

1 HONG KONG LEGISLATIVE COUNCIL -- 1 July 1992

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OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 1 July 1992

The Council met at half past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

LORD WILSON OF TILLYORN, G.C.M.G.

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

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THE ATTORNEY GENERAL

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

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

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THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

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

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL

MR LAW KAM-SANG

Valedictory

HIS EXCELLENCY THE PRESIDENT: Good afternoon. It is nice to be here with you once again.

Mr Deputy President, Honourable Members, the day after tomorrow I leave Hong Kong after five years as Governor and as President of this Council. I should not like to go without formally taking leave of the Members of this Council.

These have been five eventful years. We have had crises to face and problems to solve. But we have come through the crises well. And we have achievements as well as problems to record. Achievements which have seen the people of Hong Kong better provided for with health care and social benefits; with better educational opportunities in an expanded programme of education; and living in an environment which is beginning, although only beginning, to be more cared for. We have a community which is more confident in itself and in its future; and we have an economy (much helped by the development of Southern China), which is the envy of many places in the world and the essential foundation of all our other achievements.

One of the marked changes in these past five years has been in the composition of this Council itself. Of the Council's 60 Members with, very sadly, one vacant seat, only 16 (one of whom is the Chief Secretary) were Members when I first presided over a meeting of the Council on 6 May 1987. Then it was less than two years since the first elected Members had taken their seats. Now, a majority of the Members of the Council are elected by one form or another.

There have been changes too in the way the Council carries out its business. It might perhaps interest you to recall that in the 1986-87 Session, the first of those over which I presided, the total number of questions asked of the Administration was precisely 153. So far during this Session, including later today, the number is 440. And even more striking, in the 1986-87 Session there were three motion debates. So far this Session the number is 33.

But one thing has not changed. This Council, and all its Members, exist to serve

the interests of the people of Hong Kong. That is true of the elected Members, however elected. It is true of the appointed Members. It is true of the Administration, whether members attending or being Members of this Council. And it is true, no less, of the Governor as the Council's President.

That determination to serve the whole community of Hong Kong should remain at the forefront of our minds. There will be discussion and argument. It is right that there should be. There will be much explanation and answering of questions to be done by the Administration. It is right that they should. But argument and discussion; questioning and explanation should not take place for their own sakes. They are a means of getting to the objective -- the objective of doing what is right and what is best for the people of Hong Kong. I am sure that, as this Council moves forward to reorganize the way it conducts its own business, you will always wish to have this objective clearly in mind. We must not let discussions become the enemy of decisions.

I should like to pay a special tribute to the work of Mr John SWAINE who has fulfilled the role of Deputy President since October last year. He has presided over the work of this Council with fairness, dignity and with patience. His role as a stepping stone in the historical evolution of the work of the Council should never be forgotten.

I should like also to thank all of you, the Members of this Council, for the work you all do on behalf of the community. You work long hours; you have to master complex subjects and pieces of legislation; and you have to keep constantly in mind the interests and the needs of the community. Yours is an important role, now and for the future. In carrying it out you have my very best wishes. Although not here to see it, I shall read and learn with intense, and supportive interest about what you do.

So very best wishes to you all.

Thank you.

DEPUTY PRESIDENT: Mr President, I am honoured to make this valedictory speech on the occasion of your retirement as Governor of Hong Kong and President of the Legislative Council.

Today's Council is a very differently constituted body from that in 1987 when you first assumed office, with a preponderance then of official and appointed Members, and with no directly elected Members. There was of course no Deputy President.

But I think it is true to say that the spirit which motivates this Council is the same now as it was then. Every Member of this Council, irrespective of personal or political persuasion, is dedicated to making the system work, for the good of Hong Kong and its people.

The past five years have been critical ones for Hong Kong and the burdens of your office must have been crushing at times.

You have had to be Hong Kong's champion, sometimes against London, always within the confines of the Joint Declaration, recognizing China's legitimate expectations under that treaty. The job has required skill, infinite patience, and the ability to know where to draw the line against others in defence of Hong Kong's interests.

You were truly Hong Kong's champion when you pleaded its cause in England in June 1989 for British passports; you had to say things in Hong Kong's interests that Britain did not always want to hear and ask for something it had always before refused to give.

But I think it was the agreement with China on the new airport which truly tested your skills and must have come close to exhausting your reservoir of patience. You knew where the line should be drawn, you drew it, and the line held.

The new airport together with its associated works, which will have such an immense impact on Hong Kong, will be a lasting tribute to your governorship.

We offer you and Lady WILSON our best wishes for the years ahead. I will not say in your retirement, because I know you will not really have retired. I am sure you will be active in promoting Hong Kong's interests and that in the House of Lords in particular you will continue to champion Hong Kong's cause.

Borrowing from the words of our yearly motion, Sir, thank you.

HIS EXCELLENCY THE PRESIDENT: Thank you very much.

HIS EXCELLENCY THE PRESIDENT: And now in accordance with Standing Orders I adjourn this Council. Thank you.

Council gave His Excellency the President a standing ovation.

Adjourned accordingly at nineteen minutes to Three o'clock.

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 1 July 1992

The Council met at sixteen minutes past Three o'clock

PRESENT

THE DEPUTY PRESIDENT

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

THE CHIEF SECRETARY

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DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

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

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

IN ATTENDANCE

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

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Member's motion

REDEVELOPMENT OF PRIVATE BUILDINGS

DEPUTY PRESIDENT: We will now resume the sitting suspended on 24 June and continue with the debate on Mr Ronald ARCULLI's amendment to Mr James TO's motion on redevelopment of private buildings.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, a conservative estimate puts the number of buildings redeveloped by private developers over the past 20 years or so at about 15 000. While it is difficult to be precise about the future, we can expect urban regeneration in response to market forces to continue at much the same pace. As I have said elsewhere on several occasions, the existence of Metroplan in itself will not produce redevelopment; it will however provide the framework within which redevelopment will take place. Metroplan is therefore less a threat of disruptive change in the short term than a promise of a better living

environment in the longer-term future.

Redevelopment has two sides to it. On the one hand, it is the means by which the housing and living environment of many thousands of Hong Kong residents is continuously upgraded. On the other hand, it can be disruptive, and sometimes uncomfortably and worryingly so for some people. What we need to do, therefore, as is often the case in Hong Kong where fortunately private enterprise still takes the lead in many situations, is to ensure that it is given the free-rein possible to go on with the urban upgrading process; while, at the same time, having adequate monitoring and adjustment processes in place to help minimize the adverse effects on those who are for various reasons not immediately able to derive the full benefits which redevelopment can normally be expected to bring people.

Although particular cases of difficulty come to public attention from time to time, usually because of the failure of parties involved to agree over compensation or timing of removal, by and large the arrangements work well, and adequate monitoring and adjustment processes are in place to deal with imperfections as they emerge. Comprehensive control over private redevelopment would not therefore appear to be necessary. Indeed, if its introduction were to have the effect of discouraging building owners and would-be developers from undertaking redevelopment which is quite possible, then it would achieve quite the opposite of what is intended. Rather than better controlled development, there would be less; and more people than at present would find themselves living in aging buildings slowly spiralling downwards into slum conditions. This is not, I am sure, what the advocates of greater control wish to see.

The planning and implementation of private development projects is largely a matter for the parties involved, that is, the owners of buildings and developers. The Government does not intervene in the negotiations which take place between them. This is not to say that there is no control at all over such projects however. Property development is subject to lease restrictions as well as planning and building control. It must be in compliance with the lease conditions, which may or may not be capable of modification, depending on the particular circumstances. Planning permission may also need to be sought if the proposed development is not in compliance with the statutory town plan. And before building works may commence, the approval of the Building Authority must be obtained.

In describing the position of tenants, some Members appear to have underestimated

the extent to which the provisions of the Landlord and Tenant (Consolidation) Ordinance regulate the repossession of buildings by landlords for redevelopment; and to overlook the fact that amendments to the Ordinance are currently being considered by this Council.

Part I of the Ordinance provides security of tenure for the tenants of pre-war premises. A landlord must apply to the Lands Tribunal if he wishes to redevelop his building. His tenants may apply to the Tribunal for a hearing and submit written representations. If the Tribunal agrees to the landlord's application, it will normally impose conditions regarding the proposed redevelopment and requiring the payment of compensation to tenants.

Similarly, for post-war premises, a landlord wishing to redevelop has to obtain an order for possession from the Lands Tribunal. The Tribunal will not grant the order unless it is satisfied, for example, that the redevelopment will result in an increase in the number of dwellings over what exists or that the redevelopment is in the public interest. In granting an order, the Tribunal may impose conditions; and, in particular, it can order that compensation be paid to tenants.

As far as possible, landlords and tenants are encouraged to reach agreement on the amount of compensation payable. Where there is no agreement, a decision may be sought from the Lands Tribunal. For pre-war premises, the level of compensation determined by the Lands Tribunal takes into account such factors as the size of the accommodation and the controlled rent level. Generally, the system works smoothly and there are few disputes between landlords and tenants.

Tenants of post-war domestic premises affected by redevelopment are currently entitled to statutory compensation at the rate of twice the 1983 rateable value of the property and for removal expenses and loss of fittings. This affords tenants financial assistance to see them through relocation and provides a basis to enable the parties concerned to reach a settlement. It is always open to the landlord to pay a higher sum to make the process quicker. Since the current provisions were introduced in 1984, about 90% of the orders for redevelopment of post-war premises have been granted with the level of compensation being mutually agreed between the landlords and tenants.

As I have mentioned the Administration has already accepted that the existing provisions in respect of post-war premises are outdated. The Landlord and Tenant (Consolidation) (Amendment) Bill 1992, currently being considered, includes a

proposal to amend the statutory basis for compensation to a multiple of 1.3 of current rateable value. This would roughly double the level of compensation payable and bring it into line with what is being paid by owners where consent is obtained without recourse to the Lands Tribunal. For a flat of 600 sq ft the amount payable would be about \$65,000, which should allow the recipient to rent similar accommodation for about six months. The Bill also provides for the adjustment of the method of calculating the compensation by resolution of this Council.

Concerns about tenants' compensation are therefore being positively addressed and it is against this background that the thinking on the related matter of public housing assistance should be done. The Administration believes that priority in the allocation for public housing units should be given to those directly affected by public redevelopment and clearance programmes and those awaiting their turn on the general waiting list. Someone affected by private redevelopment should not be assumed to automatically qualify for public housing assistance.

At present, the Housing Authority offers people who become genuinely homeless, because of a natural calamity or redevelopment, transit centre accommodation, initially in Tuen Mun, pending investigation. Subject to vetting, which normally takes about two or three weeks, the homeless are offered temporary housing area space in the New Territories. Those who are already on the general waiting list for public rental housing can advance by six months in the waiting queue for their preferred district. As is well known, the waiting time for different districts varies. For example, in Tuen Mun, permanent accommodation may be offered in about six months. The time required for this processing fits reasonably well with the lead time for repossession. In addition, those eligible for compassionate rehousing will be offered permanent rehousing almost immediately.

Although the Housing Authority has decided to increase flat production for small households, the availability of such accommodation in the urban area will continue to be limited. It would not be equitable to meet demand for local rehousing arising from private redevelopment at the expense of those already in the queue.

The Administration recognizes the importance of accurate information on their rights and obligations being readily available to tenants affected by redevelopment, as well as to those whom they might ask to represent their interests, such as Members of this Council, district boards, agencies and so on. To this end, the provision of better advice and assistance is being considered. For instance, the Housing

Department is considering setting up a one-stop office on each side of the harbour where tenants could seek advice on the procedures for claiming statutory compensation, their eligibility for public housing and so on. Other possible improvements to co-ordination within the Administration could ensure that departments such as the Housing Department and Social Welfare Department are alerted to redevelopment proposals at an early stage.

Because of the terms of the original motion, I have concentrated on the situation as regards private sector redevelopment projects. In the light of the proposed amendment, I should like to add that a comprehensive review of the urban renewal process involving the Land Development Corporation has already begun and is due to be completed by the end of this year.

Mr Deputy President, the Administration is keenly aware of the need to strike a balance between making sure urban regeneration and upgrading through private sector initiatives is not inhibited by bureaucratic controls and adequately safeguarding the interests of those who may be adversely affected by such projects. The existing arrangements provide a sound basis on which to maintain this balance and to consider refinements as and when they become necessary. Views put forward by Members in this debate will be carefully studied and taken into account in the review process. Thank you.

Question on Mr Ronald ARCULLI's amendment put.

Voice vote taken

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? I will check with Members before the results are displayed.

DEPUTY PRESIDENT: Do Members have any queries before the results are displayed? If not, the results will now be displayed.

Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mrs Rita FAN, Mr David LI, Mr NGAI Shiu-kit, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr Howard YOUNG voted for the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, 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 Samuel WONG, Dr YEUNG Sum and Mr WONG Wai-yin voted against the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr TAM Yiu-chung, Prof Edward CHEN and Mr CHIM Pui-chung abstained.

THE DEPUTY PRESIDENT announced that there were 24 votes for the amendment and 25 votes against it. He therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): Mr Deputy President, first of all, I would like to thank all colleagues. The motion debate last time went on until midnight. Today, after listening to the response from the Secretary for Planning, Environment and Lands, Members may still deliberate on the arguments advanced before deciding whether to support or oppose the motion.

Firstly, I would like to respond to a point made by the Secretary for Planning, Environment and Lands to the effect that redevelopment as a whole should be good for Hong Kong, the reason being that it would lead to a better environment and a better housing situation. I believe that all Councillors seated here will agree with this point. But our problem now is with the second point mentioned by the Secretary for Planning, Environment and Lands, which is the trouble and inconvenience caused to the dwellers. The Secretary for Planning, Environment and Lands said that, if additional systems were to be introduced, developers would have no inducement to

undertake development or redevelopment, and the result would be more people living in very bad housing in a poor environment. Let us think. Will the people now living in a very poor environment really be able to move back to their former district, supposing that the redevelopment project is a success? In fact, no. They will only be moving to a neighbouring block where the environment is even worse. The reason is that, as demolition goes on, not many choices will be left. They are members of low income groups. They will only be moving to a smaller flat in a neighbouring block, where the environment is worse. They may be living now in rooms with wooden partition walls. In the neighbouring block, they will probably be living in "caged accommodation". Thus, they will not be partaking of the fruit of redevelopment.

Another point made by the Secretary for Planning, Environment and Lands is that 90% of the people affected by redevelopment have filed claims with the court in accordance with the statutory procedure and have been paid certain amounts upon settlement. The Government suggests that the amount of compensation should be revised on the basis of a figure that is generally agreed upon. I have one point to make in response, which is that a Legislative Council group is now studying this matter. The base figure was set in 1983 and it has never been revised. This in itself already constitutes an injustice that has persisted for a long time. Where the base figure (the bottom line) for the computation of compensation is unjust and has been too low for too long, any outcome of bargaining surely cannot reflect the present reality. Let me give an example. I believe that, if the figure had been reviewed once every three or five years, what the Government would be proposing now would not be seven times the 1983 figure which is equivalent to 1.3 times the 1991 figure, but a higher figure. Therefore, I feel that the argument that the citizens or dwellers are willing to accept this rate of compensation is open to question.

Furthermore, the Secretary for Planning, Environment and Lands said that, upon the demolition of the buildings where they lived, people would not be allowed to move into public housing immediately even if they were eligible for public housing. His explanation was that immediate allocation of public housing would be at the expense of others already waiting in line for public housing. My answer to this is that those waiting in line for public housing probably still have homes in buildings that have not yet been demolished. Perhaps, when those buildings are demolished, this triggering event will enable them, too, to move into public housing immediately. I feel that this is not too much to ask for. Nor is it a very grave queue-jumping problem. Redevelopment is neither a dweller's wish nor his choice. He is reactive. He wishes to continue living in his original home. But the building is going to be demolished.

This triggering event provides a justification for his being allowed to move immediately into public housing. Of course, if this is not to affect the chances of those already waiting in line, or if the intention is not to have any queue-jumper, then the long-term solution is to build more public housing.

I would like to make it known to the Housing Authority through the Secretary for Planning, Environment and Lands that some citizens used to think that they would be able to live in old buildings all their lives by paying a little rent money. Their motive was probably good -- they probably did not wish to take up public housing resources. That might be why they had not queued up, eligible for public housing though they were. The redevelopment of urban areas was a rude awakening to them. They queued up belatedly when their homes were about to be demolished. So they were given numbers which meant close to the rear end of the queue. Had they queued up 10 years ago, they probably would have moved into public housing already. They had not queued up sooner because they had a perfectly honourable motive -- they were thinking of others. It is precisely because of this failure to queue up that they are now suffering the effect of being without a home.

Finally, I hope that the Government will set up an ad hoc group to extensively consult the public. Concurrent with its effort to reasonably increase developers' efficiency and speed in redevelopment, the Government should also safeguard the interests of dwellers, particularly those in the low income groups. It is a fact that they have been made homeless by the present redevelopment. I also hope that, as the result of the ad hoc group's findings, the relevant policies will be improved and the relevant laws revised so that the social time-bomb that we now have will not go off.

Thank you.

Question on Mr James TO's motion put and agreed to.

Private Bill

First Reading of Bill

MIDDLE EAST FINANCE INTERNATIONAL LIMITED (TRANSFER OF UNDERTAKING) BILL

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

Second Reading of Bill

MIDDLE EAST FINANCE INTERNATIONAL LIMITED (TRANSFER OF UNDERTAKING) BILL

MR DAVID LI moved the Second Reading of: "A Bill to provide for the vesting in Emirates Bank International Limited of the undertaking of Middle East Finance International Limited and for other related purposes."

MR DAVID LI: Mr Deputy President, I move the Second Reading of the Middle East Finance International Limited (Transfer of Undertaking) Bill.

This Bill is technical in nature and uncontroversial and follows the patterns of a number of other banking institution merger Bills introduced by me in recent years. I am pleased to report that the Bill has been circulated to the Commissioner of Banking and the Foreign and Commonwealth Office for their comments. They have approved the Bill.

A private Bill such as this is the most expeditious method of providing for the transfer of business of the Middle East Finance International Limited to Emirates Bank International Limited whilst assuring certainty to the customers and business associates of both institutions. This transfer comes about as a result of the acquisition by Emirates Bank in November 1991 of 86.5% of the shares of Middle East Bank and in December 1991 of 35.5% of the shares of Middle East Finance International Limited.

Members may be assured that no stamp duty will be saved by this Bill. Both institutions are anxious to ensure that the stamp duty position shall be precisely the same as if no legislation had been enacted. There is no intention to avoid stamp duty by means of this Bill.

Mr Deputy President, I believe this Bill to be uncontroversial and in the interests of the institutions and their customers alike. I therefore move that the

debate on the motion be adjourned.

Question on the adjournment proposed, put and agreed to.

3.40 pm

DEPUTY PRESIDENT: That concludes the business of the sitting on 24 June.

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 1 July 1992

The Council met at Twenty minutes to Four o'clock

PRESENT

THE DEPUTY PRESIDENT

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

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, C.B.E., J.P.

THE ATTORNEY GENERAL

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

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

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

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

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, C.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 PEGGY LAM, M.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 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

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

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

IN ATTENDANCE

THE HONOURABLE EDWARD BARRIE WIGGHAM, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

MRS ANSON CHAN, C.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

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

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

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

MR MICHAEL SUEN MING-YEUNG, J.P.
SECRETARY FOR HOME AFFAIRS

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 CHAU TAK-HAY, J.P.
SECRETARY FOR TRADE AND INDUSTRY

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

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

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation L.N. No.

Immigration (Amendment) Regulation 1992.....	193/92
Legal Aid (Amendment) Regulation 1992.....	194/92
Legal Aid (Assessment of Resources and Contributions) (Amendment) Regulation 1992.....	195/92
Legal Aid (Scale of Fees) (Amendment) Regulation 1992.....	196/92
Legal Aid (Amendment) Ordinance 1991 (27 of 1991) (Commencement) Notice 1992.....	197/92
Telecommunication (Hong Kong Telephone Company) (Exemption From Licensing) (Fees) (Amendment) Order 1992.....	204/92

Chinese Permanent Cemeteries (Amendment)

(No. 2) Rules

1992..... 205/92

Antiquities and Monuments (Declaration of

Historical Building) (No. 2) Notice 1992.....

206/92

Sessional Papers 1991-92

No. 82 -- Report of changes to the approved estimates of
expenditure approved during the final quarter
of 1991-92

Public Finance Ordinance : Section 8

No. 83 -- Statement of Accounts and Report on
the Administration of the Travel Agents' Reserve
Fund for the year ended 31 March 1991

No. 84 -- Construction Industry Training Authority
Annual Report 1991

No. 85 -- Clothing Industry Training Authority
Annual Report 1991

DEPUTY PRESIDENT: We now proceed to the business of today's sitting and we will start with an address.

Address

Report of changes to the approved estimates of expenditure approved during the final quarter of 1991-92

Public Finance Ordinance : Section 8

SECRETARY FOR THE TREASURY: Mr Deputy President, in accordance with section 8(8)(b) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved Estimates of Expenditure for the final quarter of

the financial year 1991-92.

Supplementary provision of \$4,619.7 million was approved. This included \$3,022.3 million for the implementation of the 1991 pay adjustment and \$589.6 million for a transfer of provision from the Hospital Services Department to the Hospital Authority. The supplementary provision was fully offset, either by savings under the same or other Heads of Expenditure, or by the deletion of funds under the Additional Commitments subheads.

During the period, non-recurrent commitments were increased by \$13.2 million, new non-recurrent commitments of \$329.4 million were approved, and approved non-recurrent commitments of \$13.3 million were revoked.

In the same period, a net decrease of 3 193 posts was approved. This was mainly attributable to the deletion of posts as a result of civil servants having opted for service with the Hospital Authority.

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

Oral answers to questions

Bedspace apartment lodgers

1. MR FREDERICK FUNG asked (in Cantonese): Will the Government inform this Council of the position in providing alternative accommodation for lodgers of bedspace apartments:

(a) the progress in the rehousing of elderly lodgers aged above 60;

(b) the progress in the provision of singleton hostels through voluntary agencies, and whether there are plans to boost the occupancy rate of certain hostels and increase the supply of hostels; and

(c) whether there are measures to assist the lodgers who are not eligible for compassionate rehousing or singleton hostels?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, since October 1990, as part of the Government's efforts to improve conditions in bedspace apartments, the Social Welfare Department has been conducting half yearly visits to known bedspace apartments to identify those lodgers who are aged 60 or over, or are recipients of public assistance. Alternative accommodation is offered by the Department to those who need it. Up to March 1992, 254 lodgers out of a total of 1 552 visited have been rehoused and in addition, 100 have been put on the waiting list.

In playing its role to improve conditions in existing bedspace apartments, the City and New Territories Administration (CNTA) has embarked on a programme of provision of singleton hostels. As of today, three singleton hostels have been completed. The first is run by the Agency for Volunteer Service and is situated in Wan Chai. It was opened in November last year. Two new hostels, one in Yau Ma Tei and the other in Kwun Tong, have just been established and applications for admission are being invited. These will be followed by another five hostels, including two provided by the Housing Authority, which will be brought into commission before the end of this year. By that time we will have eight hostels offering a total of about 240 places.

These hostels are intended for lodgers of existing bedspace apartments so as to provide relief to the severe overcrowding conditions in some of them.

Tak Nga House, the only hostel in operation offers 80 places but has only 20 lodgers. All genuine bedspace apartment lodgers, apart from those over 60 years old or taken care of by the Social Welfare Department, are eligible for admission into our hostels. There is a practical need to draw this line because to do otherwise will seriously compromise our capability to bring about improvements to the overcrowding conditions in existing bedspace apartments. The CNTA will continue to search for suitable flats to provide more hostels.

Since lodgers in existing bedspace apartments are either eligible for rehousing offered by the Social Welfare Department or for admission into our singleton hostels, there is no need for other measures to be introduced.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, the former Secretary for Home Affairs, Mr Peter TSAO, told this Council last year that according to a survey by the CNTA, there were around 4 000 bedspace apartment lodgers at that time, of which 2 000 lodgers needed alternative accommodation. Of these 2 000 lodgers, 1 000 would be offered compassionate rehousing and the remaining 1 000 would be arranged accommodation by the CNTA. But the reply the Secretary gave a while ago indicates that only 254 lodgers have been rehoused after a year and that there are only 240 new hostel places; accounting for a total of only 490 places. Given the figures provided by the former Secretary, there will still be a shortfall of 1 500 places or 75% of the required number of places. Could I ask the Secretary whether the Administration will fulfil its commitment made in the past?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, my predecessor did inform this Council that according to estimates available at that time there would be a demand of around 2 000 places. But I must emphasize it was an estimate which was done at that time. Since then we have been able to do another survey and we are in the course of completing that particular survey. On the basis of information available to us, the demand for spaces is going to be less than what we estimated a year ago. And in any case, we have, during the last year, as I have said in the main reply, gone through the hardship cases and those who are over 60 years of age. The Social Welfare Department have visited over 1 500 of the lodgers in bedspace apartments and we have offered housing to 254 of them; another 100 have been put on the waiting list. As to the remainder, we have ascertained that some of them have, for example, been reunited with their family and moved to other accommodation, and the others have indicated that they are not interested in moving into our hostels. And so because of a combination of all these factors, the potential demand for new bedspaces is going to be drastically reduced and we figure that we will be able to take care of most of the demand by the time we are in a position to introduce legislation to control bedspace apartments.

MRS ELSIE TU: Mr Deputy President, in the last sentence of the answer we are told that one option for these lodgers is to accept housing offered by the Social Welfare Department. Is it not correct that this is invariably in the New Territories and these elderly people cannot accept because that would mean going far away from friends

and relatives and from all the places they know?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, yes and no. Of course there is housing available in the New Territories for compassionate rehousing but in terms of the programme that I have been talking about, for example, the Housing Authority will be making available flats in Cheung Sha Wan and Sai Wan Ho -- the very heart of the urban areas -- for the setting up of new hostels to be run by the Salvation Army and the Pok Hoi Hospital respectively. So there are choices.

MR FRED LI (in Cantonese): Mr Deputy President, we have visited some new singleton hostels and, to our surprise, the facilities provided therein are very up to standard. But with regard to a singleton hostel with 80 places in Wan Chai, only 20 persons moved in eight months after its commission. In view of the great demand for hostel places in Wan Chai District, will the Administration review its admission criteria to see whether it is too strict for single bedspace apartment lodgers to be qualified for admission?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, as I have said in my main reply, the criteria for admission is simple: that they are genuine lodgers of existing bedspace apartments. But I think Wan Chai, as we all know, is not a district which has a predominance of bedspace apartments. Most of the bedspace apartments that we have come across are mainly in the Kowloon area and so despite the fact that we have got over 80 places in Wan Chai, and despite the fact that we have received over 160 applications, most of these applications do not come from existing lodgers of bedspaces; they come from tenants of tenement buildings, street sleepers and elderly people who do not qualify under our criteria. But I must say that the criteria we have adopted is simple and clear, that is to say, we want to reserve spaces in this sort of hostels in order to meet our requirements in relieving overcrowding in the bedspace apartments.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, has the Administration examined why some bedspace apartment lodgers have refused rehousing? Are there ways to solve

the problem regarding their reasons for refusal?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, I am afraid we do not have information about the general situation of refusal because we have not extended the scheme to bedspace apartments. But as I have said, we have covered those lodgers who are over 60 or who are in receipt of public assistance. Most of those who have turned down gave the reason that they are satisfied with their own existing conditions and I think in terms of rent, perhaps, there is a slight differential in that at the moment the average rent paid by them is about \$300 per month whereas in the case of hostels which we administer we are charging around \$330.

Theft of motor vehicles

2. MR CHIM PUI-CHUNG asked (in Cantonese): In view of the public concern over the problem of theft of motor vehicles, will the Government inform this Council:

(a) of the numbers of the various types of vehicles stolen and recovered since the beginning of this year;

(b) among the vehicles recovered during the same period, how many had been located in the Mainland and handed over to the Hong Kong police through the assistance of the Chinese Government;

(c) apart from China, which South-east Asian countries are also major markets for vehicles stolen from Hong Kong; have the Hong Kong Police approached those countries for assistance; and

(d) what measures, including the deployment of additional manpower, have been taken or planned by the Police to curb vehicle theft activities?

SECRETARY FOR SECURITY: Mr Deputy President, 2 556 vehicles were stolen in the first five months of 1992. So far, 1 577 have been recovered. Details of the various types of vehicles stolen and recovered are given in an annex to this reply.

The police have asked the Public Security Bureau in China to help them trace the whereabouts of cars stolen in Hong Kong and to return them. However, no cars have been returned from China so far this year.

There is a demand for luxury vehicles throughout southeast Asia, in particular in Thailand and Malaysia. However, we believe that the smuggling of stolen cars into these countries has virtually ceased since a car smuggling syndicate was broken up in 1990. The police will however continue to liaise with the authorities in these countries through Interpol.

The police have taken a number of measures to counter vehicle theft. These include obtaining intelligence on vehicle theft and smuggling gangs, deploying the Anti-Smuggling Task Force and other operational units against car smuggling syndicates, and conducting checks at road blocks and car-parks. Thirty-two stolen vehicles have been seized by the Anti-Smuggling Task Force in the first five months of this year. The police have also stepped up publicity to advise the public and vehicle owners of the need for adequate security measures. Car-park operators and building management companies have been advised of ways to prevent car theft and to improve caretaker and watchman services. The police have also given advice to the motor sales industry on measures to improve security.

Annex

Vehicles stolen and recovered, 1992 (Jan-May)
(as at 26.6.92)

1992

Type of vehicles	Jan	Feb	Mar	Apr	May	Jan-May
Motor cycle Stolen	86	34	61	55	48	284
Recovered	20	17	28	12	8	85

Private car	Stolen	355	333	247	350	355	1	640
	Recovered	209	204	161	207	182		963
Lorry/ goods vehicle	Stolen	112	98	122	123	136		591
	Recovered			94	84	106	101	104 489
Taxi	Stolen	3	2	3	4	5		17
	Recovered	3		2	3	4	5	17
Public light bus/van	Stolen	3		1	4	2	1	11
	Recovered	3		1	4	1	1	10
Public vehicle e.g. bus	Stolen	-		1	-	2	8	11
	Recovered	-		1	-	2	8	11
Others	Stolen	1	-	1	-	-		2
	Recovered	1	-	1	-	-		2
Total	Stolen	560	469	438	536	553	2	556
	Recovered	330	309	303	327	308	1	577

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, we understand from the Secretary's reply that China is probably the largest market for stolen cars from Hong Kong. We may also say that Hong Kong may have made the unofficial world record for having the largest number of vehicles stolen. According to statistics done by the insurance industry, Hong Kong indeed suffered a loss of \$212 million in car insurance in 1990, \$244 million in 1991 and over \$130 million during the first six months of this year as of yesterday. This has caused economic loss to Hong Kong and mental stress on car owners as well. Will the Secretary please answer the following: Firstly, has the Government probed into the reasons for the Chinese Government not returning any stolen vehicles to Hong Kong so far this year other than the return of 34 such vehicles last year? Secondly, how many prosecutions have been brought against car theft syndicates? What is the level of fines? Is the penalty too lenient and is a revision required?

DEPUTY PRESIDENT: Mr CHIM, you are not entitled to make a speech when asking a supplementary question.

SECRETARY FOR SECURITY: Mr Deputy President, I agree that China is probably the largest market for stolen cars from Hong Kong and in my answer I certainly did not intend to give any other impression. I do not have available comparative statistics for vehicles stolen from other countries. All I would say is that I am advised by the police that the problem of car theft and of export of stolen cars is by no means confined to Hong Kong; it is a worldwide problem. As regards the return of stolen vehicles from China, that is certainly something that we are asking the Chinese authorities to do. We have done that on a number of occasions. What I would say is that I believe that the present system of licensing vehicles in China does not enable them to identify these vehicles easily. But I also believe that the Chinese authorities are now introducing a computerized system for the registration of vehicles. This should enable easier checking against the details of vehicles stolen in Hong Kong, and I certainly hope that this will lead to the return of more stolen cars and indeed provide a deterrent against car theft and smuggling.

I think the last part of the question relates to prosecutions. Mr Deputy President, I do not have details of prosecutions, either for car theft under section 9 of the Theft Ordinance, or for taking a conveyance without authority under section 14 of the Theft Ordinance. I will provide figures for those separately in writing. (Annex I)

MR SETVEN POON (in Cantonese): Mr Deputy President, it is reported that Hong Kong vehicles smuggled into China have to be converted from righthand-drive to lefthand-drive. It is also said that a company in Guangzhou is specialized in this conversion engineering. Is the Government aware of the existence of this company? Is this company controlled by Hong Kong people? It is reported that all one needs to do is to get a telephone number, call somebody up, pay \$30,000 and then the deal is done. Does the Administration know this telephone number?

SECRETARY FOR SECURITY: Mr Deputy President, I have no information on the conversion of righthand-drive vehicles to lefthand-drive vehicles.

DR LAM KUI-CHUN: What measures are taken by the Government, Mr Deputy President, to

prevent stolen cars from being dismantled and used as spare parts and is there any estimate of the number of cars dismantled for this purpose in Hong Kong?

SECRETARY FOR SECURITY: Mr Deputy President, we do not have any figures for the numbers of cars that might be broken down after being stolen and where the parts are either used as spare parts in Hong Kong or indeed smuggled overseas. Certainly, the police believe that some cars are broken down and are smuggled out of Hong Kong in parts in containers, and this is something that they are actively trying to combat.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, the problem of car theft in Hong Kong has turned into one of outright car snatching (an incident as such happened only yesterday). Will the Administration inform this Council if there is any difference in law between car theft and car snatching? Is there any effective measure to prevent car snatching?

SECRETARY FOR SECURITY: Mr Deputy President, it is difficult to give an answer to a question which is to some extent hypothetical; it would depend largely on the circumstances of the case. If violence was offered, then clearly some other offence may have been committed as well as theft. What I can say, though, is that very often it is not possible to charge people with theft because one of the elements of theft is the intention to deprive the owner permanently of his goods. And this is why we have separately on the statute book section 14 of the Theft Ordinance which concerns taking a conveyance without authority. That carries a maximum penalty of three years imprisonment. We do intend to review the penalty for this offence to see whether it should be increased.

Localization in the Legal Department

3. DR LEONG CHE-HUNG asked: The Legal Department recently announced that it envisaged that the employment contracts of some 200 overseas legal officers would not be renewed upon expiry. Will the Attorney General confirm that the posts thus vacated will be filled by promotion of local officers in the Department and that the consequential vacancies in the basic rank will also be filled by recruitment of local officers?

DEPUTY PRESIDENT: Dr LEONG, could I just clarify whether you meant 200 or 20 overseas legal officers?

DR LEONG CHE-HUNG: Twenty, Mr Deputy President.

ATTORNEY GENERAL: Mr Deputy President, I am most grateful for that clarification. You had me worried there for a moment.

Mr Deputy President, to put my answer in perspective, I would like to explain the general position before addressing the two issues raised by Dr LEONG.

The Legal Department is one of the few government departments with a high percentage of overseas officers, particularly at senior levels. In line with the Government's overall policy of localization, two schemes have been set up within the Department. The first of these is the Double Ladder Scheme, established in 1988, under which up to 30 additional Senior Crown Counsel posts are provided for the promotion of local Crown Counsel with potential. The second is the Development Posts Scheme, set up last year, which allows up to 18 local Senior Crown Counsel to be selected for grooming for eventual promotion to directorate posts.

So far, the results of these two schemes are encouraging. Localization of Senior Crown Counsel has more than doubled, from 23% in 1988 to 47% this year, and the rate of wastage of local officers in the Department has dropped significantly from 21.7% in 1988 to 6.7% in 1991. Although localization at the directorate level at this moment is still relatively low at 14%, under the Development Posts Scheme nine local Senior Crown Counsel are already acting in various posts at the directorate level, and three more will do so over the next few months. I therefore expect to see more local officers in the directorate in the near future.

In his question, Dr LEONG refers to the fact that the employment agreements of a number of overseas legal officers in the Legal Department will not be renewed upon expiry. An annual review of employment agreements of overseas officers is carried out by the Government. In the Legal Department's latest review, carried out in April of this year, the agreements of 65 overseas officers which will expire between October

1993 and September 1994 were covered. The Department has recommended to the Public Service Commission and to the Civil Service Branch that the agreements of 18 overseas officers at various ranks either not be renewed, or in certain cases be extended for up to one year only, as compared with the more usual two years.

This recommendation has been made having regard to the Department's projection that, as a result of the two schemes to which I have just referred, more local officers will become available for promotion to Senior Crown Counsel and directorate posts in 1993 and 1994. This is in accordance with the Government's long-standing policy that, when considering the renewal of agreements of overseas officers, the availability of suitable local replacements must be taken into account.

I cannot, however, give the assurance that Dr LEONG seeks in his question. In filling posts at the promotion level, the Government's policy is to consider local and overseas officers on equal terms irrespective of their terms of appointment, since the overriding aim is to select the best person available. Although I cannot guarantee that all the promotion posts which will become available in 1993 and 1994 will be filled by local officers, I am confident that a substantial number will be. Similarly, I cannot give an assurance that the consequential vacancies in the recruitment rank of Crown Counsel will all be filled by local candidates. The Government's localization policy is to give preference to local candidates at the recruitment level. However, if there are not enough suitably qualified local candidates to fill the vacancies, to maintain the level of service provided by the Department, applications from overseas candidates will then have to be considered.

DR LEONG CHE-HUNG: Mr Deputy President, I am grateful for the Attorney General's detailed answer. The follow-up question is: Can the Attorney General confirm that it is the policy of the Administration to secure commitment to the bilingual legal system and, if so, will he tell us what efforts are being made for the appointment of more Chinese judges and bilingual Crown Counsel to conduct trials in Cantonese?

DEPUTY PRESIDENT: Dr LEONG, I feel that is really outside the ambit of your main question, certainly as regards judges. Would you like to rephrase your question to bring it closer to the main question?

DR LEONG CHE-HUNG: Mr Deputy President, I will drop the word "judges" and just use Crown Counsel then.

ATTORNEY GENERAL: Mr Deputy President, certainly an ability to speak, read and write Chinese is an important factor when considering recruitment into the Department. That is particularly so when we are recruiting draftsmen to go into the Law Drafting Division where, as Members know, we are drafting laws in both languages.

MR MOSES CHENG: Mr Deputy President, would the Attorney General inform this Council whether the Administration will be prepared to consider creating more trainee solicitor positions within the Legal Department as one of the means to increase the availability of local candidates for appointment as Crown Counsel?

ATTORNEY GENERAL: Mr Deputy President, I am currently considering the whole framework under which we employ trainee lawyers within my Department. But I must put a note of caution down at this stage that I cannot give any commitment that there would be a substantial increase in the numbers.

Medical staff establishment

4. MR MICHAEL HO asked (in Cantonese): Will the Government inform this Council:

(a) of the criteria on which the Hospital Authority works out the establishment of doctors and nurses required by various hospitals and the funding for their remuneration;

(b) whether the Hospital Authority will revise the existing establishment of the above-mentioned grades of medical staff in those hospitals according to the manning ratio proposed by the then Medical Development Advisory Committee when the present supply of such medical staff is improved; and

(d) if so, whether the Government will increase the funding to meet the necessary expenditure; and if there is no additional funding from the Government, through what

channels can the Hospital Authority obtain the necessary funds?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the answers, seriatim, are as follows:

(a) The present provision of doctors and nurses for individual hospitals had its origin in the actual number of staff in hospitals when the Hospital Authority took over the management responsibility for all public hospitals in December 1991. The provision is updated and revised as necessary based on the prevailing workload and the trend of demand for services in different hospitals.

(b) The ratios drawn up by the former Medical Development Advisory Committee (MDAC) are guidelines for reference and planning purposes. The planning ratios for doctors and nurses are not viewed in isolation but in the context of health care professionals overall. Since the planning ratios were last reviewed in 1987, based as they were on hospital beds, there is scope to review these ratios having regard to advances in modern technology and treatment procedures not only in a hospital setting but also in primary health care.

The Hospital Authority is itself developing a system to facilitate and complement the policy of decentralization of management responsibility to individual hospitals; the strategy and targets for individual hospitals; and the assessment of needs required to meet defined standards of services.

(c) The Hospital Authority has flexibility and autonomy in the deployment of funds. It may retain savings; it may adjust priorities in the better performance of its functions; it may submit proposals in the context of the Annual Resource Allocation Exercise. Any request for funding by the Authority is considered in the light of competing demands.

MR MICHAEL HO (in Cantonese): Mr Deputy President, in the first paragraph of her reply, the Secretary explicitly expressed that funding was based on the actual number of staff in hospitals when the Hospital Authority took over the management responsibility of them. It was, however, obvious that there was severe shortage of manpower when the Hospital Authority took over last year. Can the Administration advise this Council how it is possible for the Hospital Authority, upon revision of

the establishment, to have adequate funding to recruit more doctors and nurses in order to improve the present shortage?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I think we must first have regard to the June issue of a newsletter by the Hospital Authority where it said that salaries for medical and non-medical staff take the lion's share of the Hospital Authority budget and that there are other areas of expenditure which occupy 9% of total expenditure. Members will recall that at the time of the Budget, the estimated expenditure to be voted to the Hospital Authority is \$10.265 billion recurrent, which accounts for some 12% of the Government's total estimated recurrent expenditure for 1992-93 -- an increase of some \$3.144 billion over the Hospital Services Department expenditure of 1991-92, which represents an increase of 44% over last year. It is no mean increase, and there is a lot of room to manoeuvre. As I said in the main reply, there is a lot of flexibility left to the Hospital Authority to deploy the funds within the vote allocated to it.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, can the Administration advise this Council of the forecast supply and demand of doctors and nurses for the next three years? If supply is more than demand, does the Administration have any plans to recruit more staff to improve the provision of services?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the intake of interns and nurses, in the last three years for instance, has shown an increase. To give some illustrative figures in respect of the public hospitals, in 1989-90 the number of interns recruited was 194, the nurses 1 033; in 1990-91, for the interns the number was 214, and for the nurses the number was 1 131; in 1991-92, the number was 202 for interns, 1 286 for nurses. So the trend is toward an increase and, as present figures show, we are into the scene of expansion. When I talk about public sector need, it also includes public sector primary health care provided by the Department of Health. To quote an example, we are still short of 1 273 doctors into 1996. I think we should, where necessary, encourage more people to take up the profession.

