

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 14 July 1993

The Council met at half-past Two o'clock

PRESENT

THE PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., LL.D., 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 MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

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

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

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

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

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

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, J.P.

THE HONOURABLE MOSES CHENG MO-CHI

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

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

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

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, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

ABSENT

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

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

THE HONOURABLE STEVEN POON KWOK-LIM

IN ATTENDANCE

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR YEUNG KAI-YIN, C.B.E., J.P.
SECRETARY FOR TRANSPORT

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 JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

THE HONOURABLE 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

MR MICHAEL DAVID CARTLAND, J.P.
SECRETARY FOR FINANCIAL SERVICES

THE CLERK TO THE LEGISLATIVE COUNCIL
MR CLETUS LAU KWOK-HONG

THE DEPUTY CLERK TO THE LEGISLATIVE COUNCIL
MR PATRICK CHAN NIM-TA

Papers

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Pilotage (Amendment) Regulation 1993	252/93
Pilotage (Disciplinary Procedure) (Amendment) Regulation 1993	253/93
Hong Kong Airport (Restricted Areas and Tenant Restricted Areas) Order.....	262/93
Immigration (Vietnamese Migrants) (Detention Centres) (Designation) (Amendment) Order 1993	263/93
Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 4) Order 1993.....	264/93
Immigration (Vietnamese Migrants) (Detention Centres) (Amendment) Rule 1993.....	265/93
Pleasure Grounds (Regional Council) (Amendment) (No. 2) Bylaw 1993	266/93
Statutes of the Chinese University of Hong Kong (Amendment) (No. 2) Statutes 1993.....	267/93

Sessional Papers 1992-93

- No. 88 — Hong Kong Sports Development Board
Annual Report 1992-93
- No. 89 — Report by the Commissioner of Police on
Police Welfare Fund for the period
1 April 1990 - 31 March 1991
- No. 90 — Traffic Accident Victims Assistance Fund
Annual Report by the Director of Social Welfare
Incorporated for the year
from 1 April 1991 to 31 March 1992

- No. 91 — Sir David Trench Fund for Recreation
Trustee's Report 1992-93
- No. 92 — Audited Statement of Accounts for the Sing Tao
Foundation Students' Loan Fund
for the year ending 31 August 1992
- No. 93 — Audited Statement of Accounts of the
Hong Kong Rotary Club Students' Loan Fund
for the year ending 31 August 1992

Miscellaneous

Towards Better Health A Consultation Document

Addresses

Hong Kong Sports Development Board Annual Report 1992-93

MR HOWARD YOUNG: Mr President, I am very pleased to be able to present the Annual Report of the Hong Kong Sports Development Board for the year 1992-93. At the beginning of its third year of life, the Board had some changes in its membership. However, the direction laid down in the Board's four-year Strategic Plan for the period 1991-95 continues to be pursued.

One of the major aims of the Board is to raise the standard of sporting performance and increase levels of participation. Through its Block Grant Scheme, the Board allocated \$27.5 million to 52 National Sports Associations and the Amateur Sports Federation and Olympic Committee of Hong Kong to provide the major funding sources for staffing, office expenses, training and competition programme costs. Encouraging results have been achieved by local athletes in certain major international competitions. Badminton, Rowing, Rugby, Squash, Swimming and Table Tennis are some of the outstanding examples. It is also pleasing to recall that disabled athletes also achieved impressive performances during the Paralympic Games in Barcelona 1992. Disabled athletes are now treated by the Board on a par with their able-bodied counterparts with regard to funding.

The performance of athletes relies to a great extent on the quality of coaches. Together with the Amateur Sports Federation and Olympic Committee of Hong Kong, and the Hong Kong Sports Institute, the Board introduced the Hong Kong Coach Education Programme in 1991, of which the Hong Kong Coach Accreditation Programme was a major component. Up to March 1993, 23 National Sports Associations and one coaches' association have joined the Coach Accreditation Programme.

To strengthen the administration side of sport, the Board has developed a Code of Practice for National Sports Associations in receipt of its funds. The aim is to ensure the transparency and fairness of administration linked to accountability for the use of public funds. The Board has also introduced a professional administrative structure amongst the National Sports Associations. This provides an obvious improvement in the status, recognition and rewards for those who work for these associations.

Lifting the profile of sport and physical education in the lives of the community, and reinforcing the link between exercise, physical fitness and a healthy lifestyle is another important mission of the Board. It believes that the provision of an extensive network of community sports clubs throughout Hong Kong will be essential in providing opportunities for participation in organized sports activities. With the support of municipal councils, National Sports Associations and District Sports Associations, the Board has established 24 new community sports clubs in the territory.

The Board continues to recognize the important role which the school system plays in providing the encouragement and means by which young people can develop a sustainable interest in sport. A seminar was held to exchange views with school principals on how sport was developed in different types of schools and to focus on sport as a vital factor in the overall quality of students' lives.

The Government continues to support the Board with an inflation adjusted annual subvention. The subvention in the year 1992-93 amounted to \$55 million. To increase the resources available for sports development, the Board launched a sponsorship drive and managed to raise during the year \$9 million through its own initiative from the corporate sector, making a total of \$20 million in the past 18 months.

A special reference must be made to the generous donation of \$265 million from the Royal Hong Kong Jockey Club to support the Board's activities. As a result, the Sports Aid Foundation Fund and the Sports Aid for the Disabled Fund have been increased with \$25 million to help support the training programmes of the best athletes in Hong Kong. An amount of \$40 million has been set aside for the fitting out of the new Sports House when it opens next year in 1994. A trust fund has been set up with the remaining \$200 million to support the Board's overall development programme.

The Sports House next to the redeveloped Hong Kong Stadium will be a two-storey office building to accommodate the Board, the great majority of National Sports Associations and other sporting organizations. The Government as landlord has entrusted the Board with the responsibility of managing the Sports House at a nominal rent. It is hoped that the Sports House will create a new prestigious identity for sport in the community.

Mr President, the year 1992-93 has laid the foundation stone for the integration of the Board and the Hong Kong Sports Institute, as expressed in the Hong Kong Sports Development Board (Amendment) Bill 1993. It is aimed that the integration will provide a simpler, stronger and more efficient delivery system to sport. Hopefully, the Legislative Council next year will be presented with a combined report.

Towards Better Health A Consultation Document

SECRETARY FOR HEALTH AND WELFARE: Mr President, the document *Towards Better Health* is published today for public consultation.

Government's commitment towards better healthcare

Hong Kong enjoys one of the longest life expectancies (average 77.6 years) and the lowest infant mortality rates (6.4 per 1 000 live births) in the world. Our public healthcare system provides a high standard of service at a low cost to the user.

To ensure that government commitment towards public health services remains paramount, the Governor in his address to this Council last October pledged "to increase recurrent spending on healthcare by 22% in real terms by 1997". Access to affordable healthcare is a public right. This right is protected in section 4(d) of the Hospital Authority Ordinance. This right remains the cornerstone of our policy. The common perception is that our public healthcare system is inexpensive and viable. We do have a good system, but we need to make it better. Whereas the accent in the past has been on quantitative care, we must now move on to ensure quality of care in the provision of services, particularly in the light of medical and demographic changes.

Calls for change

As far back as 1990, 1991, 1992 and more recently in April 1993, there have been repeated calls for review and rationalization. In the words of Dr the Honourable LEONG Che-hung, we should not be "hiding behind the skirt" of anyone but should have the "courage" to look into the complex issue of healthcare reform. We hide behind no one, Mr President, and I am also confident that Honourable Members will support change.

The present system

Our healthcare system has often been described as a "dual monopoly" in that the public system is perceived to be cheap but the consumer has to wait, whilst service in the private sector is immediately available but expensive. The public perception is that you either wait or pay. This parallel system has very little interface and hardly any convergence. Indeed, only last week I received another letter clamouring for better service and more choice, and separately,

yet another call for "a fundamental reassessment of our healthcare policy" before the budgets "of the Hospital Authority reach astronomical figures".

Where do we go from here and how do we get there?

The healthcare system in Hong Kong is coming under some stress due to escalating medical costs, an ageing population and rising public expectations for improved services. We are not unique in this respect and many other countries have experienced similar problems.

Mr President, out of the 24 Organization for Economic Co-operation and Development countries, 18 are in the process of healthcare reform. It is high on the agenda of the United States Administration. Whilst it would be folly to assume that the road to reform is smooth, the destination is well worth reaching. We have identified the current problems and drawn up practicable options to address them. This includes desirable features of other countries' healthcare systems, where they are applicable to the local context.

Focus on primary healthcare

The title of the Consultation Document is *Towards Better Health*. These three simple words highlight a very fundamental shift in the focus of our health policy. We recognize that healthcare extends far beyond curative treatment in hospitals. Our future emphasis, therefore, should be on the prevention of disease and the promotion of good health. For with good health comes quality of life; with good health comes productivity; with good health comes stability and prosperity. In all this, the private sector has a significant role to play. In the matter of primary healthcare which is participatory care, we all have a role to play. As Izaak WALTON wrote, "Look to your health; health is a blessing that money cannot buy."

Fees and charges

This consultation document offers the community an opportunity to debate and decide on the best way forward. This is not a document about fee levels but structural change.

However, already there are fearful speculative reports, disguised as facts, about dramatic fee increases. The misunderstanding created by erroneous reports, if perpetuated, could torpedo the entire process of consultation. For we must be sensitive to and address the legitimate concerns of the public. A special explanation on hospital fees is therefore necessary.

Fees charged by our public hospital system have their origins in the post-war years when they were originally based on the cost of catering, whilst the fees charged by public out-patient clinics were based on operating cost. Fees levied in all public hospitals — acute general, infirmary and psychiatric — are the same irrespective of the different levels of service, operating cost and

patient's ability to pay. All fees are updated every year, based on average operating cost and in line with the movement of Government Consumption Expenditure Deflator.

Prior to the setting up of the Hospital Authority, different hospitals had different charging policies. Whereas ex-government hospitals imposed an all-inclusive flat rate, that is to say, "standard charge" for the occupation of a general ward bed, some ex-subsidized hospitals, however, imposed "itemized charges" in addition to the basic rate. These historical methods of charging still apply today in some circumstances. For example, as gazetted, some hospitals, in addition to the daily charge of \$43 a day for a general ward bed, charge separately for admission, surgical operations and drugs. Furthermore, in some cases, consumables related to special procedures are also subject to separate levies. Thus the current system of fees charged in the public sector is neither rational, consistent nor clearly understood. Unless new options are adopted the existing system will continue.

These historical anomalies in fee structure create confusion and need to be rationalized.

The current fee charging system does not carry with it a clear-cut waiver system except for recipients of public assistance. This causes unnecessary anxieties for the less well off, the elderly people and long-stay patients. This imperfection in our current waiver system needs to be addressed.

Safety net

Our health and welfare policy has always focused on the philosophy of helping the vulnerable and those with special needs. And yet, under the existing healthcare system, the less well-off, the elderly and long-stay patients do not have certainty of access to waiver. We must protect their interest so they are not left in the dark; so they know what society can do to help them; so they are comforted in this knowledge when they need health and medical care.

With the imperfections of the existing system, can we rest on the laurels of our good health indices? Can we stand still and not move forward? Are those in need really looked after? Dare we become complacent?

The consultation document offers options on possible approaches to give people a safety net with certainty, more choice at affordable prices, whilst maintaining the Government's commitment in subsidizing healthcare services and poising ourselves to meet the medical and demographic challenges of tomorrow.

By way of an example, at present, an elderly patient has to pay \$43 a day plus various in-patient charges still imposed in some hospitals under the Hospital Authority. There is no automatic waiver system in place. After rationalization, he will know with certainty, and in advance, his entitlement, that is to say what

will be charged and what will be waived. And people will have more choice at an affordable price.

Mr President, this document is not about the maintenance of the *status quo* which we believe would be the worst-case scenario. We do not need to write a consultation document for that. This document is about possible options for change for the better. If we move forward to cater to the aspirations of the community and anticipate the needs of the future, we should, from a wide spectrum of options, select those most appropriate to Hong Kong and most acceptable to our community.

The objects spelt out in the consultation document are: to ensure that the existing policy that no one should be denied adequate medical treatment through lack of means remains paramount; to ensure increased accessibility, that is to say, reducing waiting time, better services and more choice, simpler administration and improved efficiency; and above all, to ensure that a balance is struck between the provision of services and the level of subsidy for these services.

Out of the many healthcare models, we have identified five options as the possible way forward. We have in reader-friendly language, I hope, crystallized the arguments for and against each option. The consultation document was written with the benefit of advice from two committees and other experts in the healthcare field. We must do them justice. In the consultation process, we hope that members of the public will openly and frankly put forward their views. We need to see your needs through your eyes.

I commend this carefully-drafted document for your objective analysis and advice. We must find a way forward towards a healthcare system that is accessible, affordable and acceptable to the community. The choice is yours.

Thank you, Mr President.

Oral answers to questions

Police public relations

1. DR CONRAD LAM asked (in Cantonese): *Will the Government inform this Council what specific mechanism the police have in hand to maintain good relations with the general public and whether regular reviews are conducted on the ways to promote police relations in various districts?*

SECRETARY FOR SECURITY: Mr President, the police attach much importance to good public relations. They are well aware that co-operation and assistance from the public are essential if they are to fight crime effectively.

The Police Public Relations Bureau is charged with the specific role of promoting good public relations. Its responsibilities include the co-ordination of community relations activities, the maintenance of good relations with the media, publicity, and the planning and implementation of campaigns such as the police recruitment campaign.

At district level, District Commanders attend meetings of district boards and District Fight Crime Committees to listen to their views on law and order issues and to explain policing policies and measures to tackle crime. Staff in police districts, organized by the District Police Community Relations Officer, are involved in a number of schemes designed to enhance police/public relations, such as the Junior Police Call, the Neighbourhood Police Scheme and the School Liaison Scheme. They also maintain close contact with area committees, mutual aid committees, owners' corporations and similar organizations.

All police officers are given training in public relations at recruitment and in subsequent years of service.

Regular reviews are conducted on the ways of promoting good public relations. The Police Public Relations Bureau itself is currently under study as part of the overall police management review.

DR CONRAD LAM (in Cantonese): *Mr President, the rough manners of some duty police officers and the rude way they talk very often would damage good police public relations. An example would be unreasonable assaults by the police which generated a number of public complaints. In this connection, what specific steps has the Administration taken to improve police public relations?*

SECRETARY FOR SECURITY: Mr President, the Commissioner's directive to all police officers highlights and reinforces the importance of co-operation and understanding from the public and the benefits which will accrue to the police from good police public relations. The training for police officers at all levels and at various stages throughout their career does emphasize the importance of police behaviour and attitude to the public and of police public relations.

DR TANG SIU-TONG (in Cantonese): *Mr President, referring to the "Neighbourhood Police Scheme" mentioned in the third paragraph of the reply, can the Administration inform this Council of the reasons for not implementing the scheme in recent years? It was learnt that the scheme would be implemented in Tuen Mun this September. May I ask the Administration whether the scheme will be implemented again in other districts?*

SECRETARY FOR SECURITY: Mr President, the Neighbourhood Police Scheme remains active and in existence. It was introduced first in 1984 to improve police community relations on a local basis. Generally, junior police officers, probably of the rank of sergeant, or inspector, are assigned to specific localities, often in neighbourhood police posts, and their task is to foster relationships with the local communities through, for example, mutual aid committees and other local community organizations. There is no intention to close down the scheme.

MR HENRY TANG (in Cantonese): *Mr President, if for some reasons, a person is intimidated or has been attacked on a number of occasions and he has sought police assistance, and the police upon investigating also accepts that the person is in danger, can the Administration inform this Council, in the interest of police public relations, of the circumstances under which the victim can be offered protection in one way or another?*

PRESIDENT: Secretary, do you have the answer to that?

