with and to combat any form of discrimination that we have identified, of course the Government will certainly be very interested to adopt them.

Whole-day primary schooling

6. MR LEE WING-TAT asked (in Cantonese): With the Government's decision to shelve the plan for whole-day primary schooling at newly built schools, will the Government

inform this Council:

(a) of the additional estimated annual capital and recurrent expenses over a 15-year period should the plan for whole-day primary schooling at newly built schools be proceeded with (at 1992 prices);

(b) of the reasons for shelving the plan and whether the Government will reconsider the views of the education sector and the public to implement the whole-day schooling plan in the coming school year?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, before answering the specific points in the question, I wish to make it clear that there has never been any plan for whole-day primary schooling at newly-built schools. It follows therefore that there is no question of shelving such a plan. What the Government has decided is to set whole-day schooling as a long-term goal. Our policy now is to work towards this goal by encouraging schools to convert to whole-day operation when demographic changes allow. This encouragement takes the form of providing additional teachers for those schools which are already operating whole-day classes or which may turn whole-day from now on.

On part (a) of the question, I have tabled an estimate of what the annual capital and recurrent costs might have been if whole-day schooling were to be achieved in 14 years from the 1992-93 school year. At March 1992 prices, the cost would have been $140 million in the first year rising progressively to $761 million in the 14th year, or a total of $6.5 billion for the 14-year period as a whole. I should add that the cost estimate, which was prepared some time ago for planning purposes, is in respect of implementing whole-day schooling in all primary schools, including both newly built and existing schools.

As regards part (b) of the question, the Government is already aware of general public support for the concept of whole-day schooling, and has taken full account of this support in reaching its decision to encourage schools to convert to whole-day operation where possible and to provide additional teachers for such schools.

Estimated Cost of Implementing Whole-day Schooling
comprehensively over 14 years (in $m at March 1992 prices)

	Recurrent (1)	Non-recurrent (2)	Total
1992	135.0	5.8	140.8
1993	156.2	1.1	157.3
1994	175.4	4.1	179.5
1995	193.6	28.1	221.7
1996	212.4	70.9	283.3
1997	233.1	111.0	344.1
1998	260.0	141.4	401.4
1999	301.9	168.5	470.4
2000	340.9	192.3	533.2
2001	372.7	228.6	601.3
2002	413.2	287.9	701.1
2003	458.7	350.1	808.8
2004	509.9	362.7	872.6
2005	565.6	195.5	761.1

(1) includes costs for additional teachers, clerks, janitors and the enhancement grant of $950 per class.

(2) includes capital cost for building 66 additional primary schools, staff training costs and additional tables and benches for existing schools.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, it was mentioned in the Education Commission Report No. 4 that the Education Commission had accepted the views of groups to recommend to the Executive Council that whole-day schooling be phased in for all primary schools within 14 years. Can the Administration advise this Council why it did not adopt the proposal originally recommended by the Education Commission but instead adopted the previous approach of natural conversion?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the Fourth Report of the Education Commission did not -- and I repeat did not -- include any recommendation for a phased programme for implementation of whole-day schooling in all primary schools. What ECR4 contained were recommendations for implementing mixed-mode schooling in primary schools, that is to say, whole-day operation for Primary V and VI and bisessional operation for other classes. The recommendations as regards

mixed-mode schooling met with considerable public opposition during the period of consultation following the publication of ECR4, and it was in the light of the public comment that the Government eventually decided not to pursue the concept of mixed-mode schooling and to go back to adopting whole-day schooling as a long-term goal and allowing and encouraging schools to convert as circumstances allow.

MRS SELINA CHOW: Mr Deputy President, can the Secretary tell this Council whether it would have been possible to produce enough well-qualified teachers for primary schools if all of them were to turn whole-day as was indicated in the planning figures given?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I think the answer to that question is that there would probably have been some difficulties. In my own view, until certain important issues relating to the training, recruitment and retention of teachers had been addressed, as they now have in the Fifth Report of the Education Commission, then there might have been difficulties in seeking to implement whole-day schooling across the board within a relatively short time.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, I wish to point out a mistake in Mr John CHAN's answer to Mr LEE Wing-tat's question. On completion of its collection of public opinions, the Education Commission did recommend to the Executive Council that whole-day schooling be phased in for primary schools within 14 years. The Education Commission has this document. However, the Education Commission now recommends to the Executive Council a scenario of natural conversion to whole-day schooling in primary schools. These two different opinions were both proposed by the Education Commission and both were substantiated by documents. Does the Administration have this document and on what basis did the Education Commission change its mind within such a short time?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I do not think I have made any mistake in my answer to Mr LEE Wing-tat's earlier question. What I said was that the Fourth Report of the Education Commission itself did not include any recommendations for full-scale implementation of whole-day schooling across the board. I am not at liberty to disclose what specific recommendations were put to

the Executive Council by the Administration; all I can say is whatever recommendations that might be put to the Executive Council may or may not always be accepted.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, the Administration has publicly claimed that the teacher training programme contained in the Education Commission Report No. 5 is more important than the whole-day schooling in primary schools included in Report No. 4. Can the Administration advise this Council whether these two proposals have been prioritized after a consultation of public opinion? If not, then on what grounds was the argument that teacher training should be placed before whole-day schooling in primary schools founded?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, again I do not think I actually said that I put one on top of another in terms of priority. What I did say was of course that the whole-scale implementation of whole-day schooling would have required many more additional teachers and until such time as we can be certain that we have the right arrangements to train, recruit and retain the necessary number of teachers, there could be practical problems in the implementation of whole-day schooling within a relatively short time frame. As far as consulting the public is concerned, we have of course heard views from the public in the course of consultation on ECR4 regarding whole-day and mixed-mode schooling. We are now going to the public in ECR5 to seek their views on a series of recommendations concerning the teaching profession and I would like to take this opportunity to urge the public to let us have their views.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, according to newspaper reports a few days ago, the Administration has ceased to pursue the phased programme for implementation of whole-day schooling in primary schools because of financial considerations and priority reasons. That priority means that the just published ECR5 has a higher priority than that of the recommendation for whole-day schooling contained in ECR4. The newspapers that we read clearly quoted the opinion of Mr John CHAN. That is why I feel that he had said things to this effect. Mr LEE Wing-tat's question is well founded. Why could the question of teacher training mentioned by a report yet to be consulted upon take priority before the whole-day schooling in primary schools recommended by ECR4, a report on which public views have already been sought?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I think it would be right to say that if we had taken a firm commitment to adopt a timed programme for the whole-scale implementation of whole-day schooling, then that would have probably foreclosed the option on implementing some or many of the recommendations in ECR5 as far as financial resources are concerned. Our present position is that we have not foreclosed any option and certainly we have not foreclosed the option of implementing whole-day schooling. In fact we are implementing whole-day schooling, we are encouraging schools to convert when circumstances allow and we are giving schools additional resources if they already operate or will turn whole-day. If at the end of public consultation we were to get a clear message that the public would prefer whole-day schooling within a specific time frame to all the recommendations in ECR5, then the option would still be open for that to be done.

Written answers to questions

Electricity supply to rural villages

7. MRS PEGGY LAM asked: In view of the inconvenience caused to the villagers by the lack of electricity supply to some rural villages in Hong Kong, will the Government inform this Council:

(a) how many villages are at present lacking in electricity supply;

(b) whether the electric companies concerned will be asked to arrange for electricity supply to these villages;

(c) if so, when will such electricity supply programmes be completed;

(d) if not, what are the reasons?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, the electricity companies have a statutory responsibility to supply electricity to any party who applies to be connected to the supply, unless there are good reasons for not doing so. An applicant aggrieved by refusal of the relevant electricity company to supply electricity may appeal to the Director of Electrical and Mechanical Services. No instances of such

refusals or appeals have been recorded in recent years.

As far as our records show, no village of any significant population is now without an electricity supply. If any villager considers that his village should have such a supply in spite of its remoteness or small population, he should contact the electricity company direct requesting the connection of a supply. He may also seek the assistance of his local District Office if he encounters any difficulty in obtaining a supply.

Unauthorized occupation of pavements

8. MR TIMOTHY HA asked: In view of the common practice of some shop operators of making unauthorized use of the pavements for vending and other private purposes, thus forcing pedestrians to walk on the carriageways, and causing inconvenience and danger; will the Government inform this Council:

(a) which government departments and how many staff are responsible for enforcing the legislation which prohibits unauthorized occupation of pavements by shop operators;

(b) how many offenders have been prosecuted and punished for violation of such legislation in each of the past three years; and

(c) how the Government monitors the effectiveness of the existing legislation in curbing such malpractices; and whether consideration has been given to imposing heavier penalties to achieve the necessary deterrent effect?

SECRETARY FOR SECURITY: Mr Deputy President, a number of government departments have responsibility for enforcing legislation against unauthorized use of pavements by shop operators depending upon the nature of the offence. Prime responsibility, however, lies with the police, the Urban Services Department and the Regional Services Department. Annex A summarizes present legislation, and gives details of the department responsible for enforcement, and the number of staff available for enforcement. (These staff all have many other duties as well.)

Annex B gives details of prosecutions for the past three years.

The departments concerned keep the legislation under regular review to ensure that it continues to be effective. We consider the present penalties are adequate.

Annex A

Summary of provisions concerning obstruction or unauthorized use of pavements

Statutory provisions	Offence/Punishment	Responsible department(s)	Number of saff involved
Section 4A, Summary Offences Ordinance (Cap 228)	Obstructing, inconveniencing or endangering any person or vehicle in public place. A fine of $5,000 or imprisonment for three months.	Police USD RSD	Beat patrol officers 1 400 staff 910 staff
Section 22(1)(a) and Ninth Schedule, Public Health and Municipal Services Ordinance (Cap 132)	Obstructions to scavenging or conservancy operations. A fine of $1,500 and a daily fine of $25, possibly forfeiture of goods or articles that cause obstruction.	USD RSD	No specific number of enforcement officers, but periodic operations involving large number of officers are carried out. 910 staff

Statutory Responsible Number of

provisions Offence/Punishment department(s) saff involved

Section Hawking without USD No specific number
83B(3) and licence. of enforcement
Ninth officers but periodic
Schedule, On first conviction: operations involving
Public Health A fine of $2,500, large number of
and Municipal daily fine of $150 officers are
Services and one month carried out.
Ordinance imprisonment plus
(Cap 132) mandatory forfeiture RSD 910 staff
of goods.

On second or
subsequent conviction:
A fine of $5,000,
daily fine of $150
and six months
imprisonment plus
mandatory forfeiture
of goods.

Annex B

Number of summonses applied for by police against
shop operators for causing obstruction in the last three years

Year	1989	1990	1991	1992 (Jan-Apr)	Total
Number of summonses issued	20 768	20 921	14 956	4 366	61 011

Number of prosecutions taken out by USD staff for

unauthorized occupation of pavements for the past three years

Year	1989	1990	1991	Total
Section 4A of Summary Offences Ordinance, (Cap 228)	586	687	882	2 155
Section 22(1)(a) of Public Health and Municipal Services Ordinance (Cap 132)	3 647	3 949	4 624	12 220

No of prosecutions taken out by RSD staff for
unauthorized occupation of pavements for the past three years

Year	1989	1990	1991	Total
Section 4A of Summary Offences Ordinance (Cap 228)	1 278	1 662	1 388	4 328
Section 22(1)(a) of Public Health and Municipal Services Ordinance (Cap 132)	1 941	2 060	3 384	7 385
Section 83B(3) of Public Health and Municipal Services Ordinance (Cap 132)	11	12	17	40

Central monetary authority

9. MR DAVID LI asked: Will the Government inform this Council whether consideration is being given to establishing a Central Monetary Authority, and if so, what is the projected schedule for its implementation?

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, it is the Government's

responsibility to ensure that the monetary system of Hong Kong is sufficiently robust to meet future challenges, and that the institutional framework, mechanism and the resources available for monetary management in Hong Kong are adequate.

Before making any significant changes to our monetary system we have always consulted extensively with interested parties at an appropriate time and taken careful account of their views. This will continue to be the case. I do not, however, believe that it would be in the public interest to comment on what may, or may not, be contemplated in respect of any further changes to our monetary system.

Operational relations between Hong Kong and Chinese authorities

10. MR DAVID LI asked: Will the Government inform this Council what steps it has taken, or is planning to take, to expand the operational relations between its departments and the corresponding departments of the Government of the People's Republic of China?

CHIEF SECRETARY: Mr Deputy President, the Hong Kong Government believes that it is important for government departments to increase their familiarity with their counterparts on the mainland. We believe it is best for the development of actual working contacts to proceed in a natural fashion, as operational needs dictate. Areas in which these have expanded recently include cross border policing (for example, against smuggling), anti-corruption work, immigration and customs matters. In all of these areas the respective Hong Kong Government departments and services are in regular contact with their counterparts over the border.

Recent years have seen an increase in the amount of contacts between Hong Kong Government departments and their mainland counterparts, both in the Central People's Government in Peking, and in provincial governments, notably Guangdong. In 1991, 152 delegations from Hong Kong travelled to China. Some of these were for the purpose of familiarization, but the majority were working visits. Likewise, 91 delegations came to Hong Kong from the mainland. This trend of increased contacts is encouraged and promoted by the Hong Kong Government, and is continuing. So far in 1992 over 60 delegations from Hong Kong have travelled to the mainland.

Expenditure on road construction and maintenance works

11. MR PETER WONG asked: Will the Administration inform this Council of the respective expenditure on road construction and maintenance work in Hong Kong during the past three years and how it compares with that of our neighbouring countries, for example, Singapore?

SECRETARY FOR TRANSPORT: Mr Deputy President, in the three-year period from 1989 to 1991, government expenditure on road construction and maintenance was as follows:

	Construction ($M)	Maintenance ($M)
1989	3,837	413
1990	3,255	486
1991	2,580	546

The higher expenditure on road construction in 1989 and 1990 was due to work on several major projects, including the Kwun Tung Bypass, Shing Mun Tunnels and Tseung Kwan O Tunnel during that period.

Over the three-year period, total annual expenditure on road construction averaged 0.57% of GDP. Little direct information is available on comparable expenditure on road building in neighbouring countries. However, some comparison is possible with Singapore where on average expenditure on new roads amounted to about 0.35% of GDP during the same three-year period. In the period 1988 to 1990, average expenditure on new roads in Hong Kong was about $3,200 million per annum, compared with about $800 million per annum for Singapore.

Triad activity in new estate decoration business

12. MR WONG WAI-YIN asked: With regard to the harassment of tenants of newly completed public housing estates by triads while their flats are under decoration, will the Government inform this Council of the following:

(a) the number of cases reported to the police in each of the past three years; of these, the number of prosecutions by the police and the number of convictions;

(b) whether any cases have been reported to the police regarding tenants of the recently completed Tin Yiu Estate, Phase I in Tin Shui Wai being harassed while their flats are under decoration; if so, what the figures are; of these, the number of prosecutions and the number of convictions; and

(c) what preventive measures the police will adopt to tackle the problem?

SECRETARY FOR SECURITY: Mr Deputy President, harassment can occur in a number of different ways and may involve a variety of criminal offences not only during the decoration period but at other times. Statistics in relation to selected triad-related crimes against tenants of newly completed public housing estates for the past three years are as follows:

	1989			1990			1991		
Offence	A	B	C	A	B	C	A	B	C
Wounding and serious assault	-	-	-	5(3)	3	0	2(1)	1*	0
Criminal damage	-	-	-	-	-	-	-	-	-
Arson	-	-	-	-	-	-	-	-	-
Blackmail and intimidation	-	-	-	4(3)	3	0	6(6)	6*	4
Unlawful society offences	3(3)	2	2	1(0)	0	0	4(4)	4*	2
Total	3(3)	2	2	10(6)	6	0	12(11)	11*	6

A: Reported (Detected) B: Prosecuted C: Convicted

The figures in ( ) denote the number of detected cases. For the year 1991, the

figures with * denote cases for which prosecution has been brought and some of which are still under trial at present.

Before Tin Yiu Estate was occupied, the Housing Department liaised closely with the police who strengthened their presence in the estate to counter triad and criminal activities. Since occupation in April 1992, the Housing Department has received two complaints of nuisance caused by unauthorized decorators and one alleging assault. All these have been referred to the police for investigation; no prosecutions have yet resulted.

The police are taking a number of preventive measures to tackle the problem. These include undercover operations with officers posing as tenants and/or decorators, and publicity through announcements on television to encourage tenants who receive threats to report to the police.

The approved decoration contractor (ADC) system is another measure to combat criminal activities related to decoration works in new estates. Under this system, the Housing Authority maintains an approved list of decoration contractors and only those contractors registered on the list are allowed to carry out decoration works in newly completed rental estates. At present, there are 87 such approved decoration contractors. The Housing Department monitors the system closely in respect of price, workmanship as well as background and conduct of the approved decoration contractors.

Foreign law firms

13. MR MARTIN BARROW asked: Will the Government inform this Council of the present progress of its plan to open up the legal profession to allow foreign law firms to provide expanded services in Hong Kong and to recruit local lawyers to advise on Hong Kong laws?

ATTORNEY GENERAL: Mr Deputy President, since 1971 Hong Kong has permitted foreign law firms to operate in the territory to advise on foreign law. There is an informal procedure under which the Law Society issues administrative guidelines specifying the terms on which these firms are permitted to practise in Hong Kong. The informal procedure is not satisfactory to the Law Society because these firms are not subject to their rules regulating professional conduct, ethics and discipline. Foreign law

firms are also dissatisfied because there are no statutory criteria that set out the conditions for establishing and for the regulation of their practices here.

Proposals for a regulatory framework were first mooted by the Government in 1988 and were the subject of a government consultative document in early 1989. In response to the Government's proposals, the Law Society produced in October 1991 two reports containing, amongst others, a number of recommendations for the regulation of foreign law firms. If these recommendations were implemented, a foreign law firm would have to register with the Law Society and could enter into an association with a local law firm. The association could share fees, premises, resources and personnel, but the ratio of foreign lawyers to local lawyers in the association could not exceed 1:1. A registered foreign law firm which had practised in Hong Kong for three years would be able to establish a Hong Kong practice and practise Hong Kong law, provided that all persons who were to practise Hong Kong law were qualified Hong Kong solicitors.

The Law Society's recommendations received the Governor in Council's approval in principle in January 1992. It is proposed that they be implemented by amendments to the Legal Practitioners Ordinance and by subsidiary legislation. Preparation of the relevant legislation is in progress. It is expected that a Bill will be introduced into this Council in the latter half of the 1992-93 Session.

Seaworthiness of vessels

14. DR HUANG CHEN-YA asked: Will the Government inform this Council:

(a) what mechanism is in place for the Marine Department to monitor Hong Kong registered vessels for corrosion and stress which may affect the seaworthiness of the vessels;

(b) how many such vessels have been found to have significant corrosion and stress problems in the past three years; and

(c) how many of the cases in (b) above were due to damage caused by the cargo loading mechanism in local terminals?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President,

(a) The seaworthiness of Hong Kong vessels, including their corrosion and stress conditions, is monitored through the following means:

(i) a vessel needs to pass an initial survey before it can be registered in Hong Kong. Thereafter, the ship must be surveyed annually. These surveys may be conducted by Marine Department surveyors of ships in accordance with international safety standards or by authorized international classification societies. In the latter case the Marine Department conducts audit inspections to ensure strict compliance with the required standards. In any event the Marine Department conducts a thorough survey of each registered vessel every five years;
(ii) the Marine Department will be notified if any Hong Kong registered ship is found by any maritime administration that practises "port state control" to be deficient in meeting international standards; and

(iii) following the loss of a number of bulk carriers worldwide, the International Maritime Organization and the International Association of Classification Societies have developed new survey and maintenance requirements for such ships. These standards have been applied to Hong Kong registered ships since April 1992.

(b) There has only been one reported case of a Hong Kong registered ship suffering from significant corrosion and stress problems in the past three years.

(c) No connection has been identified between the case referred to in (b) above and the cargo loading mechanism at any local terminal.

Government surpluses

15. MR TAM YIU-CHUNG asked: Will the Government inform this Council:

(a) of the reasons for the substantial discrepancies between the original forecast and actual figures for surpluses in the past few years' estimates of revenue and expenditure; and

(b) whether any measures would be taken to ensure that more accurate estimates on the Government's revenue and surplus would be presented in future Budget exercises?

FINANCIAL SECRETARY: Mr Deputy President, in response to Mr TAM, I would like to deal separately with recurrent and capital accounts, to which very different considerations apply in preparing our estimates.

First, recurrent account. Recurrent expenditure is relatively easy to predict, and the variation in 1991-92 between our actual operating expenditure and the revised estimate was less than 1%.

Estimates of revenue, however, involve judgements about the state of the economies of our major trading partners, as well as business confidence, investment, interest rate movements and inflation within our own economy. Applying economic forecasts to revenue projections based on past trends clearly involves a significant degree of subjective judgement.

Against this background, our estimates system has worked well in recent years. Since 1988-89, the amount of revenue actually received in a particular year has varied between 0.5% below the revised estimate (in 1990-91) to about 2.5% above it (in 1991-92).

Most of the variations in respect of the last financial year was due to certain specific factors. A resurgence in the stock market and a greatly increased level of stamping of property documents in March 1991, for example, pushed stamp duty receipts up by about $700 million. This could not reasonably have been anticipated. Similarly, the increase in revenue received from profits tax over the revised estimate, though small in percentage terms, amounted to some $400 million, the larger part of which arose from an unanticipated decrease in the number of claims for tax hold-over. The variation between the revised estimates and actual revenue received for other internal revenue heads and subheads was minimal.

Our relatively good record in estimating both recurrent expenditure and recurrent revenue is, of course, no cause for complacency. Clearly accuracy is desirable in a situation where only a small percentage variation can be equivalent to a significent sum in dollar terms. We will be exploring whether there are ways to improve further both the production and presentation of our estimates in the lead-up to the next Budget. But we must bear in mind that no system can predict all changes, local and international, which may have a sudden effect on the economy and, in case of doubt,

we should err on the side of prudence in estimating the amount of revenue we have available.

We face a different and somewhat more serious problem with respect to capital expenditure.

Looking at the performance of the Capital Works Reserve Fund over the past five years, the difference between our original estimates and the actual expenditure averaged at something over 6% up to 1989-90, but increased to about 30% in 1990-91 and 1991-92.

The largest elements in this underspending in the last two financial years occurred under Head 701 Land Acquisition and Head 702 Port and Airport Development. In the case of land acquisition, underspending was mainly due to prolonged arbitration on contested cases and the failure of landowners to come forward to collect compensation. Uncertainty over the future of the Airport Core Programme also contributed to underspending, as contracts and tenders were held up until the signing of the Memorandum of Understanding on 30 June 1991. This was, of course, a major breakthrough, but time was still required to mobilize resources and obtain the necessary approvals from Finance Committee before the projects concerned could go forward at full speed.

I am confident that our PADS-related estimates will be improved in 1992-93. Projects within the Airport Core Programme are now progressing steadily and a series of port development projects are coming on stream. As for Head 701, factors outside the Government's control will always make it difficult to predict accurately each year's expenditure on land acquisition. Prolonged discussion with a major clearee or arbitration by the Lands Tribunal can, for example, result in slippage of hundreds of millions of dollars in compensation payment.

As with our estimates of recurrent account, we nevertheless recognize the need for improvement. The Secretary for Works and the Secretary for the Treasury are looking at ways to enable early identification of possible deviations from the estimates. This would enable us to direct sums likely to remain unspent in a financial year to other projects. The Directors of the Works group of Departments have been asked to review their departments' manpower resources and availability of sites more carefully. We are also considering requiring quarterly breakdowns of expenditure from the Works group of Departments so that actual spending patterns can

be more closely monitored, and reviewing gazetting procedures to improve the accuracy of the estimated start dates of new projects.

Clearance of silt and refuse in squatter areas

16. MR FRED LI: Heavy rainstorms a month ago had caused blockage of drains in several squatter areas which remained uncleared for days. Will the Government inform this Council which department is responsible for the clearance of silt and refuse in squatter areas and whether there is any established policy to deal with such clearance after natural disasters?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the Drainage Services Department is responsible for the clearance of silt from properly built drains in squatter areas. The clearance of drains which have been constructed by squatters themselves should normally be undertaken by them in much the same way as drains within private property are dealt with by their owners. However, in emergencies, the Drainage Services Department will clear silt from drains in squatter areas if necessary.

The Urban Services Department and Regional Services Department are responsible for removing refuse in the urban area and the New Territories respectively. Clean up operations are undertaken by the two departments jointly with others such as the Highways Department and Drainage Services Department as soon after natural disasters as conditions permit. These operations can include the removal of silt and refuse from squatter areas and drains therein.

In addition, in the event of natural disasters, the district offices of the City and New Territories Administration co-ordinate emergency relief work by the departments concerned, including the urgent reinstatement of disrupted services.

Passenger safety on rail platforms

17. MR CHEUNG MAN-KWONG asked: With regard to the incidents involving passengers of the Light Rail Transit, Kowloon-Canton Railway and Mass Transit Railway falling from the platforms onto the tracks, will the Government inform this Council of the following:

(a) the respective numbers of cases involving passengers of each of the above-mentioned railway systems falling off the platforms accidentally, intentionally or upon being shoved by others over the five years; and

(b) whether the Administration will require operators of those railway systems to install more effective safety facilities on the platforms to prevent passengers from falling onto the tracks?

SECRETARY FOR TRANSPORT: Mr Deputy President,

(a) The Appendix gives a breakdown of incidents involving passengers of the Light Rail Transit (LRT), the Kowloon-Canton Railway (KCR) and the Mass Transit Railway (MTR) falling from platforms in the past five years. The average number of accidents per million passengers carried by the LRT, KCR and MTR was 0.068, 0.014 and 0.039 respectively.

(b) The two railway corporations are required by their respective Ordinances to ensure passenger safety. In addition, the Government appoints a Chief Inspecting Officer of Railways to monitor and advise on all safety issues.

Both corporations are fully aware of the need to ensure platform safety. Measures to warn passengers to keep off the tracks include marking yellow lines along platform edges, sending constant reminders through the public address system and introducing platform queuing schemes. Platform assistants are deployed to assist boarding and alighting and to ensure passenger safety.

More specifically, as regards the LRT, apart from the standard yellow lines, white lines have been painted on the edge of curved platforms to alert passengers of gaps. Safety campaigns such as community briefings, school talks and exhibitions are held regularly. Safety messages are printed on posters and pamphlets to educate the public. As regards the KCR, $344 million will be spent to provide additional platform entrances at the Tai Wai, Kowloon Tong and Kowloon Stations over the next four years to spread passengers more evenly along the platforms. The signalling system is also being upgraded to increase train frequency and thus reduce overcrowding.

As regards the MTR, pressure mats are being installed which will set off audible

and visual alarms in case of anyone descending to the tracks. A passenger behaviour campaign will be launched this August to educate passengers on railway safety with emphasis on platform safety.

Appendix

	Suicides	Accidental falls	Incidents of being shoved by others	No. of accidents/ million passengers carried annually
(I) LRT				
1988*	0	1	0	0.062
1989	0	4	0	0.064
1990	0	5	0	0.068
1991	0	6	0	0.073

			Overall Average	0.068

(*The LRT was commissioned in 1988.)

	Suicides	Accidental falls	Incidents of being shoved by others	No. of accidents/ million passengers carried annually
(II) KCR				
1987	1	1	1	0.022
1988	1	1	0	0.013
1989	2	2	0	0.023
1990	2	0	0	0.011
1991	1	0	0	0.005

			Overall Average	0.014

	Suicides	Accidental falls	Incidents of being shoved by others	No. of accidents/ million passengers carried annually
(III) MTR				
1987	16	12	1	0.047
1988	10	21	0	0.049
1989	13	11	0	0.035

1990	15	13	0	0.039
1991	7	12	0	0.026

		Overall Average		0.039

(Note: The accidental falls were mainly caused by dizziness, fainting, slipping and carelessness.)

Medical certificates issued by unregistrable medical practitioners

18. MR TAM YIU-CHUNG asked: Unregistrable medical practitioners are legally permitted to practise medicine in exempted clinics organized by local organizations and frequently issue medical certificates in the course of their duties. Will the Government inform this Council whether the medical certificates issued by these unregistrable medical practitioners are accepted for the purpose of granting sick leave to civil servants?

SECRETARY FOR THE CIVIL SERVICE: Mr Deputy President, civil servants may be granted sick leave on the basis of certificates issued by private medical practitioners, including those issued by unregistrable practitioners working in exempted clinics.

Secondary VI admission procedure

19. MR TIK CHI-YUEN asked: In respect of a working party formed by the Education Department to review the implementation of the "Secondary VI Admission Procedure" which has been put into effect for a year and the revised admission guidelines distributed to schools in early May this year, will the Government inform this Council of the following:

(a) the number of complaints received by the Education Department concerning the implementation of the "Secondary VI Admission Procedure" in the last year; and the major subjects of the complaints;

(b) the measures to be taken by the Education Department this year to ensure that secondary schools will comply with the revised admission guidelines; and how the

department will deal with those schools which fail to comply with such guidelines without justification;

(c) the measures to be taken by the Education Department this year to improve the actual implementation of student admission by stages and the promulgation of available school places by various schools in Stage II, so as to avoid confusion; and

(d) the ratio and the number of students admitted by all secondary schools in Hong Kong in each of the five stages of admission last year?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to Mr TIK's questions are as follows:

(a) A total of 23 allegations of malpractice were received by the Education Department throughout the admission process. The major subjects of the complaints related to schools abusing the admission procedure, for example, by taking in students with high scores from other schools at Stage I or announcing admissions of students on Day 2 of Stage II rather than on Day 3 as stipulated. All the cases were investigated. Eight were substantiated and were found to be mainly due to schools' misinterpretation of the new procedure. All cases were rectified upon advice given by the Education Department.

(b) The Education Department will ensure that schools comply with the revised admission guidelines mainly by close monitoring of the situation in individual schools. The measures which have been or will be introduced include:

(i) requiring schools to keep records of candidates accepted or rejected at all the stages of the admission procedure, and to submit a list of successful candidates to the District Education Officer for information at the end of each stage;

(ii) advising schools to accept students in accordance with the points system and subject relevance. If, for any reason, this guideline is not followed, an explanation must be recorded for future reference;

(iii) advising schools not to admit students without an admission slip; and

(iv) staff of the Education Department visiting schools throughout the admission process to ensure that schools comply with the admission procedure.

Schools which fail to comply with the guidelines without good reason will be asked to re-consider the cases of any eligible candidates who have been adversely affected.

(c) The measures to improve the actual implementation are the same as those mentioned in paragraph (b) above. School Councils have been consulted on the measures to ensure acceptability and compliance.

At the end of Stage I, schools will be required to provide District Education Officers (DEOs) with the number of places still available. DEOs will then prepare a "List of Schools with S.6 vacancies" for display in their offices by 9 am on Day 2 (Stage II) for the information of students.

(d) The percentage and number of students admitted at the end of each stage in 1991 were:

Stage	%	Number
I	73.6	14 274
II	(not available as schools were not required to report at the end of Stage II)	
III	98	19 006
IV	99.9	19 376
V	100	19 400

Organophosphate insecticide

20. DR HUANG CHEN-YA asked: In view of some recent overseas reports of neurotoxicity due to the use of an organophosphate insecticide called "CHLORPYRIFOS", which was

previously regarded as a safe chemical, will the Government inform this Council:

(a) whether the insecticide "CHLORPYRIFOS" is currently in use in Hong Kong;

(b) what other kinds of organophosphate insecticides are currently available in Hong Kong;

(c) whether there are any regulations controlling the use of these insecticides and, if so, what they are;

(d) what surveillance mechanism is in place for detection of toxicity arising from use of the insecticides; and

(e) what specific actions the Government will take to safeguard against toxicity due to their use ?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President,

(a) The insecticide "CHLORPYRIFOS" is currently registered for local distribution and is available in Hong Kong. It can be used for controlling pests in certain vegetable crops and as domestic cockroach bait. However, it is not in common use due to its limited application and the availability of other synthetic pyrethroid formulations.

(b) At present, there are 31 organophosphate compounds registered as pesticides under the Pesticides Ordinance (Cap 133). Of these, only 12 are readily available in the local market.

(c) All insecticides are controlled under the Pesticides Ordinance (Cap 133), which aims at protecting the public from hazards arising from the use of such products. In this context, the Ordinance requires a pesticide to be registered before it can be imported or distributed here. Only pesticides considered safe can be registered for local use. They are also required to be properly packed and labelled. Persons dealing in pesticides must also be licensed by the Director of Agriculture and Fisheries.

(d) Under the Pesticides Ordinance, staff of the Agriculture and Fisheries Department

conduct regular random checks at retail outlets to ensure that pesticides are properly packed and labelled. Samples of pesticides are taken from the local market for chemical analysis to check if any unregistered pesticide is being offered for sale.

(e) Farmers are the major users of pesticides. The Agriculture and Fisheries Department provides farmers with detailed advisory leaflets and also holds periodic technical seminars and discussion meetings with them. These give information on safe use of pesticides and effective pest control. Field staff of the Department also counsel and remind farmers on the safe and proper use of pesticides in their regular contacts with them.

In addition, the Agriculture and Fisheries Department maintains a close watch on the toxicity status of various pesticides. Should a registered pesticide be found or reported to be dangerous, or causing health hazards, the Director of Agriculture and Fisheries can order the cancellation of the registration of the pesticide in question. Since 1983, 15 pesticides have been deregistered on health hazard or environmental grounds.

Motions

CRIMINAL PROCEDURE ORDINANCE

THE CHIEF SECRETARY moved the following motion:

"That the Legal Aid in Criminal Cases (Amendment) Rules 1992, made by the Chief Justice on 19 May 1992, be approved."

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

Section 9A of the Criminal Procedure Ordinance provides that the Chief Justice may make the Legal Aid in Criminal Cases Rules, subject to this Council's approval by resolution.

The main objective of the amendments to the Rules is to give effect to a new means test, called the "financial capacity" approach, in criminal legal aid cases. The introduction of the "financial capacity" approach in the Legal Aid (Amendment) Bill was approved by this Council on 1 May 1991.

Under the existing arrangements, an applicant for legal aid is required to satisfy the financial limits on both disposable monthly income and disposable capital. This approach disadvantages applicants whose financial resources consist mainly of either income or capital. Moreover, the financial limits which were last revised in 1986 lag behind increases in earnings over the years and need to be updated.

The "financial capacity" approach assesses an applicant's means on the basis of his aggregate "financial resources", including disposable annual income and disposable capital. More applicants will become financially eligible for legal aid under this approach.

The implementation of the new means test was delayed because the resources originally reserved for the "financial capacity" approach were utilized, with Finance Committee's approval, to expand the Duty Lawyer Scheme in Magistrates' Courts. That was necessary to enable the Government to discharge its obligation under Article 11(2)(d) of the Bill of Rights Ordinance, which requires that legal representation be provided to persons charged in criminal cases who cannot afford it and where the interests of justice so require.

We now aim to implement the "financial capacity" approach with effect from 1 July 1992. To this end, it is necessary to amend the subsidiary regulations applying to civil cases and the rules made by the Chief Justice applying to criminal cases. The amendments to the Legal Aid in Criminal Cases Rules made by the Chief Justice are now submitted to this Council for approval.

The proposed amendments will bring about substantial improvements to the existing criminal legal aid system and are worthy of the support of this Council.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE ATTORNEY GENERAL moved the following motion:

"That the Interpretation and General Clauses (Chinese Version of Short Titles) Notice, to be made by the Governor in Council, be approved."

He said: Mr Deputy President, I move the first resolution of the two standing in my name on the Order Paper. They are connected and I will speak to both on this motion.

Mr Deputy President, this is a significant moment in the history of legislation in Hong Kong. If these motions are passed by this Council, we may expect to see, in the near future, the first authentic Chinese text of an Ordinance in our statute book prepared under the provision of section 4B of the Official Languages Ordinance, and have the advantage of a complete list of short titles of our Ordinances in Chinese. I take a particular personal pleasure in having the opportunity, by coincidence, to move these resolutions. As Law Draftsman, I have a special interest in, although making no useful contribution to, this work, and I am delighted for all those who have toiled so hard and so long that they are now to see some concrete results of their labours. They are entitled to feel proud that they have played such a valuable part towards the goal of making Hong Kong's written laws more accessible to the vast majority of our population.

It does not require any argument to convince this Council that the task of preparing an authentic Chinese text of an existing piece of legislation is an extremely difficult one and this is especially so with legislation enacted many years ago in style and wording quite different from that enacted today. The opportunity of adjusting the language of the English and Chinese versions of a new law does not exist here. Those responsible for the achievements in this area so far have wrought minor miracles, and I say this boldly in spite of the criticisms of some who should know better.

I extend my congratulations to Members of the ad hoc group headed by Mr Andrew WONG for having finalized this important and difficult piece of work.

I would also like to take this opportunity to pay tribute to Dr Daniel TSE and his colleagues on the Bilingual Laws Advisory Committee (BLAC). We are privileged to have their support and dedication on this work. Fifty Ordinances comprising some 1 400 pages of legislation have already been examined by this Committee. Chapter 1, the Interpretation and General Clauses Ordinance, was one of the most difficult to translate in view of its technical and conceptual nature. The BLAC now operates

with two separate sub-committees. A third sub-committee will be formed later this year in order to further accelerate its progress. I congratulate members of the Committee for their skilful work.

The 50 Ordinances so far examined by the BLAC relate mainly to legislation that is likely to be of use to large sections of the public and which is most frequently used in the lower courts. These will in due course be referred to this Council for approval. In addition to the Ordinances already examined by the BLAC, members of my staff in the Law Drafting Division are hard at work on the Chinese texts of another 120 Ordinances comprising some 4 100 pages. These are in various stages of completion. I would like, publicly, to extend my personal thanks to the officers of my Division for their hard work, professionalism and dedication.

Mr Deputy President, in July last year, the Law Drafting Division started a six-month pilot scheme for part-time law translation. Under this scheme, government Chinese Language Officers were invited to accept assignments for the translation of the less complex Ordinances outside their normal office hours. Their work is then vetted by the bilingual legislative counsel and Law Translation Officers in the Law Drafting Division. Work of a good standard at a reasonable speed has been produced. It has now been decided to continue with this project on a long-term basis and for that purpose, about 70 Chinese Language Officers have been identified as suitable to do the work. This has added great impetus to the law translation programme. It is believed that with this additional help, an annual production of some 4 500 pages of draft Chinese texts can be achieved. The target is to have final Chinese drafts of all existing legislation examined by the BLAC by the end of 1995.

Mr Deputy President, turning directly to the resolution presently before the Council, I say that its subject matter may not appear to be of great importance. But in fact short titles of Ordinances are useful to the lawyers.

They are often referred to in other pieces of legislation and they are also frequently cited in court. With the enactment of bilingual legislation, and to facilitate citation, it is essential that Hong Kong has a complete list of such short titles in the Chinese language.

Mr Deputy President, it would not be right for me to end this speech without a special mention of Mr Eric AU who died on 30 March this year. Eric was one of my deputies, the Principal Crown Counsel in charge of the bilingual laws project. It was very

much his child, which he was carefully nurturing to maturity. Sadly he will not see it fully grown, but it will stand as a proud monument to his memory and achievement.

Mr Deputy President, I move that the draft "Interpretation and General Clauses (Chinese Version of Short Titles) Notice", proposed to be made by the Governor in Council, be approved.

Question on the motion proposed.

MR ANDREW WONG (in Cantonese): Mr Deputy President, I agree very much with the Attorney General who said just now that the two resolutions before us today are of utmost importance and historical significance as they represent another big step forward in our bilingual law drafting exercise. We will be approving today the authentic Chinese text of the Interpretation and General Clauses Ordinance (Cap. 1) and the complete list of Chinese short titles of all the Ordinances. From now on, more and more authentic Chinese texts of existing laws will be submitted to this Council for approval, after which these Chinese versions will become binding laws and can be used in courts. What is of significance is that these laws are written in the language used by the great majority of the people in Hong Kong, and will be of great use in furthering the public's understanding of the laws of Hong Kong.

The Attorney General has just reported the progress of the bilingual law drafting exercise, and I would like to take this opportunity to give a brief introduction to the work undertaken by this Council in this regard. According to the relevant provision of the Official Languages Ordinance (Cap. 5), the Governor in Council shall consult the Bilingual Laws Advisory Committee (BLAC) before making an order for declaring the authentic Chinese text of a particular Ordinance, and the draft order, which specifies the relevant translation to be the authentic Chinese text, shall be laid before this Council for approval before it can be notified as an order in the gazette to the effect that the translation specified shall become the authentic Chinese text. To comply with this provision and to enable Members to actively take part in the examination of such Chinese texts, it has been decided to adopt a simple examination procedure during an In-House meeting of this Council, whereby the translation of the laws approved by BLAC will be forwarded, through the arrangement of the Legal Department, to the ad hoc group on authentic Chinese text of laws set up by this Council for examination. After being approved by the In-House meeting of this Council, the translation will be returned to the Legal Department for making

the relevant draft order which will be laid before and approved by resolution of this Council. This examination process having completed, a draft notice to the effect that Members of this Council confirm, after examination, the translation to be the authentic Chinese text will be submitted to this Council together with the relevant Ordinance for approval. This way, the relevant resolution will not stall even if Members should take issue with the wording of the resolution when it is moved before this Council. So far, this examination procedure has worked smoothly.