DR LEONG CHE-HUNG: Mr Deputy President, will the Administration confirm that the funding to the Hospital Authority in respect of personal emoluments in 1991-92 is

based on the actual staff strength at the date of takeover of the public hospitals by the Hospital Authority? And if so, will the Administration inform this Council whether the recently announced employment of a further 15 interns will lead to cuts in service in public hospitals in Hong Kong; and if so, what services?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, as I said in my main reply, the original estimate did take into consideration the strength as at the time when the Hospital Authority took over from the then Hospital Services Department. But additional to that, there was a generous splash of funding to cater for vacancies which were agreed at the time of preparation for the estimates. There are other areas of funding which allow a lot of room to manoeuvre.

Turning back to the question of whether there is sufficient funding to engage interns, I think the employment of staff working within the Hospital Authority is based on service needs, taking into consideration wastage and other factors.

DR CONRAD LAM (in Cantonese): Mr Deputy President, the Secretary mentioned in the first paragraph of her reply that the actual strength of hospitals was determined on the basis of the workload and the provision would be revised when necessary. Is the decision to revise the provision is made by individual hospitals or by the Hospital Authority? And is there flexibility in the timing of such revision or is it conducted rigidly once a year?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, according to the information provided by the Hospital Authority, the Authority is putting in hand a planning process which revises the whole manpower planning system, taking into account the policy of decentralization and devolution of management responsibilities onto individual hospitals. Therefore it can be envisaged that the new manpower planning system will be different from the past practice as adopted by the then Hospital Services Department and will be based on consultation of plans with individual hospitals to meet defined standards of performance. I should hope that, with the setting up of the Hospital Authority and with the provision of the functions for the Hospital Authority under the law, there should be a degree of flexibility. And certainly, it is good management sense to consult rather than to decide in isolation.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, the principal medical services

at Queen Mary Hospital and Prince of Wales Hospital are, at present, dependent on doctors from the universities. However due to the relatively lower remuneration, a lot of these doctors intend to resign. Can the Secretary advise this Council whether the Administration would increase the vote allocated to the Hospital Authority, thus enabling the latter to maintain the provision of these medical services?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, this is a very important question but may I seek a ruling from you that the question itself is hypothetical?

DEPUTY PRESIDENT: Yes, I think it is always a matter of degree, Secretary. I think the question is whether there is a policy to meet that contingency? If there is not, then you would say so.

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the question of university's remuneration package is very much the concern of the Secretary for Education and Manpower. I am well aware of the current sentiments of the lecturers and professors at the universities, and I am awaiting with equal anticipation the outcome of their discussion.

New airport capital cost estimate

5. MR ALBERT CHAN asked (in Cantonese): What was the estimated capital cost of the Chek Lap Kok new airport project when the Governor announced the \$127 billion Port and Airport Development Plan in 1989? According to the information provided by the Government, the estimated capital costs of the Chek Lap Kok new airport project at November 1990, July 1991 and April 1992 were \$38 billion, \$43.6 billion and \$46.3 billion respectively. Will the Government inform this Council of the works items covered by each of the above cost estimates, whether there are any variations in the works items covered by these estimates; and if so, what are they?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, the new airport cost estimates quoted in the question are correct. It is important to note that the estimates were

issued at various times over a period of nearly three years from 1989 to July this year. During this time the design and size of the airport have changed and have been developed from broad concepts to the detailed stage which has now been reached with the conclusion of the latest Master Plan Study. In the light of this, it is remarkable that the total cost estimates have been held so close to the original 1989 cost estimate which, in 1991 prices, was \$41.4 billion.

The \$127 billion estimate for the Port and Airport Development Scheme as announced by the Governor in October 1989 was in 1989 prices and included an estimate of \$34.7 billion for the airport itself. The airport cost was subsequently updated and announced as approximately \$38 billion in 1990 prices.

The \$38 billion cost was broken down roughly between \$9 billion for site preparation including the provision of utilities and \$29 billion for all other facilities. The cost had been established in 1988 on the basis of the original airport master plan developed in 1982. The master plan concerned was for a much smaller airport since it had been designed to cater for air traffic growth only up to 1995, although a subsequent review demonstrated that the design could be made to cope with demand up to 2010.

The cost estimates of \$43.6 billion given in July 1991 and of \$46.3 billion given in April this year are both in March 1991 prices and are based on the current approved master plan. This master plan provides for a cost-effective design meeting all international requirements and capable of coping with air traffic growth to the year 2040.

Like the original airport estimates in 1989, these latest estimates include all costs needed to open the airport in June 1997 with, initially, one runway only, including costs to be met by the Airport Authority, the Government and the private sector.

The increase in the latest estimate over that given in July 1991 results from the more accurate estimate of costs which has become possible since then because of the finalization of the Master Plan. Major master planning and engineering issues have now been resolved : the location of the passenger terminal and related infrastructure have been settled and the availability of fill resources and mud disposal sites for site preparation works have been determined.

For the ease of reference of Members, I table in the Annex attached to this reply a breakdown of the main elements of the cost as they were in July 1991 and as they now are.

Annex

ESTIMATED CAPITAL COSTS OF THE NEW AIRPORT
(\$M March 1991 prices)

July 1991

Current estimate estimate

AA FACILITIES

Formation of land and
provision of Utilities 13,700 12,600

Terminal & equipment 11,300 10,300

Airfield works 3,900 3,900

Ancillary works 1,600 1,500

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Total construction costs 30,500 28,300

Others (management
fees, and so on) 3,200 3,200

Total AA cost 33,700 31,500

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GOVERNMENT FACILITIES 3,100 3,100

TENANT FACILITIES 9,500 10,200

TOTAL CAPITAL COST 46,300 44,800*
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*note: the \$43.6 billion July 1991 cost was net of an estimated \$1.2 billion of revenue expected by the Airport Authority prior to airport opening. The total capital cost was, therefore, \$44.8 billion at that time.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, in paragraph one of her reply, the Secretary said it was remarkable that the total cost estimates had been held so close to the original cost estimate. When the Governor announced the Port and Airport Development Scheme, I believe we were given to understand that the \$34.7 billion cost covered the construction of the whole airport, not merely one runway. What is the actual variation between the difference in cost estimates and the difference in categorization of works items? In saying this, I am referring particularly to the estimates announced in 1989. Since the Annex does not contain a breakdown of the prices given in 1989 and November 1990, it is difficult for us to grasp the variation in estimates. Could the Secretary please explain?

DEPUTY PRESIDENT: Is there in fact more than one question in your supplementary or is this all in reference to the additional runway, or the absence of the second runway?

MR ALBERT CHAN (in Cantonese): Mr Deputy President, I cited the absence of one runway only to illustrate the key point of my question. Is the minimal difference among the estimates, as claimed by the Secretary in her reply, a result of the inclusion of some works items? It is because we find it difficult to tell the difference in the absence of a breakdown of the 1989 and 1990 prices in the Annex.

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I will attempt to provide a breakdown of the 1989 and the 1990 prices in writing. (Annex II) Although I cannot be absolutely certain, my recollection is that the price quoted by the Governor in 1989 included the cost of opening the airport with one runway initially, but I will again clarify this in a written reply.

MR VINCENT CHENG: Mr Deputy President, in respect of the \$46.3 billion estimated capital costs of the new airport based on March 1991 prices, is it possible for the Secretary to tell us roughly how much of this is to be spent on work not quite yet needed by 1997 but are included because of economy scale or technical reasons, given the concern of the public over the cost of the airport?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, as I pointed out in my main reply, the \$46 billion estimate includes all the costs that are required to open the airport in June 1997. To amplify on that, I suppose the only additional cost that is, strictly speaking, not required is the additional site reclamation to provide eventually for the second runway; but we expect the second runway to be required by about the year 1999 and economies of scale dictate that it would be much more economical to provide the entire site reclamation at this stage.

DR SAMUEL WONG: Mr Deputy President, the \$46.3 billion estimated capital cost of the new airport is based on March 1991 prices. Could the Secretary for Economic Services give this Council an estimate in terms of money of the day prices, including possible financing charges and interest?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, in money of the day terms the total cost of the airport is \$68.5 billion.

MR HOWARD YOUNG: Mr Deputy President, can the Government inform us whether the recently announced lower tender for the platform on second retendering will have any impact on the cost estimates shown in the Annex to the main answer?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I am very pleased to report that based on the revised bids that have now been received, it would appear, subject to detailed evaluation of the bids, that most of the bids have come in within budget. I would add also that this exercise that we have gone through demonstrates quite clearly the Provisional Airport Authority and the Government's resolve to ensure that

costs are kept within the budget.

Filming of assemblies and cordoning off of public places

6. MR CHEUNG MAN-KWONG asked (in Cantonese): In view of the police action to film and record public assemblies and processions held by citizens in recent years and to temporarily cordon off on occasions some public places as restricted zones and to use barricades to prevent the public from staging rallies and protests there, will the Government inform this Council of the following:

(a) the dates, places and occasions on which the police performed such filming and recording work in the past three years, the purposes for which these records will be used and when they will be destroyed;

(b) whether such filming and recording will interfere with the citizens' right to hold peaceful assemblies and contravene the Bill of Rights Ordinance; and

(c) the criteria which the police use to temporarily cordon off a public place (for example, in front of the headquarters of the New China News Agency) as a restricted zone and to film and record the activities of the participants in the assemblies and processions?

SECRETARY FOR SECURITY: Mr Deputy President, the police do not keep records of the dates, places or occasions on which they have filmed or video-taped public assemblies and processions. I am therefore unable to provide statistics or other details of such filming or video-recording in the past three years. The police sometimes film assemblies or processions:

(a) for possible use as evidence in the event of a prosecution;

(b) for possible use as evidence in the event of a complaint against the police; and

(c) to enable police commanders to review police strategy and deployment, to ensure that such events are properly policed.

The film or tape will be retained only for as long as necessary for these purposes.

I am advised that the filming and recording of assemblies or processions does not conflict with the right of peaceful assembly guaranteed by the Bill of Rights Ordinance. It does not prevent or otherwise restrict participants from exercising their right of peaceful assembly.

In order to maintain public order during assemblies and processions, the police may temporarily cordon off certain public areas. They do so in the interests of public order and safety, as provided for in the Bill of Rights Ordinance.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, will the Administration inform this Council whether it would cease to cordon off the area in front of the New China News Agency (NCNA) in order to protect people's right to hold peaceful assemblies? If not, how would the Administration ensure that people could hold peaceful assemblies and stage protests in front of the NCNA so as to express their views freely, unlike, the present case of holding public assemblies at a distance far from the NCNA with their chances of protesting to the NCNA considerably reduced?

SECRETARY FOR SECURITY: Mr Deputy President, the police must balance the requirements of allowing peaceful assembly and also preserving public order. The police have a duty to take lawful measures for preserving the public peace and regulating assemblies. This essentially is a matter for the police commander on the spot to decide what measures are necessary. These measures may in certain circumstances include the temporary cordoning off of certain areas.

MR ERIC LI: Mr Deputy President, in the reply of the good Secretary, three reasons are given for keeping the films and tapes. First of all, I am puzzled as to how they can use these tapes or films as evidence in court if they do not have record of the dates, place and location. For the first two reasons, there are surely some form of statutory or administrative time limits on or before which prosecution must be instituted and complaints lodged. In the case of the third reason, there should surely be at least a reasonable time limit, say, a year, for which these tapes or films will need to be kept by the police for the review of strategy. Will the Secretary inform this Council what these statutory, administrative or reasonable time

limits are, or in the absence of such specific time limits, a reasonable time frame?

SECRETARY FOR SECURITY: Mr Deputy President, I am not aware of any statutory time limits for these purposes. As I meant to indicate in my main answer, as soon as a decision had been taken whether or not to prosecute then the police would take a decision whether or not to destroy the tape. In practice, that would take priority over the other reasons.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, the Secretary said the police do not keep films or videotapes of public assemblies or processions. Nevertheless, when did the police start to have a filming crew? Would they also film other processions and assemblies, apart from filming protests against China staged in the vicinity of the NCNA? If not, why not? If yes, why is it so?

SECRETARY FOR SECURITY: Mr Deputy President, it is my understanding that the practice of filming assemblies and processions is of very long standing.

MR ANDREW WONG (in Cantonese): Mr Deputy President, under which Ordinance is the police empowered to film public assemblies or processions? Does that particular Ordinance stipulate that filming or videotaping can only be carried out under the three circumstances set out by the Secretary? Is there a fourth or fifth circumstance which also allows the police to employ this practice? If there is no such Ordinance, that is, specifically stipulating the circumstances under which filming and videotaping may be conducted, then is there a fourth or fifth circumstance as mentioned above? What are those circumstances?

SECRETARY FOR SECURITY: Mr Deputy President, I do not believe that there are any statutory provisions relating to filming or video-recording.

MR MICHAEL HO (in Cantonese): Mr Deputy President, according to the Secretary's earlier reply, there are at present basically no statistics on such filming activities. Under such circumstances, which government officials are responsible for the control

of such videotapes or films? When will they be destroyed? If there is no control over these videotapes or films, would it be possible that some videotapes or films are not destroyed?

SECRETARY FOR SECURITY: Mr Deputy President, as I said in answer to another question, this is basically left to the discretion of the police commander on the spot; after a decision is taken as to whether or not any prosecution should be taken or whether or not the film might be used in evidence, if it is not intended to keep the film or the video tape for that purpose, then the standing instructions are that the film or tape will be destroyed.

DR YEUNG SUM (in Cantonese): Mr Deputy President, would the Administration advise this Council whether the random cordoning off of certain areas as temporary restricted zones would create some sort of obstacle between the participants of assemblies and the police and stir up the sentiments of the participants? I recall that earlier the entrance of the Legislative Council Building was cordoned off as a restricted zone but when the barricades were removed, the situation was stabilized on the contrary. Would the Administration advise this Council whether there is a need to cordon off certain places as temporary restricted zones? And has the Administration considered the impact of such an action?

SECRETARY FOR SECURITY: Mr Deputy President, I think I said in answer to a previous question that the police must balance the need for the public to exercise its right of assembly against the need to maintain public order and public safety. The Public Order Ordinance is designed specifically for that purpose and that is how the police exercise their power, and it is a matter for the police commander in any particular case to decide what measures are necessary for that purpose, including possibly the temporary cordoning off of certain areas.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, in the third paragraph of his reply, the Secretary said the police may temporarily cordon off certain public areas. Would the Secretary inform this Council if such actions are carried out privately or announced publicly? Which government official is empowered to do this? Is there any specific procedure regulating his exercise of such power? If not, is his power

too great?

SECRETARY FOR SECURITY: Mr Deputy President, in most cases the police have a very good understanding and relationship with those who are organizing assemblies and demonstrations and discuss such things with them as the route and the location of the assembly and these things are explained beforehand, and understood and complied with. Of course, there is the possibility of the occasional case either when the police do not get notice or when people go beyond what has been agreed and what the police consider to be in the interests of public order and safety.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, the Secretary just now explained that the films and videotapes would be retained only as long as necessary. Would the Secretary inform this Council if the films and videotapes of the respective processions in 1991 and 1992 to commemorate the June 4 Incident have already been destroyed? If not, why not?

SECRETARY FOR SECURITY: Mr Deputy President, I do not know. I will give a written reply. (Annex III)

MISS EMILY LAU (in Cantonese): Mr Deputy President, in his reply, the Secretary said the filming and recording of these peaceful demonstrations does not violate the Bill of Rights Ordinance. Would the Administration not admit that the police practice of recording these political processions is very intimidating? Also, would the Administration advise this Council whether these videotapes would be handed over to the NCNA or the Chinese Government?

SECRETARY FOR SECURITY: Mr Deputy President, I am sure that the police do not intend it to be intimidating. The purposes are those which I have given in my main answer and I believe they are perfectly legitimate purposes.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, the Secretary said just now there are not any comprehensive records on the photographs taken and the videotapes made.

Can the Administration make comprehensive records of all photographs already taken and videotapes already made and then conduct a registration and investigation exercise? If these photographs and videotapes were found to be outside the three purposes specified by the Secretary earlier, would the Administration destroy all of these photographs and videotapes?

SECRETARY FOR SECURITY: Mr Deputy President, no, that is not practicable.

MR MARTIN LEE (in Cantonese): Mr Deputy President, will the Administration advise this Council whether those photographs and videotapes would be handed over to the Special Administrative Region Government in future?

SECRETARY FOR SECURITY: Mr Deputy President, I would have thought from the answers I had given that that could not arise. As I have said, the tapes are kept only for so long as is necessary for a possible prosecution; if they are not to be used as evidence in a prosecution, they will be destroyed. After the prosecution is completed, they would also be destroyed.

Written answers to questions

Foreign exchange requirements by government departments

7. MR MARTIN BARROW asked: Would the Government inform this Council of the progress in examining an appropriate methodology for government departments to book their foreign exchange requirements as soon as they have a known liability, in order to avoid exchange loss at the departmental level?

SECRETARY FOR THE TREASURY: Mr Deputy President, a working party led by the Finance Branch, and including representatives of the Monetary Affairs Branch, the Works Branch, the Treasury and the Government Supplies Department, has met a number of times to consider how best to protect the General Revenue from fluctuations in the foreign exchange market.

The main conclusions of the working party were that individual purchases below \$10 million should be regarded as minor and no special measures were needed, but that purchases above that value were significant enough to warrant changes in existing procedure.

Specifically, the intention is that tenders likely to cost \$10 million or more must -- with one important proviso -- be quoted in Hong Kong or US dollars only. It would then be for the tenderers themselves to decide whether and, if so, how to cover the exchange risk. We consider that it is more efficient and cost-effective for the private sector to manage exchange risks than the Government.

The proviso relates to those circumstances where such a restriction would result in a significant and unacceptable reduction in the degree of competition in the tendering process. In such cases, tenderers will be allowed to quote in currencies other than Hong Kong or US dollars. We would wish in such cases to protect the General Revenue either by buying forward on the open market or by booking our foreign exchange requirements at a fixed price with the Exchange Fund as soon as the contract is signed, as was done for the Tsing Ma Bridge contract.

The details of such arrangements are still being discussed with the Exchange Fund and Treasury and I expect to finalize revised procedures shortly.

Airport Authority legislation

8. MR MARTIN BARROW asked: Will the Government inform this Council, with regard to progress in the preparation of legislation covering the Airport Authority:

(a) of the drafting instructions issued;

(b) of the current status of the drafting;

(c) of the expected date of completion for the drafting and when the Bill will be introduced into the Legislative Council; and

(d) of the reasons for the long time taken and the problems that have been faced?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, the answers to the questions raised are as follows:

(a) the drafting instructions for the Airport Authority Bill (the Bill) were issued in February 1992;

(b) drafting of the Bill is now at an advanced stage;

(c) drafting is expected to be completed during the Legislative Council's summer recess. The aim is to introduce the Bill into the Legislative Council at the earliest possible opportunity in the 1992-93 legislative Session; and

(d) the Bill is an important and substantial piece of legislation. It is by no means unusual for legislation of this nature to take some months to draft. We are not encountering any particular problems in framing the Bill.

Cost of Legislative Council questioning process

9. MRS PEGGY LAM asked: Will the Government inform this Council of the amount of public funds spent on the whole process, including all preparatory work, of branch secretaries attending Legislative Council sittings to answer oral questions, and providing replies to written questions, expressed as an average per oral and written reply?

CHIEF SECRETARY: Mr Deputy President, the cost of providing answers to Legislative Council questions varies, depending on the nature and complexity of the question and, in particular, the amount of research necessary to obtain the information requested.

Based on a sample of questions answered by Branch Secretaries recently, it is estimated that, on average, it would cost about \$30,000 to provide an answer to an oral question; and \$20,000 for a written reply. The cost includes staff cost and administrative costs such as photocopying, faxing, translation, and so on.

Cross-border criminal activities

10. MR ERIC LI asked: In reply to the Honourable Henry TANG's question at the Legislative Council sitting on 6 May, the Secretary for Security indicated that the Royal Hong Kong Police Force and the Chinese public security authorities had made concerted efforts to combat cross-border criminal activities. Will the Government inform this Council:

(a) whether the Chinese authorities have put forward any requests to the Hong Kong police for assistance to curb smuggling activities; if so, how many such requests have been received in each of the past two years; and

(b) whether the Hong Kong police have turned down any requests from China; if so, what these requests were and the reasons for rejecting them?

SECRETARY FOR SECURITY: Mr Deputy President, the making of formal requests is not a feature of the arrangements for co-operation between the Royal Hong Kong Police Force and the Chinese public security authorities. It is not therefore possible to reduce the relationship to the statistics requested. Rather, representatives from the Royal Hong Kong Police Force and the Chinese authorities meet regularly to review progress in anti-smuggling operations, to discuss tactics and generally to co-ordinate efforts to tackle the smuggling problem. In addition there is frequent contact between operational staff, not only from the police but also from Customs and Excise, to exchange tactical information and intelligence on smuggling activities. Communication has been enhanced recently by the introduction of an anti-smuggling hot-line to facilitate the swift passage of information between the two sides. The result of this co-operation has been a significant reduction in the incidence of smuggling by speedboat in the last few months. The figures of speedboat sightings since February are as follows:

February	1 062
March	648
April	569
May	147
June	105

(Up to 28 June 1992)

Police training

11. DR CONRAD LAM asked: With regard to police training, will the Government inform this Council:

(a) whether male and female police officers are given the same kind of training, particularly in shooting and skills in self defence; and how police training courses will be modified to fit in with the plan to let women police officers carry revolvers;

(b) in the light of the increasingly powerful weapons used by criminals, whether Government will place greater emphasis on shooting skills in designing police training courses; and

(c) whether regular reviews are made to ensure that police training programmes meet the actual needs of police officers in the discharge of their duties; if so, when the last comprehensive review was made and the areas covered; if not, whether and when the Government will carry out such a review?

SECRETARY FOR SECURITY: Mr Deputy President, in general, all police officers are given the same training throughout their careers, with the following exceptions:

(a) at the Police Training School, women officers are taught the basic skills of handling weapons safely and of how to deal with armed persons. But they do less firing practices than their male colleagues; on the other hand, they receive more training in the skills required for dealing with women and children, both as offenders and as victims;

(b) only male officers receive continued revolver training later in their careers; and

(c) there are differences in the internal security training received by male and female officers. Women police officers are trained largely in how to deal with large crowds comprising predominantly women.

The Commissioner of Police is now considering whether women police officers should be armed. If it is decided that women officers should carry firearms,

additional firearms training for them would be required.

Since 1986, the force has been implementing a plan to improve police shooting skills. This includes training of additional firearm instructors, and the provision of additional and better-equipped indoor firing ranges. Training courses in shooting skills are regularly reviewed and updated.

All police training programmes are reviewed regularly to ensure that they meet actual needs. At any one time, about 10% of police training courses are under review.

No smoking areas

12. MR TIMOTHY HA asked: In view of the hazardous effect of smoking on health, the legislative measures already taken to designate certain public places as no smoking areas and the need to educate school children to refrain from adopting the unhealthy habit of smoking, will the Government inform this Council whether in addition to designated no smoking areas under the Smoking (Public Health) (Amendment) Ordinance 1992 (Ord. No. 9 of 1992), the Government has considered designating other areas, in particular, school premises, as no smoking areas; and if not, why not?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the Government's policy is to discourage people from smoking. The approach is progressive and pragmatic, having regard to public attitudes and trends overseas. It relies on legislation, prevention and education to achieve its aims.

The various measures introduced by the Smoking (Public Health) (Amendment) Ordinance 1992 were formulated after careful consideration of public response to a consultation exercise in 1989. Among these measures, the further prohibition on smoking in public places and all public transport carriers will take effect when the grace period expires on 1 August 1992. The designation of additional public places as no smoking areas will be considered in the light of public response to the current package of measures.

As regards school premises, smoking has all along been prevented through administrative arrangements. First, the Education Department regularly issues circulars to remind all schools of the Government's anti-smoking policy. Teaching and non-teaching staff are requested to refrain from smoking in schools. We think

that by acting as good role models, teachers can inculcate proper social behaviour among those in their charge. Secondly, every school invariably has regulations to prohibit students from smoking on school premises. This enables closer control than through legislation.

A major weapon in the Government's anti-smoking arsenal is education. This tackles the problem at its root and is aimed particularly at the young. The objective is to make people aware of the health hazards associated with smoking. Both primary and secondary schools now include anti-smoking elements in their curricula.

Outside the classroom, the Hong Kong Council on Smoking and Health delivers regular health talks and targets general publicity at school pupils. With a \$2 million grant from the Royal Hong Kong Jockey Club, the Council has recently completed a year-long youth project in collaboration with the Community Youth Club of the Education Department. More than 500 schools have taken part in its various activities. Hundreds of thousands of students have been involved. Further initiatives will be forthcoming from the Council, with full support from government departments.

We are committed to an anti-smoking policy. We will shortly publish a consultation paper on further measures to restrict the use, sale and promotion of tobacco products. Public views will be sought to shape the development of our anti-smoking policy for the future.

Basic Law promotion

13. DR PHILIP WONG asked: In view of the importance of converging with the Basic Law of the Government of the Hong Kong Special Administrative Region to be established in July 1997, will the Government inform this Council:

(a) whether there are any plans to promote the awareness of the general public and the civil servants of the Basic Law; if so, what these specific plans are; and

(b) whether consideration will be given to including the Basic Law in the curricula of primary and secondary schools; if so, when relevant teaching guidelines will be provided to the schools?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, our main efforts to promote awareness of the Basic Law have been in the context of school education. For example, the Basic Law has been included in the Government and Public Affairs curriculum for Secondary IV and VII students since 1989. Meanwhile, the Education Department is developing a teaching kit on the Joint Declaration and the Basic Law, to assist teachers in presenting the two documents at secondary school level. This teaching kit will be ready for use in the next school year commencing September 1992. Also starting from September 1992, the Basic Law will become part of the Social Studies subject for Secondary I and III students and the Liberal Studies subject for Secondary VI and VII students.

Under the Community Participation Scheme, the Committee on the Promotion of Civic Education offer sponsorship annually to community organizations in organizing worthwhile civic education projects. In this context, the Committee offered sponsorship to the Hong Kong Christian Service in 1988-89 for a project entitled "50 years under the Basic Law" and in 1990-91 offered sponsorship to the Hong Kong Federation of Education Workers for the project "The Fundamentals of the Basic Law". The Committee is prepared to consider other worthwhile community projects on the Basic Law.

As regards promoting knowledge of the Basic Law among civil servants, the Civil Service Branch have embarked upon a series of China Studies Seminars to cater for civil servants at various levels. The Basic Law has been a subject frequently covered in these seminars.

Zero-emission cars

14. DR LAM KUI-CHUN asked: Will the Government inform this Council whether it has any knowledge of the introduction of zero-emission cars, for example, electrically operated cars, into Hong Kong in the near future; and if so, does it have plans to encourage car owners to change to this environmentally friendly type of vehicle and to discourage the use of diesel-engine vehicles?

SECRETARY FOR TRANSPORT: Mr Deputy President, at present, 48 electrically powered vehicles are licensed in Hong Kong. These are mostly special purpose vehicles such

as fork lift trucks and industrial tractors. Although trials have been conducted in recent years using battery powered passenger vehicles, such vehicles have not been introduced permanently because of high capital cost, the need for frequent battery recharging and the difficulties in operating them in local traffic and topographical conditions. The wider use of such zero-emission vehicles in future would therefore depend on manufacturers' ability to develop models that have high capacity and yet are technologically efficient and commercially viable.

Until then, the Administration have no definite plans to encourage the introduction of electric vehicles, but will continue to monitor technological advances elsewhere, aimed at reducing emissions from conventional engines and introducing new types of low pollution engines.

Resettlement of Vietnamese refugees

15. MRS RITA FAN asked: Will the Government inform this Council how many Vietnamese refugees from Hong Kong have been accepted for resettlement by the United States, Australia, Canada and the United Kingdom respectively in the past three years; and whether each of the named countries has taken the number of refugees from Hong Kong to which they committed themselves three years ago, and if not, whether it is aware of the reasons and what is being done about the matter?

SECRETARY FOR SECURITY: Mr Deputy President, the numbers of Vietnamese refugees accepted for resettlement from Hong Kong from 1 July 1989 to 31 May 1992 by the countries mentioned are as follows:

United States	-	4 224
Australia	-	2 884
Canada	-	4 183
United Kingdom	-	1 800

The pledges of resettlement made in 1989 and revised by United Nations High Commissioner for Refugees in 1990 related to the region as a whole, and not specifically to Hong Kong. We understand from UNHCR that all the countries mentioned have accepted or exceeded the numbers to which they are committed.

Banker's receipts

16. DR HUANG CHEN-YA asked: In view of the recent report of uncovered or fraudulent banker's receipts issued by banks in India, will the Government inform this Council:

(a) how many banks in Hong Kong are supervised mainly by regulators in India;

(b) how many banks in Hong Kong have branches in India; and

(c) of the risks, if any, these banks (referred to in (a) and (b) above) have been exposed to through the fraudulent banker's receipts and how this would affect the stability of the banks concerned?

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President,

(a) There are four licensed banks in Hong Kong which are branches of banks incorporated in India. They are subject to the primary supervision of the Reserve Bank of India and the supervision of the Commissioner of Banking in Hong Kong under the Banking Ordinance.

(b) There is only one bank incorporated in Hong Kong which has branches in India. It has not been affected by the problems in the Indian stock market.

(c) The Commissioner of Banking has been in touch with the Reserve Bank of India with a view to identifying whether any of the Indian banks with operations in Hong Kong would be significantly affected by the problems in the Indian stock market. There have been no indications that the stability of any of these banks is likely to be affected. The Commissioner will, however, continue to monitor the situation.

Temporary housing area clearance programme

17. DR CONRAD LAM asked: With regard to the clearance programme for Temporary Housing Areas (THAs), will the Government inform this Council:

(a) of the number of THAs in the territory;

(b) whether there is any general guideline on the maximum operational life span of a THA;

(c) how the order of priority for clearance of THAs is set; what the current priority list is;

(d) whether sufficient resources are available for in situ rehousing of the affected residents who will have to vacate their THAs under the clearance programme;

(e) whether there are any THAs which are still not included in the clearance programme though they have already exceeded the maximum length of their operational period; when these THAs were built; and

(f) which departments are responsible for the delay; whether the delay in clearing these THAs is due to the negligence of certain departments; and if so, what remedial measures would be taken to rectify the situation?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, there are at present 60 Temporary Housing Areas (THAs) in Hong Kong.

The operational life span of a THA is not fixed, but is generally dictated by the timing of the development of the land for permanent use. Other factors taken into consideration are the age and condition of the structures in a THA, operational requirements and the availability of funds for clearance.

The priority for clearing THAs is reviewed regularly. Twelve THAs have been accorded priority for clearance in 1992-93. A list is at Annex A.

For many years, the Government has relied on the supply of new flats in the extended urban areas as reception accommodation for clearing THAs in Kowloon. People cleared from THAs on Hong Kong Island can normally be offered rehousing on the Hong Kong side; and the preference for rehousing in the same district in the New Territories can often be met.

As already pointed out, there is no "maximum" life span for THAs. The Administration's aim is to clear all part-built THAs completed before 1984 in the next three years. The majority of full-built THAs will also be cleared over the next five years. A list of the THAs against their completion dates is at Annex B.

There is no "delay" in clearing THAs as such because the pace of clearance is determined by the interplay of the factors mentioned above. The continued existence of some older THAs is mainly due to the fact that the land is not yet required for development.

Annex A

Clearance Programme for Temporary Housing Areas 1992-93

Name of THA Year of completion

- | | |
|--|------|
| (1) Kai Cheung THA (Part) in Kowloon East | 1983 |
| (2) Sheung Shing Street THA in Kowloon East | 1988 |
| (3) Cornwall Street THA in Kowloon West | 1978 |
| (4) Lai Chi Kok Road THA in Kowloon West | 1977 |
| (5) Yuen Chau Kok (II) THA in Sha Tin | 1980 |
| (6) Shuen Wan THA (Remainder) in Tai Po | 1982 |
| (7) Sheung Shui II THA (5 blocks) in Sheung Shiu | 1982 |
| (8) Tsing Hong Road THA in Tsing Yi | 1986 |
| (9) Kwai Tai THA in Tsuen Wan | 1987 |
| (10) Yick Yuen THA in Yuen Long | 1983 |

- (11) Long Bin THA (Remainder) in Yuen Long 1985
- (12) Yuen Ha THA in Yuen Long 1989

Annex B

Age of Existing Temporary Housing Areas (As at 1.6.1992)

	Part built/	Year of	
Name of THA	Full built	completion	
1 Ping Shek	Part Built	1975	
2 Fat Kwong Street	Part Built	1978	
3 Tai Wo Ping	Part Built	1978	
4 Shun Lee Tsuen	Part Built	1978	
5 Cornwall Street	Part Built	1978	
6 Shatin Tau	Part Built	1979	
7 Welfare Road	Part Built	1979	
8 Yuen Chau Kok and extension	Part Built	1980	
9 Mui Lee	Part Built	1982	
10 Sheung Shui II and additional	Part Built	1982 & 1987	
11 Shuen Wan	Part Built	1982	

12	Yue Wan	Part Built	1982
13	Yick Yuen	Part Built	1983
14	Kai Cheung	Part Built	1983
15	Yau Shing Street	Part Built	1983
16	Long Bin	Full Built	1985
17	Tsing Fai	Full Built	1985
18	Sha Kok Mei	Full Built	1986
19	Tsing Hong Road	Full Built	1986
20	Kai Lok and extension	Full Built	1986

Part built/ Year of
Name of THA Full built completion

21	Fortune Street	Full Built	1986
22	Nam Fung	Full Built	1986
23	Hau Man Street	Full Built	1987
24	Wing Tai	Full Built	1987
25	Tsing Tsui	Full Built	1987
26	Kai Wo	Full Built	1987
27	Kwai Hong	Full Built	1987
28	Kwai Tai	Full Built	1987

29	On Yip	Full Built	1987
30	Tsing Kin	Full Built	1987
31	Sheung On	Full Built	1987
32	Kwai Lok	Full Built	1988
33	Kwai Shun	Full Built	1988
34	Tseung Kwan O	Full Built	1988
35	Sheung Shing Street	Full Built	1988
36	Hing Tin	Full Built	1988
37	Kai Wang	Full Built	1988
38	Tin Sam	Full Built	1988
39	Kai Chiu	Full Built	1988
40	Hau Yan	Full Built	1988
41	Kai Yuet	Full Built	1988
42	Tai Po Tau	Full Built	1988
43	Choi Chuk	Full Built	1988
	Part built/ Year of Name of THA	Full built	completion
44	Tsing Yan	Full Built	1988
45	Yuen Tung	Full Built	1988
46	Hoi Bun	Full Built	1988

47	Kai Yiu	Full Built	1988
48	Sheung Tai	Full Built	1989
49	Shing On	Full Built	1989
50	Yuen Ha	Full Built	1989
51	Fat Tseung Street	Full Built	1989
52	Hing Shing	Full Built	1989
53	Tsing On	Full Built	1989
54	Tsing Fat	Full Built	1989
55	Lung Ping Road	Full Built	1990
56	Yuen Tin	Full Built	1990
57	Hing On	Full Built	1990
58	Yen Chow Street	Full Built	1990
59	Yuen Ping	Full Built	1990
60	Pok Fu Lam	Full Built	1990

Traffic congestion at border crossing points

18. DR PHILIP WONG asked: In view of the traffic congestion at the various border crossing points, will the Government inform this Council:

(a) whether assessment has been made of the financial loss to Hong Kong as a result of these traffic congestions, if so, what the findings are; and

(b) whether consideration will be given to negotiating with China for the opening

hours at these border crossing points to be gradually extended to 24 hours?

SECRETARY FOR TRANSPORT: Mr Deputy President,

(a) The Administration has not made an assessment of financial loss suffered as a result of traffic congestion at the border crossing points.

(b) Following recent discussions with the Chinese authorities, it has been agreed that, with effect from 1 July, the opening time of the three road crossings will be advanced to 7.00 am. From the same date, the closing time of the Man Kam To crossing will be extended to 10.00 pm for goods vehicles. The closing time of the Lok Ma Chau crossing will be similarly extended with effect from 1 December. All of this should help to spread traffic demand, thus easing congestion. We will continue to monitor the use of the three crossing points and consider further extension of opening hours where necessary, subject to the availability of resources and the agreement of the Chinese authorities.

Taiwanese visitors

19. MR HOWARD YOUNG asked: With Taiwan being the largest visitor market of Hong Kong, will the Government inform this Council:

(a) of the number of visitor arrivals from Taiwan in the past three years;

(b) whether it is aware of the number of Taiwan visitors transiting Hong Kong during the same period; and

(c) whether there are plans to encourage these transit visitors to have a short stay in Hong Kong by relaxing the visa requirement, including the waiver of visa requirement for short stay, with a view to promoting tourism?

SECRETARY FOR SECURITY: Mr Deputy President, the numbers of visitors from Taiwan in the past three years are: 1.13 million in 1989, 1.34 million in 1990 and 1.29 million in 1991.

We do not know how many Taiwan visitors transited Hong Kong during the same period because transit passengers do not have to present themselves for immigration clearance.

We have simplified the procedures for the issue of visit permits to Taiwan visitors. Taiwan visitors may now obtain one-year or two-year multiple visit permits, which allow them to stay for up to 14 days on each visit. We will continue to review our visa requirements regularly, and to consider further streamlining and simplification of our procedures.

Special industries area

20. MR WONG WAI-YIN asked: With regard to the plan to set up a large Special Industries Area in Area 38, Tuen Mun, will the Government inform this Council of the following:

(a) what industries are being perceived as "special industries"; how the Government determines which are special industries worthy of development;

(b) what facilities will be provided to manufacturers in the Special Industries Area; whether the Government will offer preferential or special conditions to manufacturers as incentives to set up factories in the Area;

(c) what criteria the Government will take into account in selecting individual manufacturer to set up factories in the Area;

(d) which government department or organization will be responsible for the management of the Special Industries Area; and

(e) what studies and consultation the Government has conducted with regard to the "Special Industries Area" Scheme?

SECRETARY FOR TRADE AND INDUSTRY: Mr Deputy President,

(a) "Special industries" are generally regarded as those industries having special characteristics in relation to site requirements and operations. Consultants appointed by the Government to undertake a development study of Tuen Mun Area 38 advised that "special industries" suitable for development there should be

capital-intensive, water-intensive and land-extensive, and should require deep-water access and warehousing facilities or on-site storage for dangerous goods.

Examples of such industries include high value-added chemical and plastic resin manufacturing, food processing, building materials manufacturing, paper processing, textiles bleaching and dyeing, and bulk cement storage and distribution.

(b)(c) and (d)

The Special Industries Area in Area 38 Tuen Mun will meet the perceived demand for sites for low plot-ratio industrial development which are not readily available in other parts of the territory. The following facilities will be available in the Area : deep water wharfage, good highway access, efficient effluent disposal and good water supply.

At present, the Government is giving consideration to how the Area, when formed, should be managed and how the sites should be disposed of. One of the options under consideration is to request the Hong Kong Industrial Estates Corporation to manage the Area. In formulating its decisions, the Government will take into account the recommendations of the consultancy study referred to under (a) above, the actual demand for sites and the needs of the industries concerned.

(e) As indicated under (a) above, the Government engaged consultants to study the development of the Special Industries Area in Area 38, Tuen Mun. The main findings and recommendations of the consultants' report were discussed by the Tuen Mun District Board in August 1990 prior to the publication of the report in October 1990. A draft layout plan based on the preferred development scenario was discussed by the Tuen Mun District Board in December 1991 and January 1992.

Motion

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

"That the Factories and Industrial Undertakings (Cargo Handling) (Amendment) Regulation 1992, made by the Commissioner for Labour on 4 June 1992, be approved."

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

The Factories and Industrial Undertakings (Cargo Handling) (Amendment) Regulation 1992 was made by the Commissioner for Labour on 4 June 1992. In accordance with section 7(3) of the Factories and Industrial Undertakings Ordinance, I now move that the Regulation be approved by this Council.

Section 7(1) of the Factories and Industrial Undertakings Ordinance empowers the Commissioner for Labour to make regulations to ensure the safety of people in industrial undertakings. The Factories and Industrial Undertakings (Cargo Handling) Regulations were made in 1978. Following approval by this Council of the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1992 on 29 April 1992, the definition of "industrial undertaking" in the principal Ordinance has been expanded to include container handling so as to provide control of container handling activities in container storage yards which have hitherto fallen outside the ambit of the Ordinance. For the control measures to be effective, there is a need for consequential amendments to the Factories and Industrial Undertakings (Cargo Handling) Regulations to extend the coverage of the Regulations to include container handling as well. Hence the Factories and Industrial Undertakings (Cargo Handling) (Amendment) Regulation 1992 submitted for this Council's approval today.

In addition, the Factories and Industrial Undertakings (Cargo Handling) (Amendment) Regulation 1992 will require proprietors to ensure that containers are safely stacked, that the ground on which containers are stored is maintained in a level and firm condition, and that adequate precautions are taken to prevent persons from falling from the top of the containers. Proprietors who contravene these provisions shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000. At the same time, an employee who acts in a way that may endanger his own life or those of his fellow employees shall also be guilty of an offence and shall be liable on conviction to a fine of \$10,000.