SECRETARY FOR SECURITY: I think all I would say is it would depend upon the circumstances, Mr President. I do not think I can answer a hypothetical question like that. The police would always be willing to offer protection where they considered that was necessary.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, it has been mentioned in the third paragraph of the reply that the Police Community Relations Office would maintain close contact with local communities. But according to my experience with local communities, they were just general contacts. May I ask the Secretary whether he would consider asking the Police Community Relations Office to hold regular meetings (about once in a couple of months) with representatives of various committees? And as I am not familiar with the functions of the Police Community Relations Office, may I know if it has any duty list, and if yes, can it be made public?*

SECRETARY FOR SECURITY: Mr President, I do not quite know what the question is based on. I do not think I did say in my main answer that the Police Public Relations Bureau has regular liaison meetings with local organizations. In fact I do not believe that that is the case. The Police Public Relations Bureau is a headquarters unit charged with overall responsibility for community relations activities and relations with the media and with the planning and implementation of campaigns and other publicity. The regular liaison with local organizations, whether at the district level, for example, district boards and District Fight Crime Committees, or at the more local neighbourhood level, is

normally undertaken by the district police, not by the headquarters unit. And I think that that system will remain.

On the second part of the question, I think I have, in the second paragraph of my main answer, tried to set out the main responsibilities of the Police Public Relations Bureau, but I will try to give a more detailed reply on that in writing. (Annex I)

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, with the advance of time, police public relations have no doubt improved a great deal. Does the Administration have any statistics on the amount of money spent annually on publicity and promotion of police public relations? Has the Administration assessed and reviewed whether the money spent represents good value and how does the Administration ensure that it is really "value for money"?*

SECRETARY FOR SECURITY: Mr President, there is, as I said in my main answer, regular reviews of the work of the Police Public Relations Bureau and of the police public relations effort generally throughout the police force and throughout districts. And certainly this is something that very often comes up and is looked at, for example, by the Fight Crime Committee. New initiatives are often considered and injected into the programme of police public relations. And, as I also said in my main answer, the Police Public Relations Bureau, as all other formations in the Police Force, is also currently under review as part of an overall police management review.

Plot ratio

2. MRS PEGGY LAM asked (in Cantonese): *According to the Building (Planning) Regulations (Cap. 123 sub. leg.) the maximum plot ratios for domestic and non-domestic buildings are 10 and 15 respectively. Will the Government inform this Council:*

- (a) *of the basis on which the existing plot ratios are determined;*
- (b) *of the rationale for permitting a higher plot ratio for non-domestic buildings;*
- (c) *whether the higher plot ratio for non-domestic buildings has discouraged investment in domestic building projects; if so, the measures in hand or to be formulated to address the situation and if not, what the reasons are; and*
- (d) *whether the existing plot ratios would be reviewed; if so, the timeframe of the review and if not, the reasons thereof?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the present system of using plot ratios to control building density was first introduced in 1962 and was modelled at the time on building legislation then applicable in the United Kingdom and United States.

The answer to part (a) of the question is that plot ratios are determined under the Building (Planning) Regulations by reference to the height of the building and the class of the site. Class is decided having regard to the streets abutting the site. Plot ratio increases on a sliding scale with the height of the building and the numbers of streets abutting it.

The answer to part (b) of the question is that because domestic buildings are for human habitation they need to meet certain criteria relating to natural light and ventilation. However, non-domestic buildings such as those used for commercial and godown purposes may rely on artificial lighting and ventilation to a greater extent and have higher development densities. A higher plot ratio is therefore permitted for non-domestic buildings.

The answer to part (c) of the question is that there are no indications that differences in plot ratio potential have discouraged investment in domestic building projects. The choice of development type for a particular site is restricted in most cases by statutory zoning and lease conditions. Development decisions are also heavily influenced by market conditions and the economic outlook.

The answer to part (d) of the question is that the plot ratio system has not given rise to significant problems since it was introduced. It is well understood and effective. There are no immediate plans to review it. Plot ratios stipulated under particular statutory town plans may be reviewed from time to time to meet changing circumstances on a case by case basis however.

MRS PEGGY LAM (in Cantonese): *Mr President, for a system that was introduced in 1962 and modelled at the time on building legislation then applicable in the United Kingdom and the United States, does it still apply and fit Hong Kong setting today? The Secretary says that the system has not given rise to significant problems. But I think this is the cause of problems that have affected many districts, because once demolished, residential buildings will give way to commercial ones and occupants are unhappy with this for they have to move elsewhere. Will the Administration explain why it thinks there is no problem and why there is no need to review the law that was formulated 30 years ago?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think in the nature of the building and development industry one thing that is required — because the planning and development and use of projects occupies a long period of time — is a great degree of certainty that the

rules and regulations which apply will apply continuously into the foreseeable future. The changing of rules of this kind, even in the simplest way, can throw up considerable complexity, the results of which are not always easily foreseen and forecastable without the most far-reaching, intricate and costly studies. I do not believe that in this particular planning and policy application there is a great pressure to reinvent the wheel.

As far as the change of use of buildings to which the Honourable Member has referred in certain districts is concerned, I think that the suggestion that there is a massive changeover from use of buildings for domestic purposes to use of buildings for commercial purposes would probably not be borne out by a statistical study. The point about changing use of buildings is that we do need domestic buildings and we do need commercial buildings and we must try to respond to the requirements of the market in a flexible way and I believe this is what the Town Planning Board seeks to do. The failure on the part of the Administration and the Town Planning Board to operate in this flexible way would undoubtedly be met with a response that we were not providing sufficient commercial space to meet market demands and with complaints that rentals in the commercial sector were rising too steeply.

I should also like to repeat — perhaps not in an exact way but in a simple way — the answer to part of a question asked previously in this Session and that is that over the recent years the redevelopment of buildings in the urban areas has produced up to 40 000 residential flats and the loss of living units as a result of this redevelopment was 8 000, so that the gain of domestic units upon redevelopment, I think, is at a very satisfactory ratio as things stand.

MR JAMES TIEN: *Mr President, in the fifth paragraph of his reply, the Secretary stated that the current plot ratio system has not given rise to significant problems since it was introduced, that it was well understood and effective and that there are no immediate plans to review it. If that is the case, could the Secretary please inform this Council why the plot ratio for industrial land was down-zoned from 15 to 9.5 thus creating a huge price increase for industrial premises, and whether that plot ratio will be revised upwards back to 15 in the near future?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the Honourable Member is referring to specific circumstances rather than the general application of the Building (Planning) Regulations. The plot ratios applied under the Building (Planning) Regulations have not changed and are unlikely to change. I did, however, refer at the very end of my initial reply to the fact that plot ratios stipulated under particular statutory town plans may need to be reviewed from time to time to meet changing circumstances. And the sort of circumstances which applied in the cases to which I believe the Honourable Member refers are in industrial areas where manufacturers are finding it extremely difficult to reach their factory

buildings through the existing street system, and where other infrastructural services show very clear signs of becoming overloaded and strained and therefore in danger of producing even worse conditions than exist at the moment. It is under those circumstances that the Town Planning Board — not the Building Authority — may take a decision to lower plot ratios in order to enable the infrastructure to continue to serve.

MR EDWARD HO: *Mr President, in view of the shortage of land for domestic development and in order to maximize the development potential of land, will the Secretary please inform this Council whether the Administration would consider increasing domestic plot ratios in the new towns to Zone One standard?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the objective of setting the plot ratios which apply in the new towns at the level they apply is so that we do not produce in the new towns another generation of Mong Koks and Wan Chais. I do not believe therefore that we will be contemplating a general revision upward of the plot ratios which apply in the new towns. We may, however — and we have done so in the past — consider on a case by case basis whether on certain sites a relaxation of plot ratios would be appropriate.

Infirmary services

3. MR FREDERICK FUNG asked (in Cantonese): *Further to the written reply given by the Secretary for Health and Welfare on medical infirmary services at the Legislative Council sitting held on 24 March 1993, will the Government inform this Council:*

- (a) *regarding the 4 352 elderly persons classified as in need of medical infirmary services and who are currently staying in private homes for the aged and residential care institutions subvented by SWD, what plans are in place to meet their needs;*
- (b) *what measures will be taken to handle the 5 361 applications in the central waiting list for medical infirmary services; and*
- (c) *what long-term plans are in place to solve the problem of inadequate infirmary beds, for example, whether consideration will be given to improving the existing planning standards with a view to speeding up the construction of more infirmaries?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, in order to meet the increasing needs of elderly persons requiring medical services there is a need to provide not only residential care but also care in the community.

Additional to infirmary places, we are now focussing also on the provision of outreach care. This will be done through the setting up of community-based geriatric service to provide pre-registration assessment and medical care for elderly people outside the hospital environment, with special attention on specialist support to subvented care-and-attention homes. Community nursing service and domiciliary occupational therapy are also in place to provide professional care and support to elderly people in the community as well as to those who care for them.

In addition, district-based co-ordinating committees are being formed in collaboration with the Social Welfare Department, non-government organizations and the Department of Health to co-ordinate service requirements.

There will be 1 114 new infirmary beds coming on stream in the years to come between here and 1998-99. Plans are being formulated by the Hospital Authority to redesignate about 500 general beds and to convert some hospital facilities as an additional supply of infirmary beds.

MR FREDERICK FUNG (in Cantonese): *Mr President, the Secretary's reply seems to suggest that she has only thought of two ways to tackle the problem, namely the provision of outreach care and the provision of 1 600 infirmary beds in the near future. According to the written reply she gave at the Legislative Council sitting on 24 March 1993, 4 352 elderly persons had been classified as in need of medical infirmary services. So despite the 1 600 beds to be provided, there is still a shortfall of 2 700 beds. What is the Administration's plan for these 2 700 elderly persons? Secondly referring to the 5 000 or so elderly persons in the central waiting list as mentioned in part (b) of my question, does the Administration have plans to provide them with outreach care? If so, have they been informed that there is no need to wait any further for infirmary places? Besides, when will this so-called "Community Outreach Service" be provided, and how does it operate?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, as regards the infirmary places, I would like to refer first of all to the planning standards for infirmary places in hospitals. The planning standards for general hospital beds is five beds per 1 000 population aged 65 and over. Based on the current population ratio we are short of over 1 000 bed places in infirmary. With the setting up of the Community Outreach Service it is expected that the perceived demand will drop or the demand will be met sooner. I did refer in the main reply to the setting up of outreaching teams for elderly patients. We plan to set up eight geriatric teams to focus on the rehabilitation needs of elderly persons who may suffer from various disabilities. The objective is to provide timely assessment of those people who are on the waiting list because not all people on the waiting list are medically assessed as requiring medical services. But with the setting up of the geriatric teams, that assessment work will be carried out earlier and rehabilitative care for elderly people in either homes or other areas

will assure that appropriate placement of elderly persons in need of residential care takes place earlier rather than later.

DR HUANG CHEN-YA (in Cantonese): *Mr President, despite these plans mentioned by the Secretary, it is in fact very difficult for the Administration to cope with the existing problems. We know that we have an aging population and chronic diseases are on the increase, so the demand for infirmaries and community health care naturally will rise. Can the Administration inform this Council whether it has any statistics on the level of increase of these patients and the rising demand for hospital beds and community health care in order to know whether there is a real chance of improvement in the future?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, based on the actual demand figures as supplied to us — not based on the planning standards but in fact additional to the planning standards — we know there will be a total provision of 1 532 beds with a perceived demand for 3 730 beds by the end of this year. The figures will increase to 2 980 and 4 450 by the year 2000. This means the perceived shortfall of beds will decrease from 2 198 in 1993 to 1 470 in the year 2000. However, with the setting up of community-based geriatric service and the focusing on the provision of outreach care, it is expected that the perceived demand will drop considerably or the demand will be met earlier.

I would like also to highlight another provision which does not involve the public sector. Members will recall that some months earlier in this Council, in response to a question, I did say that the Residential Care Homes (Elderly Persons) Bill will be introduced into the Legislative Council early in the 1993-94 Session, in other words in a couple of months' time. The Bill is aimed at ensuring that private homes, in their significant contribution to the care for the elderly, will deliver quality service of a reasonable standard acceptable to the community of Hong Kong. The proposed control scheme will include a licensing system, an appeal system and proper inspection of homes with minimum standards of care. Through this scheme and through the enactment of the law, we hope that more private homes of various kinds will be encouraged to continue their contribution to care for those elderly people who are in need of many types of either social or medical services.

MR TIK CHI-YUEN (in Cantonese): *Mr President, many of the elderly persons living in care-and-attention homes are in need of infirmary care. Will the Administration allocate more resources and manpower to these homes so that more infirmary places can be provided? By so doing, it can increase the number of infirmary places and reduce the need for referrals which are often the case now. Does the Administration have any specific plans in this respect and can it provide this Council with the relevant data?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, there are 18 infirmary units in 13 care-and-attention homes; each unit caters to some 20 people. We intend to increase, on an average, by about three additional units in a year but I must stress that this is only a temporary provision; this is an interim measure accepted only on an interim basis. I think the ultimate answer must be to have proper infirmary places in medical settings rather than temporary units in care-and-attention homes. Members will recall that the subvented places, bought places and non-profit-making home places are increasing year by year. Today, there are 3 789 places in subvented organizations, 500 bought places and 618 places in non-profit-making organizations. Over the next four years, we plan to increase the number of places by 5 972. The breakdown is: this year the total additional is 1 607; 1994-95 is 1 568; 1995-96 is 1 134; 1996-97 is 1 663. These figures are traceable back to the \$2.3 billion additional injection under the Lotteries Fund.

DR TANG SIU-TONG (in Cantonese): *Mr President, as regards the control of private homes, I am not as optimistic as the Secretary. I think that the enactment of the Ordinance on residential care homes will lead to the closure of some of these homes or an increase in charges. Does the Administration have any plan to expand the service of care-and-attention homes, and how will it deal with the situation that I have just mentioned?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, may I suggest that the problem be debated and considered in detail when the Bill is put to this Council for deliberation.

Demand for doctors and nurses

4. MR TIK CHI-YUEN asked (in Cantonese): *Will the Government inform this Council of:*

- (a) *the forecast supply and demand of doctors and nurses for each of the next five years;*
- (b) *the criteria adopted by the Hospital Authority in determining the establishment of doctors and nurses for various hospitals; and*
- (c) *the plan in place for recruiting sufficient doctors and nurses to cope with the increase in the number of hospital beds?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, taking into consideration current annual wastage rate at 7.4% for doctors and 9.6% for nurses respectively, we estimate that on average about 255 doctors and 1 223 registered nurses will be required in each of the next five years to meet

the demand arising from new service areas. Against this demand, there will be an annual supply from local tertiary institutions and from our nurses training schools of about 250 doctors and 1 200 registered nurses for employment in the public sector.

In order to meet the projected requirement of nursing staff for new hospital projects, plans are being made to expand the nurses training school at the United Christian Hospital and the Tai Po Nethersole Hospital to provide an additional 130 registered nurses each year. Other sources of supply include direct recruitment and nursing degree graduates from the tertiary institutions.

Apart from ratios drawn up by the former Medical Development Advisory Committee (MDAC), the Hospital Authority also takes reference from the actual operational requirements and staffing provision in public hospitals having regard to the advancements in medical technology and the advent of new treatment procedures.

With the integration of all public hospitals under one management by the Hospital Authority, the manpower planning process first involves business planning by individual hospitals to identify the actual demand and operational requirements in relation to their objectives and targets. This is followed by central assessment by the Hospital Authority on the overall demand and supply of manpower and the setting of annual recruitment targets.

This planning process has been applied in the case of Pamela Youde Nethersole Eastern Hospital and the Tai Po Nethersole Hospital. As regards the planned new North District Hospital, a committee under my chairmanship, comprising representatives from Finance Branch, Hospital Authority and Department of Health has been set up to plan the manpower requirements and to ensure that training programmes are in place to meet them.