The ad hoc group is aware that the Chinese texts of laws, before being submitted to it, have undergone several phases of vetting and scrutiny by the BLAC, and that to the group the quality of the Chinese texts is beyond question. But I have to emphasize here that we in the ad hoc group will not perfunctorily discharge our duties because of our trust in the work of the BLAC. When examining the Chinese texts, we will be just as meticulous. To take the example of the examination of the Interpretation and General Clauses Ordinance and the complete list of Chinese short titles of all our Ordinances, the ad hoc group altogether held seven meetings, and had numerous discussions with the Legal Department on problems concerning the translation of some provisions. The group also made suggestions in pursuit of which many amendments were eventually agreed upon.

Finally, Mr Deputy President, I should like to say that the ad hoc group regrets the premature death of Mr Eric AU. But the group is confident that the relevant authority, the BLAC and the group itself will continue with their effort to complete as soon as possible the vetting of the Chinese versions of the existing laws. I hope that all the laws in Hong Kong will have both an English and Chinese version in the near future.

Mr Deputy President, with these remarks, I support the present motion and the other one on authentic Chinese text under the Official Languages Ordinance to be moved later.

Question on the motion put and agreed to.

OFFICIAL LANGUAGES ORDINANCE

THE ATTORNEY GENERAL moved the following motion:

"That the Official Languages (Authentic Chinese Text) (Interpretation and General Clauses Ordinance) Order, to be made by the Governor in Council, be approved."

He said: Mr Deputy President, I move the second resolution standing in my name on the Order Paper, adopting the remarks I made earlier regarding the connected resolution.

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 Pharmacists (Disciplinary Procedure) (Amendment) Regulation 1992, made by the Pharmacy and Poisons Board on 21 May 1992, be approved."

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

The Pharmacy and Poisons Ordinance provides that a Disciplinary Board appointed by the Pharmacy and Poisons Board may conduct disciplinary inquiries against pharmacists. Any party may, after the inquiry, obtain a verbatim record of the proceedings at a fee of 75 for each folio of 72 words. Set about two decades ago, this fee level is seriously out of step with the actual cost of the service and is thus contrary to the government policy of recovering the cost of services rendered. A recent costing exercise reveals that the actual cost of producing each folio is $73.

Under section 29 of the Pharmacy and Poisons Ordinance, the Pharmacy and Poisons Board, subject to the approval of this Council, may make regulations prescribing this fee. The Pharmacy and Poisons Board has agreed to amend the relevant regulation to recover the full cost of the service rendered. The approval of this Council is now sought.

This proposed revision is in line with that of similar fees concerning doctors, dentists, midwives and nurses recently effected by amendment to other subsidiary legislation made by the Executive Council.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

INTELLECTUAL PROPERTY DEPARTMENT (CONSEQUENTIAL AMENDMENTS) BILL 1992

PARENT AND CHILD BILL

EMPLOYEES RETRAINING BILL

AIR POLLUTION CONTROL (AMENDMENT) BILL 1992

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

Second Reading of Bills

INTELLECTUAL PROPERTY DEPARTMENT (CONSEQUENTIAL AMENDMENTS) BILL 1992

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend miscellaneous Ordinances consequent upon the establishment of the Intellectual Property Department."

He said: Mr Deputy President, I move that the Intellectual Property Department (Consequential Amendments) Bill 1992 be read a Second time.

The Intellectual Property Department came into being on 2 July 1990. It serves as a focal point for the development of Hong Kong's intellectual property regime.

The purpose of this Bill is to place lawyers in the Department in the same position, in relation to certain rights and privileges under some Ordinances, as other lawyers in government service. The rights and privileges to which I refer are:

(i) the exemption from jury service;

(ii) the counting of service towards eligibility for the admission as a solicitor and for judicial appointment; and

(iii) thirdly, the ability to take on trainee solicitors.

The work performed by lawyers in the Department is similar to the intellectual property work formerly carried out by lawyers in the Registrar General's Department. These lawyers enjoyed the rights and privileges I have mentioned.

The Bill also classifies money handled by the Director of Intellectual Property as public money for the purposes of the jurisdiction of the Director of Audit.

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

Question on the adjournment proposed, put and agreed to.

PARENT AND CHILD BILL

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to reduce the legal disabilities associated with illegitimacy, to consolidate and amend certain aspects of the law relating to paternity, legitimacy and legitimation, to provide for the determination of parentage in cases where birth or pregnancy results from medical treatment services, to provide for the use of scientific tests in determining parentage in court proceedings, and for connected purposes."

He said: Mr Deputy President, I move that the Parent and Child Bill 1992 be read a Second time.

This Bill seeks to implement the recommendations contained in the Law Reform Commission's report on "Illegitimacy". That report, published in December last year, drew attention to the fact that the present law places an illegitimate child at a legal disadvantage in a number of ways and this disadvantage arises from the circumstances of his birth; circumstances for which the child himself can clearly have no responsibility. Article 20(1) of the Hong Kong Bill of Rights Ordinance, 1991, provides that every child is entitled to protection as a minor, without any

discrimination as to his birth. Article 22 provides that all persons are entitled to the equal protection of the law without any discrimination on the ground of birth. It is clear that the existing law, in this area, is inconsistent with the Bill of Rights.

The illegitimate child is disadvantaged by the existing law in, for instance, succession matters. Unlike a legitimate child, he cannot succeed to his father's estate on the father's death intestate. Where support is concerned, the range of maintenance orders available to the illegitimate child is more limited. He must apply to the court for these by way of a special procedure which does not apply to legitimate children. In custody proceedings, the child's welfare is normally the paramount consideration for the court but, where an illegitimate child is concerned, the court must take account of the mother's superior claim to custody rather than the child's welfare.

The aim of this Bill is to ensure that an illegitimate child will, so far as is practicable, be treated by the law in the same way as a legitimate child. The numbers of those affected by the present law may be small but it is clearly desirable that the present discriminatory aspects of the law should be rectified.

The Law Reform Commission found strong public support for this proposal. In answer to any suggestion that the present law served to uphold moral standards and to support the institution of marriage, the Commission said this: "the law should protect the institution of marriage and that the family is the fundamental unit of society but did not believe that the present discrimination achieved very much in that regard". As the Commission argued, while a married relationship should in principle be more stable than an unmarried one, and so provide a better environment for the child, that is not always the case. Many marriages are not stable and the Commission suggested that there was statistical evidence that a marriage entered into primarily for the purpose of ensuring that an expected child would not be born illegitimate was especially at risk.

The principal provision of the Bill is set out in clause 3. The effect of this provision is that in all legislation (existing and future) and all future documents, words implying a family relationship such as "son" or "child" are to include illegitimate persons unless a contrary intention is shown. Thus it will remain open for a testator to exclude his illegitimate child by specifying in his will that he leaves his estate to his "legitimate children", but a bequest to "his children" would

include an illegitimate child.

Mr Deputy President, clauses 9 to 12 of the Bill refer to surrogacy and births brought about through artificial insemination or other scientific means. I am conscious that this is an area which raises sensitive and important questions of ethics and morality. I must stress, however, that this Bill is not concerned with whether or not surrogacy and scientifically assisted birth is desirable, nor with considering the controls, if any, which should be applied. This Bill deals only with making provision to identify the legal parents where such births take place, and to provide a legal mechanism for parties to a surrogacy to apply to the court for an order as to the child's parentage which reflects the reality of the surrogacy arrangement. The extent to which such arrangements should be allowed, or how they should be regulated, are questions which fall outside the ambit of this Bill and are currently under consideration by the Secretary for Health and Welfare as a separate exercise.

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

Question on the adjournment proposed, put and agreed to.

EMPLOYEES RETRAINING BILL

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to establish the Employees Retraining Board as a body corporate, to establish the Employees Retraining Fund, to provide for the imposition of a levy payable by employers who employ imported employees, and to provide for the collection of the levy by the Director of Immigration from those employers in respect of those employees and the remittance of the levy to the Board for the purposes of the Fund, the defraying of the costs of providing retraining courses for local employees, the payment of retraining allowances by the Board from the Fund to those employees, and for incidental and connected matters."

He said: Mr Deputy President, I move that the Employees Retraining Bill 1992 be read a Second time.

At present training and retraining facilities are provided to local workers by the Vocational Training Council, the Clothing Industry Training Authority and the

Construction Industry Training Authority (the two CITAs) through their full-time or part-time courses, although these courses are not specifically or exclusively designed for in-service workers wishing to change employment. Some retraining is therefore currently being financed through the government subvention to the Vocational Training Council and levies contributed to the two CITAs by employers in the clothing and construction industries. There are of course other, mostly in-house, retraining programmes provided by individual employers to meet specific needs. Notwithstanding existing provisions, we recognize that there is a need to provide retraining courses that are specifically and exclusively designed to assist those workers who are displaced as a result of the economic re-structuring process to find alternative employment. The setting up of a statutory retraining fund financed by a levy imposed on employers who import workers will channel additional resources to augment the provision of retraining for local workers.

The Bill before the Council seeks to create an Employees Retraining Fund and establish an Employees Retraining Board to administer the Fund.

Part II of the Bill establishes the Employees Retraining Board as a body corporate and sets out its composition, functions and procedures. The Board shall be a tripartite body consisting of representatives of employers, employees and the Government as well as experts in the field of vocational training or manpower planning. Apart from managing the Employees Retraining Fund, the Board shall be responsible for considering the provision of retraining courses designed for the benefit of local employees and determining the level of retraining allowance to be paid to those employees as trainees.

Part III establishes the Employees Retraining Fund and covers the financial arrangements relating to payments from the Board as well as accounting and auditing procedures.

Part IV deals with the imposition and payment of a retraining levy. Part V provides the machinery in respect of applications by trainees to attend retraining courses and claim the retraining allowance and includes a review procedure.

Clause 33 provides for transitional arrangements which ensure that the levy collected under the 1992 general labour importation scheme could be channelled directly to the statutory fund and that the funds advanced by the Government to finance the pilot retraining courses before the establishment of the Board could be recovered.

Mr Deputy President, the Government has lost no time in our efforts to augment the provision of retraining to local employees. As Members are aware, pending the establishment of a statutory Fund, a Provisional Retraining Fund Board was established in February this year to consider and plan suitable retraining courses, and an advance of $50 million has been made available by the Government, with the endorsement of the Finance Committee of this Council, for the purpose. I am pleased to inform Members that 10 new pilot retraining courses will commence early next month. Upon passage of the Bill into law, the Employees Retraining Board would have an estimated income of at least $120 million in the following 12 months. More retraining courses are expected to be organized as a result.

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

Question on the adjournment proposed, put and agreed to.

AIR POLLUTION CONTROL (AMENDMENT) BILL 1992

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to amend the Air Pollution Control Ordinance."

He said: Mr Deputy President, I move that the Air Pollution Control (Amendment) Bill 1992 be read the Second time.

The Air Pollution Control Ordinance introduced in 1983 was designed to control air pollution from stationary sources like industrial chimneys and processes which were then the main cause for concern. Since then, the major sources and the types of air pollution which are of concern have become diversified, and experience has shown that some provisions of the Ordinance cannot meet the need for new controls effectively. Under the Ordinance some air pollution problems, such as asbestos, cannot be controlled. It is also time to provide for better enforcement under the Ordinance.

Twenty-three types of specified processes, which are processes having the

potential to cause serious air pollution, have been subject to licensing control since 1987. Exemption was provided for premises already in existence at that time. Probably because of their exemption, few owners of exempted premises have sought to upgrade their facilities. In the interests of our health, it is now proposed to provide by clause 15 for the removal of exemption for such premises. However, this will be done in phases and in full consultation with the industries affected.

It is also proposed that eight new processes identified in the Bill as being capable of contributing to serious air pollution should be included as specified processes in the First Schedule to the Ordinance.

Asbestos has long been known to be a substance which can cause serious health problems through inhalation and its use is under strict control in many countries. New sections contained in clause 32 will provide for the control of the emission of asbestos into the environment. The proposed controls require the owners of premises who intend to carry out any asbestos related work to appoint qualified registered consultants, contractors, supervisors and laboratories for the purpose. All buildings accessible to the public or used for certain sensitive purposes would be surveyed for asbestos in phases, with the first phase covering schools and hospitals. The sale and import for use in Hong Kong of two hazardous types of asbestos, amosite and crocidolite, and products containing these two substances would be banned.

Clause 7 provides for a new section under which technical memoranda setting out standards and guidelines for the determination and abatement of air pollution can be issued. The Bill also provides an opportunity to improve the provisions relating to general control and the Appeal Board, and to revise the penalties under the Ordinance to increase their deterrent effect and bring them in line with penalties under other environmental legislation.

Major industrial and trade associations, as well as the industries affected, have been consulted on the proposed controls. Their main concern is about the requirements which will be stipulated in the technical memoranda, the proposed removal of exemption for existing specified processes and the introduction of controls on new ones. I wish to emphasize that the Government's intention is to set out only current requirements in the technical memoranda to facilitate enforcement. I must also emphasize that the proposed controls on both existing and new specified processes would be implemented in phases following consultation with the industries involved.

Mr Deputy President, I move that the debate be adjourned.

Question on the adjournment proposed, put and agreed to.

CRIMES (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 17 October 1991

Question on Second Reading proposed.

MR MARTIN LEE: Mr Deputy President, the Crimes (Amendment) (No.2) Bill 1991 seeks to modernize the criminal law provisions relating to forgery and counterfeiting. The ad hoc group set up to study the Bill was unanimously in support of the codification of the law but was deeply concerned about the apparently unintentional increases in maximum sentences for some forgery and counterfeiting offences, a point which had been raised in both the submissions from the Law Society of Hong Kong and Hong Kong Bar Association. The ad hoc group expressed reservations about the raising of the maximum sentence for many offences from three or seven years to 14 years. It noted that the maximum sentence in the United Kingdom for similar offences was 10 years. It considered that the increase in penalty was unacceptable unless the crimes concerned were viewed more seriously now than before. It was concerned that the Courts might think that the legislature intended heavier sentences to the passed by the Courts. The Administration was asked to explain the rationale for the higher sentences, and its reply was that in light of the current sophistication in credit card forgery, an area of criminal activity where Hong Kong features as a major centre, it is necessary to have heavier sentences to discourage such activities. The ad hoc group was informed that serious cases would be tried in the District Court whereas less serious cases could be tried in Magistrates Court so that these offences would be subject to the limits of jurisdiction of these Courts of seven years and two years respectively.

In reply to the ad hoc group's request that thought be given to amending the Bill so as to ensure that no existing maximum sentences were increased merely as a consequence of "simplification", the Administration pointed out that the Bill was more than a mere simplification. The system of penalties was rationalized in simple fashion which was easy to understand. Broadly, 14 years' imprisonment was prescribed where there was an intent to use a false instrument or counterfeit currency, and three

years where there was no such intent.

At the suggestion of the ad hoc group, the Administration also consulted the draftsman of the Bill to see whether it would be possible to legislate for different sentences for different types of forged instruments. It was considered that this could only be achieved if the basic format of the Bill were to be sacrificed, and the original method of having different maximum penalties for different offences reintroduced, as the blameworthiness varies from one offence to another.

Another aspect of the Bill which the ad hoc group considered was the venue of trial. The ad hoc group noted that apart from the offences of reproducing Hong Kong currency notes (section 103(1)) and making, selling or distributing, or having custody of any imitation Hong Kong coins with the intent to sell or distribute (section 104(1)) which were triable in the Magistrates Court only, all the other offences set out in the Bill, for example, the proposed new section 71, were expressed to be indictable only. It considered that these latter offences should all be triable either "on indictment" or summarily. The Administration clarified that the Crown had the absolute power to decide upon the venue of the trial of all offences according to the view taken of the severity of these offences; so that the offences which appeared in the Bill as triable "on indictment" could also be dealt with summarily by virtue of section 92 of the Magistrates Ordinance, but the maximum sentence would then be limited to two years, being the maximum sentence which the Magistrates Courts could impose in a general case.

Having received the clarifications and explanations of the Administration, the ad hoc group is satisfied that the Bill can be supported.

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

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

Bill read the Second time.

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

INSURANCE COMPANIES (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 13 November 1991

Question on Second Reading proposed.

DR PHILIP WONG: Mr Deputy President, it was at the Legislative Council In-House meeting held on 1 November 1991 that the Legislative Council ad hoc group to study the Insurance Companies (Amendment) Bill 1991 was formed. The ad hoc group was later charged with the responsibilities to examine also the Insurance Companies (Amendment) (No. 2) Bill 1991 by the Legislative Council In-House on 29 November 1991.

Right from day one, the ad hoc group realizes that we have taken on an important job. On one side of the scales is the need to maintain the laissez-faire business environment of the private sector. On the other side of the scales is the need to vest the monitoring authority, in this case, the Insurance Authority, with the necessary power to carry out his monitoring functions effectively. How this state of equilibrium can be maintained is a question that we kept on asking ourselves in the past six months.

We do not accept the allegation that any requests for additional powers by the Insurance Authority will definitely upset the balance. We feel that the Insurance Companies Ordinance has to be reviewed from time to time in the light of the actual experience gained in its operations. As a matter of fact, we note that a total of 12 major amendments have been made to the Ordinance since its enactment in 1983.

Since the publication in the Gazette of this Bill and the No. 2 Bill on 1 and 29 November 1991 respectively, the insurance industry has thrived with worries that the powers sought by these two Bills are draconian and excessive which, when used, would stifle insurers' activities. Perhaps it is time now to assure all those who were concerned that their worries have been taken care of. The ad hoc group, the Hong Kong Federation of Insurers and the Administration have worked closely together and consensus has finally been reached for the powers originally proposed in the Bills to be appropriately trimmed on the grounds for exercising these powers to be narrowed and more clearly defined.

Turning now to the Bill proper, I would like to report to honourable colleagues that the main item of amendments that has been the subject of concern of the insurance industry is clause 5 of the Bill which proposes to amend section 26(3) of the Ordinance to empower the Insurance Authority to exercise any of his power under sections 28,

29, 30, 32, 33 and 35, in addition to his more limited powers under section 34, on the ground that he considers the exercise of such power to be desirable in the general interests of persons who are or may become policy holders of an insurer.

Before I proceed any further, I think it would be useful if I could briefly explain to honourable colleagues what the powers under sections 28, 29, 30 and 35 are:

(a) Section 28, under this section, the Insurance Authority may impose restrictions on the way an insurer can make its investments.

(b) Section 29, under this section, the Insurance Authority may require an insurer to maintain certain amount of its assets in Hong Kong.

(c) Section 30, under this section, the Insurance Authority, in conjunction with his exercise of his power under section 29, may also require the insurer to put the assets maintained in Hong Kong under the custody of a person approved by him.

(d) Section 35, under this section, the Insurance Authority may require an insurer to take such action in respect of its affairs, business or property as he considers appropriate.

The insurance industry was concerned that given the nature of the powers in sections 28, 29, 30 and 35 and the wide scope of the ground of section 26(3), the Insurance Authority would be capable of interfering with the normal commercial decisions of an insurer. Business decisions such as determining the rate of premium and deciding where and how to invest are likely to be interfered with by the Insurance Authority for non-specific reasons under the new section 26(3).

The insurance industry therefore proposed that the powers of sections 28, 29, 30 and 35 should be removed from the scope of the ground of section 26(3).

In response to the insurance industry's proposal, the Administration has agreed to remove the powers of sections 28, 29 and 30 from the scope of the ground of section 26(3). As a result, the Insurance Authority will produce valuation rules/guidelines which will provide a basis for the valuation of assets of general business insurers and the liabilities of long term business insurers.

The Administration, however, maintained that section 35 should be retained as this would allow the Insurance Authority to exercise his interventionary powers in

a more active and responsive mode such that timely measures can be taken to address a problem before it reaches critical levels.

Nevertheless, to assure the insurance industry that the proposed combination of the ground of section 26(3) and the powers of section 35 would not be used by the Insurance Authority to regulate the normal commercial activities of an insurer, the Administration has agreed that there should be statutory provisions barring the Insurance Authority from using the ground of section 26(3) to regulate any commercial decisions in respect of pricing and policy wordings. Mr Deputy President, I would further explain how this is achieved at the Committee stage when I will move amendments to clause 5 of the Bill.

Initially, the Hong Kong Federation of Insurers has also suggested that as a safeguard against possible abusive use of section 26(3), the Insurance Authority should be required to obtain prior approval from the Secretary for Monetary Affairs before he could exercise the powers on the ground of section 26(3).

Having realized that the scope of clause 5 would be much reduced and more clearly defined, the Federation has later agreed that prior consultation with other authorities is no longer required.

We, however, hold the view that some checks and balances should be in place in view of the wide scope of the power in section 35. We therefore suggested that the Administration should publicly confirm during the Second Reading debate of the Bill in the Legislative Council that the requirements imposed by the Insurance Authority under section 35 which will later be amended to section 35(1) as a result of the Insurance Companies (Amendment) (No. 2) Bill 1991 would be limited to matters of a lesser magnitude compared with those that may be imposed by virtue of the exercise of other specified powers conferred on the Insurance Authority by the Ordinance. We have been given to understand that in his speech this afternoon, the Secretary for Monetary Affairs will positively respond to our suggestion.

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

MR JAMES TO (in Cantonese): Mr Deputy President, the insurance industry is a very important industry. It affects public interest and is closely related to the daily life of the people. But the insurance industry is not selling us tangible commodities

but a service. The insurer undertakes to provide the policy holder with indemnity against unfortunate accidents or certain specified incidents. And it may take quite a long time, ranging from several years to several decades, before the indemnity would be paid. For this reason, effective monitoring over the insurance industry is very important. Just imagine what would happen if we fail to have a sound monitoring system: the insurance companies may abscond with the premiums collected from the public, or engage in speculative activities with the premiums and in case they fail, they either make their getaway or simply wait for a liquidation. Under the present monitoring system, the Insurance Authority is in a very passive position who takes action only after the problem of an insurance company has been brought to light.

This Bill gives more suitable power to the Insurance Authority to strike a balance between the development of the insurance industry and the monitoring system so that public interest can be ensured. Therefore, I and the United Democrats support the spirit of the Bill.

As a matter of fact, with the development of the commercial sector, the insurance industry is faced with many new problems. As for the situations contained in the brief presented by the Administration to this Council, such as some insurance companies being engaged in speculation on futures market, even on taxi licences and in high risk-taking trades, these are problems found among some of the insurance companies over the recent years and are also the factors affecting their ability to pay indemnity. The authorities concerned should step up precautionary actions. We should bear in mind that when people wish to take out a policy, it is difficult for them to choose the right insurance company and most of them usually would rely on the Government's monitoring system, which should not be in force only for one or two years but on a long-term basis. Therefore, it is very important that the present power and regulatory regime of the Insurance Authority should be kept under constant review to see whether it is sufficient or not.

After having held many ad hoc group meetings, considered opinion of the trade and listened to the Government's open confirmation of certain relevant principles and its assurance that the extra powers conferred would be exercised cautiously at the Second Reading stage, I and the United Democrats feel that the present provisions have already achieved a right and reasonable balance. For this reason, we support the Bill as amended.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, I am grateful to Dr WONG and members of the ad hoc group for their very careful consideration of the Bill. The Administration supports the amendments which Dr WONG will be moving in the Committee stage. I would also assure Mr TO that our regulatory regime is kept under regular review, and if there is need for further refinements, we will not hesitate to seek to introduce them.

Dr WONG has identified the remaining concern of the ad hoc group and the insurance industry regarding the residual powers under new section 35(1) exercisable by the Insurance Authority on the ground of section 26(3). I can assure Members that the powers will only be used for less serious matters than those which may be imposed by virtue of other specified powers conferred on the Insurance Authority by the Ordinance, such as the requirement to cease writing new business or the limitation of premium income.

Examples of the "less serious" requirements that may be imposed under the new section 35(1) include:

(a) requiring abstinence from related-party transactions, such as excessive lending to related parties;

(b) requiring prior notification of the recommencement of business by a dormant insurer, so that the Insurance Authority would have an opportunity to examine the appropriateness of the recommencement and the insurer's business plans;

(c) requiring prior notification of changes in shareholders or controller, so as to avoid new entrants bypassing the authorization requirements by acquiring a dormant insurer;

(d) requiring the making of a section 35A deposit, which would serve as security for the protection of Hong Kong policy holders; and

(e) requiring an insurer not to pledge its assets as security for loans granted to a third party where this would reduce the assets available for distribution to policy holders in the event of liquidation of the insurer and thus undermine their protection.

These examples are by no means exhaustive and it is not possible to predict all

the specific circumstances which might arise necessitating the exercise of the power conferred on the Insurance Authority under new section 35(1), on the ground of section 26(3). I can, however, assure Members again that the provisions of section 35(1) will only be invoked by the Insurance Authority after very careful consideration. It will be used with the objective of providing better protection for policy holders and removing potential problems which could have an adverse effect on their interest.

Mr Deputy President, I beg to move.

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

Bill read the Second time.

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

INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 11 December 1991

Question on Second Reading proposed.

DR PHILIP WONG: Mr Deputy President, I am not going to repeat the methodology adopted by the ad hoc group in tackling this Bill on which I have already reported earlier on when I spoke during the resumption of the Second Reading debate for the Insurance Companies (Amendment) Bill 1991. I will go straight to highlight what I believe to be some of the important features of the Bill.

First, it is the powers proposed under the new section 35(2) for the Insurance Authority to appoint an advisor or a manager to take over the business of an insurer.

We have been assured by the Administration that these proposed powers would only be exercised as a last resort in circumstances where all the other existing powers of the Insurance Authority would not be sufficient to protect the interests of policy holders.

We have also learnt that despite their wide nature, these powers could still be accepted by the insurance industry on the provisos that:

(a) the circumstances in which such powers can be exercised are narrowed and more clearly defined; and

(b) safeguards for invoking the powers, such as prior approval from the Secretary for Monetary Affairs for the exercise of the powers would be installed.

That being said, what really worries us is the new ground proposed by clause 6 of the Bill on which the Insurance Authority can exercise the "take-over" powers, that is, "that it appears to him that the insurer is carrying on his business in a manner detrimental to the interests of policy holders or potential policy holders of the insurer". Such ground is so wide that the possibility of exercising the "take-over" powers in inappropriate circumstances cannot be completely ruled out.

After much discussions between the ad hoc group and the Administration, and also between the Hong Kong Federation of Insurers and the Administration, I am glad to report that the Administration has now agreed that the additional ground under clause 6(a)(ii) should be deleted and that the ground for exercising the proposed "take-over" power will be limited solely to the ground stated in the existing section 26(1)(a). I will explain these amendments in more detail during the Committee stage.

I would also like to report that with the proposed amendment being suggested by the Administration, both the ad hoc group and the Hong Kong Federation of Insurers have agreed that a statutory requirement for the Insurance Authority to obtain approval from other government authority prior to exercising the powers on the specific ground of section 26(1)(a) is not required.

The second main concern of the ad hoc group is the wide power conferred on a manager by the proposed section 38A.

In clause 10, section 38A(3)(a) proposes that no meeting of the insurer can be held without the consent of the manager and section 38A(3)(b) proposes that no resolution may be passed at a meeting of the insurer which may fetter the powers of the manager.

We considered that in view of the draconian effects of these two sections, in case a manager acted unreasonably under these sections, the insurer should be allowed to apply to the High Court for an objective ruling, that is, whether a meeting should

be held or a resolution should be approved.

As regards the proposed section 38A(3)(a), the Administration pointed out that according to the proposed section 38A(5), the manager should not unreasonably refuse to give consent for a meeting. He is therefore subject to the test of reasonableness. An insurer who has ground to believe that the manager has acted unreasonably could thus apply to the High Court for a judicial review.

We are satisfied that given the reasonableness provision in section 38A(5), an aggrieved insurer could effectively apply for a judicial review and there is no need for specific provisions to allow an insurer to apply to the High Court.

Regarding section 38A(3)(b), we are advised by the Administration that on reconsideration, the effective exercise of the manager's powers in this section was found to have already been adequately covered by section 38A(3)(c) and therefore it could be deleted.

Mr Deputy President, the Bill together with the Insurance Companies (Amendment) Bill 1991, are the products of close scrutiny, not only by the ad hoc group but also by the Administration, various organizations including the Hong Kong Federation of Insurers, the Hong Kong Society of Accountants, the Actuarial Association of Hong Kong, and interested members of the community. I am grateful to them all.

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

MR JAMES TO (in Cantonese): Mr Deputy President, when I spoke on the Insurance Companies (Amendment) Bill 1991 a while ago, I already stated the views of the United Democrats of Hong Kong as regards the rigorous monitoring of insurance companies. I do not intend to repeat those views now.

Patently, the present (No. 2) Bill is seeking to give the authority concerned some sweeping powers in exercise of which the authority concerned may, in serious cases, even appoint an adviser to an insurer or a manager to assume the functions of the insurer so that suitable measures may be taken. After careful consideration, we have decided to put forward some agreed amendments at the Committee stage in order to strike a balance.

I hope the Insurance Authority will not only have regard to the overall monitoring

of insurance companies but also pay close attention to the conduct of members of the insurance industry. This, though, may not fall within the scope of the present amendment Bill.

With these remarks, I support the motion on the amendments.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, once again, I am grateful to Dr WONG and Members of the ad hoc group for their careful consideration of the Bill. Dr WONG has highlighted the concern of the ad hoc group and of the insurance sector about the serious nature of the powers of the Insurance Authority to appoint an adviser to an insurer or a manager to assume the functions of the insurer. I wish to confirm that their concerns have been carefully considered, and the Administration supports the amendments which Dr WONG will be moving in the Committee stage to restrict the scope of use of the powers. As a result of these amendments, the ground for exercising the new powers will be limited solely to the ground of section 26(1)(a), that is, that the Insurance Authority considers the exercise of the power to be desirable for protecting policy holders against the risk that the insurer may be unable to meet its liabilities or to fulfil the reasonable expectations of policy holders.

I can assure Members that the new power will only be exercised as a last resort, in circumstances where all the other interventionary powers would not be sufficient to protect the interests of policy holders. The aim of the Insurance Authority in exercising the powers will be to ensure that an insurer which is in serious difficulties is properly managed and thereby prevent further damage being caused to the policy holders.

Mr Deputy President, with these remarks, I beg to move.

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

Bill read the Second time.

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

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1992

Resumption of debate on Second Reading which was moved on 26 Feburary 1992

Question on Second Reading proposed.

PROF FELICE LIEH MAK: Mr Deputy President, the Bill before us today was first introduced to this Council on 26 February 1992. Its purpose is mainly twofold. First, to amend, modify or repeal presumptions which are incompatible with the provisions of the Bill of Rights Ordinance. Secondly, to address the criticism of the Appeal Court on the overlapping provision regarding the offence of possession of dangerous drug for the purpose of unlawful trafficking and the offence of unlawful trafficking.

The ad hoc group set up to examine this Bill held seven meetings including five with the Administration. It has also considered the views given by the Hong Kong Bar Association. After careful deliberation, the ad hoc group has recommended that the Bill be supported subject to amendments to be moved at the Committee stage.

Mr Deputy President, I would like to now briefly highlight the three major points considered by the group. The first involves presumptions. Some of the presumptions in the Dangerous Drugs Ordinance were ruled by the Court of Appeal to be inconsistent with the provisions of the Bill of Rights. The Administration has therefore reviewed the principal Ordinance to ensure that it complies with the Bill of Rights Ordinance and at the same time maintains the ability of the law enforcement agencies to bring successful prosecutions for drug offences. The Administration has recommended to repeal the presumptions concerning manufacture of dangerous drugs in section 45, the possession of prescribed minimum amount of drugs for the purpose of trafficking in section 46, and divans in section 48 of the Dangerous Drugs Ordinance. The presumption in section 47 concerning possession of dangerous drugs has been modified to limit its scope to make it compatible with the Bill of Rights.

The group generally supports the Administration's recommendation to repeal or modify those presumptions which are vulnerable to challenge under the Bill of Rights Ordinance. However, it is concerned with the proposed repeal of the presumption concerning possession of prescribed minimum amounts of drugs for the purpose of trafficking. This together with the proposed repeal of section 7 of the principal Ordinance on the possession of dangerous drugs for the purpose of unlawful trafficking could enable drug traffickers to get away easily. The group therefore considered, with the Administration, methods of prescribing in the Ordinance some quantitative

or qualitative presumptions on trafficking that could withstand challenge under the Bill of Rights Ordinance. This has been found difficult, if not impossible. Consequently the group agrees to the Administration's proposal to remove all the presumptions on trafficking, and it should be left to the court to exercise judgement on the evidence as to whether a case of possession is for consumption or for trafficking. We hope that the court in meting out sentences on possession cases would have due regard to the community's concern that drug trafficking offence is a serious social crime.

The second point concerns the criticism of section 7 by the Court of Appeal. The Appeal Court has indicated on two separate occasions that the provision regarding the offence of possession for the purpose of unlawful trafficking should be removed from the Ordinance because the court believes that it overlaps with that on the offence of trafficking. However, the Administration considers it essential to maintain legislative provision for possession of dangerous drugs for unlawful trafficking. There is also an obligation under the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances that possession of drugs for the purpose of trafficking should be established as a criminal offence. The Administration has therefore proposed to repeal the provision relating to the possession of dangerous drugs for the purpose of unlawful trafficking and to place it under section 4 of the Ordinance on trafficking offence. The group had reservations on this proposal and suggested an alternative approach to deal with the criticism. I will elaborate on this when I move the amendment at the Committee stage.

The third point involves the maximum fine for simple possession on summary conviction (section 8 of the Ordinance). In clause 4 of the Bill, the Administration has recommended to increase the maximum penalties under section 8 for simple possession on indictment to seven years' imprisonment and a fine of $1 million. However, to maintain the Government's current policy that drug abusers should not be unduly penalized, the Administration has proposed to retain the penalties for the same offences on summary conviction at a maximum of three years' imprisonment and a fine of $10,000. The group supports the proposal to increase the maximum penalties for conviction upon indictment. This would give the court the flexibility to impose a higher penalty on those persons found in possession of large quantities of drugs for which evidence is not available to deal with it as trafficking offences under section 4. However it does not agree that the maximum penalties for the same offence on summary conviction should remain light in order to encourage the drug abusers to seek treatment. It is noted that many drug addicts are also traffickers. They

should not be allowed to get away. The existing maximum fine of $10,000 is considered too low to be an effective deterrent. It is also considered disproportionate to the years of imprisonment for the same offence. The group has therefore suggested and the Administration has agreed to increase the maximum fine for possession offence on summary conviction from $10,000 to $100,000. I will move an amendment to this effect at the Committee stage.

Mr Deputy President, before closing, I would like to thank the Administration for their open attitude throughout the course of our deliberations and their efforts in making various attempts to address the group's concerns.

With these remarks, Mr Deputy President, I support the passage of this Bill subject to the Committee stage amendments.

SECRETARY FOR SECURITY: Mr Deputy President, I am grateful to Professor LIEH MAK and the members of the ad hoc group, of which she was convenor, for their careful scrutiny of the Bill. We share the same view on the need to strike a balance between meeting the requirements of the Bill of Rights Ordinance and having effective legislation against drug trafficking.

The ad hoc group's concern about the possible implications of repealing the presumptions in the existing legislation is understandable. I believe however that the best course, as the ad hoc group has concluded, is that we should leave it to the court to decide in the particular case the amount of drugs and the circumstances which may lead to an inference of trafficking.

The proposal to do away with the separate offence of possession of dangerous drugs for the purpose of unlawful trafficking and to include it as a trafficking offence under section 4 has been discussed at great length with the ad hoc group. The Administration has taken careful note of the suggestions put forward by the group. And we agree that, instead of including the offence in section 4, the better alternative would be to amend the definition of "trafficking" in section 2 and to include the offence of possession of a dangerous drug for the purpose of trafficking.

The ad hoc group's concern about the appropriate level of penalty for possessing relatively small quantities of dangerous drugs, ostensibly for personal consumption, is also noted. The Government's policy has always been, and remains, to take vigorous

action against drug traffickers but not to have such stringent penalties against individual drug addicts as to discourage them from coming forward for treatment. I believe that Members support this policy. Equally, I accept the ad hoc group's advice that, since the existing maximum fine was introduced in 1968, it should be increased from $10,000 to $100,000 to reflect inflation and to maintain an appropriate level of deterrent.

The Administration therefore agrees with the two amendments to be moved by Professor LIEH MAK at the Committee stage.

Thank you, Mr Deputy President.

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

Bill read the Second time.

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

ACETYLATING SUBSTANCES (CONTROL) (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 26 Feburary 1992

Question on Second Reading proposed.

PROF FELICE LIEH MAK: Mr Deputy President, this Bill was also introduced to this Council on 26 February 1992 together with the Dangerous Drugs (Amendment) (No. 2) Bill. Like the latter Bill, it seeks to amend its principal Ordinance, that is, the Acetylating Substances (Control) Ordinance to meet the provisions of the Bill of Rights Ordinance. It mirrors the amendments in the Dangerous Drugs (Amendment) (No. 2) Bill in so far as possession and manufacturing presumptions are concerned.

The ad hoc group set up to examine the Dangerous Drugs (Amendment) (No. 2) Bill also scrutinized this Bill. The group has been assured by the Administration that the proposed legislative amendments would not cause any undue hardship to the legitimate trade because relevant permits would be issued, upon application, to commercial users of acetylating substances.

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

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

Bill read the Second time.

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

GOVERNMENT FLYING SERVICE BILL

Resumption of debate on Second Reading which was moved on 27 May 1992

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

Bill read the Second time.

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

POLICE FORCE (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 27 May 1992

Question on Second Reading proposed.

MR MOSES CHENG: Mr Deputy President, the Police Force Ordinance is one of the six pieces of legislation that were put under a one-year freeze period under the Hong Kong Bill of Rights Ordinance. The Police Force (Amendment) Bill 1992 seeks to amend the principal Ordinance to make it compatible with the provision of the Bill of Rights Ordinance. It is the last of the six Bill of Rights related Bills submitted to the Legislative Council. When it was first read in the Legislative Council sitting on 27 May 1992 it was less than two weeks from the expiry of the freeze period on 8 June 1992. The explanation for the late submission given is that since the Law Reform Commission (LRC) has been examining police powers in general, the Administration had hoped that the LRC recommendations would be available in time to assist in the exercise of making the Police Force Ordinance compatible. However it became clear at a rather late stage that the LRC review would not address Bill of Rights issues specifically.

The Administration then started to proceed with its old review to address the Bill of Rights issues of the Police Force Ordinance. A full review of the Ordinance will be carried out later, after the LRC recommendations have been made available.

The ad hoc group set up to examine the Bill is not satisfied with the late introduction of the Bill, as well as the apparent lack of coherence between the Administration and the LRC. It worries that soon after the amendments made under this Bill, the Ordinance would have to be amended again in the light of the LRC recommendations. Frequent changes to the law may cause confusion to the general public and police officers. However, in view of the impending expiry of the freeze period and with the assurance of the Administration that the Bill would not be at odds with the LRC recommendations and that significant amendments to the Ordinance would not be expected within the coming year, with much reluctance the group has accepted to proceed with the Bill on the basis that it is purely a Bill of Rights oriented exercise

The group had to work on a very tight schedule and I would like to thank my colleagues for the time they have put into the Bill, the Administration for their quick response to the queries raised by the group, and the staff of the OMELCO Secretariat for their hard work. With all these efforts, the group is able to complete its examination and recommend the resumption of the Second Reading debate of this Bill today.

Mr Deputy President, I now come to the Bill itself. The Bill of Rights Ordinance provides, amongst other things, that no one shall be subjected to arbitrary arrest or detention and to arbitrary or unlawful interference with his privacy. "Arbitrary" is defined by the United Nations Human Rights Committee to comprise capriciousness, unreasonableness and injustice. Some of the provisions in the Police Force Ordinance relating to the police power to stop, arrest, detain and search may be considered arbitrary. The Bill focuses on removing the arbitrary element from these provisions so that the power conferred on the police officers could be exercised without challenge under the Bill of Rights Ordinance.

I will just highlight the major modifications proposed. One major modification proposed is to narrow the scope of police general power to arrest without any warrant under section 50(1). The proposal will principally enhance the threshold of arrest from any offence to imprisonable offences. Offences liable to fines and offences not attracting imprisonment on first conviction would be excluded. The group has

considered whether the threshold should be further enhanced to arrestable offences, but considering that further raising the threshold would exclude some more serious offences, the majority of members have accepted the proposal in the Bill.

There is also the suggestion of following the United Kingdom approach to use the nature of offence as the guideline. Most members, however, considered it not advisable to adopt another piecemeal approach by introducing new conditions to this section at this stage when the LRC is comprehensively reviewing that Ordinance.

Another major modification is introduced to section 50(7) which provides for the power of entry, search, seizure and detention under warrant. The current provision allows a police officer to apply on oath for a warrant to search for and seize materials which may throw light on the character or activities of any person liable to apprehension. The proposed modification requires that materials to be searched for and seized are likely to be of value to the investigation of an offence which has been committed or which is reasonably suspected to have been or to be intended to be committed. A few members considered that the modification has not gone far enough and may still infringe the freedom of expression, including the press freedom. The majority view of the group is that the proposed modification is acceptable considering that, aside from the change in the condition of the issue of the warrant, the warrant is issued by a magistrate through judicial process and that any aggrieved party could apply for judicial review to determine whether the warrant has been appropriately issued. The Administration is confident that the proposed modification has made the provision compatible with the Bill of Rights.