These proposed measures will go some way towards safeguarding the safety of employees engaged in container handling activities. They have been endorsed by the Labour Advisory Board and supported by this Council when passing the Factories and Industrial Undertakings (Amendment) (No. 2) Bill 1992 on 29 April 1992.

Mr Deputy President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

SUPPLEMENTARY APPROPRIATION (1991-92) BILL 1992

PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 1992

MARINE FISH (MARKETING) (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

SUPPLEMENTARY APPROPRIATION (1991-92) BILL 1992

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1992."

He said: Mr Deputy President, I move that the Supplementary Appropriation (1991-92) Bill 1992 be read the Second time.

Section 9 of the Public Finance Ordinance states that "If, at the close of account for any financial year, it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates".

The accounts for the financial year 1991-92 have been finalized by the Director of Accounting Services. The expenditure charged to 57 heads out of a total of 77 heads is in excess of the sum appropriated for those heads by the Appropriation Ordinance 1991. This is because sufficient offsetting savings could not be found

within the heads concerned. In accordance with section 9 of the Public Finance Ordinance, this excess has been included in the Supplementary Appropriation (1991-92) Bill 1992 now before Members. The Bill seeks to give final legislative authority for the amount of supplementary provision approved in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total net supplementary appropriation required in respect of the 57 heads of expenditure is \$8,436.6 million. This excess is largely attributable to the implementation of the 1991 pay adjustment in respect of the Civil Service (\$2,300.7 million) and government subvented organizations (\$1,292.1 million). Other major contributing factors include the transfer of the management responsibility of public hospitals to the Hospital Authority with effect from 1 December 1991 (\$3,039.2 million) and additional expenditure on pension payment (\$559.7 million).

The cost of the 1991 pay adjustment and pension increase had been anticipated in the 1991-92 estimates under the "Additional Commitments" subhead. Savings were also made in other subheads through continued tight control over public expenditure, and I would like to thank the Controlling Officers and others who have contributed to restraint. Because of these savings and the provision made for additional commitments, total expenditure for the year is within the sum appropriated in the Appropriation Ordinance 1991.

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

Question on the adjournment proposed, put and agreed to.

PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 1992

THE SECRETARY FOR THE CIVIL SERVICE moved the Second Reading of: "A Bill to amend the Public Service Commission Ordinance."

He said: Mr Deputy President, I move that the Public Service Commission (Amendment) Bill 1992 be read a Second time.

The purpose of the Bill is to amend the Public Service Commission Ordinance

(Chapter 93) to exclude appointments and promotions of civil servants working in the Hospital Authority and the Vocational Training Council from the purview of the Public Service Commission.

In August last year, the Vocational Training Council took over the operational responsibilities of the Technical Education and Industrial Training Department; and in last December, the Hospital Authority took over the operation of the Hospital Services Department.

Both bodies are empowered, under their respective Ordinance, to employ staff and remunerate them. Civil servants already in the departments have been given the option to transfer to the two organizations or to retain their civil servant status. As at the end of June 1992, 162 officers of the Technical Education and Industrial Training Department remain as civil servants. Officers in the Hospital Services Department have until 30 November 1994 to make their decision. As at the end of June 1992, about 30% of these staff had opted to join the Hospital Authority

On equity grounds, civil servants working in both the Vocational Training Council and Hospital Authority have been assured that they would have the same opportunities as direct employees of the two organizations for promotion. Accordingly, what is called a "Shadow Promotion Scheme" has been devised, to provide a mechanism for the creation of shadow posts and ranks to accommodate civil servants selected for promotion by the Vocational Training Council or the Hospital Authority. Staff who feel aggrieved by such decisions may appeal to the management of the two organizations. Staff may also appeal to the Governor under Colonial Regulation 68.

In the circumstances, it is no longer appropriate or necessary to seek the advice of the Public Service Commission on promotion decisions. The Public Service Commission has been consulted and has agreed that it need no longer be consulted on promotions under the Shadow Promotion Scheme. However, matters relating to the conduct and discipline of staff remaining civil servants will continue to be subject to the advice of the Commission.

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

Question on the adjournment proposed, put and agreed to.

MARINE FISH (MARKETING) (AMENDMENT) BILL 1992

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to amend the Marine Fish (Marketing) Ordinance."

She said: Mr Deputy President, I move that the Marine Fish (Marketing) (Amendment) Bill 1992 be read a Second time.

The Marine Fish (Marketing) Ordinance provides for the Fish Marketing Organization to prescribe in its by-laws a rate of commission for sales of marine fish in its wholesale markets.

In recent years, the Fish Marketing Organization's operating costs have risen significantly, largely reflecting general inflation, whereas the price of marine fish has not increased at the same pace. As a result, the commission earned by the Organization is no longer sufficient to cover its expenditure despite tight control over costs and the introduction of various measures to improve sales and streamline operations.

The Fish Marketing Organization foresees that the rate of commission, which has remained unchanged at 6% since 1956, will need to be adjusted from time to time having regard to its operating costs and overall financial position.

At present, any variation of the rate of commission requires an amendment to the Fish Marketing Organization's By-laws. Such amendments are required to be submitted to the Governor and are subject to the approval of the Legislative Council. This is an unnecessarily cumbersome means of prescribing a rate of commission decided upon by the Fish Marketing Organization.

The Marine Fish (Marketing) (Amendment) Bill 1992 seeks to amend the Ordinance so that the Fish Marketing Organization may, instead of prescribing the rate of commission in its by-laws, prescribe the rate by notice in the Gazette, after consultation with the Fish Marketing Advisory Board. This will streamline the procedure for prescribing the rate of commission whilst ensuring that any decision to change the rate is taken only after consultation with representatives of those who buy and sell fish through wholesale fish markets.

Mr Deputy President, I move that the debate on the Second Reading of the Bill

be adjourned.

Question on the adjournment proposed, put and agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1992

Resumption of debate on Second Reading which was moved on 29 April 1992

Question on Second Reading proposed.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, the Road Traffic (Amendment) (No. 2) Bill 1992 was introduced into this Council on 29 April 1992. It seeks to prohibit the use of vehicles used predominantly for displaying advertising except when the advertising is being displayed for non-commercial purposes, in which case the Commissioner for Transport may issue a permit subject to such conditions as he determines. The Bill also provides for a transitional period where permits issued under existing regulations for advertising vehicles normally for a one-year period will remain valid after the enactment of the Bill until their expiry date.

The ad hoc group set up to study this Bill held a total of three meetings, including two with the Administration. It also considered the views of the Association of Accredited Advertising Agents and the Association of Accredited Mobile Billboard Advertisers (AAMBA). After careful deliberation, the majority of the group recommended that the Bill be supported as it stands.

Mr Deputy President, I would like to briefly highlight the major points considered by the group. The first involves the legal arguments against the ban on the advertising vehicles. In the representations from the AAMBA, it was argued that the total ban on the vehicles was both fundamentally unlawful and unnecessary because it would take away the personal right of every citizen in Hong Kong to express himself in the moving billboard medium if he so chose. It was further argued that as the legislation imposing the ban conflicted with Article 16 (freedom of opinion and freedom of expression) of the Hong Kong Bill of Rights (BOR) Ordinance, it would be repealed upon challenge in Court. The Administration's position on the BOR argument was sought and the group was informed that as there was as yet no established body of jurisprudence or precedent cases on the BOR in Hong Kong, reference must be made to international authorities to find an aid to interpretation. Referring to Article

19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights, the thrust of which is the protection of ideas, opinions and information and the freedom to seek and impart such ideas, opinions and information, the Administration advised that the emphasis laid by the authorities in relation to freedom of expression is upon the content of the idea or opinion expressed or information imparted rather than the means by which a particular opinion, idea or piece of information is expressed or imparted. The means of expression is only protected in so far as it is a means which has an independent significance for the expression of the opinion. When mobile billboards are considered in the light of the authorities it is clear that they do not form a medium of independent significance. The message or messages that they convey can be published in many other forms; their expression or importation does not depend on mobile billboards as the sole or significant medium (for example, fixed advertising signs, billboards and posters, other forms of mobile advertisements on buses, trams, taxis, commercial vehicles, sandwich boards, other form of published advertisements in magazines and newspapers, on radio or television, flyers, leaflets, and so on). The Administration concluded that the ban on moving billboards does not conflict with the right to freedom of expression contained in Article 16 of the BOR. The group accepted the Administration's explanation and agreed that there was avenue for recourse in that any possible challenges arising under Article 16 could be left to be determined by the Courts.

The second point involves alternatives to a total ban. The group explored various alternatives to a total ban and was assured by the Administration that due consideration had been given to possible options. However, given the fact that the advertising vehicles served no transport function in using the roads (although they served an advertising and marketing function), posed a safety hazard to other drivers and pedestrians, caused congestion along busy roads during peak hours and caused enforcement difficulties for the police, the group agreed that alternatives such as the imposition of tighter permit conditions or setting up a special framework to implement self-regulation in this very small industry would not be viable solutions without having manpower and resource implications on already tight resources and other pressing priorities for the police. The group also takes note of the fact that cities like New York and San Francisco have already put an all-out ban on these vehicles.

Mr Deputy President, having received the explanations and clarifications of the Administration, everyone in the group saw a need to restrict the vehicles. Several

Members support the Bill unreservedly, while a few, including me, expressed support with reservation. One Member was opposed to the Bill as a matter of principle. Nevertheless, Members felt that the issue was conflicting interest between a small business on the one hand and the public resources needed to regulate the business in the interest of road users on the other.

Mr Deputy President, in the light of practical considerations and the interest of the road using public, I see a need for placing some restrictions on the advertising vehicles but I still have some personal misgivings about the necessity of an immediate total ban. However, until this very afternoon, staff of the OMELCO Secretariat have failed to find me a precedent in which a convenor has acted in defiance of the majority opinion of an ad hoc group. Therefore, I have to act in accordance with the opinion of the majority of the group.

With these remarks, I recommend the Bill to this Council.

MR MARTIN LEE: Mr Deputy President, I rise to speak against this Bill. While the fate of the 10 to 20 mobile advertising vehicles now on the roads may not be the most pressing issue in Hong Kong, the principle at stake here is quite important. The principle is: should this Council agree to restrict a freedom guaranteed in the Bill of Rights -- in this case the freedom of expression -- merely because the Government asserts that doing so would be good for the community?

Certainly, the Government may have good reasons for wishing to limit or even ban outright the use of mobile advertising vehicles. Among the reasons are protection of the environment and traffic safety. Yet, I believe the Government has not discharged the necessary burden of proof for this Council to agree to an outright ban on all such vehicles.

In all cases of free expression, the community accepts that there must be a balance struck between the right of the individual to expression and other pressing needs of society. As the Bill of Rights explicitly states, limits may only be placed on the right of expression which are necessary, and I stress the word "necessary", for "the protection of national security or of public order, or of public health or morals." Now it could be argued that a ban on the advertising vehicles is necessary for the protection of public order (such as traffic safety), but the Administration certainly has not proven this case to this Council. Unless we are convinced that

an outright ban -- as opposed to a regulatory scheme -- is necessary, it would be wrong of us to support the Bill today.

I am also afraid that this Bill represents the start of a dangerous journey down a slippery slope. What is next? Is the Government going to impose a total ban on all wooden posters on sidewalk railings? Already we have seen the Government use the feeblest of excuses to ban important rights, such as the right of political groups to raise funds in public on the ridiculous ground that it might cause unnecessary congestion.

Of course, persons affected by this new law, if passed tidily, may challenge it in the courts under the Bill of Rights. That process, however, is very expensive and time-consuming. It would be highly irresponsible of this Council to take the attitude that we shall not concern ourselves with the Bill of Rights but merely leave it to the courts.

I therefore call upon the Government to present this Council with far more convincing reasons as to why an outright ban on mobile advertising vehicles is necessary for the protection of public order. Unless the Administration does so, I urge my colleagues to vote against this Bill. If the Bill is defeated, the Government should then revise the existing regulatory scheme for the vehicles so as to balance the right to free expression with the other important public interests at stake, for example, by putting a ceiling on the number of licences for such vehicles and, if necessary, introducing a tender procedure, as in the case of taxi.

Mr Deputy President, Members of the United Democrats of Hong Kong will have a free vote on this Bill.

MR MARTIN BARROW: Mr Deputy President, I too rise to raise my objections to this proposed legislation. Unfortunately, I was not a member of the ad hoc group and have only recently studied the extensive papers on the proposal, including the legal opinion obtained this week by the Honourable Simon IP.

I consider this an entirely unnecessary piece of legislation which has been wasting the time of both Members of this Council and those involved in drafting the amendment. I believe the Transport Department could have tackled any perceived problems through discussion with the small number of people involved and in

straightforward self-regulation as well as licensing. It seems to me that any government act that sacrifices a new and small industry to give merely an appearance of improvement is surely wrong and only serves to deceive the public. There are a tiny number of advertising vehicles at present and it is hardly likely to grow by more than double, to say 20 or so vehicles.

The Transport Department's paper of 1 June states that mobile advertising can be met by vehicles which do have a transport function. This indicates a complete misunderstanding of the advertising field, as taxis, trams and buses all carry long-term advertising and their contract lengths are often for three or six months or more. Billboard advertising, on the other hand, is almost always tactical in nature and covers short-term campaigns of two or three weeks for a new product or temporary service.

Given the tiny size of this industry, it seems to me absolutely wrong to presume that self-regulation would fail before it has even been properly considered. In earlier briefings the Government suggested that the industry will only route vehicles in congested areas. Surely, the very mobility of the industry allows the advertisers to go to locations which are otherwise uncovered by other advertising mediums, such as housing estates, factory areas or more distant new towns which may not have static billboard hoardings.

I understand the Honourable Simon IP will address the issue of potential conflict with the Bill of Rights and the International Covenant. I endorse what he has to say.

On a more general point, Mr Deputy President, and in the overall context of the legislative process, this is another example of over-regulation and over-legislation, and I would urge the Government to take measures to restrict the proliferation of new legislation. With all the work that needs to be done in the next five years to adapt legislation to the Basic Law, I do not see how the Government or this Council can have the time to process a mass of new legislation.

With these words, Mr Deputy President, I oppose this amendment and I urge other Members to do likewise.

MR LAU WAH-SUM (in Cantonese): Mr Deputy President, about a year ago, I asked the

Administration before this Council the reason for allowing mobile advertising vehicles to operate on narrow and congested roads. The reason for raising the question is that apart from myself, several friends of mine did see such vehicles moving very slowly on the roads. Only by moving very slowly can the vehicles serve an advertising function with their huge billboards attracting the attention of other drivers, which, however, would easily cause traffic chaos and congestion. I am pleased today to see that amendments to this Ordinance are being proposed to safeguard the rights and interests of drivers against these mobile advertising vehicles. Over the past few months, I have received several letters written by one and the same person. The point being made is that the Ordinance will be in conflict with the Bill of Rights if it is really amended. However, I believe that should there really be a need for mobile commercial advertisements, arrangements can be made to place them on buses and taxis. I do not intend to stop such commercial advertising, nor do I see any conflicts with the Bill of Rights. As far as I know, no more than three operators are still carrying on such business. A restriction on the issue of the licences in question will only enable a few people to reap a huge profit at the expense of the rights and interests of the majority, that is to say, the rights and interests of the drivers and the road users.

I hope all Members will support this motion.

MR JIMMY MCGREGOR: Mr Deputy President, I oppose this Bill. I was in fact the member of the ad hoc group who disagreed with the Government's stated motives and objectives in presenting this Bill to the ad hoc group.

I believe that the Government has taken a sledgehammer to crack a nut. I do not think that the moving billboard vehicles, whilst unsightly, have created any observable traffic problems, nor have they contributed to traffic jams, nor have they deliberately driven slowly, nor parked illegally, as far as I am aware. I have been told that there are at present only 10 such vehicles on the roads. They are subject to special licence and these licences are subject to very draconian conditions as to where and when the vehicles can operate. I am also told that there are over 400 000 vehicles on our roads. These 10 vehicles surely cannot represent a very special traffic risk. In fact, the Government has admitted that there is no record of any traffic violations by these vehicles and no traffic summonses have been issued.

I have no particular regard for the moving billboard industry but I do concede

that it is a unique form of short-term advertising, often for special events, some of which at least might represent matters of real public interest, such as elections.

The Government says that a ban on moving billboards is necessary because they fear that the number will proliferate and that they do not represent a legitimate use of the roads. I really do not accept these arguments and I believe that a licensing system with strict conditions should be used instead. A total ban is a very bad principle.

On principle, therefore, I oppose this Bill and will vote against it. I urge all my colleagues to vote against the Bill. By doing so we will be advising the Government to concentrate its scarce resources on more important targets.

MR PETER WONG: Mr Deputy President, Honourable Members seem to have forgotten that the air over our congested roads is bad enough without having moving billboards crusing around adding to the pollution. There are many other forms of advertising and with the Bill of Rights point explained by the convenor, I cannot see why this can be said to be a ban on the freedom of expression. Mr Deputy President, I support the resumption of the Second Reading of this Bill.

MR SIMON IP: Mr Deputy President, I rise to speak against this Bill. I was a member of the ad hoc group studying this Bill but I was away from Hong Kong at the time it concluded its deliberations. If I had been here I would have indicated my opposition at that time. The operation of mobile billboards for the purpose of carrying commercial advertisements is expression within the meaning of Article 19(2) of the International Covenant on Civil and Political Rights, the controlling standards for legislation passed after 8 June 1991 by virtue of Article VII(3) of the Letters Patent. The proposed ban of this medium of expression would, in my view, amount to an infringement of the right of expression which would fall to be justified under the limitations contained in Article 19(3) of the ICCPR. Restrictions on the freedom of expression by advertising on mobile billboards can only be justified in so far as they are necessary for the protection of public order or for respecting the rights of others. In other words, there must be a "pressing social need" for the restriction and it must be reasonable and proportionate to the achievement of that aim.

A number of arguments against mobile billboards have been advanced including,

first, that colourful and brightly illuminated billboards may distract drivers and pedestrians thereby causing a safety hazard. Brightly lit boards and signs exist all over Hong Kong and they have never been a safety hazard. Everyone in Hong Kong is well accustomed to bright lights, moving or otherwise.

Second, that mobile billboards add to road congestion. We have been told that the number of mobile billboards in operation is not great and that market forces will limit their growth. Though our roads are already very congested I cannot accept that mobile billboards would add significantly to the congestion.

Thirdly, that mobile billboards ignore permit conditions by entering prohibited zones and parking in heavily populated urban areas adding to police law enforcement problems. This problem, if it exists, can be dealt with by heavy penalties making it prohibitive for operators to breach permit conditions and traffic regulations.

No empirical evidence has been produced to substantiate that mobile billboards are in fact safety hazards or that they contribute significantly to traffic congestion or to law enforcement problems of any magnitude. To ban them completely is to use a sledge-hammer to crack a nut. If challenged under the Bill of Rights Ordinance, I think the ban is unlikely to pass the test of reasonableness and proportionality. Mobile billboards should be permitted to operate under licence subject to conditions aimed at dealing with the real or perceived problems which they are said to cause. Only if regulation is shown to have failed to achieve these aims should a ban be contemplated. I therefore vote against this Bill.

MISS EMILY LAU (in Cantonese): Mr Deputy President, I am not a member of the ad hoc group studying this Bill, but I feel that I need to speak against it. Other Members have voiced their opinions from the viewpoint of the Bill of Rights. I, however, shall speak from a traffic congestion point of view.

I believe the main reason for the Administration proposing this amendment is traffic congestion. Mr Deputy President, I believe members of the public have long been infuriated and annoyed by problems of traffic congestion. We also know that the main reason does not lie with the ten-odd mobile advertising vehicles but rather with the Government's policy. There are several factors worth discussing, but, in order not to waste Members' time, I shall highlight only three of them:

First, in many of the highrise buildings, especially those newly completed ones, no

spaces are provided for loading and unloading goods as well as for picking up passengers. Such being the case, drivers normally tend to load and unload goods and pick up passengers on the streets;

Second, a large number of multi-storey buildings are without car-parks. As a result, a lot of vehicles are being driven about on the roads as the drivers look for a space to park, or they are simply parked illegally. Sometimes on-street parking spaces designated by the Government cause traffic congestion too;

Third, a very important point which the Government has openly talked about on several occasions is that more than 30 000 holes are dug on the roads within a year. It is all due to the lack of co-ordination among such companies as the Hong Kong and China Gas Company, China Light & Power Company and others that so many holes are dug. The Government, on the other hand, is unwilling to require that such repair works be conducted at night while the holes be backfilled and road surfaces be rendered fit for vehicular traffic during the day.

I feel that these are the real reasons leading to traffic congestion in Hong Kong and these 10 to 20 mobile advertising vehicles would have little to do with it one way or the other! I believe it is the opinion of a lot of people that the Government should immediately do something about traffic congestion by revising its policy, otherwise it will be "letting the tiger go but swatting the fly." Worse still, if we accept the passage of this Bill, we shall be giving the public a false impression that the Government is really trying to do something to cope with the problems of traffic congestion. Therefore I oppose the Bill.

MR JAMES TO (in Cantonese): Mr Deputy President, I also rise to speak against the Bill. Article 16 of the Bill of Rights states that "freedom of expression" shall include expression through any media and restrictions can only be justified when they are necessary for the protection of public order and their extent must be proportionate. The reasons for placing restrictions are nothing more than the following:

The first point relates to traffic. I do not think this can be substantiated:

(1) At present there are only about 10 such vehicles. This is a negligible number comparing to the total number of vehicles in Hong Kong.

(2) Under the present licensing policy which is attached with conditions, licences can in fact be issued with due consideration of the traffic capacity including setting restrictions on the number, the places, the time and the speed. If the speed of a mobile billboard vehicle is similar to that of other vehicles on a particular section of road, that mobile billboard vehicle is also a road user, just like other vehicles. Under such circumstances, would it be a lot more when one or 10 vehicles are added to hundreds of thousands of other vehicles? Therefore, I do not think that these vehicles would cause traffic jams. If they really do, they could be prosecuted according to the conditions attached to the licence. I think if Mr LAU Wah-sum and his friends really encounter traffic jams caused by such vehicles, they should make more reports.

Another point is that taxis and other vehicles now also carry billboards and advertisements. If this can be tolerated, then favouritism is shown. If it is argued that these vehicles carry passengers while mobile billboard vehicles do not, I also find it hard to accept. As Miss Emily LAU has said, there are many ways to solve traffic problems and we have to face these problems and not just shift our attention to the mobile billboard vehicles and make them a scapegoat.

Moreover, the very special case mentioned by Mr Martin BARROW in his speech is, as with ice-cream vehicles and others, in fact a similar situation which has to be faced.

The second reason that could be thought of for placing restrictions is protection of the environment. Would 10 vehicles affect our efforts in the protection of the environment very significantly? What is the difference between these vehicles and vehicles carrying people to have joy rides? Both travel on our roads and both emit exhaust. If we want to tighten up the control on exhaust emission, we should do so by taking measures which have a long-term effect, for example, measures relating to the design of vehicles and types of fuel or even introducing the electrically-driven vehicles mentioned by Dr LAM Kui-chun.

The third point relates to the aspect of safety hazard. We are told that to date the record of these vehicles has been good. It has been argued that drivers' attention is distracted by the very brightly lit billboards. This issue has been dealt with by Mr Simon IP.

Concerning whether there are other ways which can make possible a similar form of expression without let or hindrance, I feel that this is a very bad example. Let me give two examples:

First, about public assembly. Public assembly can take place everywhere in fact, but why must it take place in front of the New China News Agency? Protest can be held for example at the building in front of the Caravelle Hotel facing the New China News Agency. Why does it have to go that near? Second, in a court case concerning human rights law in West Germany, Person A gave a slanderous account, coupled with a scathing personal attack, of some facts about Person B in a newspaper. B then asked to publish his arguments by way of rebuttal in the same newspaper. But the newspaper claimed that B should not be given the same chance and that B could publish the arguments in other newspaper such as the forum page in many newspapers. Nevertheless, the human rights court held that since A was allowed to lodge such severe accusations against B, then B should be given similar space in the newspaper to respond, particularly with respect to the facts. I think the argument that there are other advertising alternatives also cannot stand.

On the whole, I do not think restrictions are necessary or their extent proportionate. Therefore, I oppose the amendments.

MRS MIRIAM LAU: Mr Deputy President, in the course of the year, the Transport Panel has discussed the issue of mobile billboards on more than one occasion. The Transport Panel also met with members of the representatives of the trade to listen to their concern. And having considered carefully the matter in detail, members of the Transport Panel unanimously concluded that they do not support the continued retention of mobile billboards on our roads. Members of the Panel firmly believed that vehicles on our roads should serve a transport function, particularly bearing in mind that the roads we have can hardly manage the number of vehicles we have on them. Mobile billboards do not serve any transport function and actually they are contributing to the traffic congestion on our roads and therefore, from a transport point of view, there is no justification for the continued existence of these mobile billboards on our roads.

Mr Deputy President, I support the Bill.

DEPUTY PRESIDENT: Mr YOUNG, do you wish to make an application?

MR HOWARD YOUNG: If you would allow me, Mr Deputy President, I would like to make one point relevant to what I said earlier.

DEPUTY PRESIDENT: Will that be a point of clarification?

MR HOWARD YOUNG: No, Mr Deputy President, it is not a point of clarification.

DEPUTY PRESIDENT: Mr YOUNG, I think I am precluded by the rules from giving you a second bite.

ATTORNEY GENERAL: Mr Deputy President, I am most grateful to you for allowing me to intervene in this debate. Several Members have asserted before this Council that the Bill is contrary to the Bill of Rights. Mr Howard YOUNG, when he spoke earlier this afternoon, alluded to legal advice that had been received being to the contrary view. I think that it might be helpful to the Council if I were to take this opportunity to restate the contrary view -- the view that we in my Chambers have given to the Government -- as an aid to the Council in forming a view on this Bill.

The focus is on Article 16 of the Bill of Rights Ordinance which deals with the freedom of opinion and the freedom of expression. Let me re-state Article 16(2) -- I would not bother with 16(1) which I think is not relevant -- 16(2) says: "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 regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice."

By way of background, Members might be interested to know the origin of that article, or that paragraph. It was put in after great debate in the drafting of the International Covenant on Civil and Political Rights to enable citizens of the former Soviet Union to receive newspapers and magazines from the West.

Article 16(3) goes on to describe the way in which those rights can be limited; it says that:

"The exercise of the rights provided for in paragraph (2) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions but these shall only be such as are provided by law and are necessary:

(a) for the respect of the rights and reputations of others, or for the protection of national security or public order, (ordre publique) or of public health and morals."

As Mr YOUNG has already stated, but I will restate it, there is as yet no settled body of law in Hong Kong that will guide us in an interpretation of Article 16; so we have to turn to other decisions to give us material to form a view. And we turn to decisions from Europe based on the analogous provision in the European Convention.

The thrust of Article 16, based on Article 19 of the ICCPR, is the protection of ideas, opinions and information, and the freedom to seek and to impart ideas, opinions and information. In my view, the emphasis laid by the authorities in relation to freedom of expression is upon the content of the idea or opinion expressed, or information imparted, rather than the means by which a particular opinion, idea or piece of information is expressed or imparted. Having regard to the origins of Article 16(2), one can see why that is the case. In my opinion, the means of expression is only protected in so far as it is the means which has an independent significance for the expression of the opinion.

Now an example of that is a painting dealt with in a 1988 Swiss case. An artist has ideas but how can he convey them? He can only convey them by putting his ideas down in paint on a canvas. And that is an example of a medium, a means of communication having an independent significance. But one cannot really equate a painting with a moving billboard. The decisions from the European courts support the proposition that a ban on a means of expression, such as publication in the newspaper, is not protected as a means of independent significance where the public can obtain the information from another source. And there is a Dutch case of 1976 about that.

So when one looks at mobile billboards in the light of those authorities and the developing law in Europe closely analogous to our situation, it is clear that they do not form a medium of independent significance. Once again, Mr YOUNG has very

usefully set out the alternative forms of conveying the message that is contained on the mobile billboard to illustrate the point that they do not have an independent significance.

Article 16(2) uses the expression "other media". In my opinion, that is likely to be regarded as being of the same kind or nature of the words immediately preceding it, that is, "in writing or in print in the form of art or through any other media of his choice". The words can say that that conveys the essence of the means of communication, and billboard would clearly fall outside that.

So the advice that we have given the Government, and the advice that I give this Council this afternoon, is that this Bill does not contravene Article 16(2). I see Mr LEE wants to intervene.

MR MARTIN LEE: If I could ask to elucidate one point, Mr Deputy President, and that is that in the case of advertisement by a billboard vehicle the cost is much cheaper than advertisement by television and newspaper; so if there is a total ban on this type of advertisement and the advertiser is not of such a rich company, is there not a danger then that there is no way for him to express his ideas at all?

DEPUTY PRESIDENT: Attorney General, under Standing Orders it is up to you to decide whether you wish to elucidate the question.

ATTORNEY GENERAL: Mr Deputy President, there is an extraordinarily long list of ways in which a person who is advertising can otherwise convey his message. He can do so as expensively or as cheaply as he likes and the market place will determine it. So I cannot believe that the cost element of deciding whether to go for a billboard, a newspaper advertisement or a hand-sheet mimeographed in a back street in Hong Kong would be a determinant as to whether or not the provisions of this Bill fall foul of Article 16(2).

So let me restate that the advice we have given to the Government and the advice I give this Council this afternoon is that we do not believe that this Bill is contrary to Article 16(2) of the Bill of Rights. In other words, we do not even get to the point of saying that it is justified. But since lawyers always like to cover themselves,

let me say this: that if I was forced to argue a justification I would ask on what instructions I have had from the Transport Department; and indeed from what I have heard in the debate this afternoon, there is ample ground for saying that in the circumstances of Hong Kong -- its conditions, its traffic conditions, its traffic environment, which does not seem to be getting better -- there is ample justification for this Bill. And as I say, our prime advice is that this Bill does not fall within Article 16(2) of the Bill of Rights and that it is in order, legally, for this Council to pass that Bill if it so chooses. Thank you.

DEPUTY PRESIDENT: I understand Mr McGREGOR wants to make a point. Mr McGREGOR, is that a point of elucidation or order?

MR JIMMY McGREGOR: Mr Deputy President, elucidation, please, from the Attorney General. In regard to the question of human rights and the Bill of Rights, what is the difference between a moving billboard and a static billboard? Is not the idea of the billboard in the first place a special method of communication and advertisement? And if so, cannot special expression be therefore applied to the moving billboard in the same way as a static billboard?

DEPUTY PRESIDENT: It is for you, Attorney General, if you wish.

ATTORNEY GENERAL: Mr Deputy President, I think it goes back to what I said earlier, that is to say, it is the content of the message, the thought, the idea, the information that you are trying to put over rather than the method by which you are attempting to convey it. And I think that is what Article 16(2) is all about. And I would remind the Council once again of the origins of that Article and how it came to be included in the International Covenant in the first place.

DEPUTY PRESIDENT: Mr YOUNG, do you wish to make an application?

MR HOWARD YOUNG: Yes, Mr Deputy President, since the Attorney General has alluded to parts of my speech on the Bill of Rights, I would like to, in order not to mislead

Members, clarify certain points in that.

DEPUTY PRESIDENT: Would you confine yourself to that sort of clarification, please, Mr YOUNG?

MR HOWARD YOUNG: Mr Deputy President, I would like to point out to Members that although my speech did go on in great detail on the Bill of Rights argument, and so did the Attorney General, at no time in our ad hoc group deliberations -- in fact even the one Member who said he will vote against the principle -- did anyone ever raise this point as a Bill of Rights issue. Everyone actually looked at it from pragmatic grounds. I would add that since consultation seems to be the order of the day, as an example to Members, in fact today I at random asked three people over lunch on this issue. Funnily enough one person said that one should totally ban these on environmental traffic grounds; another said it is really an issue allowing people to do business; and the third asked why we did not raise the fees and make them higher; but at no time was the Bill of Rights a real issue in this. I hope that although I did deal with it at length in my speech, Members will not be misled into thinking that that was the major point of deliberation.

DEPUTY PRESIDENT: In view of the way in which the debate has developed, does any other Member, who has not already spoken, wish to speak?

SECRETARY FOR TRANSPORT: Mr Deputy President, I am grateful to the ad hoc group under Mr Howard YOUNG for its advice and support and to all those Members who spoke this afternoon.

I fully appreciate the concerns expressed. The Attorney General has addressed the concerns in regard to the Bill of Rights and I shall not repeat them. I would like to assure this Council that full and careful consideration was given to all the alternatives before we decided to propose a ban on advertising vehicles. The fact is that the sole purpose of these vehicles is to display advertisements and for this very reason they are drawn to the most congested areas at the busiest times in order to achieve maximum effect. The number is not a relevant point; it is the problem they create that is the point. Although their numbers are small, they tend, by the

nature of their business, to drive at snail's speed in the most busy areas of Hong Kong and they do add to our already overcrowded environment, not to mention the pollution and related problems they create.

There are many examples of an accident involving a truck of this size overturning in the middle of a road, blocking the traffic, giving rise to long queues of vehicles and causing many hours of delay to drivers. Witness the example recently on Tuen Mun Highway or other major roads in Hong Kong where a single accident can block traffic for hours. This is the point at issue. The vehicles have been

DEPUTY PRESIDENT: Are you prepared to give way, Secretary for Transport?

SECRETARY FOR TRANSPORT: Yes, Mr Deputy President.

MR JAMES TO: Point of elucidation, Mr Deputy President. (in Cantonese): Concerning the overturned vehicle mentioned just now by the Secretary, was it a billboard vehicle, a cement-mixer, a container truck or other types of vehicles?

DEPUTY PRESIDENT: It is up to you whether you wish to elucidate, Secretary for Transport.

SECRETARY FOR TRANSPORT: Yes, Mr Deputy President. I would like to answer that point. Clearly they are not the same type of trucks, but they are similar in size. And if they overturn, they do block one or more lanes.

SECRETARY FOR TRANSPORT: If I may resume my speech, Mr Deputy President. These vehicles have been fairly recent phenomenon in Hong Kong but we have received numerous complaints from the public. Our proposed solution, Mr Deputy President, is not unique. They have already been banned in other similarly congested big cities, such as San Francisco and New York.

The alternative to a ban on these vehicles is to control them and to restrict

the areas and the times in which they can operate. In fact, this is the present system of control under existing legislation. But any system of control including, for example, a quota system requires enforcement. And in this case control puts an added and unnecessary burden on the police at a time when there are more pressing priorities. As I have said, by their very nature, these vehicles must operate in the busiest areas. Keeping them out of these areas will require constant and major efforts on the part of the police and it may degenerate into a cat and mouse situation. As many Members have said, advertising vehicles serve no transport functions. Any need for mobile advertising can be and is already being met by many other forms of transport, such as buses, trams and taxis.

Although the vehicles have not so far been involved in traffic accidents, they are obviously a potential safety hazard. They are brightly lit displays and can and do distract drivers' and pedestrians' attention. The huge size of the billboard itself often blocks the sightlines of drivers, causing serious danger in our busy roads.

Members will agree with me, I hope, that prevention is better than cure; we must not wait until accidents occur.

Under the proposed legislation, the Commissioner for Transport will still be able to issue permits for the display of non-commercial advertising including election campaigns. Existing operators will also be able to continue using their vehicles until their current permits expire, the latest not until early next year. The vehicles are basically flat-bed trucks and can easily be converted to transport purposes. There is therefore no hardship or problem in their maintaining a viable use after the ban.

Mr Deputy President, I move that the Bill be read the Second time.

MR JIMMY MCGREGOR: I wonder if I may seek elucidation from the Secretary on certain points which are relevant to the speech he just made. I wonder if I could put to him three questions.

DEPUTY PRESIDENT: You can always make a point of elucidation if a speaker is prepared to give way, but make your points and it would then be for the Secretary to decide whether he elucidates as requested.

MR JIMMY MCGREGOR: I seek to establish a balance, Mr Deputy President. Would the Secretary tell me whether there are cities, or indeed states, which permit the use of such vehicles without banning them and without restricting them in any way? The second question relates to the risk of overturning and the suggestion that there may be serious accidents caused by such vehicles. Have there been any such accidents? And since the vehicle is a flat-bed and thus can never overturn -- unlike a cement vehicle which is top-heavy -- in an accident unless deliberately pushed over, would the Secretary confirm that the risk of overturning is indeed the key issue? Finally, on the question of enforcement by the traffic police, I have asked how many summonses have been issued against such vehicles; I have been advised that not one summons has been issued. The Secretary referred to a "cat and mouse" operation. So big a mouse it was, would the police have found difficulty in spotting it to issue it with a summons? (Laughter)

DEPUTY PRESIDENT: There are three points for your elucidation, Secretary. It is entirely up to you whether you wish to elucidate as requested.

SECRETARY FOR TRANSPORT: Mr Deputy President, if I may just respond briefly to the points raised. I think I have already covered some of the points made by Mr MCGREGOR. Clearly the question of overturning is one example; there are many other examples, collision being one, which cause blockage of our roads. As regards the numbers, they have in fact not grown yet, but if there is no ban, the numbers will grow in tandem with market demand. Indeed, when we first proposed the present legislation, the number then was 34; now it is reduced to 19. This is an obvious example of the effect this will have. The trade can see that they will have to operate on the basis of public support and what they now face is an indication of public opposition to this type of mobile advertising which causes serious traffic congestions. Finally, about the point of police enforcement, I am not sure whether Mr MCGREGOR is aware of the attention and time the police must give to many other pressing priorities, least of all chasing after a mobile truck. I am sure it is a question of proportion and relative priorities. It is true that there are no summonses yet, but we must prevent rather than cure. Thank you.

DEPUTY PRESIDENT: Is that a point of elucidation, Dr HUANG?

DR HUANG CHEN-YA: Yes, Mr Deputy President, point of elucidation.

DEPUTY PRESIDENT: Would you please make it a short point and confine it to something which the Secretary has said which you want him to elucidate.

DR HUANG CHEN-YA: Yes, Mr Deputy President, I will do precisely that. In view of the fact that the Secretary has made so much of a point of traffic accidents, would he inform us of the accident rate involving these mobile billboards as compared with container vehicles or ordinary vans and cars?

DEPUTY PRESIDENT: Secretary, it is for you.

SECRETARY FOR TRANSPORT: I believe I already said in my main reply that there has been no accident so far, but we would wish to prevent accidents happening.

DEPUTY PRESIDENT: Mr BARROW has put his hand up. Yes, Mr BARROW.

MR MARTIN BARROW: I do not think the Secretary has answered the first part of Mr MCGREGOR's question. I think the Secretary referred to the fact that these vehicles were now banned in San Francisco and New York. He did not answer the question of whether he was aware of which major cities still continue to allow them. Could he comment on that?

DEPUTY PRESIDENT: Strictly, it is not a matter of comment, Mr BARROW. It is a matter of elucidating something which the speaker has said.

MR MARTIN BARROW: Could the Secretary explain then if there are cities he is aware

of where these vehicles are permitted?

SECRETARY FOR TRANSPORT: Mr Deputy President, I think in Australia these vehicles have not yet been banned but it is a very large country with sparse population. It is a very different environment from Hong Kong which is comparable to New York and San Francisco in terms of congestion on the roads.

DEPUTY PRESIDENT: Yes, Mr James TO.

MR JAMES TO (in Cantonese): The Secretary mentioned just now that billboard vehicles would block the sightlines of drivers because of their huge size. But are the sightlines of drivers blocked in particular by the triangular design of these billboard vehicles in comparison with the often seen 5.5-ton or 7.5-ton high-compartment goods vehicles, buses or other heavy vehicles?

SECRETARY FOR TRANSPORT: I am afraid, Mr Deputy President, we are drifting away from the main issue which is that these trucks serve no transport functions. The vehicles Mr TO referred to serve a very important economic function in Hong Kong.

DEPUTY PRESIDENT: Yes, Mr McGREGOR.

MR JIMMY McGREGOR: Mr Deputy President, a point of elucidation. The Secretary mentioned the difficulty in Australia. Is he suggesting that Australia is about to or actually going to restrict those vehicles? This is very relevant to the case being made because the Secretary is giving a very negative position on what other cities do and I am concerned whether Australia is, as we have been presently advised, about to face or facing a danger with these vehicles; I have not thought so.

DEPUTY PRESIDENT: I think we are drifting from strict points of elucidation and I do not think this is the forum to continue this exercise. Yes, Mr Simon IP, is that a genuine point of elucidation?

MR SIMON IP: Yes, Mr Deputy President. The Secretary told us that non-commercial mobile billboards will still be allowed. I just wonder what the difference is. If there are still to be mobile billboards, why discriminate against the commercial use of them?

DEPUTY PRESIDENT: Secretary for Transport, it is for you.

SECRETARY FOR TRANSPORT: I believe we are a very sensible government. We do allow mobile billboards for charitable or electioneering purposes which are important community functions. These trucks can sometimes help. This is why we allow them to be exempted.

DEPUTY PRESIDENT: I think we had better proceed with the normal business.

Question on the Second Reading of the Bill put.

Voice vote 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 and I will check with them before the results are displayed.

DEPUTY PRESIDENT: Do Members have any queries before the results are displayed? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mrs Rita FAN, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO,

Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Prof Edward CHEN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Frederick FUNG, Dr LAM Kui-chun, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Gilbert LEUNG, Mr Eric LI, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum and Mr Howard YOUNG voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Ronald ARCULLI, Mr Martin BARROW, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO and Mr WONG Wai-yin voted against the motion.

Mr Henry TANG abstained.

THE DEPUTY PRESIDENT announced that there were 33 votes for the motion and 19 votes against it. He therefore declared that the motion on the Second Reading of the Bill was carried.