MR TIK CHI-YUEN (in Cantonese): *Mr President, the former Medical Development Advisory Committee had drawn up manning ratios as a planning guide. Is the Administration following these ratios when planning its staffing provision? If not, what are the reasons and are there other objective guides to follow in this respect?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the manpower planning ratios under the former MDAC were used as reference points for planning purposes; they were centrally prescribed. In the words indeed of the MDAC at the meeting in November in the year when they devised the manning ratio, it was stated that, "Planning ratios are intended as a basis for forecasting future manpower requirements and training needs. It may or may not coincide with the approved manning scales. The latter will have to take into consideration not only the planning ratios but also such considerations as technology, clinical care, complexity of the development of medical services and

also various conditions such as bed occupancy or attendance rates, usage changes and the population profile of a particular area". In other words, planning ratios are used as a planning guide, as reference points. But reference points being reference points, actual consideration will take into account operational requirements.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, in the fifth paragraph of her reply, the Secretary said that the Pamela Youde Nethersole Eastern Hospital, in setting its recruitment targets, took reference from the central assessment of manpower requirements. I understand that the Eastern District Hospital will be operational this October, but it will not be able to provide a comprehensive 24-hour service as scheduled, particularly the provision of accident and emergency service after midnight. May I ask if this is due to the inadequate number of doctors and nurses to meet the demand? If yes, does that indicate that the existing training programmes cannot meet the manpower requirements of new hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think the question is specifically on the Eastern District Hospital where we know that the building was completed in December last year and the keys were handed over to the Hospital Authority in April this year. There will be a commissioning period. It will be opened in October this year with 450 beds, including surgery beds, medicine beds, obstetrics, gynaecology, orthopaedics, paediatrics, with 16-hour accident and emergency (A & E) service. And in April next year, there will be 850 beds comprising geriatrics, radiology, oncology, ENT, intensive care, plus 24-hour A & E. I think Members will have reference to the previous answers I gave on the commissioning of new hospitals. The opening of a new hospital is not like the opening of a theatre where all the seats are full on Day One. We have got to make sure the hospitals are opened and in function at the level which the patients would require care for. In other words, we feel that the commissioning of the Eastern District Hospital, to be called Pamela Youde Nethersole Eastern Hospital, is on time and within schedule.

MR MICHAEL HO (in Cantonese): *Mr President, in her reply to Mr TIK Chi-yuen's question, the Secretary said that the ratios drawn up by the former Medical Development Advisory Committee were a planning guide. May I point out that there is a wide gap between these planning ratios and the actual staffing provision. So what is the point of adhering to these ratios? Furthermore, the Secretary said in the fourth paragraph of her reply that manpower planning would be in the hands of the Hospital Authority. As it stands, the Authority is merely holding the funds and there is no such thing as a formula for calculating manning ratios. The number of staff recruited depends much on the size of the funds allocated. In this connection, will the Administration require the Hospital Authority to set the formula for calculating manpower requirements within a specified period of time?*

PRESIDENT: You have got two independent questions there, Mr HO. I think you had better opt for one of them because there is a long list of people wanting to ask questions.

MR MICHAEL HO (in Cantonese): *Mr President, I will try to rephrase my question. Referring to the fourth paragraph of the reply in which it said that manpower planning was in the hands of the Hospital Authority, will the Administration inform this Council if it would require the Hospital Authority to set the formula for calculating manpower requirements within a specified period of time?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, both the Hospital Authority and the Department of Health are completing their review on future manpower requirements. The outcome of these reviews will be shortly discussed by the Health and Medical Development Advisory Committee and separately I myself will chair a co-ordinating committee specifically to address the problem of nursing manpower requirements and the direction for the future.

DR TANG SIU-TONG (in Cantonese): *Mr President, in the first paragraph of her reply, the Secretary said that at present, local institutions could supply 1 200 registered nurses for employment every year. What is the annual wastage rate of student nurses in Hong Kong? If the wastage rate is high, does that mean that the supply of registered nurses for employment cannot reach the level of 1 200 a year?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, may I offer some figures for Members' consideration. In respect of doctors the strength at the moment is 2 372; in respect of the nurses in the public hospitals, at the moment the strength is 16 373. The intake in the first quarter in 1993 is 79 for doctors and 695 for nurses. We are indeed fast catching up with the recruitment of nurses. We have three intakes in a year in the nine hospitals providing some 3 835 places, but of course training for nurses is a three-year system. Particularly this year, I am happy to report that the recruitment in the nursing school has been very vibrant and young people are now coming forward wanting to be nurses. We are "full house" in other words. But we do have a shortage still in particular areas of nursing, for instance, psychiatric nursing which is going to be a problem area we need to address, and there are several measures, for example, using special training courses for general nurses for psychiatric training purposes which will require 18 months' training. We had in the past a global problem of nursing in the sense that a couple of years ago there was a serious loss of nurses from Hong Kong to other parts of the world. Therefore the lead time is shortened, and though it could be said that the acuteness of the problem has heightened because there is less time available to

deal with it, I think we are certainly beginning to see the light at the end of the tunnel.

MR PETER WONG: *Mr President, is it part of the plan to include overseas trained professionals to help ensure that our medical staff have an international outlook which is vital to maintaining world standards?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I hope the question itself does not imply that our standards are not terribly good. Our standards are in fact of world standard; so I have no answer to that question, Mr President.

Jury verdict

5. MR SIMON IP asked: *In relation to a recently reported criminal trial in the High Court in which the foreman of the jury reportedly returned a verdict not discussed by the jury, has the Administration considered:*

- (a) *how similar incidents can be avoided in the future, in particular how to ensure that the jury knows all the charges against the defendants, and how to rectify a verdict wrongly pronounced by the foreman; and*
- (b) *how to ensure that jurors have a thorough understanding of their rights and duties, especially what they should do when they do not understand matters in the proceedings?*

ATTORNEY GENERAL: Mr President, following the case referred to in the question, the Judiciary has carefully considered what steps should be taken to avoid a similar incident occurring in the future. The Acting Chief Justice has this week sent to all Judges of the High Court a specimen direction and a form which the Judges are invited to use in all future jury trials. The specimen direction is to be given before the jury retires to consider its verdict. It explains that each juror will be given a piece of paper setting out the questions that the foreman of the jury will later be asked. It then suggests that, after the collective decision is reached, each juror should note on his or her piece of paper the agreed answers, and should return to court with that piece of paper. If any mistake arises when the foreman answers the questions put to him or her, the jurors are instructed in the specimen direction to draw it to the judge's immediate attention.

The piece of paper is to be based on the form sent out by the Acting Chief Justice. That may have to be modified to meet particular circumstances. It sets out a series of questions in respect of each count and each accused, and in

respect of each alternative verdict open to the jury if the verdict on the main count is not guilty.

The Acting Chief Justice has asked High Court Judges, at the end of three months, to supply the Chief Justice with any comments they may have on how this scheme is working.

As for the second part of the question, the primary responsibility for ensuring that jurors understand their rights and duties lies with the trial judge. The new specimen direction and form that I have just referred to are designed to help jurors to understand what they are being asked to decide and what they should do if the foreman makes a mistake. Jurors are also assisted before the trial begins by being given a pamphlet that explains their role. That pamphlet is now being revised and the Judiciary has proposed that, in addition, an instructional video should be prepared for the information of jurors.

MR SIMON IP: *Mr President, although the common jury is a hallowed institution of the common law and one that should be retained, does the Administration agree that the system under which a jury performs its functions requires an overhaul to avoid as far as humanly possible miscarriages of justice? If so, what initiatives does the Administration intend to take? If not, why not?*

ATTORNEY GENERAL: Mr President, the question of jury trials was examined some years ago by a Select Committee of this Council. That of course was in the context of complex commercial crime but it raised fundamental issues and the recommendation of the Select Committee was that the jury system should be retained. I believe that that was the right decision. I think that the jury system is a fundamental bulwark of the liberties of the individual. I have no present plans to review the jury system. We will have to see how the proposed specimen direction put forward by the Acting Chief Justice works in practice and see whether there are any future incidents. We rather hope that there will not be.

MISS EMILY LAU (in Cantonese): *Mr President, may I ask the Administration if similar incidents had occurred in the past? Does the Attorney General have details on them? If there were such incidents, will he inform this Council of the number of these cases and the details?*

ATTORNEY GENERAL: Mr President, a few weeks ago a District Judge wrote to me and to one or two others listing three cases that had occurred to her knowledge. She also wrote to the Acting Chief Justice. I am not aware of any other cases, certainly no other cases have been brought to my attention, and I believe that no other cases have been brought to the attention of the Judiciary. But the Acting Chief Justice has written to the chairman of the Bar Association

asking her to canvass among her members to see if they know of any other cases where this has occurred.

MISS EMILY LAU (in Cantonese): *Mr President, may I ask a further question: As we heard that some jurors did not have a good command of English, can the Attorney General provide any detailed information on this, and do the cases referred to have any relation with the English standard of the jurors (some of them have very poor standard indeed)?*

ATTORNEY GENERAL: There was no suggestion of that at all in this case, Mr President.

Kwai Chung container port traffic

6. MR WONG WAI-YIN asked (in Cantonese): *In view of recent occasions when traffic in Kowloon West and New Territories West came to a standstill as a result of container trucks going at the same time to the Kwai Chung Container Terminal for loading/unloading, will the Government inform this Council what effective measures will be implemented to prevent the recurrence of similar incidents?*

SECRETARY FOR TRANSPORT: Mr President, traffic congestion in the vicinity of the Kwai Chung container port is caused mainly by the fact that the terminals and their back up areas are reaching saturation. While the road system in the area is capable of meeting normal traffic demands, problems can arise when there is a sudden surge of traffic, for example when the terminals reopen after the passage of a typhoon. The incident on 28 June, in which traffic came to a standstill, was caused by a greatly increased flow of container vehicles when the terminals reopened after the lowering of the No. 8 typhoon signal.

Much has already been done to improve traffic flows in Kwai Chung in the last few years. Kwai Chung Road has been widened, Container Port Road realigned, and more lorry parks and emergency vehicle holding areas have been provided. In addition, a contingency plan has been adopted by the terminal operators and the relevant government departments to help deal with periods of exceptional traffic demand. This provides for a co-ordinated and phased response when traffic is heavier than normal. For example, at such times vehicles may be diverted to emergency holding areas to reduce the volume of traffic on the roads.

A number of new measures will also be introduced shortly. These include:

- (a) firstly, the allocation of about 30 hectares of land in the next six months to be used as additional back up areas for the port;
- (b) secondly, the provision of a second emergency holding area, capable of accommodating about 150 container vehicles;
- (c) thirdly, the adoption by two terminal operators of an appointment system for vehicles, which should facilitate a more orderly flow to and from the port; and
- (d) fourthly, strengthening the police district traffic team at times of expected congestion, so as to improve traffic regulation in the area.

A number of other proposals are under consideration. These include:

- (a) a review of access points to the terminals to see whether these can be improved so as to provide for a smoother traffic flow; and
- (b) establishing an Emergency Control Centre in Kwai Chung, comprising representatives of government departments, the terminal operators and the trucking industry, which would be manned at times of particularly heavy traffic demand.

Mr President, I am confident that these measures will help to ease the traffic situation in Kwai Chung in the short term at times of peak demand. I will not deny that they are short-term expedients and, like all short-term expedients, have their limitations. Given the fact that the congestion we have seen is due to the terminals reaching saturation, the real, long-term solution lies in the opening of Container Terminals 8 and 9, with their very substantial back up areas totalling 76 hectares and associated access road improvements.

MR WONG WAI-YIN (in Cantonese): *Mr President, the Secretary mentioned a number of improvement measures in his main reply, but I wonder if they are effective in easing traffic congestion. When these new measures are implemented, to what extent can they improve traffic flows if serious congestion similar to the one on 28 June occurs again? Would the Secretary care to elaborate?*

SECRETARY FOR TRANSPORT: Mr President, I think these short-term measures in combination should not, if they are properly acted upon, result in a repetition of the traffic jam we saw on 28 June. It was unfortunate that on that particular day the contingency arrangements we had in place were not working very well. We are talking to all parties concerned to make sure that when these contingency plans are triggered they will work properly in future.

MRS MIRIAM LAU: *Mr President, one of the new measures which will be introduced is the strengthening of the police district traffic team. Can the Secretary inform this Council specifically how this particular police district traffic team will be strengthened?*

SECRETARY FOR TRANSPORT: Mr President, I do not have specific details of how the dedicated police team will be strengthened, but I am assured by the Transport Department and the Police Commander of the district that we have normal police patrols in Kwai Chung in addition to the dedicated team. This dedicated team is used to regulate traffic at normal times, but it can be increased at short notice if necessary.

MR FREDERICK FUNG (in Cantonese): *Mr President, in the last paragraph of his reply, the Secretary said that the opening of Container Terminals 8 and 9 would further improve the traffic situation. But is the real situation the other way round? With the opening of two more container terminals, traffic congestion will be more serious a problem. I hope the Secretary would pay attention to the fact that traffic congestion is not confined to Kwai Chung only. In fact, the whole West Kowloon including Sham Shui Po is also affected. May I ask the Secretary whether the Administration would, in formulating long-term improvement measures, consider adopting an alternative site on Lantau Island for the construction of Container Terminal 9?*

PRESIDENT: Some of this is getting rather remote, Secretary. Have you got an answer to the first question?

SECRETARY FOR TRANSPORT: Mr President, the answer to the first question is that, as I mentioned in my main reply, the creation of more holding space and more space for container operations, that is to say, the stuffing and stacking of containers, should reduce the number of wasted trips on the part of container lorries. If more space is provided, if container lorries can wait before they can get into the terminals, there will be fewer trips and therefore it should have the immediate impact of reducing the number of trips in and around Kwai Chung itself. Similarly if enough space is provided within the container port with the opening of Container Terminals 8 and 9, the total volume of container lorry trips within the wider area of the west New Territories should be reduced.

MR LEE WING-TAT (in Cantonese): *Mr President, in reply to Mr WONG Wai-yin's question just now, Mr YEUNG Kai-yin expressed confidence in the effectiveness of these short-term measures in reducing traffic congestion. But I would say I am all the more worried because as I see it, there was serious traffic congestion at Kwai Chung Container Terminal following typhoons or heavy*

rains and one of the factors was whether there was adequate co-ordination and co-operation between terminal operators and government departments. Since in law, the Administration has no power to interfere with the internal management of terminal operators, what will the Administration do in the face of such difficulty? Will the Administration follow the examples of other international ports and consider adopting the long-term measure of establishing a container terminal authority with statutory powers?

SECRETARY FOR TRANSPORT: Mr President, I am afraid the question goes even further than the immediate problem of congestion in the Kwai Chung area. The question of a maritime or port authority falls outside my remit. But I will convey the question to my colleague, the Secretary for Economic Services, and I will ask him if he would wish to give a reply.

Written answers to questions

Right of abode

7. MR CHIM PUI-CHUNG asked (in Chinese): *In relation to the Government's reply to a question at the Legislative Council Sitting on 2 June 1993 pointing out that a person with at least one parent who was a permanent resident of Hong Kong at the time of his or her birth would automatically acquire the right of abode in Hong Kong on 1 July 1997, will the Government inform this Council:*

- (a) *how the identity of those persons would be verified;*
- (b) *how it would prevent and stop acquisition of the right of abode in Hong Kong on 1 July 1997 by way of producing false information and illegal documents; and*
- (c) *what charges would be instituted against the offenders and what penalty would be imposed?*

SECRETARY FOR SECURITY: Mr President, we will need to work out detailed administrative arrangements with the Chinese authorities. We will suggest that the Chinese authorities should:

- (a) verify the parent-child relationship claimed in each application; and
- (b) provide details of the parent(s) for us to check whether he/she/they had permanent resident status at the time of the child's birth.

We will no doubt conduct a further check by interviewing the children when they enter Hong Kong to confirm that they are indeed the children in the application.

We believe that these checks will be adequate to expose any attempt to obtain right of abode in Hong Kong by fraudulent means.

Strict penalties for such fraud already exist. Under section 42 of the Immigration Ordinance, a person who makes a false statement or representation to an immigration officer shall be guilty of an offence, for which he or she is liable to imprisonment for up to 14 years.