My honourable colleague Mr James TO will propose some Committee stage amendments to this subsection to address the issue of press freedom. The ad hoc group has had no opportunity to examine details of the Committee stage amendment to be proposed by Mr TO, but appreciating his concern as expressed at the meeting, most members of the group have suggested it to be more desirable to take a comprehensive review of this section when the LRC recommendations on police powers in the context of freedom of expression is available. This will avoid a piecemeal approach to the matter which might cause greater confusion.

The last major modification that I would like to highlight concerns the power to stop, search and detain provided under section 54. The current provision allows any police officer to stop and search and, if necessary, to arrest and detain for further enquiries any person who acts in a suspicious manner. The Bill now proposes

to split the provision to cater for two different situations. In subsection (1) a police officer is allowed to stop and detain a person who acts in a suspicious manner in a public place for the purpose of checking his identity. He cannot, however, under this sub-section search a person unless for things that may present a danger to himself. In subsection (2) a police officer is empowered to stop, detain and search a person whom he reasonably suspects of having committed or being about to commit or intending to commit any offence. While some members have reservations on police power to demand a person for proof of identity, the group generally supports the proposed modification as it has largely restricted the police powers and removed the arbitrary element in the provision.

Mr Deputy President, I am pleased to report that the group has discharged its duty not only diligently but also thoroughly. Despite the time constraint, the group has also examined the whole Police Force Ordinance to see if there are areas which may be obvious inconsistencies with the BOR provisions and hence need modification. The group has noted that the current provision of section 52(1) which empowers a police officer to further detain an arrested person could also be Bill of Rights challengeable. After discussing with the Administration the group has decided that an amendment to this section is necessary. I will propose an amendment for this purpose and explain the group's thinking at the committee stage.

The group is also concerned that under the existing provisions set out in section 52(1) where such person is detained in custody he shall be brought before a magistrate as soon as practicable. Members question why a time limit was not being introduced. On receiving the explanation from the Administration that in some unusual circumstances it may not be possible for a time limit to be adhered to and that in usual circumstances such person detained will be brought before a magistrate at the soonest possible time, members of the group accepted that no amendments should be introduced at this stage pending the report of the Law Reform Commission. However, the group has also expressed the view that such provisions should be amended if in practice they would lead to abuse to persons being detained.

Mr Deputy President, members of the group have different views on the police powers provided in this Ordinance. However, limited by the scope of the Bill, the group could not examine the Ordinance as much as it would have liked to and some of members' concerns could not have been addressed thoroughly. Acknowledging that it is only a BOR oriented exercise, the group generally supports the Bill subject to the Committee stage amendment proposed for sections 52(1). However, the group

requests the Administration to take the group's view expressed during our previous meeting into account when it conducts the comprehensive review of the Ordinance after the LRC recommendations have been made available. The group also requests the Administration to issue police officers with clear instructions and guidelines to ensure proper exercise of their powers.

Finally, the group would also like to ask the Administration to consider the setting up of an independent channel to handle complaints against police officers. I look forward to hearing the Secretary for Security's response to the group's requests in his reply.

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

MRS MIRIAM LAU: Mr Deputy President, the Police Force (Amendment) Bill 1992 seeks to amend the Police Force Ordinance to bring its provisions in line with the Bill of Rights Ordinance. It was never the intention of this exercise to seek to perfect the Ordinance or otherwise introduce provisions unrelated to Bill of Rights considerations. During the course of deliberating the Bill criticisms were made by Members in regard to the narrow scope of the present amendments since a review of police powers generally is long overdue. Some Members expressed concern that the proposed new section 50(7) does not sufficiently safeguard the media from searches by the police. The allegation was that the subsection, even as amended, may still infringe the right to freedom of expression enshrined in the Bill of Rights Ordinance. It was suggested that there should be incorporated provisions similar to those set out in the United Kingdom Police and Criminal Evidence Act 1984, in short PACE.

As we all know, a subcommittee of the Law Reform Commission (LRC) has, since the end of 1988, been carrying out a comprehensive review of the existing law and practice governing the powers and duties of the police in relation to stop and search, entry, search and seizure, arrest and detention, treatment of persons in police custody and so on. That subcommittee was also invited to make recommendations as to whether PACE and the Codes of Practice thereunder should be adopted in Hong Kong.

Ideally, the Administration should have co-ordinated the present Bill of Rights exercise with the broader review being carried out by the LRC so that the Ordinance would only need to be amended once. However, in the course of events that did not happen. Appreciably, the exercise being conducted by the LRC is something quite

different from and much more thorough and extensive than the limited exercise carried out by the present Bill. As a member of the LRC, I am not aware of the Commission having been asked to deal with Bill of Rights issues under the Ordinance as well, my understanding being that the Bill of Rights exercise and the comprehensive review are separate exercises running parallel. The Honourable Simon IP who also sits on the LRC has asked me to confirm that this was also his understanding. This has resulted in the rather undesirable situation of Members having to deal with the limited exercise for Bill of Rights purposes, knowing that major surgery to the Ordinance has yet to come but not quite knowing what exactly is in the pipeline.

The subcommittee has submitted its report to the LRC and the LRC has now almost completed the comprehensive review. It is expected that the Commission's report will be available shortly. This report will contain the LRC's recommendations in regard to PACE. In the circumstances, however dissatisfied we may be, I do not think that it is right to pre-empt the recommendations of the LRC by seeking to introduce PACE or any provisions thereof into this present Bill. Amendments to such an important and complex piece of legislation as the Police Force Ordinance should not be made in a piecemeal or haphazard manner. Whoever suggests that instant adoption of PACE can be made ignores the fact that it took the Philips Commission in the United Kingdom six years to come up with PACE, and it has taken the LRC over three years to consider the suitability of PACE to Hong Kong.

The Honourable James TO has given notice of his intention to move amendments to the Bill at the Committee stage, specifically to deal with the police powers of search in relation to journalistic material and items subject to legal privilege. Let me point out at the outset that I am as concerned as Mr TO is about the exercise of police powers in this area. After the incident on 3 October 1989 involving the seizure by the police of videotapes from two television stations, I raised a question in this Council on the issue and urged the Administration to consider amending the Police Force Ordinance in line with PACE. The amendments now proposed by Mr TO are modelled on selected provisions in PACE. However not only has Mr TO selected only provisions which suited his purpose but he has also redrafted them to such an extent that they have become his own edition of the PACE provisions. The difficulty with accepting Mr TO's proposal is that this would amount to importing into our Ordinance something which looks like PACE provisions but which are in fact not. It follows that even if such provisions should be included in our law, it would not be possible to draw on the jurisprudence that has been built up on PACE in the United Kingdom. That clearly would not be desirable.

Furthermore, I wish to point out that PACE does not operate on its own and that section 66 of PACE provides that Codes of Practice shall be issued by the Secretary of State in connection with the exercise of police powers and duties under that Act. The fact that such codes are made mandatory under the United Kingdom Act clearly demonstrates recognition of the importance and need to strike a balance between strong safeguards for the public on the one hand and clear workable guidelines for the police on the other to enable the police to exercise their powers properly and effectively. In the United Kingdom, extensive consultation took place on these codes before they were laid before Parliament for approval, again demonstrating that rules of this nature are not something that should be rushed through without the most careful consideration.

Mr TO has proposed the inclusion of certain provisions similar to those in PACE but he has not made any reference to any Code of Practice. Perhaps Mr TO may care to enlighten us as to why he does not feel that such codes are necessary in relation to the provisions he is suggesting and how he proposes the Hong Kong police should be guided in the exercise of powers and performance of duties under these complex provisions.

In the light of the reservations aforesaid, I would have difficulty in supporting Mr TO's proposed amendments at the Committee stage.

Lastly, at the Legislative Council In-House meeting last Friday, Mr TO made reference to the case of Lingens v. Austria, which was decided by the European Court of Human Rights, in support of his contention that section 50(7) is objectionable for Bill of Rights reasons. That case concerned the publication of political defamation in a magazine. Whilst I do not quarrel with the finding in that case that freedom of expression includes press freedom, I doubt the relevance of that case to the issue in question under section 50(7), namely police powers to search and seize. Two Canadian cases, namely the case of Re Societe Radio Canada v. Attorney General for New Brunswick (1989) and the case of La Societe Radio Canada v. La Sade (1989) appear to be more in point. Both cases involved the seizure of videotapes from television stations. In the first case the Court of Appeal unanimously found that the granting and execution of the search warrant did not infringe the right to freedom of the press. In the latter case the Court of Appeal, by two to one, quashed the search warrant. However, even the two judges quashing the search warrant were at variance with each other on the reasons for the decision. One of them openly stated

that he did not feel that freedom of the press had anything to do with the case. The Canadian cases are at best persuasive authority but they do demonstrate the thinking of judges in cases of this nature. Our revised section 50(7) already substantially limits the police powers of search and seizure thus removing the arbitrariness that may be contained under the previous subsection.

Whilst no one can be absolutely sure that the provision will not infringe the Bill of Rights Ordinance, the court being the final arbiter of such issues, I am prepared for the time being to accept the Administration's contention that the revised section 50(7) will be able to withstand a Bill of Rights challenge.

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

MRS ELSIE TU: Mr Deputy President, this amendment Bill is intended on the one hand to protect human rights against abuse by law enforcers and at the same time to ensure that the police have adequate powers to deal with crime. As such it must in principle have the support of all law-abiding people, and I intend to support the amendments as far as they go.

However, I must express my fears on behalf of those who may find themselves still being wrongly accused because of the subjective terms that may be necessary but nevertheless open to abuse, for example, the term "reasonably suspects" in section 50 of the Bill. Policemen are human beings, and like all human beings their reasoning powers can differ widely -- and there lies the danger.

I therefore wish to declare today that in dealing with all Bills put before this Council in connection with crime or police powers, I will continue to press for an independent Complaints Against Police Office.

I am aware that some complaints against police are frivolous, but I also insist that many are genuine. The Government has set up appeals against other departments of the Administration; so why should the police be different and judge their own cases? Independence in investigating complaints against police is even more necessary than for other departments, because a person's freedom may be at stake. Everyone must be aware of the long prison terms some have served in Britain because of unreasonable charges brought by the police with inadequate or even false evidence.

The present Complaints Against Police Office has, in my estimation, failed on all points. It generally takes a year or more to complete an investigation. It usually finds the complaints unsubstantiated. More importantly it judges its own kind. No wonder many complainants withdraw their complaints! The situation is totally unacceptable.

So my support for all such Bills before this Council will hinge upon the condition that an independent Complaints Against Police Office be set up, with powers to check files and records and interview complainants so that any future tough laws to curb crime may at least be tempered by the right of genuine investigation of complaints.

Mr Deputy President, with this reservation, I support the Bill.

MISS EMILY LAU: Mr Deputy President, the Police Force (Amendment) Bill 1992 is one of the most important pieces of legislation introduced into this Council this Session because it gives the police extensive powers to carry out their law enforcement duties. I fully support giving the police sufficient powers to enable them to deal effectively with the deteriorating law and order situation but such powers must not be in breach of the Bill of Rights Ordinance.

Under the Police Force Ordinance the police enjoy sweeping and draconian powers. They include the power to stop, detain, search, arrest suspects and to seize property. I agree with Mr Moses CHENG that the disorganized and unco-ordinated way in which the review of police powers is being conducted is highly unsatisfactory and regrettable.

During our discussions in the ad hoc group, the Secretary for Security told us that his Branch had thought that the Law Reform Commission Subcommittee would address Bill of Rights concerns in their review of police powers but only found out in February that the Law Reform Commission Subcommittee would not look into such aspects. Mr Deputy President, I think the responsibility for such disarray and lack of co-ordination lies with the Attorney General as he is also the Chairman of the Law Reform Commission. He owes this Council an explanation as to why the review of police powers has been so badly handled.

The police have told us that frequent changes to the law would create confusion among officers, some of whom are already concerned about the impact the Bill of Rights

Ordinance could have on their powers. Earlier in this Session, Mr Deputy President, I asked the question on what the Government has done to explain the Bill of Rights Ordinance to the police. Judging from the feedback that I received from police officers, the Administration has done precious little. It is most unfortunate that some police officers have the misapprehension that the Bill of Rights Ordinance will strip them of their powers and thus undermine their law enforcement capability. I hope the Government will move quickly to explain the intentions of the Bill of Rights Ordinance to police officers and to allay their fears.

As for the amendments proposed by the Government, Mr Deputy President, I have tremendous reservations in a number of areas. Section 50(2) empowers a police officer or other person to use all means necessary to arrest a suspect if the suspect attempts to evade arrest. Mr Deputy President, disproportionate use of force should not be allowed where a suspect is not resisting but merely evading arrest. For example, if an unarmed person runs away, is it lawful for a police officer to shoot him? The answer surely should be no. Therefore it follows that some limitation or qualification should be introduced to this section to avoid the legalized use of disproportionate force.

The Hong Kong Bar Association has also drawn our attention to Article 5, subsection (2) of the Bill of Rights Ordinance which stipulates that anyone who is arrested shall be informed at the time of arrest of the reason for his arrest and shall be promptly informed of any charges against him. The Bar says the current amendments have done nothing to implement Article 5, subsection (2) of the Bill of Rights Ordinance and warns that if this Article is not incorporated into the Police Force Ordinance there is a danger that every arrest may be challenged as unlawful if reasons are not given.

Mr Deputy President, in October 1989 the police invoked their powers under section 50(7) to seize news videotapes on the confrontation between the police and demonstrators outside a New China News Agency reception to mark China's national day. The incident caused a big stir within the news profession sparking off concern that the police could march into other news organizations to seize reporters' notebooks, videotapes, audiotapes and other journalistic materials. The amended subsection (7) allows the police, armed with a magistrate's warrant, to forcibly enter any premises, search and seize any newspaper, book or other document which is likely to be of value to a criminal investigation. The police may detain any person who may prejudice the search. Such sweeping power, Mr Deputy President, I think is a direct threat to press

freedom and also an infringement on the freedom of expression.

Mr James TO is going to move an amendment to this section by transplanting provisions from a United Kingdom law, as described by Mrs Miriam LAU. While I support the spirit of Mr TO's amendment, like Mr Moses CHENG and Mrs Miriam LAU, I am concerned that the ad hoc group has not had time to examine Mr TO's proposed amendments carefully in order to fully absorb all the implications.

Mr Deputy President, everybody agrees that police powers need to be thoroughly overhauled and we are told that the Law Reform Commission is doing just that. Being caught in a very difficult situation through no fault of our own, while I support the spirit and principle behind Mr TO's amendment, I feel myself unable to give it positive support. For that reason I shall abstain from voting. However, I must warn the Government not to invoke this power until it has been thoroughly reviewed. Our ad hoc group has been told that this controversial section is one specific area that the Law Reform Commission will address and I hope its report will take fully into account concerns on press freedom.

Mr Deputy President, another area of concern is section 54(1)(a) which gives the police power to stop a person who acts in a suspicious manner in order to check his identity card. Last year over 1 million people were stopped by the police in the street and had their identity checked. I regard this as a form of arbitrary interference with a person's privacy, a right protected by Article 14 of the Bill of Rights Ordinance. I hope this power will be reviewed by the Law Reform Commission.

Mr Deputy President, given the very extensive powers enjoyed by the police, in order to prevent abuse an independent channel should be set up to handle complaints against police officers. This suggestion is going to be followed up by the Security Panel and I hope the Administration will look at it with an open mind.

Mr Deputy President, I deeply regret the chaotic way in which amendments to the Police Force Ordinance have been handled and I urge the Government to act quickly to contain the damage.

PROF FELICE LIEH MAK: Mr Deputy President, I rise to speak in support of the Bill and I shall address myself specifically to section 50(7), a clause in which Mr TO is planning to introduce his amendments.

Article 16 of the Bill of Rights, while providing for the freedom of expression, also carries with it special duties and responsibilities. That being so, it is subject to certain restrictions, such that are provided by law and are necessary for:

(a) the respect of the rights or reputation of others;

(b) the protection of national security or of public order (ordre publique), or of public health or morals.

The police, in exercising their duty to investigate crime, act not only for the public but also for the victim of the crime whose rights have been infringed upon. In protecting the rights of the victim or victims the police must have the power to obtain materials which are of likely value to the investigation of an offence. The necessary check and balance of police power is already provided in the relevant section where the police must first obtain a warrant from a magistrate who has to be satisfied that there is reasonable cause. But this may not be sufficient; so as a further safeguard I support the Honourable Elsie TU's call for the establishment of an independent Complaints Against Police Office.

I accept that the approach taken in balancing the need for maintaining public order and the requirements of the Bill of Rights should be circumspect. However, we must note that the insertion of the French expression "ordre publique" has broadened the meaning and it is broader than the English words "public order". The French expression includes peace and order, safety, public health, aesthetics, morals, and consumer protection. Section 50(7) of this Bill is in fact sufficiently circumspect as not to infringe upon the Bill of Rights.

The consequential justification for the freedom of expression is the discovery of truth, and criminal investigation is also aimed at the discovery of truth. So in this respect, I do not see that this section is an infringement on press freedom.

With these remarks I support the motion.

MR JAMES TO (in Cantonese) : Mr Deputy President, in the light of what the Honourable Moses CHENG said a while ago and in the light of criticisms that the way the Administration handles this Police Force (Amendment) Bill is causing confusion, we

are reluctant to accept the limited amendments that are being introduced to the Bill; that is to say, there is still room for doubting if the present amendments conflict with the Bill of Rights.

The United Democrats and I basically support the spirit of the present amendment Bill because, in many areas, it represents an improvement on the principal Ordinance as now exists. It introduces amendments to replace provisions which empower the police, based on subjective judgment, to arrest, stop and search with provisions which incorporate an element of objectivity and are better placed to give effect to the Bill of Rights. Subject to the comments I shall make during the Committee stage on the police powers of search and seizure -- particularly in respect of journalistic material -- and privileged information between counsel and client, we are basically of the view that the overall spirit of the present Bill can be supported.

The amendment Bill took a long time coming and was passed to us for scrutiny by the Administration when the freeze period under the Bill of Rights Ordinance was about to expire. We understand that the Law Reform Commission has several years in which to undertake a full review of the principal Ordinance. The Administration probably thinks that we will only propose limited amendments and that a few weeks would be amply sufficient for us to scrutinize the Bill in view of the mere handful of clauses to be considered. However, in respect of sections 50 and 54 of the Police Force Ordinance which have a direct bearing on the exercise of police powers by some 20 000 constables on the beat, we think that it would not be right to give the Legislative Council so little time to consider them.

On the one hand, although the Law Reform Commission has not been asked to consider whether the proposed amendments are in conflict with the Bill of Rights it is in fact conducting a full review of police powers. The commission, composed of knowledgeable persons from various fields, has full professional expertise. Why had the Administration not immediately referred the questions to the commission? I would have thought that the shortness of time would not have mattered; the Legislative Council is being asked to undertake a preliminary review and give an opinion in just as short a time.

On the other hand, the legal profession has not been consulted on the limited amendments proposed. Since we are concerned as to whether the revised law would conflict with the Bill of Rights, we should have the benefit of advice from legal professionals as a basis for reference. The Bar Association has complained that the

Administration has not given them enough time. Anyway the Bar has made some proposals to us. Although the proposals reached us only a couple of days ago, we nevertheless appreciate their good intention and effort.

Many members of the public and non-government organizations, the Human Rights Committee for one, are concerned over this area of law reform. They are of the view that the time available for scrutiny of the proposed amendments is too short. Non-government organizations will usually need more time to collect and collate professional opinions.

Of course, the most ideal and appropriate way of doing it would be for the Law Reform Commission and this Council to study together whether the proposed amendments are inconsistent with the Bill of Rights. Some have criticized the amendments I am about to propose as piecemeal. But I have to point out that as a responsible Councillor I have to propose amendments, however piecemeal they might be, to provisions that are in conflict with the Bill of Rights.

The Honourable Mrs Miriam LAU has said that I have drawn, in a piecemeal fashion, on the United Kingdom's Police and Criminal Evidence Act 1984 (PACE in short) in proposing my amendments. She has argued that Hong Kong will be unable to draw on the case law of the United Kingdom. May I request Mrs LAU to take a good look at the important points under my proposed amendments -- the most important points. Circuit Judge in the United Kingdom Act is transplanted to the Hong Kong Ordinance as Magistrate. Of course, there is some difference between the two. But the important point is whether, for example, there is major evidential value in a sought item, whether there is any alternative means of obtaining other evidence and thus dispensing with the need to get hold of, say, a particular video cassette or particular journalistic material. Furthermore, phrases like "the public interest" and others can all be found in my proposed amendments. We can fully draw on the case law of the United Kingdom in applying our revised Ordinance.

One criticism against my proposed amendments is that the United Kingdom has a comprehensive Code of Practice for the police. But we must not forget that the Police Force Ordinance of Hong Kong contains what is known as Police General Orders. If my proposed amendments are passed, the police should, according to the spirit of the revised provisions, immediately issue directions to police officers as to what procedure to follow in searching for journalistic material.

Furthermore, the case of Lingens v. Austria I quoted relates to a human rights claim taken out by an Austrian citizen against the Austrian Government before the European Court of Human Rights. I am not arguing if the police powers of search and seizure constitute a direct conflict with the Bill of Rights. I am only saying that the freedom of expression and freedom of information, which Mrs LAU espouses, include journalistic freedom. I was hoping that this point could be borne out through citation of this case.

The United Democrats and I also support the Honourable Mrs Elsie TU's view, that is to say, no provision can be perfect. We therefore need to have an organization independent of the Police Force to handle complaints.

Mr Deputy President, I shall explain in detail the amendments as proposed by me during the Committee stage.

SECRETARY FOR SECURITY: Mr Deputy President I have listened carefully to the points raised by Members on the Police Force (Amendment) Bill.

Some Members have asked why the Bill had not been introduced into this Council earlier so that they could have more time to consider it before the freeze period expired on 8 June. Others have expressed concern that the amendments proposed in the Bill may have to be amended again in the light of the Law Reform Commission report due to be published in a few months' time.

The Administration has been equally concerned that the amendments proposed in the Bill should not be inconsistent with any changes which might be proposed as a result of the Law Reform Commission's study of police powers. The reason why the Bill was not introduced earlier into this Council is that we hope to have available first the recommendations of the Law Reform Commission. However, when it became clear that the Law Reform Commission Report would not be available before the freeze period under the Bill of Rights Ordinance expired, we decided that we had to proceed first with amendments to the Police Force Ordinance necessary to remove any conflict with the Bill of Rights Ordinance.

I equally regret that this has resulted in the introduction of the Bill only shortly before the expiry of the freeze period.

This Bill addresses the Bill of Rights issues only. We have not sought to anticipate any of the recommendations of the Law Reform Commission Report. However, as Mr STRACHAN said when introducing this Bill into this Council, we are satisfied that the provisions of this Bill will be consistent with the broad approach favoured by the Law Reform Commission. There is also no question of the Ordinance being amended again within a short period of time. The Law Reform Commission recommendations are likely to be complex; some will be controversial. The Administration will require time to consider and consult on the recommendations made.

Turning to the Committee stage amendments which will be moved later this afternoon, I agree with the proposed amendment to section 52(1). This will make it clear that a police officer should have reasonable grounds for deciding that a person ought to be detained after arrest rather than be discharged upon recognizance.

I now turn to the proposed amendment to section 50(7) to exclude items subject to legal privilege and journalistic material from that subsection and introduce a special procedure for access to journalistic material. The Administration's view is that these amendments are not necessary to make the Ordinance consistent with the Bill of Rights. It is, therefore, not the appropriate time to decide whether such amendments should be introduced into the Ordinance. I understand that the Law Reform Commission will include in its report the issues covered in these proposed amendments, that is, police powers in relation to journalists' material and items subject to legal privilege. The Administration would not wish to rush to a conclusion on this issue now, rather we would wish to have the benefit of the Law Reform Commission's recommendations on the subject, and to have adequate time to consult and think through the full implications in the context of the recommendations of the Commission on the whole subject of police powers of arrest, detention, search, seizure and related matters.

I would like to thank Mr Moses CHENG for his efficient chairmanship of the ad hoc group and his support for this Bill. I am most grateful to members of the ad hoc group for completing their deliberation of the Bill so thoroughly and so promptly.

The Administration supports the amendment to this Bill which Mr CHENG will move at the Committee stage.

Thank you, Mr Deputy President.

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

Bill read the Second time.

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

HONG KONG ACADEMY OF MEDICINE BILL

Resumption of debate on Second Reading which was moved on 4 March 1992

Question on Second Reading proposed.

MR DAVID LI: Mr Deputy President, the establishment of the Hong Kong Academy of Medicine is an important milestone in the medical history of Hong Kong. There is a strong and growing demand in the medical profession for formal and locally based post-graduate medical educational programmes. It is therefore appropriate that we set up an independent local body to foster the development of post-graduate and continuing medical education. Such education is geared towards standards and service needs defined in Hong Kong. It will provide more local doctors with opportunities for specialist training. Improved medical services will in turn benefit our community.

The Bill provides for the structure of the Academy and its subordinate bodies, and their respective powers and duties. It provides for different classes of membership in the Academy and the admissions criteria. It also empowers the Academy to confer specialist medical designation and to make recommendations to the Medical Council of Hong Kong for these designations to be recognized.

The ad hoc group formed to study the Bill has proposed several amendments to the Bill. The first relates to the provision for an avenue of appeal in the admission procedure for membership of the Academy. The Bill empowers the Academy, on the recommendation of the Academy Colleges, to admit persons to various forms of membership. While the eligibility of admission is laid down in the Bill, there is no review provision for cases where recommendation for admission may be refused. Members of the ad hoc group are concerned this may lead to a possible abuse. Having

considered the appeal practices of a number of local and overseas specialist colleges, the group has recommended that a review system should be established by the Academy so specified in the future regulation of the Academy.

The ad hoc group considered at length the instruments of voting prescribed in the Bill. The use of postal ballot is proposed in the Bill. However, proxy voting, although not specified, is not disallowed. Having considered the pros and cons of these two voting instruments, the ad hoc group agree unanimously that given the unique nature of the medical profession, and to avoid any potential abuse of the proxy system, the postal ballot is preferable to proxy voting which should be disallowed.

Another amendment is to the composition of the governing body of the Academy, the council. Members consider that a conflict of interests may arise if the presidents of the Academy Colleges who are ex-officio members of the council could be elected to any of the six key positions of the council office bearers, as stipulated in clause 9(5) of the Bill. Such a possibility should be averted and such holding of dual offices should be prohibited in the Bill.

The Administration concurs with the ad hoc group's recommendations. Accordingly, in my capacity as convenor, I shall be moving the requisite amendments at the Committee stage.

The ad hoc group also notes that the Academy will need a large budget, estimated at HK$100 million, to meet its capital and recurring expenditure. The Government will provide a grant for the setting up of the Academy. Members therefore support the view of the Administration that more detailed financial procedures should be set out in the Bill. I understand that the amendments will be moved by the Administration at the Committee stage to deal with this aspect.

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

DR LEONG CHE-HUNG: Mr Deputy President, I rise to support the Hong Kong Academy of Medicine Bill on behalf of the medical and dental professions of Hong Kong. Let me first declare that I am a member of the Constitution Subcommittee of the Preparatory Committee for the Academy of Medicine. I am also currently the president of one of the future academy colleges and, of course, I am a practising doctor who will be very much influenced by this Bill. Mr Deputy President, in rising to support this Bill,

the medical and dental professions would also like to urge the Administration to implement without delay the recommendations set out both in the spirit and letter of this Bill, that is, to set up an interim council and the Academy of Medicine itself.

Mr Deputy President, in spite of the international highly acclaimed medical standard of Hong Kong, ironically as it may sound, well structured post-graduate medical training and accreditation of post-graduate status has, up to this point in time, never been in existence in Hong Kong. Our graduates received training not through properly structured programmes but by the good will of their peers and superiors. Accreditation of post-graduate status has, up to this point in time, to be obtained overseas usually through vetting of standard by specialty colleges of the United Kingdom or the Commonwealth.

But the medical professional standard of Hong Kong has been high. We have the infrastructure of setting up our own training programme of accreditation system. The impending change of sovereignty has given us the political will to form our own body.

The formation of the Academy of Medicine, Mr Deputy President, thus heralds the establishment of our own training programme through the different academy colleges as stipulated in this Bill. This statutory body, the Academy of Medicine, will also be responsible for the vetting and subsequent accreditation of our own post-graduate status. Mr Deputy President, this is a move the medical and dental professions yearn for and very much welcome.

Yet the Academy of Medicine is only useful if it is internationally recognized. International recognition of professional standard can only be achieved through time -- time for international accreditation bodies to assess the standards of the product of the Hong Kong Academy of Medicine. It takes years to have this achieved. We must establish the Academy now, for the professions want to put the flag of Hong Kong in the world map of medicine well in advance of 1997.

Mr Deputy President, in closing, may I take this opportunity to remind the Administration that the health care team consists of not only doctors, but also nurses, and allied health care staff and others. To have a high standard of medical care, it is not just enough to improve the doctors alone, but a well structured training programme must also be established for the rest of this team. The medical profession as the leader of the team thus urges the Administration to look at the formulation of post-graduate bodies similar to the Academy of Medicine for other health care professionals as soon as possible.

I support the Bill.

MR MICHAEL HO (in Cantonese): Mr Deputy President, I am pleased to support the Bill because the establishment of the Hong Kong Academy of Medicine will further improve specialist training in the medical field which will result in a higher level of medical services to be enjoyed by the public.

However, I would like to remind the Administration that the enhancement of the level of our services should not be confined to medical practitioners only. Presentday medical services are provided by several grades such as nurses, occupational therapists, physiotherapists and radiologists, all of whom are represented in the functional constituency to which I belong. If we neglect the other members of our medical service teams, it will be difficult to enhance the level of our services.

I now urge the Administration to commence as soon as possible a study on synchronizing the enhancement of in-service training for all related grades. I would also like to point out in particular that in the health care functional constituency represented by me, the qualifications for several grades have been raised to degree level, and that only the training for registered nurse has lagged behind without being upgraded to a degree course. If the Administration still fails to amend as soon as possible the current health care policy, the nursing service will be unable to keep abreast of the development of presentday medical and health care services, and in the end, those who will suffer will be the public of Hong Kong. The situation is analogous to that of a car with one wheel being out of sync with the other wheels, and it is for us to rectify the situation. I earnestly urge the Administration to conduct a review immediately and raise the course level of the registered nurse to that of degree level.

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

DR LAM KUI-CHUN: Mr Deputy President, let me first declare interest as a practising medical specialist in Hong Kong. For the Academy of Medicine Bill itself, I need to make the following remarks.

For over a century Hong Kong looked to the rest of the British Commonwealth for both supply and training of medical specialists. With 1997 approaching, Hong Kong

prepares to disengage from the British Commonwealth. The Academy of Medicine Bill formalizes the training of medical specialists in Hong Kong, culminating in the establishment of full specialist status for the successful. This is a logical step in the local development of medicine. However, there are two potential problems inherent in establishing Hong Kong's own Academy of Medicine in accordance with this Bill.

Previously, trainee-doctors in Hong Kong had to go overseas to acquire full specialist status. In so doing they completed the latter part of their training overseas and broadened their medical experience. When they returned to Hong Kong they brought their overseas experience with them. That enhanced their professional competence, supplied them with personal involvement at the frontiers of medicine, and gave them better insight into medical problems at home.

Starting a decade or so ago, when specialist medical training and final qualification became fully available to some in Hong Kong, even though that facility per se did not preclude undergoing further medical training overseas, many trainee-doctors preferred not to go overseas at all, but to acquire all training and status here and then opt out of the training system into lucrative private practice. This sequence of events is likely to become more prevalent when the Hong Kong Academy of Medicine is set up. Hong Kong would thus be poorer for having fewer doctors with first-hand overseas exposure. Henceforth it will be up to the medical specialists to demonstrate whether they are keener to better themselves by an overseas period of training or to make money in a hurry. The Academy of Medicine should ensure that their specialists are adequately exposed to international standards of medicine as part of their lifelong continuing medical education. The future standard of specialist medical care in Hong Kong will depend on this.

For my second point, preparation of the Academy of Medicine Bill incurred extensive study into the practice of similar institutions in other parts of the world, and such homework is commendable because it ensures that the local institution benefits from the experience of august, successful bodies overseas. However, the comparatively small size of the local community of doctors opens up the risk of victimization which is not encountered overseas. To illustrate my point, I know of the true story of a university lecturer doctor who had had enough of his professor. Upon resignation he found his applications for other jobs being blocked from all accredited local institutions which were all controlled by his professor. Forced by circumstances to accept a job in an unaccredited department he subsequently became

disillusioned with the system and finally ended up in private practice. He was not the only victim of the system at the time.

Mr Deputy President, qualification for specialist status is a passport to a better life. In a small community like Hong Kong, it is easy for a junior doctor to be victimized by the powers that be in his field and he may be unjustly denied what he deserves. The law must protect those who cannot protect themselves. So the future Academy of Medicine must provide suitable alternative pathways to the medical specialist status if victimization is to be avoided. While it would be inappropriate to allow for appeals against injustice in the field itself, and while overseas colleges of medicine generally forbid appeals against their own decisions, it is of great importance for Hong Kong to ensure that channels of appeal against miscarriages of natural justice are written into the internal regulations of the Academy and its Colleges.

With these remarks, I support the Bill.

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

Bill read the Second time.

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

LAND REGISTRATION (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 13 May 1992

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

CRIMES (AMENDMENT) (NO. 2) BILL 1992

Clauses 1 to 5 were agreed to.

Schedule was agreed to.

INSURANCE COMPANIES (AMENDMENT) BILL 1991

Clauses 1 to 4 and 6 to 10 were agreed to.

Clause 5

DR PHILIP WONG: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

Clause 5, as originally drafted, seeks to amend section 26(3) to empower the Insurance Authority to exercise any of his powers under sections 28, 29, 30, 32, 33 and 35, on the grounds of desirability in the general interests of policy holders.

The proposed amendments aim to suitably reduce the scope of clause 5 in two aspects.

First, references to powers under sections 28, 29 and 30 are to be deleted from clause 5 so that the powers conferred on the Insurance Authority exercisable on the grounds of general interest of persons who are or may become policy holders will now be restricted to those powers under sections 32, 33, 34 and 35 only. Regarding the powers under sections 28, 29 and 30, the Administration has agreed that instead of going for the legislative route as originally proposed, they will now produce valuation rules or guidelines of the assets of general business insurers and the liabilities of the long-term business insurers.

Secondly, a new section 26(3A) is added to specifically state that the grounds of section 26(3) cannot be used by the Insurance Authority to regulate any commercial decisions in respect of pricing and policy wordings. Although the Administration has confirmed to the Legislative Council ad hoc group set up to study the Bill that it is not their desire or intention to interfere in the normal legitimate operations of an insurer, such addition is still considered necessary as it will serve as a

statutory safeguard against any intended or unintended use of the grounds of section 26(6) by the Insurance Authority in future to endeavour to regulate commercial decisions involving profit levels, policy wordings or premium pricing of an insurer.

Mr Chairman, with these words, I beg to move.

Proposed amendment

Clause 5

That clause 5 be amended by deleting clause 5 and substituting --

"5. Grounds on which powers are exercisable

Section 26 is amended -

(a) in subsection (3), by repealing "Any power conferred on the Insurance Authority by section 34" and substituting "Subject to subsection (3A), any power conferred on the Insurance Authority by sections 32, 33, 34 and 35"; and

(b) by adding -

"(3A) No power referred to in subsection (3) shall be exercisable in relation to any insurer on the ground specified in that subsection in such a way as to require an insurer to amend either -

(a) the wording of any policy or class of policies; or

(b) the premiums payable in respect of any policy or class of policies."."

Question on the amendment proposed, put and agreed to.

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

INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1991

Clauses 2 to 5, 8, 9 and 11 to 17 were agreed to.

Clauses 1, 6, 7 and 10

DR PHILIP WONG: Mr Chairman, I move that clauses specified be amended as set out under my name in the paper circulated to Members.

I will first explain why amendments to clauses 6 and 7 are proposed.

As originally drafted, clause 6(a)(ii) seeks to add the new ground of "carrying on business in a manner detrimental to the interests of policy holders" for the exercise of the interventionary powers by the Insurance Authority. This proposed new ground, which would have applied to all powers under the Ordinance, is superfluous and should therefore be deleted in its entirety.

Another amendment which I propose to make to clause 6 is the addition to a new section 26(1A). The combined effect of this new section and the proposed amendment to clause 7 is that the use of the proposed power to appoint an adviser or manager by the Insurance Authority would now be limited solely on the ground of section 26(1)(a), that is, that the Insurance Authority considers the exercise of the power to be desirable for protecting policy holders or potential policy holders of the insurer against the risk that the insurer may be unable to meet its liability or to fulfil the reasonable expectations of policy holders or potential policy holders.

Mr Chairman, I now turn to the amendment regarding clause 10.

Arising from the query of the Legislative Council ad hoc group set up to study the Bill as to why new section 38C(1) only allows an insurer to apply to the High Court for a resolution of a meeting of an insurer referred to in new section 38A(3)(c) to be approved but NOT for such a resolution referred to in new section 38A(3)(b), the Administration has closely reviewed the provision of section 38A(3)(b) and has come to the view that the effective exercise of the manager's power is already adequately covered by section 38A(3)(c). Section 38A(3)(b) is considered unnecessary and should therefore be deleted.

Mr Chairman, with these words, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended --

(a) by renumbering the clause as clause 1(1).

(b) by adding -

"(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette and different days may be appointed for different provisions.".

Clause 6

That clause 6 be amended --

(a) by deleting paragraph (a) and substituting -

"(a) in subsection (1), by repealing "Any" and substituting "Subject to subsection (1A), any";

(aa) by adding -

"(1A) The power conferred on the Insurance Authority by section 35(2) shall not be exercisable in relation to any insurer except on the ground specified in subsection (1)(a).";".

(b) by deleting paragraph (d).

Clause 7

That clause 7 be amended, in the proposed section 35(2), by deleting "section 26(5)" and substituting "section 26(1A) and (5)".

Clause 10

That clause 10 be amended --

(a) in the proposed section 38A(3) -

(i) by deleting paragraph (b); and

(ii) in paragraph (c), by deleting "other".

(b) in the proposed section 38A(4)(a), by deleting "subsection (3)(b) or (c)" and substituting "subsection (3)(c)".

Question on the amendments proposed, put and agreed to.

Question on clause 1, 6, 7 and 10, as amended, proposed, put and agreed to.

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1992

Clauses 1, 3 and 5 to 12 were agreed to.

Clauses 2 and 4

PROF FELICE LIEH MAK: Mr Chairman, I move that clauses 2 and 4 be amended as set under my name in the paper circulated to Members.

Clause 2 amends section 4(1)(c) of the Dangerous Drugs Ordinance in order to include in it the offence of possession of dangerous drugs for the purpose of unlawful trafficking.

As I have said earlier on, the proposed amendment is intended to address the criticism of the Appeal Court that the two provisions on offences of possession of dangerous drugs for unlawful trafficking and trafficking are overlapping and that the former should be removed from the statute.

The ad hoc group set up to examine this Bill does not consider the proposed amendment an effective way to answer the criticism. Moreover, it may create extraterritorial problems. As an alternative, the group has suggested amending the

definition of "trafficking" in section 2 to include "possession of a dangerous drug for the purpose of trafficking".

The group is aware that the new clause 2 would widen the scope of some provisions in the Ordinance, namely section 4(1)(c), section 4A and section 37. However, this widening is considered technical rather than real. Any case brought before the court would still be considered on the weight of the evidence. The proposed amendment to the definition of trafficking is supported by the Administration.

Clause 4 amends section 8(2) to increase the maximum penalties for possession offences on indictment to seven years' imprisonment and a fine of $1 million. For reasons I have explained earlier on, clause 4 is amended to increase also the maximum fine for possession offence on summary conviction from $10,000 to $100,000.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting the clause and substituting -

"2. Interpretation

Section 2(1) of the Dangerous Drugs Ordinance (Cap. 134) is amended in the definition of "trafficking" by adding "or possessing the dangerous drug for the purpose of trafficking," after "the dangerous drug,".".

Clause 4

That clause 4 be amended, in the proposed section 8(2)(b) by deleting "$10,000" and substituting "$100,000".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 and 4, as amended, proposed, put and agreed to.

ACETYLATING SUBSTANCES (CONTROL) (AMENDMENT) BILL 1992

Clauses 1 to 3 were agreed to.

GOVERNMENT FLYING SERVICE BILL

Clauses 1 to 20 were agreed to.

POLICE FORCE (AMENDMENT) BILL 1992

Clauses 1 and 3 to 5 were agreed to.

Clause 2

MR JAMES TO (in Cantonese) : Mr Chairman, I move that clause 2 be amended as set out in the paper circulated to Members.

Mr Chairman, I should like to comment in one go on clauses 1, 2, 6 and 7 of the Bill.

Mr Chairman, the limited amendments as introduced are based on the Bill of Rights. Therefore we must consider whether the present amendments are consistent with our rights and freedoms as conferred by the Bill of Rights. Article 16 of the Bill of Rights provides "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds...... subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the respect of the rights and reputations of others; and for the protection of national security or of public order or of public health or morals." And Article 14 provides "No one shall be subjected to arbitrary or unlawful interference with his privacy." This article should apply to the search and seizure of papers and documents.