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

Committee stage of Bill

Council went into Committee.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1992

Clauses 1 to 4 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1992

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

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

Bill read the Third time and passed.

Member's motions

REVIEW ON EXECUTIVE-LEGISLATURE RELATIONSHIP

DEPUTY PRESIDENT: There are two Member's motions for debate this afternoon and in accordance with recent practice Members have agreed to place a voluntary limit on length of speeches. Members have agreed, I understand, that a total of four hours be allocated for the two motion debates less the reply by the mover of the motion and government speakers. It has been suggested that we allocate two and a half hours for the first motion debate and an hour and a half for the second motion debate. A fair balance as between the two motion debates, in view of the number of Members who have put their names down to speak, is to allow, other than the movers of the motions, six minutes to each Member in each of the two debates. I would urge Members to respect their own voluntary agreement on restraint and to limit their speeches to not more than six minutes each.

MR SZETO WAH moved the following motion:

"That this Council urges the Government to review and improve urgently the relationship between the Legislative and the Executive Councils on the basis of the principle provided in the Sino-British Joint Declaration that the executive authority shall be accountable to the legislature."

MR SZETO WAH (in Cantonese): Mr Deputy President, I move the motion standing in my name on the Order Paper:

"That this Council urges the Government to review and improve urgently the relationship between the Legislative and the Executive Councils on the basis of the

principle provided in the Sino-British Joint Declaration that the executive authority shall be accountable to the legislature."

The Sino-British Joint Declaration is the most important document relating to Hong Kong's present and future and its provisions serve as the cardinal principles for the administration of the territory's present and future affairs. Any violation of, deviation from or distortion of the Joint Declaration will definitely ruin Hong Kong's future, and jeopardize the interests of both the six million Hong Kong citizens and 1.1 billion Chinese people.

A commonly used expression in Mainland China is: "which is superior", as in "which is superior, the Party or the law?" Now, borrowing the same line, I would like to ask, "which is superior, the Sino-British Joint Declaration or the Basic Law?"

Section 12, Paragraph 3 of the Sino-British Joint Declaration states that "the above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years".

Paragraph 8 adds that "this Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding". The actual date of the exchange of instruments of ratification of the Joint Declaration was, in fact, 27 May 1985.

This shows that: (1) The Basic Law was drafted on the basis of the Sino-British Joint Declaration and hence if there is any discrepancy between the two, the Joint Declaration should prevail. That is to say, the Joint Declaration is superior to the Basic Law. (2) The Joint Declaration has already become effective since 27 May 1985, and is in force now, whereas the Basic Law shall not be put into effect before 1 July 1997, according to the Decree of the President of the People's Republic of China No. 26 issued on 4 April 1990.

As regards the relationship between the executive authority and the legislature, or in other words, the present relationship between this Council and the Executive Council, there is only one relevant sentence in the Joint Declaration which states:

"the executive authorities shall be accountable to the legislature".

What does it mean by "be accountable to XX"? Some twisted it substantially in order to play down significantly the status of the legislature.

Going through the Constitution of the People's Republic of China briefly, I spotted more than 10 provisions where "be accountable to XX" is mentioned. Here are three examples:

"Article 69: The Standing Committee of the National People's Congress is accountable to the National People's Congress and reports on its work to the Congress".

"Article 92: The State Council is accountable, and reports on its work, to the National People's congress or, when the National People's Congress is not in session, to its Standing Committee".

"Article 110: Local people's governments at different levels are accountable, and report on their work, to the state administrative organs at the next higher level".

In the Chinese Constitution, it is therefore obvious that "be accountable to XX" refers to a relationship of the superior to the subordinate, the leader to the led and the supervisor to the supervised.

There are also provisions in the Basic Law where the phrase "be accountable to XX" can be found:

"Article 57: A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive".

"Article 58: A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive".

The relationship which the Chief Executive has with the Commission Against Corruption and the Commission of Audit thus illustrates more clearly what kind of relationship the phrase "be accountable to XX" implies.

We must construe the provision in the Sino-British Joint Declaration on the executive authority's accountability to the legislature in the light of the meaning of "accountable to XX" as provided in the Chinese Constitution and the Basic Law. And on this basis, the relationship between the two shall be reviewed and improved. No distortion, deviation and violation should be allowed.

When talking about the relationship between the two Councils, some people have prattled on about the importance of "executive-led". When this Council upheld the provision of the Joint Declaration concerning the appointment of overseas judges to the Court of Final Appeal, called for an increase in personal allowance and the cancellation of rates increase as proposed in the Budget, and vetoed the funding of directly subsidized schools, these people raised a hue and cry about it and claimed that the principle of executive-led government was compromised.

What does it mean by "executive-led"? Why must the relationship between the Executive Council and the Legislative Council be built under an executive-led system? I would like these people to give me an explanation. Besides, on what provisions do they base their arguments? In fact, the phrase "executive-led" is nowhere to be found in the Sino-British Joint Declaration, the Basic Law or even the Letters Patent. The so-called executive-led system has, after all, no legal foundation nor any substance at all.

These people may say, "Hong Kong's political system has all along been executive-led and should not be changed".

Frankly speaking, as a colony, Hong Kong's political system has not been "executive-led" but "sovereign-state-led". The sovereign state appoints the Governor who in turn appoints all the Executive Councillors. Before 1985, all Members of the Legislative Council were appointed by the Governor, and since then and before 1991 more than half of the Councillors were still appointed Members. The Executive and the Legislative Councils were just like the two arms of a person. Both were under the command of a person's brain, that is, the sovereign-state-appointed Governor. Starting from this Session, more than half of the Members of this Council are returned through elections. This is a historic and qualitative change. As a departure from the days when both arms were under the command of the same brain, one of them has now become less willing to follow instructions as it wants to echo more public sentiments. But this development has met with loud cries that this is against the executive-led system. "Executive-led", how many decisions running counter to

the wishes of the public have indeed been made in your name!

Those who hold the executive-led government so dear to their heart are in very fact people who find it hard to part with the "sovereign-state-led colonial government". For those insisting on the executive-led government remaining unchanged, do they intend to treat the Hong Kong Special Administrative Region after 1997 as another form of colonial government?

The Administration is not unaware of the historic and qualitative change that has taken place in this Council. As such the Governor in his Policy Address last October put forward the ideas of "the establishment of an effective partnership", modification of "administrative procedures" and "streamlining of the Executive Council's procedures". I asked the government officials to elaborate how to "establish", "modify" and "streamline" in their replies. Unfortunately, in their response, the officials were deaf to my request and made no attempt whatsoever to answer my question. Now this legislative year is about to come to an end; could the officials inform this Council what measures, if any, the Administration has taken to "establish", "modify" and "streamline" the above? Has "partnership" been built up already?

In the debate on the Policy Address that followed I expressed the view that the conflict, that is, the way to handle the relationship between the Executive and the Legislative Councils, can be resolved in two entirely different ways:

"1. Making use of the undemocratic system of this Council where only a small number of seats are provided for directly elected members who represent the views of the majority of the public to organize, through every possible means, various "fire-fighting teams", "flood-control teams", "water-supplies teams" and "poaching teams", overtly or covertly, to secure the majority vote in this Council, thereby turning a deaf ear to the views of the public.

2. Recognizing the unreasonable fact that the Administration is not a governing party returned by elections, due respect be given to public views reflected by elected Members, particularly directly elected Members, and policies be formulated on the basis of these views instead of focussing only on the number of votes secured."

Which way has the Administration adopted in the past year?

It has become a vogue of this Council in this Session for Members to move amendment

to other colleagues' motion. Fortunately, this motion of mine is spared a strike by this vogue and there is no amendment motion. However, can my motion be carried though it is not subject to an amendment? I think it can.

There are three basic ingredients in my motion: (1) The principle that the executive authority shall be accountable to the legislature as provided for in the Sino-British Joint Declaration, which I believe none of the Members of this Council would oppose. (2) Improvement of the relationship between the Executive Council and the Legislative Council. Nothing is perfect in this world. There must be room for improvement in everything and it is also necessary to do so. Anyone who resists improvement is ossified, stagnant, or even a living dead man. Who will not object to ossification, stagnation and death? (3) Review of the relationship between the Executive Council and the Legislative Council. To bring about improvement, we have to carry out a review. A serious review is the first step towards improvement. Opposing the review is in essence refusing to initiate improvement and this is ossified, stagnant or even dead.

Is there any ground to oppose these basic ingredients? No. I therefore envisage that this motion will be agreed to.

But as to how to conduct the review or how to make improvement, I have no other specific views or preconceived ideas apart from the principle stipulated in the Joint Declaration as referred to in my motion. The Administration will hear a lot of opinions in today's debate. And more can be expected after the review commences. Today's debate only marks the opening, rather than the closing, of the door to opinions on improvement. I believe more and mature views will come forth after the passing of this motion today.

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

Question on the motion proposed.

MR ALLEN LEE (in Cantonese): Mr Deputy President, today's debate is on the relationship between the Legislative Council and the Executive Council. I have a certain degree of understanding about both the Executive Council and the Legislative Council, having worked for seven years in the former and fourteen years in the latter. The Executive Council is the highest policy making body in Hong Kong; in the previous

term every Executive Councillor was required to swear the oath of confidentiality. The reason is that, the discussion papers which go before the Executive Council may touch on the stock market and other sensitive economic, social and political issues. It is vitally important that confidentiality is observed as the Executive Council functions in a similar way as the cabinet in other countries. The only exception is that the Executive Councillors hold no special official position. In this regard, all papers have to be discussed by all Councillors who will then have to be held collectively responsible for all the policy decisions taken. On certain issues, such as those involving personal religious belief and ideology, Councillors may request a relaxation of the rule of collective responsibility, but the final decision rests with the Governor. The formulated policy which requires legislation or public funding will then be presented to the Legislative Council or the Legislative Council's Finance Committee, respectively, for consideration. The Legislative Council may disagree with, make amendments to, or simply endorse, the policy. That is where the Legislative Council's power lies and how check and balance works in respect of its relationship with the executive authority. Indeed, that is also how the Executive Council and the Legislative Council operate and how they relate to each other. Basically, the political system in Hong Kong is one in which the executive authority formulates policy for the monitoring of the legislature.

With Hong Kong's political system becoming more and more democratic, open government is being instituted step by step along the democratic trend. The opening up of the Legislative Council is something which everyone can see with his own eyes. I believe that, as Mr SZETO Wah was saying, we can review and study what improvements can be made. It is based on this spirit that I do not see any need to oppose his motion, but decisions regarding the operation of the political system rests with the Governor. Although the Governor is appointed by the British Crown, he is also accountable to the people of Hong Kong. In the five years which remain of the transition period, the Governor's greatest responsibility is to implement the Sino-British Joint Declaration and to maintain the prosperity and stability of Hong Kong. In this connection, I cannot but commend Lord David WILSON for his great achievement during his five year tenure as the Governor of Hong Kong. Hong Kong has faced a lot of challenges for the past five years and under his leadership we have been able to successfully tackle these challenges and difficulties. There are many issues which have been resolved in a quite satisfactory manner. As he is about to leave his governorship in two days, I wish to pay tribute to him and wish him and his family well when they return to the United Kingdom; I also wish he could come back to visit Hong Kong frequently in the future.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, this current term of the Legislative Council beginning in October last year can be said to mark a new epoch to the extent that it has had for the first time directly elected seats, and more importantly, that the total number of elected seats has for the first time exceeded that of official and appointed seats put together. Although we cannot make the assumption that all elected Members are opposed to the government position, they, shall I say we, have to step up the monitoring of government operation and critically comment on government policies for after all we have to fight for the interests of our electors and be accountable to them. Under these circumstances, the Government could no longer use the same old practice of giving a routine, ex post facto explanation and actually expect a policy which has been formulated by its executive departments to be endorsed and passed as a matter of course by the majority of Members of this Council.

I believe that, although Hong Kong people may have different interpretations of an ideal democratic system, nobody will object to being given more freedom and democracy in a shorter time. As Members of this Council, we are of course clearly aware that the present executive-led government is not the ideal democratic system of tomorrow. I am also in favour of increasing the representativeness of the Executive Council, in order to strengthen the mandate for government policy decisions in the Legislative Council. But speaking for myself, after the experience of the past eight months, I believe that the twin rules regarding confidentiality and collective responsibility which Executive Councillors have to abide by are actually great hindrance to the cause of strengthening the communication between the Executive Council and the Legislative Council, and making the former accountable to the latter.

Despite the hindrance, however, I believe that improvement may be made to the relationship between the two Councils. My proposals are mainly as follows:

(1) Given that nobody dares deny the extremely important factor which the relationship between the two Councils constitutes in maintaining a stable political environment, we should not lightly abolish the existing OMELCO standing panels, or for that matter, the future standing committees, which correspond to the various policy branches of the Government. It is for this reason that I propose that, when the Executive Council takes a decision on a policy which has not been included in the agenda, the relevant Branch Secretary should inform beforehand the relevant OMELCO standing panel or committee of the contents relating to the policy principles

and solicit the views of panel members. When the Branch Secretary presents his or her policy proposals to the Executive Council, the latter may at the same time know the views of OMELCO panel members and consequently take a decision which is most favourable to the community as a whole. Regarding the point of post-decision accountability, I believe that Executive Councillors should, in addition to introducing the contents of policy at the OMELCO briefings, also explain why relevant ideas have not been accepted, in an attempt to win the support and understanding of Members of the Legislative Council.

(2) Whereas the British Government has also a system of collective responsibility governing all cabinet members, it is in real practice more flexible than that which applies to Hong Kong Executive Councillors. Given that each cabinet member has his own constituency to take care of, in the event of a central policy decision taken by the cabinet causing a conflict of interest with his constituency, then the member may make public his personal position taken in the cabinet discussion. Admittedly, the ruling party will put this on record and when this occurs repeatedly during the term, the member in question may be subject to party disciplinary action. At any rate, I believe that the leeway for a member to explain his position to his constituency in the event of a major conflict of interest would to a certain extent alleviate the misgivings of legislators, who have party background, about joining the ranks of Executive Councillors. I believe that the relationship between the two Councils would be greatly enhanced with the co-option of this category of members to the Executive Council. It is in this perspective that we have something to learn from the British system.

Mr Deputy President, democracy should not be viewed as just a present from the powers that be; therefore, this Council has been trying over the years to help fight for it for Hong Kong people, though our achievement has not been proportional to the effort we have made towards this cause. Reasons might be that our ideal perceptions of democracy are too detached from reality, that our democracy demands have invariably been raised at the downturns of Sino-British relationship, and indeed the recent debate on this issue is a good example of this. No wonder we have been accused of going round and round the issue without bringing any real benefits to society. It is a very bitter feeling to have to take stock of experience and reluctantly accept the political reality not to one's liking. But there is still a need for this Council as a leader of public opinion to continue to take a positive attitude and fight the best we can at appropriate times and by appropriate actions.

With these remarks, I support the motion and present the above two proposals, in the hope that they may be implemented soon.

MR PANG CHUN-HOI (in Cantonese): Mr Deputy President, given that the Legislative Council has already made changes to its structure and composition in keeping with the times, the relationship between the Legislative Council and the Executive Council should also be reviewed as a matter of urgency if the Executive Council is to continue to function effectively.

To forestall the Executive Council becoming out of touch, and to enable its policy decision to have greater support in the Legislative Council, there is all the more need for its representativeness to be increased, and for people of different political persuasion to be appointed to it. Even after 1997, the Chief Executive of the Hong Kong Special Administrative Region will still have to rely on the support of the Legislative Council for the smooth passage of all of his administrative measures and decisions. In this regard, the increased representativeness of the Executive Council will be conducive to communication and co-ordination.

Annex I of the Sino-British Joint Declaration stipulates, and I quote, that "the executive authorities shall abide by the law and shall be accountable to the legislature". The Basic Law also stipulates, and I quote again, that "the Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy making". In this regard, the relationship between the three is very clear indeed. Regarding whether collective responsibility and confidentiality should continue to apply in respect of the Executive Council, since they are not included in the Basic law, I would think that they should be open to further study and debate according to practical circumstances, subject to the premise that they are compatible with the relationship stipulated for the three parties in the above-mentioned documents.

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

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, let me first of all declare that I do not quite understand the phrasing of the motion before us today. Whereas the first part of the motion mentions the principle prescribed in the Sino-British Joint Declaration of the executive authorities being accountable to the legislature,

the second part actually requests a review of the relationship between the Legislative Council and the Executive Council; it is indeed quite baffling. I will not therefore vote on this motion. The "executive authorities" mentioned in the Sino-British Joint Declaration actually refers to the departments of the Special Administrative Region (SAR) Government; it does not refer to the Executive Council, which is a policy advisory body assisting the Chief Executive of the SAR. Insofar as the Basic Law is concerned, executive committees which have similar role and function to the existing Executive Council are institutions which assist the Chief Executive in policy making; they are not part of the executive authorities. In this regard, it is quite a misconceived idea to put the executive authorities and the Executive Council in the same category.

However, it is all right of course to review the existing relationship between the executive authorities and the legislature for the purpose of achieving a smooth transition to the political system after 1997. I think Members are aware that the Basic Law has already been formulated; it serves to give effect to the spirit of the Sino-British Joint Declaration and decide the direction of political development from 1997 until at least 2007. In this regard, the present review should take into account the issue of convergence with the Basic Law. As a member of the drafting committee of the Basic Law, I have the responsibility here of briefing Members on the relationship between the executive authorities and the legislature, as stipulated in the Basic Law. Section 2 of Chapter IV of the Basic Law states that the "executive authorities" of the HKSAR refers to the SAR Government which is to be composed of various bureaux, divisions and commissions, under the leadership of the Chief Executive. It shall abide by the law and be accountable to the SAR legislature. Accountability is defined in the following terms, "it shall implement laws passed by the (Legislative) Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the (Legislative) Council; it shall obtain approval from the (Legislative) Council for taxation and expenditure." Meanwhile, Section 1 of Chapter IV of the Basic Law also stipulates the powers of the Chief Executive and his relationship with the legislature. It is worth noting that Articles 54-56 of Section 1 provide for the setting up of an executive council which is similar in nature to the existing Executive Council, to assist in the policy making of the Chief Executive. Article 56 even says that, "the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council." Regarding the composition of the executive council, Article 55 clearly specifies that its members shall be

appointed by the Chief Executive from among the key officials, members of the legislature and community figures.

It can be seen from the provisions of the Basic Law that the future executive council and the legislature will have quite different roles to play. The executive council will be a think tank which will assist in the policy making of the Chief Executive; its members should be unbiased and assist in policy making in the overall interest of Hong Kong. The legislature, on the other hand, will represent a cross section of different interests in the community and function as a force to monitor government policies. In this regard, the executive and the legislature will have clearly defined terms of reference. That being the case, I would think the present principles of collective responsibility and confidentiality should be preserved because these are principles which will also be applicable to the future executive council. Otherwise, the future executive council will have powers but no accountability; it will have the power to participate in policy making but it cannot be held responsible for policies which have been formulated. The executive council will as such become a venue for contest of various political forces. This will run counter to the roles prescribed by the Basic Law for the future executive and legislature.

Although Hong Kong will continue to have an executive-led political structure, it does not follow that the Chief Executive or the executive authorities for that matter will be able to do whatever they like. The legislature will continue to check and balance the power of the Chief Executive and the executive authorities. Article 73 of Section 3 in Chapter IV of the Basic Law sets out the terms of reference of the legislature, including questioning the performance of the government, conducting debate on relevant public issues, even impeaching the Chief Executive for breaching the law and dereliction of duty, and reporting the case to the Central Government for its decision.

Lastly, I hope that the Government will review the relationship between the executive and the legislature on the basis of the model pattern described in the Basic Law.

Mr Deputy President, I so make my submission.

6.33 pm

DEPUTY PRESIDENT: We will take a break and resume after 7.05 pm.

7.12 pm

DEPUTY PRESIDENT: Council will resume.

MR MARTIN LEE (in Cantonese): Mr Deputy President, I would like to begin by quoting DENG Xiao-ping. "With a good system in place, even the bad guys will not be able to do bad things; but in the absence of a good system, even the good guys will not be able to do good things and they will even be forced occasionally to do bad things." Of course, I am quite sure that Mr DENG was not referring to the political system of Hong Kong when he said this, but I tend to share his feelings as I look at our colonial political system which is feudal and outdated.

The Governor said in this policy address last year that the relationship between the Executive Council and the Legislative Council should be one of partnership. The United Democrats of Hong Kong (UDHK) support this view. Indeed, we have all along insisted that the roles of the two Councils should be clearly defined and that the ultimate goal should be the setting up of a government which is accountable to the public.

A colonial government does not ever have the need to be accountable to the people of Hong Kong. To ensure that the interests of Hong Kong people are protected, and that their wishes are respected, the only way is for us to set up a system in which the Executive Council is accountable to an elected Legislative Council. That indeed is the guarantee given to Hong Kong by the Sino-British Joint Declaration.

At present, the Legislative Council only has 30% of its seats returned from direct election; the vast majority of the remaining seats are occupied by Appointed Members who do not have to be accountable to the public. In this regard, the UDHK insist that at least half of the seats of the Legislative Council should be returned by direct election by the year 1995. What we are fighting for is not so much eight or 10 seats but to ensure the principle that a government should be accountable to its people.

Of course, it is understandable that Appointed Members will have reservations

about this principle of public accountability because they do not have the public mandate and it is difficult to ask them to be responsible to the people. During the Legislative Council debate on the OMELCO consensus last week, all directly-elected Members unanimously supported the original motion moved by Mr McGREGOR. But it can be seen from the voting result that the amended motion has been carried. This is simply because the way the existing Legislative Council is constituted is not democratic. If there is no change to the existing system, I am afraid the interests of Hong Kong people will be buried along with the demise of the colonial government.

Mr Deputy President, we insist on the principle of public accountability because we would like to ensure that any decision taken by the Government will be in line with the interests of the people. In this year alone, there have been quite a number of decisions made by the Executive Council which are not in keeping with the interests of the people. Examples which stand out include the veto to the demand for increasing the personal allowance, the importation of foreign workers, and the move to cut education spending, combine classes and enlarge the class size, all in the context of huge government surplus.

If we have in place an Executive Council which is fully accountable to an elected Legislative Council, the Government will not be able to get away with such policies which do not have the support of the people. However, under the present system, with the Executive Council which has no need to be accountable to the public, it is quite inevitable that there will be policies which betray public opinion. Even when the Government is committed to doing good things, its policies may be aborted by the Executive Council and the Legislative Council whose vast majority of Members are not accountable to the public. Meanwhile, in the event of a conflict of interests between China and Hong Kong, if the Executive Council and some Legislative Councillors actually choose to put China's interests before Hong Kong's interests, it will have the even more serious consequence of the two Councils becoming accountable to the central government in China. That scenario is completely not in keeping with the purpose of the Sino-British Joint Declaration.

Lastly, I would like to respond to some of the views expressed on the issue of collective responsibility of the Executive Councillors. It has been said that the new Governor, Mr Chris PATTEN, should preserve the principle upheld by Lord David WILSON, because that is a good way of ensuring the effective functioning of the Executive Council.

However, I would like to clarify that we clearly know from the constitutional history of Hong Kong for the past 100-odd years that the Executive Council has never had a tradition of collective responsibility. It is a practice which has no constitutional basis, and which is not part of the tradition of our political system. It should not be a problem if we choose to let the Executive Council revert to its old style of functioning.

Meanwhile, in terms of political effect, collective responsibility is only to make sure that the Executive Council will stay loyal to the colonial government and escape the monitoring of the public. In Western countries which practise parliamentary system, the cabinet is produced by the parliament and has to be accountable to it. Given that the parliament is elected by the people, this means that the cabinet has to be accountable to the people. But we have a quite different situation in the colony of Hong Kong. The Executive Council is appointed by the Governor and is accountable to the colonial government. Collective responsibility will only result in a tighter grip over the Executive Council by the colonial government, to the extent that it is completely not monitored by the public. The practice of collective responsibility in the context of Hong Kong as a colony will only achieve a political effect which is diametrically opposed to that aimed for by a cabinet responsibility system in Western countries which have parliamentary system. In the case of the latter, the aim is that the cabinet will be accountable to the people. If Hong Kong is to insist on the preservation of collective responsibility, this would only force elected representatives of the people to be accountable to the colonial government. I hope Members will seriously review this issue.

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

MR RONALD ARCULLI: Mr Deputy President, the motion proposed by the Honourable SZETO Wah calls on the Government to review and to improve urgently the relationship between the Legislative and the Executive Councils as the Sino-British Joint Declaration provides that executive authority shall be accountable to the legislature. Members may recall that the Governor, at the opening of this Council last October said, and I quote:

"Under our system of government the Executive Council is and will continue to be the key policy making body in Hong Kong. Its members will have an important role to play, an increasingly important role, both in reflecting the views and concerns of the

Legislative Council Members and in explaining the Administration's proposals to you and to a wider public. This will help us to create an effective working partnership between the Administration and Members of this Council."

I believe that in today's debate, those words of the Governor are a good starting point. I imagine few would disagree with the essence of the Governor's remarks, although on another occasion some of my colleagues made suggestions as to how this might be achieved.

It therefore seems to me relevant that we look at different ways this Council, or Members of this Council, can either collectively or individually express our views and concerns, and indeed achieve as best we can the proper accountability from the executive authorities, in which I would include the Executive Council and the Administration. Indeed, Members need no reminding that there are a number of ways of calling on the executive authorities to properly account to this Council. Some examples include: when we scrutinize Bills, our function as Finance Committee or indeed as the Public Accounts Committee, through Question Time, or as Members of the OMELCO Panels. Furthermore, as individual Members, we have access to all government officials and departments and indeed, to all Members of the Executive Council. I believe few would say that a close working relationship between this Council and the Executive Council is undesirable. What is equally, if not more important, is that this Council, the Executive Council and the Administration should produce between them an effective, fair and accountable government, for, above all, we are all here to serve the community.

I would therefore be receptive to any new ideas that I believe will help us attain that goal. But before we throw out summarily any of the existing arrangements, we must ensure that whatever is to replace them, these new arrangements are improvements and are seen by most, if not all of us, to have a high probability of success.

Members of this Council completed a review of the committee system of this Council and amendments of Standing Orders are due to be considered by Members on 8 July. If the amendments are passed, we would have taken a giant step within this Council, to improve efficiency, transparency and accountability of this Council and thus to better serve the community. As for the activities of OMELCO, the intention is for Members of the Legislative and Executive Councils to carry out a review of the present system.

Mr Deputy President, there has been much talk of widening the representation of the Executive Council. Some concerns that I have heard are as follows: Do we want the disagreements that we have here to go through a first-round disagreement in the Executive Council, or words to the effect that how often is it that we see stable governments that are as a result of a coalition? Perhaps this is to look at this issue too narrowly. For myself, the most important objective is for us to collectively achieve a fair, effective and accountable government. Any review that helps us towards that objective should be supported.

MR ERIC LI (in Cantonese): Mr Deputy President, according to the Letters Patent and the Royal Instructions, the functions of the Executive Council are limited to advising the Governor and the appointment of its membership is not subject to any preceding model. It is nobody's business to comment on appointment to the Executive Council because it is entirely a matter of the Governor's subjective judgment that he sees the political need for someone to become his advisor. But if the purpose is to form an Executive Council which is more responsive to the immediate political situation, then an analysis of the objective factors may be of use.

Under our present constitution, the Governor is the only person who is empowered to present in his capacity as the head of the government a policy proposal to the Executive and Legislative Councils for consideration. A policy must first of all have the endorsement of the Executive Council, and then the legislative and funding support of the Legislative Council, before it can be implemented. The Government will be in deep trouble and lose all of its credibility if this duet in the constitutional process is less than harmoniously played. In order to improve the inter-relationship between the Legislative Council and the Executive Council, I firmly believe that we should start by dividing the powers between the two Councils while making them equally responsible.

I cannot agree with the view held by not a few people that, based on the principle of the division of powers, the Legislative Council and the Executive Council should have clearly differentiated powers. The executive powers in the Hong Kong context rest with the Governor; the Executive Council is only executive in name without the power to actually execute policies. The most important function of the Executive Council is indeed to sell the government policy to the Legislative Council. For the Hong Kong Government does not have the mandate from the people, it is a matter of top priority, given the existence of a partly elected Legislative Council, that the

Legislative Council's endorsement must be secured, and therefore, in an indirect manner, the endorsement of the people, so that it will have both the blessing of public opinion and legitimacy on its side. Put in another way, the Executive Council and the Legislative Council discharge their responsibilities at different power levels in terms of balancing the extremely great powers of the Governor; the two Councils should therefore work closely together, in the duet that they are playing together, to make sure that the government policies should be formulated more in line with public opinion. I think those who advocate the shifting of the powers and responsibilities of executing policies to the Executive Council and request that it be accountable to the Legislative Council are actually barking up the wrong tree.

The Governor may make his selection for appointment to the Executive Council on the strength of two considerations. Either the candidate is an old faithful capable of hard selling the established policies or he or she is someone who is capable of acting as a bridge connecting the Executive Council and the Legislative Council and forging a partnership relationship between the two. These two different objectives were achieved, in the good old days of a similar ideological outlook between both Councils, by means of stick and carrot tactics. However, since the introduction of directly elected elements to the Legislative Council, an entirely different situation has emerged. (1) Public perception of the two largest camps on the Council is that one represents the grassroots and the other, business interests. Their ideological views are poles apart and they make no conciliatory gesture. But neither side has the overwhelming majority to control the Council. (2) With the imminent abolition of the appointment system, appointed members who form the backbone of the Executive Council are faced with a critical test in terms of public credibility and personal integrity.

I believe that the Executive Council may be able to adapt to different times and different circumstances, by a different composition in each instance. The following is an analysis of four possible combinations:

(1) The first scenario features the reliance on one large camp in the Legislative Council. That should be the most reasonable arrangement under a totally mature democratic system. The main consideration is that the ruling camp will co-operate wholeheartedly with the Government. However, if its intention is inconsistent with its profession, then this will result in forming an Executive Council in which members can actually manipulate the Governor, which is tantamount to the legislature leading the executive, and therefore a contravention of the existing constitution, and the

spirit of the Basic Law for that matter. Neither of the two existing camps in the Legislative Council, whether they be elected or appointed, have the mandate from the people to rule in place of the Government. Under the present election system, the people merely assign the responsibility to the elected members of monitoring the operation of the Government. What is more, in the latter half of transition, it is paramount that Hong Kong has the genuine co-operation of all walks of life to meet the challenges ahead. We cannot afford to have any one party reluctant to participate and this will be detrimental to our social and economic development and in the long run, this will jeopardize our prosperity and stability. Furthermore, it is still an open question whether the ruling camp will survive in the new political alignment of post 1997 Hong Kong. It is inappropriate for the Governor to put all his stakes on a particular camp to allow them to gain the experience of administering Hong Kong because any miscalculation will result in all efforts coming to nothing and will put a smooth transition at risk.

(2) The second scenario sees reliance on one camp plus independents. It is close to the present situation. The shortcomings are similar to those given in (1); only that the exclusion of the opposition camp will be all the more apparent and this would easily lead to the opposition camp assuming an even higher profile to fight to the bitter end, since they find themselves denied real power though having assumed certain responsibilities. It is likely under these circumstances that the opposition would in so doing be able to secure even more votes and more seats in the 1995 election. It would make the administration of Hong Kong all the more difficult, and affect the confidence of the administration per se, if the voice of opposition within the establishment becomes stronger by the day, while the opposition itself has no practical experience of running Hong Kong at all.

(3) The third scenario sees the appointment of both the two major camps. This would intensify their political contest and the Executive Council will be torn by polarized views. Although the Governor can choose what he thinks is the best for Hong Kong, he would be deprived of independent, fair-minded views. The Executive Council will in this way lose its advisory function. And the issues will eventually have to go back to the Legislative Council to face another round of tug-of-war before a result becomes available.

(4) The fourth scenario sees appointment being made in proportion to the strengths of the respective political forces. It was a proposal which I made about one or two months ago and it has been called the mixed model of 3:3:3 by the media.

It is based on a conception of the Executive Council as one in which there is both consultation and solidarity and which is able to share its powers with the Legislative Council while being equally accountable as the latter. Its advantage is that it will fully reflect the views of the Legislative Council. Since both of the major camps have equal number of seats in the Executive Council, there is no question of one being able to prevail over the other. They will have to take a pragmatic approach in terms of convincing their colleagues with argument and in the process, the official members and the independents will be in a position to play the role of a moderator. I believe that, before the emergence in Hong Kong of a powerful political camp which is capable of giving clear and uniform instructions to the Government, the uniting of the various political forces and the soliciting of more views from different quarters is a very good compromise indeed. While the rules of collective responsibility and confidentiality will make sure that the Executive Council will not get out of control, the resistance of the Legislative Council will also be accurately anticipated making it necessary for the Government to think carefully before acting. Another advantage of this scenario is that all political figures of different political persuasions will be able to acquire the valuable administrative experience right up to the eventual political transition, and therefore have the opportunity of sharing powers and responsibilities, and all the rest that go with it.

The rules of collective responsibility and confidentiality are two important mechanisms of resolving the internal disputes of the Executive Council to ensure effective administration. The United Democrats have not been appointed to the Executive Council because they found these rules unacceptable, and the process of the negotiations have not been made known to the public. I hope that the Administration and the United Democrats will care to respond to the points which I am going to make as follows:

(1) Collective Responsibility

Collective responsibility is only applicable to individuals; it does not apply to the party one belongs to. If three party members have been appointed to the Executive Council, their other party colleagues are still quite free to clearly state their party position. After all, collective responsibility applies only when a policy decision has been taken by the Government. Executive Councillors are quite free to state their position in principle regarding the issue during the deliberation, or at any rate, before a decision has been taken. In any case, if the party manifesto and its stance are clearly different from the Government's position on particular

issues, then members involved can ask the Governor for exceptional treatment such that they be allowed to vote "no", which I am sure they are allowed to do. Under these circumstances, I am sure voters will not be unreasonably critical.

(2) Confidentiality

The importance of confidentiality needs no further explanation. Indeed, in the closed door meetings of a political party, the rules of confidentiality and collective responsibility also apply. One wonders why this rule is only applicable to political parties but not acceptable to individual members even for the sake of the common interests of the people of Hong Kong.

Some people make the point that the bringing into the Executive Council of Legislative Council disputes will undermine the efficient operation and the credibility of our executive-led government. My response to this is that our political development has reached a point where political contest is quite inevitable. The only viable option is for us to try to find a compromise first in the Executive Council, to secure as much consultation and solidarity as possible within the context of collective responsibility and confidentiality, before the start of intensive debate in the Legislative Council which may eventually go back to the people or putting the issue to vote. The present practice of parading issues big and small on the political arena and of mobilizing public opinion to cheer on the sidelines will, I firmly believe, only lead to endless political bickering which will erode the credibility and efficiency of the Executive Council in the eyes of Hong Kong people.

Mr Deputy President, with these remarks, I wish to call upon Members to put aside their party and sectional interests to serve the people of Hong Kong with heart and soul and to improve the inter-relationship between this Council and the Executive Council in a more sincere manner. I hope Members will after making their speeches, actually put their words into action so that the spirit of the motion can be realized.

MR ANDREW WONG (in Cantonese): Mr Deputy President, I speak in support of Mr SZETO Wah's motion though my views on the relationship between the executive and the legislature may not coincide with his.

Mr Deputy President, Article I of Annex I of the Sino-British Joint Declaration stipulates that "the executive authorities shall abide by the law and shall be

accountable to the legislature". There are roughly three interpretations of such accountability of the executive authority to the legislature, with only one of them is truthful and correct. However, there is a possibility that all three are wrong.

The first interpretation is based on the American model, that is, the presidential responsibility system. I do not think it stands, for the following reasons:

(1) It is a model based on the tripartite division of powers of the executive, the legislature and the judiciary. It is a system of checks and balances which is quite different from a system in which the executive authority is accountable to the legislature. It is not regarded as a responsibility system in the 1976 original edition of the Global Parliamentary Encyclopaedia. What we are talking about now is a responsibility system within the context of a political system which is basically not the kind of system in which the executive authority is accountable to the legislature.

(2) The political system endorsed by China and enshrined in the Basic Law is not one of the presidential model. It is not possible that China would like the future political system of Hong Kong to model on the system of the paper tiger that is the United States.

(3) The British side must definitely go for the time-honoured parliamentary system rather than the presidential system. Hong Kong has always adopted the parliamentary system though in the past no elections have been held. We have now begun to have elections, but whether the elections are democratic or not is of course another issue.

The other interpretation is based on the socialist model in which there is legally no division of powers to speak of. There is only division of labour and accountability is a matter of subordination; for example, the State Council is answerable to the People's Congress. I think this is impossible. But it seems that Mr SZETO Wah is inclined to interpret accountability in this manner. I do not think it is a correct interpretation, for the following reasons:

(1) The socialist political system is not suitable to a capitalist economic system.

(2) China clearly states that a system of one country two systems will be in place.

We are not about to adopt the socialist system in which there is no question of division of powers.

(3) Britain insists on division of powers, which it has adopted for a long time. The essence of a democratic system is the division of powers. Even with the existence of a legislature which is directed elected by universal suffrage, the possibility of tyranny is always there without the division of powers, for absolute power will corrupt absolutely. If executive and legislative powers are actually combined into absolute powers, rather than separated, the very thought of it makes me shudder. That is all too horrible.

I mentioned just now that the third interpretation has to do with Britain, but it is in fact an accountability system pertaining to the European parliamentary model. With the division of executive and legislative powers, the executive authorities will have both powers and responsibilities. Executive powers are those of executing policies, the power to initiate and the capability of exercising power generally. We do not have to use such terms as "executive-led"; indeed, the spirit of the whole system rests with the power to initiate and execute policies and the capability of exercising power generally. It is more oriented towards the executive authorities, but it is also accountable to the legislature. Through raising questions, conducting investigation, moving motions and making criticisms, rejecting or slashing funding requests, rejecting the passage of bills or making amendments to them, the legislature is quite capable of making the executive accountable. That is a system which makes the executive answerable. I think this is the kind of accountability that both China and Britain have agreed upon, for the following reasons:

(1) This is the system which has always been part of Hong Kong's institutions.

(2) This is a British system which is also in common practice in Western Europe and Commonwealth countries.

(3) The essence of the Basic Law may also rest with such a system. For example, there is the provision for the dissolution of the legislative assembly which is not found in the presidential system.

Mr Deputy President, it is undoubtedly true, as Mr TAM Yiu-chung was saying just now, that this may not be the scenario as suggested in certain provisions of the Basic Law. Article 64 confines the interpretation of "accountability" to four respects. But I wish to point out here that Article 73(6) actually empowers the legislature

"to debate any issue concerning public interest", which should naturally include making criticism, even doing so in a vote of no confidence, or criticizing government policies. In this way the legislature can question the executive authority's policies, which in turn has to answer to the legislature. That is the provision concerning accountability within the context of a parliamentary system. It is in this way that the purpose of the system can materialize.

Mr Deputy President, allow me to read out two conclusions which have been reached by the OMELCO Panel on Constitutional affairs. Though I am the author of these conclusions, they have the endorsement of all members, including at least Messrs TAM Yiu-chung, SZETO Wah and Martin LEE.

Paragraph 7.17 of the OMELCO Standing Panel on Constitutional Development Report on draft Basic Law, 1989:

"Article 64 now limits the accountability of the executive authorities to the legislature to only four instances: (a) implementing laws, (b) presenting reports, (c) answering questions, and (d) obtaining approval for taxation and public expenditure. Members consider that such a limitation goes against the Joint Declaration quoted above. In addition, such a limitation is conceptually untenable since the Legislative Council, as a deliberation assembly, does have the power to move, debate and adopt motions, be expressive of its collective view as to whether specific policies and measures, specific public officials and the Government as a whole are worthy of its support, thus resulting in significant political consequences. (Although the Constitution does not require them to step down, the consequences will be still be enormous.) The limitation is also an undesirable arrangement as the possibility of moving such a motion represents a necessary safety valve making it possible for the executive to gauge the mood of the legislature ahead of time without the legislature having to resort to defeating government bills and withholding public funds." This is the kind of accountability system which gives greater promise of stability.

Paragraph 5.5 of the OMELCO Standing Panel on Constitutional Development Report on Draft Basic Law, 1988:

"Members felt that the phrase "accountable to the legislature", in essence, meant that the principal officials of the executive authorities should not be insulated from forces emanating from the political will of the people and the legislature and

should continue to hold office when they enjoy majority support of the legislature."

Mr Deputy President, the main point of Mr SZETO Wah's motion is how to improve the relationship between the Executive and Legislative Councils in respect of the issue of accountability prior to 1997. He stressed improvement in the present context, before 1997. But he also made the point in his speech that the Sino-British Joint Declaration has already been implemented, prior to 1997. I do not think this is the case. For the Sino-British Joint Declaration only prescribes the formulation of the Basic Law to make sure that the latter will not be incompatible with the former. But we are now moving towards the establishment of the political system of 1997. In this regard, with the Sino-British Joint Declaration already taking effect, we have the responsibility of ensuring that our existing executive authority, and the relationship between the Executive Council and the Legislative Council for that matter, will develop along the lines prescribed by the Basic Law and the Joint Declaration. I would like to solemnly state that no stop-gap change should be made at this present stage; we should instead move in the direction which we have already agreed upon. That is to say, we have to work towards the goal of the executive authority being accountable to the legislature in the sense of the answering questions raised from the latter.

Mr Deputy President, in summing up, I think, firstly, we should not abolish the rules of confidentiality and collective responsibility which are applicable to the Executive Council. Any proposal to amend or water down these two rules or to divide up the seats of the Executive Council are just contingency measures which have neither vision nor principle. With a collectively responsible Executive Council, the legislature can then make the executive authority accountable to it and the executive authority can no longer shirk its responsibility.