Water supply charges

8. MR FRED LI asked (in Chinese): *Will the Government inform this Council of the following:*

- (a) *the operating cost, charges and rates of return of supplying water for domestic and industrial consumption respectively in the past five years; their respective anticipated changes in the coming year following the imposition of new charges in August this year;*
- (b) *the rationale for setting a target return of 7% for supplying water; whether such target applies to both domestic and industrial consumers; and*
- (c) *the specific plans in place and the time frame for achieving the above target return?*

SECRETARY FOR WORKS: Mr President,

- (a) The details of the operating costs, charges for domestic and industrial consumption, and the actual rate of return in the past five years and their anticipated changes in the coming year following the imposition of the new charges are set out in the Appendix.
- (b) The target return of 7% is a notional figure to reflect the financing charges and opportunity cost of the capital employed. This is applicable to both domestic and industrial consumers.

The appendix shows that the actual rates of return are lower than the target return of 7%.

- (c) Target rate of return is only one of the factors in considering the appropriate level of water charges. Other factors such as public acceptability and inflation would be carefully assessed. Time frame and specific plans for achievement are currently under general review.

Appendix

	<i>Forecast</i> 1993-94 \$M	<i>Estimate</i> 1992-93 \$M	1991-92 \$M	1990-91 \$M	1989-90 \$M	1988-89 \$M
Chargeable supplies						
Domestic	848.8	730.0	669.3	566.6	435.9	365.9
Non-domestic	1,391.6	1,227.6	1,139.1	1,038.4	921.9	752.7
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	2,240.4	1,957.6	1,808.4	1,605.0	1,357.8	1,118.6
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Total operating cost	3,667.8	3,286.0	3,065.4	2,727.1	2,158.9	1,902.8
Actual rate of return	5.3%	5.9%	4.5%	5.8%	4.7%	4.2%

- Note: 1. In addition to chargeable supplies, revenue of the department also includes the following:
- Contribution from rates
 - Subsidy from the Government
 - Fees, licences and reimbursable work
 - Interest from deposits
2. The projected rate of return for 1993-94 is based on the assumption that the proposed increase for 1993-94 as set out in the Workworks (Amendment) Regulation 1993 would be adopted.

Siting of chemical plants

9. MR PETER WONG asked: *Will the Administration inform this Council of the present position for developing the site at northwest Tuen Mun for the accommodation of chemical plants and related facilities, and whether it intends to relocate all such existing facilities to this site?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, a Special Industrial Area covering 55 hectares of land will be developed in Tuen Mun Area 38. Reclamation and servicing works are scheduled to commence in the middle of 1994 for completion in phases by 1999. About 25 hectares of land will be reserved for the chemical industry to serve both new developments as well as existing facilities which may wish to move there. The Administration does not intend to initiate or organize relocation arrangements. It will be for operators to decide whether to relocate themselves.

Export procedures

10. DR HUANG CHEN-YA asked (in Chinese): *In view of the growing demand for prompt delivery of goods ordered by overseas buyers (especially from the United States), will the Government inform this Council what assistance is now provided to local manufacturers to enhance efficiency in the production, stock control and consigning of exported goods; will the Government expedite the processing of export documents?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, it is the Government's long-standing policy to promote efficiency on the part of our manufacturers in production, management (including inventory control) and delivery of manufactured goods.

A wide range of support services are provided by the Industry Department and other industrial support organizations such as the Hong Kong Productivity Council, including consultancy services provided by the latter on production technology as well as management systems to improve stock control.

The Industry Department operates an Industrial Extension Service whereby staff of the department visit factories, especially small to medium-sized ones, to emphasize the importance of production efficiency. Where problems relating to management systems and production technology are identified, they would give advice or refer the manufacturers to appropriate agencies, such as the Hong Kong Productivity Council.

The Industry Department also commissions techno-economic and market research consultancy studies on major manufacturing sectors on a regular basis to identify measures which could be introduced to further improve productivity.

As regards the processing of export documents, the Trade Department is committed to processing export licence applications and other export documents as expeditiously as possible without compromising the integrity of our trade control systems. Our commitment towards this objective is reflected in the performance pledges made by the Trade Department to adhere to target processing time of one to three working days for various types of export documents.

With a view to further assisting textiles traders, the Trade Department has, with effect from 1 July 1993, introduced a voluntary Textiles Traders Registration Scheme whereby textiles traders registered under the scheme may import textiles products, export such products to non-restrained markets and re-export them to all markets without a licence.

In the long run, the processing of export documents would be further facilitated through implementation of an electronic data interchange (EDI) system whereby traders will be able to complete export documentation

procedures through the transmission of electronic messages. EDI would obviate the need for traders to apply for export documents in person, thus saving time and costs, and would substantially reduce the paperwork involved. The current plan is to have this service available to traders in stages starting from 1995.

Protection for residents in the vicinity of Ma Wan Channel

11. MR JIMMY MCGREGOR asked: *Will the Government inform this Council what measures it will take to protect the residents in the coastal areas bordering Ma Wan Channel against the possible risks posed by the large number of vessels passing through the Channel, bearing in mind that some of these vessels may carry dangerous goods?*

SECRETARY FOR SECURITY: Mr President, the Ma Wan Channel is a major waterway for ocean-going vessels passing through Hong Kong. To minimize any possible risks, the Marine Department maintains a traffic management system. To enhance this system, the building of a control station for the area is due to start later this year.

In addition, pilotage is compulsory for all vessels over 5 000 gross registered tons; and the Marine Department provides dedicated launches for escorting large vessels in transit around Ma Wan.

All local craft, and ocean-going vessels loading and unloading in Hong Kong, are subject to control under local legislation. Specifically, the carriage of dangerous goods on vessels is regulated by the Dangerous Goods (Shipping) Regulations. Other vessels in transit through Hong Kong are not subject to this legislation, but they must comply with all the safety standards laid down under international maritime conventions.

Extension of stay

12. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the approximate number of tourists from Australia, New Zealand, North American, Western and Northern European countries, who have stayed in Hong Kong for more than a year through successful application for extension of stay over the past three years; and*
- (b) *whether the Administration is aware that some of these tourists have taken up employment and self-employment in Hong Kong, for example, street hawking, during their stay in the territory; whether appropriate measures have been taken to stop these activities; and*

whether consideration will be given to tightening up the criteria for granting extension of stay to tourists?

SECRETARY FOR SECURITY: Mr President, the answer to the first part of the question is none. It is not our policy to grant visitors extensions of stay beyond one year.

Visitors who are found in non-approved employment in Hong Kong are in breach of their conditions of stay. Under section 41 of the Immigration Ordinance, they are liable to prosecution and, if convicted, to a fine of \$5,000 and to imprisonment for two years. Action is taken both by the Immigration Department and by the Urban Services and Regional Services Departments in respect of the kind of activities mentioned. Immigration Officers conduct surprise visits to locations where foreign workers are suspected to be illegally employed. Urban and Regional Services Department staff take action against all unlicensed hawkers. The Urban Services Department in particular deploys General Duties Teams on Sundays and Public Holidays to patrol certain areas where foreign hawkers tend to congregate. Between 1990 and May 1993, a total of about 1 000 arrests of foreign hawkers were made.

If tourists are prosecuted and convicted of hawking without a licence, the Immigration Department is unlikely to grant them any further extension of stay. The Immigration Department grants extensions of stay to visitors only if satisfied that they have a genuine reason to stay longer and that they have the means to support themselves legally in Hong Kong. These criteria are adequate.

Visa policy

13. MR PANG CHUN-HOI asked (in Chinese): *As holders of passports issued by the People's Republic of China are allowed to stay in Hong Kong in transit for seven days without visas, will the Government inform this Council of the following:*

- (a) *the basis on which this policy is formulated;*
- (b) *as it may be easier for these visitors, as compared with tourists from other countries, to overstay or illegally reside in Hong Kong, whether monitoring measures are in place to prevent such incidents; if so, what the details are; and*
- (c) *whether consideration will be given to relaxing this policy so that Taiwanese visitors in transit in Hong Kong will also be exempted from visa requirement; if not, what the reasons are?*

SECRETARY FOR SECURITY: Mr President, PRC nationals transiting Hong Kong have created few problems in recent years. In 1992, for example, only 0.02% overstayed. This prompted the change in policy, which will also result in the release of staff from visa processing work to much-needed counter duties at Lo Wu.

We will maintain effective pre-entry and post-entry controls to prevent overstaying. PRC transitees are required to prove that they have valid passports, visas and onward air tickets for their destination countries before they are admitted into Hong Kong. The Immigration Department's computerized passenger movement record exposes any transitee who has overstayed. Overstayers are liable to prosecution and removal from Hong Kong.

There is no plan to waive visa requirements for Taiwanese visitors in transit. We require visas or permits from all visitors from administrations not recognized by the British Government, including Taiwan. However, the requirements for Taiwanese visitors are not onerous. They can obtain Multiple Visit Permits, and during the validity of their permits, they can visit Hong Kong as they wish.

English language teaching

14. MR ERIC LI asked (in Chinese): *With regard to the Secretary for Education and Manpower's reply of 26 May 1993 to the Legislative Council Question on English language teachers, will the Government inform this Council:*

- (a) *of the circumstances and criteria under which the Education Department would permit a university graduate not majoring in English Language or English Literature to teach the English subject; and*
- (b) *of the induction course(s) that the Education Department has provided for the English Language teachers who are not graduates in English Language or English Literature, so as to enhance their language ability in English Language teaching?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) Under the Education Regulations, a university graduate not majoring in English Language or English Literature may teach English if he is a registered teacher, or if he is a permitted teacher meeting the following requirements:

- (i) Grade E or higher grade in English Language (Syllabus B) in the Hong Kong Certificate of Education Examination; or
 - (ii) Grade E or higher grade in English Language in the Hong Kong Certificate of Education (English) Examination; or
 - (iii) a pass in English Language in the Hong Kong English School Certificate, the Hong Kong Chinese School Certificate, or the Hong Kong School Certificate; or
 - (iv) a knowledge of English of a standard which in the opinion of the Director of Education is equivalent to Grade E in English Language (Syllabus B) in the Hong Kong Certificate of Education Examination.
- (b) The Advisory Inspectorate and the Institute of Language in Education of the Education Department provide regular training courses open to all English teachers, whether they are graduates of English or graduates of other disciplines, to enhance their knowledge and skills in teaching English. The Advisory Inspectorate also organizes special training courses and workshops each year for non-English major teachers to enhance their proficiency in English and competence in teaching the subject. In the 1992-93 school year, four training courses were conducted for 131 non-subject-trained English teachers from 119 secondary schools. Similar courses will be organized in September and October 1993. Other advisory services, including consultation sessions, are also provided by subject inspectors for English teachers who need assistance.

Immigration clearance at Lo Wu

15. REV FUNG CHI-WOOD asked (in Chinese): *In view of the large number of complaints lodged by members of the public about the long waiting time for going through immigration clearance at Lo Wu Terminal especially during weekends or holidays, will the Government inform this Council:*

- (a) *what interim measures and long-term plan will be made by the Immigration Department to provide better service, such as through the increase of manpower or the installation of additional facilities; and*
- (b) *whether the Administration will make greater use of the facilities at Lok Ma Chau or other passages to alleviate the congestion at Lo Wu Terminal?*

SECRETARY FOR SECURITY: Mr President, the Lo Wu crossing point is under increasing pressure. It is now probably the world's busiest single crossing point, with passenger traffic averaging nearly 9 000 people an hour. Passenger traffic has increased nearly 40% since 1989, a result largely of southern China's economic growth. The Immigration Department has managed very well in the circumstances. 90% of travellers are still being cleared within the 30-minute target waiting time. Only on busy weekends and public holidays are Immigration Department failing significantly to reach the target. Out of 84 million people crossing the border in the last two and a half years, only 52 formal complaints have been received.

We accept, however, that, improvements need to be made to deal with the situation. A major extension to the Lo Wu terminal is due to be completed in 1995. This will provide an additional 72 immigration counters, an increase of 82%. The introduction of optical readers in the same year will also speed up significantly the clearance of Hong Kong Identity Card holders, who are the vast majority of border-crossers.

Pending these major improvements, staff have been deployed by Immigration Department so as to provide maximum coverage at the worst times, that is, over busy weekends and public holidays. A number of other initiatives have been taken to ease congestion and to speed up clearance times:

- (a) separate immigration counters were introduced last year for residents and visitors;
- (b) the Easy Travel Scheme has enabled permanent identity card holders to clear immigration much more easily;
- (c) the opening hours of Lu Wu Terminal were extended by one and half hours last year. The Terminal now operates 16 hours a day from 7.00 am to 11.00 pm; and
- (d) starting from 1 August 1993, PRC transitees will be allowed to stay for seven days without a visa. This will enable manpower at Lo Wu now employed on paper work for issuing visas to be deployed to direct counter duty, thus reducing queues.

We shall also be providing additional immigration staff for Lo Wu later this year by redeploying staff as the screening of Vietnamese migrants is completed.

Two-way permit holders from China are already permitted to use entry points other than Lo Wu. A large proportion of organized tours from Hong Kong also use other entry points. With effect from 1 August, PRC nationals transiting through Hong Kong will be permitted to use any of the other land and sea control points. This will relieve Lo Wu further, as suggested.

Visa requirements for PRC visitors

16. MR MARTIN BARROW asked: *In view of the arrangement announced on 17 June 1993 for PRC transients to be allowed to stay in Hong Kong for seven days without visa, will the Government inform this Council whether PRC visitors who return to the PRC within seven days can also be granted the same arrangements?*

SECRETARY FOR SECURITY: Mr President, apart from those transiting Hong Kong to other destinations, nearly all short-term PRC visitors come to Hong Kong on two-way permits. They do not need to apply separately for a visa.

Extra charges on patients for costs of certain surgical equipment

17. MISS EMILY LAU asked (in Chinese): *In view of the complaints that patients undergoing surgical operations in public hospitals have to make additional payment for therapeutic appliances used for them in these operations, will the Government inform this Council:*

- (a) *of the criteria under which patients have to pay for such appliances; what kind of therapeutic appliances are to be paid by patients;*
- (b) *whether all public hospitals follow the same criteria in charging patients for these appliances; and*
- (c) *whether the Government will provide financial assistance to those patients who cannot afford such appliances and if so, what criteria are adopted to determine eligibility and what the maximum amount of financial assistance being offered is?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, under the Hospital Authority, the fees charged are set out in Gazette Notices No 13/1992 (former government hospitals) and 22/1992 (former subvented hospitals) respectively.

In former government hospitals, most patients staying in public wards are charged a daily maintenance fee at \$43. The maintenance fee covers clinical, biochemical and pathological investigations, vaccines, general nursing and medicine. Other charges, for example, for certain surgical implants and special equipment, are determined by the medical officer attending the patient as provided under section 2.0(d) in SS No 4 to Gazette No 13/1992. If patients cannot afford the special equipment or surgical implants, they may apply for waiver through the medical social workers, upon whose recommendation grants

could be released from the Samaritan Fund to cover whole or part of the cost involved.

Some public hospitals, that is, former subvented hospitals, have historically applied their own fee structure in respect of medical treatment not covered by the daily maintenance fee. These include itemized charges for admission, surgical operations and drugs. With the setting up of the Hospital Authority and the bringing of all 39 public hospitals under one management, it is necessary to standardize the fee structure so that patients know beforehand with certainty how much they would have to pay for hospital services. The need for rationalizing and standardizing the fee structure in public hospitals is spelt out in the Consultation Document *Towards Better Health* tabled before Honourable Members at the sitting of this Council on 14 July 1993.

Rule 29 of Criminal Appeal (Cap. 221)

18. MR HENRY TANG asked (in Chinese): *Will the Government review the application of Rule 29 of the Criminal Appeal Rules Cap. 221 (relating to suspension of disqualifications) to convictions of Members of the Legislative Council/municipal councils/district boards for corrupt and illegal electoral practices, bearing in mind that a prison sentence in excess of three months for any offence whatsoever will immediately disqualify such members from holding office regardless of whether the conviction giving rise to the sentence is subsequently quashed on appeal?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, under current electoral laws, an incumbent member of the Legislative Council/municipal councils/district boards who has been sentenced to imprisonment for three months or more will immediately be disqualified from holding office. The Administration does not have any plans to change the trigger point for disqualification from one based on sentence to one based on conviction. This is because allowing an incumbent member serving a sentence of imprisonment to retain his seat pending the outcome of his appeal would create considerable uncertainties which would be against the interests of both his constituency as well as the general public. The existing disqualification provisions ensure that such uncertainties will not arise, and is not a pre-judgement of any appeal which the incumbent member may lodge.