The freedom of expression and the freedom to seek and receive information as referred to in Article 16 include the freedom of news reporters to seek, receive and impart information. In the case I quoted earlier on of an Austrian citizen suing

the Austrian Government, the European Court of Human Rights handed down judgment to the following effect:

Construing the relevant Article in the European Convention on Human Rights (an article similar in terms to Article 16 of the Hong Kong Bill of Rights), this Court finds that freedom of expression includes journalistic freedom and we confirm the special role of the media in the dissemination of news and their monitoring functions in a democratic society.

In order to fulfill their monitoring functions, the media must have, in the course of their work, a great measure of freedom and manoeuvring room to seek and receive information, including some sensitive information which might be deemed to be confidential. They must also abide by the principle of not disclosing their sources. Only under such conditions will the media be able to gain public trust, to get true information and to expose society for what it is, particularly in the course of covering events which bear directly on the Government and the public.

If the media are incapable of protecting their sources, the provision in the Bill of Rights relating to the right and freedom to seek and receive information can never be given effect to and the public's right to know will be infringed upon. In the 1979 case of the Sunday Telegraph v. the United Kingdom Government, the European Court of Human Rights stated that at the other end of the media's dissemination of information is the public's right to information. If the media's information material can be easily seized by the Government, the media will degenerate into an information-collecting tool of the Government.

As the Honourable Felice LIEH MAK has said, the Bill of Rights has laid down restrictions on the freedom of expression and journalistic freedom. I have mentioned where exactly these restrictions should apply. These restrictions are necessary; that is to say, if restrictions exist on the ground of public order, that means that the authority concerned is entitled to search for and seize material that has a bearing on the evidence of crime. Such being the case, are the existing provisions conferring the powers of search and seizure necessary? In the light of this, if we consider the police powers of search and seizure in this regard the following principle will become clear to us: Only if the police would search for and seize journalistic material in extremely exceptional and absolutely necessary circumstances could the provision in the Bill of Rights with regard to journalistic freedom and freedom of expression be given effect to. But I would invite Honourable

Members to look at the provision proposed by the Administration. It provides that upon an ex parte application the police may be granted a search warrant by the court if it can be proved that the material to be searched for is of evidential value, no matter how slight, with respect to any crime, however minor. If this provision is to be applied to ordinary private dwellings as well as news organizations without differentiation of any sort, then there is strong probability that journalistic freedom and freedom of expression provided for under Article 16 will be infringed upon. The amendment I am proposing is based on the Police and Criminal Evidence Act 1984. If Members would care to compare it with the original clause proposed by the Administration, they would find that the latter is really unnecessary and that no appropriate balance has been struck.

First, according to this provision, the police can apply ex parte for a search warrant and the news organization concerned has absolutely no opportunity to make representations to the court to enable it to consider the matter thoroughly and make its decision based on the arguments advanced and on the balance to be struck between the interests of the parties concerned and the public interest. I therefore propose that there should be an adversarial system in place in this regard. However, under special circumstances, for example in a kidnap case where the police need to have access to a videotape to enable them to crack the case and rescue the kidnapped person before he is killed, the police can apply ex parte for and be granted a search warrant provided they establish to the satisfaction of the court the emergency nature of the situation or the material effect the access to the sought item will have on the investigation of the case. My proposed amendment does indeed provide for this.

Second, the power of arrest provided under the Police Force Ordinance to which the present proposed amendments relate is only applicable to imprisonable offences, that is to say, more serious offences. But the power of entry and search is applicable to any offence, no matter whether it be imprisonable or just a minor offence. It must be understood that entry to premises to conduct a search thereon is a more oppressive act than arresting a person in the street. Why is it that the trigger point for the exercise of the power of investigation and search should be lower than the trigger point for the exercise of the power of arrest? Therefore I propose that the relevant powers can only be exercised when serious offences are involved.

Third, the existing provision does not require that the police must first try to seek independent evidence and only in the event of failure to obtain such evidence can they apply to the court for a search warrant. This indeed would have been an

even less proper way of doing it. Therefore I propose that an appropriate provision should be added to require the police to try to obtain other evidence first in order to show the necessary balance. Moreover, the existing provision has it that a search warrant may be applied for if the item sought can be shown to have some evidential value. I believe that in order to strike a balance, the provision should require that the item sought must have important evidential value.

Fourth, the existing provision does not require that the court must consider the public interest and then strike an appropriate balance in deciding whether to grant a search warrant. Therefore I propose that provision be added to require that the public interest must be considered having regard on the one hand to how much help the item sought would bring to the investigation and on the other hand to the circumstances in which the item sought was first obtained, that is to say, whether it was obtained by a news reporter or news organization through an interview, a secret interview or random photo-taking/video-taping during a rally.

Some Members are of the view that since the Law Reform Commission is conducting a comprehensive review of the issues involved, there would seem to be little justification for introducing piecemeal amendments to the principal Ordinance now. To this I would say that the Administration, as a matter of fact, has never asked the Law Reform Commission to consider the question of police powers from a Bill of Rights perspective. Moreover, would it be a responsible way of tackling the problem to refer instances of clear breaches of the Bill of Rights to the Law Reform Commission and to await the outcome of the Commission's study? Here I cannot helping calling to mind the "false news" provision in the Public Order Ordinance enacted by this Council a few years ago and then repealed before long. That provision grossly violated journalistic freedom. The Bill of Rights was then not yet enacted but the Administration had the courage to repeal that repugnant provision. Now, today, a few years on, and a year since the coming into force of the Bill of Rights, it is totally unexpected that the Administration should see fit to tolerate a provision that grossly infringes human rights and take no initiative to amend it with the result that some Members of this Council have to bend over backwards to support the Administration thus turning the media into a police tool to obtain information and into an accomplice to ride roughshod over the Bill of Rights. This will not be tolerated by a community who respects journalistic freedom and human rights.

The Administration has raised a legal point by way of argument which I believe I should address. The Administration contends that under its proposed amendment the

court, in considering whether to grant a search warrant, may have regard to the protection provided for under the Bill of Rights (that is to say, the freedom of expression that we have been mentioning) because the English text of the proposed provision uses the word "may" which would imply a discretion on the part of the court whether to grant a search warrant. In other words, it is contended that the court may have regard to the Bill of Rights in making its decision. The snag in dealing with this argument was that I waited a whole week, which accounted for the delay in circulating my proposed amendments to Members, for the Attorney General's Chambers to cite me two cases -- that is, the two cases mentioned by the Honourable Miriam LAU a while ago. The two cases clash on principle. The ratio decidendi of one case is that since the law has provided unequivocally as to what needs to be proved, no matter how well-intentioned the court is, it cannot add other preconditions as it pleases, such as requiring that only after the police has established failure of an earlier attempt to obtain other independent evidence can they apply for a search warrant. The ratio decidendi of the other case is that the court can add reasonable conditions in accordance with the Bill of Rights. Since there is no definite precedent whereby to explain what constitutes a correct balance, having regard to the public interest, between journalistic freedom and the power to collect information, I submit that the proper way of doing it is to set out some reasonable preconditions to require the police to search for journalistic material only in extremely exceptional and absolutely necessary circumstances.

The other part of the proposed amendments relates to information or material in the course or arising out of legal consultation between counsel and client, which is privileged. It should be obvious that the privileged and confidential status of legal advice helps ensure the effective operation of the defence system and is an important principle buttressing the fairness of an adversarial system of trial. If a client cannot unreservedly and frankly discuss with and seek legal advice from his lawyer, the defence system will collapse and justice will not be upheld. I should like to tell Honourable Members that under the present system even a trial judge cannot compel disclosure by counsel or client of information or documentation relating to the legal advice given; in other words even the court is powerless to do so. On the other hand, even ICAC officers, who have been criticized for the excessive powers vested in them, are subject to the restriction, as expressly set out in the Independent Commission Against Corruption Ordinance and the Prevention of Bribery Ordinance, that they shall not search for such information or material nor shall they compel disclosure of same by the lawyer. I would like to quote one more example: the White Bill on organized crime the Administration has presented to this Council likewise

contains a provision exempting from search any material relating to communication or consultation between a legal practitioner and his client. The Administration must do away with intrinsic contradictions to achieve uniformity. Since the Administration has proposed such an exemption in the White Bill on organized crime, it must mean that the Administration has recognized this as an important principle disregard of which would risk breaching the Bill of Rights. Therefore I cannot help asking why the Administration is contradicting itself and acting in such an irresponsible way.

I hope Honourable Members will, after listening to my speech, make a careful analysis of the amendments I am presently proposing and support them.

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 50(7) by adding "and provided that such newspaper, book or other document or portion of or extract therefrom or any such other article or chattel does not consist of or include items subject to legal privilege or journalistic material," after "intended to be committed,".

Question on the amendment proposed.

SECRETARY FOR SECURITY: Mr Chairman, I would only like to repeat very briefly that for the reasons which I mentioned during my speech on the Second Reading the Administration does not support these proposed amendments. The advice we have received, in our view, is that such amendments are not necessary to make the Police Force Ordinance consistent with the Bill of Rights and that consideration of these proposals should be left until we have had the benefit of the full recommendations of the Law Reform Commission.

MR MARTIN LEE: Would the Secretary care to deal with the points raised by Mr James TO at all?

CHAIRMAN: Is that either a point of order or a point of intervention, Mr LEE?

MR MARTIN LEE: It is a point of clarification, Mr Chairman.

CHAIRMAN: I do not think it is a point of clarification.

Question on the amendment put.

Voice votes taken

THE CHAIRMAN said he thought the noes had it.

MR JAMES TO: Mr Chairman, I claim a division.

CHAIRMAN: The Committee will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

CHAIRMAN: Would Members please proceed to vote? I will check with Members before the results are displayed.

CHAIRMAN: Do Members have any queries? The results will now be displayed.

Mr Martin LEE, Mr David LI, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Albert CHAN, Prof Edward CHEN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU,

Mr LAU Wah-sum, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Simon IP, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Dr Philip WONG and Mr Howard YOUNG voted against the amendment.

Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Timothy HA and Miss Emily LAU abstained.

THE CHAIRMAN announced that there were 20 votes for the amendment and 25 votes against it. He therefore declared that the amendment was negatived.

Question on clause 2 put.

CHAIRMAN: May I remind Members that this is the original clause 2.

Question on clause 2 was agreed to.

New clause 1A Declaration of Office
New clause 2A Section added
New clause 6 Oath or Declaration of Office
New clause 7 Scehdule added

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR JAMES TO (in Cantonese): Mr Chairman, I have stated very clearly all the reasons in my speech earlier. I do not intend to repeat them here.

Question on the Second Reading of the new clauses proposed.

SECRETARY FOR SECURITY: Mr Chairman, these proposed amendments are related to the

amendment to clause 2 which has been rejected. I would only say that because of that the Administration equally does not support these amendments.

Question on the Second Reading of the new clauses put and negatived.

MR JAMES TO: Mr Chairman, I claim a division.

CHAIRMAN: I have called the noes and I am afraid you are too late, Mr TO.

MR JAMES TO: I will not challenge that, Mr Chairman.

MR MARTIN LEE: Mr Chairman, you might have said something you did not intend to say. I think you said the noes had it.

CHAIRMAN: Yes, the noes to Mr TO's proposed amendments.
MR MARTIN LEE: I am much obliged, Mr Chairman.

CHAIRMAN: As the motion for the Second Reading of the new clauses 1A, 2A, 6 and 7 has been negatived, we will not take any further proceedings on these four clauses. We will now consider a further amendment to the Police Force (Amendment) Bill 1992.

New clause 3A Person arrested to be discharged on
recognizance or brought before a magistrate

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR MOSES CHENG: Mr Chairman, I move that a new clause be introduced to the Bill as set out under my name in the paper circulated to Members.

The amendment relates to section 52(1) of the Police Force Ordinance. The current provision requires an arrested person to be brought before a magistrate or be discharged on recognizance by an authorized police officer unless the offence appears to such officer to be of a serious nature or unless such person appears to such officer to be a person who ought to be detained. The ad hoc group considers detention on "ought to be detained" gounds dubious as such a formulation could be construed as arbitrary under the Bill of Rights Ordinance. The group therefore considers it necessary to introduce requirement of reasonableness in the provision and the Administration is agreeable to this view.

The amendment now proposed is to modify the provision to this effect.

Mr Chairman, I beg to move.

Question on the Second Reading of new clause 3A proposed, put and agreed to.

Clause read the Second time.

Proposed addition

New clause 3A

That the Bill be amended, by adding --

"3A. Person arrested to be discharged
on recognizance or brought
before a magistrate

Section 52(1) is amended by repealing "such person appears to such officer to be a person who" and substituting "such officer reasonably considers that the person".".

Question on the addition of the new clause proposed, put and agreed to.

HONG KONG ACADEMY OF MEDICINE BILL

Clauses 1, 3, 4, 9, 11, 14 and 15 were agreed to.

Clauses 2, 5 to 7, 10 and 13

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clauses 2, 6(3)(b), 10(4) and 13 be amended and that new clause 13A be added to the Bill. I also move that clauses 5(c), 7(i), 12(1)(k) and 13(2)(a) of the Sinophone version of the Bill be amended. These changes are set out under my name in the paper circulated to Members.

As the Bill presently stands, a group of medical specialists must be registered as a society before it can apply to the Hong Kong Academy of Medicine to become an academy college. The amendments to clauses 2, 6(3)(b) and 10(4) provide a more flexible wording consequential to proposed amendments to the registration requirement in the Societies Ordinance which were gazetted on 15 May 1992.

The proposed additional clause 13A introduces a provision requiring the Hong Kong Academy of Medicine to keep proper accounts.

The amendments to the Sinophone version of the Bill serve to improve the Chinese rendition of the Bill's provisions. The other amendments are minor and technical in nature.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, in paragraph (b) of the definition of "college" by deleting "registered for the time being under section 5(2) of the Societies Ordinance (Cap. 151)" and substituting "which is a society to which the Societies Ordinance (Cap. 151) applies".

Clause 5

That clause 5(c) by amended, by deleting "   " and substituting "   ".

Clause 6

That clause 6(3)(b) be amended, by deleting "registered under section 5(2) of the

Societies Ordinance (Cap. 151)" and substituting "which is a society to which the Societies Ordinance (Cap. 151) applies".

Clause 7

That clause 7(i) be amended, by deleting "   " after "   ".

Clause 10

That clause 10(4) be amended, by deleting "registered under section 5(2) of the Societies Ordinance (Cap. 151)" and substituting "a society to which the Societies Ordinance (Cap. 151) applies".

Clause 13

That clause 13 be amended --

(a) in subclause (2)(1) by deleting ", including the maintenance of accounts, the auditing thereof and matters connected therewith"; and

(b) in subclause (3) by deleting "has been previously" and substituting "is".

That clause 13(2)(a) be amended, by deleting "   " and substituting "   ".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5 to 7, 10 and 13, as amended, proposed, put and agreed to.

Clause 8

MR DAVID LI: Mr Chairman, I move that clause 8 be amended as set out under my name in the paper circulated to Members for reasons that I gave at the Second Reading debate.

Mr Chairman, I beg to move.

Proposed amendment

Clause 8

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

"8. Exercise of powers by the Academy

(1) Subject to subsection (2) and any requirements as to a quorum specified in regulations made under section 12, any power conferred on the Academy under section 3, 5, 6 or 7 may be exercised either -

(a) by a resolution passed at a meeting of the Academy and as regards which only Fellows shall be entitled to vote; or

(b) by a decision determined by postal ballot in which only Fellows shall be entitled to participate,

as the Academy decides.

(2) The Council may direct whether a power referred to in subsection (1) is to be exercised by the Academy in accordance with subsection (1)(a) or (b) and a direction under this subsection may apply to the exercise of all or any one or more of such powers and to such exercise -

(a) generally;

(b) in circumstances specified in the direction; or

(c) in a particular case.

(3) A direction under subsection (2) shall remain in force until it is withdrawn by the Council and for so long as it is in force the Academy shall comply with it.

(4) A Fellow shall not be allowed to vote or otherwise act by proxy as regards the consideration or determination of a question or other matter relating to the exercise of a power of the Academy as described in subsection (1)(a) or (b).".

Question on the amendment proposed, put and agreed to.

Question on clause 8, as amended, proposed, put and agreed to.

Clause 12

MR DAVID LI: Mr Chairman, I move that clause 12 be amended as set out under my name in the paper circulated to Members for reasons I gave earlier.

Mr Chairman, I beg to move.

Proposed amendment

Clause 12

That clause 12 be amended --

(a) in subclause (1)(g)(ii) by deleting "and";

(b) in subclause (1)(g)(iii) by adding "and" at the end;

(c) in subclause (1)(g) by adding -

"(iv) to provide, with the approval of the Academy, for reviews in cases in which a recommendation for the purposes of section 3(3)(a) has been refused;";

(d) in subclause (1)(j) -

(i) by adding "prohibit voting by proxy and" before "provide"; and

(ii) by adding ", including the holding of postal ballots," after "election" in

the third place where it appears;

(e) in subclause (1) by adding -

"(ka) provide that a person shall not at the same time hold an office which makes him eligible for membership under section 9(2)(c), and -

(i) an office described in section 9(5);

(ii) membership under section 9(2)(b);"; and

(f) in subclause (3) by renumbering paragraph (a) as paragraph (b), and paragraph (b) as paragraph (a).

Question on the amendments proposed, put and agreed to.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 12 be further amended as set out under my name in the paper circulated to Members for the reason I gave earlier, that is to say, to improve the Chinese translation.

Proposed amendment

That clause 12(1)(k) be further amended, by deleting " " and substituting " ".

Question on the amendment proposed, put and agreed to.

Question on clause 12, as amended, proposed, put and agreed to.

New clause 13A Accounts

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

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

Clause read the Second time.

Proposed addition

New clause 13A

That the Bill be amended, by adding --

"13A. Accounts

(1) The Council shall keep proper accounts and records of all financial transactions and shall, within 5 months of the expiry of a particular financial year, prepare in respect of that financial year, a statement of accounts which shall -

(a) include an income and expenditure account and a balance sheet; and

(b) be signed by the President of the Academy.

(2) The Council shall appoint auditors who shall be entitled at any reasonable time to -

(a) have access to all books of accounts, vouchers and other records of the Council; and

(b) require such information and explanations as they consider necessary to discharge their functions.

(3) The auditors shall, within 7 months of the expiry of a particular financial year, audit the accounts, prepare a report on the statement of accounts and send it to the Council.

(4) The Council shall cause the report of the auditors in respect of a particular financial year to be presented at the annual general meeting of the Academy next following the receipt by it of such report.

(5) The Council -

(a) shall, subject to paragraph (b), determine the period of 12 months which is to be the financial year of the Academy; and

(b) may determine a period of -

(i) 12 months;

(ii) more than 12 months;

(iii) less than 12 months;

as its first financial year.

(6) In this section "financial year" (   ) means the period determined under subsection (5)(a) or (b) as may be applicable.".

Question on the addition of the new clause proposed, put and agreed to.

LAND REGISTRATION (AMENDMENT) BILL 1992

Clause 1 to 20 were agreed to.

Schedule was agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CRIMES (AMENDMENT) (NO. 2) BILL 1991

ACETYLATING SUBSTANCES (CONTROL) (AMENDMENT) BILL 1992

GOVERNMENT FLYING SERVICE BILL and

LAND REGISTRATION (AMENDMENT) BILL 1992

had passed through Committee without amendment, and the

INSURANCE COMPANIES (AMENDMENT) BILL 1991

INSURANCE COMPANIES (AMENDMENT) (NO. 2) BILL 1991

DANGEROUS DRUGS (AMENDMENT) (NO. 2) BILL 1992

POLICE FORCE (AMENDMENT) BILL 1992 and

HONG KONG ACADEMY OF MEDICINE BILL

had passed through Committee with amendments. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

6.44 pm

DEPUTY PRESIDENT: I propose to take a break for supper.

7.24 pm

DEPUTY PRESIDENT: Council will resume. In view of the lateness of the hour and the fact that we have two motion debates on the Order Paper, with the concurrence of the Rev FUNG Chi-wood, I shall refix his adjournment debate for another sitting.

Member's motions

DEMOCRATIC DEVELOPMENT IN THE LEGISLATIVE COUNCIL

DEPUTY PRESIDENT: In accordance with recent practice, Members have agreed to place a voluntary limit upon length of speeches and have agreed that a total of four hours should be allocated for speeches in the two debates, excluding replies by government officials and concluding speeches by movers of motions. Twenty-eight Members have given notice to speak on the first motion and 13 Members on the second motion. An equitable division of time is therefore to allow two and a half hours for the first motion and one and a half hours for the second motion. I would remind Members that movers of motions and movers of amendments should not exceed 15 minutes and in the case of other Members on the first motion speakers should not exceed four and a half minutes and in the second motion speakers should not exceed five minutes.

MR JIMMY McGREGOR moved the following motion:

"That this Council reaffirms its adherence to the proposed pace of democratic development in the Legislative Council set out in the 1989 OMELCO Consensus and requests the British Government and the Chinese Government to accept the proposal that there should be no less than half of the seats of the Legislative Council elected by universal suffrage in 1995."

MR JIMMY McGREGOR: Mr Deputy President, I move the motion standing in my name in the Order Paper.

I must begin this address by declaring that the views I will express are my own and not those of the Hong Kong General Chamber of Commerce. In political matters of this kind it is impossible to obtain a representative view from the Chamber membership. It is likely that there will be divided views among members. I prefer therefore to speak according to my deeply held beliefs and to my conscience.

In October 1989, after many months of detailed discussion and argument and finally in a spirit of compromise, this Council together with our colleagues in the Executive Council reached agreement on what has become known as the OMELCO Consensus. The accord was a surprising one given the very different political views of many OMELCO

Members and in light of the worries and stresses in Hong Kong in the wake of the tragic events in Tiananmen Square on 4 June 1989. That event, and the very serious worries about Hong Kong's future stability and prosperity, clearly influenced many OMELCO Members in their consideration of the level of democracy in Hong Kong that they could support.

Prior to that consensus, some Councillors had argued for full democratic development with all Legislative Council seats filled by direct elections by 1995. Others wanted a much slower pace, fearing disruption to the Hong Kong economy arising from the Chinese Government's unwillingness to accept even a modest pace of reform. To my mind, the OMELCO Consensus was a remarkable achievement in all the circumstances. The consensus, inter alia, called for at least 50% of Legislative Council seats in 1995 to be filled by universal suffrage, that is, by direct elections. Had the OMELCO Consensus been accepted by the two sovereign governments concerned that would have meant that at least 30 seats out of 60 would have been filled by direct elections in 1995.

Sadly, in my opinion, the two governments did not negotiate such an arrangement but, instead, agreed that only 20 seats would be directly elected in 1995 out of the 60 seats available. The Chinese authorities subsequently accepted, in the Basic Law, that the figure would rise to 24 in 1999 and 30 in 2003. The two governments also agreed on the "through train" principle placing an obligation on the British Government to ensure that any arrangement that would affect political development before 1997 should be compatible with the arrangements set out by China for the period after 1997.

It can be seen, therefore, that the British Government is not entirely a free agent, able to decide on political matters in Hong Kong with only the views of Hong Kong people in mind. I will not dwell on this situation nor is there much to be gained by speculating on whether it was right or wrong for the British Government to accept these arrangements on behalf of Hong Kong. A great deal of hot air has been expended in this Chamber and elsewhere on the moral obligations resting upon the British Government to secure for Hong Kong political constitutional arrangements that would permit Hong Kong people to rule Hong Kong with a high degree of autonomy. There is certainly a continuing moral obligation on the British Government to do the best it can for Hong Kong. History will judge whether Britain has discharged that obligation satisfactorily.

It must also be said that the conversion of moral responsibility into political

reality has been an extraordinarily difficult task for the British Government given Chinese opposition to political reform and, particularly, given the dominating position of the People's Republic of China in this whole matter. It seems clear that the British, no matter what their convictions may have been, felt that they had no alternative but to lower their sights and aim at a less acceptable target. The result is evident to all.

That the British Government realized that it had not secured the most satisfactory arrangement for Hong Kong is also evident to all. Each British Minister responsible for Hong Kong who has visited us since 1989 has reiterated a British pledge to approach China at an appropriate time to seek an improved rate of democratic development. The British Foreign Secretary has confirmed that intention. The most recent assurance in Hong Kong was given by Mr Alistair GOODLAD and in London by the British Prime Minister. I am sure that the British Government will in fact carry out this pledge.

The approach must obviously be made within the next few months in order to ensure that any changes agreed, or to be unilaterally introduced, can be carried out without administrative confusion.

Equally obviously and as things stand at present, any British initiative in this direction will be met by strong Chinese opposition. That position has been made clear many times in recent months by Mr LU Ping, and other Chinese officials, in specific language.

If my assumption of a firm British commitment to approach China on a positive basis on this issue is correct, the British Government seems to have only three options open to it. It can formally ask the Chinese Government to agree to a faster pace of democracy in Hong Kong with more than 20 seats in this Council being directly elected in 1995. It may succeed and some additional directly elected seats may be agreed. That would be widely welcomed in Hong Kong by a majority of the people. It would amount to a concession by China and would be widely recognized here and internationally as a gesture of friendship and conciliation to the people of Hong Kong.

The British Government may fail and decide not to take any unilateral action in 1995 to increase the number of directly elected seats. That would be seen internationally as a diplomatic failure and would be damaging to Britain's reputation and image. It would also be a great disappointment to the people of Hong Kong.

Thirdly, the British may fail and yet decide unilaterally to increase the number of seats to be directly elected in 1995. That course of action, of course, would be in contradiction to any earlier concurrence over the "through train" principle. It would certainly result in extremely heated protests from China and quite possibly disruptive actions of one kind or another. Such action could damage short-term local and foreign confidence in Hong Kong's future with unassessable longer-term implications.

For unilateral action of this nature to be contemplated, it would seem important that the British Government should be aware of the opinions of Hong Kong people. Would Hong Kong people wish the British Government to take such action on their behalf? How can a reliable and representative opinion be constructed? A referendum no doubt could produce a reasonably clear result but a referendum might also be weighted, even if inadvertently, in favour of one result or another. We have seen in the past that representative opinion is not easy to obtain from the grass roots by means of comprehensive government survey. There is little time left in any case for such a referendum to be completed.

I have been very much encouraged however by the results of limited surveys carried out by the media in recent weeks, culminating in the survey reported in today's South China Morning Post. These surveys have consistently shown that a high percentage of the ordinary people of Hong Kong wish to have a greater degree of democracy than that at present promised. They support in fact the OMELCO Consensus and they believe that the British Government should act on it in 1995.

The opinions expressed in this Council today may be regarded by the British Government as representative even though many of our Members are not elected. I think the British Government may therefore be influenced by the views expressed by Councillors today and by the results of any voting that may occur. If this Council continues to support a faster pace of democratic development than we have been given for 1995, then the British Government will surely be encouraged to make a firm approach to the Chinese and, even in the event of failure, to consider granting additional seats for direct election in 1995.

If, on the other hand, there is a seriously divided view in this Council or if the Council firmly rejects the pace of democracy set out in the OMELCO Consensus and does not substitute support for a modified but faster rate of democracy than has been

agreed at present, then the British Government may make its approach to the Chinese Government with much less vigour and determination and lacking the will to take unilateral action if necessary.

I venture to suggest to my fellow Councillors that their views and votes today will have a crucial impact on the resolve of the British Government to promote greater democracy in Hong Kong before 1997. Each and every one of us must therefore carefully consider what to say and how to vote. The Hansard record will be a public record and we will all be committed one way or another. The people of Hong Kong will judge us now and in the years to come. I ask Councillors therefore to speak according to their conscience and not to any party or other affiliation.

Having set out my views on the background I would like to express my personal convictions. As I have said, I believe in matters of this kind I must speak in accordance with what my conscience tells me is right and I must try to discharge my wider responsibility to the people of Hong Kong. Having said that, I have no reason to believe that my views will not be supported by many Chamber members. I can also say that my views are directly in line with those of the Hong Kong Democratic Foundation whose members are all of democratic persuasion and many of whom are businessmen and professionals.

I believe that the British Government must make the approach to the Chinese Government to seek concurrence with a proposal to provide another 10 seats for direct elections in 1995, making 30 in all, equivalent to the OMELCO Consensus recommendation for 1995.

The arrangements at present envisage 10 appointed seats being replaced in 1995 by elected representatives put in place by an election committee, whose membership and modus operandi are not at present known. I believe the British Government should do everything possible to persuade the Chinese Government not to object to the allocation of these seats for direct election. The British authorities have the power to take this step unilaterally but it would clearly be in Hong Kong's interest to have Chinese concurrence.

I believe that the British Government should have regard for their obligations to the people of Hong Kong. These are obligations that have been forged during a century and a half of colonial rule, during which the mother country has developed one of the strongest systems of democracy in the world but yet failed to extend that

same democracy to the political development of Hong Kong. Britain has little time left to give Hong Kong the system that the majority of our citizens clearly desire and the hope for our future that they surely deserve.

We are all aware of the sensitivity of this most important issue. We all recognize that we are not masters of our own destiny. In this Council, however, we are all committed to seeking the best possible arrangements for the people of Hong Kong in securing their future. It is not for us to assume the mantle of negotiators but rather to seek what we know to be right. I ask Councillors therefore to have the courage to speak out for further democratic reform in 1995.

This will be the last chance for the British Government to put into place the means to maintain reasonable progress towards a fully elected legislature. At the very least it would provide an acceptable balance between directly and indirectly elected seats leading to better and more comprehensive representation in the legislature for the people of Hong Kong.

Failure to take this step will in my view represent unnecessary timidity on the part of the British Government which is itself the mother of all parliaments and steeped in democratic tradition. It will be sad if we have to listen to Councillors who have enjoyed every advantage from a democratic system of administration in Hong Kong decry the proposal that the people of Hong Kong should be given a faster pace of democratic development. I have heard Councillors who have never faced an election in their lives speak heatedly about the merits and demerits of the electoral process. It will not be surprising if a number of them are not in favour of a faster rate of democratic development. They will call anxiously for restraint and look to Beijing for guidance when perhaps they should be asking themselves to what extent their concern should be for the interests of the people of Hong Kong.

I have no doubt that in the speeches to come we are going to hear a great deal about the through train, convergence, a recognition of reality; about likely Chinese reaction, fear of consequence and so on. Certainly the amended motion proposed by Mr NGAI Shiu-kit is meaningless in regard to democratic reform. For that reason it will no doubt be preferred by some Councillors. Mr Deputy President, it is always easy to do nothing and hope for the best. It is more difficult sometimes to do what is right.

I ask those of my colleagues who believe deeply in democratic reform to support

my motion.

Mr Deputy President, I beg to move.

Question on the motion proposed.

DEPUTY PRESIDENT: Mr NGAI Shiu-kit has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to speak and to move his amendment now so that Members may debate the motion and the amendment together.

MR NGAI SHIU-KIT moved the following amendment to Mr Jimmy McGREGOR's motion:

"To delete all the words after "That this Council" and to substitute for the words deleted the following:

"requests the British Government to reach an early decision on matters relating to the 1995 elections, including the composition of the Legislative Council, and to seek Chinese acceptance of it as soon as practicable in order to achieve smooth transition of the political system before and after 1997.""

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy President, I move an amendment to Mr Jimmy McGREGOR's motion as set out in the paper circulated to Members.

Mr Jimmy McGREGOR said a moment ago that "NGAI Shiu-kit's motion is meaningless." I believe that a conclusion as to whether it is "meaningless" is not for Mr McGREGOR to draw. It should be drawn by all the people of Hong Kong; then it will perhaps be closer to the truth.

Mr Deputy President, as Hong Kong enters the latter part of the transition period, it must make adjustments on the political, economic and social fronts so as to assure smooth transition. Mr McGREGOR revoices support for the OMELCO Consensus. While his quest for a democratic political system in Hong Kong deserves support, he has overlooked the fact that political realities now are not what they used to be. Also, matters that need to be taken into consideration in the economic and social areas and in the area of people's livelihood have changed. The OMELCO Consensus is out

of date.

I recall that the OMELCO Consensus was arrived at shortly after the June 4 incident. At that time, both the business community and the public at large in Hong Kong were faced with a confidence crisis. That was why colleagues in this Council held discussions and arrived at the OMELCO Consensus, which had a reassuring effect on the public. But China has progressed from a period of consolidation in the wake of the June 4 incident to a new period of vigorous reform and further liberalization. It cannot be denied that the political vista has cleared up gradually. That which formed the historical backdrop of the OMELCO Consensus has changed. Hong Kong as a society has gradually regained its confidence in China. This Council should look at Hong Kong's political development from a new angle. It should not reminisce of events past. It should not refuse to open its eyes. It should not behave like a frightened ostrich, which would rather bury its head in the sand than face the reality.

The political reality in Hong Kong is that, as specified in the Sino-British Joint Declaration, sovereignty will revert to China in 1997 and Hong Kong will then be governed in accordance with the Basic Law. To insist on disregarding the Basic Law is, as a Cantonese saying goes, "to ram one's head against the wall." As can be imagined, the harder this is done, the more it will hurt. The year 1989 happened to be the time of consultation on the Basic Law. By way of expressing its views on the model of political system of the Hong Kong Special Administrative Region (SAR), this Council formulated the OMELCO Consensus and submitted it through diplomatic channels to the the Basic Law Drafting Committee for consideration. The Basic Law Drafting Committee collected the views of all quarters, analysed them, weighed them, and then arrived at the political model as we know it. Such an outcome may not meet the wishes of all. Still, the Basic Law has enshrined features designed to maintain the prosperity of Hong Kong; besides it is the result of democratic consultation. Should this Council cling to the OMELCO Consensus, the result would be inconsistency between the 1995 Legislative Council and the first legislative assembly of the SAR, in other words, the undoing of the entire process of consultation on the Basic Law. Such a course of action would violate the rules of the game and would lead to confrontation and social unrest. In truth, it would be a course of action taken in disregard of the overall interests of Hong Kong as a society.

There is another political reality for us to acknowledge. It is that the Basic Law was formally promulgated in 1990. An appendix -- "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council for the Hong Kong Special Administrative Region" -- clearly

specifies how the first legislative assembly is to be constituted. In addition, the Chinese and the British Governments have agreed to use the "through train" concept for solving the problem of convergence between the 1995 Legislative Council and the first legislative assembly of the SAR.

In consideration of the above, before we make any decision that may impact on the constitution of the 1995 Legislative Council, including any decision about the OMELCO Consensus, we must ask ourselves whether it will have a positive effect on smooth convergence. The OMELCO Consensus clearly will not pass such a test. Undoubtedly, if the OMELCO Consensus is to be implemented, then the Basic Law itself, as well as the above-mentioned decision of the National People's Congress (NPC), must be revised.

Mr Deputy President, some people have suggested revising the Basic Law or revising the NPC decision so as to speed up the democratic process and make the OMELCO Consensus come true. I consider this the doing of political opportunists. LU Ping, Director of the Hong Kong and Macau Affairs Office of the State Council of China, has made it clear that the Basic Law absolutely cannot be revised before 1997. Mr McGREGOR, too, referred to this point a moment ago. I believe that the Chinese side has expressed their position in the strongest terms. Any attempt to have the United Kingdom put to China a proposal about additional directly elected Legislative Council seats, and any hope, however forlorn, that the United Kingdom will influence or even persuade China to revise the Basic Law is nothing but opportunism. What else could it be?

Mr Deputy President, from the legal point of view, the feasibility of the people of Hong Kong moving an amendment to the Basic Law would be minimal. According to Article 64 of the Constitution of China, any amendment to the Constitution (including the Basic Law of course) must be proposed by China's NPC. Only then can the Constitution be amended. At the moment, Hong Kong has only 18 deputies to the NPC. This is a far cry from the required one-fifth of all deputies, or about 600 of them, who must initiate the motion, and from the required two- thirds, or about 2 000 deputies, who must support the motion. Such being the political reality, to cling to the OMELCO Consensus, which obstructs "through train" traffic, would really be unwise. Be that as it may, it is necessary to remove uncertainties that have adverse effects on Hong Kong, to free the public from the obsessive "amendability" versus "non-amendability" issue and to stop the opportunists from further fantasizing. So I think that the British Government should quickly hold consultation with the Chinese

Government on the 1995 elections and then let the public see the outcome clearly.

Mr Deputy President, when Mr McGREGOR moved his motion, he failed to take Hong Kong's economic needs or society's lifestyle preferences into consideration. Speaking from the economic angle, investor confidence is built on known and predictable situations. Hong Kong's local and international investors are gradually coming out from under the shadow cast by the June 4 incident. They are actively and massively investing in the enormous market that is China. Such a strong investor sentiment is reflected by the present strength of Hong Kong's economic activity. If the 1995 Legislative Council election model should fail to converge with provisions of the Basic Law, that surely would constitute a political uncertainty, with hardly avoidable effects on investor confidence and on investment strategy. Those who have already invested would feel alarmed and disturbed. Those who are planning to invest would hesitate. The effects on Hong Kong's economic prosperity would be harmful indeed.

True, the democratization of Hong Kong's political system is a trend that cannot be reversed. However, political development that is too fast would disrupt economic operations and be bad for Hong Kong in the long run. On the other hand, the degree of mutual dependence between Hong Kong and China, particularly South China, has been growing steadily in recent years. Hong Kong must maintain a good co-operative relationship with China if economic co-operation between the two is to benefit. Confrontation on the political front between Hong Kong and China would inevitably damage the economic co-operative relationship between them. Therefore, OMELCO must think carefully. Clinging stubbornly to the OMELCO Consensus would have negative effects on economic development in both China and Hong Kong. This would be a high price to pay, a price that indeed should not be lightly dismissed.

Finally, if one analyses the matter from the angle of the well-being of society and the people, one will see that the people, while seeking democracy, also understand the importance of smooth transition. In recent days, with all the proposals being made to revise the Basic Law and to speed up the democratization of the political system, I did not notice public opinion being positively in favour of them. Mr McGREGOR a moment ago cited the result of a survey conducted by a certain newspaper and used it to prove the point that the majority of the people are in favour of the OMELCO Consensus. In my opinion, that is not necessarily the case. Who were the respondents in the survey? Could they represent the six million people of Hong Kong? What was the questionnaire like? All these are debatable questions. The result of

the survey cannot be accepted as the general truth. Although the people of Hong Kong may not be fully satisfied with the relevant provisions of the Basic Law, the Basic Law nevertheless has provided a clear and certain blueprint for future political development and is reassuring to the public. If this Council should cling to the OMELCO Consensus, the result would be a disruption of public order, a resurgence of controversies and social unrest. I believe that colleagues in this Council do not want to see this happen.

Mr Deputy President, I think that Hong Kong's political progress towards the democratic goal deserves to be supported and encouraged. However, in choosing what methods to use, one must not fail to consider such things as the social and political environment, the economic necessity and the well-being of the people. The circumstances that now exist are on the whole quite different from those under which the OMELCO Consensus was formulated. The OMELCO Consensus is no longer applicable. It should be replaced by ideas that are conducive to the realization of the "through train" concept and by plans that will help Hong Kong to make the transition smoothly and that will have a stabilizing effect on the confidence of investors and the general public. Then, Hong Kong will be able to maintain its prosperity and stability.

Mr Deputy President, the principal direction the OMELCO Consensus set sights on is that Legislative Council seats should eventually be returned through popular election. The Basic Law accepts a similar final goal. Therefore, the long-term objectives of the two are consistent. The difference is between rapid progress and gradual progress, not between non-democracy and democracy. The difference is one over the question of speed and pace, not one over the question of whether or not there will be a change in direction. Legislative Council Members have a social responsibility. They should lead the public to follow a correct and practical course. But there are those who, knowing that one road is a dead end, continue to lead the public along it. They euphemise this as "steadfastness" and "responsibility to the electorate." It is in fact a very irresponsible act. There are also those who lead the public to follow a correct, realistic and practical course but who are accused of "changing course" and being "unprincipled." This is really quite absurd. Faced with such a blatantly unfounded accusation, I find it not only quite laughable but also quite regrettable. In view of the above, I disagree with Mr McGREGOR's motion. I therefore put forth a motion for amendment, the substance of which is as set out in the paper that I have circulated.

Question on Mr NGAI Shiu-kit's amendment proposed.

MR ALLEN LEE (in Cantonese): Mr Deputy President, most Hong Kong people long for democracy. Many Hong Kong people are wary of the Chinese Communist Party because of its performance after the founding of the People's Republic. I believe that I am one of the very few Members of this Council who had lived under the communist regime. In my young days, I had been through "the movement against the three evils" and "the movement against the five evils". I revisited China in 1978, before it announced its open door policy. I saw how the Chinese people lived. Being Chinese, I felt a pang of heart. In May 1983, before the Sino-British talks on the future of Hong Kong began, I led a group of young achievers of the time to visit Beijing to convey the moods and sentiments of the people of Hong Kong. Many among my colleagues here in this Council were members of the group of young achievers.

Hong Kong made amazing progress in the past 10 years. Its future has become clearer. Relations between Hong Kong and China have grown ever closer. Many storms were weathered during those 10 years. Hong Kong's political system, too, has become steadily and gradually more democratic.

Today, this Council is re-enacting its 1989 debate on the OMELCO Consensus. In fact, when this Council held a marathon debate on 28 February and 1 March 1990 on the OMELCO Consensus, the Honourable Jimmy McGREGOR and I simultaneously put forth our separate motions. My motion was: "That this Council expresses disappointment that the OMELCO Consensus has not been adopted in the formulation of the future political model but urges the community, in the interest of Hong Kong, to be united in its efforts to achieve a successful democratic system." My speech at the time won the support of colleagues in this Council. As I recall that speech, my feelings today are the same as they were then. I think that we must establish a relationship of mutual understanding and mutual trust with China and that each side should do its respective best to try to narrow the gap between them.