Secondly, Members of the Executive Council have to be individually given the power to oversee and held responsible for government policies and key officials should receive political appointment rather than being employed on permanent terms. In other words, if his performance is not satisfactory, the official in question will not be trusted and should step down. In this regard, it is not only the executive authority which has to be responsible to the legislature, but Members of the Executive Council and the key officials also have to be responsible to the legislature. Thirdly, however, given that we are still in the transition period, the Governor and the British Government are both bound by the Sino-British Joint Declaration to assume the responsibility of transferring the sovereignty of Hong Kong to China in 1997 and for

this reason, the Executive Council cannot enjoy full powers for the time being. After 1997, it will be able to enjoy all powers other than those relating to national defence and foreign affairs. I think we should divide administrative affairs into two categories, namely, those which are purely domestic, and those which are related to the transfer of sovereignty. The first category of administrative affairs should be decided on by unofficial members of the Executive Council with official and other parties contributing no more than views for reference; decision should be taken according to the wishes of the unofficial members. The second category of administrative affairs, because they hinge on the transfer of sovereignty, should be decided on by Hong Kong British officials, though before decision is taken, views of the unofficial members should be sought.

Fourthly, in this connection, the Governor should make his political judgment of appointing a certain political group in the Legislative Council to the Executive Council. I do not mind whether he chooses the Co-operative Resources Centre (CRC) or the United Democrats of Hong Kong (UDHK), exclusively or otherwise. I am not talking about the 3:3:3 model whereby the so-called neutral independents may be appointed to the Executive Council. The criterion is that the appointment should enjoy the support of more than half of the Legislative Council; at any rate, the appointment should not be opposed by that proportion of the Legislative Council.

Mr Deputy President, the saying goes that it is easy to go from being too involved to becoming preoccupied and confused. The person involved may feel that he can see very clearly not knowing that he is unable to see the picture because he becomes too subjective, and therefore rather muddle-headed, preoccupied as he is with his own stakes. He may in the end not be able to see as clearly as the bystanders. I do not have the audacity to say I am the bystander; I am also someone involved in this business. I hope that Members, myself included, will not get confused as we go deeper into the issue.

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

DR LEONG CHE-HUNG: Mr Deputy President, today, 1 July 1992, just five short years from the 1997 handover, this Council is again locked in a tug-of-war over whether the Executive Council or the Legislative Council should command the political high ground. But I firmly believe this is sheer coincidence in timing. There is no political conspiracy behind fixing such a day for such an important debate.

Some may see the debate as another solid proof of a political insurrection by Legislative Council rebels, to seize more power for the legislature. But I rather regard it as a chance for all of us to take a cool look at the present setup and to put our heads together to come up with a better one, for the benefit of Hong Kong and her people.

Mr Deputy President, there is an urgent need to review and improve the working relationship between the legislature and the executive authorities, not so much for the former to seize power from the latter, but to make the system work more logically and efficiently.

The fading out of the appointment system and the emergence of elected legislators in the Legislative Council is a phenomenon of natural development under the transitional arrangement preset in the Basic Law. Such a development is to enable Hong Kong people to learn in steps how to administer the territory, a very important part to realize the principle of a high degree of autonomy promised by China.

Elections do not only bring quantitative changes in the composition of the Legislative Council, they also provide a qualitative change to the ties between the Legislative Council and the executive authorities and also the Legislative Council and the Executive Council, the Government's highest decision-making body. The concept is that Hong Kong people can, through their elected representatives, participate in administering Hong Kong. This does not mean simply monitoring government policies. It also means expressing views during the formulation of policies, a process which is by and large behind closed doors now in the Executive Council Chamber up in Lower Albert Road.

As the Government is becoming more open and with more representatives elected to the legislature, it is essential to transform the present colonial system to a system that will realize the concept of Hong Kong people administering Hong Kong. And reviewing the relationship between the Legislative Council and the executive authorities is a step in the right direction.

No one can stand against the tides, and change is the only constant in Hong Kong.

By promising elections to the Hong Kong people, it is the intention of both China and Britain to show to the world that the future government will be alive to public views. And it is exactly for this reason that reform efforts have to be in place

to boost the link between the Legislative Council and the executive authorities.

The scene, Mr Deputy President, is thus set for an urgent review and to improve the working relationship between the Legislative Council and the executive administration, not so much as some have expressed, to seize power from the latter but to make the system work more logically and efficiently.

What then will be the rules of the game? The Joint Declaration provides that the executive authorities should be accountable to the legislature and the Basic Law calls for a clear division of work between the executive authorities and the legislature.

Let us pause and look at the current relationship between the executive authorities and this Council. It is the traditional practice of the Governor to appoint senior Legislative Council Members to the Executive Council to institutionalize the system; that is, the OMELCO system which enables Executive Council Members to be "on top" of Legislative Council Members. This system also ensures that Executive Council masterminds the Legislative Council, as that was an important condition for a stable colonial system.

With respect, Mr Deputy President, the current OMELCO system is but one big muddle. The Legislative Council has no independent bodies to monitor government policies. The job is done via OMELCO panels. The OMELCO panels are neither horses nor mules. Panels are convened by Legislative Council Members who are also Executive Council Members. For whilst Executive Council Members formulate policies as close advisers to the Governor, wearing another hat as a legislator cum convener of an OMELCO panel, they then take a lead to scrutinize the policies they themselves formulated. Under these circumstance, Mr Deputy President, OMELCO Members are subjected to a conflict of role if not a conflict of interest, to say the least.

This present link must have worked perfectly well as it was tailor made for an appointment system, but it does not and will not do, and rejection has been obvious when it is transplanted into a new system with elected Members who have their own constituents to serve.

Following the introduction of elections to the Legislative Council since 1985, the link between the Executive Council and the Legislative Council Members had undergone subtle changes. Executive Council Members can no longer maintain an overt

superiority over Legislative Council Members.

Last year, with a majority of Legislative Council seats being taken up by elected Members and that the Executive Council is still run under an appointment system, stark differences in the political backgrounds and the mandate between the two groups of politicians have emerged.

A new set of working relationship between the Legislative Council and the executive authorities, including the Executive Council, must therefore be installed with the new rules of the game.

Talking about new game rules, changes must be extended beyond the Legislative Council. The executive authorities must also make the necessary alterations. The current Executive Council consists of civil servants and non-official Members. The civil servants are to be sympathized for, although they have the authority and responsibility, they do not have the mandate. On the other hand, elected politicians have the mandate yet they do not have the authority or the responsibility. Should not this Council (Executive Council) be transformed into a genuine cabinet system where non-official Members are each given a portfolio -- the result being that politicians have to be responsible for what they propose and thus spare the civil servants to execute their duties? My suggestions, Mr Deputy President, are as follows:

Rule number one: at least half of the Executive Council Members should be elected legislators. There are two reasons for this: firstly, to input public views into the decision-making process and secondly to get public mandate for the policies formulated.

Rule number two: the Legislative Council should be allowed a greater participation in the formulation of policies, for the same reasons as above. At present, it is totally at the Government's mercy to release information and details to the Legislative Council.

Rule number three: the OMELCO panel system should be removed and replaced by a standing committee system.

Let me reiterate here that a committee system should be in place within the Legislative Council to vet Bills and monitor government policies.

Government officials would benefit as they would know which committee to lobby for their causes and to which to state their cases, making the "true partnership" between the Legislative Council and the executive authorities a reality.

Such a system would also provide the Legislative Council with a stable and efficient operation machinery. It would also help promote co-operation and communication between lawmakers and civil servants, allow members of the public at large to understand the legislative process and give confidence to the public through fairness and transparency in the legislative process.

This is a proposal that makes perfect sense. It will enable a solid partnership between the Legislative Council and the Executive Council on the one hand and boost efficiency of the administration on the other.

Mr Deputy President, we wholeheartedly throw ourselves behind the task of doing the best service for Hong Kong people; for this we need a creative transition of the OMELCO system. A reformed system is essential to guide Hong Kong through the future testing times, and in the long-term interest of both China and Hong Kong.

Mr Deputy President, medicine may cause drowsiness. I hope that it will not prevent a patient from taking the medicine altogether.

With these remarks, Mr Deputy President, I support Mr SZETO Wah's motion.

MR JIMMY MCGREGOR: Mr Deputy President, the Hong Kong Government is an executive-led government and always has been; that is the nature of colonial governments. The Chief Executive and the executive arm of the Government, supported by the Executive Council, exercises very great power in determining all major government policies. It is important to recognize that this situation has not changed to any great extent since the real process of democratization began in 1985.

The composition of the Executive Council is decided by the Governor, but in reaching his decisions on appointments, the Governor has available to him a wide spectrum of advice from senior officials and people prominent in the community. It is no doubt a very difficult job for the Governor to decide who to appoint in order to obtain the best advice, the best leadership and the most representative membership.

Throughout the history of Hong Kong as a colonial territory, governors have consistently appointed successful businessmen and professionals because the advice and support needed from the Executive Council was largely economic. This was no bad thing, given the need for firm and expert management of our human and other resources, and with the continual problems associated with industrial and trade development and external commercial relations. The list of Executive Councillors down through the years is a record of the most successful of our business leaders. There was never a need to include political leaders because there were virtually no politics and therefore no political leaders.

Co-operation and co-ordination between the Executive and Legislative Councils was always relatively easy because the composition of both Councils was under the control of the Governor and the Government. Resistance to government policy and legislative proposals might be experienced but that had little chance of success with all Councillors on both Councils appointed by the Governor. In any event, any difficulties were usually settled outside the Councils by judicious lobbying.

I first served, personally, in the Legislative Council in 1972. I can say, hand on heart, that very few Councillors were disposed at that time to disagree publicly with the Government. As a government official, I dared not. So the "ayes" had it for most of the time. That picture has changed quite dramatically during the last seven years. Through three Legislative Council elections we now have directly elected Members representing the general public. We now have politically oriented groups and parties vying for seats, and taking very different positions on both policy and procedural matters affecting Hong Kong's further development. The Legislative Council has become a political assembly and is gradually learning how to adapt to this new role.

What was good enough in the past is no longer good enough. The cosy relationship between the Executive and Legislative Councils is no longer cosy. Each Council is much more aware of its role and responsibilities. These seem to me to have become more and more polarized and less and less co-operative. The politicization of the Legislative Council will continue, and it is inevitable in my view that the two Councils will separate administratively so that there will no longer be an OMELCO. We have heard many arguments for and against the present OMELCO committee system. I think this will disappear in due course and be replaced by a Legislative Council committee system.

Liaison between the Executive Council and the Legislative Council is essential, however, and will be maintained more specifically than at present with some Members appointed to Executive Council on the basis of their political experience and support. It would be very wrong indeed to exclude from Executive Council those political groups whose members have been successfully elected by universal suffrage and in other ways. To continue to deny them Executive Council recognition is to negate the intention of the electoral system and therefore the integrity of Hong Kong's constitutional development. I do not think that any case can be made for excluding directly elected Members from the Executive Council.

At the same time, it is also clear that some of the work of the Executive Council is, of necessity, highly confidential and even secret. Members of Executive Council, like those of a cabinet in other governments, must clearly recognize the need to maintain confidentiality on issues so designated, and not release that information outside the Executive Council.

Whilst I agree, therefore, with the position taken by the Governor and the Government on confidentiality, I do not agree that there should be collective responsibility. Why should an Executive Council Member who disagrees strongly with a particular policy not make this clear when the policy decision is made public, and particularly when it is brought down for discussion in this Legislative Council? It is farcical that Executive Council Members have to swallow their tongues when the Legislative Council challenges an Executive Council decision. I have seen the pantomime of body language when a Legislative Council Member feels bound by the collective responsibility rule but wants to let us know that he or she really does not agree with the policy position.

Let me summarize, therefore, my suggestions, Mr Deputy President. Firstly, separate the Executive Council and the Legislative Council administratively and in terms of the committee system.

Secondly, appoint directly elected Legislative Council Members to the Executive Council to reflect the electoral strength and influence of successful political groups or parties. And that means, in a sense, if taken to its logical conclusion, that the five political groups represented in the Legislative Council will all be represented in the Executive Council, not just one, especially so since the one that is represented is composed largely of unelected Members.

Thirdly, maintain the confidentiality rule but use common sense in deciding what must remain confidential. Publish the Executive Council agenda so that we all know what issues are being discussed. Why should the Legislative Council find out from the press?

Fourthly, get rid of the collective responsibility rule. It is unnecessary and it does not work in any case. There is a great deal of whispering in the corridors.

Fifthly, trust the elected representatives of the people of Hong Kong. They are not a race apart and they represent the mainstream of political thinking in Hong Kong.

It may have crossed the minds of a few of my colleagues that my thinking on reform of the Executive and Legislative Council relationship follows closely the proposals set out by my clever and very democratic colleague, Dr LEONG Che-hung. He had the benefit of priority in speaking. Our thinking springs from the same deeply held philosophy and runs down the same track.

Mr Deputy President, I support the motion.

MR PETER WONG: Mr Deputy President, today, few of us in this Council would object to the motion which calls for a timely review of the Executive Council/Legislative Council relationship. In keeping with changes brought about by our first direct elections, our executive-led Government must re-examine the working relationship between the two Councils to see if it can be enhanced. This communication exercise carries with it the basic objective of facilitating the efficient operation of the Government to maintain Hong Kong's stability during the transitional period.

Since the powers of the Administration come directly from the United Kingdom Government, and the popular mandate of the directly elected Members is bestowed by the people of Hong Kong, they will bring about a conflict between the two Councils. The Governor's comment on the Executive Council/Legislative Council relationship last October epitomizes the need for a "co-operative partnership" to see Hong Kong through the transitional period and beyond 1997. The importance of the Legislative Council's support for policies adopted by the Executive Council is evidenced in the Court of Final Appeal issue. Efforts made by Executive Council Members to obtain feedback on policy matters from their Legislative Council colleagues can help avoid Executive Council decisions pre-empting the consensus of Members of this Council,

as in the case of the motion debates on taxation system review and the Scheme of Control for public utilities. Similarly, closer consultation with Legislative Council Members on the 1992-93 Budget proposals and other Finance Committee items will help speed up the approval procedure of public expenditure.

Mr Deputy President, gone are the days when Hong Kong was governed by a benevolent oligarchy which initiated, formulated and implemented all our public policies, with an obedient, appointed Legislative Council giving the appearance of public scrutiny. With increasing attention being paid by the Chinese and United Kingdom Governments to Hong Kong affairs, the need for the Executive Council to be accountable to Hong Kong through the Legislative Council, and the growing tendency for some Executive Council Members to dissent from the Government's collective decisions, there is an urgent need to bridge the communication gap of the two Councils. Here, I must point out that whatever changes are to be effected in the Executive Council/Legislative Council relationship, the complementary roles of the two Councils should remain unchanged. An executive-led government not only caters to Hong Kong society which needs high administrative initiative and efficiency, but also fulfils the requirement for convergence with the Basic Law.

In reviewing and improving on the Executive Council/Legislative Council relationship, it may do well for the Administration to borrow from the discipline of modern-day public relations. For "it has become evident that no significant institution can survive, much less flourish, if its policies, practices or services fail to meet the legitimate expectations of the public it seeks to serve". Improved communication will enable our Government to deliver affordable quality services which Hong Kong people rightly deserve.

I would therefore suggest that:

Firstly, in keeping with Hong Kong's democratic development, the Executive Council membership be reviewed to have less officials and include more directly and indirectly elected Legislative Council Members as well as the business sector, so that the Administration can obtain practical advice for formulating pragmatic policies that meet the expectations and needs of the public;

Secondly, the common membership of the two Councils be utilized as a linkage to foster more open communication;

Thirdly, as part of the review exercise, the collective responsibility rule imposed on Executive Council Members be treated more flexibly -- it must be remembered by all those who enter its hallowed circle that it is the collective wisdom that will decide the best policy for Hong Kong;

Fourthly, the role of the Policy Secretaries and Executive Council Members in presenting Bills, explaining expenditure proposals, and remaining accountable to the Legislative Council must be strengthened, so that the Administration can project the image of a responsible government;

Fifthly, effective day-to-day communication channels be established between the Executive Council/Administration and the Legislative Council, with the former learning to be salesman of public policies and the latter the watchdog.

"Public relations is the deliberate, planned and substained effort to establish and maintain mutual understanding between an organization and its public". The Executive Council has not in the past recognized its public relations role; the proposed review exercise offers a chance to do so. A responsive Executive Council reflecting the consensus of local politics is a strong Executive Council which is essential to Hong Kong's stability. Only by building and maintaining a constant dialogue with this Council, and through this Council to the people of Hong Kong, can the Executive Council and the Administration hope to maintain its smooth and efficient operation in the run-up to 1997.

With these remarks, I support the motion.

8.00 pm

DEPUTY PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

ATTORNEY GENERAL: 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.

DEPUTY PRESIDENT: I would take the opportunity to remind Members of their agreement to limit the length of speeches and would request them to honour that agreement by limiting their speeches to not more than six minutes, please.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, the Executive Council as the centre of the executive authorities is a forbidden kingdom of power. It is completely detached from the Legislative Council and not subject to public monitoring. Its partnership with the Legislative Council actually turns out to be the subordination of the latter. This is completely contrary to the spirit of the Sino-British Joint Declaration which provides that "the executive authorities shall be accountable to the legislature". This phenomenon makes Hong Kong people lose confidence in the Joint Declaration.

Today, the Government formulates policies through the appointed Executive Council, frequently claiming that this is an executive-led government. These policies very often disregard the interests of Hong Kong people who, however, are not able to monitor or influence the Government in its policy-making process through their elected Legislative Councillors.

Today, the Executive Council frequently seeks to hide the policy making process from the public in the name of confidentiality and collective responsibility, to the detriment of the public interest. In this forbidden regime of confidentiality, collective responsibility effectively becomes collective irresponsibility. The public is completely kept in the dark. There is no way they can trace the blame.

In the Legislative Council, on many occasions when the elected members have shouted at the top of their voices to air their opposition to the policy decisions of the Executive Council, they found that none of their Executive Council colleagues are around in the chamber; none would even care to respond; none of them will stand up to be accountable. It is just like what we are witnessing now before our eyes. All of my Executive Council colleagues have left their seats; they need only return in time to cast their "no" votes, and public opinion will be suppressed, as easily as that.

Mr Deputy President, is this state of affairs what we should expect from the executive authorities which are accountable to the legislature as promised in the

Joint Declaration? Is this really what the Governor means by partnership between the Executive Council and the Legislative Council in his policy address?

Mr Deputy President, the Joint Declaration in describing the relationship between the two Councils says that "the legislature shall be constituted by elections" and "the executive authorities shall abide by the law and shall be accountable to the legislature". To understand the full meaning of this stipulation, we will reach the conclusion that the future policy formulation process of Hong Kong will be neither executive-led nor legislative-led, but rather public-led. Government policies must be made on the basis of public opinion.

Given that the executive authorities have to be accountable to the legislature, it goes without saying that the legislature should hold sway. Since the legislature is constituted by elections, it goes without saying that voters will have the final say. This is to say that both the Legislative Council and the Executive Council owe their legitimacy to the people. Their powers come from below. However, the Government has completely usurped this power and decides the fate of the people from on high through the Executive Council. This is something which all champions of democracy should steadfastly oppose.

Regarding the usurpation and distortion of power, we can see in today's Legislative Council that power has triumphed over justice, that the official will has prevailed over the public opinion. The wishes and demands of the public have frequently become a minority voice in this Council. It is easy to see how many times public opinion has been thwarted in this Council, in this year alone. The proposed monitoring of public utilities has been voted down; the motion moved to oppose labour importation has been voted down; the request for a review of the taxation system has been voted down; the proposals in respect of the opposition to the cutback in education spending have been voted down; even the OMELCO Consensus model has also been voted down. To their disappointment, the public have been let down time and again by this Council.

This will lead to two extreme reactions. One is renewed political apathy; the other is people taking to the streets again to make their voices heard. When public opinion cannot be properly articulated, people will resort to confrontation action or express their views by means of a social movement. And all this talk about a smooth transition, prosperity and stability, could only be illusionary empty talk.

Mr Deputy President, Mr SZETO Wah's motion for review of and improvement to the relationship between the Legislative Council and the Executive Council has a very important objective, which is to rectify the improper power relationship, so that power will return to the people in the building of a society by the people, of the people and for the people.

Mr Deputy President, I totally agree with the objectives as reflected in Mr SZETO Wah's motion. With these remarks, I support his motion.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, in this debate on the relationship between the executive and the legislature, first of all, I would like to describe the relationship which exists between the Executive Council and the Legislative Council; and then I would present what I envisage should be the relationship between the executive and the legislature for the future based on the principles of the separation of executive, legislative and judicial powers, and the provisions in the Basic Law regarding the relationship between the executive authorities and the legislature for the future Special Administrative Region (SAR); my presentation will be followed by improvement suggestions which I think will help achieve the scenario I have in mind.

First of all, the political system of the Hong Kong Government is something of a strange creature. The Executive Council, which is originally an advisory body to the Governor, is indeed the power house for the formulation of policies. One of the functions of the Legislative Council is to monitor the operation of the Administration. However, the Council has within its ranks some Members of the Executive Council and a group of Policy Secretaries of the Government. Double membership means that people wear both hats as executive and watchdog, and that the Legislative Council gets mixed up with its role; this will reduce its independent role as a watchdog of the Government.

In order to improve the present situation, we should identify targets of improvement. I think there are two principles which should be achieved in the long run.

(1) The executive authorities should be separated from the legislature. The executive authorities need to be monitored by the legislature and monitoring can be accomplished by means of scrutinizing public expenditure, legislation and raising of

questions;

(2) People in key positions in the executive and the legislature (that is, the Chief Executive and the members of the Legislative Council of the future SAR) should be directly elected by universal suffrage and be directly monitored by the people.

Article 54 of the Basic Law states that the future Executive Council of the SAR "shall be an organ for assisting the Chief Executive in policy-making". Article 56 also states that "if the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record".

These provisions depict very clearly the Executive Council as nothing more than an advisory body to the Chief Executive; it is not a policy-making body. In this regard, the present policy-making powers of the existing Executive Council will disappear.

In order to make sure that the principle of the separation of the three governmental powers is upheld, and taking into account the definition of the Executive Council in the Basic law, I think that the relationship between the future executive authorities and the legislature should develop more appropriately along the following lines:

According to Articles 54, 55, 59 and 60, the executive authorities should only include the Chief Executive and the civil servants of the SAR Government. The Executive Council should be an advisory body to the Chief Executive and enjoys no policy-making powers. Since it does not have policy-making powers, there is no question of its accountability. Since it is not accountable, it is not part of the executive authorities and there is no question of collective responsibility. The legislature, that is the Legislative Council, has the powers of both making laws and monitoring the executive departments, but the latter does not include the Executive Council.

Since the Executive Council is only an advisory body and has no real powers, the Governor can make his appointments according to his own needs. Its membership may include people with political party background, and indeed members of the Legislative Council in a double role capacity. Given the non-existence of accountability of the Executive Council, the need for the existing practice of collective responsibility as a checking measure does not arise. This will result in greater transparency of

the executive authorities which should then take the initiative to make public all relevant data pertaining to its policies, except those involving national defence, foreign affairs and commercial secrets. It is for this reason that it will be sufficient for the Executive Council to observe the rule of confidentiality until the policy decision has been taken by the executive authorities.

Meanwhile, members of the Legislative Council should be independent of the Government officials in order to monitor independently the work of the executive authorities. In order that this can materialize, I believe the following changes must be made:

(1) The Legislative Council should set up Standing Committees of its own. These should be made up of Council members themselves to study whether the policies of the executive authorities are appropriate or whether improvement should be made and to reflect such views to the executive authorities. They should replace the existing OMELCO panels.

(2) The Legislative Council should have a secretariat of its own so that the executive authorities will not become their only source of information.

The functions of the Executive Council and the complementing role of the Legislative Council proposed above should be put into practice before 1997 in order to make for smooth transition. I propose that the Executive Council should be made an advisory body in its last term prior to 1997.

With these remarks, I support the motion moved by Mr SZETO Wah.

DR CONRAD LAM (in Cantonese): Mr Deputy President, whatever begins in absurdity will end in even more absurdities. For one thing, the Briton who heads the administration relishes the empty talk about representative government. For another, as the six million free souls have their right to self-determination deprived and are about to be turned over by a democratic country to a one party totalitarian country, there are many who are preaching that salvation lies with faithful believers.

In the face of absurdity, man is prone to take solace in myths to avert a nervous breakdown, to hypnotize himself as well as his neighbours.

The first myth dates back to the proclaimed partnership existing between the Government and the Legislative Council by the Governor in his last policy address. Indeed, the Government has also described as partnership the relationship which exists between the Social Welfare Department and the voluntary welfare agencies, but for many years now, that partnership has been dismissed by the latter as all talk and no substance. Partnership refers to a relationship based on mutual respect between partners who treat each other as equals. The Government has not even now treated the Legislative Council on an equal footing.

The second myth has to do with the inviolability of the Hong Kong style executive-led government. Indeed, in democratic countries, policy and legislative initiatives are usually taken by the executive, but that does not mean that they have executive-led governments. It is for the executive and legislature to check and balance each other, not for one branch to enjoy undue prominence at the expense of the other. While in many democratic countries there is a tendency for the chief executive or executive departments to enjoy greater and greater powers, we should not be misled by this tendency because, after all, these chief executives are invariably elected to office, and they are quite susceptible to being voted out of office in the next election, or even during their term of office, if they mess it up. However, the British appointed Governor has to be accountable to Britain only and insofar as the post-1997 Chief Executive is concerned, even though he may have the majority support in Hong Kong, he will be just as liable to be vetoed by China. It can be seen hence that the Hong Kong style executive-led government is actually quite unique to Hong Kong. In this regard, the insistence that the system of the executive overriding the legislature (that is, the so-called Hong Kong style executive-led government) is sacred and inviolable is typically the logic of naked power; it reflects nothing other than the slavish resignation of its advocates.

The third myth is that the Basic law cannot be amended. Generally speaking, the Legislative Council as a vehicle of public opinion monitors the Government. The provision in the Basic Law regarding the number of directly elected seats in the Legislative Council is way too conservative. In order that the Legislative Council can perform its monitoring function, the Basic Law will have to be amended. Indeed, if the Chinese Government respects public opinion, it is absolutely within its rights to amend the Basic Law.

After all, the Basic law is not the Holy Bible; partnership is more in name than anything else; executive-led government can absolutely be improved upon.

Mr Deputy President, Hong Kong is now suffused with political myths intended to fool and hypnotize Hong Kong people, which advance such causes as a smooth transition, prosperity and stability, and so on. The Executive Council and the Legislative Council which are caught up in these myths may be said to be strange creatures which bear no resemblance to any living species. In here, we have a despotic chief executive commanding the Legislative Council made up of appointed, directly and indirectly elected members, which is being trapped within an iron cage erected by both the Chinese and the British Governments. In this regard, we need to accomplish the following, in order that the Legislative Council and the Executive Council will be able to work together wholeheartedly.

(1) Use public opinion to break the iron cage.

(2) Use democracy to improve the shape of the strange creatures which are the two Councils.

That is to say, the two Councils will need to have an adequate number of elected representatives of public opinion.

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

MISS EMILY LAU (in Cantonese): Mr Deputy President, when the new Governor Mr Chris PATTEN examines the relationship between his Government and the Legislative Council, upon his arrival in Hong Kong on the 9th of this month, I am sure he will be very furious indeed, and it is quite possible that very soon now heads will roll. For as things stand, the Government has only three votes in this Council; whereas before, it could count on the support of the Co-operative Resources Centre (CRC), now some officials have recently confided in me that the Government has an uneasy feeling of insecurity having to deal with effectively two opposition parties in this Council, following the visit of CRC members to Beijing. In this regard, with or without today's debate, Mr Deputy President, I am sure the new Governor will also want to review the present situation to see how he could clean up the mess and go about administering Hong Kong over the next five years.

Mr Deputy President, it is unfortunate that Hong Kong is not like the United Kingdom; we do not have her democratic system; we do not have popular elections to

vote in a ruling party which will in turn form a cabinet to run the territory. Given these political constraints, it is all the more important that the Executive Council as the highest policy making body should comprise people of different political persuasions; it is particularly important that Members who have won popular support in the direct elections should join the Executive Council. I am sure other elected Members also have adequate representativeness. Insofar as the appointed Members are concerned, I fail to see what representativeness they have to entitle them to advise the Government on how to run Hong Kong. In this regard, I hope that the first thing on the new Governor's agenda will be the reconstitution of the Executive Council such that people who ought to be in will get in and people who ought to be out will get out. There is a view that this will result in the Executive Council becoming a venue for political contest. Mr Deputy President, we were not born yesterday; we all know that there is bound to be contest where there are different political views. The problem is if the Government excludes the elected Members from the Executive Council by political manoeuvring, this would draw even greater public reaction, and public resentment. I am sure that Mr PATTEN will understand this simple truth and therefore see the wisdom to immediately abolish the so-called collective responsibility rule. Regarding the confidentiality rule, I tend to agree with Mr Jimmy MCGREGOR that it should continue.

Meanwhile, I fully support Dr LEONG Che-hung that Hong Kong should implement the ministerial system as soon as possible. Our policy secretaries are technocrats rather than politicians; they do not want to take political responsibility for their policy decisions. I feel that the development of representative government up to this point in time already warrants the appointment of elected Members to ministerial positions. Since these elected Members are also Legislative Councillors, they will become directly responsible to their colleagues in this Council. If they make the wrong decision, they should take the blame and resign accordingly.

Mr Deputy President, it is a totally unacceptable relationship which exists between the Executive Council and this Council. It is up to the Government, to this Council, and indeed to the public generally, to ask for an immediate review.

With these remarks, I support Mr SZETO Wah's motion.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, the most crucial factor in terms of whether the relationship of the executive authorities and the legislature will

function and continue to improve in accordance with the Sino-British Joint Declaration and the Basic Law is whether the Chinese and the British Governments are prepared to thoroughly implement the provisions of these two documents, which is to say, that before 1997, Hong Kong affairs will be run by the Hong Kong British Government, and after 1997, the Special Administrative Region (SAR) Government will be able to enjoy a high degree of autonomy.

Mr GUO Fengmin, chief representative on the Chinese side in the Sino-British Joint Liaison Group, said on 18 June, in answer to questions from the press on the question of the new Governor, Mr Chris PATTEN, appointing members of the United Democrats to the Executive Council that, and I quote, "the Chinese Government's position is very clear. It takes the view that the appointment to the Executive Council of people who are opposed to the Basic Law and who openly call for the overthrow of the Chinese Government is not conducive to the stability of Hong Kong. Therefore, we are opposed to such appointment."

Article 4 of the Sino-British Joint Declaration provides, and I quote, "during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong....." In this regard, it is the Hong Kong British Government which is responsible for the running of Hong Kong in the transition period; the appointment of the Executive Council is a matter for the Governor to decide. The United Democrats do not attach great importance to whether party members may or may not be appointed to the Executive Council, but we regret that the Chinese officials have failed to observe the Joint Declaration, that they have seen fit to interfere in Hong Kong affairs and to "gesticulate" on this issue of the composition of the Executive Council, such that the Governor will not be able to make his decision in accordance with the wishes of the people.

Article 55 of the Basic Law provides, and I quote, "Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive." In this regard, even after 1997, the appointment of the Executive Council will still be a matter for the Chief Executive and insofar as the appointment process is concerned, there is no requirement for even the membership list to be presented to the Central Government for record purposes; there is no question of candidates having to secure the endorsement of the Central

Government. It is for this reason that Mr GUO's statement would constitute interference in the internal affairs of the SAR, even in the context of post-1997 arrangements; it is not in keeping with the principle of self-administration and a high degree of autonomy, or indeed with the provisions of the Basic Law.

On the issue of opposing the Basic Law, the United Democrats' position is that we are generally supportive of the Basic Law, but we also consider that there are certain provisions of the Basic Law, particularly those relating to the political system, which are unreasonable and to which we therefore request amendment. To equate our request for amendment with opposition to the Basic Law would be to frame up a charge against us. Every Wednesday, government departments propose amendments to the Laws of Hong Kong, which we in this Council will then pass; one wonders whether critics will accuse, applying the same logic, the Hong Kong Government and the Legislative Council of being opposed to the Laws of Hong Kong. The Chinese Constitution has undergone three major amendments recently, the last time being 1982, by the National People's Congress. If we apply the same logic, then the NPC must have been similarly opposed to the Chinese Constitution. Mr GUO also mentioned the issue of publicly calling for the overthrow of the Chinese Government. First of all, let me say that activities conducted by public organizations must be in line with Hong Kong laws; if our activities deviated from this the law enforcement departments would have taken action. Furthermore, Article 23 of the Basic Law provides, and I quote, "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government....." The key words in this provision are "enact laws on its own"; the laws which are alleged to be breached by the activities in question are to be made by the legislature of the SAR. The most important issue here of whether the individuals or organizations in question have broken the law is a matter for the court to decide, rather than for Mr GUO or Chinese officials to decide. Mr GUO's statement is totally inconsistent with the rule of law; he has put himself above the law. He has not only interfered in Hong Kong affairs; he has also violated the judicial independence of Hong Kong now and of the future Hong Kong SAR.

Some people, including some legislators, have defended Mr GUO on the ground that what he said reflected his personal opinion and everyone has his freedom of expression. Of course, one is free to express one's opinions. But is it likely that China's official representative is expressing his personal opinion when he makes a point like that at an official function, in the context of a press conference? Mr GUO was not talking about the weather; he was not commenting on whether the lychee was good to

eat or not. He was attending a press conference, and making comments on the political issue of whether certain people could or could not be appointed to the Executive Council. If that kind of reply could be interpreted as a personal opinion, then I can only say that people who have come to his defence are absurdly treating public (political) affairs as personal property. It is very dangerous to take this kind of attitude because it will legitimize a specious excuse for the Chinese Government to interfere in Hong Kong affairs.

Mr Deputy President, the relationship between the executive and the legislature has to be improved. But however that is to be done, the first thing that we need to ensure is that Hong Kong has and will have to enjoy a high degree of autonomy, except in the spheres of national defence and foreign affairs. Without autonomy, the relationship between the executive and the legislature will only develop in a grotesque and unhealthy manner.

Mr Deputy President, with these remarks, I support Mr SZETO Wah's motion.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, I agree that the relationship between the executive and the legislature has to be reviewed in order to make sure that the system will operate in a way which is more in line with the provisions of the Sino-British Joint Declaration. I would like to make two points. First, we should not allow ourselves to be bogged down on the issue of whether we should have an executive-led or legislative-led system; rather, we should pragmatically review the issue of division of labour to see whether the present functional arrangements and debating procedures are appropriate or not. Second, the motion mentions only the Joint Declaration; it does not mention the Basic Law. But the Basic Law indeed has specific provisions relating to the executive authorities and the legislature, which clearly state that the former are to be accountable to the latter; it has more specific provisions than are available in the Joint Declaration, regarding the powers of the executive authorities and the legislature. In this regard, I think that the review of the relationship between the executive and the legislature should also take into account the provisions of the Basic Law to make sure that we will have a smooth transition and convergence of the political systems.

Accountability does not equal subordination

One possible misconception of some members of the public, and some Members of

this Council as well, regarding the relationship between the two Councils is that the Executive Council leads the Legislative Council. The misconception is wrong. Historical factors may be involved in such misconception to the extent that some senior Legislative Council Members also double up as Executive Councillors and, insofar as the legislative process is concerned, the Bills are first discussed in the Executive Council before they are presented to the Legislative Council for deliberation. In that regard, some people may have the perception that the Executive Council is the leader of the Legislative Council and that Executive Councillors are more important than, and senior to the Legislative Councillors. As a matter of fact, the issue of double membership and the order of presentation of Bills to the two Councils are nothing more than established practice of the Government, which should not lead to the conclusion that one Council is the leader of the other.

The two Councils are in fact charged with two different functions. The Executive Council is the top policy making body within the executive framework; it is responsible for vetting Bills and policies submitted by various government departments before presenting them to the Legislative Council for passing them into law. The latter has the power to pass or reject these Bills. The Executive Council's decisions should not have any bearing on the decision of the Legislative Council. The functional difference is an illustration of the division of labour between the two Councils.

From another point of view, the Legislative Council has the final say on whether a certain Bill is to be passed or not. The Government's use of public funds has also to be endorsed by the Finance Committee of the Legislative Council. Through the use of its legislative powers and its control over the granting of public funds, the Legislative Council effectively exercises its power of monitoring the executive authorities.

It is based on the above points that the principle, provided under the Joint Declaration, of the executive authorities being accountable to the legislature should be understood in the sense that there is a division of labour between the two Councils in respect of policy making and legislation, and that the Legislative Council exercises the power of monitoring all executive authorities, including the Executive Council. There is no question of one being the leader of the other.

Strengthening division of labour and monitoring

In our review of the relationship between the two Councils, we must make a point of strengthening the division of labour and monitoring between them. It is up to us, in order to achieve this objective, to clearly differentiate the powers and functions between them and to design appropriate operational procedures to go with it. For example, the Executive and Legislative Councils can set up separate secretariats to accentuate their different roles, respectively, of assisting the Governor in his policy making, and of monitoring the executive authorities, and to consequently highlight their mutual working relationship.

Presently, it frequently takes the Government a very long time to present to the Legislative Council its Bills or proposed amendments to existing Ordinances. For example, we have not been able to complete the legislative process in respect of amendments to the Police Force Ordinance, the Societies Ordinance and the Crimes Ordinance, which have to be amended in the light of the Bill of Rights, before the freeze period expires. The Finance Committee, while responsible for endorsing funding requests amounting to tens of billions of dollars, often receives papers only one or two days before the meeting is held. For example, whereas there were 25 items on the agenda of the 24 June meeting of the Public Works Subcommittee of the Finance Committee involving funding requests of \$16.9 billion, a complete set of the relevant papers did not reach members until the day before the meeting. There was not enough time to go over each application; there is no question of monitoring the Government if this practice is allowed to continue. The result was that the two-hour meeting only managed to complete three items on the agenda. These procedural problems quite adequately reflect that in actual practice the executive authorities are not able to become fully accountable to the legislature. These procedural problems may seem trivial, but they are exactly where the problem lies. The Government should expeditiously review its present mode of practice and to adhere, in its day to day practice, to the principle of making the executive accountable to the legislature.

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

MR FRED LI (in Cantonese): Mr Deputy President, on the relationship between the executive and the legislature of the Hong Kong Special Administrative Region (SAR) Annex I of the Sino-British Joint Declaration provides that the executive authorities shall abide by the law and be accountable to the legislature.

The Basic Law has explained in detail the definition of accountability. Put

simply, in matters of public finance, whereas the executive authorities have to present administrative reports to the legislature regularly and answer questions from legislators, the legislature is responsible for passing Bills and approving the Budget and other funding requests presented by the executive authorities.

The design of the system empowers the executive authorities to formulate policy initiatives whereas the legislature, through engaging in debates, raising questions, enacting laws and approving public expenditure, plays the role of a sounding board of public opinion and a government watchdog.

Meeting Point think that these arrangements are acceptable in principle.

However, in terms of implementing the division of labour and a mechanism of checks and balances between the executive and the legislature, and of allowing the executive and the legislature to function more effectively, it is up to us to make corresponding changes to our existing system during the transition period.

In this regard, I have to bring up again the issue of the committee system which this Council examined at the start of this term. Meeting Point, and other liberal Councillors at the time, advocated the strengthening of this Council's functions in enacting laws, approving public expenditure and monitoring government operation generally. We also championed the setting up of standing committees corresponding to the various policy branches so that we could, through keeping close watch on the policies of the various departments, more effectively monitor the implementation of government policies in the various areas. Unfortunately, our suggestion was vetoed.

We would also like to point out that the existing practice of both the Executive and the Legislative Councils using the same office manned at least partly by government officers is not consistent with the principle of separation and balance of powers between the executive and the legislature. In this connection, we believe that the Legislative Council should have an independent secretariat of its own and it should be set up as soon as possible.

Regarding the Executive Council and the post-1997 executive council, they are, according to the design of the system, in the nature respectively of an advisory body to the Governor, and to the Chief Executive of the Hong Kong SAR. Neither has clearly defined powers and accountability. At any rate, if the Executive Council/post-1997 executive council is not to be constituted in the form of a cabinet, which is to say

the Governor/Chief Executive will then only appoint key officials as his cabinet members to thrash out public policies -- but I do not consider that to be a distinct possibility -- then the representativeness of members of the Executive Council/post-1997 executive council will become an important issue.

The composition and operation of the existing Executive Council is extremely unsatisfactory. It is largely made up of businessmen and industrialists who are as prone to protect business interests as they are inadequately familiar with public views. The policies which they helped formulate frequently deviate from the wishes of the people.

We feel that it is all the more important that the Executive Council should have wide representation if it is not to function as a cabinet. I feel that in this regard consideration should be given for directly elected Members of this Council to join the Executive Council.

We believe that for the sake of a stable relationship between the executive and the legislature, the Governor/Chief Executive should consider appointing the representatives of major parties on the Legislative Council, especially Members who have had popular support in the elections, to the Executive Council so that the mainstream views in Hong Kong society can be reflected in the policy formulation process, and that the formulated policies can be more in line with public opinion and receive popular support.