Reports on causes of death of patients

19. MR MICHAEL HO asked (in Chinese): *Regarding the incident in which a patient died after undergoing an operation involving implantation of Baruah heart valves at Prince of Wales Hospital in April last year, will the Government inform this Council:*

- (a) *whether investigations into the cause of his death have been completed; if so, what the findings are; if not, what the reasons are; and*
- (b) *of the policy on the publication of such reports on causes of death; and whether the findings of the above investigations will be made public?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Hospital Authority has commissioned an independent inquiry by a visiting cardiologist on all Baruah valve replacements performed at Prince of Wales Hospital. This inquiry concluded that the patients had been provided with proper care and medical treatment, that their consent had been obtained before the operations, and that they had been given a full explanation of the potential risks involved.

As regards the specific incident in question, the family of the deceased patient have been provided with full reasons on the cause of death and a post-mortem report. However, it would not be appropriate to make public these details in the interest of safeguarding the right and privacy of patients.

Operation of clinics

20. MR LAU WAH-SUM asked (in Chinese): *Will the Government inform this Council:*
- (a) *of the respective numbers of clinics exempted under section 8 of the Medical Clinics Ordinance (that is, those already in existence on 5 September 1963), and persons permitted to practise in these clinics;*
 - (b) *of the daily average of patients seeking medical treatment in these clinics over the past three years;*
 - (c) *of the average charges of these clinics (for each patient seeking medical treatment) over the past three years;*
 - (d) *of the legislation and measures in place to monitor the operation of these clinics; and the number of their practitioners who were prosecuted for the breach of the legislation over the past three years; and*
 - (e) *whether reviews are regularly conducted on the role of these clinics and practitioners in the medical and health services of Hong Kong, particularly in the delivery of medical services for the lower-income group; if so, what the findings of the reviews are?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) At present, there are 149 unregistrable medical practitioners practising in 137 clinics exempted under section 8 of the Medical Clinic Ordinance (Cap 343).
- (b) The average number of attendances per year in these clinics over the past three years is about 1 235 000.
- (c) Over the past three years, the average charge per consultation in the exempted clinics, including a two-day supply of drugs, was about \$35.
- (d) The Medical Clinics Ordinance (Cap 343) empowers the Registrar of Clinics (the Director of Health) to exempt clinics established before 1963 from the statutory requirement to employ registered doctors. This allows unregistrable medical practitioners to continue to be employed, but, at the same time, this mechanism brings them under the control of the Authority in order to protect the interests of patients. Practitioners in exempted clinics are subject to a Code of Practice issued by the Registrar regarding mode of practice, scope of functions and standard of conduct. Each exempted clinic is inspected at least twice a year by staff of the Department of Health. No exempted clinic practitioner has been prosecuted in the past three years.
- (e) A review of unregistrable medical practitioners was carried out annually after 1963. However, in December 1984 Members of this Council enacted the Medical Clinics (Amendment) Bill to recognize the role of these practitioners in granting them exemption. In reviewing whether this exemption should be renewed, the Registrar's primary concern is to protect the consumer by ensuring compliance with the Code of Practice.

Statement

Exchange Fund

FINANCIAL SECRETARY: Mr President, on 15 July last year, I broke with the tradition of confidentiality and announced in this Council for the first time the overall size of the Exchange Fund, the amount of foreign currency reserves held and the accumulated earnings. I made it clear that this transparency would continue and that I intended to publish a balance sheet of the Exchange Fund every year.

The audit of the Exchange Fund's 1992 accounts has now been completed, and I am tabling today a balance sheet statement covering the six years from 1987 to 1992, together with supporting explanatory notes.

I am pleased to say that at the end of 1992, the Exchange Fund stood at HK\$287 billion, compared with HK\$236 billion at the end of 1991 — up roughly 22%. Over the same period, accumulated earnings rose from HK\$99 billion to HK\$107 billion, while total foreign currency assets increased from US\$29 billion to US\$35 billion.

I am sure Members will agree that these are very impressive figures. At US\$35 billion, our foreign currency holdings were the 10th highest in the world, compared with a ranking of 12th at the end of 1991. Our *per capita* foreign currency holdings stood at US\$6,000, compared with US\$5,000 at the end of 1991. The corresponding average for the OECD countries has, as a matter of interest, fallen from US\$740 at the end of 1991 to US\$700 at the end of 1992.

Let me stress for the avoidance of doubt, as I did last year, that only the fiscal reserves element of the Exchange Fund is available to be drawn upon, prudently, to meet public expenditure. Members will be interested to know that at the end of 1992, our fiscal reserves stood at HK\$104 billion, of which HK\$96 billion had been placed with the Exchange Fund.

I should also say that the primary role of the Exchange Fund has always been to safeguard our exchange rate stability. It will remain so in the future.

Henceforth, the year-end balance sheet of the Fund will be included, as a matter of course, in the annual report of the Hong Kong Monetary Authority which was established on 1 April this year. The Authority's annual reports will be tabled in this Council.

Motions

COMPANIES ORDINANCE

THE SECRETARY FOR FINANCIAL SERVICES moved the following motion:

"That the Companies (Fees and Percentages) (Amendment) Order 1993, made by the Chief Justice on 28 May 1993, be approved."

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

The Companies (Fees and Percentages) (Amendment) Order 1993, which was made by the Chief Justice on 28 May, increases certain minor fees payable

to the Registrar of Companies in relation to the inspection and photocopying of liquidators' statements sent to the Registrar under the Companies Ordinance. These fees were last reviewed in 1988. We are proposing to revise them by an average of 30% having regard to the increase in the cost of providing these services since that date. The fees will come into operation on 1 August 1993.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

REGISTERED TRUSTEES INCORPORATION ORDINANCE

THE SECRETARY FOR FINANCIAL SERVICES moved the following motion:

"That the Registered Trustees Incorporation (Amendment of Second Schedule) Order 1993, made by the Governor in Council on 22 June 1993, be approved."

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

The Registered Trustees Incorporation (Amendment of Second Schedule) Order 1993, which was made by the Governor in Council on 22 June, increases certain fees payable to the Registrar of Companies in relation to the incorporation of trustees under the Registered Trustees Incorporation Ordinance. The current fee revision takes account of the increase in the cost of providing these services since they were last reviewed in 1988. We propose to increase these fees by around 30% which is consistent with the proposed increase for comparable fees under the Companies Ordinance which were tabled in this Council on 30 June 1993. The revised fees will be implemented with effect from 1 August 1993.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

LEVERAGED FOREIGN EXCHANGE TRADING BILL

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

Second Reading of Bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

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

He said: Mr President, I move that the Criminal Procedure (Amendment) Bill 1993 be read a Second time.

The purpose of the Bill is to implement the recommendations made by the Law Reform Commission in its Report on Bail in Criminal Proceedings. The Law Reform Commission recommended the creation of a statutory right to bail.

It has been the practice of the courts for many years to grant bail pending trial, except where there is good reason not to do so. A good reason to deny bail exists where there are grounds to fear that the defendant will fail to appear at future court hearings, or will commit offences while on bail, or will interfere with the course of justice; and also where the defendant should be remanded in custody for his own protection.

The Bill proposes to give statutory effect to the practice of the courts, and for the first time will create a positive presumption in favour of bail. This will in no way detract from the powers of the court to refuse bail in appropriate circumstances. It will, however, prohibit the arbitrary or unreasonable refusal of bail, and will impose a duty upon the courts to explain the basis on which bail is refused.

The Bill emphasizes the need for the court to consider properly the alleged facts on which objections to bail are based, and provides that conditions of bail may be imposed only where the court considers them to be necessary.

In the vast majority of cases, the issue for the court to determine will be whether the defendant will fail to surrender to custody, commit an offence on bail or interfere with the course of justice. In defining the standard of proof for prosecution objections, the Bill states that the court must grant bail unless it appears to the court that there is an unacceptable risk the defendant will do one or more of those three things.

The proposed presumption in favour of bail will arise only prior to conviction. It will not apply to bail pending appeal, although courts will retain their present discretionary powers to grant bail.

The Bill proposes to abolish the power of courts to take recognizances from bailed persons as guarantees for their future surrender to custody. Instead, a specific offence of failing to surrender to custody is proposed. Existing powers for courts to require cash deposits from defendants, and to require sureties, are retained.

In any case where a person is refused unconditional bail by a magistrate or a District Court judge, the Bill provides that he or she will have the right to apply to a High Court judge who will consider the matter afresh. The Bill in substance repeats the effect of existing law.

The Bill preserves existing powers of arrest without warrant by a police officer where there are reasonable grounds to believe a person has breached or is likely to breach his bail, and also preserves the Attorney General's right to seek a review of bail granted by a magistrate or District Court judge.

For the most part, the courts' jurisdiction to grant bail is not altered. The Bill seeks only to regulate the manner in which courts exercise their discretion. There is one exception. The Bill proposes that the Court of Appeal should be empowered to grant bail or detain a person in custody pending a prosecution or defence appeal to the Privy Council. At present there is no such power.

As I mentioned at the outset, the Bill implements the proposals of the Law Reform Commission. I should explain, however, that although the Commission's recommendations related to bail both by the police and bail by the courts, the Bill relates only to the latter. The reason for this is that a further Law Reform Commission Report on Arrest, Detention, Search and Seizure, published in November 1992 is under active consideration. This deals with police powers generally, and the question of bail by the police is more appropriately considered in that wider context.

Mr President, I commend this Bill to the Council as balancing the individual's right to freedom with the need to protect society against criminals.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

LEVERAGED FOREIGN EXCHANGE TRADING BILL

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to regulate leveraged foreign exchange trading."

He said: Mr President, I move that the Leveraged Foreign Exchange Trading Bill be read a second time. The Bill aims to introduce a legal framework for the regulation of dealings in leveraged foreign exchange contracts in Hong Kong.

The past few years have witnessed an upsurge in the number of companies offering leveraged foreign exchange contracts to retail investors. It is estimated that no less than 200 companies are at present engaged in the business. These companies are not subject to any form of government regulation apart from having to fulfill the initial registration requirements applicable to all companies under the Companies Ordinance. The contracts offered are often highly "leveraged" in nature, which means that investors make only a margin payment

with the potential for very substantial profit or loss when the contract is liquidated. In offering such contracts, a company usually acts as the counter-party taking the opposite position to its clients rather than acting as an agent or broker, although commission and handling charges are also levied. If the price of a currency goes in favour of an investor, a client may liquidate the contract at a profit while the company would suffer a corresponding loss if the contract had neither been hedged nor offset. Malpractices, coupled with bad management, have led to the collapse of some of these companies. In certain cases, it appeared that the companies concerned may have been run with the intention to defraud clients from the outset.

There have been frequent complaints from investors about malpractices by these companies. Most cases are related to a situation under which a client would have to sign an authorization giving discretion to the company to trade on his behalf. A common malpractice is that the company will carry out many more transactions than warranted in a bid to maximize commission charges. Some companies have been reported to have put clients into positions against the market trend so that the companies would make a profit at the expense of the client.

Despite the complaints received, it is difficult to secure sufficient evidence to prove that these companies have dishonestly or recklessly traded their clients' accounts. Some have even routed their deals to overseas sister companies, making it virtually impossible to obtain sufficient evidence to support a prosecution or civil suit.

In the light of this situation, it is considered necessary to introduce a framework to regulate leveraged foreign exchange trading in Hong Kong. There should be stringent requirements in order to provide adequate protection to investors.

The system proposed is basically modelled on that for regulating the stock and futures markets. Companies involved in the leveraged foreign exchange business and their representatives will be required in future to obtain a licence from the Securities and Futures Commission (the SFC). Except for certain exemptions given to authorized institutions and deals conducted under specified circumstances, it will be a criminal offence for anyone to carry on such business without being so registered. The penalty for a breach of this requirement involves a maximum fine of \$10 million and maximum imprisonment of seven years.

In considering applications for licences, the SFC will take into account such considerations as an applicant's financial status, education, other qualifications, ability to act honestly and fairly as well as his reputation, character, financial integrity and reliability. The SFC can suspend or revoke a licence, supervise and investigate licence holders and intervene in the business of a licensed trader where necessary.

The SFC will be able to stipulate stringent requirements on the conduct of market practitioners in the form of rules or guidelines. A minimum share capital requirement will be imposed, at a level envisaged to be slightly higher than that for a deposit-taking company, which is \$25 million at present, so that only larger operators with reasonable financial backing will be eligible for registration.

Since companies offering leveraged foreign exchange contracts already exist, there will be a grace period for them to apply for licences. Those which apply for licences within the period, which will be set for 30 days after the enacted Bill takes effect, may carry on business while their applications are processed. Companies with their licence applications refused should cease operation immediately but will have 14 days to close client positions.

The provisions that I have described represent the major features of the proposed framework, on top of which the Bill also incorporates other investor protection measures including the requirement for traders to pay clients' money into segregated trust accounts, the prohibition of hawking of business and the ability of the SFC to appoint auditors to inspect the books and records of licensed traders.

The Bill imposes comprehensive and stringent requirements on how leveraged foreign exchange trading should be conducted so as to reflect the risk faced by investors. While leveraged foreign exchange contracts can be a legitimate investment vehicle, the nature of these contracts and the volatility of the foreign exchange market together call for tight regulation so as to provide a safer and more orderly environment in which the investing public can have confidence.

Bill referred to the House Committee pursuant to Standing Order 42(3A).

SUPPLEMENTARY APPROPRIATION (1992-93) BILL 1993

Resumption of debate on Second Reading which was moved on 30 June 1993

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

Bill read the Second time.

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

EMPLOYMENT (AMENDMENT) BILL 1993**Resumption of debate on Second Reading which was moved on 2 June 1993**

Question on Second Reading proposed.

MR LAU CHIN-SHEK (in Cantonese): Mr President, I welcome the proposals for strengthening the protection of employees' rights and interests as set out in the Employment (Amendment) Bill 1993. Yet, I think the protection is still grossly inadequate and it is necessary to review the Bill again promptly and make exhaustive amendments.

No protection for the right of reinstatement

Firstly, the proposed amendments will confer power upon the Court to rule that employees may be given compensation if they are dismissed after giving evidence against their employers in proceedings. Apparently this will give a greater degree of protection to employees, who give evidence in court, by enabling them to receive compensation. However, employees who are dauntless enough in giving evidence in the Court against their employers, in fact, will not get any compensation if they lose their job as a result. As the Administration's original intention of formulating the Bill is to provide employees who give evidence with job protection, the law should vest the Court with power to rule that such employees may resume duty or receive compensation at their own choice if and when they are dismissed unfairly.

The protection scope should be enlarged

In addition, I would like to point out that the protection for employees who give evidence as proposed in the Bill will only safeguard employees from being sacked but not from being "racked". Racking takes the form of, among others, transfer of duties, assignment of difficult tasks and freeze of wage adjustments. These methods can invariably force employees to resign voluntarily while the employers need not have to make any severance payment at all. The so-called protection is, after all, obviously inadequate.

Apart from inadequate protection, I think the Government should also make a review of the Bill and explain why it is only proposed in the Bill that protection be given to employees who give evidence in Court proceedings but not to employees who are on the rack as a result of their taking part in trade union activities. This is extremely unreasonable to employees who have joined trade unions.

The enactment of unfair dismissal law

In order to effectively give real protection to employees against any unreasonable racking or dismissal (no matter whether it has to do with an employee who has given evidence or who has taken part in trade union activities), the Administration should expeditiously enact a piece of foolproof law governing unfair dismissal to ensure employees' right to resume duty or receive compensation.