Many Members of this Council, including myself, never gave thought to this question: If we, as Hong Kong's community leaders, fail to take a trusting attitude towards China, how can we expect China to trust us? If we think that erecting a barrier will enable us to continue our present lifestyle, how will China react? We have failed to live up to the expectations of the people of Hong Kong.

Of course, I was very disappointed at the Basic Law's failure to adopt the OMELCO

Consensus. Although we did our best as required by our responsibilities and duties, still we could not control our own destiny in the end. Some Legislative Council Members at the time thought that for OMELCO Members to give up the OMELCO Consensus was like abandoning the people of Hong Kong. I feel that OMELCO Members already discharged their duties towards the people of Hong Kong by arriving at the OMELCO Consensus as a formula for the future political model. As we all know, we sent our report to the Basic Law Drafting Committee. Baroness DUNN and I went to London to call on the Foreign Office Minister, the Foreign Secretary and the Prime Minister and did our best to the OMELCO Consensus. Towards the people of Hong Kong, too, we had made and carried out our commitments and discharged our duties. As I said a moment ago, we are not masters of our own destiny. I am very much in agreement with what the Honourable Elsie TU said a moment ago, namely, that we are not giving up, nor have ever given up; we are merely facing the fact. I feel that, if we do not face this fact, we will be misleading the people of Hong Kong, leading them in a different direction.

Have we ever asked ourselves what our attitude towards China is? If we wish China to adopt a good attitude towards Hong Kong, we must handle Hong Kong's relations with China with an attitude of mutual trust, mutual understanding and give-and-take. If we adopt an attitude of no trust, no understanding and no give-and-take towards China, I believe that Chinese leaders will not try to know or understand us. The result will be mutual suspicion and confrontation. It will always be the people of Hong Kong who will lose out.

Five more years and Hong Kong will become a special administrative region of China. Those Hong Kong people who do not trust China very probably will have left Hong Kong. We must think for those Hong Kong people who do not wish or are unwilling to leave Hong Kong. What kind of China, what kind of Hong Kong would they like to see in the future? I hope that colleagues in this Council will visit different parts of China more often, exchange views with the people there and find out what their present views are about the future of China.

I always believe in democratic politics. I think that the top priority at the moment is to achieve convergence in the political system, to ensure a smooth transition and to see to the success of the "through train". These are important matters that are easy to talk about but not so easy to achieve. We must be realistic and establish good relations with China. We must face the future in a positive way. We must do our work well. We must not shirk our responsibility towards the people

of Hong Kong. We must create a better tomorrow for Hong Kong.

8.00 pm

DEPUTY PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

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

Question proposed, put and agreed to.

MR STEPHEN CHEONG (in Cantonese): Mr Deputy President, as Hong Kong faces the prospect of transfer of sovereignty in 1997, what is our first wish? My wish is that Hong Kong make the transition smoothly and safely and that the people of Hong Kong be able to rest assured that the stability, prosperity and free lifestyle such as they now know will continue. I believe that such a simple wish is shared by many people of Hong Kong and even by the Chinese and the British sides as they talk about the future of Hong Kong.

"Smooth transition" -- this sounds very simple. However, during the past few years, because of differences between the Chinese and the British Governments over the affairs of Hong Kong and because of quarrels among local supporters of different political beliefs, "smooth transition" has become far from simple. It has become increasingly complex. In the more complex social and political environment that has presented itself, quarrels between governments or among politicians have set off waves of disquiet. Coming under pressure and made to face an uncertain future are the majority of the people of Hong Kong, the more than five million who take no part in such quarrels.

As Legislative Councillors responsible for making laws affecting the life of the people, how can we reassure them about the 1997 transition? Should we persuade them, with strong words and actions, to try to get used to social and political unrest, to living with the uncertainties? Or should we try our best to remove the

uncertainties and let the wish for "smooth transition" come true? I will do the latter.

Mr Deputy President, during the latter half of the transition period, a co-operative partnership is very important. Such a relationship is indispensable not only between the Chinese and the British Governments and between the Chinese and the Hong Kong Governments, but also between the Government and the Legislative Councillors and between the Government and the public. A co-operative partnership is based on mutual trust, mutual understanding and give-and-take; its basic spirit is a constant dialogue. It cannot be achieved through endless mutual suspicion, confrontation and recrimination.

Some people think that mutual suspicion and recrimination will be followed by enhanced mutual understanding. I believe that mutual understanding has deepened after all this time and now is the time to establish a co-operative partnership.

If there are people who think that partnership between China and the United Kingdom, between China and Hong Kong, between the Government and Legislative Councillors and between the Government and the public can be established only when one side kow-tows to the other; if there are people who think like this, I consider their notion to be really stupid. Such a notion is all the more questionable when applied to the relationship between China and Hong Kong, as a partnership spirit between them is important. We should consider that there exist between China and Hong Kong all kinds of unbreakable ties dictated by social realities and the facts of life, such as in the areas of law and order, illegal immigration and food and water supplies. If China-Hong Kong relations should deteriorate until social stability and the supply of necessities of life are affected, then it is the people of Hong Kong who would suffer. Therefore, we must do our best to maintain a partnership spirit between China and Hong Kong, marked by sincere co-operation and the resolution of differences.

For many years, members of the public have had different views and preferences with regard to the speed of Hong Kong's political development. People's thinking often matures on the basis of personal experience and as the social condition or situation changes; they will not rigidly and blindly adhere to conventional codes of conduct; they will not turn their back on realities. Where smooth transition is the overriding objective, continuity and stability in political development will have a far-reaching impact on people's livelihood. This is where the Chinese and the

British Governments and the Legislative Councillors must give assurances to the people of Hong Kong.

Recently, local politicians and politicians from the United Kingdom have proposed a revision of the Basic Law to speed up the democratization of the Legislative Council. I think that those who initiate such proposals must clearly explain to the people of Hong Kong what the potential risks of the proposals are.

The Basic Law was passed and promulgated by the National People's Congress of China in 1990. The final model of the 1997 political system of Hong Kong was thereby decided. Because the 1995 Legislative Council will serve a transitional term extending beyond 1997, political continuity and stability will depend on the 1995 Legislative Council elections. The Chinese side has already made it clear that the Basic Law cannot be revised before 1997. If the British side should insist on acting unilaterally; if, as the Honourable Jimmy McGREGOR has proposed, there should be an election plan that differs from the Basic Law on how the legislative assembly of the Special Administrative Region should be constituted in 1997, then I expect that social unrest would immediately ensue and would not wait until 1997. Every day for the next five years, people would be anticipating the consequences of a break in legislative continuity in 1997. Should this happen, how could there be smooth transition? Giving away the peaceful life of millions of people in exchange for a few directly elected Legislative Council seats -- would this be worthwhile?

If we think that the Government can become more open and can increase the degree of transparency of its decision-making process, are we also sure that adding several directly elected Legislative Council seats in 1995 is the only way to arrive at such a result? In fact, I believe that, if we insist on the continuity of the legislature and accordingly devise an electoral mode that can assure smooth transition, we still will be able to make the Government more and more open. All of us are community leaders with heavy responsibilities. We must let the people know that, while listening to their views, we will, drawing on our public service experience and having regard to the overall situation, lead Hong Kong to make the smooth transition to 1997 with flair and vision. This will give the people of Hong Kong confidence in their future. We also must let the public know that community leaders are not bull-horns or recording machines. The public should learn and understand in depth the decisions made by the Government and Legislative Councillors after weighing the pros and cons. The Government and Legislative Councillors, for their part, have a duty to explain things clearly to the public. If there is any person who considers only his own wish

and who short-sightedly and deliberately polarizes social differences before the public has a chance to see the entire picture and the consequences, that person is unfit to be a community leader. Of course, it is also questionable whether such a person will be able to make the transition smooth for Hong Kong. I think that a co-operative partnership among different social strata should be encouraged so that all may learn to accommodate differences in order to achieve general consensus, learn to be mutually courteous and respectful and learn to be mutually conciliatory and understanding. This way, public opinion will rally in an atmosphere of harmony, and Legislative Councillors will be able to work together in mind and body to make the Government more liberal and more open.

Mr Deputy President, I believe that, if such a partnership spirit, which should exist in Hong Kong internally, is extended to bilateral relations between China and the United Kingdom, that will mean that the British Government should quickly consult with China about the 1995 Legislative Council elections with a view to making the transition smooth for Hong Kong.

Mr Deputy President, since the Sino-British talks about Hong Kong's future, the people of Hong Kong have been drifting for 10 years in a maelstrom of uncertainties. If we are community leaders determined to serve the people of Hong Kong, if we really mean to do so, should we not do our best to enable them to live in peace as they deserve?

Mr Deputy President, with these remarks, I support the Honourable NGAI Shiu-kit's motion for amendment.

MRS SELINA CHOW: Mr Deputy President, what was the OMELCO Consensus?

I remember it only too well. It was indeed arrived at after the most lengthy discussion by our colleagues and came together before and after 4 June in 1989. It did indeed reflect the spirit of caution, unity and compromise of our membership then. What made it special was that all the Members of this Council at that time decided unanimously to agree, in spite of the fact that not each and everyone found it the most ideal. No voting was necessary then. We wanted to reach agreement. The primary purpose of the agreement was to send a clear message to both the British and the Chinese Governments before a decision was to be made on the political system that was to take Hong Kong towards and through 1997. That decision was made by both governments at the beginning of 1990.

The British Government made its position clear via the Foreign Secretary Mr Douglas HURD's statement in the House of Commons on 16 February 1990. In it Mr HURD made clear the importance that was attached to a convergence of systems before and after 1997, and held out the hope that there might be the chance of increasing the number of directly elected seats by Her Majesty's Government approaching the Chinese Government some time in the future while ruling out unilateral action along this line as unrealistic. His exact words at the time were:

"Those who suggest that whatever we do now China would be obliged to accept in 1997 are out of touch with reality. The measures which we are introducing will preserve the concept of one country, two systems, which is the basis of Hong Kong's future success. We shall continue to press the case for a faster pace of democratization."

The Chinese Government promulgated the Basic Law in April 1990. The purpose of the early promulgation was to present Hong Kong with certainty of what will happen to all systems that govern the running of Hong Kong, of which the constitutional arrangement is only but a part, in 1997 and beyond.

I believe very few people in Hong Kong would not support a faster pace of democracy in the form of more directly elected seats in a shorter time frame than is presently set. However, to lead Hong Kong into a campaign which not only has no chance whatsoever of winning but might in all probability backfire is at best foolhardy and at worst recklessly irresponsible. For it is Hong Kong and no one else who has to live with the consequences. I am not sure whether the Honourable Jimmy McGREGOR's motion is meant to be such a campaign, but it certainly has that ring about it. For the sake of clarity and to assist Members to make their decision when the vote is taken at the end of this debate, what is being called for by Mr Jimmy McGREGOR is not simply an increase in directly elected seats to not less than 30 in 1995 but also to 60 such seats in 1999 and 90 in 2003, thus constituting .....

MR JIMMY McGREGOR: I have a clarification and correction to make.

DEPUTY PRESIDENT: Do you wish to make a point of elucidation, please?

MR JIMMY McGREGOR: Yes, Mr Deputy President.

DEPUTY PRESIDENT: Are you prepared to give way, Mrs CHOW?

MRS SELINA CHOW: Yes, Mr Deputy President.

DEPUTY PRESIDENT: Yes, would you rise please, Mr McGREGOR?

MR JIMMY McGREGOR: I would like to say that what I have asked for is the pace of democratic development for 1995; I have not asked that the OMELCO Consensus as a whole should not be maintained or adopted. I think if you look at the motion, you will find that that is the case.

DEPUTY PRESIDENT: That is not strictly a point of elucidation requiring a reply by Mrs CHOW. Mrs CHOW, would you resume your speech?

MRS SELINA CHOW: If I may just respond to Mr McGREGOR. The motion asks for a reaffirmation of this Council's adherence to the proposed pace of democratic development in the Legislative Council set out in the 1989 OMELCO Consensus; and that includes the pace of democratic development up to the year 2003.

..... thus constituting the entire legislature by direct election in that year. This implies a total overhaul of the relevant sections in the Basic Law. In other words, the motion forces this issue on all of our Members without consideration of the likely consequences of such a stand on the part of this Council. It chooses to ignore the existence of the Basic Law, the importance of establishing a basis for dialogue between this Council and China in the interest of Hong Kong, and the aspiration of our people for a smooth transition in this very crucial and critical stage of our history. And it leaves unsaid what step should be taken if the request is not accepted. But I understand that Mr McGREGOR is advocating for unilateral action to proceed with the 30 seats in 1995. In other words, he is suggesting that Hong Kong should call the bluff of the Chinese Government. I just cannot believe this is what our community

wants. I am convinced that whatever ambivalence that our people carry in their hearts towards China, we are sensible enough to realize that the only hope we have of seeing the "one country two systems" in place is to work towards the building of bridges of good will and mutual respect between Hong Kong and China rather than barriers of animosity and suspicion which would more likely invite intervention than prevent it.

I can well support what was the OMELCO Consensus, if we can all agree that we will only proceed to act with the consensus of the British and Chinese Governments. I suspect such a prospect is remote given the wide spectrum of views held by colleagues here and the repeated public reiteration of her stance by China in the Basic Law. As far as this Council is concerned, the fact is, unlike the days when the OMELCO Consensus was adopted, nowadays the consensus style of politics has been replaced by a very different mode which relies on confrontation, argument and voting rather than compromise and dialogue for the resolution of our differences and problems. It would be quite a senseless paradox if the OMELCO Consensus had to entrust its survival on a vote which reflects the lack of consensus over it in this Council.

Mr Deputy President, I support Mr NGAI's amendment to the motion.

DEPUTY PRESIDENT: Mr McGREGOR, under Standing Order 28(2) you may speak again, with my permission, to explain some part of your speech which has been misunderstood but when speaking your shall not introduce new matter. Do you wish to take advantage of that Standing Order?

MR JIMMY McGREGOR: Thank you very much. No, I do not.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, senior Members of this Council who had taken part in the formulation and endorsement of the OMELCO Consensus model on political reform should know very well that the consensus was arrived at after lengthy public consultation, a lot of discussions and much give-and-take by Members of different political backgrounds or aspirations. The model could be said to be the most representative proposal for the development of political system at that time. Regrettably both the Chinese and British Governments looked upon the views of the Hong Kong people merely as bargaining chips in their political negotiations and had never given them due respect. This explains why the OMELCO Consensus model was

finally not included in the Basic Law. And the Hong Kong Government, under the pressure from China and Britain, also gave up its fight for Hong Kong. Nevertheless the spirit of the model still has been with us; otherwise we will not have this debate here today.

However, I am not speaking with the intention of reversing the verdict on the OMELCO Consensus, but mainly conveying the worries of some Hong Kong people about the current controversy over our political system. The people of Hong Kong have already learnt a painful lesson from the Sino-British negotiations on the future of Hong Kong and the formulation processes of the Basic Law and the Memorandum of Understanding on the new airport, that whenever the occasion demands, their views will be discarded and their interests sacrificed readily by the Chinese and British Governments. Therefore, the recent war of words broken out again between the two Governments on the development of Hong Kong's political system and the amendment of the Basic Law has worried many people and prompted them to speculate on whether the interests of the Hong Kong people will again be sacrificed by the two Governments in exchange for some political goals.

It is plain to everybody that the dispute was triggered off by the new Minister of State with special responsibility for Hong Kong, Mr Alastair GOODLAD who stated clearly in his first official visit to the territory that the Basic Law could be amended to meet the need of having no less than 50% of the seats in this Council to be returned through direct elections in 1995. I think that the people of Hong Kong have every reason to doubt the sincerity of the British Government because it has never taken the initiative to establish a democratic system for Hong Kong throughout its reign of the territory for over a century. Had the Sino-British Joint Declaration not stipulated that the sovereignty of Hong Kong shall be reverted to China in 1997, thereby making it imperative for the British Government to foster pro-British forces by stepping up the establishment of a representative government as soon as possible, the pace of democratic development in the territory would have, I believe, been much slower.

Mr Deputy President, irrespective of whether Mr GOODLAD has made these remarks out of his sheer ignorance of China-Hong Kong affairs or with ulterior political motive, since he is a senior official responsible for Hong Kong affairs, the British Government should be held responsible for his remarks. It is absolutely inappropriate for him to use this kind of sweet talk to try to win over the people of Hong Kong. I think what Hong Kong needs most now and in the next few years ahead

is a stable society in which people may rebuild their confidence in the future, thus achieving a smooth transition in 1997. Therefore, to save the territory from being thrown again into a state of jitters and confusion spawned by meaningless political controversies, the British Government must explain to the people of Hong Kong on what grounds and conditions it is going to urge China for an amendment to the Basic Law. If this move were merely meant to curry favour with its domestic voters and without any specific plan of execution, I should venture to sound a warning to the British Government that it must be prepared to face up to whatever serious consequences that would be brought about by stirring up Hong Kong people's fervent hope for democratic development and then dashing it with its own hands.

I must stress that the British Government should fully consult the Executive and Legislative Councils before making any decision so as to forestall another blunder which may subject Hong Kong to another shock such as the Court of Final Appeal incident.

As for the motive of our colleague, Mr Jimmy McGREGOR, in moving this motion, suspicion has long been cast from people outside this Chamber that it is all meant to test our colleagues' commitment to the OMELCO Consensus model on political development. If this is the case, then I think our debate today will amount to nothing but meaningless and futile wrangling, which will do no good to our community as a whole. In fact, whether one supports the motion or not does not indicate one's attitude to the consensus model, but rather a reflection of whether Hong Kong people are willing to give up a stable environment which is beneficial to the community in pursuit of a hardly achievable political ideal.

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

MR MARTIN LEE (in Cantonese): Mr Deputy President, the United Democrats of Hong Kong continue to support the OMELCO Consensus model because we believe that only a bona fide democratic political system can ensure "Hong Kong people ruling Hong Kong and a high degree of autonomy", as promised by the Sino-British Joint Declaration. We insist that Hong Kong must have sufficient autonomous power to administer its internal affairs including its political development, with the exception of defense and foreign policy matters. I would like to reiterate that this is the assurance that the Sino-British Joint Declaration has agreed to give Hong Kong; it is history that cannot be rewritten.

What we the people of Hong Kong would not like to see is that we should wait for the Chinese Government or the British Government to make decisions for us and then tell us what they think we should have. On the contrary, it is upon us to make our requests known to the Chinese and the British governments and then to strive for these requests to be met. This being the case, Mr NGAI Shiu-kit's motion for amendment is still a passive one in that it expects others to make decisions for us. This is indeed regrettable and saddening. This kind of mentality reflecting those who cannot and dare not be masters in their own houses is indeed the worst trait among all colonial traditions.

The OMELCO Consensus model was arrived at before the June 4 incident. In the wake of that incident, the people of Hong Kong came to see clearly that the Chinese Government had no slightest intention to bring about a truly democratic system. Still, they, as well as colleagues in this Council, continued to support the model. The Basic Law was promulgated in Beijing on the morning of 4 April 1990. On the same afternoon, this Council passed a motion urging the National People's Congress (NPC) of China to consider the OMELCO's views on the Basic Law (Draft) and to change relevant provisions in the Basic Law as promulgated. The most important comment among them was the suggestion that at least half of the seats on the Legislative Council in 1995 should, in accordance with the principles of the OMELCO Consensus, be returned by direct election.

Our unanimous position at the time was this: Though the Chinese Government had made it clear that the Basic Law could not be revised before 1997, still, we would not abandon the OMELCO Consensus model. I am really puzzled. When the Chinese Government was undertaking large-scale suppression, we were able to stick out our chests and say, "Here I come." Now that China is pushig on with economic reform, why is it that some of us would say, "Here I quit"?

Mr Deputy President, from the legal point of view, the Basic Law of course can be revised. The question is: Does the Chinese Government wish to change it and does it respect the wishes of the people of Hong Kong? The provisions of the Basic Law, which has not yet come into effect, basically cannot legally restrain the NPC under the Chinese Constitution from changing any law. In fact, if we wish to fight for real democracy, our most effective method is to stand firm and stick to principles. By the same token, if we give up or are fickle, only to trample on our own dignity in order to gratify those in power, then we will betray the wishes of the people of

Hong Kong and fail to fulfill our inherent duties as Legislative Councillors. As a result, then of course, this will get us nowhere.

Mr Deputy President, history cannot be falsified. History moves ever forward, never backward. Those who were strongly opposed to the introduction of direct elections in 1988, as well as those who were opposed to true democracy, did return to the ranks of supporters of the popular will by showing support to the OMELCO Consensus model. Today, even as the people of Hong Kong are unequivocally supporting democracy and freedom, some of them are breaking the promises they have made and betraying the trust they have earned. Using the so-called realpolitik as an excuse, they try to hide their weakening knees. Such inconstancy may win the acceptance of those in power. But it will be despised by the people of Hong Kong. The chameleon is changing its colour today. It will do the same tomorrow. Before long, it will take on all kinds of hues. What is the most saddening is that the democratic future of Hong Kong will very probably be held in the hands of these totally unrepresentative chameleons.

Mr Deputy President, these are my remarks. The United Democrats will fully support Mr Jimmy McGREGOR's original motion and oppose Mr NGAI Shiu-kit's amendment motion.

MR PANG CHUN-HOI (in Cantonese): Mr Deputy President, the issue of additional directly elected seats in the 1995 Legislative Council elections and a further quickening of the pace of democracy have given rise to controversies for no other than this reason: the OMELCO Consensus will be in conflict with the Basic Law and offend the Chinese side, with adverse effects on smooth transition. There is concern that this may lead to unrest in Hong Kong during the latter half of the transition period. I believe that nobody seated here is really opposed to additional directly elected seats, much less to democracy.

Let us think about it carefully. Rules and regulations are made by people. Their purpose is to protect and improve the way people live. But, as structural institutions, they should be revised or repealed wherever they are found not up to expectation. This is only natural. There is no reason whatsoever why people must yield to, and live under, laws that are unsatisfactory.

Must the Basic Law be revised? Is this a pressing issue? I think, first of all,

Hong Kong people's views should be sought. We, on our part, should air our views. Though the power to revise the Basic Law is vested in the National People's Congress (NPC) of China, it should consult the people of Hong Kong before considering making an amendment. It would do the Chinese Government no harm to listen. Indeed, an official rejection so soon is not called for.

If the Chinese Government is sincere about accepting Hong Kong's status quo after 1997, then it should also recognize or even accept the fact that the people of Hong Kong are energetic and not short of their own views. This characteristic of the Hong Kong people is one reason for the success of Hong Kong as a society. It is also what makes Hong Kong such a lovely place to live in. I hope that, in the future, before the Chinese Government begins considering the views of different quarters, it will not rush to issue a categorical statement rejecting change, nor will it show that it takes "offence" easily. Communists regard the people as their master, while capitalists propose to give full play to individual potential. There is common ground between the two. Since both governments are working for the people, it would do them no harm to listen to the inner voices of the people of Hong Kong. We should not begin with a consideration of what makes either government happy or unhappy.

Had the British Government intended to win more democracy for Hong Kong, it should simply have done its utmost for the people of Hong Kong before the Basic Law was enacted. The OMELCO Consensus model was already in existence then. The British Government should already have known the wishes of the people of Hong Kong. It should have used the opportunity to argue strongly with the Chinese Government, all the more so because the OMELCO Consensus was a fairly conservative model. Clearly, however, after the June 4 incident, the British Government failed to use the opportunity to do its utmost to help the people of Hong Kong to win real rights. It comes to my knowledge that the British Government will consult with the Chinese Government before the end of this year about directly elected seats in the 1995 Legislative Council elections. That may be the last chance. The British Government should not let it slip again. However, where the sincerity of the British Government is concerned, we will believe at only when we see that it has kept its promises. I do not wish to see the issue of directly elected seats used as a bargaining chip in another round of Sino-British talks.

Some people worry that an increase of more directly elected seats will lead to political disorder in Hong Kong. I personally consider this kind of worry to be unjustified. Additional directly elected seats are but a catalyst for democracy.

That different forces should emerge in a democratic society is a good thing, not a bad thing at all. According to theory of physics, the interaction of different forces may result in "greater equilibrium." It is indeed contradictory if one longs for democracy, but is afraid of it and cannot stand different arguments legally put forward under a democratic system. Some say: 1997 is approaching and time is running out, so no change should be made. In fact, precisely because time is running out, the people of Hong Kong should participate in the political process more actively and assume the responsibility of administering Hong Kong. They should greet 1997 in this way and not entertain an escapist mentality.

The Honourable Jimmy McGREGOR has, of his own accord, made an eleventh hour change of the wording of his motion, substituting "requests the British Government and the Chinese Government to accept" for "requests the United Kingdom to seek China's acceptance of." I find this extremely meaningful. Today, Hong Kong's Legislative Councillors are using the occasion to make their wishes known both to the United Kingdom and China, the present and future sovereign states of Hong Kong respectively. We do not intend to exert pressure on China by making use of British influence. We know the situation and position of the people of Hong Kong, and we are rationally presenting our views to both China and the United Kingdom.

Mr Deputy President, I support the Honourable Jimmy McGREGOR's motion.

MR SZETO WAH (in Cantonese): Mr Deputy President, the OMELCO Consensus on Hong Kong's political development was arrived at on the eve of the June 4 incident. It can be regarded as one of the products of the worldwide support for China's 1989 pro-democracy movement. During the 31 May 1989 motion debate in this Council, I said, "The Beijing students' love of country and democracy is shaking heaven and earth and moving the gods and spirits to tears." Blood is thicker than water. The movement aroused Chinese people all over the world to rally and form a grand army in support. The people of Hong Kong, 98% of whom being Chinese, marched in the foremost ranks of this grand army. For a month or so, in numbers often reaching a hundred thousand or a million, they let their emotions run high while their actions were cool-headed, disciplined and peaceful. This provided a full demonstration of what had always been underestimated in them: their national sentiment, democratic awareness and high degree of rationality. Who could continue to say, "They are a politically apathetic silent majority, a crowd that blindly asks for free lunches"?

About two years after the 1989 pro-democracy movement, that is, about a year or so ago, a colleague in this Council offered me a piece of advice: If you wish to continue "having a successful career" after 1997, you should disband the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China. He began by telling me, "Somebody betted on the wrong horse in 1989." I answered, "I never gamble. Some people may have betted on the wrong horse, but not me. I bet my life on justice and democracy." Who, then, is the real opportunist?

Recently, somebody coined two terms: "long-term patriotism" and "short-term patriotism." He praised the former and disparaged the latter. In fact, talking about either "long-term" or "short term" reflects an investor mentality and a premeditation of gain. The difference is only a matter of degree. What is a true patriot like? LIN Zexu said, "I will live or die, whichever benefits the country regardless of whether it will bring me misfortune or blessing." What he meant was this: He would not hesitate to give his life for the good of the country. So how could he run away from personal misfortunes and court personal blessings where national interests were at stake? This is how a true patriot should be.

I expect that Mr Jimmy McGREGOR's motion will be defeated. Still, his motion is very meaningful. It at least will let people see clearly who were the gamblers who betted on the wrong horse last time. They are now changing their bets. So who is the opportunist?

Mr Deputy President, I support Mr Jimmy McGREGOR's original motion and oppose Mr NGAI Shiu-kit's amended motion.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, the Basic Law, which decides the direction and shape of Hong Kong's political development during the latter half of the transition period and beyond 1997, was promulgated more than two years ago. All the people of Hong Kong, from whatever walk of life, should now do their best to assure Hong Kong's smooth transition to 1997. It would be very unwise for us to be still bickering over political issues at this time, even more unwise to bring up old issues.

Mr Jimmy McGREGOR's motion today aims at reaffirming the 1989 OMELCO Consensus

model. I am perplexed. The OMELCO Consensus model was made public in May 1989. At the time, the final draft of the Basic Law had not yet been available, and a public consultation was still underway. The OMELCO Consensus model was merely one body of views among the numerous bodies of comments being made about that section of the Basic Law pertaining to the political system. Why must a particular body of views on the political system, made during the period of consultation on the Basic Law, be reaffirmed today, more than two years after the Basic Law was promulgated?

As a member of the Basic Law Drafting Committee, I am well aware that people from different sectors in Hong Kong have different ideas for the future development of Hong Kong's political and other institutions. The text of the Basic Law was in fact the result of an on-going process of compromise of different views. During the drafting of the Basic Law, many suggestions were received on the one section concerned with political development, such as, the "89 model," the "190 model," the "38 model," the "Mainstream model," the "Four-Four-Two model," the "bicameral model" and this "OMELCO Consensus model." If we wish to reaffirm the OMELCO Consensus now for the reason that we are not satisfied with the Basic Law, will this signify that the other proposals about the political system can also be reaffirmed? If so, the different ideas present in the community will have to go through once again the process of debates and give-and-take until a new compromise is reached concerning our future political development. While no one knows what the final outcome will be, such a political debate may last for a few years, at the end of which 1997 will be just around the corner. During the latter half of the transition period, Hong Kong has many other problems which call for our attention and an answer. For instance, problems like how to handle Sino-Hong Kong relations and how to safeguard people's livelihood. Must we spend a lot of time and effort on the political debate at the expense of other important and more practical problems?

If at least half of the Legislative Council seats are to be returned by direct election in 1995, then the Basic Law must be revised. But it is unrealistic to expect this to happen before 1997. Chapter VIII of the Basic Law states clearly that the power of amendment of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPC) of China, the State Council and the future Hong Kong Special Administrative Region (SAR) government. The conditions necessary for revising the Basic Law do not exist at this time. I must point out that the process of amendment of the Basic Law is different from that of other laws of China. This is so because the text of the Basic Law puts restraints on the amendment process, the purpose being to prevent the Central Government from revising it at whim. Article

159 in Chapter VIII, for instance, states that, before a bill for amendment to the Basic Law is put on the agenda of the NPC, a Committee for the Basic Law of the HKSAR composed of representatives of China and Hong Kong shall study it and submit its views. The SAR Government has not yet come into being at this time, and the Committee for the Basic Law has yet been set up. If the Basic Law is nevertheless revised now, a precedent will be set that enables the NPC to revise the Basic Law unilaterally. This will in effect nullify the Basic Law's built-in mechanisms of restraint against Central Government action.

Though the Basic Law has set the tone for Hong Kong's political development from 1997 to 2007, there will be nothing much wrong with asking for a revision of the Basic Law after 1997 if the revision is needed as a result of Hong Kong's social development. At the present time, we really should not waste our effort by trying to do unrealistic things.

Mr Deputy President, for the above reasons, I oppose Mr Jimmy McGREGOR's motion. As for Mr NGAI Shiu-kit's amendment motion, I wish to add one point to it, that is, the political system before 1997 will only be able to make the transition smooth to 1997 if consideration is given to the need to converge with the Basic Law in our handling of the 1995 elections and the composition of the Legislative Council.

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

MR ANDREW WONG (in Cantonese): Mr Deputy President, I am speaking in support of Mr Jimmy McGREGOR's motion.

For many years, there have been arguments among different sectors of society about political development. Not only is there no sign of their quieting down, but they have escalated with the passage of time. Parties and individuals wish to show that their views deserve support and are worth fighting for. Inevitably, they have become more obdurate and emotionally involved. They have stubbornly clung to their own positions and wantonly attacked people with political views different from theirs. They have come to a point when there is nothing to add. And as a result, well-intentioned advice gradually gives way to abusive language. Words are being used as weapons. The atmosphere is reeking with a smell of gun-powder. Bearing in mind that it is nothing but human nature, I must ask: Can people free themselves from their worst instincts?

This Council is debating its own democratic development today. To many, this topic is neither new nor interesting. Still, I hope that everybody will approach the issue as rationally as possible.

True, it is not easy for a person to talk rationally about an issue that affects his interest or that has to do with his convictions. Still, Mr Deputy President, it was with maximum self-denial and the most unselfish rationality and open-mindedness that OMELCO colleagues in 1989 arrived at the OMELCO Consensus model concerning the democratic structure of the Legislative Council. During the discussions then, there were heated arguments, but there were also scenes of compromise. All approached and discussed the issue in a spirit of sincere co-operation.

Somebody said, "The time for consensus has passed." This is precisely the point of the debate today, is it not? I think that the essence of consensus politics lies in a practical spirit of sincere co-operation and selflessness. Here, may I wish an eternal life to consensus politics in this Council. The Consensus model formulated by the OMELCO in 1989 was in fact nothing more than the fruit of a process of consensus politics.

When the 1989 OMELCO Consensus model was being formulated, Members adhered to the theme that Hong Kong's political development should be introduced in an orderly and gradual manner. During the Legislative Council debate of 28 February 1990, I pointed out in my speech that the separate motions moved by Mr Allen LEE and Mr Jimmy McGREGOR that day were the same in intent. And we should abide firmly by the OMELCO Consensus because it is an appropriate and proper model for our political reform. Today, I still deeply believe that this model is an appropriate and proper model for our political reform. Though the plan was not accepted by the British Government at the time, still, after the draft of the Basic Law was finalized, British officials, including Foreign Secretary Douglas HURD of course and also today's Prime Minister John MAJOR, said in public that the British side would consult with China about arrangements for the 1995 elections in due course. I do not know if those words can be regarded as a promise. But they did give hope to those who supported the view that half of the seats in the 1995 Legislative Council elections should be returned by direct election.

This spark of hope broke into flame twice, first during Prime Minister John

MAJOR's visit to Hong Kong on 5 September 1991 and then during Minister of State Alistair GOODLAD's visit not so long ago. The former said that the United Kingdom would review the 1991 election result and consider the views of the popularly elected Members of the new Legislative Council before making a decision. The latter, before leaving Hong Kong, went farther and said that the Basic Law could be revised. I personally think that, legally speaking, the Basic Law can indeed be revised. However, here I do not wish to go into great detail about this question.

The result of the 1991 elections is in front of us. A request jointly signed by Hong Kong's 18 directly elected Legislative Councillors (including our respectable colleague Mr NG Ming-yum, who passed away in the prime of his life the day before yesterday) has already been forwarded to the British Government. So far, the British side has told us nothing about their time-table for consultation with the Chinese side concerning arrangements for the 1995 elections.

I believe that it is common knowledge that all governments and parliaments, including the Chinese, British and Hong Kong governments, China's National People's Congress, the British Parliament and Hong Kong's Executive and Legislative Councils, when serving the public, are constrained by a principle, namely, "Where there is power, there must be responsibility." In other words, everybody in Hong Kong's Executive and Legislative Councils has a responsibility and must not shirk it.

At this stage, I think that it is our responsibility to request the British Government and the Chinese Government to accept the proposal that there should be not less than half of the seats of the Legislative Council to be elected by universal suffrage in 1995. I even think that, to avoid delays and allow sufficient time for making election arrangements, the British and the Chinese governments should begin and conclude the relevant talks before the end of this year.

Ask yourselves. How much time have the people of Hong Kong and colleagues in this Council already spent on inconclusive debates on the political system? I think that 1992 should be the time to make the decision. Furthermore, if the inconclusive debates and quarrels are allowed to drag on, the prospect of instability will only worry and disquiet the people of Hong Kong. The Chinese and the British sides should calm down and sincerely hold thorough-going talks on Hong Kong's political development, bent on removing the suspicions that have long existed between the two sides and among the people of Hong Kong.

I hope that the British Government will give us an unequivocal and unmistakable direct answer, thus letting the people of Hong Kong know what the responsibilities of the British Government are during the latter half of the transition period and how it proposes to honour all its commitments.

By the same token, as Legislative Councillors, we also have a responsibility. We should bravely face the outcome of the Sino-British talks on the political system of Hong Kong and stop belabouring the issue any longer. Whatever the outcome we must see to it that the 1995 Legislative Council elections are to be held smoothly, because that elections will have far-reaching repercussions on Hong Kong's stability, prosperity and confidence.

I think that the aim of the separate motions of Mr Jimmy McGREGOR and Mr NGAI Shiu-kit are roughly the same. They both request the British Government to take action to make things right for Hong Kong's political system. The former is more specific in requesting the implementation of the OMELCO Consensus concerning the political system. The latter puts more emphasis on smooth transition. In fact, if we compare today's motions and debate with the motions moved by Mr Allen LEE and Mr Jimmy McGREGOR and the subsequent debate in this Council on 28 February and 1 March 1990, we will find that we have indeed not made any headway in this matter but merely engaged in word games and body language games.

Mr Deputy President, during the latter half of the transition period we have to address many important issues. We have to make proper arrangements for Hong Kong's future development and for smooth transition. If the Chinese and British governments and Executive Council and Legislative Council Members are not frank and sincere in dealing with the relevant problems, China and the United Kingdom and all of us in the Executive Council and the Legislative Council should be held responsible for the consequence. I dare to assume this responsibility. I believe that everybody involved who holds sway, including of course my colleagues in the Executive Council and the Legislative Council, will in fact be responsible for any harmful consequence arising from any distrust or power struggle.

Mr Deputy President, I am not an opportunist. Nor do I wish to get involved in confrontational politics. I dare to assume responsibility. I will calmly state once more that, in my opinion, the OMELCO Consensus is correct and good for Hong Kong's

long-term stability and prosperity.

Mr Deputy President, I support Mr Jimmy McGREGOR's motion.

MR LAU WONG-FAT (in Cantonese): Mr Deputy President, during a debate three weeks ago, I gave the name of "adventurist romanticism" to a proposal to get rid at once of all appointed members and ex-officio members of the district boards, the Urban Council and the Regional Council. I intend to use this term again as I try to discuss the topic of the present debate.

I do not pretend to preach in front of my distinguished colleagues who are full of Chinese and Western learning. Nevertheless, based on my more than 20 years' experience of participation in public affairs, I must say that I am deeply aware of the importance for politicians to be circumspect and pragmatic. The reason is in fact quite simple. Our words and decisions can affect government actions and the well-being of the general public. We are like locomotive drivers. If the driver is careless, the train will be derailed. Then, not only will the driver himself come to grief, but the innocent passengers, too, will pay a painfully heavy price for his doing. I think that romantic feelings and the spirit of adventure should be left to people such as artists, acrobats and race-car drivers. Whether they succeed or fail, they themselves bear the consequences. The interests of the general public are not at stake. By contrast, politicians have heavy responsibilities and must not act in disregard of consequences.

I do not intend to comment here on the merits or demerits of the OMELCO Consensus. If I were to do so, I would also have to compare the OMELCO Consensus with the proposals of other social groups. Then, we would be back to the situation before the promulgation of the Basic Law, when a hundred schools of thought were contending endlessly and inconclusively. What I wish to talk about is this question: What is the practical point of reviving the OMELCO Consensus? When the OMELCO made its comments on the political system in 1989, that was opportune. The Basic Law was then being drafted. Not only the OMELCO but any individual or group could make comments. Of course, those comments were made in order that they might be considered or in the hope that they would be adopted. They were purposeful comments.

The times have changed. The Basic Law has been promulgated. The Chinese Government has said again and again that the Basic Law cannot be revised before 1997.

This being so, I feel that reviving the OMELCO Consensus and requesting China and the United Kingdom to increase directly elected seats in the 1995 Legislative Council cannot be the doing of the pragmatic or the circumspect. Nor would such doing lead to any positive or useful result. If we persist, if we continue to talk endlessly, we will be like a love-sick man who cannot accept the fact that his sweetheart has finally chosen and married somebody else. He continues his courtship; he continues to send love letters. He tries to do what he knows is impossible. There may be romance in being stubborn and nostalgic. But no good will come of it for any party.

Looking at it from another angle, such stubbornness may be risky. It was with great difficulty that we weathered through the days of trying trilateral relations between China, the United Kingdom and Hong Kong. To ask at this time for a revision of the Basic Law to increase directly elected seats in the 1995 Legislative Council runs the risk of leading the public to entertain unrealistic expectations. It also runs the risk of letting China-United Kingdom-Hong Kong relations deteriorate and clouding the future of Hong Kong with uncertainties again. I think that taking such risks without a chance of success is neither worthwhile nor wise.

Mr Deputy President, I think that it is meaningless to become entangled in arguments about whether the Basic Law can be revised before 1997. China has already taken a clear public position, which is that the chance of revising the Basic Law before 1997 is basically nil. Even if the text of the Basic Law may not meet the wishes of all, what is the big hurry of those who seek to revise it?

The text of the Basic Law was drafted after a long period of consultation and after careful consideration of the views of all sectors of society. It was a product of accommodation and compromise. Before it comes into force, there is no way to be sure that there is anything "wrong" with it. To talk lightly about revision at this time is totally lacking in factual basis and totally unconvincing.

It must be realized that the Basic Law contains many provisions which are important for the protection of Hong Kong. Promulgated as an integral document, the Basic Law has made the future of Hong Kong clear, and a clear future is precisely the key to the maintenance of confidence. If provisions are revised before the Basic Law comes into effect, then, in the wake of this precedent, I believe, a succession of voices will be heard, asking for revisions. This will make it difficult for the Basic Law to remain authoritative and stable. A situation of confusion and uncertainty will then ensue in Hong Kong. I believe that nobody will deny the

importance of the "through train" concept and smooth transition for Hong Kong. To achieve such an objective, we must have convergence with the Basic Law. If this important reality is ignored, if one tries to find a way around it, I am afraid that the consequences will probably be catastrophic indeed.

Mr Deputy President, with these remarks, I support the Honourable NGAI Shiu-kit's motion for amendment.