Mr Deputy President, with these remarks, I, personally and on behalf of Mr TIK Chi-yuen and Mr WONG Wai-yin, support Mr SZETO Wah's motion.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, I would like to speak on the issue of the separation of the Legislative Council and the Executive Council and the setting up of a separate office and secretariat. In the past, Members of both Councils were appointed by the Governor so there was no question of any problem existing between the executive and the legislature. In 1985, however, elected seats were introduced to the Legislative Council, and since 1991, the majority of its seats have been occupied by elected Members, 18 of them returned by direct elections. This Council is basically a sounding board of public opinion; its functions are mainly to legislate and monitor government operation. It can be seen hence that this Council has ceased to be an echo of the colonial Government and that in the development towards

representative government it has a unique role and special functions to perform. In order that it can perform its role and functions properly, it is important that it has the support of a strong secretariat, and a strong research team, and something approximating to the Capitol Hill Congress Library of the United States, to strengthen its ability to scrutinize policies and monitor the Government. In addition to the expansion of secretarial and research work, it is also important that the Legislative Council should have an independent office and secretariat. In the first place, the existing OMELCO Office has been the product of the bygone days of arranged union. Today's Legislative Council is a sounding board of public opinion and as such it has to be answerable to the public. It has to have autonomy and independence; so the office and secretariat responsible for attending to its day to day work should also be independent, rather than led by Executive Councillors, particularly given that the vast majority of the Executive Councillors are not elected and have no representativeness. A mixed office will only blur the distinctive functions of the two Councils. In the long run, the two Councils should be separated and should each have an office and secretariat of its own so that the functions of one Council can be clearly differentiated from that of the other. While the Legislative Council is responsible for legislation, granting funds and monitoring the Government, the Executive Council is the top policy making body headed by the Governor. Each has a separate role to play and one should not be confused with the other.

The worry that the splitting of the office serving the two Councils will lead to problems of communication and interchange of views is totally unjustified. Members of the two Councils can communicate and exchange ideas with one another at joint meetings. And indeed, OMELCO standing panels and ad hoc groups can also be replaced by a system of committees under the Legislative Council. There is no question of the two Councils lacking a mechanism to enable them to communicate with each other.

There may be some technical problems involving the setting up of an independent Legislative Council office. For example, following the bifurcation, to which office will some of the work which currently comes under the OMELCO go? I think that the Committees Division, the Legal Unit and the Complaints Division should come under the Legislative Council. I urge Members to seriously think about splitting up the OMELCO Office and strengthening the responsibilities relating to the Legislative Council and the Executive Council respectively, so that the two Councils can have a balanced relationship.

Mr Deputy President, with these remarks, I support Mr SZETO Wah's motion.

DR PHILIP WONG (in Cantonese): Mr Deputy President, I agree with the comments of Mr TAM Yiu-chung on the wording of Mr SZETO Wah's motion. Hong Kong's political system must continue to be executive-led and by this I mean that the rules of accountability and confidentiality of the Executive Council, and the existing relationship between the Legislative Council and the Executive Council, must continue to apply.

It is a well-known fact that over the years the executive-led Government has achieved high administrative efficiency and great political stability. It has attracted overseas investors to come to Hong Kong and enabled Hong Kong people to enjoy stability and prosperity. If we take a look at countries and regions which practise western style democracy, we can see high incidence of political crises which have grave economic consequences. It provides a lesson for us to reflect upon. There is no reason for us to change our well-tried system in a wild bet. I think that we will not have a stable political environment if there is no co-ordination between the executive and the legislature, and if a right balance cannot be struck between the two, policy deviations will result. The new constitution of the Legislative Council last year of course pointed to a more open government, but precautions must be taken against the development of British Westminster style parliamentary politics. We do not wish to see Hong Kong being engulfed in endless bickering leading to social chaos. Indeed, the success of the executive-led model has also been thanks to all ranks of civil servants who have been able to contribute their legal and other professional expertise, and who have been able to dedicate themselves to their jobs and consequently achieved a remarkable level of efficiency.

The Sino-British Joint Declaration and the Basic Law both articulate the wish of Hong Kong people for basically no change to the existing social and economic system and their way of life. Although the executive-led model is not specifically mentioned in the documents, their contents are for the preservation of its cause. Article 64 of the Basic Law clearly states that as long as the Special Administrative Region (SAR) Government implements laws, presents regular policy addresses, answer questions and refers matters involving taxation and public expenditure to the legislature for approval, it meets the criteria for abiding by the law and being accountable to the legislature. Also, I notice that Articles 72, 49, 50, and 74, and also Annex 2 of the Basic Law, separately provide for the legislature to give priority treatment to the bills presented by the Government. If the Chief Executive

considers that a bill passed by the Legislative Council is not compatible with the overall interests of Hong Kong, he may return it to the Legislative Council for re-consideration or even dissolve the legislature as circumstances warrant. Before a member of the Legislative Council introduces a bill involving public expenditure, political system or government operation, he has to secure the prior written consent of the Chief Executive. In terms of voting procedure, a government bill is considered passed if it secures a simple majority of vote of members attending the meeting. Meanwhile, the passage of a motion, bill or amendment to a government bill introduced by individual members of the Legislative Council has to secure a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee. Given that, in accordance with the reality of Hong Kong and in keeping with the principle of gradual evolution, the Basic Law provisions have already pointed to a Hong Kong SAR which enjoys a high degree of autonomy in terms of executive management and policy-making. The legislature is only there to act as a check (on the executive authorities), and that all of us are crying out for a smooth transition, why do we have to change an executive-led model which has been in successful operation all along and which will continue to operate in the same manner into the future? Why do we have to destroy the continuity of the executive-led model and thereby create unnecessary turmoil? I believe that the Government which has the respect of Hong Kong people is quite capable, after acquiring an understanding of their wishes, of making policy decisions in the overall interests of society, and of taking the courage to persist in its correct policies. It will not use public opinion as a pretext for shifting the responsibility of policy-making to the public. There is a popular saying among some Hong Kong people, "If you ask me (when you should know better), who else can I count on for the answer." I hope the Government will assume the responsibility, which should be its, during the transition period for the sake of the overall interests of Hong Kong. We should uphold what is right and rectify what is wrong.

Mr Deputy President, with these remarks, I oppose the motion of Mr SZETO Wah.

DR YEUNG SUM (in Cantonese): Mr Deputy President, under a democratic system, a person who exercises political power and takes political responsibility, whether a member of the legislature or head of an executive department, is invariably elected to office as the result of a popular election. In the United Kingdom, for example, both members of parliament and members of the cabinet have the mandate from the electorate through

the parliamentary election; in the United States, the President and members of Congress are elected to their offices in two separate elections. Given that the future of political leaders hinges on people's votes, the voters' choice becomes the most potent means of monitoring and checking the Government.

The scenario is completely different under an undemocratic system. Since people are deprived of their political right to choose their political representatives, they have naturally no way of effectively monitoring and checking the Government.

Hong Kong is a colony which over the past hundred-odd years has practised a closed colonial political system featuring a high concentration of power. Constitutionally speaking, the Legislative Council and the Executive Council have well-defined powers, and the latter has to collaborate with the former in order for government policies to be endorsed and implemented. Unfortunately, however, given that the Members of the Legislative Council were all appointed in the past by the Governor like their counterparts in the Executive Council, they were effectively unable to really function as a monitoring body to check the executive authorities. That explains also why the Legislative Council was ridiculed by the public as a rubber stamp of the Government.

Political reform towards a representative government has been introduced by the British Government in Hong Kong since the mid-1980s. However, looking back over the past eight years, we can only say that the political system of Hong Kong is only semi-democratic. From 1985 up to this point in time, the Legislative Council has only part of its seats returned through elections. The Executive Council, while an advisory body according to the constitutional instruments, is effectively the highest policy making body of the Hong Kong Government; up until 1991, all of its Members were appointed by the Governor. Even in the process of appointment, the Governors never considered the option of offering a given number of Executive Council seats to directly elected Members of this Council who have popular support. The result is that the Executive Council has neither representativeness nor popular mandate. From the point of view of Hong Kong people, since directly elected legislators are unable to join the Executive Council, there is no way they can monitor or influence the Executive Council through their elected representatives.

It may perhaps be said that now we have elected legislators and there is no need for them to be appointed to the Executive Council because they already are capable of monitoring and checking the Executive Council through carrying out their work as

legislators and performing their functions in the Legislative Council. But we know that even now directly elected members are still in the minority in the Legislative Council and that there are still many obstacles and difficulties in the way in terms of really monitoring and checking the Executive Council and government departments generally.

In this regard, now is the time for improving the relationship between the executive authority and the legislature and for the legislature to take on a bigger role in monitoring and checking the executive authorities. The United Democrats feel that the two Councils need co-ordination as much as they need checks and balances against each other. By co-ordination we mean to step up collaboration between the Legislative Council and the Executive Council so that the proposed policies and draft bills presented to the Legislative Council will be endorsed. By checks and balances we mean that the Legislative Council should echo the public sentiments and monitor government operation. A simple way of achieving the goals of co-ordination and checks and balances is as follows:

(1) The Legislative Council should have more directly elected seats in order to have more representatives of public opinion to monitor government operation;

(2) The Governor should, in selecting candidates for Executive Council, make a point of appointing a given number of directly elected members of the Legislative Council to the Executive Council.

This will enable the public to indirectly monitor and check the powers of the Executive Council and strengthen the influence of Members of this Council on government policies. Meanwhile, from the government point of view, this will also make for smoother administration and indirectly boost its credibility because its policies will have the assured support of the people.

Lord David WILSON in his policy address delivered to this Council on the commencement of its current session expressed the wish that government departments would build up a partnership with this Council. I am sure that no one in this Council would oppose such a partnership as it were; I am sure that no one in this Council is determined to make life difficult for the Government by deliberately finding fault with the policies initiated by government departments and already endorsed by the Executive Council. However, in the past year, we have discovered many policies which are thrashed out not in the public interests and which are indeed detrimental to the

public interests. As directly elected members we have been forced to vote against them. As a result, we have been criticized for ruining the partnership. But the blame actually falls on the Executive Council because it is basically without adequate public representativeness. It is for this reason that the policies formulated or presented by the Executive Council fail to reflect public opinion at all and as such it is very difficult for them to win the support of the directly elected legislators. In this regard, if this Council is to develop a partnership with the Government on an equal footing, the Governor should first of all follow the democratic trend by appointing a given number of legislators to the Executive Council.

Mr Deputy President, I would like lastly to respond to the issue of collective responsibility. Some people draw an analogy between the cabinet of the British Government and the Hong Kong Executive Council and advocate on that basis that the rule of collective responsibility should apply. I wish to point out here that the Executive Council is not equal to the British cabinet. The latter is formed by the ruling party and its members have all been directly elected when they receive cabinet appointment. Given that their manifestos are publicized in the election, it is clear that the British cabinet has the mandate from, and is acceptable by, the electors. But Executive Councillors in the Hong Kong context are invariably appointed by the Governor; most of them are not returned through popular elections and consequently lack popular mandate and support. One can see from this that it is not appropriate to strictly apply the rule of collective responsibility observed by the British cabinet to the Executive Council.

With these remarks, I support Mr SZETO Wah's motion.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, I would first of all like to respond to the question of which of the two constitutional documents should have the more authority, raised by the mover of today's motion. Insofar as the Joint Declaration and the Basic Law are concerned, I think that because the former is the document which was ratified earlier, the latter is the continuation of the former. The Basic Law effectively spells out in detail the contents of the Joint declaration. If we only stress the issue of which has the more authority and say to ourselves that the latter should be subject to the former, then it might be just as well to ask whether someone as a parent should be responsible for his offspring, or whether it should be the other way round. Speaking for myself, I think I should be responsible for my offspring.

Furthermore, whereas the Joint Declaration is an international treaty, the Basic Law is a code of laws of a sovereign state. Although I have only superficial knowledge of international law, I would have thought that any sovereign state would, in weighing the international laws against its own sovereign laws, attach primary importance to the latter. On the issue of accountability, as a matter of fact, Article 64 of the Basic Law already stipulates how the Special Administrative Region (SAR) Government is to be accountable to the legislature, in the following four respects: It shall implement the laws already in force; it shall present policy addresses to the legislature regularly; it shall answer questions raised by members of the legislature; and it shall obtain approval from the legislature for taxation and public expenditure. According to my observation for the past half year or so, these provisions are quite similar to the way in which the Legislative Council operates. So I think that the Government has already been accountable to the legislature at this point in time.

However, the question has recently arisen of whether the Governor should appoint candidates from various parties groupings or quarters into the Executive Council. I think that while this may sound like an ideal arrangement in terms of increasing democracy and transparency, I am rather worried lest it should result in the Executive Council developing into either a super Legislative Council, or a mini Legislative Council. I am worried that this would decrease rather than increase public monitoring. For it is likely that the Chief Executive, or the Governor for that matter, would choose not to discuss important policy issues with the Executive Council altogether, in view of the absence of collective responsibility and confidentiality. He might instead choose to discuss those with a number of key officials and take a decision after this is done. If that should happen, then the only chance of public scrutiny through a few appointed individuals would be reduced. The check on the Governor's powers as things stand now is less than that in respect of the Chief Executive provided under the Basic Law. The Basic Law stipulates that if the Chief Executive is not able to accept the majority view of the Executive Council, he shall put the case on record, which is something the Governor is not required to do under the present system.

Mr Deputy President, I think that we should not, as we review the relationship between the two Councils, forget that Hong Kong people, including the grassroots, are all beneficiaries of the present system, for otherwise we would not have sought the preservation of the status quo for 50 years and Hong Kong would not have become what it is today -- a territory in the Asian region which has a relatively high living standard and a very great measure of freedom. The only controversial point here is, as Mr HUI Yin-fat was saying, whether collective responsibility can be applied to

a certain degree. I think that before reviewing this we may consider certain scenarios; if it should happen that a direct conflict with the functional constituency interests of a certain legislator should arise, then perhaps more cautious consideration would be called for. But I do not think this scenario would be applicable to directly elected legislators returned from geographical constituencies. I cannot see how anyone could within a short span of time consult the views of hundreds of thousands of people and come to the conclusion that the decision in question is not consistent with the wishes of his or her electors. Mr Deputy President, I hope the Government will take the above point into consideration when it reviews the relevant issues.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, the Hong Kong legislator is almost a Mr Know-all. Quite apart from debating issues on behalf of the various interests of the public, he or she has to speak for his party, his principles, his own interests, and what is more, he has to make proper preparations, in terms of grabbing votes, for the elections of 1995. And there are already Members who have to cope with arrows shot at their back and the pressure brought to bear on them by their own political party.

Mr SZETO Wah's motion for today's debate is mildly worded and fair enough; so, as he has admitted himself, he is quite confident it will be supported and passed, and so no amendment has been made to his motion. But in his speech, Mr SZETO has in fact made some challenging points and called for certain reforms; there are many points made which cannot be implemented. Today, eight United Democrats Members have spoken, which is evidence that they attach great importance to this issue, or it could equally be that they are divided among themselves on this issue.

Mr Martin LEE has reiterated the point that Members have to be responsible to the public. But can I ask him whether he has tried his best to fight for Hong Kong people on (1) the Vietnamese boat people issue, (2) the issue of restoration of the death penalty, and (3) the issue of requesting that the United States grant the Most Favoured Nation status to China without any strings attached?

Mr Deputy President, the existing executive and legislative system has been in place for a long time, but over the years, one has not heard of any sharp criticism from anybody, including politicians, or indeed anybody asking for any changes to the system. The main objective of the Sino-British Joint Declaration is to make sure

that Hong Kong people have the confidence in the transition to 1997 and that they identify with the concept of two systems coexisting within one and the same country. Indeed, let me reiterate here that Britain is taking advantage of the issue of 1997 to rewrite history and conceal the facts while defending her own irresponsibility. As Members continue to debate time and again the so-called democratic and just cause, which is totally unnecessary, people who harbour ulterior motives are already laughing up their sleeves from behind the scenes. Why are Members who enjoy such esteem, who are so responsible and so representative, why are they still ever so certain of their invincible fighting spirit, when they are in fact fighting each other over the most trivial things to the neglect of the cause of really serving Hong Kong people and fighting for their rights? Colleagues, let us wake up.

Mr Deputy President, the relationship between the Legislative Council and the Executive Council is already clearly defined in principle. The Executive Council is the executive advisor of the Governor in Hong Kong as well as the endorser of some of his policy decisions. In principle, the Executive Councillors are collectively responsible for the acts and policy decisions of the Governor; they also observe the rules of collective responsibility and confidentiality. The Legislative Council basically has different responsibilities and different positions; there is not a doubt about this. What Hong Kong needs now is a smooth transition; it does not need unnecessary confrontation. Hong Kong people have no wish to see the erosion of confidence and peace. It is a more practical thing for legislators as representatives of different walks of life to do some soul searching on this.

Mr Deputy President, I could only abstain from voting altogether given that no one is prepared to oppose Mr SZETO Wah's motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, there has been much talk about the executive being accountable to the legislature, but what do we really mean by this? Hong Kong's circumstances are unique. We do not have an elected government, and there is no government party as you will find in, for example, the United Kingdom. The Administration is responsible for formulating policies; the Governor, on the advice of the Executive Council, decides on the policies which the Administration will then implement. This does not, however, mean that the executive can go about its business according to its own whims. Far from it. Amongst other things, this Council has the real and important powers enabling it to hold the executive accountable for its actions and decisions.

The Legislative Council has five main functions. First, it can pass, amend, or refuse to pass, proposed legislation initiated by the executive. Secondly, it has the power to vote or deny funds. Thirdly, it can debate public policies and other matters of public concern, as we are now doing. Fourthly, Members of the Council can question the Administration on any public issues, can call for the attendance of witnesses and the production of documents. And finally, it can call the Administration to account for the expenditure of public funds. These roles are extensive and have been, over the years, put to good use by this Council to protect and to promote the interest of the public. Indeed, the Basic Law (cf. Chapter IV, Section 3) also provides for similar functions of the Legislative Council of the Hong Kong Special Administrative Region after 1997.

Whilst our system of government is executive-led, the executive relies on the support of the legislature for the enactment of laws and the provision of funds required to give effect to its policies. Such support cannot be assumed, and is not assumed as a matter of course. The legislature can, and does, use its powers to keep the executive under scrutiny and keep it in check by questions and debates. It is in this sense, the Administration believes, that the executive is accountable to the legislature.

Clearly, an important aspect of the relationship between the executive and the legislature relates to the role of the Executive Council. Under our system of government, the Executive Council is the highest policy-making body in Hong Kong. Its links with the Legislative Council are provided by a number of Executive Council Members also serving on the legislature. This arrangement should enable the Executive Council to have a better and more timely understanding of the mood of the legislature on any issue of the day, and facilitate explanation of the Executive Council decisions to the legislature.

In the years ahead, there will be further changes to the composition of this Council, which will become fully elected in 1995. The relationship between this Council and the Executive Council will also continue to evolve. It is important for us all to learn from experience before coming to any conclusions as to how that relationship should be refined in the future on an evolutionary basis. There is therefore no case for a review on a specific time frame.

On the part of the Administration, clearly we need to work closely with the

legislature. In this connection, Policy Secretaries are spending even more time than before to explain and brief Members of this Council on what their policies are, why those policies are needed, how feasible those policies are, and how much those policies will cost to the taxpayer. This is particularly important given the development of representative government and the increasing complexity of the many issues which face us today.

Mr Deputy President, the Administration fully accepts the responsibility of constantly looking for means to further strengthen the relationship between the legislature and the Executive Council with a view to ensuring the effective and efficient governance of Hong Kong. In this connection, I welcome the many valuable views expressed by Members in this debate today. However, for the reasons I have explained, the Administration considers that this is a continued process of examination rather than a question of initiating an immediate review. The ex-officio Members of this Council will therefore abstain from voting on Mr SZETO's motion. Thank you.

MR SZETO WAH (in Cantonese): Mr Deputy President, I reckon that my motion will be carried and this I will find out very soon. Although Members have expressed different views, I do not think it matters very much. The adoption of the motion will open the way to review and improvement. We will have more opportunities for exchanging views. But I would like to remind Members that review and improvement will have to be in keeping with one principle, that is to say, the principal that the executive is to be accountable to the legislature as spelt out in the motion. Admittedly, some people have a different interpretation of the term "accountability", but one should never take "the executive authority is accountable to the legislature" to mean "the legislature is executive led". I do not intend to respond to the speeches of Members at this point. Let us instead wait and see how the Government is going to review and improve the relationship between the two Councils.

I would like to thank Members who have spoken in support of my motion. At the same time, I also note that Mr TAM Yiu-chung has declared that he would not participate in the voting and that Dr Philip WONG who was saying he agreed with Mr TAM's position, has actually gone one step further, in terms of actually opposing my motion. I feel that the reason he has given for voting against the motion is not adequate. He has described the status quo in very upbeat terms. If everything is really so good, how much better still for Hong Kong not to have to be reunited with China. I did not

get a good reason from his speech, but I can guess what his reason might be. Thank you.

Question on the motion put and agreed to.

LEGAL AID SERVICES

MR WONG WAI-YIN moved the following motion:

"That this Council urges the Administration to undertake a comprehensive review of the existing legal aid and related services and to publish a consultative document to solicit public comments with a view to identifying possible areas of improvement and enhancing public participation in the policy formulation and provision of legal aid and related services."

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, I rise to move the motion standing in my name on the Order Paper. "That this Council urges the Administration to undertake a comprehensive review of the existing legal aid and related services and to publish a consultative document to solicit public comments with a view to identifying possible areas of improvement and enhancing public participation in the policy formulation and provision of legal aid and related services."

Mr Deputy President, the spirit of rule of law is one of the main factors contributing to Hong Kong's success. An important principle of the rule of law is that "all persons are equal before the law". In Hong Kong, as in other well-developed modern metropolises, laws are quite complex and specialized while legal procedures and formalities are stringent and complicated. Besides, English is the principal language used in the court-room and in legal documents. Consequently, whenever a citizen becomes legally entangled he must engage a lawyer to represent him. Legal services in Hong Kong, however, are expensive and the average citizen indeed cannot afford them. But before the law, the party who is not represented by a lawyer will be hard to win his case even if the truth is on his side. In practical terms, therefore, there is no equality before the law to talk about. For this reason, the system of legal aid and related services is truly a support system essential to the establishment and maintenance of the rule of law in Hong Kong.

It can be seen from the above that legal aid and related services have a close

bearing on the life of the people (particularly those who cannot afford legal charges) and on their lawful rights. For this reason, this Council should attach importance to such services. However, as far as I know, this Council has never held a debate on them. That is why I am moving this particular motion. My primary purpose in doing so is to draw due attention both inside and outside this Council to Hong Kong's system of legal aid and related services. This debate also makes available opportunities for colleagues to give their views, compare notes and put forward constructive proposals for the authorities' consideration. Such collective deliberation will further the public interest. It will also lay a foundation for future planning.

In view of the time constraint, I will focus on three principles to which, in the opinion of Meeting Point, we should pay attention in our deliberation of ways to improve the provision of legal aid and related services. I will also make some preliminary suggestions. Later, Mr TIK Chi-yuen of Meeting Point will talk about how legal aid services, as a form of social services, affect people's life and about the related problems of the grass roots.

The three principles put forth by Meeting Point are:

(1) Legal aid and related services are a support system that is essential to basic human rights and to the establishment and maintenance of the rule of law.

I have already explained how important legal aid services are and why they constitute a support system essential to the establishment and maintenance of the rule of law. Here, I merely wish to make some additional observations. Section 22 of Hong Kong's Bill of Rights Ordinance states, "all persons are equal before the law and are entitled without any discrimination to the equal protection under law". Therefore, where a person cannot afford to engage a lawyer to represent him, he should be provided with legal aid services. This is particularly so when it comes to criminal cases, where, if convicted, a person will be fined for a light offence or imprisoned for a serious offence, where he may even be sentenced to death, or his reputation and his future may be ruined. This is why Section 11 of Hong Kong's Bill of Rights Ordinance, providing for an internationally recognized human right states clearly that, when charged with a criminal offence, the defendant has a right, to defend himself through legal assistance of his own choosing and without payment by him in any case if he does not have sufficient means to pay for it. It is thus clear that Hong Kong law already recognizes legal aid services in criminal cases as a basic human right.

(2) People need more than legal representation in a court case as a form of legal service. Equally important are the availability of accessible and effective preventive legal services and general legal advice before a legal dispute deteriorates into litigation.

"Prevention is better than cure." "Diseases should be treated before they become serious." The truth in these sayings applies also to legal services. If people are well equipped with general knowledge of law, this may already have forestalled a lot of law suits. It may help them more readily identify a potential legal problem and thereupon solve it in a simpler, more expeditious and less expensive way. Prevention and "early diagnosis" are often cost effective. They will also help to lighten the caseload of our over-burdened law courts. Therefore, Hong Kong should undertake a comprehensive review, develop some kinds of legal services of a preventive and "early diagnosis" nature and make an effort to disseminate general knowledge of law.

(3) Action should be taken to increase the degree of transparency of legal aid and related services and to enhance public participation in the provision of such services.

Many aspects of legal aid and related services are very technical. But in respect of policies, values, methods of supervision and accountability, the provision of such services is in fact no different from the provision of other kinds of social or public services. At the present moment, the provision of legal aid and related services in Hong Kong thus far is handled in most cases by one or two government departments and two professional bodies. The average citizen has no chance at all to act as watchdog. Even the popularly elected representatives in the various boards/councils do not have a say. This situation is far from satisfactory. True, where the provision of legal aid and related services is concerned, the details of a possible make-up of the policy-making body, the executive arm, the appeal channels and the supervisory mechanism may be decided after public comments are solicited from all quarters. Still, it is essential that action should be taken to increase the degree of transparency of legal aid and related services and to enhance public participation in the provision of such services. To an appropriate extent, the community's overall interests and the general public's stand-point may be used to counter-balance the professional interests and stand-point of the professional bodies. This will increase the general public's identification with, and respect

and support for, the legal system.

After talking about the three principles, I will now present some of the preliminary suggestions of Meeting Point. In fact, in many areas in the way in which legal aid and related services are being provided, there is still much room for further improvement. So this is the right time to undertake a comprehensive review. On the basis of the review, a consultative document should be published, preferably before the end of this year for public comments, if possible. In regard to the scope of the review, it may cover the following points:

- (1) The principles and the objectives of legal aid and related services;
- (2) Classification of, and co-ordination among, legal aid and related services;
- (3) The structure of the policy-making body and the advisory body;
- (4) The executive arm and the supervisory body;
- (5) The appeal channels and procedure;
- (6) The question of manpower and resources.

As the body for promoting legal aid services, Meeting Point's preliminary suggestion is the establishment of a "Legal Aid Committee". This is to be the main policy-making body. Its members should include Government officials, popularly elected Councillors, public representatives and representatives of professional bodies. The committee is also to act as the body to supervise the implementation of the policy and for hearing appeals where applications for legal aid have been rejected. Also, the proposed Legal Aid Committee should readjust its relationship with other government departments. Meeting Point suggest that the existing Legal Aid Department be reorganized and made responsible to the proposed Legal Aid Committee.

As for the "means test" of persons applying for legal aid, I am very glad to learn that the Government will, with effect from today, use a new criterion.

Heretofore, an applicant for civil legal aid had to go through two "means tests": He must have a disposable monthly income not more than \$2,200 and disposable capital

not more than \$15,000. Also, he had to undergo a "justification" test. This meant that he must justify his legal action. Besides, it was up to him to show that he had a reasonable chance of succeeding in the litigation in recovering the judgement debt thereafter. According to data published by the Census and Statistics Department, we estimated that, as a result of such "means tests", discounting the justification requirement, only about 16% of all families in Hong Kong were eligible for the service.

In May last year, the Government proposed a change in the means screening. A criterion of a \$120,000 ceiling for "combined disposable resources" was to be used instead. It was hoped that this would make more people eligible for the benefit. Finally, today, more than a year later, the Government has officially given effect to the proposal.

Undoubtedly, the new criterion is better than the old one. Still, on the strength of data published by the Census and Statistics Department, Meeting Point estimate that only half or less of all families in Hong Kong will meet the new criterion and become eligible for the service. Therefore, Meeting Point suggest a further raising of the means ceiling to make the service available to between 70% and 80% of all families in Hong Kong. To do so, the means ceiling should be raised to \$180,000. If the Government does not have sufficient resources, it should consider charging a fee, the amount of which should be determined at a level proportionate to individual family income or, after the case is won, to the size of the settlement awarded.

Also, the scope of the Law Society Legal Advice Scheme should be broadened to cover civil cases. The Scheme is currently applicable only to law suits over compensation for casualties. Meeting Point think that legal aid in criminal cases should also be regarded as a basic human right and that legal aid services should be extended to every defendant charged in criminal cases in Hong Kong, subject to cost recovery where warranted by the defendant's financial situation. Those involved in criminal cases who are not granted leave to appeal should also have access to legal aid for appeal or judicial review.

The proposed Legal Aid Committee should also take up responsibility for developing and planning legal advice as a service. In fact, legal advice service is an area where there is a lot of room for development.

Meeting Point have studied the comparable plans of many countries. Among them, the United Kingdom's Green Form Scheme is worth learning from.

The Green Form Scheme in the United Kingdom is financed by local councils. When a citizen needs legal service, he can visit a law firm that participates in the scheme. He would be required to fill out an application form and pay a prescribed fee not more than five pounds. This entitles him to half an hour of professional legal service including legal counseling. The difference of the service charges would be met by the city councils.

Of course, it is not necessary for us to have a scheme that is exactly like the Green Form Scheme. But will it be possible for the Government to set up a user-friendly legal aid scheme tailored for Hong Kong, which is characterized by its simplicity, accessibility, nominal fees and professional standards of quality? Such a scheme is to incorporate the good points of the United Kingdom's Green Form Scheme and is to substitute the free legal counseling service being operated by the Law Society at some of the district offices.

Along the same line of thought as above, Meeting Point would like to propose a further expansion of legal aid services. One way of doing it is to give financial and other assistance to non-profit-making voluntary agencies so that they may run a pilot scheme to set up legal advice centres and to disseminate general legal knowledge. Each of the legal advice centres is to be directed by at least one practising lawyer with two or more years of professional experience. Such lawyers are hired by the non-profit voluntary agencies. Supported by other professional persons such as social workers or medical practitioners, they will provide legal advice and related services and propagate legal knowledge.

In fact, many voluntary agencies are already providing such services and many of which, such as counseling on basic labour law, laws concerning the interests of old people and on the management problems of multi-storey buildings, are considered to be of no commercial value. This is why the law firms are not interested in providing them. Another reason is that the service recipients may not be able to afford high legal fees.

Meanwhile, Law Society now makes it a rule that lawyers are not allowed to accept employment and practise law in non-legal firms. In other words, voluntary agency generally cannot hire full-time professional lawyers to provide such services. Meeting Point hope that the Law Society will consider relaxing this rule and indeed giving financial and other assistance to enable some non-profit making groups to run

legal advice centres. This will enable the grass roots to enjoy legal services and put the community's resources to better use for propagating legal knowledge and the idea of rule of law.

Finally, Meeting Point would like to see a revamping of the Duty Lawyer Scheme. The successful Duty Lawyer Scheme is now run by the two legal bodies. However, Meeting Point think that there is still room for improvement. The Duty Lawyer Scheme should become an important integral part of our legal aid system. Given that the number of lawyers providing services under this scheme is far greater than that under the Legal Advice Scheme, Meeting Point suggest that the Duty Lawyer Scheme be incorporated into the Legal Aid Scheme and put it under the charge of the proposed Legal Aid Committee so that higher level of professionalism and efficiency can be achieved.

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

Question on the motion proposed.

MR MARTIN LEE (in Cantonese): Mr Deputy President, everybody is equal before the law. This is irrespective of race, sex or personal worth. Everybody is entitled to equal protection under the law. Hong Kong's Bill of Rights Ordinance was promulgated in June 1991. It has afforded further protection of individual rights under the law. Article 11(d) of the Ordinance provides to the effect that a defendant or a person charged with a criminal offence shall have a right to trial in a court of law and a right to defend himself; if necessary, the court shall assign to the defendant a solicitor or barrister to conduct his defence; if the defendant does not have the financial resources to pay the legal fees, such payment may be waived. We have a legal aid system. The question is: Can this existing system truly protect the various rights mentioned above?

This evening, four Legislative Councillors from the United Democrats of Hong Kong will try to answer this question. I myself will focus on two aspects of this question: the independence of legal aid and litigation under the Bill of Rights Ordinance.

The United Democrats are of the view that justice demands that the present Legal Aid Department be detached from the government establishment and reconstituted as an independent legal aid agency.

For a long time, Hong Kong's Law Society and Bar Association have been urging the Government to set up an independent agency to administer legal aid and other related matter. The Government, however, has refused to comply.

Actually, the independence of legal aid is necessary both from a practical point of view and from a psychological point of view. The promotions of officials in the Legal Aid Department are totally controlled by the Government. As they handle cases in which private citizens sue the Government, they are under a degree of political or psychological pressure. It was recently rumoured that the contract of the Director of Legal Aid would not be renewed and that he lost his position because he had provided legal aid to Vietnamese boat people in suing the Government. I think that the Government must give a public explanation of its position in regard to this matter.

Also, because the Legal Aid Department is a department of the Government, the solicitors and barristers it assigns or employs are often mistakenly thought to be "Crown counsel" working for the Government. Many people think that "Crown counsel" certainly will not do their best when defending members of the public against the Government's prosecuting counsel. They think that, as in a neighbouring country, the defence counsel assigned by the Government helps the Government and not the defendant.

Therefore, what are commonly known in the legal profession as "litigation brokers" can often exploit such a mentality of the members of the public. They mislead them and tout for business in the court building. This is why they are called "court rats." They often tell defendants and their families that "Crown counsel" cannot be trusted. Unfortunately, such illegal practices have so far attracted no serious attention and have not been eliminated.

In fact, as long ago as 1966, when the Legal Aid Bill went through its three readings before the Legislative Council, some Councillors already pointed out that legal aid services should be for the Law Society to provide. Mr WOO Pak-chuen, who was a solicitor, noted that, in the United Kingdom and other Commonwealth countries, it was not the Government but the Law Society which was responsible for administering legal aid. Mr WOO proposed that, in the future, when the Law Society had sufficient manpower, the Government should emulate the other Commonwealth countries and turn over the administration of legal aid to the Law Society.

It has been 26 years since the Legal Aid Ordinance was promulgated. Why has the Government not allowed the Legal Aid Department to become independent? Is it because the Government wishes to continue having an influence over the way officials of the Legal Aid Department assess the merits of applicants' cases? Is it because the Government wishes to make them have second thoughts about granting legal aid to those wishing to sue the Government?

Mr Deputy President, apart from the question of independence of the Legal Aid Department, I would like to make a few points about litigation under the Bill of Rights and to give some suggestions.

It has been more than a year since the Bill of Rights Ordinance was enacted. In reality, the Ordinance is not yet being extensively invoked. Summing up the experience of the past year, we can see that the Ordinance has indeed been invoked in criminal cases. However, there are as yet very few instances of the Ordinance being invoked in civil cases. Therefore, some of the major provisions of the Ordinance, such as those relating to racial discrimination, free expression and the right to privacy, have yet to be tested in court before a body of case law can be built on it.

There is an explanation why the Bill of Rights Ordinance is rarely invoked in civil cases. It is that, if the plaintiff should lose in a court case, he would have to pay not only his own legal fees but also the legal costs of the defendant (that is, the Government). The average citizen therefore dare not invoke the Bill of Rights Ordinance to sue the Government.

Case law in the form of precedents will have a very important bearing on whether or not the Bill of Rights Ordinance will be extensively invoked. Therefore, I have the following suggestions to make:

Firstly, like Canada and other countries, the Government should set up a Bill of Rights Fund for defraying the expenses of meaningful law suits that involve the Bill of Rights.

Secondly, the Government should enact an Ordinance to provide that, where a plaintiff invoking the Bill of Rights Ordinance loses his case, his payment of the costs of the defendant (that is, the Government) may be waived, unless the court is of the opinion that the plaintiff has brought a frivolous case.

Finally, I suggest that the Government set up a Human Rights Commission and let it handle human rights cases in a less expensive and more expeditious manner.

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

MRS PEGGY LAM (in Cantonese): Mr Deputy President, as society evolves and progresses, any existing system of services has to be reviewed regularly. In this way, it can be adjusted to the changing social conditions and the changing needs of the citizenry. The system of legal aid provides a very good illustration.

The basic purpose of legal aid is to enable citizens who cannot afford lawyers to obtain the legal service they need. They can then have recourse to the law for a fair and just resolution of problems, thus safeguarding their interests under the rule of law.

The operation of various laws and statutes, indeed the operation of the legal system as a whole, is a complex matter. The average citizen will need a lawyer to provide legal service and assistance in a law suit or to act as defence counsel in the court-room. Litigation procedures are quite complex and involve the gathering of evidence and the research of precedents. This requires the professional know-how and skill of a lawyer. Arguing a case in the court-room is not a skill the average citizen possesses. For instance, in presenting a case, a citizen who has had no legal training can hardly describe the course of events or make the relevant points of law in the right manner or language. According to the system of trial as now exists in Hong Kong, the judge gives his judgment on the basis of the case as each presented by the prosecution and the defence or the plaintiff and the defendant. Therefore, a lawyer's help will be extremely important for a citizen in a law suit. The lawyer can effectively present the facts; to a fair extent, he can also protect the interests of the client.

If it happens that a citizen, because he cannot afford a lawyer, is unable to have recourse to the law for the protection of his just interests, we will have injustice. Legal aid is meant to address this. Its purpose is to put the principle of "equality before law" into practice and make sure that every citizen in need of legal service will have access to it. The legal aid scheme must therefore be reviewed

regularly. This will show if it is fulfilling its purpose, if citizens in need of legal aid are having due access to it.

Furthermore, Hong Kong's economy has developed rapidly over the past 20 years and that there have been rapid social changes in tandem. On one hand, citizens' income has risen. On the other hand, continuous sharp increases in prices have resulted in inflation. But inflation has recently shown signs of slowing down or even declining. Citizens' income increase, too, has tended to slow down. The result of all this is that citizens' real income has declined a bit compared with before. Also, as knowledge of law becomes more widespread, the chances of facing law suits have increased correspondingly for citizens.

I am very glad to learn that the Government has already set up an interdepartmental working group to review the operation of the entire legal aid system. With effect from today, the income ceiling is raised in the determination of who will be eligible for legal aid. Under the new criterion, roughly about 60% of the population will be eligible for legal aid services when needed. This shows that a comprehensive review of the legal aid scheme from time to time, specifically with regard to who will be eligible for legal aid, is essential. Because citizens are the legal aid recipients, it is all the more necessary, during such a review, to consult the public through different channels.

Finally, I think that the authorities concerned should enhance civic education to make the average citizen better informed of the laws of Hong Kong and of the various legal procedures. Citizens should be inculcated with the idea of the rule of law. They should be taught what rights are bestowed upon them by law and to what kinds of legal aid services they are entitled.

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

MR ALBERT CHAN (in Cantonese): Mr Deputy President, in a community where the rule of law is upheld, when something unjust happens, specifically when an individual's rights and interests are encroached upon by a private institution or a government department in the execution of its functions, the affected citizen should not lose his right of recourse to the law because of lack of financial means. In a fair and just community, the conviction of an innocent person under these circumstances should not happen.

I intend today to cite an example from real life to illustrate the inadequacy of Hong Kong's legal aid services. The subject in question has been charged by the Urban Services Department for illegal hawking in Kowloon, and all her ware has been seized.

Subject is illiterate and has a speech problem. However, she did not think that she had committed an offence. So she pleaded not guilty in court. Unfortunately, her commendable courage has incurred a great deal of trouble for her. At the present time, the Legal Aid Department provides services only to persons involved in civil or criminal cases at the district courts or higher courts.

Subject, limited by her lack of knowledge and speech impediment, is really unable to defend herself in court. She is now in great distress. On one hand, she feels that she has been treated unjustly; on the other hand, she does not know where to go for help. She is under heavy mental stress all day long. I have talked with her many times and found her greatly depressed. She burst into tears a few times in front of me.

To find out what really happened, members of my staff have visited the scene where the alleged offence took place and talked to people in the neighbourhood and to other hawkers who saw what happened. They all pointed out that subject is innocent. Unfortunately, these witnesses are afraid to appear in court; so they would not testify. As a result, truth may never come to light. The court might not accept subject's version of what happened. In fact, subject has a fixed stall. Every day, she would stop doing business at about nine. Then she would go to a restaurant to have dim sum. While she was pushing her cart-load of goods towards a storage space to leave it there, officers of the Urban Services Department stopped her and charged her with illegal hawking. However, according to eye-witnesses and stall owners nearby, subject's cart was at the material time covered with a piece of green plastic cloth; she was not hawking.

Given subject's limited power of expression and in the absence of a lawyer to represent her, subject cannot compete in eloquence with the professional lawyer for the prosecution. The evidence adduced by the two sides will differ greatly in quality. This being so, there is a high chance that the court will not have before it the full facts of the case but will accept the evidence submitted by the prosecution. Should subject be convicted, I believe that all the Councillors seated here would call that

unjust and wrong.

Mr Deputy President, in a community where a sound legal aid system does not exist, the idea of equality before law is simply out of the question. Article 11 of Hong Kong's Bill of Rights Ordinance provides specifically that a defendant shall not be deprived of his right to counsel because of lack of means. The rules made and implemented by the Legal Aid Department simply are not up to the requirement of the Bill of Rights Ordinance.

Many may feel that the above is just a very trivial case and that it is not worth society's while to provide legal aid in such a case. However, from subject's point of view, the ware that has been seized is worth over \$10,000 and probably makes up her entire possessions. Unless it is given back to her, her livelihood will be in serious trouble. Besides, under the principle of equality before the law, whether a citizen has a right to legal aid services should not be determined on the basis of his financial means or the gravity of the injustice he suffers. Therefore, I think that the Government should expeditiously review the existing legal aid services and give further protection to the rights of defendants in cases where less than serious offences are involved.

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

MR MOSES CHENG: Mr Deputy President, today marks an important milestone in the development of legal aid services in Hong Kong. The recommendations of the last review undertaken in 1987 to extend the availability of legal aid are being implemented today. According to the estimation of the Administration the results of this extension mean that legal aid will be available to about 60% of our population. As compared to the previous figure of availability to about 16% of our population it is quite a noticeable step forward. However, a review to evaluate the true effects of such extension and to see if those with limited means are not being deprived of access to justice due to lack of means will unlikely yield any meaningful indication if undertaken earlier than 18 months from now.