By the way, the Government has, in response to the industrial action staged by the Cathay Pacific staff early this year, undertaken to review labour legislation, Ordinances found to be discriminatory against trade unions, the law on unfair dismissal and so forth. I hope the Government could complete the review as soon as practicable and put forward further proposals on the protection of employees' rights and interests.

Amendment to the definition of underemployment

Another amendment to the Bill is about the definition of "lay off". The purpose is to prevent an employer from forcing his employees to take annual leave when the business is dull and thus to ensure that employees will not lose their right to take annual leave and will be able to ask for severance pay on the grounds of underemployment. The proposed amendment will do away with the grey area in the definition of "lay off" and I think it deserves this Council's support. However, in order to further safeguard workers' rights and interests, I think the Government should consider changing the minimum number of days for which employers must provide work for employees from 12 days to at least 16 days in a period of four weeks, so as to enhance the protection for workers in respect of this minimum number of days to provide work and provide more effective safeguard to employees' well-being.

Mr President, with these remarks, I hope the Government would earnestly consider my proposals. Thank you.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I am grateful to Members for their support of this Bill.

I have noted the points raised by Mr LAU Chin-shek on further measures to protect the interests of workers. Mr LAU asked that further protection be given to dismissed workers who have given evidence against their employers such as inclusion of a provision on reinstatement, and that similar protection of awarding compensation and allowing reinstatement should be given to employees who are dismissed for taking part in union activities.

We have taken careful note of these points and will include them in our current review.

As regards the suggestion of stipulating a minimum number of normal working days provided by employers in order to safeguard the interests of workers, this is a separate issue which would require careful consideration. I will ensure that this matter is taken further by the Administration.

Thank you.

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

Bill read the Second time.

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

AMUSEMENT GAME CENTRES BILL

Resumption of debate on Second Reading which was moved on 14 October 1992

Question on Second Reading proposed.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the Amusement Game Centres Bill seeks to establish a new scheme for licensing amusement game centres. At present, the operation of amusement game centres is controlled by provisions set out under the Miscellaneous Licences Ordinance and the Miscellaneous Licences Regulations. The Commissioner for Television and Entertainment Licensing is the licensing authority for the issue of amusement game centre licences.

Under section 3 of the Ordinance, the Governor in Council may by regulation provide for the form and conditions of any licence granted under the Ordinance. In 1990, the Court of Appeal held that a licence condition was *ultra vires* and thus invalid because it was not made by way of regulation. In the light of that judgement, it was found that the majority of the licence conditions are tainted with the *vires* problem and are unenforceable. It is therefore necessary to establish a new scheme to regulate amusement game centres.

The Bill was introduced into this Council on 14 October 1992. A Bills Committee of 11 Members was formed and commenced scrutiny of the Bill on 23 April 1993. Altogether we held six meetings, including four with the Administration. We met representatives from the Licensed Amusement Game Centres Trade Association Limited. We also visited three amusement game centres and considered submissions from the Association and the Kwai Tsing Branch of the United Democrats of Hong Kong. As Chairman of the Committee, I would like to take this opportunity to thank my colleagues in the Committee for the time and effort they put in the discussion, the Administration

for their co-operation and the interested organizations for submitting their views and taking part in our deliberation.

Mr President, I now come to the main issues considered by the Committee.

The Committee has doubts as to whether vending machines would come within the scope of control of the Bill. The Administration explains that it is not intended to control vending machines which are designed for sale of articles rather than for entertainment and do not involve the element of chance or lucky draw. However, in view of the rapid evolution of amusement game machines, flexibility has to be provided in the Bill to encompass all forms of new machines. The Committee has accepted this explanation.

On the other hand, the Committee considers that shops selling computer software and offering customers the opportunity to play computer games should be controlled. The Administration confirms that such shops would be required to obtain a licence under the Bill but this is not likely to be approved.

Another point raised by the Committee is the Commissioner for Television and Entertainment Licensing's power to suspend, revoke or refuse to renew a licence. To address this concern, the Administration has drawn up guidelines to this effect. The Administration also explains that any person aggrieved by the Commissioner's decision may lodge an appeal with an independent Appeal Board.

The Committee has also discussed the proposed licensing policy and licensing conditions, including the location criteria, hours of operation, spacing requirement and the maximum number of persons that should be allowed in an amusement game centre. However as they do not form part of the Bill, it is recommended that the appropriate Legislative Council panel will follow up on the matter.

On the question of liability of employee and licensee, the Committee considers to be unreasonable the provision which renders any employee liable to prosecution in the same way as the operators are liable. The Administration explains that one of the major objectives of the Bill is to ensure that genuine offenders can be brought to prosecution and assures the Committee that prosecution action would only be taken against an employee when it is reasonable and within legal limits. Despite this assurance, the Committee is of the view that the provision is too broad and may cause unnecessary disturbance to innocent employees. After discussion, it is agreed that the relevant provision will be deleted. The Administration will move the necessary amendment at the Committee stage.

Another point of concern expressed is that the offence for contravening the age restriction in respect of children centres appears to be draconian since "lack of knowledge" would not be a defence. After discussion, the

Administration agrees to amend the provision to provide for reasonable defence for the inadvertent intrusion into children centres. Moreover, guidelines on the enforcement of the provision have been drafted to require the law enforcement officer to provide advice and warning to the persons concerned before possible prosecution against them can be considered. This amendment will also be moved by the Administration at the Committee stage.

Another major point which has been raised is whether the cut-off age for children and adult centres should be set at 18 instead of 16 to maintain consistency with the Film Censorship Ordinance and to enable a more relaxed vetting criteria for games played at these centres. The Administration explains that the age limit of 16 has been in use for over 10 years. Feedback from the public, including the Central Committee on Youth, the Hong Kong Council of Social Service and district boards, indicates that there is a need to protect those aged under 16 from violent and indecent games, as well as harassment by the older youths and adults and that the retention of the existing age limit is widely supported.

Moreover, amusement games are a unique form of entertainment. Being highly interactive in nature and coupled with the physical environment in which they are played, amusement games have a strong effect on the players. The film classification system is not applicable to this form of entertainment.

The Administration further explains that the policy is to ban excessively violent games and those containing graphic sexual or gambling activities. This view is strongly supported by the public and the district boards. In this connection, vetting criteria for games played in adult and children centres have been drafted to tighten up the standards.

After detailed discussion, the Committee agrees that 16 should be used as the cut-off age.

Concern has also been expressed over the power of forfeiture in relation to minor offences. Subsequently, the Administration agrees to amend the provision by replacing "court shall" by "court may" to clarify that the court has the discretion to order forfeiture based on the circumstances of each case. Guidelines have been drawn up to the effect that forfeiture will not be automatic but has to be applied for by the prosecution and the circumstances under which an application will be considered are limited to the operation of unauthorized machines or devices. The Committee agrees with the amendment. It will be moved by the Administration at the Committee stage.

Mr President, after enactment of the present Bill by this Council, I believe that order as needed will be restored to the amusement game centres, that greater safety protection will be accorded to those playing amusement games within the centres, that children under 16 will be shielded from the adverse effects of violence and sex, that the nuisance caused to the neighbourhood by

children's amusement games will be mitigated and that the unlicensed operation of amusement games in certain shops will be stopped.

With these remarks, I support the Bill.

MR SIMON IP: Mr President, I wish to speak against clauses 4(4) of this Bill.

The clause provides that a first-time offender for operating an amusement game centre without a licence shall be liable to be punished as if he is offending for a second time if another person had been convicted of the same offence in relation to the same premises within three years prior to his conviction, unless he proves that he did not know and had no reason to suspect that another person had been so convicted.

The clause as it stands raises obvious Bill of Rights questions. The Government justifies the clause by reference to the policy objective of prohibiting the operation of amusement game centres without a licence and to prevent illegal operations through the use of different persons as operators.

However, if this is the evil that the Government seeks to remove, then clause 4(4) is in my opinion misconceived. The proper way to combat the problem is to devise ways to strike at those masterminds behind the illegal enterprises. To impose heavy penalties on the "pawns" who are merely put up as "front-men" will not solve the problem.

For these reasons, I consider the proposed clause a disproportionate and irrational response to the policy objective of prohibiting the operation of amusement game centres without a licence. It is illogical, unfair and unjustified. I will, therefore, support the Committee stage amendment to be moved by the Honourable James TO that clause 4(4) be deleted.

MR JAMES TO (in Cantonese): Mr President, I have a few points to make in respect of the Amusement Game Centres Bill. First of all, as Mr Simon IP has just pointed out, clause 4(4) provides that a first-time offender for operating an amusement game centre without a licence shall be liable to a heavier penalty as if he is offending for a second time if another person had been convicted of the same offence in relation to the same premises within three years prior to his conviction. The problem is that a person is liable to a heavier penalty not because he has committed the same offence again but because somebody else has committed the offence in the same place. I think such a policy is unfair.

Secondly, the spirit behind clause 4(4) comes close to presuming that the person concerned committed an offence before, and he is now a second offender. The Administration has explained that the clause seeks to strike at those masterminding the operations behind the scenes. But I wish to point out that if the Administration can step up its efforts in prosecution and intelligence

gathering, and make use of pardoned witnesses, that will encourage those who have committed the offence of operating an amusement game centre without a licence to testify against those masterminding behind the scenes, or testify in relation to the offence of conspiracy or abetting or counselling. The result will be even better. Besides, this proposed clause may be in breach of the principle of the presumption of innocence.

Thirdly, to require a first-time offender for operating an amusement game centre without a licence to prove that he did not know and had no reason to suspect that another person had committed the same offence in the same premises within three years prior to the commission of the present offence places a heavy burden of proof on the defendant. The main point is that we do not have a record system that records all the premises where the offence of operating an amusement game centre without a licence has been committed. Anyone who has infringed the law or has done something wrong should be punished accordingly. But as there is no way to know or verify the situation, then how can any particular person concerned prove that he did not know and had no reason to suspect that another person had committed that same offence in the premises concerned?

For these three reasons, I think that this clause 4(4) should be removed. I will move an amendment to this effect at the Committee stage.

As far as punishment is concerned, the Administration's intention may be based on the presumption that a heavier punishment can be meted out to those masterminding behind the scenes. I wish to analyze this point in more detail. Firstly, assuming there is a boss behind the scenes ordering different persons to operate an amusement game centre without any licence, then even if one of his people is committing the offence concerned for a second time, the maximum penalty will only be \$200,000. But according to subclause (4)(c) of the same clause 4, even a first-time offender is already liable to a fine of \$20,000 for each day during which the offence continues. In other words, if he is caught by the police after operating in certain premises for 10 days, he is already liable to the maximum fine of \$200,000, and there will be no need to consider this assumption. Besides, the boss behind the scenes will surely be disgruntled at the heavier fine, but the one who is exploited will have to serve a longer sentence of imprisonment just because someone else committed the same offence before in the same premises. As far as a system is concerned, this is unfair, because the boss will not go to prison to take the place of the small fry.

Another point I would like to talk about is the difference in punishment between clauses 4 and 20. Clause 4 provides against operation without a licence and clause 20 against breach of the provisions or conditions of a licence. I think the two are different offences with a difference in seriousness. In terms of maximum penalty, clause 4 provides for a fine of \$200,000 for operation without a licence while clause 20 provides for a fine of \$100,000 for breach of the conditions of a licence. However, we find that the two clauses provide for the same maximum of imprisonment terms as both provide for a maximum of

six months' imprisonment for first-time offenders and one year for second offenders. I think that if different punishments are to be set for offences of different seriousness, then it should not be just a difference in fines, the maximum terms of imprisonment should also be different. I hope that the Administration can seriously review the situation after having enforced the provisions concerned to see whether appropriate amendment is required as regards the maximum terms of imprisonment provided under these two clauses.

Finally, I must say that I am happy to see the passage of the Amusement Game Centres Bill, and I believe that Members would all hope that the Administration would do its best in enforcing the Ordinance. However, I am a little bit worried and hope that the Administration can give us an assurance as far as resources are concerned. The reason is that the offences in relation to pornographic articles, amusement game centres and the like, which used to be handled by the Television and Entertainment Licensing Authority with the aid of divisional police forces, have always caused me worries. In respect of pornographic articles, many district police commanders do not give any priority to taking actions against these articles. I do not understand why, but I have actually learned through an indirect channel and from two police commanders that this is in fact the case. As the Television and Entertainment Licensing Authority is the department responsible for enforcing the Obscene and Indecent Articles Ordinance and the Amusement Game Centres Ordinance, I hope that the Authority can do its best to ensure that the newly passed Ordinance is fully enforced in order to protect our social order, especially where problems concerning law and order and adolescents exist.

Thank you.

SECRETARY FOR HOME AFFAIRS: Mr President, I am most grateful to the Honourable FUNG Chi-wood and his colleagues on the Bills Committee to Study the Amusement Game Centres Bill for their wise counsel and the considerable time they have spent in examining this Bill.

The Amusement Game Centres Bill seeks to establish an effective regulatory regime for licensing amusement game centres.

In the course of their deliberation, members of the Bills Committee sought assurance that its scope is wide enough to control peripheral activities, such as the operation of vending machines and computer software sales.

As we have explained to the Bills Committee, the primary purpose of a vending machine is for the sale of merchandise rather than for providing entertainment. Furthermore, the element of chance is absent. It is therefore not our intention to control vending machines under this legislation.

With regard to computer software vendors, if they provide amusement games on their premises at a charge, they will be required to obtain an Amusement Game Centre Licence. However, those computer software vendors who sell software for private use would not be required to do so.

The Licensed Amusement Game Centres Trade Association Limited objected to the proposal to establish 16, instead of 18, as the cut-off age for the purpose of admission into adults' and children's centres. They argued for the adoption of a system similar to that used for the classification of films, which provides for a cut-off age at 18.

Amusement games and film viewing are two different forms of entertainment. The physical environment in which amusement games are played, the degree of participation by players and the interactive nature of modern games have made them a unique form of entertainment which should not be compared with film viewing or other forms of entertainment. For the same reason, the grounds for providing extra protection to those admitted to children's centres and to free them from harassment by others who are older are that much stronger. We have taken public sounding on what the cut-off age should be. I am pleased to confirm that the age of 16 stipulated in the Bill is a popular choice, both with the members of the Bills Committee and also with members of the public.

Some Members have raised concern over possible abuse of enforcement provisions. I would like to reassure members that the Licensing Authority will take a number of administrative measures including advisory letters and warning letters before prosecution actions are resorted to. Prior to the suspension or revocation of licences, operators will be invited to make representations. In addition, enforcement guidelines will be drawn up between the Television and Entertainment Licensing Authority and the police. The trade and any other interested parties will be fully informed of the details of the guidelines before they are brought into operation.

Mr President, with these remarks, I recommend to Honourable Members the Amusement Game Centres Bill subject to the amendments to be moved at the Committee stage.

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

Bill read the Second time.

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

IMPORT AND EXPORT (AMENDMENT) BILL 1992**Resumption of debate on Second Reading which was moved on 25 November 1992**

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

Bill read the Second time.

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

FILM CENSORSHIP (AMENDMENT) BILL 1993**Resumption of debate on Second Reading which was moved on 24 February 1993**

Question on Second Reading proposed.

MR TIMOTHY HA: Mr President, this Bill has a history which is well known to members of the former Legislative Council ad hoc group to study the Control of Obscene and Indecent Articles (Amendment) Bill 1991. At that time, the Administration attempted to plug an existing loophole in the law by proposing to place films, which were classified under the Film Censorship Ordinance (FCO) under the regulation of the Control of Obscene and Indecent Articles Ordinance (COIAO) when they were released as videotapes and laserdiscs. Members of the previous ad hoc group considered that the Administration's proposal might lead to a system of double standards and suggested that videotapes and laserdiscs made from a classified film should also be subject to the FCO so that one set of standards would be adopted in classifying the same film, whether for exhibition or for publication.

The Film Censorship (Amendment) Bill 1993 seeks to achieve the above purpose. The Bill proposes that a film be deemed to be approved for publication as a videotape or laserdisc if there is a certificate under the FCO regarding its exhibition in cinemas. The Bill also proposes to increase the maximum cash penalty for various offences.