MR MARTIN BARROW: Mr Deputy President, it goes without saying that every Member of this Council has a common aim: it is to secure the best possible future for the people of Hong Kong. We are at one in believing that this can be achieved by pursuing the prosperity and stability of this territory. However, we are not at one as to the means.

We never lost sight of that aim even at a low point in 1989. The combination of the remarkable resilience which is the dominant characteristic of Hong Kong people, the leadership of Lord WILSON and his colleagues in the Government and the enthusiasm of Hong Kong's entrepreneurs took us through the trough to a level of self-confidence now which would have seemed unimaginable in 1989.

The Basic Law

The 1989 OMELCO Consensus was put to the British Government and later the Basic Law allowed for 20 directly elected seats in 1997 to take effect in 1995. Although I sympathize with the Honourable Jimmy McGREGOR's wish to achieve a faster pace of democratization, can a protracted negotiation with China on amendments to the Basic Law really be in the interest of the people of Hong Kong? Might we not be opening a pandora's box which in turn could tempt others to make further changes to the Basic Law which would not be in our interest. Politics, Mr Deputy President, is the art of the possible. Let us be realistic. The British Government is committed to raise the issue. We should encourage them to do so as soon as practical. However the main points of discussion will probably relate to all the other unresolved and complicated issues of the 1995 elections.

The need for a smooth transition and for certainty

Mr NGAI's amended motion calls for the achievement of a smooth transition; and

I agree that certainty and continuity must remain the overriding objectives.

Some will ask how an appointed Member can speak on behalf of the people of Hong Kong. I accept the legitimacy of the directly elected Members of this Council but, as I have already said, we have a common aim. Let us remember however that 80% of eligible voters did not participate in the 1991 election. Those who did vote were not electing a government. They were electing representatives. There may be many reasons for this large and silent majority but I believe it shows a sense of pragmatism which cannot be overlooked.

A protracted debate at this time, both within Hong Kong and with China, will revive the uncertainties which existed in the 1980s and will distract us from other issues, such as the strengthening of the administration of Hong Kong and concentrating on the economic agenda.

Other issues

One of my key concerns is that both the Hong Kong and British Governments may be diverted into treating this issue as No. 1 priority.

There remains a very large agenda for the work of the Joint Liaison Group before 1997. Furthermore we cannot now predict the other issues which may come up in 1993 or 1994 -- issues which may need a united stand by Members of this Council, as well as the Hong Kong and British Governments and ones on which there can be no question of kowtowing.

Outcome of the 1991 elections

No one has attempted to define whether or not last September's elections were "successful". Despite the low turnout I think they were, although I would like to have seen more emphasis on substance rather than form during Legislative Council proceedings since those elections. The political environment has been more lively and the growing accountability of civil servants is welcome. But those elections were not elections to elect a government. They were elections of representatives to a council with somewhat limited powers in relation to an executive-led government. Hong Kong will remain first and foremost such a government. In saying this, I am not for one moment belittling this Council's essential role of checking and balancing. Furthermore, increasing the number of directly elected seats is not the only way of

developing democracy and ensuring open, accountable government.

Conclusion

In conclusion we must not lose sight of what makes Hong Kong tick, about what has brought prosperity to the people of Hong Kong. The commitment to economic prosperity and a government policy of minimum intervention is fundamental. If it was believed that a faster pace of democracy would result in calls for a more activist government, for more intervention and inevitably, in my view, less progress, then some might oppose it anyway. It would be ironic indeed if Hong Kong's superlative free enterprise system, which has brought the people of Hong Kong so much prosperity, were to be eroded not by fears about 1997 -- fears which I believe are unjustified -- but by the insidious growth of the nanny state. I hope the campaigners for more democracy appreciate the inherent risks of this.

Our future will be dominated by our economic links with the Mainland. Hence the importance of our airport and port projects in support of Hong Kong's role as the service centre of southern China. Instead of distracting the people of Hong Kong from the economic agenda and raising false expectations, we as Members of this Council should present the community with this vision of Hong Kong's future, as the engine room for growth in southern China and may be the whole of China. This is the best way of achieving prosperity and stability for our people

Mr Deputy President, I support Mr NGAI's amended motion.

DR LEONG CHE-HUNG: Mr Deputy President, two years ago, in this very Council, I called on honourable colleagues to show conviction for what we stand for. I said then, "But the people of Hong Kong must stand firm. OMELCO must take a lead and keep her ground. We must show the people of Hong Kong our determination in our drive for democracy. We must be firm on our stand and never to impart the feeling that we are giving in with a gentle push of a finger."

Two years, Mr Deputy President, have now elapsed.

The chorus of solidarity which once filled this Chamber has now ended on a quiet note.

I cannot but ask myself if it is that nobody talks about principles in politics this day and age? Is compromising on principles the order of the day?

On moving his motion, two years ago, that this Council expressed its disappointment that the consensus had not been adopted as the future political model, my honourable colleague Mr Allen LEE said then, and I quote, "In the case of the pace of democracy, we have failed the Hong Kong people."

He added that he personally believed in democracy, and that Hong Kong people should have the right to choose their leaders. He also urged the community, in the interest of Hong Kong, to unite in their efforts to achieve a successful democratic system.

He still spoke with vividness, Mr Deputy President, but the wine of the consensus has turned sour. Today, we can hardly see within this four walls that honourable colleagues are still standing squarely behind the proposal they once supported.

Lord WILLOUGHBY DE BROKE, in the motion debate on "Hong Kong and South China" in the House of Lords last week, had rightly pointed out, and I quote, "I argue that the right conditions for financial success are precisely those of open government, open administration and an effective judiciary. All those will be best served by a truly representative government."

Mr Deputy President, I support his argument.

I also share with him the view that Hong Kong can demonstrate to China that an open and representative government is the most effective guarantee of stability, a factor business needs to succeed.

Democracy is not a poison pill.

By expediting the pace of democracy in Hong Kong, we do not mean to keep China at arm's length. Nor are we trying to embarrass China by prolonging British influence. We want it because it will smooth our transition and ease the minds of the very people who call Hong Kong their home.

Cynics may see, Mr Deputy President, with scepticism as to why the OMELCO Consensus is brought up again at this particular political juncture. The reason is

simple. Truth stands the test of time. I see it timely to reiterate our call now as the Government is at an advanced stage in its review of the election arrangements for 1995 and that Britain has expressed her sincerity to allow more directly elected seats in the Legislative Council.

Some may say the consensus is the outcome of a hectic search by Hong Kong people for political protection after the Tiananmen incident. I refute this claim. The OMELCO Consensus should never be taken as a signal of lack of confidence in China. It should instead be treated as one of the many models for guiding the pace of democracy that the Hong Kong people have yearned for, well before 4 June 1989.

One example is a survey conducted by the Hong Kong Medical Association in 1987. For the Legislative Council Session beginning 1988, doctors expressed agreement to having at least a quarter of the seats returned through direct election. Three years on from 1989, over 60% of those interviewed by a poll conducted last week on behalf of the South China Morning Post again reaffirmed public support of the OMELCO Consensus. This will, surprisingly, be what the Honourable NGAI Shiu-kit denounces.

A smooth transition is an oft-told and overplayed phrase used by all of the three parties, China, the United Kingdom and Hong Kong. But those who wear the phrase seldom go deeper to analyse what a smooth transition really means to the people of Hong Kong.

It is a general impression that a mandatory political timetable enshrined in the Basic Law will ensure a smooth transition. Is that true? And if so, how deep is that truth?

Hong Kong people are not happy. Nobody can deny that many do not like the arrangements. But they will not speak up. China knows the feeling well. That is why there is such sensitivity even at the slightest derailment. The possible opening of a flood-gate is what she fears.

For the sake of a superficial smooth transition, China plans to carry on board the "through train" hundreds of thousands of frustrated minds. Their frustrations are currently brushed under a convenient carpet. But they are and will be still there.

Let us not forget Hong Kong is a city brimming with intelligence. This junior

partner of China is a place of grey matter and fine judgments, difficult to manipulate.

To ease their minds, a quickened democratic timetable should be in place. This is the only kind of smooth transition that we should go after.

What is it with Her Majesty's Government? The first step towards a representative government in Hong Kong began in 1982. Why is it that as we approach 1997 the brakes have been slammed on. It defies common sense why a fully elected government like the Her Majesty's Government, hailed as the mother of democracy, would not stand up for its last colony.

Our quest for acceptance of the OMELCO Consensus is a modest one, a very slow pace by British standard. It is no good for Her Majesty's Government ministers to pledge, repeatedly, that they would like to see a faster pace, unless they translate this into positive actions. It is time that Her Majesty's Government reveals to Hong Kong people its choice of speed and the reasons why.

Time and again we hear China and the United Kingdom assure us of their commitment to Hong Kong. Their commitment is surely not to some abstract political catchwords such as prosperity and stability. Their commitment should be to the people that live in this place.

This commitment can only be realized if the principles of justice and human rights can be attained. This cannot be done without greater democracy that should continue without interruption after the transfer of sovereignty.

Mr Deputy President, political development and economic success go together. The lack of one cripples the other.

Nobody wants to rock the boat. Only those who are afraid of challenges accuse others of rocking the boat. So the theme of those who oppose Mr McGREGOR's motion has repeatedly called for partnership with China and the need for " ". Yet I am given the impression to understand that this partnership is a partnership where Hong Kong will have to continuously give in and the " " will come from Hong Kong, and Hong Kong alone.

I was saddened to hear, in the House of Lords debate last week, that even Baroness DUNN described having more directly elected seats as "unwise", and talked of it as "reviving uncertainty, tension and discord in our community."

Where has our daring spirit to meet challenges gone to?

Mr Deputy President, it is of course difficult to bring together a parent and a child who, politically, developed so differently. But if China and the United Kingdom are genuinely concerned about the interest of Hong Kong people, they should consider what we feel and develop a system to ease our minds.

Mr Deputy President, we need fresh winds to blow away the cobwebs that clog our way to greater democracy, which is much needed for a prosperous and stable Hong Kong. Let the winds come jointly from China and Hong Kong.

The future belongs to those with motivation to strive for something better. With these remarks, Mr Deputy President, I support Mr McGREGOR's motion.

MRS ELSIE TU: Mr Deputy President, Tiananmen Square was a human tragedy that upset some of China's best friends and gave ammunition to its worst enemies. It has certainly polarized political views in Hong Kong, and left many like myself in a dilemma. Somehow or other we have to face that dilemma and try to regain perspective.

Of course most people everywhere want a democratic system, though the term democracy has been greatly abused. The great mistake in Hong Kong was that so few of today's dedicated democrats even gave a thought to democracy under the colonial system. That is the weakness of their present case, and China is not slow to point that out. Also failure to introduce democracy during its one and half centuries of rule is an indictment on the British Government when it now makes tongue-in-cheek promises to try to increase the number of elected seats.

It has been argued that the British colonial system was a benevolent bureaucracy, and therefore acceptable. No undemocratic system is acceptable because it carries no guarantee that it will continue to be benevolent. In fact, I have spent my life here struggling for those who gained little or nothing from colonial benevolence, which was directed towards the privileged.

So, like many who support democracy for its true meaning and not for personal

motives, I find myself in a dilemma. What I seek is a peaceful and stable future for Hong Kong, so that the people can get on with their lives and not be rocked by the violent political struggles that have ended up in misery in many parts of the world, such as Burma, Palestine, Panama, and Yugoslavia, to mention only a few. One has only to study this century's history to see that the soundest democracies have grown up by peaceful, progressive means, while sudden revolutions have merely replaced one dictatorship by another, and the people have not benefitted.

My own fear now is that by continuing to insist on a quicker pace of democracy when we all know that China will not change the Basic Law at this stage will only stir up the idealism of the younger generation who genuinely believe that they are fighting for high principles, when in fact they may only be damaging their own lives for an ideal that may later lead to disillusionment. I love the innocent enthusiasm of young people, but I am also fearful that they may be stirred up to the point when they may damage themselves and others.

Mr Deputy President, if I had any hope that Britain intends to seek more elected seats and that China is likely to concede, I would certainly support this motion. But since I am sure that neither case is likely to happen, I think we can do more damage than good by encouraging confrontation with China. We could end up with less rather than more than has been offered.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, the Honourable Jimmy McGREGOR's motion and the Honourable NGAI Shiu-kit's motion for amendment today can be described as representing the two major mainstream views of the Legislative Council at the present time. Hong Kong's Legislative Councillors, one can say, are not qualified to be called politicians. They deserve only to be called "political participants". We come from different organizations and different social strata. We have different backgrounds, different aspirations, different responsibilities and different objectives. But we can say one thing: We have a common will and a common responsibility. It is to make Hong Kong's transition to 1997 smooth. I say this to Hong Kong's Legislative Councillors and self-styled politicians: I hope that you will not mislead your supporters or play games with your constituents. No matter whether we are elected by the people or by functional constituencies or appointed by the Government, I hope that we will do some really meaningful things for all, so that Hong Kong may, thanks to our effort, become more prosperous in a stable environment and aspire to democracy in an ambience of freedom. The fact is that it

has already been put down clearly in writing how the 1995 Legislative Council is to be constituted and how many members it is to have. What is more, it is very clearly written in the Basic Law how members are to be returned to the first-term, second-term and in the third-term legislature in 1997, 1999 and 2003 respectively. The Basic Law is no divine book, but it is at least clear that we cannot use the Basic Law to contradict the Basic Law. When the Basic Law is useful, it is "the Basic Law." When it is not useful, it becomes "Andrew WONG." I say so because the Honourable Andrew WONG is one of the Legislative Councillors who are most familiar with the revision of law.

Mr Deputy President, acting in good conscience, I am once more emphasizing one point. It is that, after 1997, Hong Kong will not be independent but will revert to China and become a Special Administrative Region of China. The Chinese Government, under a promise it has made, will let the people of Hong Kong administer Hong Kong. Some politicians are continuing to close their eyes and ignore their conscience. With every word they utter, they declare that they are fighting to win democracy for Hong Kong. They ignore the realities. They are not fighting for Hong Kong's interests. They are simply treating the people of Hong Kong as uninformed fools. Citizens of Hong Kong, are you really uninformed fools? I think that the Government's top priority at this time is to set up and organize an Election Committee which will return 10 members to the 1995 Legislative Council. This will be the most practical thing to do.

Mr Deputy President, I so make my submission.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, I and the Association for Democracy and People's Livelihood (ADPL) held repeated discussions that year with 190 civic groups. Through mutual understanding and accommodation, we arrived at a proposal that not less than half of the seats in the 1997 legislature should be returned by direct election. (This is the "Proposal of 190.") It set the direction for civic groups in their fight for democracy. At the present time, we still consider that to be a rational, correct and reasonable goal. The Honourable Jimmy McGREGOR now proposes that the Chinese and the British Governments be urged to accept a proposal that not less than half of the seats in the 1995 Legislative Council should be elected by universal suffrage. I, together with the APDPL, am very much in favour of this proposal, the reason being that we feel it to be within the framework of the Proposal of 190. However, I would like to go farther and stress that, in striving for a

democratic political system, the most important thing is to rely on our own effort, the effort of the people of Hong Kong.

I, together with the ADPL, always maintain that all Legislative Council seats and the Chief Executive should be elected by direct election. We understand that direct election does not at all represent full democracy and that citizens' democratic habits and open-minded attitude towards, and respect for, different views are also quite important. Still, a fact that cannot be denied is that a system of direct election will allow voters to unseat at the next election those who are now in power. Because of this, Legislative Councillors will, when deliberating on issues, give serious consideration to the interests of their constituents and represent their wishes. Direct election does not assure the election of the best candidate. But it does offer a chance to unseat those who ignore the people and act as dictators.

In view of the above principle, which does not need to be debated at length, we maintain that the Legislative Council should have more and more directly elected seats until eventually all seats are returned by direct election.

What deserves even more attention is this: Recently, in Hong Kong's fight for a faster pace in democratic development, the British Government has taken on a more active role. The people of Hong Kong should welcome this. However, we must not overlook the fact that the British Government has very often ignored the people of Hong Kong and that its views and interests do not always correspond with those of the people of Hong Kong. Indeed, the people of Hong Kong must not rely solely on the effort of the British Government. They should rely on their own effort.

Another point of even more crucial significance is that it is basically for a community itself to strive to bring into existence its own democratic system of government. In the course of this effort, community members will have opportunities to learn to make decisions as to their own way of life and to learn to respect one another's wishes and come to a compromise. Thus, the spirit of democracy will be given effect to in real life. I think that the people of Hong Kong know Hong Kong best. They, and not the Chinese or the British Government, know best how life in Hong Kong would become. Therefore, we should not wait for China and the United Kingdom to "grant" us democracy. We must take the initiative in making our wishes known to China and the United Kingdom until we succeed.

However, certain public comments indicate that there are reservations about the

direct election of half of the 1995 Legislative Council seats. Such reservations are mainly due to concern that this may not converge with the Basic Law or that it excessively speeds up the so-called "transition".

However, concerning convergence with the Basic Law, the problem, technically speaking, can be solved if the Chinese and the British Governments are willing to heed the wishes of the people of Hong Kong. I will give an example. The problem may be tackled by means of an "elector" system. This so-called "elector" system means having the seats on an Election Committee returned by universal suffrage from different geographical constituencies. Candidates running for seats on the Election Committee must announce in advance which Legislative Council candidates they support. After a particular candidate is elected to the Election Committee, he votes for the Legislative Council candidate that he has openly supported. The 10 Legislative Council candidates who win the most votes in this way then become Legislative Councillors. Such a method of direct election would not be in violation at all of the spirit or principle of democracy. Another method would be to let the National People's Congress (NPC) of China revise the April 1990 decision of the Third Session of the Seventh NPC concerning the method of constitution of the first government and legislature of the Hong Kong Special Administrative Region (SAR) in order to increase the number of directly elected seats in the first legislature of the SAR to 30, which would equal half of all the seats. After the government of the SAR is set up in 1997, it would, in accordance with the provisions of the Basic Law, amend the section of the Basic Law relating to the constitution of the second-term and third-term legislatures.

I emphasize that the proposal to increase directly elected Legislative Council seats is based on the popular will as reflected by the OMELCO Consensus, by the Proposal of 190 and by a recent survey conducted by the South China Morning Post. If the Chinese Government has doubts, it can have recourse to a referendum in Hong Kong or to a public opinion poll conducted scientifically.

It is feared that a faster pace of democracy may affect investors' confidence and that democratically elected Legislative Councillors may generously hand out free lunches in the form of social welfare benefits. Such fears are actually not well founded. Firstly, I feel that these fears are played up in some of the arguments by people with vested interests to protect or by people in power wishing to maintain their hold on power. Secondly, look at the economically developed Western countries. Which one of them does not elect legislators or the president directly by universal

suffrage? Let me tell Members this: The facts show that the fears in question are counter-arguments that do not make sense but seek to pin accusatory labels on others. Among the elected Prime Ministers, Presidents and Premiers of countries like the United Kingdom, the United States, France and Germany today, none is a "free lunch advocate" or an economic leftist. Why have they been elected, and not the socialists or the free lunch advocates? Therefore, to say that democrats are free lunch advocates makes no sense and is label bandying tactic.

Finally, I call on the people of Hong Kong and on colleagues in this Council to take active steps to secure a faster pace of democracy from the Chinese Government. As for the Chinese Government, it should respond positively to the wishes of the people of Hong Kong and make arrangements for increasing directly elected Legislative Council seats. On the basis of the above presentation, I support Mr Jimmy McGREGOR's motion.

MR SIMON IP: Mr Deputy President, this debate is about the future pace of democratic development in Hong Kong. Unfortunately, it has another dimension, that of relations with China. Legislative Councillors who vote one way or the other may be seen as either pro-China and anti-democracy or anti-China and pro-democracy, but such a differentiation is superficial and unfair. Being pro-China and pro-democracy are not mutually exclusive. It is quite possible to be both.

Hong Kong people have every right to discuss their political future in open forum and seek changes which satisfy their political aspirations in order to realize a high degree of autonomy without being labelled as either pro-China or anti-China.

Mr McGREGOR's motion seeks reaffirmation of the OMELCO Consensus of 1989. As a member of the public, I supported the consensus then and in theory I still support it now. But it is now clear that for different reasons, that consensus no longer exists. Mr NGAI Shiu-kit's amendment is proof of that. Further, in view of China's strong reaction to statements made by British officials, it has become, in my opinion, unrealistic to think that there are any prospects of China agreeing to increase the number of directly elected seats from 20 to 30 in 1995. I do not think that unilateral action by the British Government is an option worthy of the slightest consideration. There must be bilateral accord if we are to have more directly elected seats.

The number of directly elected seats in 1995 is merely one issue. There are many

other equally important issues which include, for example, the composition and structure of the Election Committee and how to determine which constituencies may be occupied by legislators who have a right of abode overseas. These are matters that will need goodwill and ingenuity to resolve speedily.

While I do not doubt the sincerity of the British Government when it said it would discuss with China the issue of more directly elected seats in 1995, the prospects of success are not bright. However, when the package of proposals is being negotiated, there may be some room for manoeuvre. I do not believe we should at this stage tie the hands of the negotiators by insisting upon 10 additional seats in 1995. I believe we should give the British negotiators the flexibility to advance the democratic cause when all the relevant issues have been identified, the priorities have been set and the relative value and importance of those issues have been determined. This would not preclude the British side seeking more seats, even up to 10 additional seats, if in all the circumstances it would be appropriate to do so. To put them into a strait jacket now may be counter productive and may obstruct the early resolution of other equally important issues.

Mr Deputy President, for these reasons and with reluctance, I shall vote against Mr McGREGOR's motion and support Mr NGAI Shiu-kit's amendment which allows greater flexibility without excluding the possibility of negotiations for more seats in 1995.

DR CONRAD LAM (in Cantonese): Mr Deputy President, some say that the Legislative Council Chamber is a solemn place inside which even a street fighter like the Honourable LAU Chin-shek has to wear a neck-tie. However, at meetings in this very chamber, it appears that breach of faith, fence sitting, self-contradiction and the use of power to overwhelm reason have become the norm. They are seen so often that they have lost the ability to shock. Here, reason is once more being laid to rest. This Council has almost become a cemetery for reason and a place where principles are wantonly bought and sold.

Under the baton of their masters, Councillors fell over one another to pass the Public Order Bill to the indignation of the public. Under the baton of the same masters, they then again fell over one another to repeal the self-same section of the Public Order Ordinance they had passed. Now, under the baton of new masters, they are unabashedly vying to reject the OMELCO Consensus, which came into being around the time of the 4 June 1989 incident, to which the sacrifice of countless

Chinese compatriots contributed and which they themselves energetically promoted.

BO Yang was right to ask, "Chinese people, what is the curse you live under?"

The fact is that Chinese people's usual insensitivity to "truth and falsehood" and "right and wrong" has long been noticed by many scholars and proven by their studies. Lucian RYE, professor of political science in the Massachusetts Institute of Technology; his disciple Paul HINIKER; Lawrence KOLHBERG, founder of the "theory of six stages of ethics" and the contemporary top scholar on ethics and psychology; and grand master John SNAREY, who teaches in Harvard University with KOLHBERG -- these scholars have all probed the question of Chinese people's ethical standards, using different approaches. They have all found that Chinese people's ethical standards are not high at all. Separate studies by KOLHBERG and SNAREY show that the normal Chinese, even after receiving university education, attain only the third or fourth stage of ethics. The third stage describes a person who is a good boy or a good girl and who tries to please others in order to win their approval. The fourth stage describes a person who is law-abiding, who respects authority, who supports the establishment and who -- this must be mentioned -- is willing to keep his promises. Though many people would rather not know, it is clear that certain tack-changing Councillors have not yet attained even the fourth stage. To be sure, they are more than adequate in supporting the establishment. As for political scientists Lucian RYE and Paul HINIKER, they have observed that Chinese people, for various social and cultural reasons, often have a high tolerance for totally contradictory thoughts. Therefore, Chinese people are generally good at changing tack when the wind changes. Some of them do not find it difficult or painful to adjust to sudden changes or even to betray their masters, their personal principles or their conscience. I myself, being a Chinese, naturally find such studies hard to accept. However, it seems that, over the years, many Councillors' behaviour in this Council has provided indisputable proof for the findings of those studies.

We call ourselves "the heir of the dragon." It is a pity that the dragon is already extinct. Only chameleons still exist. These chameleons are reproducing apace to greet the advent of a dictatorial system. They are real opportunists who allegedly would face the realities lest they should get hurt badly. Many traitorous high officials existed in Chinese history. So did many heroic men. History will judge who in the Legislative Council today are guilty of obstructing the democratic development of the Chinese people. The voting record later on will bear testimony to this.

Mr Deputy President, with these remarks, I support the Honourable Jimmy McGREGOR's motion.

MISS EMILY LAU (in Cantonese): Mr Deputy President, my position with regard to the democratization of Hong Kong's political system is quite clear-cut. I support total democratization, that is, hundred percent democratization. I said so in Hong Kong. I said so when I visited the United Kingdom. Also, during the election campaign last year, I never cheated the voters. I told them that I hoped that Hong Kong would implement full-scale direct election and that I believed that Hong Kong was perfectly able to cope with hundred percent direct election. I believe that my election victory last year is proof to many people that the people of Hong Kong are very supportive of the democratization of the political system. I am even more deeply aware that none voted for me in the hope that I would compromise their political rights. Nobody told me, "Emily LAU, please compromise our political rights. We do not need those things. Please do so for the sake of smooth transition." Mr Deputy President, since we first had direct election, I have held 15 consultative meetings with the residents in my geographical constituency. None of them said that to me. They all hope that Hong Kong will continue to enjoy democracy and freedom and will even enjoy total democracy. I hope that the British Government will hear this loud and clear.

A moment ago, several Councillors mentioned a recent public opinion poll. I believe that many colleagues have seen reports about it and that the Government, too, knows well about it. Mr Deputy President, the fact is that, over the past few years, public opinion polls have clearly shown that the vast majority of the respondents support a faster pace of democratization. Of course, there was that one public opinion poll which showed something different. I mean the public opinion poll that the Government conducted in 1987. The finding of that poll was that only 15% of the people supported the holding of direct election in 1988. But, of course, the Government is no longer mentioning that public opinion poll, after it was condemned by the whole world as a distortion of the popular will.

Though public opinion polls clearly show what the wishes of the people of Hong Kong are, many colleagues say (and I believe) that the Honourable Jimmy McGREGOR's motion is sure to founder. Why? I believe the British Government should bear responsibility for this. I am very glad that an official from the British Foreign Office is here today to listen to our views. I hope that he will take all our views back to the United Kingdom so that Prime Minister John MAJOR may consider them at

his leisure. The British Government should be held absolutely responsible for such strange happenings in Hong Kong.

Mr Deputy President, apart from the strange happenings in this Council, I feel that there are also strange happenings in the media. We know that the people of Hong Kong are very supportive of democratization. Yet, if we read newspaper reports and editorials, we will surely be surprised by what we read; we will feel as if we were living in a different society. Why is it that editorials and reports do not reflect people's views? The editorials even call on readers to stop arguing and stop making trouble and tell readers that they must come to a compromise with the Chinese Government. What kind of a world are we living in? But I know that the British Government should be held responsible for this. The United Kingdom has ruled Hong Kong for 150 years, with the result that Hong Kong does not have democracy. Since 1984, when the British Government signed the Sino-British Joint Declaration with the Chinese Government without the participation of the people of Hong Kong, we have seen this happen: the United Kingdom has been retreating from the commitments it made in the Sino-British Joint Declaration. On 16 February 1990, the THATCHER Government announced in Parliament that there would be only 18 directly elected seats in the 1991 Legislative Council. The OMELCO Consensus was thus rejected. I believe that this at the time infuriated the Members of the Executive and Legislative Councils as well as the general public of Hong Kong. I hope that Prime Minister John MAJOR's Government will show political and moral courage and win rights for the people of Hong Kong from the Chinese Government.

The Honourable NGAI Shiu-kit says that Hong Kong needs smooth transition. I, of course, have nothing against that. However, if smooth transition means that we will be under the Chinese Government's control in other aspects, that we will have to do without an increased measure of democracy and that we will have to do without a high degree of autonomy, then, Mr Deputy President, I cannot accept it. I believe that many people of Hong Kong do not want it and would not accept it. However, Mr Deputy President, we also know that many people in Hong Kong cannot emigrate. They are very afraid of the communist regime but they cannot leave. So they dare not air their views. I hope that the popularly elected Councillors will reflect their views in the Legislative Council and let them know that we will never compromise their democracy and freedom.

However, I am very supportive of one comment made by Mr NGAI Shiu-kit. He said that we could not decide the future of the people of Hong Kong; they should decide

it for themselves. The British Government may tell us later, "We really do not know what you want. One person says one thing; another person, another." Because of our differences in 1987, the idea of holding direct election in 1988 was rejected. I hope that the British Government will not play the same trick again. This is why I support Mr NGAI's comment that the people of Hong Kong should decide their own future. The British Government should make ready to hold a referendum in Hong Kong to decide whether or not the pace of democratization of the political system should be speeded up. Then, in a vein of rationality and moral rectitude, it can start talks with the Chinese Government.

Mr Deputy President, I believe that this Council's debate today will once more sharpen the vision of the people of Hong Kong (and I believe that they are in fact politically already quite mature) so that they may discern who are fighting for their democratic and free future and who are paving the way for personal political and commercial interests. I believe that the people of Hong Kong can definitely tell.

Mr Deputy President, I so make my submission.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, today I had to run some errands for the late Mr NG Ming-yum's funeral. Originally, I did not intend to make a speech. However, after listening to colleagues' speeches on the political system, I feel I must speak my mind.

A moment ago, some colleagues said that our relations with China must be based on mutual trust, mutual understanding and accommodation. This principle is right. However, for a person in power, a national leader or a responsible person of a government, the need is to ask himself first whether he trusts the people and the citizenry. If a person in power or a leader does not trust the citizenry, the people, how then can the people trust him?

The people of Hong Kong have, through various public opinion polls over the past few years, made their wishes known in great detail. However, what I have seen is that the Chinese Government has continuously ignored these public opinion polls or has even attacked them instead of accepting them. This being the case, how can the people of Hong Kong trust the Chinese Government?

Mr Deputy President, we talk about mutual understanding and accommodation. In

fact, I consider, and I believe, that the OMELCO Consensus is already the product of mutual understanding and accommodation among the people of Hong Kong, people who belong to different political groups and are of different political persuasions. Why then has the Chinese Government not accepted this product of mutual understanding and accommodation?

A moment ago, arguing against Mr Jimmy McGREGOR, Mr NGAI Shiu-kit said that it was not for Mr Jimmy McGREGOR, but for the citizenry at large, to decide whether the motion for amendment was meaningful. I think that this point was very well taken. However, Mr NGAI went on to say that, in his opinion, a number of aspects about Hong Kong's public opinion polls were suspicious and required clarification. Here, I would like to make an open request to the South China Morning Post to disclose information relating to the scientific methods used and the number of respondents surveyed in the public opinion polls published today and on various previous occasions. This will let Mr NGAI know that the public opinion polls are scientifically conducted and credible.

In fact, I feel that the distrust of public opinion polls is but an excuse to hold onto power or to reject the wishes of the people. In fact, after a public opinion poll has clearly shown the wishes of the citizenry, if the powers that be find that they have no ground for opposing these wishes, they will tend to say that they doubt that the poll is scientific.

I think that, if we all agree that the wishes of the people are important factors for us to consider in making decisions on political development, if there is such a consensus, then we can find an independent assessment body to conduct a full-scale and scientific public opinion poll to reflect the wishes of the citizenry. Of course, it must be agreed that, if this is done, the finding will be accepted even by those whose views do not agree with the finding. On such a basis, we will have a generally accepted indicator of, and a common ground for determining, what the people want.

A colleague said a while ago that we had already been through a consultation exercise and that to restart the exercise would give rise again to political debates, send the local economy reeling and even cause unnecessary controversies to re-emerge. As a matter of fact, it is not up to us to choose; it is for the citizenry to choose. It is for them to consider whether the development of the political system is more important than other matters. If they feel that political development is more important and that political debates therefrom arising are acceptable, why can we

not reopen the debate? Why do we not believe that the citizens' choice is correct?

Another colleague said a moment ago that, according to LU Ping, the Basic Law will not be revised. Many Chinese leaders have expressed similar views. However, I personally think that we do not live by leaders' orders or words. We live by our own ideals and our own conscience; our objective is the well-being of the people. We should not let leaders or other influential people show us or decide how we should behave and live. We must fight for what we feel is right. We must speak up to tell what is wrong.

I would like to respond to one final point. Some people feel that further argument about the political system will take Hong Kong into a situation where the future will become very difficult to predict. In fact, if we look around us, we will find that only a democratic political system can confer social stability and make the future more predictable. Let us look at the Third World, at how the investment scene changes there under dictatorial governments. Let us look at Thailand and some other Southeast Asian countries. Until a fully democratic political system came into being there, political upheavals and military coups had been frequent. Why? Why do we not see similar things happen in Western democratic countries? Democracy affords precisely the protection that enables investors to invest in a future that is known.

Mr Deputy President, I feel that many colleagues' speeches today are merely excuses for slowing down political development. Mr Deputy President, I feel that, over this issue, the strength of the people of Hong Kong is important. This is why I hope that more citizens will air their views, continue to support the OMELCO Consensus and continue to support a more democratic system.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's motion.

MR ERIC LI (in Cantonese): Mr Deputy President, since the introduction of directly elected Legislative Council seats last year, many people have pointed out that the era for consensus politics in Hong Kong has passed. The OMELCO Consensus can be called a "masterpiece" of that era. Though the OMELCO Consensus at one time had a historic mission to fulfill and merited a positive evaluation, to have it revived now would be out of place and out of time.

What the people of Hong Kong must face, but cannot get used to, is the changing diplomatic gimmicks of the Chinese and the British Governments. We find ourselves restrained. Hong Kong's party politics has just gotten off the ground. Each party wishes to project a distinctive image of its platform and the interests it represents. Political parties often cling stubbornly to their respective positions and refuse to yield to one another. The people of Hong Kong feel that Hong Kong's politics is fragmented and chaotic. Although this is a necessary phase in the development of democratic politics, yet the people of Hong Kong, faced with the "external worries" and "internal problems" as they are, hope that this "metamorphic phase" will be as short as possible. When politics develops faster into a more mature phase, I hope that Legislative Councillors will, in addition to establishing their own distinctive positions, strengthen consultation with one another and take care of the many matters that are of "mutual interest", particularly in the area of external affairs where they should display concerted purpose and effort. Then, people will sense the solidarity of this Council and take this Council as a force to be reckoned with. Nothing short of this will benefit Hong Kong.

The Basic Law is the solemn result of vigorous consultation between China and the United Kingdom. Though I think that the people of Hong Kong have not changed their minds about supporting the OMELCO Consensus, I still respect the Basic Law as I would any final result of full consultation. Nor will I favour any unjustified proposal to revise it. In fact, the Legislative Council, in suddenly and "unilaterally" making a high profile move to lodge an"appeal" at this time, is walking into a British trap and such a move will easily become a bargaining chip for use in the airport talks. This will have no positive effect at all on relations with China. It will only invite charges of "breach of faith," deepen the contradiction and misunderstanding between China and Hong Kong and make the people of Hong Kong feel more troubled. I think that the people of Hong Kong should control their impulse. This is not because I am afraid of brute power but because, in the final analysis, we must find a more effective policy, a policy that is better for the long-term development of Hong Kong's democratic political system.

I think that, whenever a request is made to China to revise the Basic Law, there should be "new arguments, new facts or new circumstances". We cannot blame China for not heeding us if we merely "harp on an old tune". The consistent Chinese position is that Hong Kong does not have an adequate foundation for a democratic political system since the directly elected Legislative Councillors won very small numbers of votes. This "reality" must be changed. Broadening democratic representation is the

best justification for proposing a faster pace of democratic politics to China.

In 1988, that is, before the OMELCO Consensus was reached, I took the lead in proposing changes to Articles 45 and 67 in the first draft of the Basic Law. I proposed adding a provision to make universal suffrage the final objective of political development, to increase the popularly elected Legislative Council seats gradually and to regard a 50% voter turn-out rate as the "trigger point" for full-scale universal suffrage. These proposals were later incorporated into the "Proposal of 89." Everybody knows what happened subsequently. Articles 45 and 68 of the Basic Law now provide additionally that the Chief Executive and all members of the legislature will eventually be returned by universal suffrage. As for my proposals about a "trigger point" and about gradually increasing popularly elected Legislative Council seats, they have evolved into the present "time-table" for political development. Under the political time-table concept, when this "final objective" of the Basic Law is to be attained will depend on the "realities" in the Special Administrative Region.

In fact, the design of the "trigger point" is unique. There is no contradiction between it and the political development time-table. It is an extra insurance. It provides a way to expedite the political time-table. It also shows the people of Hong Kong a clear goal that is objective and attainable. It at the same time has the effect of a referendum. It is easy to implement and can be implemented without additional manpower or material resources.

In reviving this "trigger point" concept, my point is not to hang onto a personal principle. It is that, being the original designer of the concept, I felt, and still do, great pity for its passing. The people of Hong Kong at the time did not have a spirit of "self-respect and self-trust." Later, when the emphasis was on the overriding objective of smooth transition, they gave up their fight to have a "trigger point" provision incorporated into the Basic Law. They let slip the opportunity for attaining universal suffrage sooner. The result has been that we are having no end of a row over the pace of political development. Although the "trigger point" concept has become history, the spirit behind it is still worth taking reference from.

The development of a democratic political system should not be an empty shell. The proper way to fight for it is for the citizenry to take direct action to make their wishes known. If they wish to be the masters of their own house, if they wish to create a positive "reality" for representative government, they should go out and

take part in voting. If we then propose "full-scale universal suffrage" to China, the Chinese side will have no justification for rejecting our proposal. I think that this will be more effective than forcing the British to bargain with China on half of the people of Hong Kong.

The Honourable Jimmy McGREGOR's motion today asks Councillors to take a position. I think that such a course of action is of no help to the long-term development of a democratic political system. I hope that this Council, while indulging in high-sounding talks, will not forget that politicians who will administer Hong Kong must have both "guts" and "ideas." Preferably, we will not have one group of people who have the "guts" and another group who have the "ideas." What is even more necessary is sincerity in consultation. Nothing short of this will finally give voters confidence in the real outcome of political development. There is a saying about "trying to do what is known to be impossible." If such a principle were to be the yardstick with which to measure the soundness of one's political judgment, then, no matter how much sincerity there might be, the effect would be the same as the effect of "the emperor's new clothes." There would be some routine praise for a time. In the end, however, voters would be bound to realize the emptiness of it. From a pragmatic angle, I do not approve of "struggle" as a means of fighting for something. I hope that Hong Kong's politicians will display more verve and dynamism in making suggestions that are more far-sighted than the present motion.

This Council should not force the British side to do what it will be difficult for them to do, that is to say, to create a democratic environment for Hong Kong. But this does not mean that we should give up. The people of Hong Kong should proceed in the spirit of "self-trust and self-respect." They should regard full-scale universal suffrage as their long-term objective. They should urge the Government to strengthen civic education and to do their best to speed up voter registration. In civic education, importance should be attached to teaching knowledge about contemporary China. This will dilute the Hong Kong people's attitude of confrontation towards China. Hong Kong and China differ in their understanding of the representative nature of universal suffrage. The truth, where it does exist, cannot be made clear in a hurry. If the people of Hong Kong really take the actual step of registering themselves as voters and then going out to vote by way of expressing their wishes, that then will be conducive to peace and to the removal of the "cause of friction" between China and Hong Kong.

Mr Deputy President, I so make my submission.

MR FRED LI (in Cantonese): Mr Deputy President, I really feel quite sad that we should still be debating today on, and trying to attain, the direct election of not less than half of the 1995 Legislative seats. What I mean is that I am sad because the people of Hong Kong long ago, during the discussion of the further development of representative government and during discussions when the Basic Law was being drafted, already made strong representations in the hope of speeding up the democratization of Hong Kong's political system. I remember that several hundred thousand Hong Kong people signed a petition in 1987, asking for the introduction of directly elected Legislative Council seats in 1988. Regrettably, the Chinese and the British Governments, as well as the Hong Kong Government, ignored this wish of the Hong Kong people. It was not until three years later, in 1991, that directly elected Legislative Council seats were introduced.

I do not propose to talk today about the advantages of direct election. I remember that Meeting Point long ago, at the signing of the Sino-British Joint Declaration in 1984, expressed support for the spirit of the Joint Declaration and requested that Hong Kong's political process be opened up step by step until all Legislative Council seats were to be returned by direct election in 1997. This request was not accepted in the ensuing years. What happened instead was that, following the suppression of China's pro-democracy movement in 1989, the tone of discussion on political development in Hong Kong became even more conservative. At the time, Meeting Point put forth a comprehensive proposal for Hong Kong's future political development, requesting that half of the 1991 Legislative Council seats be returned by direct election, and that the proportion rise to two-thirds in the 1995 Legislative Council. At the time, we considered that to be the basic request. The Basic Law of the Hong Kong Special Administrative Region (SAR) was promulgated in April 1990. The particular article of that law relating to the political system was a great disappointment to us. It was quite conservative. Only one-third of the seats in the first legislature of the SAR were to be returned by direct election. Only in the year 2003, two legislatures later, would half of the seats be returned by direct election. This was clearly contrary to the wishes of the people of Hong Kong. Meeting Point and other democratic groups said at the time that they could not accept this kind of arrangement provided under the Basic Law. If we were alleged to be opportunists, that would have been belied by the fact that our position has never changed since April 1990. That position continues to represent the ideal that we are fighting for. I feel that we are not opportunists at all. Instead, we wonder

if those Honourable Members who promised to fight for the OMELCO Consensus for the sake of the people of Hong Kong are not opportunists. They are now very ready to accept compromises. The supreme irony is that the Councillors who formulated the OMELCO Consensus in the first place have now given up, so that it has devolved on us to support the very OMELCO Consensus that we at the time could not even discuss because we were not then qualified to sit on this Council.