The motion before us today urges the Administration to undertake a comprehensive review of the existing legal aid and related services with the view to identifying possible areas of improvement. Unless it is contemplated that such review is being undertaken 18 months from now, it will be pointless to cover availability. My colleagues in the Co-operative Resources Centre and myself feel that the review should cover the following specific areas:

Firstly, as the provision of resources from the public revenue to legal aid and related services have been substantial and are increasing yearly, the review should cover a value for money study. The efficiency in the deployment of resources should be carefully scrutinized to ensure that quality legal services are being most efficiently provided to aided persons. In particular the standard of services provided in-house should be compared with those provided by private practitioners as well as the cost effectiveness between cases handled in-house and those briefed out.

The system regulating the assignment of private practitioners in handling legal aid cases and its application in day-to-day operation of the department should be looked at to see if such system is working fairly to all private practitioners participating in the service. This can be a great potential area of abuse if the appropriate check and balance built into the system are not vigorously upheld.

Another area which should be subject to the review is the proportion of professional and non-professional staff in the Legal Aid Department. The financial records of the Department suggest that a constant figure of about 10% of the costs for providing legal representation to aided persons are being deployed yearly to employ professionally qualified staff to follow up on cases assigned to private practitioners to ensure that the provisions of the legal aid legislation are complied with and that the interests of the aided persons are protected. The exact scope and need of such supervision should be examined in detail to ensure that resources are justifiably employed.

Localization of the Department's professional staff, just like any other department in the Government, is another area which warrants a careful evaluation as we are going through this transitional period. The review should cover the effectiveness of the remuneration package in attracting candidates with good potential to join and stay working in the Department. In view of the difficulty in recruiting qualified local candidates to work for the Department I urge the Administration to consider a more flexible approach in deploying vacant qualified posts to set up more trainee positions which will inevitably increase the availability of qualified local candidates for appointment in the long run.

The Administration has been asked to consider the desirability of setting up an independent Legal Aid Commission to co-ordinate the provisioning of legal aid and

related services. Although the merits of such proposal should be acknowledged, yet the appropriateness of implementing such proposal under the current conditions should be seriously considered. Whilst we have identified areas of concern in the effective management of the Department and monitoring of the provisioning of legal aid which we feel should be covered by the review, it seems to be more appropriate for the Department to remain in the hierarchy of the Government thus subject to the same degree of monitoring as any other government department.

Enhancing public participation has been urged for in the motion before us. Members of CRC are always supportive of soliciting views of the public in the process of formulation of policies by the Administration. We therefore urge the Administration to consider the setting up of a Legal Aid Advisory Committee with representation from the various sectors of our community whilst at the same time review the value of the further existence of the Standing Committee on Legal Aid.

Mr Deputy President, with these remarks my colleagues of CRC and I will support the motion.

MR SIMON IP: Mr Deputy President,

Introduction

For every society in which the rule of law is upheld, everyone should be entitled to legal representation. A state-funded legal aid system enables less well-off citizens access to justice. For them, it is legal aid that transforms a theoretical right to justice into a practical reality.

The enactment of the Bill of Rights Ordinance in June last year enshrines equality before the law as a civil right in Hong Kong. Article 11(2)(d) of the Bill of Rights clearly states that everyone shall be entitled to receive legal assistance where the interests of justice so require without payment if he does not have sufficient means.

Independent Legal Aid Commission

Currently, the Legal Aid Department is a branch of the Government and employs

a large number of lawyers to conduct cases. While this may be an administrative convenience, it does not allow legal aid to be perceived as independent and free from the influence of or interference by the Government. It must be right in principle for the Legal Aid Department to be and seen to be separate from the Government. The 1979 Royal Commission on legal services affirmed this principle.

The report said: "The main objection of principle is that legal services are required more and more by private individuals who are in dispute with authority in one of its many forms, and to protect the interests of clients in such cases, the independence of the legal profession is of paramount importance. If all the lawyers available to assist an individual at public expense depended on the authorities for position and advancement, there would be a risk that an individual's case might be conducted not in a way which best served his interest or complied with his wishes, but in a way which avoided difficulties and gave least offence to those in authority."

In 1987, the Bar and the Law Society submitted a joint report to the Government requesting that an independent authority for legal aid be established, but that request was not granted. It is timely for the issue to be looked at again.

The Legal Aid Department handled 2 906 criminal cases in 1989-90 and 2 825 criminal cases in 1990-91. Therefore, those at the receiving end of justice may justifiably perceive that direct government provision of both the functions of prosecution and defence will result in less than fair and impartial justice. In the financial year 1991-92, 1 574 applications were made by citizens for legal aid to pursue remedies against the Government or quasi-government bodies. Again, in my view, it cannot be right for the Government to represent both parties when remedies are sought against it. The provision of legal aided service is an integral part of the administration of justice and must be independent and seen to be independent of the Government.

There is no novelty in this suggestion. Examples can be found in many other parts of the world including New Zealand, Australia and Canada.

The Duty Lawyer Scheme now represents some 25 000 defendants a year and it is where most people in Hong Kong have their contact with legal aid. It is an efficient and cost-effective scheme and its success is due to the support of and management by legal practitioners. The fact that this is so should encourage the Government to follow the scheme's example and establish an independent commission to administer

legal aid. If one part of legal aid services is independent, then why not the other? The incorporation of both schemes under one independent body will streamline legal aid services and achieve greater efficiency and economy.

Many statutory bodies performing public functions separately from the Government already exist. Examples include the ICAC, the Office of the Commissioner for Administrative Complaints and the Judicial Service Commission, just to name a few. It was precisely because of the need for these bodies to be and seen to be independent of the Government that they were set up. The Legal Aid Department is a clear anomaly.

For the reasons I have mentioned, legal aid services should be administered by a commission independent of the Government, regulated by its own Ordinance and managed by a board consisting of members drawn from the public and the legal profession.

Mr Deputy President, the Legal Aid (Amendment) Ordinance 1991 was passed in May last year to introduce a new means test based on an applicant's "net financial resources" which cannot exceed HK\$120,000, in order to qualify. The new provision was not brought into operation until recently because the funds earmarked for this purpose was transferred to the Duty Lawyer Scheme to meet the Government's obligations under the Bill of Rights despite the large government surplus achieved last year.

There is, however, no self-adjusting mechanism to review the means test so as to ensure that the eligibility level keeps abreast of inflation and rises in income. There should be a statutory requirement to conduct periodic reviews to ensure that the appropriate eligibility level is maintained.

The new amendment however still will not cater for the sandwich class. This situation was recently highlighted in a decision of the High Court which stayed criminal proceedings against a defendant under the Bill of Rights Ordinance. That defendant found himself falling outside the statutory eligibility prescribed by the Legal Aid Ordinance. However, he did not have sufficient means to engage lawyers privately for the estimated duration of his trial. The judge held that the interest of justice required that he should be legally represented and as this was not possible, the judge stayed the prosecution against him. The result is that a person who may be convicted after the due process of law could go scot free if legal representation is not granted to him by the Government to enable him to defend himself. This is a serious lacuna that could frustrate the due process of law. There have also been cases where the Court has ordered that legal aid be granted to someone who did not qualify under the Legal Aid Ordinance, on the ground that the Bill of Rights entitled

them to legal aid in the interest of justice. These cases show the need for an independent legal aid authority to exercise the function of deciding what in fact constitutes interest of justice. It is not right for one department of the Government to apply the test on behalf of a defendant when that defendant is being prosecuted by another department of the Government.

Finally, I should not conclude without making a brief reference to fees paid under the Duty Lawyer Scheme, which has remained unchanged since 1986. I do not think it is reasonable to expect people to work, whatever may be their job, for six years without a pay rise. The Government has depended on the goodwill of the legal profession which has in effect subsidized legal aid. The Government should not rely unduly on the profession's enthusiasm for the Bill of Rights because sooner or later, "compassion fatigue" may set in if the Government does not recognize the value of the services they provide.

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

DR LAM KUI-CHUN (in Cantonese): Mr Deputy President, from the viewpoint of monitoring, I think Hong Kong people have the following three expectations of the legal aid services:

- (1) they can make full use of the legal aid services;
- (2) the quality of the legal aid services is good; and
- (3) no unnecessary waste is incurred in the provision of the legal aid services.

Regarding the first point about whether Hong Kong people are able to make full use of a certain service, we can look at it from two perspectives. First, are all people who are in need able to use that service? As from today, 60% of Hong Kong people are eligible for legal aid services. Generally the needs of the poor households of the territory can be seen as being effectively taken care of. Second, is there unnecessary delay in applications resulting in eligible applicants being forced to give up legal aid services? The present position is that, with the exception of urgent cases, there are no special guidelines governing the handling priorities of the legal aid cases. However, some of the people using legal aid services are not Hong Kong people, such as the Vietnamese refugees who take up the

time of a lot of staff of the Legal Aid Department. Some of the clients involved in the cases have already left Hong Kong. The Legal Aid Department has no statistics indicating to what extent its resources are being used by non-residents of Hong Kong. I feel that since the Department is run with public funds, Hong Kong people should have priority treatment, particularly with regard to non-criminal and non-urgent civil cases. This is a point which deserves review.

The second point is about the quality of the legal aid services. The lawyers in the employ of the Legal Aid Department whom I have contact with apparently have different calibres. However, insofar as the issue of immigration is concerned, since the appointment of a certain officer in the Legal Aid Department, it has been the case for the past three years that the same legal firm has been consistently employed. I have made a point of asking why, but I have yet to be given a satisfactory reply.

I raised a couple of questions regarding the Legal Aid Department at the Budget Debate in March this year. Subsequently, the Director of Administration asked the Legal Aid Department for information to formulate a reply. More than three months have elapsed now, yet the Director of Administration has not received any reasonable information from the Legal Aid Department. It seems that an early review is needed regarding the manner in which legal firms are employed by the Legal Aid Department and its accountability to the Government's monitoring agency.

The third point is about the possibility of waste on the part of the Legal Aid Department. A review of the appeals lodged by illegal immigrants reveals that the radical, over-zealous attitude of the Legal Aid Department has apparently led to a lot of waste. I have ample evidence because I happen to be on the Immigration Tribunal.

In most appeal cases involving illegal immigrants, the Legal Aid Department is not allowed by law to intervene before hearing. However, since the appointment of that officer in the Legal Aid Department in 1989, there have been an increasing number of illegal immigrants formally seeking contact with the Department before hearing. It is clear from recent cases that the illegal immigrants have been taught a few tricks before hearing. In one particular case, the Legal Aid Department even went so far as to write to the Adjudicator and threaten members of the Immigration Tribunal who are supposed to uphold justice that unless the illegal immigrant's wish was granted an appeal to the High Court would ensue.

In another two cases, the persons involved had already admitted to be illegal immigrants and indicated that they were willing to be repatriated to Mainland China. But the Legal Aid Department refused to give up and actually persuaded them to stay in Hong Kong to lodge an appeal.

As far as I know, in some other cases the Legal Aid Department sought to persuade persons who had decided to give up to continue to appeal, even over-ruling the decisions of some of its own barristers. The move to get the persons to continue to appeal has caused resentment among some of the lawyers within the Department itself.

Usually it is extremely troublesome for the whole lot of hearing records of the Immigration Tribunal to be translated into English, and the practice in the past is that the Immigration Department would not produce the records, unless leave to lodge an appeal has been granted by the High Court. Since 1989, the Legal Aid Department had requested an English translation of nearly every hearing record. Then it found fault with the procedure and asked the High Court for an appeal, wasting large amounts of manpower and resources. But up to now, as reflected by the High Court decisions, whether it be a rehearing by the Immigration Tribunal, or a retrial that the Immigration Department requested from the court of appeal, the original verdict of the Immigration Tribunal has invariably been upheld.

There has not been a single case of an appeal lodged through the Legal Aid Department in which the original verdict was overturned. Each appeal case costs \$250,000 in terms of retaining fees and court costs on average. According to the statistics of the Immigration Department, the Legal Aid Department handled one such case each month in 1989, and the number has escalated to 11 a month at present. An enormous amount of money has gone down the drain in this way and the one and only legal firm which has been employed is the only beneficiary. It is clear that the Legal Aid Department has wasted public resources.

Mr Martin LEE and Mr Simon IP both take the view that in order to display a fair and just image, the Legal Aid Department should be independent of the Government. While I accept this I also feel that since the Legal Aid Department has apparently so many shortcomings which make it far from being ideal, what it needs most is further monitoring to improve efficiency and reduce waste. It would not be appropriate now to let it become independent and act at will.

On the question of a new review, I do not think we should waste resources on conducting a large scale public consultation exercise, or indeed engaging in a comprehensive but aimless review.

I agree with Mr Moses CHENG that the point is how to provide a better and more efficient service to Hong Kong people without waste and to achieve greater cost effectiveness. In addition, I think it is also important that we should take account of what Mr CHENG said, that is, the new scheme should be reviewed in one or one and a half years following its implementation today.

I very much hope that the wording of today's motion could be amended to produce a more clearly defined objective. It is unfortunate that Mr WONG is not willing to make any amendments. I am only prepared to say that the motion is "acceptable" as it stands.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, it can be said that the provision of legal aid services in Hong Kong is now going through a development phase. Many deficiencies and loopholes exist. A Joint Planning Committee on Legal Aid Reform, headed by former Deputy Chief Secretary Mr A.J. SCOTT, has published a report on Hong Kong's legal aid system, expressing the opinion that the whole structure of the system should be overhauled. Some of the recommendations contained in that report have not yet been implemented so far. Effective today, that is, 1 July, the old criterion for determining who will be eligible for legal aid is replaced. Now, an applicant will be eligible if the sum of his disposable capital and his annual disposable income does not exceed \$120,000. This raises the former ceiling which was \$2,200 in monthly disposable income plus \$15,000 in disposable capital. But it still leaves many people ineligible for the benefit.

I think that, as society becomes more complex, the need for legal aid services will keep growing. Moreover, some legal procedures are difficult to understand and that many legal terms are in English. This also causes a growing need for legal aid services. However, legal aid services are not being provided in a manner that benefits the general public. The Honourable Martin LEE of the United Democrats of Hong Kong said a moment ago that legal aid services should be independent. Here, I would like to dwell once more on the inadequacy of popular legal education and legal counselling service. I have been promoting weekly sessions of legal counselling and popular legal education in Hong Kong East. These sessions are now into their fifth

year. The law lecture sessions conducted in my ward office have now progressed to Stage XIX; more than 150 lectures have already been given. Many lawyer friends and I have been doing this work on an unpaid basis. We have a duty and we ourselves set an example. Our belief is that to rely solely on the Government's existing legal aid services will not do. Demand for services far exceeds supply. In particular short supply is free legal counselling. If we say that "equality before the law" is an important principle of the rule of law and a basic human right, then everybody should have access to legal aid services. Thus, to have in place a full range of legal aid services is very important. We need help not only when we have to settle disputes in the court-room. Living in this world, particularly in such a complex community as Hong Kong, we come across legal problems every day, such as in buying or renting a home, starting a business or applying for probate. Hence, it can be said that popular legal education is very important but far from available. True, Hong Kong's Law Society is now operating a telephone counselling service, and this is a very good way for citizens to receive legal counselling. But what I would like to point out is that, in providing legal aid services, the importance of popular legal education is being overlooked. As the saying goes, "prevention is better than cure." If citizens have sufficient knowledge of the law, they sometimes can avoid unnecessary litigation.

Furthermore, legal aid, after becoming independently administered, can provide service apart from the supply of a lawyer to represent a litigant in pursuing or defending a case. I believe that simple and expeditious legal counselling service, if available, will also be of great help to the general public. At the same time, the provision of such service will have the effect of contributing to a full range of legal aid services.

Mr Deputy President, I support the Honourable WONG Wai-yin's motion. I specifically stress that the terms of reference of the Government's interdepartmental working group must include a review of legal counselling service and of popular legal education. I also request that the Government's representative give us specific answers in his response.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, I am very much in favour of Mr WONG Wai-yin's purpose in moving this motion debate: to draw attention inside and outside this Council to legal aid and related services, to urge the Government to undertake a comprehensive review and to let Councillors exchange views and hold

discussions on this issue for the first time in a Legislative Council debate.

People from a particular walk of life would have their own particular pet subjects to talk about just as a particular species of melon would grow from a particular species of vine. I am a social worker and a directly elected Councillor from a remote geographical constituency. So I would like to talk about the relationship between legal aid services and the way the people live, the relationship between legal aid services and the grass roots and the question of legal aid services as a form of social service.

We live in a community that prides itself on the rule of law. Sometimes, the law looks like something remote, something abstract, something very difficult to understand, something that exists only in the court-room or exists as a theme for movies or TV dramas. However, if one takes a closer look, one will find that the law exists everywhere. In fact, there is not a single moment in our life when we are not caught in the cobweb of the law. We live. We grow old. We get sick. We die. We wear clothes. We eat food. We live in homes. We travel. Laws and regulations operate behind all these activities, behind basic human rights. What is more, legal procedures are rigid and complex. One must not make a false step; if one does, there will be consequences to worry about. When there is a dispute between two persons, the issue of who is right and who is wrong must be resolved on the basis of the law and in accordance with the terms of the law. There are also the numerous social policies and public policies which have the law as their core and their basis and which are governed by special provisions of the law. If you wish to change a policy that directly affects the way a citizen lives, you must make or revise the law. This is what Councillors and the Legislative Council routinely do. Clearly then, the law has a very close bearing on how people live.

Just as Mr WONG Wai-yin has pointed out, without legal aid and related services, many people will simply not be equal before the law. Legal aid services are particularly meaningful and necessary for those who cannot afford their own lawyers or legal services, even more so for the low-income and impoverished people.

Firstly, legal aid and related services are meaningful at least in the sense of "redistribution." They help to narrow the gap between the rich and the poor and to mitigate the factors of social instability due to the disparity of wealth.

Secondly, people who cannot afford legal services, specifically the poor, are

particularly vulnerable to persecution by others using the law as a tool. They therefore need the protection of legal aid and related services. Without such services, the law will be a tool for oppressing the poor instead of a tool for upholding justice and social order.

Thirdly, where the grass roots are concerned, in many cases, the experience of participation in the settlement of a dispute according to the law is a very precious lesson in civics. Such experience will encourage citizens to settle disputes by lawful and peaceful means. It will increase their understanding and approval of, and respect and support for, the legal system. To use the terminology of social workers, it will increase the future "problem-solving capacity" of those involved and make them more mature.

Stemming from the spirit of the rule of law is the principle that everybody is equal before the law. From my angle as a Councillor representing the grass roots and as a social worker, I think that legal aid and related services should not be regarded as charity but as a right to which every citizen is entitled. Legal aid and related services should form an inalienable part of our judicial system. They are not expensive cosmetics that we can do either with or without.

I also support Mr WONG Wai-yin's three principles for improving and developing legal aid and related services in Hong Kong. However, I would like to add some footnotes to the three principles.

Firstly, since legal aid and related services are civil rights and human rights, the Government must extensively publicize them. This will change the perception of those who regard the services unfavourably; it will encourage eligible citizens to use the services as a matter of right.

Secondly, legal aid and related services should be extended to the grass roots. It should be made as easy as possible for citizens to receive such services. As a Councillor representing New Territories North, I must point out that many of the Government's services, including legal aid and legal counselling services, are still concentrated in the urban areas despite the fact that the population of the New Territories has grown rapidly and now equals the urban population. This is unfair.

Thirdly, the quality of legal aid services must be the same as that of legal services available to citizens who pay. Therefore, the fees paid by the Legal Aid

Department to the lawyers it engages must not differ too much from the prevailing market rate.

Fourthly, where a fee must be paid by recipients of legal aid services, the amount must be within their means. Where an applicant for legal aid services is means tested, consideration must be given to the question: If his application is refused, will he be able to afford paid legal services in the marketplace?

Fifthly, legal aid and related services should be provided in a flexible way to cater for the special needs of those who need to be looked after, such as welfare recipients.

Mr WONG Wai-yin has proposed letting non-profit-making agencies operate legal counselling centres on a trial basis. I think that this proposal is particularly deserving of encouragement and consideration. The proposal will enable legal aid services to be delivered to the individual neighbourhoods. The centres will provide a combination of legal and other professional services. They will merge legal services and legal education into citizens' everyday life. Citizens will feel encouraged to participate in the provision of the services. Speaking particularly for remote areas where legal services are now in very short supply, I hope that the proposal will be realized soon. This will ease the shortage of services.

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

MR JAMES TO (in Cantonese): Mr Deputy President, before going into today's motion, I would like to describe a case which I can recall only too clearly. There was a lady who had a son. Her husband had passed away and she owned a very old flat in Sham Shui Po, worth roughly between \$200,000 and \$300,000. She lived with her son. Because she was old and senile, her son had to support her living. Recently, her son was killed in a police shooting incident. The coroner's court found that it was a case of unlawful homicide. However, she could not engage a lawyer under legal aid to file a law suit. This was because her flat was worth more than \$200,000.

I am trying to point out here that her case is not within the scope of the existing legal aid scheme. Hong Kong differs from foreign countries in many ways. (1) Many of the laws of Hong Kong are still in English only. It is difficult for the average citizen, even a citizen with post-secondary education, to understand the language

of the law, particularly where it deals with abstruse provisions and complex procedures. (2) In foreign countries, there are many organizations which are able to help citizens in litigation matters. There are huge trade unions with hundreds of thousands or even millions of members. These trade unions have ample funds, even supposing that each member contributes one dollar. If a person joins a trade union, he can receive many kinds of legal services indirectly. Trade unions help members in solving difficulties and settling disputes and champion members' causes. If a trade union's executive council thinks that there is a moral obligation to help, the best lawyer will be engaged to handle the case, all the way up to the Supreme Court. Also, in foreign countries, there are consumers' councils, religious organizations and voluntary agencies, where there are volunteer lawyers to serve members free of charge. Religious and voluntary bodies have lots of money marked for helping special cases. In the United States, there is the so-called "contingent fee" system. Never mind this system's good and bad points. The system means that a lawyer will be paid his fee if his client wins the case. If the client loses, no fee will be paid to the lawyer. This is in fact like the Supplementary Legal Aid Scheme where legal fees are payable only if the case is won, which, however, is an arrangement perfectly within the law. But more of this later.

Thus, Hong Kong differs in many ways from foreign countries. In Hong Kong, a citizen often has to face legal problems arising in the course of everyday life. There is all the more reason to have a legal aid system here which is even better than that of foreign countries, to which local citizens can have recourse to. Obviously, the new means criterion that comes into effect today represents a big step forward from the old one. Still, there are several points that I would like to raise for discussion.

Firstly, at the present time, an applicant whose annual income (or whose total means) is below \$61,000 may receive free legal aid services. This income figure is based on the public assistance criterion in welfare cases. Such an applicant can be said to be among the poorest. I feel that this figure should be reviewed and raised. An applicant whose annual income is between \$61,000 and 120,000 will have to share in paying the costs of litigation. I will give an example to show if this income criterion is satisfactory. Take a family of four living in a public housing flat. Suppose that their income is \$9,700 a month or roughly \$120,000 a year. Because they are eligible for public housing, their housing is subsidized. The amount of rent they pay is limited to 18% -- formerly 15% -- of the median income. For an aided person from such a family earning \$120,000 a year, his share of the cost of litigation may be up to 43% of this income or \$51,000. A typical family living in a public housing

flat may have to spend as much as \$50,000, \$20,000 or \$30,000, on a law suit! I believe that this will greatly affect their livelihood.

The Legal Aid Department also administers a Supplementary Legal Aid Scheme under which legal aid services are extended, in claims for death or personal injury, to applicants whose annual income is between \$120,000 and \$280,000. There is one condition to this benefit, which is that the Legal Aid Department will, after a case is won, deduct certain expenses from the award. I feel that this way more citizens will choose this scheme to sue for damages. However, I would like to ask: Why is this scheme available only in claims for death or personal injury? Are we having this supplementary scheme because reimbursement is assured? Are we not to have such a scheme where reimbursement is not assured? Moreover, the income limit of between \$120,000 and \$280,000 has not been reviewed for many years. I feel that it should be reviewed at this time, now that we have a definition for "sandwich class" and have this concept of overall cost to society. I think that a difference should be made between civil cases and criminal cases in the context of applicants' eligibility for legal aid services. In criminal cases, a person's freedom is at stake. I think that the income or means limit in criminal cases should be different from that in civil cases.

In the magistracies, there is a Duty Lawyer Scheme. Under this scheme, the Government must ensure, as required by the Bill of Rights Ordinance, that legal aid is provided to defendants in criminal cases who cannot afford a lawyer. However, if the defendant's annual income is \$50,000 or over, he will not be eligible for legal representation under the Duty Lawyer Scheme. Compared with the Legal Aid Department's income limit criterion of \$61,000, the income limit is only \$50,000 for eligible applicants in criminal cases brought before the magistracies. I feel that there is inconsistency between the two figures. Because personal freedom is at stake in criminal cases brought before the magistracies, this matter must be reviewed.

Finally, I would like to turn to education. We should teach the general public more commonsense knowledge of the law. We should provide more information on basic legal concepts and the law in general to outreach social workers and staffs of Councillors' ward offices, who are the frontline workers in constant touch with the public and helping them in solving problems. This will be of great help to the operation of the judicial system and the administration of justice. Therefore, I appeal to the Government to do more in the way of promoting this kind of education.

With these remarks, I support the Honourable WONG Wai-yin's motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I would like to thank Mr Zachary WONG and other Members who have spoken in this debate for the many interesting ideas they have put forward regarding the provision of legal aid services in Hong Kong. Their views will be carefully considered by the Administration in reviewing the future direction of the legal aid services.

I have listened with care to the concern expressed by Mr Zachary WONG and other Members about the adequacy of the legal aid services provided by the Government. While I can fully understand their concern, given the high costs of private litigation, and their wish to see more families become eligible for publicly funded legal aid, I must stress that important strides have been made in the past year in expanding the provision of legal aid services in Hong Kong.

Last October, following the commencement of the Bill of Rights, the Duty Lawyer Scheme administered jointly by the Bar Association and the Law Society was expanded to provide free legal representation to needy persons charged with criminal offences in Magistrates Courts. The expansion of the Duty Lawyer Scheme has proved to be an efficient and cost-effective way of meeting our obligations under the Bill of Rights to provide free legal representation to those in need in Magistrates Courts. The Government is grateful to the legal profession and the staff of the Duty Lawyer Scheme for the magnificent way in which they have coped with this commitment.

Another important development is the implementation, with effect from today, of a new approach towards testing the means of applicants for legal aid. Under this new approach, the upper limit relating to the means of persons applying for legal aid has been increased to total disposable financial resources of \$120,000. This represents a substantial improvement over the previous requirement that to qualify for the provision of legal aid, an applicant's disposable monthly income must not exceed \$2,200 and his disposable capital must not exceed \$15,000.

This new approach towards means-testing, what we call, for short, the "financial capacity" approach, is a significant change, and it is worth spending a few minutes to explain its advantages, and what it means for the people of Hong Kong. First, the new approach removes the imperfections of the old system whereby a person whose financial resources comprise mainly income or capital may not be able to satisfy the

separate requirements governing disposable income and disposable capital. Secondly, in calculating disposable income, the payments made by an applicant for salaries tax and as contributions to a pension or retirement scheme may be discounted. More importantly, in calculating an applicant's disposable capital, the entire value of any interest he may have in the only or main dwelling in which he resides shall be disregarded. Previously, only the first \$300,000 of the value of an applicant's interest in the dwelling in which he resides may be discounted. The more flexible approach towards the assessment of an applicant's financial resources, together with the improvements to the methodology of calculating disposable income and capital, means that significantly more people in our community, including those sufficiently well off to own a reasonable home, will become eligible for publicly funded legal aid. Furthermore, under the Legal Aid in Criminal Cases (Amendment) Rules 1992 which have come into force today, the Director of Legal Aid is given the discretion to grant legal aid to a person charged with a criminal offence even if his disposable financial resources exceed the limit of \$120,000, if the Director is satisfied that it is desirable to do so in the interests of justice. It is estimated that, following the raising of the financial limit to \$120,000 and the granting of this discretion to the Director of Legal Aid, the great majority of persons charged with criminal offences will become eligible for the grant of legal aid.

As the legal aid net is now much wider than before, I do not think it would be right to further relax the limit on the applicant's financial resources by raising it to \$180,000 in the near future, as suggested by Mr Zachary WONG. But we will certainly keep the existing financial limit under regular review.

While on the subject of funding, it may be useful if I provide some information on the amount of resources which the Government has allocated to the area of legal aid services. The provision for the Legal Aid Department has increased substantially in the last five years, by some 90%, from \$116 million in 1987 to \$236 million in 1992. This includes an increase of 31% in 1990-91 over that for the previous year, and a further increase of 16% in 1991-92 over that for the preceding year. The subvention to the Duty Lawyer Scheme has also been increased substantially in the same period, by 129%, from \$21 million in 1987 to \$48 million in 1992, although a large part of the increase was due to the expansion of the Duty Lawyer Scheme in Magistrates Courts. Indeed, if we take into account full costs, that is, including accommodation and staff on-costs, for the current year the Government will be spending up to \$360 million on the provision of legal aid and related services. Given the dramatic increases in funding which have taken place in recent years, I do not think

the Government can be faulted for being unduly frugal in its provision for legal aid services. The Government will certainly continue to strive to improve the quality and accessibility of the legal aid services available to the public, but priority must be given to encouraging more efficient and cost-effective utilization of resources rather than simply throwing more money at the system. From what I have heard from this debate, I am pleased to note that this is the approach favoured by Members as well.

Mr Deputy President, we live in a changing world and we must ensure that we are delivering the services which meet the changing demands of our community. In order to ensure that we have in place the right policy, procedure, legislation and organizational framework for the provision of legal aid and related services, an interdepartmental working group has been set up earlier this year to undertake a comprehensive review of the law, policy and practice governing the provision of legal aid, advice and related services in Hong Kong, and the future direction in the light of the provisions of the Bill of Rights. This working group will look, in particular, at the areas of unmet needs, the need for further relaxation of the existing financial limit, and the appropriate organizational structure for service delivery. The working group will take into account the views expressed by Members before finalizing its recommendations. The Government intends to consult the public, including of course the legal profession, on the recommendations of the working group after they have finalized their deliberations. The working group is expected to complete the review by the end of the year.

As regards the suggestion from the legal profession that an independent Legal Aid Authority responsible for the policy, supervision and management of all publicly funded legal aid services in Hong Kong should be set up, this suggestion is of course not a new one and the Government had given it very careful consideration in the past. We have taken the view that the need for an independent authority for the administration of legal aid to guard against possible interference by the executive with decisions relating to the grant of legal aid is more imagined than real. The Director of Legal Aid is empowered under the Legal Aid Ordinance to consider applications before him in accordance with the statutory criteria. Thus the Director of Legal Aid already operates independently. An additional safeguard has been built into the system whereby appeals from decisions made by the Director in civil cases can be made to the Registrar, Supreme Court. We are considering introducing a similar avenue of appeal in respect of legal aid in criminal cases.

If the concern is with the need to provide greater security of tenure to staff of the Legal Aid Department, I have no doubt that turning the Legal Aid Department into an independent body will be the wrong solution, as it is unlikely that staff of organizations outside the Civil Service, who are normally employed on contract terms, will enjoy greater security of tenure than government employees who are engaged on permanent and pensionable terms. Given the security of tenure which already exists, I see no point in establishing an independent body to administer legal aid, with all the substantial costs involved in disestablishing the Legal Aid Department.

We shall, nevertheless, in the current review, examine whether there have been any changes in circumstances which justify the establishment of an independent Legal Aid Authority for the provision of legal aid services in Hong Kong.

I have listened with interest to Mr Zachary WONG's suggestion that the free legal advisory service funded by the Government and those provided by voluntary agencies be strengthened, and to Dr LAM Kui-chun's criticisms of the Legal Aid Department in providing legal aid to Vietnamese migrants and illegal immigrants. I will certainly ask the Working Group on Legal Aid Policy Review to look into the need for free legal advisory services to be strengthened, and to review the existing policy and practice on the provision of legal aid to illegal immigrants and overstayers from China.

Finally, it remains for me to reiterate the importance the Government attaches to improving the quality and availability of legal aid services. Although legal aid has often been regarded as a form of welfare service, it is first and foremost an integral part of the justice system, for it is legal aid which translates a theoretical right to justice into a practical reality. Legal aid thus lies at the heart of the justice system. But we must strike a balance between providing publicly funded legal aid and related services to meet genuine cases of need and excessive public expenditure which may encourage exorbitant and nugatory litigation. The views which Members have expressed this evening will help us to move forward in the right direction. I am grateful for the many interesting suggestions which Members have made, and I will make sure that the Working Group on Legal Aid Policy Review will look into all of them carefully. We will also ensure that the public have an opportunity to comment on the recommendations of the working group before they are finalized.

Thank you, Mr Deputy President.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, first of all, I wish to thank my colleagues for remaining in this Chamber at this late hour to discuss how the provision of legal aid and related services can be improved in Hong Kong. Evidently, all of us are very concerned about this issue. I would also like to thank those colleagues who have spoken to the motion and given their very valuable comments. Though some of views may not be entirely the same as my own, the airing of them will draw attention inside and outside this Council to the particular issue, and arouse more discussions. And the specific improvements proposed will provide a basic reference for use by the authorities during their comprehensive review of the matter. In this way, further development and improvement may come about in such an important area as the provision of legal aid and related services.

Time is running out. I would not like to see that our meeting tonight will again last beyond mid-night. So I intend to make only a brief response and try to draw a conclusion. I will begin with Councillors' speeches that expressed views similar to mine. Firstly, most of the Councillors who spoke agreed that the authorities should undertake a review of the matter. It is not to be simply a review of technicalities or side issues. It should be an all-inclusive review to identify the obstacles and problems now being faced by us in the provision of legal aid and related services. From there, we will go on to make improvements to enable the services to be provided more effectively. Secondly, colleagues also agreed with the spirit and the idea of everybody being equal before the law. Litigation is no doubt very expensive but the principle of equality before the law argues for the exemption of those without the means from the payment of litigation costs. This is precisely why we have to provide them with legal aid. Thirdly, many colleagues also agreed that the provision of legal aid and related services should be supervised to assure maximum utilization of available resources and to enable the services to be provided more effectively. Fourthly, though the new means criterion that comes into effect today is an improvement on the old one, it does not go far enough. For instance, it does not address the needs of the sandwich class. For this reason, many colleagues held that regular reviews should be conducted to see if the vast majority of the families in Hong Kong would be benefited with the introduction of the means criterion. A moment ago, many colleagues noted that the new means criterion, with a ceiling of \$120,000 in annual income, could be met by 60% of all families in Hong Kong. I wish to clarify one point. Sixty per cent of the families would be able to meet this means criterion provided that they had no other assets at all. I believe, however, that all families nowadays have assets, some more, some less. If we discount those families with assets of \$30,000 in any given year, then the ratio of families meeting

the means criterion will drop from 60% to below 50%. Therefore, I stressed in my speech a moment ago, that using data published by the Census and Statistics Department, we should come to the estimate that less than half of the families in the territory will meet the criterion. Fifthly, legal aid services have a close bearing on, and are very important to, the life of the citizens. Accordingly, the propagation of basic legal knowledge is a pressing matter that cannot brook a moment's delay. In this connection, members of Meeting Point hope that the Government will allocate some resources to help non-profit-making voluntary agencies to disseminate basic knowledge of the law. This will enable the citizens to become better informed about the law. The five points above were generally agreed to by the Councillors who spoke.

Of course, views were sometimes at variance. For instance, Mr Martin LEE and Mr Simon IP suggested that the Legal Aid Department should go independent. Meeting Point, too, agree that the provision of legal aid services should keep at a distance from the Government. But do we really need an independent Legal Aid Department? This question needs to be further studied. Secondly, Mr Moses CHENG suggested the establishment of a Legal Aid Advisory Committee in view of the unsatisfactory performance of the existing Standing Committee on Legal Aid. Meeting Point, too, suggest the establishment of a Legal Aid Committee. The difference is that the Legal Aid Committee proposed by Meeting Point has real power and is not a purely advisory body. Thirdly, Dr LAM Kui-chun gave his views about the priority of the provision of legal aid services. He noted that Vietnamese boat-people, illegal immigrants and people who had already left Hong Kong should not be provided with legal aid services. But we worry that, as some Councillors pointed out a moment ago, this may clash with the principle of everybody being equal before the law. I hope that we will all give some careful thought to this problem. Since there are so many kinds of views put forward, Meeting Point suggest that the authorities undertake a comprehensive review of legal aid and related services, covering such aspects as the relevant principles and objectives, the policy formulation process, the establishment of an advisory body, and supervision and appeal mechanisms. We are very glad to learn that the Government is already conducting an internal review. We very much hope that the authorities concerned will carefully consider the comments made by Councillors today and, if possible, publish a consultative paper before the end of this year to solicit public comments. This will enable the provision of legal aid and related services to be further developed.

Mr Deputy President, these are my remarks and I once more thank all my colleagues for their support.

Question on the motion put and agreed to.

Adjournment

ATTORNEY GENERAL: Mr Deputy President, I move that this Council do now adjourn.

DEPUTY PRESIDENT: I understand that Members have agreed that in addition to the adjournment debate on "Fringe benefits for staff in the subvented sector", the adjournment debate on "Use and development of country parks" be also conducted today. Members will recall that the latter debate was postponed from the sitting on 24 June because of the shortage of time. As two matters will be raised for debate on the adjournment today, I will allow exceptionally 30 minutes for each of these debates before I call upon a Public Officer to reply in each case. In view of the lateness of the hour I do express the hope that we shall be able to finish both debates before midnight.

Use and development of country parks

10.45 pm

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, the Government had plans to grant 31 hectares of country park land in the Sha Lo Tung area to a developer for the construction of a golf course. This aroused the concern of environmentalists and the general public. The crux of the matter was the Government's intended sale of country park land to a developer for the construction of a private golf course. I must point out solemnly that such a decision of the Government was completely contrary to the intent and purpose of country parks. In Hong Kong: Facts, the fact sheet on country parks says that the purpose of country parks is nature conservation and, informally, the provision of recreational and outdoor education facilities for the benefit of the public. The purpose of special areas, on the other hand, is primarily nature conservation. Evidently, country park land is protected. Its ecology is to be preserved to enable the general public to be in touch with nature. This is very important for urban dwellers.

This time, the Country Parks Board, the Director of Agriculture and Fisheries (who is the Country Parks Authority) and the Secretary for Planning, Environment and Lands agreed to make an unprecedented grant of country park land to a private developer. Why, really? If the purpose was to have more recreational facilities at Sha Lo Tung, then the Government should construct the facilities itself; it did not have to wait for a private developer to construct them. Was the Government doing the developer this favour in consideration of the fact that there is a shortage of golf courses in Hong Kong? Golf courses are used only by a minority of people. One hectare of greens can be used for no more than 4 000 man-times a month. This is totally inconsistent with the fact that land is scarce in Hong Kong in relation to the size of the population. Secondly, golf is very expensive to play. The average citizen cannot afford it. Some people have estimated that the Government would stand to gain about \$800 million from this land grant and from the collection of land premium. So, was the Government thinking about the money that would be going into the Treasury?

In any case, the environmental groups succeeded in their application for judicial review last April. Evidently, government departments had made a mistake. Their trying to sell country park land was a wrong exercise of management power. One therefore wonders if government departments know clearly what their functions are. The incident showed once more that the Secretary for Planning, Environment and Lands had a conflicting role in being simultaneously responsible for the environment and for lands and that he eventually sacrificed the environment when he agreed to the land grant.

At the start of the Sha Lo Tung dispute, the developer was blocked from constructing the golf course. So the developer has not constructed the rural housing in a timely manner for compensating the villagers. The result is that over 1 000 villagers, who have been waiting since 1979, are still without new housing today. They have my deep sympathy. The developer bought the villagers' houses and land in 1979. At the time, the developer did not apply to the Government for a grant of country park land. The application was not submitted until 1985. In fact, the developer could have constructed a nine-hole golf course, as originally planned, on the land bought. The developer was blocked when application was made for 31 hectares of country park land to construct a larger, 18-hole golf course. The feelings of the more than 1 000 villagers can be understood. But the blame for the developer's failure to construct a golf course and to develop the land should not be placed on the environmentalists instead. Environmentalists, including myself, are opposed to the construction of a private golf course on country park land, which is for the

enjoyment of the public. I believe that environmentalists will be opposed even to the construction of a public golf course, let alone a private one, on country park land. On the other hand, I am not opposed to the construction of a private golf course on private land. The success of the environmental groups in blocking the Government's grant of country park land is very meaningful. It has made the Government and the public aware of the importance of country parks. It will make the Government pause to think before deciding to change the use of country park land in the future.

The Honourable MAN Sai-cheong of the United Democrats of Hong Kong will later talk about the significance of country parks.

Mr Deputy President, government departments asked the developer to make an environmental impact assessment in respect of the construction of a golf course at Sha Lo Tung. Really, how will a man-made golf course do ecological damage? I believe that everybody knows that chemicals would be used massively and that the original plants would be removed and replaced by trees and grass transplanted from elsewhere. The environment impact is known. There is no need to wait for the outcome of an environment impact assessment.

Mr Deputy President, though it has lost to the environmentalists in the judicial review, the Government still has not corrected its orientation with regard to the use of country parks. It has not yet officially turned down the developer's application but is helping the developer in making the environment impact assessment. I am deeply disappointed at this. I hope that the Country Parks Board, the Country Parks Authority and the Secretary for Planning, Environment and Lands will conduct a review of the policies and strategies governing the use and development of country parks and make public the results of the review.