A Bills Committee was set up to study the proposed provisions of the Bill. Four meetings had been held and the Administration had participated in all of them. Members had received a representation from the Hong Kong Theatres Association who objected to the increase in the maximum cash penalty for exhibiting Category III films to persons under the age of 18 and the existing provision in section 20 of the Ordinance which imposes the offence and penalty one-sidedly on cinema operators but not the underaged watchers.

The Bills Committee deliberated in great detail on the appropriate level of the maximum cash penalty and had taken into consideration the effectiveness of the penalty's deterrence at its current level, the views received, the inflationary considerations since the penalty was first introduced in 1988 and the relativity among the different levels of penalties for offences of a similar nature and so forth. The Bills Committee also received views from the Attorney General's Chambers. It was pointed out that there had been no sign of decline in the number of breaches and prosecutions. The number of Category III films being shown in Hong Kong was in fact increasing. If the penalty was not to be increased, a wrong message might have been sent not only to the film industry but also to the public. Some members supported the proposed increase of fines but some others were of the view that the increase should be deferred until a comprehensive review was completed. After lengthy discussion, members of the Bills Committee finally agreed with the Administration's proposal to increase the maximum cash penalty from \$10,000 to \$50,000.

On the question of taking appropriate measures to deter deliberate underaged Category III filmgoers and to impose criminal liabilities on those who aided and abetted underaged persons to watch Category III films, the Administration explained that one of the main objectives of the legislation was to protect young people from having access to Category III films. Therefore, criminal responsibilities should not be imposed on them. The possibility of being summoned as a witness to appear in court would be, in itself, a deterrent to the underaged. A publicity campaign would be launched to coincide with the enactment of the amending legislation to cover all aspects of the responsibility of adults. Members shared the views of the Administration that the taking of any deterrent measures on the underaged should be handled with extreme care. Due regard should be given to the possible adverse psychological impact on the young people if it became mandatory to issue warning letters to their parents. They also appreciated the practical difficulty of creating an offence in the law against the purchase of Category III film tickets by an adult for the use of an underaged person.

Members were concerned about the views expressed by the cinema operators that the law, as now written, created a lot of enforcement difficulties on theatre and cinema operators in order to comply with the law, despite the fact that they had taken all reasonable precautions to prevent the exhibition of a Category III film to persons under the age of 18. The Administration, therefore, was of the view that the operators should have sufficient ability to distinguish an underaged person. Although prosecution action could theoretically be initiated whenever a cinema was found exhibiting a Category III film to a minor, in actual practice, the Television and Entertainment Licensing Authority would only consider initiating prosecution after issuing two warning letters to the same cinema. If no further contravention was detected during the two years after the issue of the two warning letters, the warning letters would be regarded as invalidated. I am glad that at the suggestion of members, the Administration has agreed to formalize the existing warning system.

The issue of political censorship as provided in existing section 10(2)(c) of the Ordinance was raised by some members of the Bills Committee. They felt that such provision was incompatible with the Bill of Rights and the opportunity should be taken to remove it from the law. The Administration explained that a series of in-depth legal consultations had been conducted and it was concluded that such provision was not incompatible with both the International Covenant on Civil and Political Rights and the Bill of Rights Ordinance. Most members of the Bills Committee agreed that further discussion of the issue should be pursued in the Recreation and Culture Panel as well as the Constitutional Development Panel.

We look forward to a comprehensive review to be conducted by the Administration to study the feasibility of industry self-regulation to replace the existing censorship system, the enforcement problems faced by the cinema operators and so forth. With the enactment of this Bill, we sincerely hope that our young people would be better protected from the questionable influence of videotapes and laserdiscs made from Category III movies.

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

MRS SELINA CHOW (in Cantonese): Mr President, I believe that nobody will be against the spirit of the law in respect of introducing the three-tier classification system for film censorship to protect the young and immature from undesirable influence of films. The existing legislation was passed in 1988 and I pointed out in this Council at that time the unfair situations that might arise in the course of enforcement of the law. Unfortunately, the enforcement problems now reported are precisely those I pinpointed then. At that time, the Secretary for Home Affairs said repeatedly that if the cinema operators feared that the regulation of the exhibition of Category III films would give them troubles, they might simply stop exhibiting Category III films. When the Bills Committee met to discuss the Bill recently, some members still were found to hold some misconceptions about the present situation. There is a common view among them that Category III films are invariably pornographic pictures. This is not the case. As a matter of fact, none of the cinemas solely exhibiting sex films has ever been prosecuted or warned under the law. It is the ordinary cinemas exhibiting Category III films containing foul language or violence, which run into trouble. In view of today's keen competition due to limited supply of films and many cinemas in the market, cinema operators often have no alternative but to exhibit such kind of Category III films.

This piece of legislation is basically not equitable in the sense that young people under 18 are not legally liable when they are found viewing a Category III film and the legal liability lies in the cinema operator. Nevertheless, I admit that it is sensible that criminal proceedings should not be instituted against young people involved, in particular when the existing legislation aims at protecting these young people.

Meanwhile, the common practices of censor inspectors at present are open to question. Firstly, the inspectors do not take action when the underaged go inside a cinema to view a Category III film but choose to intercept them when they leave the cinema after viewing. Such a practice is in breach of the spirit of the law. Secondly, the inspectors usually take statements from the young people on an one-to-one basis. It will, on the one hand, make one doubt whether the statements are taken in an unbiased and fair manner. On the other, one cannot help wondering whether such a practice could achieve any educational or cautionary purposes, and whether these young people know that they should take some of the blame. Thirdly, the inspectors record the cinema managers' statement by means of a statement form with questions arranged in a leading manner. I wonder if such a practice has any legal basis. Anyway the statement may be admitted as evidence in court. These practices aside, there are some practical difficulties, for instance, when the audience rush in all at a time, it will make ticket inspection difficult to carry out. Furthermore, some underaged youth would make deliberate attempts to violate the law. They are generally rather rebellious in nature and are hostile towards the ticket inspection staff. This is a real headache to cinema operators. Cinema operators have approached the Government many times in a bid to work out positive measures to bar the young people from entering a cinema to view a Category III film. Measures taken include: cinema operators have taken the initiative to produce a new warning filmlet to replace the existing one which is a less effective API produced by the Government; posters have been designed to discourage young people from viewing such films. It is also proposed to deter the young people from viewing such films by installing cardboard censor inspectors. However, the Government has yet to give a response to the proposal of the display of such cardboard censor inspectors. Some colleagues may find such a proposal ineffective. But it seems that the Government shows an interest in this idea. At any rate, the Government has failed to give a reply.

I hold that it is an important principle that in the course of law enforcement, efforts must be made to ensure that young offenders realize that although not legally liable, they are, in a certain extent, responsible for their action because they elect to view that sort of films. Besides, the offender's parents or guardians must be present when an inspector takes the statement. This will certainly produce some deterrent effects and prevent them from committing the same.

In view of the circumstances mentioned just now, the Recreation and Culture Panel of this Council is going to carry out an in-depth study to see what improvements could be made. I did not agree to a raise of the fine by five-folds before the completion of the in-depth study. But since the fine imposed on the relevant offences in the context of videotape will amount to \$200,000, which is much higher than the original \$10,000 fine applicable to similar offences in the context of cinema operators, I support the decision of the majority in the panel because the \$10,000 fine is indeed too low. However, while accepting the decision, I strongly urge the Government to carry out a review and make rectification to eliminate such discrepancy.

MISS EMILY LAU: Mr President, as a member of the International Board of Article 19, let me declare my opposition to censorship. In section 10 of the Film Censorship Ordinance, we see a perfect example of the Administration taking upon itself a task, which, in a free and liberal society and one which proclaims itself to be *laissez-faire*, it has no business to perform.

Censorship of films as practised in Hong Kong prevents adults from exercising their free choice and is based on the notion that they are unfit or cannot be trusted and have not the right to make that choice for themselves. As legislators, Mr President, are we not insulting those whom we represent by saying they are not capable? And if we consider that they are so incapable what does that make us, their chosen representatives — the voluble elected by the irresponsible? Mr President, we deprive the adults of the right to take responsibility for their own actions in a matter which should be one of personal choice. Upon what grounds? The only grounds permitted as restrictions upon the right of every person to receive information and ideas of all kinds through the medium of his or her choice under Article 16 of the Bill of Rights Ordinance which is Article 19 of the International Covenant on Civil and Political Rights should be that such restrictions must be, Mr President, provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security, public order, and public health or morals.

Instead of provisions laying down clearly and objectively what may or may not be seen as the Bill of Rights requires and as should be the case in a society which claims to value the rule of law, we have a system which rest on the subjective views of persons dignified with the title "Censor". A censor assigned to view a film is required to form an opinion whether it is or is not suitable for exhibition, and on his opinion rests the decision whether approval will or will not be granted for the exhibition of that film. The censors decide what we may see and what we may not see. We even have to pay them to wield the scissors on our behalf. This is not the rule of law, Mr President, but rule by man.

The Bill of Rights Ordinance only permits restrictions which are necessary for the protection of those matters which I have already mentioned. It is intended to have primacy over all laws passed in Hong Kong. Yet all that the censor is required to do under section 10 is to take into account Article 19 of the International Covenant on Civil and Political Rights. In deciding whether to permit or refuse the exhibition of a film or in deciding what to cut, the censor is not even required to base a decision on what is necessary for the protection of those matters.

Mr President, the Administration would have us believe that the provisions of section 10 of the Film Censorship Ordinance are in conformity with the requirements of the Bill of Rights Ordinance. Hence the Government has refused to use this occasion to amend section 10, particularly subsection (2)(c) which provides for political censorship. I deplore the Government's decision, Mr President. Under this subsection a film could be

banned if there is a likelihood that its exhibition would seriously damage good relations with other territories. As we all know, this mainly refers to the People's Republic of China. Mr President, how can such an arbitrary system of censorship, which is based on the subjective view of one or two persons, possibly conform with the Bill of Rights Ordinance. The absurdity of the task which the censor is called upon to perform is plain for all to see in subsections (2) and (3) of section 10. Is he a sociologist, a psychologist, a teacher, an artist, a writer, a scientist, a legal expert specializing in human rights law and diplomat all rolled into one? I am willing to bet not; yet that is what section 10 requires him to be. To be fair, Mr President, the censor is not obliged to carry this heavy load all on his own. Section 10 subsection (6) requires him to consult with another group of people culled from the great and the good, or possibly those who are hard put to know what to do with themselves on a wet weekday afternoon but only if they have been assigned to see the film! However, it does not require the censor to take the least bit of notice of what they say, and there is a special provision enabling consultation with the New China News Agency when the censor has difficulty in deciding whether the exhibition of a film could seriously damage good relations with other territories. But the censor, of course, can disregard New China News Agency's views as well, at least in theory.

So, Mr President, what kind of film is it that the exhibition of which is likely to seriously damage good relations with other territories? If the reaction of the Thai Government to the association made in an English language dictionary between Bangkok and prostitution is anything to go by, the answer, Mr President, is probably that which contains at least an element of truth. When a censor has to come to the conclusion that the film contains one or all of the nasty or naughty bits referred to in subsection (2), there is nothing which requires the censor to have regard to whether what is portrayed in it is true. Truth, it seems, is not a redeeming feature unless it is masquerading under another name such as "artistic", "educational", "literary", or "scientific merit" or the accumulation of "likelies" under subsection (3)(a). Section 10, Mr President, is the hallmark of a society that is afraid of ideas, of diversity and difference and, most of all, afraid of truth. If that is what we wish to be, let us leave that section in the law. But I have one small suggestion, Mr President, that should appeal to the Financial Secretary. Since we appear to be paying good money to people who have no qualifications or expertise to perform the role of censors, why does the Administration not consider the great potential which exists for raising revenue by offering the post of Censor of the Week to the highest bidders? I am sure there will be members of the public who would pay to do the job; the job would be done, no doubt, just as efficiently and with financial benefit to the community. Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, the arguments Miss Emily LAU made just now are very exhaustive and persuasive. I totally agree with her. It is hoped that the Government will give these views serious consideration and make a reply to the Recreation and Culture Panel.

I had made a point of consulting the legal adviser to see if an amendment can be made to the provisions on political censorship. However, the answer was that the amendment did not fall within the scope of this Bill. And it was, therefore, impossible to do so, technically speaking.

I would also like to respond to some of Mrs Selina CHOW's views. She mentioned just now that some inspectors should intercept the minors at the backdoor of the cinema exhibiting Category III movie, took their statements and then prosecuted the cinema operator. I take exception to her view. Firstly, the spirit of the existing law requires cinema operators to inspect and refuse the entry of minors whereas inspectors of the Television and Entertainment Licensing Authority (TELA) are responsible for law enforcement to see if cinema operators have fulfilled their duty to inspect and refuse the minors' entry. In other words, cinema staff and TELA inspectors have different duties. We cannot ask the inspectors to apprehend the offenders at the backdoors of the cinemas. It is because such action involves prosecution and evidence gathering. And it is impractical to assign an inspector to each cinema to assist the cinema operator in turning away minors or carrying out inspections. Such an arrangement is putting the cart before the horse, as it were. I do not find it necessary to mobilize so many TELA inspectors to assist cinema operators in fulfilling their legal obligation. I must say that Mrs Selina CHOW and I do not see eye to eye on that point as a result of a different interpretation of the spirit of the law.

I am looking forward to participating in the review on the effectiveness of the Ordinance so that I may expound my views on this aspect again.

Thank you, Mr President.

SECRETARY FOR RECREATION AND CULTURE: Mr President, I would like first to thank the Honourable Timothy HA and members of his Bills Committee for the thoroughness and hard work they have put into the examination of the Film Censorship (Amendment) Bill 1993. As pointed out when I moved the Second Reading of this Bill on 24 February, this Bill was drawn up to meet Members' wishes that in the interest of maintaining uniformity of treatment and standard, the censorship of films, and videotapes and laserdiscs made from such films, should be placed in the hands of one single authority, namely the Film Censorship Authority. I am pleased to note that the Bills Committee after careful and thorough examination, is now satisfied that the Bill will achieve this objective.

In the course of examining this Bill, both the Bills Committee and the Administration have raised a number of related issues which I now wish to address.

The first issue concerns the proposal in clause 11 of the Bill to increase the fines for exhibiting a Category III film to a person below 18 years of age from \$10,000 to \$50,000. Members have generally agreed that the penalties for this offence must be set at a realistic level to achieve the desired deterrent effect. Having regard to a number of factors, including inflation, the warning system introduced by the Film Censorship Authority before taking prosecution action, and the past trend on offences committed, I consider that this proposed increase is fair and reasonable to achieve the deterrent effect desired. The Hong Kong Theatre Association, however, raised strong objections, arguing that it is difficult for them to enforce this provision and that the young persons themselves should bear some of the responsibilities.

In response to the Association's objections, I would say that the Authority fully appreciates the enforcement problems faced by cinema operators. In recognition of this, the Authority has adopted a warning system whereby it will not initiate prosecution when an offence is first detected. Instead, a warning letter is issued to remind cinema operators of their legal responsibilities. The Authority will only prosecute when an offence is detected on a third and subsequent occasion. To ensure that such warning letters will not hang over the heads of a cinema operator forever, such letters will be invalidated after two years if during that period the cinema operator has not been found to have committed a further breach. The Authority will be formalizing this arrangement to give cinema operators clarity and certainty.

On the second point raised by the Hong Kong Theatre Association, I am against holding underaged persons viewing Category III films liable for prosecution. One of the fundamental principles of introducing the three-tier classification system for film censorship in 1988 is to allow adults the freedom to access a wider choice of films while protecting young persons under the age of 18 from being corrupted by such films. The spirit of the law is to protect the young and immature from undesirable influence. It is therefore inappropriate to punish the very persons for whose protection the law is designed. I consider that the present practice of giving verbal warnings to minors when found viewing a Category III movie, and the possibility of requiring them to appear as witnesses in court should serve as adequate deterrents to the youngsters.

This matter has been very thoroughly considered by the Bills Committee and I am grateful for the Committee's support.