Strange are the happenings in this world. We think that the smooth transition of the political system from before 1997 to after 1997 is quite important. We cannot deny this at all. But this does not mean that we wish to have convergence for the sake of convergence. What we wish today is that the Chinese and British Governments respect the wishes of the people of Hong Kong. We should not ignore the public opinion polls and attack them as wishful thinking. I would like to refute the argument advanced by the Honourable Martin BARROW (who unfortunately is not here now). He said that the 1991 voter turn-out rate was very low. Does he know that, since Hong Kong first held direct election in 1982, the voter turn-out rate at the 1991 Legislative Council election, at 39%, has been the highest? Nor should he forget that three Legislative Council elections were held that year. Three elections a year are more than the citizens can take. I feel that a voter turn-out rate of 39% at the last election was quite a good show. It may be said that many people did not vote or did not register as voters. 49% of those eligible did not register. It may be asked: What about the wishes of this silent majority? I would like to ask all of you: Can we represent them? If we cannot, then I hope that Mr BARROW will support the Honourable Emily LAU's suggestion; that is to say, would it not be better to hold a referendum? Then there would be no further need to conduct the kinds of public opinion polls that have come under attack. Directly letting two or three million people in Hong Kong decide together on the question of 1995 Legislative Council seats would be the best way. It would also obviate the need to discuss such issues as the silent majority or the voter turn-out rate.

Mr Deputy President, with Legislative Council colleagues Mr TIK Chi-yuen and Mr WONG Wai-yin, who are members of Meeting Point, I fully support the Honourable Jimmy McGREGOR's original motion.

PROF FELICE LIEH MAK: Mr Deputy President, the controversy surrounding this issue has obscured reality. We are not choosing or rejecting democracy today; we are determining the proper pace and implementation of governmental reform through direct

elections. Unfortunately, the emotions of this debate have led some of us to accept untested assumptions as self-evident truths. Will 30 directly elected Members in 1995 be a better safeguard of our rights and freedoms than 20? What we truly seek is good government, a system that cannot be created overnight and rushed forward without careful consideration.

Direct elections are an effective check on the potential abuses of the Government. But there are other means of accomplishing this objective. Members elected by functional constituencies are also effective in this capacity -- witness Mr Jimmy McGREGOR. Let us not equate the system of representational democracy with the preservation of human rights and freedom, for one does not necessarily follow from the other. There are many historical precedents demonstrating the precarious nature of a newly formed democracy. Born and raised in the Philippines, I can assert without reservation that democracy does not guarantee equality or freedom but contributes to instability and abusive government. The democracy trap is that a failed democracy leads to a dictatorship.

A working democracy requires a long process of development, as evidenced in the United States who underwent a civil war, and Spain who underwent several tumultuous years. We achieved our freedom in Hong Kong through the institution of a free market economy, not a democratic government. Democracy gives us an equal vote to elect our Government, but capitalism provides us with the equal opportunity to improve ourselves and better secure our future. Is it wise to unravel the Basic Law for 10 seats? Our future constitution is our greatest safeguard against future uncertainty. Would we have the National People's Congress rewrite this section of it without adhering to stated procedures? Consider the dangerous precedent this action would set, especially for those gripped in the fear of China. This fashionable practice of confrontation with China is a perverse and self-destructive form of behaviour. We are building a mutually beneficial relationship with China in promoting economic growth and fighting crime. It is time to confront our anxieties. Where does the danger lie -- in China or in our fear of them?

I would like to suggest some alternative means of accomplishing the goals that 10 more seats would presumably achieve: the preservation of our rights and freedom. We of the Co-operative Resources Centre believe that in maintaining our freedom and autonomy we can realize it without 10 more directly elected seats in 1995. We believe in the freedom of choice and the equality of opportunity that form the basis of our economy. Our free market system must be allowed to flourish without government

intervention. Law and order must be maintained in the streets. Corruption must be weeded out of our Government. The Government must step forward and become the partner of the people. This entails a greater devolution of civil service power, especially in policy formulation and financial control. Technology should also be exploited to increase public awareness, disseminate important information, and collect feedback on policy measures. For example, the implementation of an improved consultation mechanism through television, radio and regularly scheduled public meetings throughout the territory would keep the public better informed and provide avenues for people to express their opinions. Setting the precedents for government accountability, transparency and territory-wide consultation will more effectively safeguard our liberties and communicate public opinion, as far as we are concerned, in the near future -- a partial democracy.

The Government must eradicate its paternalistic tendencies and treat and respect the people as consumers of government services. We must sell our policies and programmes to the people, not force them down their throats. Consensus serves the community better than confrontation and polarization. Establishing strong bonds of communication with the people will ensure better government without being unnecessarily divisive.

With these remarks, Mr Deputy President, I support the Honourable NGAI Shiu-kit's amendment.

DR PHILIP WONG (in Cantonese): Mr Deputy President, the year 1997 is drawing close and Hong Kong is about to revert to China. To ensure our stability, prosperity and smooth transition, Hong Kong's political development in the next five years, which covers the issue of directly elected seats and the composition of the Legislative Council in 1995, must converge with the Basic Law. To revive a proposal that was considered before the promulgation of the Basic Law, thus to try to revise the Basic Law, is impractical indeed.

Members may recall that, when the Basic Law was being drafted, some people in Hong Kong expressed their worry that China might revise the Basic Law before resuming sovereignty or that it might, after resuming sovereignty, revise laws made by the Hong Kong Special Administrative Region (SAR), thus affecting the confidence of the

people of Hong Kong and that of foreign investors. Among the colleagues seated here today, some at the time exerted pressure on the Chinese Government by playing the "public opinion card". They asked for the laying down of a rigid legal procedure to make sure that China would keep its promises and to forestall such unilateral revision. To maintain the integrity and supreme authority of the Basic Law, Article 159 of the Basic Law as promulgated in 1990 provides that, though the National People's Congress (NPC) of China may revise the Basic Law, if a motion for amendment is to be put officially on the agenda, it must be moved by the Hong Kong SAR, and then it must "negotiate four hurdles": be consented by a two-thirds majority of the Hong Kong SAR's deputies to the NPC, two-thirds of all the members of the legislature and the Chief Executive of the Hong Kong SAR and be studied and commented upon by the Committee for the Basic Law of the HK SAR. Only then can a motion for amendment be moved. For this reason, it is totally impossible for the NPC to revise the Basic Law before 1997. Even after 1997, the NPC may not revise the laws made by the Hong Kong SAR; it can only take them or leave them. Article 17 of the Basic Law provides that laws enacted by the legislature of the Hong Kong SAR must be reported to the Standing Committee of the NPC for record. The reporting for record shall not affect the entry into force of such laws. If the Standing Committee of the NPC, after consulting the Hong Kong SAR's Basic Law Committee, considers that any law enacted by the Hong Kong SAR's legislature is not in conformity with the provisions of the Basic Law, it may return the law in question but shall not amend it.

Very clearly, the laying down of such rigid restrictions on any amendment of the Basic Law or future laws of Hong Kong showed that the Chinese Government absolutely would not make a revision lightly. The people of Hong Kong and international investors could rest completely assured. However, I now hear voices quite different from the voices I heard then. Some people are now saying that, there is no problem whatsoever to revise the Basic Law before 1997. Revision sounds so easy! These self-interested people try to resort to such dubious argument in a bid to put pressure on the Chinese Government. If the Basic Law should be revised before 1997 as they say it can, then we would have a precedent which does more bad than good. Since some people could ask for the number of directly elected seats in the 1995 Legislative Council to be increased, others surely could ask the Chinese Government to reduce that selfsame number or to postpone the increase or to cancel it. One may also argue that since the method of electing the legislature could be changed, the method of electing the Chief Executive would also have to change. Also, the other provisions, such as those concerning the Hong Kong SAR's administrative, legislative and judicial powers and concerning the freedom of the people of Hong Kong, could all be changed

as well. The various political groups which put forth proposals then, as well as the various new political groups, would surely fall over each other to ask for amendments to the Basic Law. Then, well before the arrival of 1997, the Basic Law would probably have turned into a worthless document or a kindergarten colouring book which can be smeared in any way one likes. Should such things happen, how could the people in Hong Kong feel confident? How could foreign investors rest assured?

Mr Deputy President, with these remarks, I oppose Mr Jimmy McGREGOR's motion.

DR YEUNG SUM (in Cantonese): Mr Deputy President, the issue of additional directly elected seats in the 1995 Legislative Council has recently been the talk of the town. However, the discussions have shown signs of confusion and running off the track.

Some people are using big words and making ominous charges in the context of describing the fight over the political system. Talking of this fight and the future of Hong Kong in the same breath, they are of the opinion that the two issues are mutually exclusive. Some people disparage democracy as the second request of the people of Hong Kong, and view it not as important as freedom and prosperity. At the same time, they regard the proposal to increase the number of directly elected Legislative Council seats to half of the total as a trivial proposal, one that makes no difference one way or the other. Some people deliberately paint a very dim picture of the future of democratization and hope to persuade others to face the "reality" and be resigned to their fate. All such views in fact take their cue primarily from the words of the Chinese Government. They disregard the Hong Kong people's wish for democracy and autonomy. Nor do they contain proposals on how favourable conditions may be created for "Hong Kong people ruling Hong Kong" or for "a high degree of autonomy."

Today, I wish to submit solemnly that, if Hong Kong is to enjoy a high degree of autonomy and run by its own people, then the spirit and principles of "Hong Kong people ruling Hong Kong" must be put into practice. To do so, I think, we should take the following three points into consideration:

(1) Adhere firmly to the principles of democracy, human rights, freedom and the rule of law.

(2) Persevere in creating favourable conditions for implementing these

principles and to prepare for the future.

(3) Have confidence in the people of Hong Kong and promote social solidarity among them.

Mr Deputy President, quite clearly, the democratization of the political system has a critical bearing on whether or not Hong Kong will truly be ruled by Hong Kong people and on whether or not there will be a high degree of autonomy for Hong Kong. It is also the bed-rock on which human rights and freedom will be protected and economic development will be enhanced. Anybody truly concerned about the future of Hong Kong will do his best to promote the development of Hong Kong's political system and not obstruct it in all sorts of ways.

Also, political development is essentially an internal matter for Hong Kong. All issues related to political development, including the pace of democratization and the distribution of representative seats, should be resolved on the basis of the wishes of the people of Hong Kong. The reason is that only the people living in this community have the right and duty to decide its future political system. Only those calling Hong Kong home know what kind of system will be the most efficacious for them.

Mr Deputy President, during a visit to the United Kingdom, I told British politicians that the concept of "Hong Kong people ruling Hong Kong" hinged on the development of democracy; that the colonial history was about to end but many of the people of Hong Kong would continue to live there; and that the people of Hong Kong, facing the future, had become more united and had even become organized. I added that it was high time the British Government returned the democratic rights which had long been owed to the Hong Kong people; the people of Hong Kong should be given a chance to create conditions for a high degree of autonomy in the future. I also told them that we were afraid neither of brute power nor of the future, so the British did not have to worry for us. Unfortunately, I never had a chance to tell the Chinese Government, "We are not afraid of brute power. We will fight to win democracy for Hong Kong."

The United Democrats of Hong Kong always think that the Chinese and the British Governments should frame the democratic political system on the strength of the wishes of the people of Hong Kong. Very regrettably, however, what we now see is that the authorities are not fully respecting public opinion in Hong Kong. Three days ago, an English-language newspaper in Hong Kong published the findings of a survey on the

political system. Over 65% of the 490 respondents think that Hong Kong should introduce a larger measure of democracy even if this would offend China. At the same time, nearly 65% of the respondents say more specifically that this Council should reaffirm its support for the OMELCO Consensus of 1989. Whoever says that democracy is something taken lightly in the minds of the people of Hong Kong is distorting the popular will. Whoever says that the OMELCO Consensus is out of date and should not be revived is an enemy of the people. Here, I offer a piece of advice to those who, because they have vested interests or because they are afraid to offend those in power, are trying in all sorts of ways to obstruct the proposal to increase directly elected seats on the 1995 Legislative Council. I call on you, from now on, to stop playing public opinion games and to withdraw your various excuses.

At the same time, I respectfully ask the Chinese and the British Governments to listen to the voices of the people of Hong Kong, to show their sincerity, to respect the wishes of the people of Hong Kong and to let Hong Kong increase the number of directly elected seats on the 1995 Legislative Council to half of the total.

Finally, I would like to comment on the concepts of the so-called "smooth transition" and "through train" as advanced by so many Members. I wish to make a three-point response:

(1) You encourage us to abandon our principles because principles are empty and unrealistic.

(2) You tell us not to challenge brute power because this will offend those in power. For this reason, we have to kowtow to them.

(3) You advise us to trust China because China will then trust us. This reminds me of the words of a famous Chinese writer: "Writers suffer from a case of bitter love for the Chinese Communist Party."

It is plain to us all that the Basic Law's section pertaining to the political system is very conservative. All the 18 directly elected Legislative Councillors have won the election because their political platforms fully championed the democratization of Hong Kong's political system. Very clearly, the people of Hong Kong expect Legislative Councillors to adhere firmly to principles, to fight and win the respect of the Chinese and the British Governments for Hong Kong's popular will and to turn a democratic political system into a reality. Very regrettably, many

Members change course as the direction of the wind changes; they bend with the wind. How can the people of Hong Kong trust them? The people of Hong Kong expect Members to protect human rights, freedom and the rule of law and to improve their quality of life. Even more, they expect Members to stand firm in the face of difficulty and be able to tell the people of Hong Kong that they have done their best even if their fight fails. It is to be regretted if Members in the end are to tell them that they should take the overall situation into consideration and give way accordingly. They wish the people of Hong Kong to kowtow to brute power. How can a person with such kind of political views fight for a high degree of autonomy for Hong Kong? Recently, Baroness DUNN said, "For the British Government to put a request to the Chinese Government, asking for democracy -- that, too, will be improper." Putting a request is not tantamount to getting what is requested. But now we are advised not even to make a request. Do we have to behave like puppets, to be silent citizens?

Finally, Mr Deputy President, my late friend NG Ming-yum who was a lifetime democracy fighter had championed the cause until his death. We of the United Democrats of Hong Kong will inherit such a spirit and fight for democracy and improve the quality of life of the people. We will struggle to the end to win democracy for, and safeguard the human rights of, the people of Hong Kong.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's motion.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, first of all, I very much agree with one thing said by Dr YEUNG Sum a moment ago: In debating the issue of democracy today, many have used increasingly big words and made increasingly ominous charges. A moment ago, some people were called "chameleons" and described as taking orders from masters and changing tack. I feel that this, too, is an example of using big words and making ominous accusations. On the other hand, I do not agree with something else said by Dr YEUNG Sum a moment ago: If one does not fight for universal suffrage, if one does not fight for the OMELCO Consensus, one is an enemy of the people. I absolutely cannot agree with this.

I strongly believe that democracy by way of Hong Kong eventually having a legislature with all seats returned by direct election is everybody's ideal goal. It is a goal that everybody is highly confident can be attained. The Basic Law, too, mentions the direct election of all seats in the legislature as a long-term objective. I do not approve of today's discussion of the OMELCO Consensus. This is not because

I was not a member of the OMELCO at the time but because I had a different view even then about this issue. If it is a question of changing tack, then I admit that I have changed tack. Before there was the OMELCO Consensus, before the Basic Law was enacted, I had been in favour of a "bicameral legislature". Then the Basic Law rejected that proposal. So I felt that I might as well withdraw my proposal and accept the Basic Law's provisions instead.

What we are debating today in fact is the matter of 10 seats in the 1995 Legislative Council. I feel that this is a question of time. Will the number be reached in 1995, in 1997 or in the year 2003? I feel that a day will sooner or later come when more than half of the Legislative Council seats will be returned by direct election.

As the debate began, the Honourable Allen LEE said that he was probably one of the few OMELCO members who had lived under communist rule. I would like to respond that I am one of a few OMELCO members who in recent time, specifically around the time of the June 4 incident, worked in China as representatives sent there by Hong Kong companies. I therefore had an opportunity to observe some aspects of China's social and political ethos. I see no sign now that China intends to withhold full democracy from the people of Hong Kong. However, I feel that, if we wish to understand China, we must not only look at China but also consider how China looks at Hong Kong. What economic and political role will Hong Kong play in China as a whole during the next century, especially during the first half of the next century? I feel that, if we consider this question, we will find that a greater or lesser degree of democracy for Hong Kong is not a matter of concern to China. China's concern would be the emergence of problems threatening Hong Kong's smooth transition. Problems of this sort would be bad for Hong Kong and also bad for China. Therefore, I feel that there is really not much sense in our having no end of a debate today about the OMELCO Consensus, which is already out of date. Times have changed. The objective circumstances have changed. There was no Basic Law before. There is a Basic Law now. Some people's views about the OMELCO Consensus have also changed. Is it fair for us to say that they have changed tack or for us to call them chameleons? As a matter of fact, many Councillors say that they have confidence in Hong Kong's future or in the long-term future of China. How can we prove such confidence if we set a deadline for everything at 1995 or 1997? Mr Deputy President, I think that we should support Mr NGAI Shiu-kit's motion today. In other words, our emphasis should be on smooth transition. I believe that, if the transition to 1997 is smooth, then Hong Kong will be able to see the direct election of not only half but all of the seats of the legislature!

MR JIMMY McGREGOR: Mr Deputy President, thank you for allowing this debate to run its course. It is very good of you to do so.

I am grateful to the Councillors who have spoken today for making their views on democracy so clear. The issue of course is fundamental to our further development as one of the world's most successful examples of an international city with Chinese characteristics, and particularly as a place which enjoys a full range of human rights.

I will be saddened if my motion is not carried. I believe that by voting it down, this Council will damage the cause of democratic reform in Hong Kong. The Council should not vote against the expressed wishes of the people of Hong Kong. Fellow Councillors, you will have failed the people of Hong Kong at a time when they need you most if you vote down this motion. Those Councillors who have been directly elected by the people of Hong Kong have almost unanimously spoken in favour of my motion, therefore in favour of greater democracy. Those Councillors who have no mandate from anyone and simply represent themselves have spoken against my motion and therefore, in my view, against democracy.

I also want to say that pro-democracy does not mean anti-China. I hope the British Government will understand who speak for the people and who have a mandate to do so. The proposal that there should be 30 directly elected seats in 1995 is surely an extremely modest objective. The appointed Members, most if not all of whom, will disappear from this Council in 1995, should not succeed in thwarting the will of the people of Hong Kong so clearly expressed in recent surveys. If this happens I can only say it will be a matter of regret which many of us will share.

I urge all Councillors to vote for the rate of democratic progress in this Council supported by my motion. Thank you, Mr Deputy President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, it has always been the Hong Kong Government's and Her Majesty's Government's wish to see a steady progress towards a greater degree of democracy in Hong Kong, on a basis that can be sustained after the transfer of sovereignty in 1997. In response to the expressed desires of the Hong Kong community for a more rapid rate of progress in this regard, Her Majesty's

Government decided in early 1990, after discussion with the Chinese Government, to increase the number of directly elected seats in this Council from 10 to 18 in 1991, and to not below 20 in 1995. At the time of announcement of this decision in Parliament, the Secretary of State, Mr Douglas HURD said:

"We wish to establish in Hong Kong, before 1997, a system of government which includes from the outset a substantial element of democracy and which can endure and further develop after 1997."

He also said:

"We shall continue to press the case for a faster pace of democratization."

Her Majesty's Government's commitment to raise with the Chinese Government before the 1995 elections the pace of democratic development in Hong Kong has since been reaffirmed by ministers when they visited the territory in April and in September 1990, and also by the Prime Minister during his visit here in September last year.

Members speaking in this debate have expressed different views on the pace of democratic development in the years ahead. These views will of course be fully reflected to Her Majesty's Government.

On the question of timing for discussion with the Chinese Government, the Secretary of State stated in Parliament as early as February this year that this will need to take place when the time is right. The new Governor of Hong Kong will also want to consider this important matter in detail, and in this regard I think I can do no better than repeating again the Secretary of State's words in Parliament earlier this month:

"I do not think that the new Governor will want to rush to conclusions on these matters as soon as he takes over. He would be wise to want, I am sure that he will want, to consult widely after his arrival, to weigh up all the factors and then to put his advice to us. That will take time. I would not expect conclusions on the kind of matters that my Right Honourable friend mentioned to emerge until the autumn at the earliest. On the specific point concerning the 1995 Legislative Council elections, we have said that we shall be discussing those elections with the Chinese side, with the aim of ensuring as much continuity as possible. Decisions on electoral arrangements will need to take account of such discussions. They are, I think, some

way off."

Mr Deputy President, the Administration believes that there is no need to rush into a conclusion on this important matter. The ex-officio Members of this Council will therefore abstain from voting on Mr McGREGOR's motion or on Mr NGAI Shiu-kit's amendment today.

Question on Mr NGAI Shiu-kit's amendment put.

Voice votes taken

THE DEPUTY PRESIDENT said he thought the noes had it.

Mr NGAI Shiu-kit and Mr Steven POON claimed a division.

DEPUTY PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

DEPUTY PRESIDENT: Would Members now please proceed to vote and I will check with Members before the results are displayed.

DEPUTY PRESIDENT: Do Members have any queries? Yes, Mr CHEONG.

MR STEPHEN CHEONG: Mr Deputy President, I should like to ask if we are in favour of Mr NGAI Shiu-kit's amendment we should vote yes; if we are not in favour of his amendment we should vote no?

DEPUTY PRESIDENT: That is correct, Mr CHEONG.

MR STEPHEN CHEONG: Thank you, Mr Deputy President.

DEPUTY PRESIDENT: Are Members content with the way they voted? The results will now be displayed.

Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Simon IP, Dr LAM Kui-chun, Mr Gilbert LEUNG, Prof Felice LIEH MAK, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr Howard YOUNG voted for the amendment.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr David LI, Mrs Elsie TU, Prof Edward CHEN, Mr Marvin CHEUNG and Mr Eric LI abstained.

THE DEPUTY PRESIDENT announced that there were 24 votes in favour of the amendment and 22 votes against it. He therefore declared that Mr NGAI Shiu-kit's amendment was approved.

MR JIMMY McGREGOR: Mr Deputy President, I thank all Councillors for giving us the benefit of their wisdom. I think the vote is extremely close. It seems to me that the British Government will be in something of a quandary if it wishes to decide, on the basis of this vote, which way the British Government itself should go. I hope very much that the British Government will take account of the vote in itself and, secondly, of the views of Members which have been expressed here today and tonight.

I believe that the cause of democracy in Hong Kong is very strong. I believe

that the people of Hong Kong deeply desire an increased rate of democracy and that is why I put the motion forward. I believe also it is reasonable for the British Government to be made aware at this point in time of the feeling of all of the Councillors as to whether or not an increased pace of democracy is acceptable or whether the dangers are too great. We have seen a very clear division among Members. I am sure that Members have spoken sincerely on the basis of their convictions and I hope very much that the British Government will understand that there has been a division but that we all will continue to work together for the improvement of the Hong Kong system.

Thank you very much, Mr Deputy President.

Question on Mr Jimmy McGREGOR's motion as amended by Mr NGAI Shiu-kit's amendment put.

Voice votes taken

DEPUTY PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes.

DEPUTY PRESIDENT: Would Members now please proceed to vote on the amended motion? I would check with Members before the results are displayed.

DEPUTY PRESIDENT: Do Members have any queries. The results will now be displayed.

Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Simon IP, Dr LAM Kui-chun, Mr Gilbert LEUNG, Prof Felice LIEH MAK, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr Howard YOUNG voted for the amended motion.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr

Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amended motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr David LI, Mrs Elsie TU and Prof Edward CHEN abstained.

THE DEPUTY PRESIDENT announced that there were 25 votes for the amended motion and 23 votes against it. He therefore declared that Mr Jimmy McGREGOR's motion as amended by Mr NGAI Shiu-kit's amendment was carried.

REDEVELOPMENT OF PRIVATE BUILDINGS

DEPUTY PRESIDENT: Order please. We now proceed to the second motion on the Order Paper. We have taken substantial time for the first motion debate and that was necessary. But I would ask Members who are down to speak in the second motion debate to bear the lateness of the hour in mind and to try to make their speeches as short as circumstances would allow.

MR JAMES TO moved the following motion:

"That this Council urges the Government to set up a special working group to carry out a comprehensive review on matters concerning the acquisition of buildings by private developers for redevelopment purposes and to formulate policies in respect of redevelopment procedures, compensation for and rehousing of tenants, and redevelopment impact assessment (including the impact on the community and the environment), so as to protect the interests of the affected citizens."

MR JAMES TO (in Cantonese): Mr Deputy President, I move the motion standing in my name on the order paper.

The United Nations Economic and Social Council and the European Committee for the Protection of Human Rights and Basic Freedom have defined the housing right as the right of freedom from eviction; it is in accordance with this definition that mandatory removal of citizens is regarded as a violation of personal freedom and right to privacy. Under the existing clearance and urban renewal policy, quasi-official bodies such as the Land Development Corporation, the Housing Authority and the Housing Society have provisions for compensation and rehousing affected residents. Private developers are singularly exempted from the responsibility of rehousing affected residents in the process of demolishing old buildings. They are only required to provide a cash compensation twice the rateable value of 1983, and it is an ex gratia compensation, legally speaking, in the sense that it is based on moral obligation. It can be seen that the Government takes a couldn't-care-less attitude towards the impact of private redevelopment on the affected residents, regardless of their plight.

According to the Government and information gathered by private organizations, the private developers have a very vital and active role to play in terms of clearance and urban renewal. Statistics from the Building Ordinance Office indicate that the buildings involved have risen from 131 in 1984 to 697 in 1991; it is on this basis that over the next ten years, more than 44 000 flats are estimated to be affected by private redevelopment and the number of people involved would be well over 760 000.

I am sure colleagues would notice the many low-income elderly protesters when they entered the Legislative Council Building this afternoon; they are the residents affected by private redevelopment. Here, I wish to remind colleagues that there are many more, even older and more destitute people who are similarly affected and they are protesting in the different quarters of our society.

Who are these most deeply affected people? From media reports and from my own personal contacts, I understand that they come from the lowest stratum of society. Many of them came by themselves to Hong Kong illegally 30 or 40 years ago and have been quietly toiling here since then, engaging in hard, monotonous and tedious jobs. For example, they worked as coolies, factory and restaurant workers, making ends meet with their meagre incomes. Some of them even contracted diseases and are unable to work as a result of their poor working conditions, and have to live on public

assistance. Indeed, job opportunities have also been seriously eroded with the huge influx of foreign workers. They do not have any collective bargaining power, under these circumstances. They have been forced all along to live in abject poverty and they have to suffer in silence. Over the past decades, a small cubicle of 40 to 50 sq ft, sometimes a badly ventilated cockloft or caged bedspace, in an old tenement building, may have been home and castle to these people. However, Members should bear in mind that the Government is considering wholesale rent relaxation, the consequence of which would be that these last castles of theirs would face demolition very soon. These people have never protested against their unreasonable and inhumane living conditions; they have put up with the injustice in silence, the traditional Chinese way. Today, they can no longer put up with these predicaments and come out to stage their protest before you, Councillors, because their dwelling places for over ten years, for decades in some cases, are to be demolished and without reasonable rehousing and compensation, they have been made victims of the Metroplan; they have lost their only protection, a place to live. Meanwhile, the support network which has been built in the original district over the years, which is to say all their friends, jobs and accustomed ways of life, will disappear as they are forced to move to remote places, as a result of the "reasonable rehousing" by the Government. I would like to ask if anyone in this Chamber has any idea of what this impact might be when they are forced to leave their familiar neighbourhood. Let me give you an example. At some of the cheap eating joints in Temple Street, it is still possible for you to enjoy a dish of food for the price of $3.5. These low income residents have managed to get by with a dish like that, and a bowl of rice plus some soy sauce, for lunch and dinner. I think you can figure out that there is no way they can survive should they be moved to a remote district, or an area where living costs are high. It is in this connection that I can say here that these people definitely need more than a roof over their head, that they need also a familiar neighbourhood which will give them spiritual and personal support.

Maybe I can tell a story of my personal experience. An old tenement building in Mongkok which has been scheduled for demolition has an area of around 400 sq ft -- home to 11 tenant parties, each sharing an area of around 40 sq ft. It offers two kinds of accommodation, namely cubicle and bedspace. Living conditions and facilities are extremely poor. In the cockloft the dweller has no turning room with the limited space already taken up by luggage and clothes. It is for this reason that people climb to their beds to sleep immediately after a day's work and get up

for work again in the next morning. The present clearance exercise which is supposed to improve their poor living environment will ironically, as some dwellers tell me, pay them off with a cash compensation twice their rent, which in the worst case, amount to no more than $350, with the largest payout not exceeding a mere $460. When asked about their feelings about the compensation deal, one old tenant in his fifties who suffers from asthma tells me that his greatest embarrassment is that he does not have the courage to jump off his building. They posed two questions to me as I was about to leave. Where can one find a place to live with $400 or so, and how long can one live there, even if such a place is fortunately found with the money? Having worked for a lifetime, why is it that one still has to face the plight of not being able to have even a cockloft for home?

What is wrong with our society? Are we really defending the public interest or are we only widening the gap between the rich and the poor? Why is it that private developers can so easily get away with the social problems which they have created in the process of acquisition of buildings for redevelopment?

Maybe we can look at this issue from the following three perspectives.

1. Redevelopment Procedure

In accordance with existing legislation, upon the developer's acquisition of the ownership right of the building, the proprietor who is unable to reach an agreement with the tenants may apply to the Court for acquisition and the tenants will then have to comply with the ruling of the Court and move out by the date as decided by the Court. The proprietor need only satisfy three conditions for acquisition, namely, that the move is made in keeping with the public interest, that more flats would be created and the living environment improved as a result of the redevelopment, and that the maintenance cost is higher than the cost of redevelopment. The second and third conditions are so loose that they do not merit as conditions at all. One also wonders whether it makes business sense at all if redevelopment will not automatically result in the fulfilment of these two conditions. These conditions are completely superfluous. Regarding the first condition, it is of course vitally important that the public interest is served and indeed the legal intent is to balance the structural relationship which exists between the affected party and the private ownership of property; this is also the essence of rent control. However, the legal intent is not in evidence where the social problems created by private redevelopment are concerned.

In reality, the rights of the tenant are not considered at all in the whole redevelopment process, including the right to know and seek redress. The United Democrats believe that the Government should consider drawing up legislation to require that, in the process of redeveloping an old building, the private developer should give notice, for example a year or more in advance, such that the tenants may be able to find alternative accommodation and re-organize their lives to adapt to the changes. Existing legislation has similar provision for the proprietor to give a half year notice to his or her affected commercial tenants.

Furthermore, Members will surely notice, even if only taking a cursory look at recent media reports, that illegal methods have been used in evicting tenants. These include threats and actual violence; electricity is cut and sometimes strong glue is used to block the keyholes. Sometimes, hostile young bullies are arranged to move in to live with the original tenants in order to create inconvenience or otherwise intimidate the tenants so that they will be coerced to leave "voluntarily". Indeed, the existing Landlords and Tenants (Consolidation) Ordinance already specifies that the tenant's signed agreement to move out has also to bear the signature of the Director of Rating and Valuation to the effect that he is satisfied that the tenant has decided to leave voluntarily and is not doing so under threat or pressure. It is unfortunate that this well-intentioned ordinance actually cannot help much and ends up with tenants continuing to be evicted under intimidation and pressure. Tenants have not received any protection in the face of the proliferation of "innovative" illegal tactics. In addition, while Section 70B of the Landlords and Tenants (Consolidation) Ordinance provides that tenants may seek redress if they are confronted with intimidation and threats, it is unfortunate that the police tend to mistake them as civil rather than criminal cases and the tenants are unable to secure the police assistance after all. In this connection, the clauses which are designed for the protection of tenants are no better than dead letters of law. It is up to the authorities concerned to review the whole process of redevelopment and the police should also step up public education and inspection to make sure that tenants are not subject to nuisance and intimidation.

2. Rehousing and Compensation

Hong Kong practises capitalism and upholds the principles of free enterprise. In this connection, when I say that private developers should undertake rehousing and compensation commitments, some people will regard this as a violation of the

principle of private ownership of property.

But I wish to make it very clear here that the issue of rehousing and compensation is not raised specifically with the profits of the private developers in mind; rather, it is up to us to address the great impact which private redevelopment has on the community, and the tenants in particular.

The chaos created by demolition will develop into social problems. The clearees will become homeless and end up sleeping rough. Such social cost should not be borne entirely by the Government as a provider of welfare and compassionate arrangements. We can all imagine that the growing ranks of old tenement building dwellers will create a great demand for public housing as they are unable to obtain reasonable rehousing and compensation. To meet this demand the Housing Authority can only resort to raising revenue from the people. It may even adopt a policy of requiring the better off tenants to pay three or four times the public rent.

The rapidly increasing demand for public housing will result in longer waiting time. And the public will become confrontational in the face of the long wait. This will create social disquiet while private developers can turn a blind eye to this and continue to shirk their social responsibility. It is not fair to the community as a whole. The private developers should share the social cost in terms of absorbing it into the cost of redevelopment.

Given that most of the on-going redevelopment projects are of a limited scale, involving the acquisition of several flats, it may not be practicable to make it obligatory for the developers to rehouse the affected tenants. But the United Democrats take the view that the private developers should at least pay for the cost of rehousing. Alternatively, the Housing Authority or the Housing Society may undertake the building of public housing to rehouse the eligible tenants. But one thing which we cannot forget is that the existing eligibility criteria for public housing should be reviewed.

The method of paying the Housing Authority or the Housing Society may be worked out on the basis of the average building cost per person of rental public housing at the existing level of quality; for example, the building cost of seven sq m may be used as a basis of estimation. The greater the number of people affected, the more the developers will be required to pay for rehousing them.

As regards tenants who are not eligible for public rehousing, the Housing Authority or the Housing Society should consider constructing buildings for the lower sandwich class to meet the needs of people whose incomes exceed the limits set for applicants for public housing.

The advantage of leaving the job to the public sector, instead of the private developers, to provide rehousing is that the public will receive better protection. Greater cost effectiveness will be achieved with one institution undertaking rehousing than leaving it to the individual small scale developers.

But insofar as large scale rehousing projects are concerned, the United Democrats are not opposed to the developers taking it upon themselves to rehouse the tenants, if they are capable of building the rehousing units. The only condition is that the rehousing units must meet the assured standards of quality and rent levels must be reasonable. And the tenants must be rehoused in their original districts.

While the Government is encouraging urban renewal it must also complement the effort by marking reclaimed land for integrated development and building a suitable proportion of public housing to meet the needs of affected tenants. This is in order to avert the scenario of affected tenants being forced to move to remote areas as reluctant pioneers.

Apart from the issue of rehousing, the level of compensation has been set at such a low level that the tenants are not able to find alternative inexpensive accommodation in the same district. They are forced to turn to the property market and indeed they cannot survive there. The United Democrats believe that the compensation should be set at a level such that the tenants will be able to pay for alternative accommodation of comparable size for at least over a year; or at least twice rateable value of 1991.

3. Assessment of Redevelopment Impact

At present, town planning is only focused on geographical planning, which is to say that to decide the level of community facilities and the number of schools in accordance with the size of district population. But no assessment has been made of the social, environmental and cultural impacts on the original tenants which come with the redevelopment. It is for this reason that the United Democrats believe that the Government should take these redevelopment impacts into account so that the poor

and old residents will not be resettled in even poorer districts. The rose garden which takes shape with redevelopment should not belong exclusively to the people who can afford the high rent; our society should not be divided into a rich circle and surrounding slums. What real benefits would such grotesque development bring to us?

Conclusion

If we take a comprehensive look at the residents affected by redevelopment we will find among them, elderly singletons, lower sandwich classes (households whose size and gross incomes exceed the limits set by the Housing Department but who are not able to afford to either rent or buy private sector flats), people who are on the waiting list for public housing and new immigrant families. It can be seen impact of redevelopment is considerable on residents of old tenement buildings, particularly those with little economic means. As responsible Councillors and responsible Government, we should not turn a deaf ear to their pleas.

I would like to draw Councillors' attention to the fact that Hong Kong, though a major economic hub, owes its present achievement in no small measure to this group of hardworking people who have quietly contributed so much, sometimes by a whole life time of toil, to our economic prosperity. How can we dismiss this respectable group to the extent of not caring whether they live or die? We must know that the higher the pressure exerted, the greater the resistance and that will bring no benefits to anyone in Hong Kong. The present situation is certainly not desirable so I earnestly ask Members to lend support to my motion to urge the Government to set up a special working group to carry out a comprehensively review on matters concerning the acquisition of buildings by private developers.

Question on the motion proposed.

DEPUTY PRESIDENT: Mr Ronald ARCULLI has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to speak and to move his amendment now so that Members may debate the motion and the amendment together.

MR RONALD ARCULLI moved the following amendment to Mr James TO's motion:

"To delete all the words after "That this Council urges the Government to" and to substitute for the words deleted the following:

"re-examine the existing policy as regards compensation and re-housing of tenants in connection with the redevelopment of old or dilapidated or underdeveloped buildings particularly those in the urban areas, taking into account all relevant factors including the impact of such redevelopment on the community and the environment."

If the Council approved the amendment, the following is the amended motion.
"That this Council urges the Government to re-examine the existing policy as regards compensation and rehousing of tenants in connection with the redevelopment of old or dilapidated or underdeveloped buildings particularly those in the urban areas, taking into account all relevant factors including the impact of such redevelopment on the community and the environment."

MR RONALD ARCULLI: Mr Deputy President, firstly, I would like to congratulate the Honourable James TO for doing a Chinese version of Mr McGREGOR. I have not been able to follow too much of his speech, simply because of the speed at which he went. But I now rise really to speak on the amendment proposed by me to the motion moved by the Honourable James TO. I propose to deal with the more important points that make his motion either inaccurate or not as clear as it might be.

The motion, as worded, asked Members to deal with the issues set out on the basis that no policy has been set by the Government in this connection, and that there are no laws providing for the redevelopment of buildings, or indeed the payment of compensation. Clearly, that is not so. We have the Landlord and Tenant (Consolidation) Ordinance, the Town Planning Ordinance, and other relevant laws implemented by authorities like the Environmental Protection Department, Buildings and Lands Department and so forth. The Landlord and Tenant Ordinance sets out the protection given to tenants or subtenants as well as the level of compensation they may get in the event of the Tribunal permitting redevelopment.

As to premises governed by Part 2 of the Ordinance, the compensation is set at twice the 1983 rateable value plus reasonable removal expenses. But as Members are aware, there is a Bill currently before this Council to amend that by increasing the existing statutory compensation to 1.3 times the current rateable value. The same increase is proposed for Part 4 premises. Part 2 premises are those in respect of

which occupation permits were issued between 16 August 1945 and 19 June 1981. The Ordinance also sets out the legal process that the landlord will have to go through before he is allowed to redevelop, and the Honourable James TO has referred to this although he has quite inexplicably described it as nonsense, other than the public interest test.

Apart from compensation, plans of the new building will have to be lodged and dates for commencement and indeed completion are normally ordered as well.

The redevelopment will also have to comply with any gazetted draft outline or approved outline zoning plans. As an aside, I know of a case where a property developer handled one subtenant so patiently and sensitively that it took over a year to obtain vacant possession -- from the initiation of the negotiations to the order for possession by the Lands Tribunal and ultimately vacant possession.

The motion also calls for, and I quote:

"A comprehensive review on the matters concerning the acquisition of buildings by private developers for redevelopment purposes."

I simply do not understand what this means or is intended to refer to. I cannot believe that the Honourable James TO can be suggesting that the acquisition of buildings needs a comprehensive review. Nor can he be suggesting that the Government should intervene or bring in legislative means to control or regulate the acquisition of property. Any control is likely either to affect the ability of the owner to sell his property, or even the value of it. Is this what the Honourable James TO is seeking? Having heard him, I am really none the wiser.

As regards the special working group that he has proposed, my reservation is simply this. I mean do we really need to tell the Government how to go about re-examining its current policies? What I fear is that the Government may form a group to prepare a paper to see if it is necessary or desirable to form a special working group. I believe that if there are matters that require re-examination, the best thing to do is to get on with it.

Mr Deputy President, I believe there really are two main issues. The first is compensation and the second is rehousing. I believe we should concentrate on these two main issues which are sufficiently complex on their own without being further complicated by matters such as redevelopment procedures and so forth.

I believe that my amendment to the motion addresses the main issues and commend it to Members.

Mr Deputy President, having dealt with my amendment, I would like to say a few words on this somewhat vexed topic. The first question I believe we should ask ourselves is this: Do we want our older dilapidated and perhaps underdeveloped buildings redeveloped so as to provide modern and comfortable new homes and to help release some of the pressures on the demand for more housing for our community? It seems to me that the answer is plainly in the affirmative. So far, I have not heard any suggestion to the contrary. We as a community must see the advantages of redeveloping run-down and perhaps even more so buildings in an unhealthy environment. The difficulty is that if we do nothing it is socially irresponsible and thus unacceptable, and yet if conditions are so tough that they make redevelopment of such dreadful buildings commercially unattractive, it will result in far fewer and perhaps even no redevelopment.