I so make my submission.

MR LAU WONG-FAT (in Cantonese): Mr Deputy President, the debate on a subject such as today's is obviously occasioned by the controversy over the Sha Lo Tung Golf Course Project. Therefore, in debating the use of country parks, I cannot help but probe the controversy in question. There are people in this community who totally reject that project, citing what they call environmental reasons. I think that theirs is an over-reaction, which will over-correct the situation. They fail to give full

consideration to the real situation or to the possible benefits that the project will bring to the general public.

Undoubtedly, environmental and ecological protection needs to receive due attention. But I think that inflexibly regarding environmental protection as paramount and overriding -- an argument that soars above the suits and trappings of the material world -- is incompatible with society's need for continuous growth. I believe that it would be practical only if we returned to the primitive barbarian world.

I will not talk about the more remote history of Hong Kong's development. A more recent example is the Government's effort over the past 10 years or more to develop new towns in the New Territories, with a view to accommodating people from the urban areas as the population density there neared the saturation point, and with a view to having more industrial bases. As was inevitable, those development projects affected the environment and the ecology of the New Territories. In the real world, such is the price to pay for social progress. We definitely cannot sacrifice social progress or sacrifice the pursuit of a more comfortable and more diversified lifestyle for the sake of environmental protection. To be sure, we should do our utmost to keep environmental and ecological damage to the minimum.

Mr Deputy President, it is true that the Sha Lo Tung Golf Course Project is not a public project. Yet, the Country Parks Authority did attach conditions to it. If the developer observes those conditions, the project will be beneficial to the public. For instance, public roads in the area will be greatly improved and the developer will provide public car parks and public recreational facilities. The area will then be able to attract more pleasure visitors. Also, the golf course will be open to the public at least one-fourth of the time. This will give the average citizen an opportunity to play golf. In addition, the villagers living in the area will have an opportunity to improve their living environment, which at the present time is far from satisfactory.

True, some time ago, the court ruled on the powers and functions of the Country Parks Authority in the context of the Sha Lo Tung Golf Course Project. Still, to be fair, the conditions proposed by the Country Parks Authority for the project were constructive and were responsive to the needs of both environmental protection and development.

Mr Deputy President, what I wish to point out is that the proposed golf course

will take up only 1% of the land of the Pat Sin Country Park and that the land for use by the golf course will remain under the management of the Country Parks Authority. Also, the authorities require the preservation of rural structures of historical value and the preservation of woods and land features that are important according to principles of geomancy. The authorities even require that the golf course may use only such insecticides and fertilizers as will not harm the environment. Evidently, the environmental impact of the project, if any, will be slight.

The project has the support of the Tai Po District Board and the Tai Po Rural Committee. The Government ought to attach importance to their comments, being made as they are by fully representative advisory bodies who are familiar with the conditions of the area.

Mr Deputy President, I so make my submission.

MR JIMMY MCGREGOR: Mr Deputy President, I have only a few words to say on this issue and it will not be about the Sha Lo Tung Golf Course. The country parks concept enshrines the right of Hong Kong people to have their environment protected to a degree that will allow them to enjoy the wonders of nature forever. The pressure in Hong Kong for land for development represents an ever present threat to the maintenance of the countryside in its natural state. The greater the demand for land, the greater the danger that the natural environment will be destroyed. Once destroyed, it cannot be resuscitated or renewed; it has gone for ever.

Every country in the world has moved in recent times to protect the natural environment and to allow people to enjoy it without damage. Developers are not given access to country parks protected by legislation. Anything built in a country park must, of necessity, be in harmony with the environment and support the concept of a protected natural wilderness. As far as Hong Kong is concerned I am sure this Council is thoroughly behind the proposition that our country parks must be protected from incompatible and indeed damaging development. At the same time, it seems to me that some compatible developments can and should be allowed, with the greatest care being taken as to their siting, cost, ownership, management and so on. Such developments must clearly assist in encouraging public access and use of country parks. Some of the largest parks in the world are in the United States and Canada and also in Africa. Facilities such as hotels and hostels are provided in many of them for the large numbers of people who visit them. In addition, some of the facilities may

include zoological gardens, arboreta, and other special displays of natural phenomena.

Here in Hong Kong our country parks are smaller but still most beautiful. I have mentioned before in this Council my hope that a zoological garden could be placed in one of our country parks. This would allow Hong Kong people to see wild animals in their natural habitat, without bars or any other restraining feature. I have personally visited dozens of zoos around the world, as I am sure many of my colleagues have done. One of the best of them is Taronga Park in Sydney. I very much hope that such a zoo could become a feature of our country park system. It would provide education, interest and entertainment for countless thousands of our people.

Mr Deputy President, like everybody else I love walking in country parks. I know that they will be protected and my only real concern is to ensure that they are not exploited. I hope that my suggestion that a modern zoological garden should be constructed in one of our country parks is taken seriously.

MR PETER WONG: Mr Deputy President, I wish to declare my interest as a Governor of the Friends of the Earth. The Friends wish to make known their views on country parks to Honourable Members through a release but this Council's rules preclude its circulation to Members in this Chamber. However, copies are available in the corridor outside and I would urge Members to peruse a copy.

Our country park programmes stemmed from the post-war forestry policy of protecting the reservoirs and reducing landslides -- lobbying for recreation is something new in Hong Kong. Although some 40% of our land is designated as country parks, the rugged relief, insular nature, low car ownership have left some of our country parks very remote and inaccessible. Due to the more urgent need to tackle pollution problems, environmental conservation and education have received scant priority.

It is against this background that attempts have been made by developers to infringe upon the Country Park Ordinance in order to meet the growing demand for land for development.

The importance of saving our country parks from the bulldozer cannot be emphasized enough. Hong Kong's economic development has brought about higher disposable income, longer leisure time and greater mobility for Hong Kong people. All that means

increasing public demand for better conservation of the landscape and higher quality of recreational facilities. The time for change has come.

Firstly, a clear definition of the proper use of country parks is needed. Regulation 11 which prohibits the holding of "sporting competition" and "any competitive team games" must be thoroughly reviewed.

Secondly, there is a need for government departments to conduct public consultation with regard to the use and development of country parks which, in fact, is the heritage of the people of Hong Kong. As recent events have shown, there is considerable interest in the Board's work and decisions, and the Board must now be more open and transparent than before.

Lastly, the planning and development of our country parks tend to be problem-orientated, focussing on the management of hill fires and litter. Barbecues, which have become the most widespread outdoor activity in Hong Kong have significant implications on country park management and development. There is a need for better co-ordination of country park planning and management.

All over the world, country parks are shifting from meeting the quantitative demand for recreational resources to satisfying the rising expectations of countryside recreationists. Long-term measures are needed to ensure the viability of the sustainable countryside. In this regard, environmental education ought to be used as a tool to help arouse public awareness of preserving the natural state of our habitat.

Improvement in the attitude of country park users, management of quality countryside recreational services and an integral plan for high quality recreation and amenity conservation will together form the basis upon which a well balanced country park policy can be formulated. I would urge the Administration to draw up a comprehensive plan for our country parks which will serve Hong Kong's projected needs for recreation in the years to come and then let the Country Parks Authority carry that plan through.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, in 1978, when I was working at a District Office in the New Territories, I took part in the planning of several country parks. Therefore, I know full well about the Government's purpose in

developing country parks. It is to let members of the public, during their leisure hours, enjoy the wonders of nature in the countryside. True, we must do our utmost to preserve the natural environment of the country parks. But this does not mean that no development project at all can be undertaken in country parks.

Development projects in country parks are not necessarily unacceptable. In fact, over the years, numerous projects have been undertaken in country parks all over the territory. Some were infrastructure projects, such as the provision of power supply and telephone lines, serving nearby villages. Some were for the good of Hong Kong as a whole, such as laying water mains, and installing power supply facilities and power cables. Some were for the improvement of the country parks themselves, for making them more enjoyable to members of the public, such as barbecue facilities and vacation camps. In addition, there are still Vietnamese refugee camps set up in certain country parks to enable Hong Kong to discharge its international obligations. Besides, some refuse landfills are located in country parks; they form part of Hong Kong's overall development planning.

Each project indeed serves a practical need. The projects for improving facilities in the country parks are meant to attract to the parks those who normally do not visit the countryside or to make the parks more accessible to the feeble ones, such as old people and small children. There may be people who think that improvement projects for the country parks nevertheless make our environment look artificial, or less natural. Still, if such second-best country park environment enables more members of public to enjoy excursions into the country and adds to the pleasures of life, how can we make an across-the-board rule that would ban all development projects in country parks? For this reason, when deciding whether to allow a specific development project in a country park, we must evaluate the project on its own merits.

I said a moment ago that projects might differ in size. We cannot just say that small projects may be allowed in country parks but not big projects. How big is big? It is hard to say for sure. Some consider that laying water mains is a very big project. Others think otherwise. Which view should we heed? The real world is full of grey areas. There is a clear consensus among the public only in a few cases. For instance, it is generally agreed that container depots and industrial establishments should not be set up in country parks.

Apart from them, other kinds of development projects should be considered by the authorities on a case-by-case basis after public consultation. In the consideration of each project, the interests of the public should come first. That is why water mains projects, for instance, are given the green light since they are carried out in the interest of Hong Kong as a whole. Some think that a ban against any development project in country parks is also in the interest of Hong Kong as a whole, because only thus can the environment be preserved in the way it is. There is some truth in this argument but members of the public are still able to enjoy the pleasure of nature any time they wish notwithstanding these development projects.

Besides, we must remember that there are still many New Territories villages that are situated near or inside country parks. If a project will have an adverse impact on a village, then we must not sacrifice the interests of the villagers for the sake of the overall interests of Hong Kong. As I see it, if a project will benefit the villagers themselves, especially if it is a physical infrastructure project meant to improve their quality of life, which will not cause too much damage to the environment and will not have an adverse impact on society as a whole, then no matter how small the number of the residents there may be, we do not have sufficient justification for opposing it.

DEPUTY PRESIDENT: We have just over eight minutes for the four Members who have yet to speak, which means on average just over two minutes for each speech. But at 11.15 pm sharp I shall call upon the Secretary to make his speech.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, in 1976, when Lord McLEHOSE was Governor of Hong Kong, we passed the Country Parks Ordinance to set up country parks to serve roughly three purposes: education, recreation and conservation. In his policy address that year, Lord McLEHOSE stated specifically that the rapid development of new towns imposed on the Government a responsibility to make sure that large tracts of unspoiled wilderness would be preserved intact for recreation and country excursions. Have the country parks lived up to these three major purposes over the past 16 years? The adjournment debate in this Council today provides a good occasion for a review.

Firstly, country parks have indeed provided facilities for people to unwind, make country excursions or have picnics. However, the most frequently used spots of

country parks are the barbecue and picnic areas that are on the urban fringe and easily accessible, such as in Shing Mun. Those country parks situated in more remote and less accessible districts are rarely visited. The "favoured spots" of country parks are plagued by problems of congestion, littering and fire hazards caused by careless visitors. Also, the quality of soil and plants there has declined. The landscape is disfigured. Country parks are divided into zones. Recreational facilities are provided in each zone to attract large crowds of visitors. For those more remote zones, nature conservation is the main attraction and only limited facilities are provided there. The zoning is indeed well intended. But the situation now is that, those highly popular spots of country parks are confronted by problems of environmental pollution, accumulation of garbage and frequent hill fires. This does not match the original aim of environmental protection. Will the Government inform this Council what would be done to improve the management of country parks and how to solve the existing problems?

Meanwhile, the Country Parks Ordinance contains no definition for terms like "recreation" and "country excursion". Nor does it provide clearly which should be regarded as the more important when there is a conflict between nature conservation on one hand and recreation and country excursions on the other, both being major purposes of country parks. The Sha Lo Tung incident of the Pat Sin Country Park has been discussed many times over the past few months. The crux of the controversy is whether or not golf is a suitable form of recreation in a country park. I think that recreation in a country park should differ from ordinary outdoor recreation. Recreation activities in a country park should be centred around the natural resources of the park, including trees, creeks, land features, wild life and fresh air. It should be consistent with the country park's purpose of nature conservation and environmental protection. Whether it is a minority's sports like golf or a mass sports facility like a soccer field or a swimming pool, neither should be considered proper in a country park. Therefore, we should protect Sha Lo Tung in the context of its important natural environment and ecology and its precious peace from the impact of the development of a golf course.

Secondly, country parks have not failed to achieve their education goal. By education goal, I mean the goal of heightening people's awareness of environmental protection. That is to say, to educate people to cherish and protect our natural environment. If the Government is to take the lead in setting a bad example, by allowing the golf course project to go ahead to the detriment of the environment, this will run counter to the education goal of country parks.

I hope that the Government will act with caution and not permit a situation where it can be blamed for taking the lead to spoil the environment.

Finally, concerning nature conservation and protection, I doubt that enough is being done by the Government to protect wild life. In early June, a historic Earth Summit was convened in Brazil. Many countries, including the United Kingdom and China, signed a Convention on Biological Diversity. However, no official representative of Hong Kong attended the summit. What are the measures taken by the authorities for the protection of animals and plants? Do our country parks need biological diversity? I think that there should be nature conservation, ecological protection and biological diversity inside and outside the nature preserves alike. Regrettably, Hong Kong failed to attend this historic global environmental meeting. When will Hong Kong ever attend an international meeting on the environment? Is it necessary for us to observe the spirit of international conventions in carrying out our policies on country parks and nature conservation? I hope that the Secretary for Planning, Environment and Lands will answer these questions.

MR TIK CHI-YUEN (in Cantonese): On the development and use of country parks, Meeting Point have three points to make:

(1) Amend the Country Parks Ordinance

Mr MAN Sai-cheong has already gone over this point. I will not repeat it here.

(2) Make available resources for the preparation of a study on the environmental baseline

The Government should draw up a complete strategy for Hong Kong's environmental and ecological protection and designate a number of "sensitive areas", with different degrees of sensitivity. In each sensitive area, depending on the degree of its sensitivity, there should be a specific level of development allowed. For instance, in the most sensitive area where even the slightest damage will have a long-lasting impact on the environment, any development in such an area should be approached with great caution.

(3) Properly dispose of abandoned villages

There are villages near many of the country parks. The Government should continue its scheme to revive farming there and let some of the villagers participate in the management of the country parks. This will provide a solution both for the problem of villagers' livelihood and that of abandoned villages. Besides, our natural environment will be better protected so that country parks will continue to be available for use by the community as a whole. Thank you.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, I am commenting on the issue as a citizen who likes country excursions and hiking and loves country parks. I must also make it clear that I do not know how and do not like to play golf.

The purposes of developing country parks are, first, to protect our natural environment and, second, to develop and improve it. To turn country parks into tourist attractions is also consistent with the purposes of country parks.

Where the controversy surrounding Sha Lo Tung is concerned, I think that the matter has been blown up. This is probably because many people are not in the picture or have even been swayed by exaggerated media reporting. I will give one example. At a recent seminar, I asked some friends if they had heard of Sha Lo Tung. They replied that they had. I asked those who approved of the golf course project to raise their hands. Few did. Then I asked how many were opposed to it. Quite a number thereupon raised their hands. Then I asked how many of those against the project had been to Sha Lo Tung. Not one. I feel that we need not worry that the construction of a golf course at Sha Lo Tung may create a precedent. As one of those who served as members of the Country Parks Board during Lord McLEHOSE's governorship, I can speak from my experience that all the members of that committee love country parks and attach great importance to the protection of natural environment. The recent rejection of the application to construct a golf course at Luk Keng showed that we had no intention to create a precedent. I feel that the developer should be allowed to undertake his project. This is to be a test case, in which practical result and time will be the judge.

11.14 pm

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, I shall confine

myself this evening to Hong Kong and I shall not be reaching as far as Rio. First of all I would like to make it clear that the Administration has made no grant of land nor has it decided to make a grant of land in respect of the golf course which it has been proposed should be developed partly within and partly outside the Pat Sin Country Park at Sha Lo Tung; no final calculation of possible premium in respect of the proposed development associated with and including the proposed golf course has been made. I say this to keep the record straight.

By designating 40% of its land surface, or over 41 000 hectares, to form 21 country parks and 14 special areas, Hong Kong has achieved what few territories have. The process began in the early 1970s and is continuing, that is, the addition of new areas is planned, even today. The vision of those who appreciated then the need to address the twin requirements of recreation and conservation was totally justified; and we can be proud of and grateful for what has been achieved. Last year alone, over 10 million visitors enjoyed themselves in our country parks. We can also be absolutely firm in our determination to defend and protect our parks from erosion or incursion by incompatible and undesirable development which would replace hills and trees with houses and lamp posts. Fortunately, despite often misleading and somewhat alarmist reports to the contrary, our country parks are not under siege by would-be developers nor indeed under serious threat at all. Furthermore, neither the Government nor the Country Parks Board has any intention of allowing such a situation to arise.

The Country Parks Ordinance was enacted in 1976 to provide for the designation, control, proper use and management of country parks and special areas. The main purpose of establishing such areas is three-fold: the promotion of recreation and tourism, the provision of facilities and services for public enjoyment and the protection of vegetation and wild life. They also fulfill an important outdoor educational purpose; their visitor and nature education centres attract over 700 000 visitors a year. In 1991, over 110 000 participants took part in summer forestry work camps, tree-planting projects, forest adoption projects, the clean and green scheme, and the hiking litter warden scheme, organized by the Agriculture and Fisheries Department, the Education Department and voluntary organizations. Over seven million trees have been planted in the country parks in the past 20 years.

All very fine, Mr Deputy President, you and Members may say, but what is the Government's and the Country Parks Board's actual position on applications for development which, if approved, would directly affect country park land? Clearly, broadly speaking, the presumption must be that country park land is not to be developed

for, for example, suburban habitation or commercial exploitation through the construction of buildings which have nothing to do with or are incompatible with the purpose of country parks. Buildings there will no doubt need to be, both for country park and compatible or related purposes themselves, and to meet other unavoidable community needs, for example, public utility, communications or transportation requirements. But, in all these cases, encroachment will be kept to the minimum; that means alternatives will be considered, and environmental impact assessments will be required.

The greatest scope for misunderstanding and controversy appears to lie with development proposals which mainly affect areas adjacent to country parks, but which may offer benefits to the public as country park users, such as improved access or additional facilities, in exchange for the inclusion of limited areas of country park land within the development scheme. It is worth remembering that several areas adjacent to country parks were deliberately excluded from their boundaries in recognition of the legitimate interests of landowners in such areas. Where development proposals in respect of such excluded areas or other adjacent areas are received, the question of their compatibility with the country park will always be fully considered in the planning context, whether or not encroachment into the park is proposed; and, under the present planning regime, an environmental impact assessment will always be required. In considering such applications, both the Land Authority and the Country Parks Authority will wish to ensure minimum impact on the country park, maximum benefit to country park users and a reasonable balance between the legitimate interests of the landowners and those of the public as country park users. The Country Parks Authority has indicated that major development proposals involving encroachment into country parks will be the subject of public consultation.

The Country Parks Authority, advised by the Country Parks Board which has always been very conservation-minded, has achieved a great deal over the past two decades, without receiving all that much notice or recognition. I have no doubt they will continue to further the proper use and development of country parks to meet the needs and aspirations of the community of Hong Kong. I am also sure they, like the Administration, welcome the new voices of conservation which are speaking up in defence of the environment in general and of the country parks and special areas in particular. These voices, quite rightly, tell us when they see the protective net around our countryside heritage being threatened. And, though their position may at times appear inordinately purist, they undoubtedly have a key role to play in helping us to see the conflicting interests more clearly and reach the carefully

balanced decisions on these matters which Hong Kong always produces.

I am sure that the Country Parks Authority and the Board will take careful note of the views expressed by Members in this evening's debate as they pursue their goals.

Thank you.

Fringe benefits for staff in the subvented sector

DEPUTY PRESIDENT: We will now proceed to the second adjournment debate. Members have 30 minutes for this before I call on the Secretary for the Treasury.

11.22 pm

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, as we all know, the Administration has been providing various medical, educational and welfare services to the public through voluntary agencies. Not only can such arrangement relieve the pressure on the Administration in the provision of those services and control the expansion of the Civil Service, more importantly, it does not necessitate the provision of fringe benefits by the Administration to the staff in the agencies, thus saving a large amount of recurrent expenditure which would otherwise have been borne by the Administration. In fact, with so many years of collaboration, the services provided by subvented agencies, whether in terms of professional standards or flexibility, have long been accepted and commended by the relevant government departments, which proves that the staff of subvented agencies are as competent as their civil service counterparts, both in service quality or efficiency; so why should there be such utterly unreasonable discrepancy in fringe benefits between them?

After more than a decade, the Administration has finally addressed the expectation of the subvented sector by proposing a housing subsidy scheme which would provide a monthly allowance for payment of part of the housing mortgage interest. But the terms of the scheme are so restrictive that very few people would benefit from it. As far as the social welfare sector is concerned, only 300 out of the 10 000-plus employees would be eligible for applying in its first year of implementation. What is even worse is that the amount of allowance would be so small that it would not even suffice to pass for a token of subsidy. If anything, such an allowance could

only be described as "chicken ribs" -- things of little value or interest. For comparison, let us take an employee at point 22 of the Master Pay Scale as an example. He is entitled to an annual housing benefit of as high as \$57,000 if he is a civil servant, and if he is an employee of the same rank in the Hospital Authority, he is entitled to an annual allowance of \$41,700 for payment of housing mortgage interest. But an employee of the same rank in a subvented agency would only get some \$13,000 a year. After such a rough comparison, it can be seen that in terms of housing benefit alone, employees in subvented agencies are far behind those of the Hospital Authority, as they would receive only about one-third as much as their counterparts in the Authority, not to mention the difference between them and the civil servants.

I have consulted the social welfare constituency to which I belong extensively on the scheme, and the majority said they would rather wait longer than accept such a subsidy scheme which would be so meagre that it would not only hurt their pride and morale, but might even subvert the unity of the sector. What the Administration has to consider is, I know, the problem of financial commitment. I would therefore advise the relevant authority to provide to the subvented sector housing benefits that are similar to those provided to the Hospital Authority, with the implementation to be phased over three to five years. Should the Administration have the bona fide intention to make such a commitment, I believe that the subvented sector, besides being grateful, will feel that after so many years of silent endeavour they at long last are getting a more reasonable remuneration.

MR SZETO WAH (in Cantonese): The Administration has been relying on the subvented sector for the provision of a wide spectrum of social services, especially in the areas of education, medical care and social welfare. As far as the services of these three areas are concerned, the subvented sector can provide them at a much lower unit cost than those provided by the Administration, the main reason being that employees in the subvented sector, though allegedly receiving the same remuneration as their civil service counterparts, are deprived of fringe benefits. They have long been subjected to exploitation by the Administration, as a result of which their morale has suffered a blow, and the wastage of competent staff aggravated. Employees in subvented agencies had demanded negotiation with the Administration, but their request was refused on the grounds that the Administration was not their employer. In fact, nearly all the running costs of the subvented agencies come from the public coffers, and the Administration is therefore the virtual employer of employees in these agencies. In the meantime, employees of subvented agencies, in alliance with

their respective employers, jointly demanded negotiations with the Administration on the issue of fringe benefits. No longer able to evade the issue, the Administration adopted a delaying tactic on the pretext that relevant examination would take time. Solution to the problem has therefore been procrastinated for years.

The establishment of the Hospital Authority, which has provided a solution to the problems concerning fringe benefits for the staff in subvented medical agencies, has in fact provided a viable model framework under which employees of other subvented agencies may also enjoy the fringe benefits that they have been longing for. However, as Mr HUI Yin-fat said, the Administration has so far provided only housing benefit the level of which is even far below those granted to the staff of the Hospital Authority. This is indeed infuriating to the staff of the other subvented agencies. I request that the Administration should take as a yardstick the fringe benefits enjoyed by the staff of the Hospital Authority, and let the employees of subvented agencies in the sectors of education, social welfare and so on be entitled to the same fringe benefits.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, that the fringe benefits provided to the subvented sector are inadequate has been a chronic problem which the Administration has not only been evading all along, but has even gone so far as to say that employees in the subvented sector are not civil servants and are therefore not entitled to the same fringe benefits as their counterparts in the Civil Service. Although this problem was discussed many times by the OMELCO Panel on Public Service of the last term, there has not been any major improvement made, and so the problem remains one of the major issues left to the OMELCO Panel on Public Service of this term to consider. As the convenor of the Panel, I would like to brief Members on the progress in this regard.

As early as 16 November 1991, the Joint Committee on the Salary and Fringe Benefits of the Subvented Sector made a submission to the OMELCO embodying its proposal on the increase of fringe benefits for the subvented sector. On 5 December 1991 when the OMELCO Panel held its second meeting, the officials from various policy branches were invited to attend and explain the Administration's policy on the issue. They stressed that the Administration would make all efforts to narrow the gap of conditions of service between the staff in the subvented sector and those in the Civil Service. They went on to say that the first task would be the improvement in housing

benefit for the subvented sector, but due to financial stringency, there would not be enough funds left for the implementation of this improvement in the 1992-93 financial year. At the Panel's meeting on 9 January 1992, members requested the Administration to implement a relatively small-scale housing benefit scheme in the 1993-94 financial year. On 16 March 1992, the Joint Committee on the Salary and Fringe Benefits of the Subvented Sector met with OMELCO Members and requested the Administration to implement the above scheme as soon as possible and lay down a schedule for improving other benefits. At the Panel's meeting on 30 April 1992, government officials introduced a Mortgage Interest Subsidy Scheme. However, due to the very meagre amount of subsidy provided by the scheme, which is as low as one-third of the similar subsidy provided to the staff of the Hospital Authority, the subvented education and social service sectors have expressed to members of the Panel their deep dissatisfaction with the scheme. On 30 June 1992, during the meeting between members of the Panel and representatives of the Joint Committee on Salary and Fringe Benefits of the Subvented Sector, the latter also expressed deep dissatisfaction with the scheme.

Mr Deputy President, besides housing benefit, there are in fact considerable discrepancies in other fringe benefits between the staff in subvented sectors and the Civil Service; examples are medical care, children education, retirement protection and so on. Although I understand that there are differences between the two in terms of their nature of work and entitlements, I still hope that the Administration can as soon and as much as possible narrow the gap of conditions of service and fringe benefits overall between the two.

Mr Deputy President, I so make my submission.

MR PETER WONG: Mr Deputy President, as the Convenor of the OMELCO Panel on Public Service last year when the subvented sector's campaign for their fringe benefits gathered momentum, I feel obliged to speak on their behalf.

Hong Kong is fortunate enough to have a voluntary sector which efficiently takes up some two thirds of the burden with the Government in providing the much needed medical, education and social welfare services to our 5.8 million population. By and large, teachers in aided schools and social workers in voluntary agencies carry the same job responsibilities and workload as their civil service counterparts. The voluntary welfare agencies, many of them pioneers of our social services, often deal

with difficult cases such as outreach social work for youth at risk, home help service for the bedridden, and institutional and day care services for the elderly. Their complexity is quite unknown to the public sector employees.

In return, these unsung heroes are not getting equal pay for often more formidable work. The discriminatory treatment given to the staff of the subvented education and social welfare sectors, who do not get housing, medical or other fringe benefits currently enjoyed by their civil service counterparts, makes a compelling case for redress.

In the light of the embarrassingly large Budget surplus accumulated, financial constraint cited by the Government as the reason for not improving the lot of subvented staff is groundless. Equally disappointing are the paltry benefits and limited provisions of the proposed Mortgage Interest Subsidy Scheme for the subvented sector. The token \$115 million scheme, which was only unveiled after a great deal of pressure, clearly reflects the Government's meanness and determination to minimize its financial commitment to narrowing the gap.

The patience and diligence the welfare sector staff have exhibited in tackling the fringe benefit problem have impressed upon me that they really deserve a better deal. Anyone who has come into contact with them can bear witness to their dedication, responsiveness and willingness to serve, purely out of their genuine concern for the public good. Indeed, Hong Kong has taken advantage of this altruistic spirit of the "cinderellas" of our social services for too long.

Mr Deputy President, although staff of the voluntary agencies are working for charities, they themselves are not charity cases. Here, I must point out that we are dealing with a moral issue affecting the dignity and morale of workers of the subvented sector. Surely the diminishing attraction of the subvented sector to potential entrants and a growing staff wastage will have adverse effects on the service recipients.

Somehow, I tend to think that the subvented sector has not been well advised in their fight for what is their right. Neither do I endorse the manner in which the Administration holds steadfastly to its rigid attitudes. What the Government needs is the pragmatism of the private sector to come to grips with a problem and resolve it without undue delay. My colleagues at the Co-operative Resources Centre and I strongly urge the Government to take immediate action to launch a housing benefit scheme acceptable to subvented staff as a first step to bridge the gap between the

fringe benefits of the government and subvented welfare and education sectors.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, equal pay for equal work is a universally upheld principle in modern society. But to the teachers in aided schools, it can only be a dream. A comparison between teachers in aided schools and those in government schools will show that although the two perform the same duties, either in terms of nature of work or responsibilities, teachers in aided school are not entitled to the fringe benefits enjoyed by their government counterparts including subsidies in housing, medical care, children education and so on.

According to government figures, such benefits amount to about 40% to 100% of the salaries of the recipients; so it can be seen how unfair the present system is to teachers in aided schools.

In addition, the pension payable to retired teachers of government schools is subject to an annual adjustment according to the inflation rate, while the provident fund of teachers in aided schools, despite the dividend earned, is constantly depreciating because the level of the dividend earned has been lower than the inflation rate in the last few years. To protect their own interests, many teachers even resorted to resignation in order to withdraw their share of provident fund. We must not let the situation go on like this.

Recently, under the pressure from the subvented sector, the Administration proposed a scheme providing housing mortgage subsidy to the subvented sector. But the subsidy provided by the scheme is far below the home purchase subsidy offered to the medical and nursing staff of the Hospital Authority who, before opting into the Authority, were also members of the subvented sector. So such a scheme is both unfair and unattractive. What is even more discouraging is the total lack of commitment as to the amount of funding for the scheme and date of implementation on the part of the Administration which regards as gratuitous in nature the fringe benefits to which teachers in aided schools should be entitled under the principle of equal pay for equal work. By so doing, the Administration has hurt the pride of the teachers in aided schools.

Mr Deputy President, wastage of teachers has been very serious in recent years, and the morale of the profession is low. One of the solutions to these problems is to give effect to the principle of equal pay for equal work by providing to teachers

in aided schools subsidies in housing, medical care and children education. To strengthen communication with the aim of solving this problem that has existed for more than a decade, the establishment of a standing organization comprising representatives of the Administration, employers and employees of the subvented sector will also be essential.

Mr Deputy President, in the same straits as the teachers are the social workers. I therefore feel myself obliged to express their common sentiments and expectations. I believe that both teachers and social workers serve people; so it is only natural that the two groups will help each other and act in concert.

Mr Deputy President, I so make my submission.

MR TIMOTHY HA (in Cantonese): Mr Deputy President, during the examination of the fringe benefits for the staff in the Hospital Authority, the Chief Secretary said that fringe benefits for teachers would also be considered in the same go. As regards the staff in the Hospital Authority, their attractive conditions of service were announced in 1990. But, concerning the fringe benefits for teachers, I cannot but say that there has been much said but little done.

The great majority of teachers in Hong Kong work in subsidized schools. Besides a subsidy of 5% to 15% towards their provident fund, they are not entitled to any subsidy in medical care, housing or children education.

Although the Administration has recently put forward a Mortgage Interest Subsidy Scheme which aims to improve the housing benefits for teachers, there is a world of difference between this scheme and the Home Loan Interest Subsidy Scheme for the Hospital Authority. The differences are:

(1) the staff in the Hospital Authority are entitled to a home loan equivalent to 60 times their salaries or 90% of the flat prices, while the home loan offered to staff in the subvented sector is only 30 times their salaries;

(2) the staff in the Hospital Authority are entitled to a subsidy of half of the mortgage interest or an annual interest of 6% on the home loan, while the corresponding entitlements of the staff in the subvented sector are respectively one-third and 4% only;

(3) repayment period for staff in the Hospital Authority is 20 years while that for staff in the subvented sector is only 10 years;

(4) for staff in the Hospital Authority, eligibility for application is five years' service, while in respect of staff in the subvented sector it is 20 years' service for those who are under point 22 and 10 years' service for those above point 22.

In short, the scheme is slow in coming, meagre in the subsidy offered and restrictive in eligibility with very few people being able to benefit from it. According to government estimate, the implementation of the scheme will incur an annual expenditure of \$115 million and it will take 10 years before eligible applicants can all receive subsidy. Assuming that \$20 million is allocated in the first year of implementation to provide subsidy to 500 successful applicants, it will mean that only 1% out of the 50 000 employees in subvented education and social service organizations will benefit from the scheme.

In the recently published Education Commission Report No. 5, emphasis has been laid upon the training of teachers. However, improving teachers' quality is only a way towards high-quality education; what is equally important is the retention of these well qualified teachers.

It can be seen from recruitment advertisements in newspapers that drivers in the Lingnan College and chefs in the Vocational Training Council are entitled to a whole package of retirement and medical benefits, while teachers in subsidized school can do no more than envy them. They are all employees in the subvented sector; why should there be such an absurdly unfair difference in terms of fringe benefits?

The subvented sector has been demanding equal pay for equal work as compared with their civil service counterparts, but what we have had so far is only equal salary for equal work. The subvented sector has been sharing the Administration's responsibilities in the provision of services in medical care, education and social welfare. Now that the Hospital Authority staff have been accorded better fringe benefits, the subvented education and social welfare sectors, quietly slogging away in their devoted service to society as they have been, are still being discriminated against.

Mr Deputy President, I urge the Administration to formulate for the subvented education and social welfare agencies a package of fringe benefits that are similar to those provided to the Hospital Authority, so as to give effect to the principles of equality and fairness. Thank you.

MR MICHAEL HO (in Cantonese): Mr Deputy President, many Members mentioned this evening the fringe benefits of the Hospital Authority. Many people may think that the medical and health care constituency which I represent will have no grievance. In fact, there are still many nurses and other paramedical professionals who are still working in subvented agencies including half-way houses, care and attention homes, long-stay care homes and so on. Their situation is indeed exactly the same as that of the teachers or social workers mentioned by the Honourable CHEUNG Man-kwong just now. Moreover, these subvented agencies are troubled by the threat of wastage of staff who may opt to join the Hospital Authority. This problem must be urgently addressed. I would therefore call upon the Administration to improve the fringe benefits for the subvented sector as soon as possible, and I would advise the Administration to do so on the basis of fringe benefits provided to the Hospital Authority.

Mr Deputy President, I so make my submission.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, in a fair and equitable society, equal pay for equal work is a commonly accepted principle. All along, the salary scale of employees in the subvented sector has been pegged to that of the civil servants to the effect that the two are in effect having the same salary structure. But vast difference exists between the two in terms of fringe benefits, on which point quite a number of Members have already spoken.

The voluntary agencies and the Social Welfare Department have maintained a long-standing relation of partnership as the two have been co-operating to provide social services to the public. Collaboration is frequent between the social workers in voluntary agencies and their counterparts in the Social Welfare Department. So the two can be said to be colleagues. As they are colleagues, they should receive the same remuneration. The great majority of the voluntary agencies concerned are non-profit-making, with government subsidy being their main source of income. In these circumstances, there are hardly enough resources for improving the fringe benefits for existing staff. This way, the agencies have been subjected to

considerable pressure brought on by the crushed morale and large wastage of staff.

The question of fringe benefits for the subvented sector has undergone years of discussion. In April this year, the Administration finally submitted a Mortgage Interest Subsidy Scheme to the OMELCO Panel on Public Service. Although this was a welcome gesture, the scheme was unfortunately not accepted by the subvented sector, because there was still a gap between the proposed fringe benefits and those enjoyed by the civil servants, which the scheme failed to narrow.

I think that the Administration should now lend an attentive ear to the opinions of the subvented sector employees and adjust the proposed scheme, so that the employees can have equal pay for equal work as compared with their civil service counterparts.

I so make my submission.

MRS RITA FAN: Mr Deputy President, ever since 1988 I have been urging the Government to consider measures to assist teachers in the subsidized sector on housing, so that the discrepancy of treatment between them and their government school counterparts can be reduced. There are differences in other fringe benefits with the teachers in the Civil Service having a better deal, but housing is by far the most conspicuous issue.

About 90% of our schools are non-government schools and this total lack of housing benefits certainly does not help to retain teachers.

I welcome the Government's proposal to subsidize one-third of the interest of a housing mortgage, up to 4%, for teachers who satisfy the criteria. But I have to say that it can only be considered as an interim measure. The possibility that real estate developers and speculators will seize this as an opportunity to raise the price further, as the teachers can now afford to pay more interest, does exist.

In the longer term I believe teachers can benefit more directly if the Government can grant sites for them to build their own homes, through joint ventures with property developers or other methods, so that the price they have to pay for their home can be considerably less than the current market price which many of our teachers simply cannot afford to pay.

This Council passed a motion in May to the extent that the Government will investigate the various options of offering help to the sandwich class on housing, and that the chosen course of action will begin to be implemented within 12 months. The majority of our teachers by virtue of their income belong to the sandwich class. It follows naturally that the Government should be able to devise a meaningful scheme of housing benefits for teachers in the aided sector, as an integral part of the study into the housing needs of the sandwich class. This is what the Education Commission recommended in its Report No. 5.

The above approach can be equally applied to social workers and nurses, most of whom are also members of the hard pressed sandwich class.

11.46 pm

SECRETARY FOR THE TREASURY: Mr Deputy President, I should like, first of all, to pay tribute to the staff of our subvented voluntary agencies. They have played a very large and important part in the development of Hong Kong's education, social welfare, and medical and health services. Indeed, the subvented sector now accounts for so large a proportion of our social services that it could be argued that it, rather than the government sector, represents the norm in prevailing terms and conditions of employment.

Several Members have argued that, since the staff in the subvented sector perform the same jobs as their counterparts in the Civil Service and enjoy the same pay, they should, in logic and in fairness, have the same fringe benefits as those enjoyed by comparable civil servants.

I think we should take care to avoid carrying that particular piece of logic to its absolute conclusion. There are, in fact, differences between the subvented sector and the Civil Service in respect of terms and conditions of employment other than pay. These differences cannot be easily reconciled or ignored. And we would ignore them at our peril. For example, one large subvented organization devised a superannuation scheme with the aim of providing for their staff roughly the same level of terminal benefit as the Government's pension scheme. The result was disastrous and the organization had to be bailed out at substantial cost to the taxpayer. Nevertheless, we have been looking at ways of narrowing the gap between the two groups,

with particular reference to housing benefits.

Last year, we formulated a mortgage interest subsidy scheme that could be applied to the subvented education and social welfare sectors. The aim was to enable all teachers and social workers who had done 10 years' service in the subvented sector to become beneficiaries within a period of 10 years. However, the scheme was too costly and, given the tight budgetary position at the time we were planning the 1992-93 Draft Estimates of Expenditure, it did not prove possible to allocate funds for its implementation during the current financial year.

At the request of the OMELCO Panel on Public Services, we agreed earlier this year to work out less expensive variants of the proposal so as to increase the likelihood of the scheme's implementation at an earlier date. After due consideration, we came to the view that a possible way forward might be to lower the rate of entry into the scheme, but ensure the same number of beneficiaries over the 10-year period. The revised scheme was considered by the OMELCO Panel at the end of April. It would cost, at 1992 prices, \$36 million in the first year rising to \$106 million in the fifth year, which is less severe in terms of cash flow than the front-end loaded nature of the initial scheme. We have asked for the panel's views by mid July so that they could be taken into account in this year's resource allocation exercise.

Many Members have proposed in this debate that the package of housing benefits provided for staff of the Hospital Authority should be extended to staff in aided schools and subvented welfare agencies. I am afraid the Government would have great difficulty with this. As my colleague, the Secretary for Health and Welfare, said in this Council on 16 May 1990, there were entirely separate considerations surrounding the establishment of the Hospital Authority, the aim of which was to merge all hospitals under a single authority. In those circumstances, it was clearly necessary to provide common terms of service for staff who elect to join the Hospital Authority. These circumstances do not apply to aided schools and subvented welfare agencies. I should add, moreover, that this proposal would be prohibitively expensive. Its full year cost is estimated to be \$550 million. However we phase it, that large terminal commitment has to be reckoned with.

I should perhaps sound a further note of caution. Notwithstanding the recovery of the economy in 1991, the prospects are for steady rather than dramatic growth. The Financial Secretary will shortly be consulting Members on next year's expenditure priorities. However, clearly funds are not unlimited. I am surprised by the remarks made by Mr Peter WONG when he alluded to the Budget surplus a while ago. We must

be careful to distinguish between the surplus, which is no more than the cash flow difference in one year between income and expenditure and which hides the fact that a very large proportion of it is represented by delayed expenditure on capital account, on the one hand, and the budgetary guideline that must not allow the growth rate of total public spending to outstrip the trend growth rate of the economy, on the other. Inevitably, spending aspirations (including those reflected in various White and Green Papers) will far exceed the money available. Thus the proposal that housing benefits for aided school teachers and staff of subvented welfare agencies should be brought into line with those of the Hospital Authority will have to compete with other worthy initiatives. When Members come forward with their views, they will also have to bear in mind whether they would prefer to see new services being introduced at today's unit costs, or whether they would prefer to see services being kept at today's level or even at a reduced level, but with the staff getting a better deal.

Next sitting

DEPUTY PRESIDENT: As more than an hour has elapsed since the motion to adjourn was first made, I will not put the question on the motion. In accordance with Standing Orders I adjourn the Council until 2.30 pm on Wednesday 8 July 1992.

Adjourned accordingly at two minutes to Twelve midnight.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Middle East Finance International Limited (Transfer of Undertaking) Bill and Supplementary Appropriation (1991-92) Bill 1992, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.