May I remind my colleagues that despite what we are currently experiencing in Hong Kong, property development is not a risk free business. Indeed, are our memories so short that we have forgotten that between 1983 and 1985, or indeed in 1987 or 1989, the price of property was at an all time low? For that matter, do we need to look any further than to look at the difficulties of the world renowned company Olympia & York? Members can also look at the property markets in North America, Europe, the United Kingdom, Australia and New Zealand but to name a few. It is so easy to point the finger at the Government, or indeed at the property industry. Pointing a finger, Mr Deputy President, does not produce solutions -- certainly not to the issues of compensation and rehousing.

Mr Deputy President, I should now like to say a few words on rehousing. The current government policy is quite clear: those who have to vacate their premises as a result of private redevelopment are not given public housing unless they are genuinely homeless or they qualify for immediate compassionate rehousing as recommended by the Social Welfare Department. There is also help given to the elderly, as well as those who have registered on the General Waiting List and come under the Anticipatory Rehousing Scheme. I need not remind Members of the demand and waiting time for public housing.

If the Government can be prevailed upon to enlarge the different categories or

ease the qualifications, how do we provide for the extra demand? Not so long ago we pressed the Government for a special scheme for the "sandwich class". We have yet to receive an answer from the Government on this matter. Are we saying now that we should defer the scheme before it even gets off the ground? Unlike those in the "sandwich class", tenants in Part 2 buildings are given a measure of protection. It is said that they are seeking reasonable protection or compensation. The difficulty is always: what is reasonable, and when does it become unreasonable? The most difficult aspect of rehousing is that those seeking rehousing generally want to be in the same district and in premises of equivalent size or perhaps even of equivalent standard, although I doubt whether they really mean this as far as redevelopment of older buildings is concerned. These older buildings are generally quite densely populated which poses an extra problem as to where to find adequate accommodation in urban areas to cater for the demand?

I shall now deal briefly with the other main issue and that is compensation. According to the Rating and Valuation Department, payment of cash compensation over the past 12 months averaged 1.3 times the current rateable value where consent orders were made by the Tribunal, but were only 0.65 times the current rateable value where the award was made by the Tribunal. However, where vacant possession was obtained by agreement between the landlord and tenant without resorting to legal proceedings, the average was almost 1.7 times the current rateable value. This illustrates quite clearly that the market has a way of finding its own level and commercial and other practical considerations come into play even though the statutory requirement is much lower. We must, in my respectful view, resist the temptation to change this balance, however much we may be tempted to do so. I believe that the proposed amendment to the Landlord and Tenant Ordinance increasing the compensation to 1.3 times the current rateable value is within the right range.

Mr Deputy President, views have also been expressed that some 40 000 flats housing about 0.75 million persons might be affected. I have tried, without success, to see whether this is correct. It may be that there are some 40 000 flats that are governed by Part 2, but that does not mean that they are all ripe for redevelopment. In view of this, I believe that we must try and assess the size of the problem, for it is only then that a reasonable approach can be taken to see what, if anything, can or needs to be done.

For this, amongst other reasons, I do favour that the Government should re-examine its current policies. The Real Estate Developers Association of Hong Kong do not

pretend to have all the answers and I would certainly be prepared to do my part in this process. We have always had useful dialogue with the Administration and I see no reason why we cannot in respect of this difficult and complex issue.

Question on Mr Ronald ARCULLI's amendment proposed.

DEPUTY PRESIDENT: Before I call on the next speaker, it is now six minutes past eleven and at midnight we technically and in fact conclude this present sitting. I do not have power to extend the sitting to the following day; such is a power not delegated to me under the powers of delegation. The result is that I will be compelled to adjourn the unfinished business from midnight to the next sitting. And I will do that unless Members are able to conclude their speeches and vote on the motion before midnight. But I do not wish to put any undue strain on Members. If we do not finish by midnight I shall simply have to adjourn this debate as unfinished business to the next published sitting.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, urban renewal is a major investment by the Government to improve the living conditions of residents and it is in this regard that support and co-operation should be lent to all the residents who are affected by redevelopment. Indeed, the legislative intent of all legislation governing the compulsory acquisition of buildings is to protect the Government or the private developers (including the Land Development Corporation) so that acquisition can eventually succeed and redevelopment go ahead. However, given that the method of calculating compensation is already outdated, that residents have no right to participate in the redevelopment, countless residents have been unjustly treated and their right as residents compromised. In a word, the living conditions of the original tenants can actually deteriorate as a result of urban renewal which proceeds in strict accordance with the law. I regret that the Government is not able even now to close the legal loopholes. The result is that redevelopment projects which should be beneficial to the community as a whole have degenerated into public nuisances, causing confrontation and resentment.

Presently, in addition to the Government and the Land Development Corporation, a number of private developers are also engaged in urban renewal projects. Although in the process of compulsory acquisition by the Government and the Land Development Corporation, individual owners and tenants have protested against the unfair method

of compensation calculation, there is at least an identifiable target for complaint and a given avenue whereby redress can be sought and rehousing obtained from the authorities concerned. However, insofar as the private developers are concerned who have the absolute right of acquisition and redevelopment, the existing laws fail to provide any adequate protection to the affected residents at all. They have no department to take their complaint to and they are made victims of the public interest.

In this regard, I am concerned about the residents affected by private redevelopment, and the bedspace dwellers earning meagre wages among them in particular. According to information made available to me by frontline social workers who are engaged in community development, many such bedspace dwellers are not able to obtain reasonable compensation and rehousing and, given their meagre income, helplessness and the plight of imminent eviction, they are forced to settle for even less living space, reducing their bedspace from three feet by six to two feet by five, with the result that they are not able even to stretch their legs. Some of them are even reduced to becoming street sleepers. It can be seen hence that urban renewal has not only failed to improve the living conditions of the residents; it has even created more street sleepers, adding to the cost to the Government of providing for them. Put in another way, that the Government actually subsidizes the greedy developers with public funds is a fact which the public cannot accept.

Mr Deputy President, let me reiterate that the right to accommodation is a basic human right and the Government has the responsibility of taking care of the housing need of low income people; it cannot stand aloof from the exploitation by the private developers on the pretext that it has not enough resources, or that it is a matter for the private sector to sort itself out. I believe that the Government should expeditiously consider the adoption of the following solutions.

(i) Since private developers are able to acquire huge profits from redevelopment, the Government should legislate to require that in the process of redevelopment of a certain lot the developer shall pay a fund proportional to the size of the redevelopment; the fund will be co-ordinated and managed by the Government for the purpose of providing permanent homes for the affected residents. Indeed, private developers should shoulder the responsibility; otherwise, the Government should amend the laws to enable the individual owners and tenants to have full and reasonable protection in terms of compensation and their right to participate in the redevelopment.

(ii) An independent urban renewal authority should be set up to take charge of all urban renewal projects, including the equitable distribution of land among the Housing Authority, the Land Development Corporation and private developers. Details of compensation and rehousing should be laid down and complaints should be received by this authority.

(iii) Given that the bedspace dwellers actually live in similar conditions as "cage dwellers", and that only the latter have the benefit of government care, it is suggested that the definition of "cage dweller" be expanded to include these poor residents who have nowhere to turn to for help so that they will receive basic care from the Government.

Mr Deputy President, with these remarks, I support the motion standing in the name of Mr James TO.

MR PANG CHUN-HOI (in Cantonese): Mr Deputy President, in the process of private redevelopment of old buildings, it is the tenants who are subject to the greatest disruption of life and they are the ones who are the most deeply affected. The owner has only to provide proof that he meets the conditions that the public interest will be served, that redevelopment will increase the provision of flats and improve the living environment, and that the maintenance cost is higher than the rebuilding cost. He will then be able to enjoy protection and proceed with the clearance and redevelopment; he can apply to the Court for possession of the building.

Will the tenants be able to benefit from the provisions regarding the public interest and improvement of the living environment? The answer is clearly no. In addition to those who will accept arrangement by the Social Welfare Department and the Housing Department, many of the tenants are lower class people who have to fend for themselves. They include new immigrant families who have been here for less than seven years; some of them are singletons who do not qualify for public housing, and there are even sandwich class among them.

Insofar as these people are concerned, the consequence of clearance is that they will not be able to benefit at all and have to continue to move on. For the sake of work and social support, they will have to find another place to rent in the original district; for those who are living in a caged bedspace, they have only the means to find the same kind of accommodation and for those who cannot even afford the rent

of a caged bedspace, they will have to end up as street sleepers.

Housing in the Hong Kong context is not a question which involves professional knowledge or expertise. The man in the street has bitter, first-hand experience of what the problem is like, and the cost which the average family has to bear in order to solve it. As ordinary people, we can understand the problem faced by this group of people who are not only unable to benefit from redevelopment projects but who have actually been made victims of the so-called environmental improvement. These people should be able to enjoy any piece of land in Hong Kong, just like you and me; they deserve a place to live.

Since the issue we are looking at involves the housing problem, the Government has the obligation to help to solve it while at the same time regarding it as part of the housing strategy such that the whole will come under wider review. Rehousing problems which will result from the entire Metroplan, not just those caused by private development, should be studied centrally and solved separately, each according to their own circumstances. The issue of compensation and rehousing should be solved expeditiously with the presentation of a compensation package. In this connection, there is an urgent need at this point in time for the setting up of an ad hoc group to address this issue.

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

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, urban renewal is an inevitable trend in keeping with the urban development of Hong Kong. The building of the new airport, and the launching of the Metroplan in particular, have expedited the speed and widened the extent of urban renewal. In the face of the ever increasing number of redevelopment projects, it is up to the Government, in the formulation of its related polices, to properly deal with the multi-faceted issue of the distribution of benefits brought about directly or indirectly by redevelopment, in addition to considering factors such as environmental improvement and economic benefits from redevelopment. However, one gets the impression, looking at the various problems which have arisen from the redevelopment projects, that the Government is playing an unjust role, that it has taken the side of the developers such that the housing right of the individual owners and tenants is unreasonably compromised. Private redevelopment projects are a particular case in point. Given that the Government has not formulated any policy or measure to protect the housing right of tenants,

they have frequently been victimized as a result of urban renewal. They are not only unable to benefit from the environmental improvement resulting from the redevelopment; they have indeed been forced to live in conditions which are even worse than before. This scenario is of course deplorable; it is also a departure from the original purpose of urban renewal.

At present, urban renewal mostly involves pre-war buildings. A large percentage of tenants living in such buildings are from the lowest stratum of society and they are the most helpless. They are not covered by the protection net of public housing due to the many loopholes of the public housing policy. The pre-war buildings have to a certain extent served the purpose of compensating for such loopholes and providing some form of accommodation for these people. The living conditions are admittedly deplorable, but these people have at least a roof over their head. Unfortunately, the demolition of old buildings has been a severe blow in terms of creating a new housing problem to them. If the Government was not able to implement policy to protect the housing right of these destitute households, they would be thrown on the streets. I believe that the Government should deal with the matter urgently along the following lines.

(1) Detailed statistics should be compiled of the residents affected by redevelopment. At present, for lack of comprehensive data regarding the residents who will be affected by urban renewal, there is no way to accurately assess the impact of urban renewal and the exact number of households who will require assistance. In this connection, the Government should carry out a careful survey of the income and age groupings, family structure and living conditions of the residents in the old districts, in order that a further assessment can be made of the impact of redevelopment projects.

(2) An interdepartmental ad hoc group should be set up to deal with disputes arising from redevelopment. At present, residents affected by redevelopment have no department to address their complaint to because there is no government department which is fully in charge of dealing with their problems. The result is that the departments keep passing the buck around and the victimized tenants are literally kicked from one department to the next. It is for this reason that an interdepartmental ad hoc group with executive powers should be set up to take full charge of the complaints lodged by the residents affected, seeking to help them with their problems as a matter of urgency.

(3) It is up to the developers to assume the responsibility of helping the destitute tenants. I believe in principle that the rehousing of affected tenants should not be made the responsibility of the Government. For if the Government assumes that responsibility, then it would be tantamount to asking the taxpayers to subsidize the redevelopment projects of the developers. However, the Government has the responsibility of asking the developers to assume their responsibility of rehousing the tenants. It is indeed very unreasonable that the developers are able to make profits which are many times the cost of redevelopment while the compensation to which the residents are entitled is set at no more than twice the rateable value of 1983. It is in this context that the raising of the amount of compensation and the request that the developers assume the responsibility of rehousing the affected tenants as part of the conditions for permission to go ahead with the redevelopment project is a fairer and more workable way of solving the problem. I hope the Government will take this suggestion into its prudent consideration.

Mr Deputy President, indeed, the problems which have arisen from redevelopment involve not just private developers. At noon today, outside the Council Chamber, there is another group of residents affected by the redevelopment project at six streets in Tokwawan; they are protesting the unreasonable tactics used against them by the Housing Authority. Indeed, the acquisition of the buildings at the six streets is a clear reflection of the fact that even statutory bodies like the Housing Authority exhibit a tendency of greed. The Crown Land Resumption Ordinance is frequently and insensitively invoked to intimidate the individual owners; if the Housing Authority could not adequately take care of the interests of residents, what could be expected of the private developers? In this regard, the Government should not stand aloof when the tenants' housing right in the process of redevelopment is being compromised. Measures should be formulated to realistically protect the housing right of tenants.

Mr Deputy President, while I support the motion of Mr James TO, I would also think that the amendment proposed by Mr Ronald ARCULLI to it does not mark any departure from the principles involved, and that the amendment actually covers the cases which are similar in nature to the Tokwawan six streets incident. I would not therefore oppose the amendment motion as such.

MR EDWARD HO: Mr Deputy President, on the face of it, Mr James TO's motion urging the Government to set up a special working group to carry out a comprehensive review on matters concerning the acquisition of buildings by private developers for

redevelopment purposes and to formulate policies in respect of redevelopment procedures is worthy of support. My reservation regarding his motion is that, like many motions put forward for debate in this Council recently, it lacks focus, and if such a motion is passed, then the fact would be that yet another of the many special working groups will be formed to carry out another comprehensive review on one of the many matters concerning the community, when it is much more effective to define the problems, if any, and to address them in the most expeditious manner.

In addition, Mr TO's motion implies that there is no policy in respect of redevelopment procedures as he urges the Government to "formulate policies", which is not correct. There are relevant policies and procedures embodied in the Landlord and Tenant (Consolidation) Ordinance, the Housing Ordinance, the Land Development Corporation Ordinance, the Town Planning Ordinance, to name a few. Mr ARCULLI's wording is to re-examine the existing policy; thus his amendment does not rule out the review as has been suggested. Such periodic reviews are beneficial and it can be said that they have been taking place, examples of which are the current Landlord and Tenant (Consolidation) (Amendment) Bill 1992 now being considered by this Council, one of the recommendations of which is to increase the level of statutory compensation; and the review of the Town Planning Ordinance is another example.

I assume from Mr TO's motion that he is concerned only with redevelopment carried out by private developers. As we all know, redevelopment is not undertaken just by private developers but also by government statutory organizations such as the Housing Authority, the Land Development Corporation as well as other non-profit making organizations such as the Hong Kong Housing Society. Depending on which agency is responsible for redevelopment, the purpose of redevelopment is either to maximize the development potential of a given site or for the purpose of urban renewal.

In the case of private developers, maximization of development potential to enhance profit is a natural incentive for redevelopment although as a result of such redevelopment, urban renewal does take place and general physical environment can be improved. It can be safely assumed that most of the redevelopment would be for properties defined in Part I and Part II of the Landlord and Tenant (Consolidation) Ordinance, that is, buildings built before 17 August 1945 and buildings built between that date and 19 June 1981. For most of the pre-war and the immediate post-war buildings, they would be in such a state of disrepair that they are now due for redevelopment. Owing to either inadequate construction standards or inadequate maintenance even the more recent developments in the early 1970s can also be in such

a state that they are due for redevelopment in the not too distant future. In addition, there are densely populated districts in the urban area which would require larger-scale redevelopment to improve the general environment and to provide for necessary community facilities, open space and so on.

For these reasons, it is important that we must not remove all incentives for private developers to carry out redevelopment of the older properties. We have recently seen that even the Government's initiative to carry out urban renewal through the Land Development Corporation has received enormous objections, delays and obstacles. I am sure that Members of this Council would agree with me that we should not be content that it is difficult for improvements to be made to our urban environment. I thus support Mr ARCULLI's amendment which focuses upon the redevelopment of old or dilapidated or underdeveloped buildings.

Time does not permit me to go into details on the various aspects that have been raised regarding compensation levels, provision for rehousing and the impact on the community and the environment. I note however that all of these are contained in existing policies and I support Mr ARCULLI's amended motion to re-examine these policies so that there is a balance of providing incentive for redevelopment as well as achieving fairness and reasonable protection to those who will be adversely affected by such redevelopment.

With these remarks, Mr Deputy President, I support Mr Ronald ARCULLI's amended motion.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, government urban renewal actually dates back to the period between 1884 and 1905 when a slum clearance project was launched at locations from Victoria Peak to Lower Laskar Row and Kau Yu Fong. There was a pilot rebuilding plan in the 1960s and in the 1970s; there were the concepts of an environmental improvement area and an integrated development area. In 1974, the Executive Council also gave its endorsement, and financial support, to an urban renewal plan proposed by the Housing Society.

The basic purposes of urban renewal are to make improvement to the community facilities, upgrade the building quality, control land use, improve transport services, and most importantly, improve the quality of life for the residents of the old districts. Residents affected by redevelopment are usually people who have been

around in the districts for 30 to 40 years. They have lived there for a considerable period of time and have made different degrees of contribution towards the development of the districts. However, in many of the present redevelopment projects, the rights of these old folks are not respected; it sometimes happens that they are deprived even of their housing right. Poor tenants are often forced to move to districts which offer conditions even worse than before and some of them have even been forced to become street sleepers.

Mr Deputy President, I will use the example of a redevelopment project in Tsuen Wan to zero in on the right of the affected residents to know and to participate.

Tsuen Wan has presently three pieces of land marked by the Government for integrated development. Such planning provides new opportunities for land development and attracts the Land Development Corporation and the Housing Society to engage in redevelopment projects. But there is no monitoring or control as regards the dissemination of information pertaining to clearance and redevelopment. The result is great confusion and misinformation.

The first issue relates to the period of notice for clearance and redevelopment. Since there is no specific requirement and planning governing the period of notice for clearance and redevelopment, many affected residents are unable to make proper preparation beforehand; they have to decide to move out very quickly when notice is eventually served on them. Meanwhile, many residents who are affected by redevelopment have to live in uncertainty and be subject to the jitters for a long period of time, all of which add to the hardship and mental stress.

Also, there are people on the wrong side of the law who, before the official announcement of clearance and removal, will deliberately spread rumours around for their own profit. Affected residents who are constantly exposed to such rumours will take their decisions regarding redevelopment or removal based directly on these rumours; the result is that their rights and interests are compromised to varying degrees. For example, some people will let on that the developer will pay out a low compensation to enable another group of people to buy up the premises released by the owners.

Meanwhile, given the hasty announcement of land resumption and purchase offer, and the proliferation of incorrect information, the interests of the residents are seriously compromised. At present, different institutions, such as the Land

Development Corporation, the Housing Society and the private developers, follow different procedures of acquisition and compensation, resulting in great confusion. Even insofar as the same institution is concerned, the Housing Society, for example, different sets of criteria exist in matters of acquisition and compensation for different kinds of buildings. For example, tenants of Four Seasons Estate and Bo Shek Estate managed by the Housing Society in Tsuen Wan have the opportunity during the clearance of moving to other housing estates under the Housing Society, or purchasing newly completed Housing Society flats at 70% of going prices. However, such arrangements do not exist for owners and tenants of private buildings which are marked for redevelopment in which the Housing Society also participates. Such inconsistency in terms of the procedure and method of acquisition has made it difficult for residents to adjust and resulted in strong resentment against the Housing Society. Insofar as acquisition by private developers is concerned, there is no rehousing policy to speak of; purchase of the property from owners and request for removal of tenants are matters to be settled entirely by private negotiation among the developer, the owners and the tenants involved. In the process of negotiation, the party who has the more information, usually the developer, will have the upper hand and it is not fair to the other parties. Problems of other sorts will arise to plague the affected residents, under these circumstances. It is for this reason that the Government should devise a system and a method which will protect the rights of the affected owners and tenants.

Mr Deputy President, given the various kinds of problems which arise from the redevelopment of old buildings, I would not only support the motion of Mr James TO, but also request that different forms of liaison groups be set up by the Government in districts or buildings marked for redevelopment, with membership drawn from the shop tenants, owners, tenants and developers involved in the redevelopment project, and also from district board members. Such liaison groups can meet regularly to discuss and communicate ideas on the redevelopment arrangements, in order to make sure that the rights and interests of individual owners and tenants are protected.

Mr Deputy President, Mr Ronald ARCULLI has earlier on frequently made the point that he does not understand the motion of Mr James TO. I believe his failure to understand is no different from the failure of the average developer to understand the plight of the lower classes. Mr ARCULLI represents the interests of developers; Mr James TO represents the interests of the lower classes living in Sham Shui Po. I believe it is a problem of communication and it reflects the fact that the problems are there. As a Councillor who comes from the grassroots, I fully understand the

spirit and principle of Mr TO's motion. I will therefore lend my full support to his motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, I am confused as much by Mr James TO's original motion as by Mr Ronald ARCULLI's amendment motion.

Mr TO's motion only mentions private developers. Hong Kong owes its present achievement to the hard work of its people, the objective conditions in China, the complementing commercial interests of various parts of the world, and not least, the principle of free enterprise and minimal intervention. We need only study the changes taking place in the property market and the securities market of Singapore to appreciate this valuable principle of free enterprise and minimal intervention. I believe that private developers of Hong Kong have the strength to realize their potential on their own. They enjoy no government subsidy; they do not have the privilege accorded to the Land Development Corporation; they have to pay tax; their decisions to purchase property are based entirely on business considerations; they have to abide by the laws and regulations of Hong Kong; also, no deal can be struck without the agreement of the owners and tenants concerned. There is no need for the Government to intervene in private transactions; indeed it does not have the power to do so, for any such move will affect the future development of the Hong Kong's property market. If property development is hindered, then Hong Kong will stagnate, and this is a point which I think Mr Ronald ARCULLI has failed to make clear.

I would like to take this opportunity to voice my objection to the Crown Lands Resumption Ordinance (Cap 124). It is based on the principle that the Government may resume private land for a public purpose in the interest of the public. The definition of "public purpose" mainly consists of the following.

(1) The property in question violates the principle of public health and as such is not suitable for habitation;

(2) The property in question hinders redevelopment in its vicinity;

(3) Resumption of the property in question is required for war purposes;

(4) The Governor in Council takes the view that the property in question need to be resumed for a public purpose.

I am extremely sceptical about the fourth condition which effectively provides the Governor in Council with absolute power to resume property on the pretext of using its land site for a public purpose. It is so absolute that it makes the first, second and third conditions superfluous. I think this is basically in contravention of the right to own private property, and human rights generally. If a government department feels that the first three conditions are not adequate, then it is quite free to make amendments so that its requirements are met. The fourth condition is most inconsistent with the spirit of democracy.

Mr Deputy President, the continued adherence to the fourth condition in Cap. 124 is indeed a great shame on us, under the present circumstances of Hong Kong. The recent case of land resumption in Tsuen Wan is basically an instance of flouting the law, and the government departments concerned should take responsibility for this. Mr James TO should aim his shot at the Government instead of at private developers.

I believe that the original and the amendment motions would pale into insignificance when compared with the Crown Lands Resumption Ordinance (Cap. 124).

Mr Deputy President, I so make my submission.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President and colleagues, since the announcement of the Metroplan, the Government has been making a show of its grand ambition and its determined effort to create a beautiful city. The Government already basically has a set of legislation to monitor the implementation of the Metroplan and its related development projects. And the Housing Authority, which is a non-government body, has also a set of guidelines to implement its estate redevelopment work. It is unfortunate, however, that there exist no comprehensive legal guidelines governing the redevelopment projects carried out by private developers; there is nothing to monitor its implementation and protect the interests of the affected residents. Given the continued upward spiral of property prices and the limited supply of urban land, private developers are very keenly engaged in redevelopment projects. Over the years, much of the civil strife and conflict has been linked to this issue. In this regard, I think that we need to urgently explore this issue now and our review should be oriented towards identifying ways and means to protect the interests of the residents affected.

The existing Landlord and Tenant (Consolidation) Ordinance provides that the developer should give compensation to tenants which amounts to twice the rateable rental value of 1983. Residents who are affected by the redevelopment of private tenement buildings are mostly very low income earners living from hand to mouth and belonging to the lowest stratum of society. Unable to afford high rent, they have no other alternatives but to live in very cramped and deplorable accommodation which offers the advantage of cheap rent. The reason why they continue to stay there is that it is easier to get work and they do not wish to leave a neighbourhood and social network with which they have closely integrated over the decades. The double rateable rental value at 1983 level amounts to very little compensation in real terms; it is completely out of step with the going market prices and hardly enough to enable the tenants to solve their housing problem, given the rapidly soaring property and rental prices in recent years.

Many affected residents have been forced to move on to accommodation which offers even worse conditions than before; some have even become homeless street sleepers. Although the Housing Department will arrange for homeless people to live in temporary housing areas (THAs) in the New Territories, these residents rarely accept such offer given the fact that the THAs are remotely located and too far away from their social network.

Some of the residents may of course qualify for public housing on compassionate grounds, but the eligibility criteria are rather harsh for only the extremely old and frail are considered eligible. New immigrants who have been in Hong Kong for less than seven years are excluded from the waiting list for public housing altogether.

There is yet another category of affected residents who still have certain working ability to earn a modest income but they are not entitled to public assistance. In fact, they are unable to solve their housing problems either with their modest incomes, following the redevelopment of their old residential building. They too will fall victims to redevelopment and have to cut corners to tide over their economic difficulty.

Given the lack of a comprehensive policy at this point in time, and the absence of a government department which is responsible for the co-ordination of the various services, affected residents are unable to seek help from the right government departments immediately. The abundant grey areas which exist among departments mean

that residents have to go from one department to the next without actually getting anywhere.

Bearing in mind the low prescribed compensation, tenants are understandably reluctant to move out. With no institution serving as an arbitrator and co-ordinator, developers eager to take possession would resort to illegal tactics to acquire property. They include the cutting off of water and electricity supply; intimidation is also employed to in some cases, including arson and the release of snakes into the flats, among other evil deeds. The residents see their rights violated and they are unable to negotiate with the developers on an equal footing.

In the face of their housing problem and the scare tactics used to make them give way, the residents are expected to turn to petitioning, bringing their plight to the concerned authorities' attention, and holding mass rallies, all of which will undermine our social stability and development.

The above situation will prolong the whole process of redevelopment, to the detriment of any speedy improvement of the over-crowded and deplorable living conditions in the urban areas. Meanwhile, it will unsettle the law-abiding owners and developers, making it difficult for them to keep to original budget and impossible for them to obtain anticipated return.

Given that private developers will be the main beneficiary of the redevelopment projects, and urban renewal itself contributes to the overall social development, it is up to the Government to urge the private developers to assume the responsibility of properly rehousing the affected tenants in order to prevent them from being rendered homeless and suffering a decline in living standard as victims of redevelopment.

The Government may consider drawing up legislation to require in the redevelopment project that developers must lay down in advance and seriously implement measures to rehouse tenants, such as by offering them concessionary rates in the purchase of new flats or favourable leasing terms to those who opt to rent. Such requirement can be made compulsory such that failure to comply with it may result in permission not being granted for redevelopment or a penalty being imposed.

The Government may also consider the introduction of a tax or the setting up of a fund so that the private developers will be made to pay for the cost of rehousing

the affected residents and managing their housing estates, without the need to use public funds.

The existing Landlord and Tenant (Consolidation) Ordinance only provides that the developer has to pay the tenants a compensation amounting to twice the rateable value of 1983. Meanwhile, the Court will, in deciding whether the owner may take possession of the building for redevelopment, only have to take into consideration whether the redevelopment will bring benefits to the community as a whole; it is more biased toward the protection of owners. Meanwhile, there is no one government department which takes charge of the co-ordination and reconciliation of the problems arising from redevelopment. There is therefore an urgent need at this point in time to set up a special working group to review and formulate a policy regarding the redevelopment of private tenement buildings. I propose that membership of the group should be drawn from all walks of life who are affected by redevelopment. Its terms of reference should consist of the following.

(a) Conducting a comprehensive review of the existing policy in respect of the redevelopment of private tenement buildings;

(b) Assessing the role which should be played by the Government in the redevelopment of private tenement buildings, for example, as a middle man to protect the interests of the victimized party;

(c) Determining the responsibilities of private developers in terms of rehousing tenants; studying the feasibility of introducing corresponding legislation and setting up a fund;

(d) Delineating the roles played by the various departments in respect of handling complaints and arbitration involving redevelopment, and formulating implementation details;

(e) Studying whether there is a need for the setting up of a co-ordinating authority to take charge of the redevelopment work and if so, what its terms of reference should be.

I insist that the prime objectives of the policy in question should be such that the interests of tenants should not be compromised as a result of redevelopment, that tenants should not be deprived of their housing right, and that they should not be

victimized for the sake of social development. It is on this basis that I support the original motion of Mr James TO.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, because of the time constraint, I would only make two points. Firstly, I hope that the authorities concerned will address the issue of tenants being forced to move out by undesirable elements. Cases of intimidation which have come to light from time to time include the cutting off of electricity supply, vandalism on the grille gates; the blocking of keyholes by strong glue and so on. It would create some sort of deterrent effect on these law-breakers if the police, upon receiving reports, would take immediate and effective action to deal with them. It is unfortunate, however, that the police more often than not show no interest in these reported cases. On 27 May, I asked the Secretary for Security how many cases of intimidated eviction from private tenement buildings were received over the past year; the reply I received at the time was that the Government did not know because no special category was created for this sort of crime. The question is whether no such crimes exist just because they have not been put in a special category. Such crimes exist, of course; the Government has only come up with an excuse for playing dumb, for shirking responsibility, and for not protecting its citizens. It is for this reason that the most urgent task at this point in time is the setting up of a channel of complaint so that each case can be dealt with seriously.

Secondly, I would like to talk about the issue of compensation. Upon being forced out of their accommodation as a result of redevelopment, the tenants have very often to pay the high market rent. They will face immediate economic hardship since old tenement building residents are mostly low income earners.

The United Democrats believe that while it is important to encourage the private developers to engage in urban renewal projects it is equally important that the housing right of the tenants should be protected. In this regard, the tenants should be entitled to a more reasonable compensation which, we believe, should be such as to enable them to pay for alternative accommodation of comparable size and quality in the same district for at least a year, that is, twice the current rateable rental value.

Mr Deputy President, some Members have spoken against their own conscience on the issue of democracy in our earlier debate tonight with the result that the amendment

motion has been carried which runs counter to public aspirations. I hope we are able to carry another motion tonight, which can really live up to public aspirations. It is unfortunate that Mr Ronald ARCULLI's amendment motion does not fall into this category. I cannot see any trace of care and sympathy for the poor in his speech, or indeed in the speeches of his supporters. Under these circumstances, I can only lend my support to Mr James TO's motion.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, it is a well-known fact that land is a scarce resource in Hong Kong. Presently, of the 35 000 newly completed flats coming on to the property market each year, 50% of them have been built on redeveloped land. We can anticipate that, as the Metroplan gets underway and as urban renewal by the Land Development Corporation gets into full gear, there will be more and more old tenement buildings marked for redevelopment.

I agree in principle with the spirit of the original motion. But the scope of review mentioned has already been covered by the relevant legislation. For example, the Landlord and Tenant (Consolidation) Ordinance already lays down the procedure for recovery of possession of property and the quantum of compensation; the Town Planning Ordinance lays down land use and community facilities to be provided. In this regard, it is indeed debatable whether there is still a need to set up an ad hoc group to examine the relevant policy.

Bearing in mind the old Chinese saying that distant water is no good for putting out a fire which is raging close by, my Co-operative Resources Centre (CRC) colleagues and I would think that, insofar as the tenants faced with the problems of redevelopment are concerned, amendment of the existing legislation would be a far more direct and helpful way to pursue than the setting up of an ad hoc group to slowly review the issue.

To the residents affected by redevelopment, compensation and rehousing are the most immediate problems confronting them and these can indeed be resolved or mitigated through amending the Landlord and Tenant (Consolidation) Ordinance and the existing policy governing rehousing.

Minimum compensation

The amount of compensation payable regarding the redevelopment of old tenement

buildings is already laid down in the Landlord and Tenant (Consolidation) Ordinance. According to data provided by the Rating and Valuation Department, since 1984, in 90% of the cases involving demolition, the actual amount of compensation paid out by the private developers to tenants has been several times higher than that required by law. Indeed, the Government is in the process of reviewing whether or not to increase the compensation to 1.3 times of the current rateable value.

However, my CRC colleagues and I fully understand that some of the residents of the old tenement buildings are low income earners. In the case of a building with a high living density, particularly when we talk about the tenants living in cramped, caged bedspaces, if the present law governing compensation is followed to the letter, or even if compensation is calculated according to the new government proposal, what these tenants will manage to get in the way of compensation at the end of the day would be still very small and it would not suffice to tide them over after all. In this regard, we would suggest that the Government set a minimum compensation rate so that the needy will receive better protection.

Increased rehousing commitment

On the issue of rehousing, I think that the Government should increase its commitment as far as it is within its ability to do so. The reason is that if the affected residents are not appropriately rehoused, it will give rise to other social problems, such as the problem of street sleepers. Such social responsibility should not be shouldered by private developers and, indeed, the small developers simply do not have the means to assume such social responsibility.

Conversely, if we force developers to assume this rehousing responsibility, it will add to the cost of redevelopment and reduce the chance of redevelopment altogether. It may actually turn out that no one will show any enthusiasm for redevelopment except the big corporations, and there will be no way of improving the poor environment in the old districts. The monopoly of the property market by the big players will result in the escalation of prices. This is not only against the principle of a free market, but the man in the street will be victimized as a result.

In any case, when I say that the Government should increase its rehousing commitment, I am not hoping that the Government will rehouse each and every affected person as part of an open-ended commitment. I am actually hoping that the Government will, on the basis of its present rehousing policy, relax the eligibility criteria.

The Social Welfare Department has at present a compassionate rehousing scheme which is mainly geared towards providing care for the old and frail, the disabled and the economically disadvantaged, such that they will be able to solve their immediate and long-term housing needs. The Government can review this policy with a view to relaxing the criteria governing age, income and health condition of applicants, such that some of the residents affected by redevelopment projects will be included.

I believe that this may be a way of enabling people, who have economic difficulties but who otherwise will not qualify for proper rehousing, to be rehoused. It is also an effective way of preventing the economically better off from enjoying more than their fair share of social resources, jumping the queue for public housing, as it were. Otherwise, it will be too unfair to people who have to bear the high rent and wait an unduly long time for their turn for public housing allocation.

Mr Deputy President, I so make my submission.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, because of the time constraint, I will not read out my prepared speech . I would like only to supplement two points for which the United Democrats stand. We feel that the plight of tenants faced with the redevelopment of their tenement buildings is an issue which is very worthy of our concern. Under the present policy, because we do not have a government department to co-ordinate the rehousing of residents affected by redevelopment, I would hope that every one of us will lend support to the request contained in the motion, particularly insofar as it relates to the elderly, single persons, and people who do not qualify for public housing, and new immigrant families too, for they form the lowest stratum of our sandwich classes and should merit particular concern on that ground.

Besides, on the question of caged bedspace apartments, the old tenement buildings which are involved in redevelopment projects are usually those which have many sub-let units, and therefore a high living density. I hope that the Government will include the "caged dwellers" in its rehousing programme and I hope that it will be able to keep its word. According to the data provided by the City and New Territories Administration, there are over 180 apartments which provide caged bedspaces. Admittedly, the Government also agrees that the living density is indeed high in these places. It is unfortunate, however, that the reduction of 4 000 "caged dwellers" to 2 000 is still an all too slow exercise.

Lastly, I would like to add that the "caged dwellers" are faced with a serious housing problem in the process of private redevelopment; it is the Government's responsibility to assist them in improving their living conditions as a matter of priority. The Government should include the "caged dwellers" in the category for compassionate rehousing to enable more of them to enjoy the benefit of public housing on compassionate grounds, and to alleviate their difficult plight and their various living and housing problems.

With these remarks, I support the motion of Mr James TO.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, because of the time constraint, I will not read out my prepared speech; I would like only to request that the Government address the issue of rehousing.

Many Members have just now made special mention of low income households and the households consisting of old people. According to existing rehousing measures, most of the applicants are actually after compassionate rehousing and they usually end up being allocated to temporary housing in the remote areas of New Territories. Despite the rapid development of new towns, the provision of job opportunities is not adequate. Many residents who have moved to the New Territories have to make the long journey back to the urban areas to go to work; they have to bear the daily journey time of not less than three hours, let alone the cost of travelling which comes to several hundred dollars per month. That is a very heavy burden to the low income families. Even if they can afford the market rent for urban residential premises, reluctant as they are to move to the New Territories, they would have to settle for old flats which offer even less attractive conditions than their present dwelling places. Another problem which may arise from this scenario is that, when these residents who refuse to move to temporary housing are unable to afford the urban rent, then they would only end up becoming street sleepers.

Indeed, as the Metroplan gets underway, as urban renewal picks up speed, it will have far-reaching impact on residents of the old districts. In this regard, for the sake of providing opportunities to enable citizens to meet their housing needs in accordance with their economic means and personal choice, Meeting Point have two suggestions as follows.

(1) Meeting Point consider that the urban renewal part of the Metroplan should strengthen the participation of all those involved. In the overall town planning process, the Government should introduce the element of social planning to assess the impact of redevelopment on the living environment of the original residents.

(2) The Government should set up a working group to review existing policy loopholes and formulate a policy which will rehouse the affected residents, particularly low-income single persons, households and elderly people.

As a matter of fact, the Government takes the view too that in the process of redevelopment the private developer is responsible for finding alternative accommodation for the affected residents. In this regard, the Government should amend the relevant legislation governing redevelopment to affirm the principle that developers should make commitment to rehouse those affected.

Mr Deputy President, with these remarks, and also on behalf of Mr Fred LI and Mr TIK Chi-yuen, I support Mr James TO's motion.

MR JAMES TO (in Cantonese): Because of the time constraint, I will be very brief. I like to thank members for speaking to my motion, whether they support it or not, because the views expressed have served the purpose of deepening the discussion.

However, I would also like Members to look at my motion carefully. It does not say that there is no policy at this point in time; it urges that the present policy be reviewed to protect the interests of residents. That is why the last clause in my motion carries the most weight. Meanwhile, Mr Ronald ARCULLI's motion has made no mention of any criteria which are applicable to the protection of residents' interests.

A special working group which I proposed has the advantage of being interdepartmental, involving the police, the Housing Authority and so on. I think it is very important for their powers to be clearly defined and a priorities list to be worked out.

Apart from touching on rehousing and compensation, my motion also takes care of the procedure of redevelopment, including the issue of triad infiltration, which many Members have expressed concern just now, for the sake of protecting the rights and

interests of residents.

I wish to thank members for their speeches. I hope they can support my motion.

DEPUTY PRESIDENT: Secretary for Planning, Environment and Lands, I fear the midnight deadline is something that I cannot waive under Standing Orders. Do you wish to speak now or at the resumed hearing?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, thank you. Although I am SPEL, I am not able to produce a magic wand to change the timing. If it is possible to complete the debate this evening, I am prepared to forgo my opportunity to speak; if it is not possible then I would like to have the opportunity to speak at a resumed session.

DEPUTY PRESIDENT: I think it is really a question for you, Secretary, whether you feel you would wish to speak. If you did, then I think we would have to adjourn this as unfinished business to the next sitting which will be next Wednesday. We have just about enough time to take a vote but I would not wish to deprive you of the chance to speak if you wish to. You must not feel under any compulsion.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I think, Mr Deputy President, if the vote can be taken I am prepard to forgo my opportunity to speak.

MR STEPHEN CHEONG: Mr Deputy President, may I put in a request. It may be out of order and you can so rule against me. I for one would very much like to hear the view of the Administration before I decide how to vote one way or the other.

DR YEUNG SUM (in Cantonese): We may vote now. Mr EASON said just now that given the opportunity, he may talk about the Administration's views again.

MR STEPHEN CHEONG: Just a point of clarification, Mr Deputy President. If a voice

vote is taken and you have called either the Ayes or Noes, will there be time to proceed to a division if it is so claimed by a Member?

Adjournment and next sitting

DEPUTY PRESIDENT: I think the matter has now been taken out of my hands as it is now midnight. I am going to adjourn this irrespective to our next business sitting which will be Wednesday of next week following the special sitting that will be on the Order Paper for the Governor to make his appearance and to say his farewell. I fear, Mr David LI, I shall have to adjourn your Private Member's Bill likewise as unfinished business as technically I have no power to extend the sitting beyond the present sitting day. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 1 July 1992.

Adjourned accordingly at Twelve midnight.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Parent and Child Bill, Employees Retraining Bill, Government Flying Service Bill and Hong Kong Academy of Medicine Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.