Another issue raised by members of the Committee and which has been strongly voiced by the Honourable Emily LAU concerned section 10(2)(c) of the Film Censorship Ordinance. They have asked for this provision to be repealed on grounds that it is incompatible with the Bill of Rights Ordinance. Section 10(2)(c) sets out that a film might be censored if it seriously damages good relations with other territories. Let me say that this issue was thoroughly debated when the Film Censorship Ordinance was first enacted in 1988. Since then, the provision has been kept under constant review. The legal advice given during such reviews is that the provision is not incompatible with the

International Covenant on Civil and Political Rights or with the Hong Kong Bill of Rights Ordinance. There is therefore no need, in the Administration's view, to repeal this provision on Bill of Rights grounds. Nevertheless, I accept that the issue should be kept under review and I would be happy to discuss this matter further with the Recreation and Culture Panel of this Council in future.

A third issue raised by some members of the Bills Committee concerns the feasibility of replacing the present film censorship system by a system whereby the film industry exercises self-regulation. Personally, I do not consider that Hong Kong is ready to adopt a system of industry self-regulation as practised in the United States and Japan. The film industry in Hong Kong, although booming, still lacks cohesion and a strong organization for it to be charged with this very sensitive, onerous and at times highly controversial task. Furthermore, the Hong Kong public still looks to the Government as the proper guardian of public morals. However, I shall be happy to examine this idea further in consultation with the Recreation and Culture Panel of this Council and the film industry.

Finally, some members have expressed concern over the corrupting influence of the rather explicit pictures and wordings appearing on the package of videotapes and laserdiscs. I share this concern and shall be proposing a Committee stage amendment to tackle this problem. I propose to include a new section 15AA requiring the packaging of videotapes and laserdiscs made from all Category III films to be submitted to the Film Censorship Authority for scrutiny. After considering the content and nature of the packaging, the Authority may require the videotape or laserdisc to be enclosed in an opaque wrapper. A certificate will be issued regarding the packaging submitted and any person who publishes or displays such packaging without a valid certificate commits an offence and is liable to a fine of \$50,000 or imprisonment of six months. A statutory defence will be created for the defendant if he has reasonable grounds to believe that a valid certificate is in force when he displays or publishes the packaging.

Mr President, with these words, I recommend the Bill to Members subject to the amendments I shall move at Committee stage.

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

EMPLOYMENT (AMENDMENT) BILL 1993

Clauses 1 to 9 were agreed to.

AMUSEMENT GAME CENTRES BILL

Clauses 1 to 3, 7, 8, 10 to 15, 17, 18, 22 and 24 to 26 were agreed to.

Clause 4

MR JAMES TO (in Cantonese): I move that clause 4 be amended as set out in the paper circulated to Members. I have already given the reasons for my amendment during the Second Reading. And I was informed by the Administration that there was no objection to my amendment.

Proposed amendment

Clause 4

That clause 4 be amended —

- (a) in subclause (3), by deleting ", subject to subsection (4),".
- (b) by deleting subclause (4).

Question on the amendment proposed, put and agreed to.

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

Clauses 5, 6, 9, 16, 19 to 21 and 23

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 16 deals with the liability of the licensee and his employees for the operation of amusement game centres. As the objectives of the Bill and the enforcement action can be achieved without this clause because similar provisions have been made in clauses 4(1) and 20(1), clause 16 can be deleted.

Under clauses 20(2) and 20(3) of the Bill the expression "adduces evidence which" may be interpreted as being in conflict with Article 11 of the Bill of Rights in respect of the presumption of innocence. It is, therefore, proposed to delete this expression in order to put the matter beyond doubt.

Clause 21(3) is amended to provide for a reasonable defence for the inadvertent intrusion into children centres by people above the age of 16.

The amendment to clause (23) is mainly a technical refinement by deleting "court shall" and substituting "court may".

The Chinese versions of clauses 5(4), 5(5), 5(6), 6(2), 9(2), 19(3) and 20(3)(b) are amended to bring the amended Chinese terms used to be fully consistent with those used in other legislations.

Mr Chairman, I beg to move.

Proposed amendments

Clause 5

That clause 5(4) be amended, by deleting "確信" and substituting "信納".

That clause 5(5) be amended, by deleting "原則性的前提下" and substituting "概括性的原則下".

That clause 5(6) be amended, by deleting "確信" and substituting "信納".

Clause 6

That clause 6(2) be amended, by deleting "滿意" and substituting "信納".

Clause 9

That clause 9(2)(b)-(f) be amended, by deleting "確信" and substituting "信納".

Clause 16

That clause 16 be amended, by deleting the clause.

Clause 19

That clause 19(3) be amended, by deleting "原則性的前提下" and substituting "概括性的原則下".

Clause 20

That clause 20 be amended —

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

"(2) Where an offence under subsection (1)(a) is alleged to have been committed, any evidence which proves that a defendant did any act in connection with the operation, keeping, management or other control of a licensed amusement game centre is, in the absence of any evidence which proves that the defendant did not operate, keep, manage or otherwise have control of a licensed amusement game centre, proof that the defendant operated, kept, managed or otherwise had control of a licensed amusement game centre."

- (b) in subclause (3), by deleting "adduces evidence which".

That clause 20(3)(b) be amended, by deleting "應盡的努力" and substituting "在合理範圍內盡了力".

Clause 21

That clause 21 be amended, by deleting subclause (3) and substituting —

"(3) In a prosecution for an offence under subsection (1) it shall be a defence for the person charged to show that -

- (a) he did not know that the licensed amusement game centre was authorized under section 5(7)(c)(ii)(A), for the playing of any game by persons under the age of 16 years; and
- (b) he could not, with the exercise of reasonable diligence, have known that the licensed amusement game centre was so authorized."

Clause 23

That clause 23 be amended, by deleting "court shall" and substituting "court may".

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 6, 9, 16, 19 to 21 and 23, as amended, proposed, put and agreed to.

Schedules 1 to 3 were agreed to.

IMPORT AND EXPORT (AMENDMENT) BILL 1992

Clauses 1 to 17 were agreed to.

FILM CENSORSHIP (AMENDMENT) BILL 1993

Clauses 1, 2, 4 to 9, 11, 13, 15, 17, 19 to 21 and 23 were agreed to.

Clauses 3, 10, 12, 14, 16, 18 and 22

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

A new section 15AA is proposed in clause 10(b). This new section deals with the requirement to submit packaging of videotapes and laserdiscs made from Category III films to the Film Censorship Authority. The purpose and nature of this new section have been clearly explained in my earlier speech on the resumption of the Second Reading of this Bill.

Clause 10(d) proposes to amend section 15(G)(2) of the Bill, by deleting the words "a fee of \$500" and substituting the words "the appropriate fee prescribed by regulations made under section 29(1A)". This is to allow flexibility to revise such a fee by the Governor in Council through regulation. This practice is in line with normal drafting convention.

Clause 14(a) is amended to extend the power of seizure to the packaging of videotapes and laserdiscs in addition to the tapes and discs themselves. This is to facilitate enforcement of the new provision referred to above in the new section 15AA.

Clause 18(d) is amended to clarify that only the Governor in Council has the power to create and amend the fees and penalty levels of this piece of legislation.

Finally, the other clauses involve textual and minor consequential amendments necessary to clarify and tidy up this piece of legislation.

Mr Chairman, I beg to move

Proposed amendments

Clause 3

That clause 3(2) be amended, in the proposed section 2(2B) by adding "a" before "society".

Clause 10

That clause 10 be amended —

- (a) in the proposed section 15A(3)(a) by adding "or 13(4)" after "12".
- (b) by deleting the proposed section 15A(4).
- (c) by adding -

**"15AA. Submission of and conditions
on packaging**

(1) Where, pursuant to section 15A(1), there is approval for publication of a videotape or laserdisc in respect of which the classification described in section 12(1)(c) applies, any packaging to which this subsection applies and which is intended to be used in relation to the publication of such videotape or laserdisc shall be submitted to the Authority.

(2) Subsection (1) applies, in the case of a videotape or laserdisc -

- (a) first published on or after the commencement of the amending Ordinance, to any packaging thereof; and

- (b) which has been published before such commencement, to packaging intended to be first used in respect thereof on or after such commencement,

but does not apply to any other packaging.

(3) Any packaging submitted under subsection (1) shall be submitted -

- (a) in such manner and at such place; and
- (b) together with such information and particulars,

as prescribed by regulations made under section 29(1).

(4) Where any packaging is submitted under subsection (1) the Authority -

- (a) may, within 4 working days of such submission, require, in any case where he considers it appropriate, that if the videotape or laserdisc concerned is published in that packaging or where the packaging is displayed with or without the videotape or laserdisc, the part of such packaging constituting the cover of the videotape or laserdisc shall be enclosed in an opaque wrapper;
- (b) shall, on the payment of the prescribed fee, issue a certificate as regards such packaging, which shall -
 - (i) be in the prescribed form;
 - (ii) certify that the packaging has been submitted; and
 - (iii) where a requirement is made under paragraph (a), have that requirement endorsed on it.

- (5) Any person who -
- (a) publishes a videotape or laserdisc -
 - (i) in relation to which subsection (1) applies pursuant to subsection (2);
 - (ii) to which the classification described in section 12(1)(c) applies; and
 - (iii) in respect of which there is approval for publication,
in packaging in respect of which a certificate under subsection (4) has not been issued; or
 - (b) displays (with or without a videotape or laserdisc) that part of the packaging constituting the cover of such a videotape or laserdisc and in respect of which such a certificate has not been issued,

commits an offence and is liable to a fine of \$50,000 and imprisonment for 6 months.

- (6) The Authority may, as regards any packaging -
- (a) not being packaging to which subsection (1) applies; and
 - (b) relating to a videotape or laserdisc which is published or intended to be published pursuant to approval under section 15A(1),

require that if the videotape or laserdisc concerned is published in that packaging or the packaging is displayed with or without the videotape or laserdisc, the part of such packaging constituting the cover of the videotape or laserdisc shall be enclosed in an opaque wrapper.

(7) It shall be a defence to a charge under subsection (5) for a defendant to prove that, at the time the offence is alleged to have been committed, he had reasonable grounds for believing that there was in force a certificate issued under subsection (4) in respect of the packaging which is the subject of the charge.

(8) For the avoidance of doubt it is declared that where there is packaging of more than one description in respect of a videotape or laserdisc which is approved for publication pursuant to section 15A(1), the provisions of this section shall apply in respect of each such packaging."

- (d) in the proposed section 15E by deleting subclause (3).
- (e) in the proposed section 15G(2) by deleting "a fee of \$500" and substituting "the appropriate fee prescribed by regulations made under section 29(1A)".
- (f) in the proposed section 15I by adding -

""amending Ordinance" means the Film Censorship (Amendment) Ordinance 1993 (of 1993);".

Clause 12

That clause 12(a) be amended —

- (a) by deleting subparagraph (i) and substituting -

"(i) by repealing "a condition" and substituting -

", as regards the exhibition of a film or the publication of a videotape or laserdisc, a condition or a requirement, as the case may be,";

- (b) by adding -

"(ia) in paragraph (a) by repealing "or" at the end;

"(ib) in paragraph (b) by repealing the comma and substituting"; or";

(ic) by adding -

"(c) a certificate issued under section 15AA(4)(b)," and".

That clause 12 be amended, by adding —

"(aa) in subsection (2) -

- (i) by adding "or (4)" after "subsection (1)";
- (ii) by repealing "or (4)(b)(iii)(C)" and substituting ", (4)(b)(iii)(C) or (4A) or a requirement made under section 15AA(4) or (6) as the case may be";
- (iii) in paragraph (a) by adding "or packaging, as the case may be," after "film"; and
- (iv) in paragraph (b) by adding "or packaging, as the case may be," after "film";".

That clause 12(c) be amended, in the proposed section 21(4) by deleting "15A(4)" and substituting "15AA(6)".

Clause 14

That clause 14(a) be amended —

- (a) in subparagraph (ii) by deleting "and" at the end.
- (b) by adding -
 - "(ia) in paragraph (c)(i) by adding "or advertising material" after "film"; and".
- (c) by deleting subparagraph (iii) and substituting -
 - "(iii) in paragraph (c)(ii) by adding "or a copy or a purported copy of a certificate issued under section 15AA(4)(b) relating to any packaging which appears to him to be evidence of such an offence" after "identity";".

That clause 14(c) be amended, in subparagraph (i) by adding "or the certificate issued under section 15AA(4)(b)" after "exemption".

Clause 16

That clause 16 be amended, by deleting the clause and substituting —

"16. Risk and expense relating to submission of film

Section 27(1) is amended -

- (a) by adding "or the submission of packaging under section 15AA(1) and the possession by the Authority of a film or packaging, as the case may be, resulting from such submission or production," after "19(4)(c)(i)"; and
- (b) by adding "or packaging, as the case may be" after "such film".

Clause 18

That clause 18(a) be amended, by adding —

- "(ia) in paragraph (b) by adding "or packaging is to be submitted under section 15AA(1)" after "8";".

That clause 18(a) be amended, by deleting subparagraph (ii) and substituting —

- "(ii) in paragraph (c) by repealing everything after "information" and substituting", particulars and declaration (including its form) to be submitted together with a film under section 8 or the particulars and information to be submitted with packaging under section 15AA(3);";".

That clause 18(a)(iv) be amended, by adding after the proposed section 29(1)(ha) —

- "(hb) the form of a certificate issued under section 15AA(4)(b);".

That clause 18(b) be amended, in the proposed section 29(1A) by adding -

- "(aa) any fee for the purposes of section 15AA(4)(b);
- (ab) any fee for the purposes of section 15G(2);".

That clause 18(d) be amended, in the proposed section 29(3) —

- (a) by deleting "Any regulation made under subsection (1) or (2) may provide" and substituting "The Governor in Council may by regulation provide";
- (b) in paragraph (a) by deleting "that subsection" and substituting "subsection (1) or (2)".

Clause 22

That clause 22(b) be amended, by adding after the proposed section 3(aa) —

- "(ab) packaging in respect of which a certificate has been issued under section 15AA of the Film Censorship Ordinance (Cap. 392);".

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 10, 12, 14, 16, 18 and 22, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EMPLOYMENT (AMENDMENT) BILL 1993 and

IMPORT AND EXPORT (AMENDMENT) BILL 1992

had passed through Committee without amendment and the

AMUSEMENT GAME CENTRES BILL and

FILM CENSORSHIP (AMENDMENT) BILL 1993

had passed through Committee with amendments, and the

SUPPLEMENTARY APPROPRIATION (1992-93) BILL 1993

having been read the Second time, was not subject to Committee stage proceedings in accordance with Standing Order 59. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

Members' motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the two motion debates and Members were informed by circular on 10 July. The mover of the motion will have 15 minutes for his speech including his reply; other Members will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

HUMAN RIGHTS COMMISSION

MS ANNA WU moved the following motion:

"That this Council urges the Government to establish an independent Human Rights Commission to help promote and protect human rights by various measures, including public education, evaluation of laws and policies, monitoring of government actions and practices as well as resolving disputes through conciliation or adjudication."

MS ANNA WU: Mr President, I rise to move the motion standing in my name in the Order Paper.

What are human rights

Mr President, I would not be doing justice to this motion without first examining what human rights are and why they are so important. Human rights are matters close to the hearts of everyone. This Chamber has looked at human rights before in 1990 and 1991 and undoubtedly we will be looking at the subject again in future.

We have to ask ourselves every now and then "who are we and what do we aspire to be". Human rights relate to the most fundamental aspects of the individual in his or her civil, political, economic, social and cultural life. These rights are regarded as universal because they represent rights that all people should enjoy all over the world.

Human rights prescribe what is desirable and achievable. Unlike other legal norms, which address the negative, human rights are positive, purposive and proactive. To mete out punishment to the wrongdoer to deter future wrongdoing is negative. To propel ourselves forward towards a more just society is the opposite of that.

Human rights are different from the minimalist theory of survival of the fittest. They are enjoyed by the weak as well as the strong, the disadvantaged as well as the privileged, the minority groups as well as the dominant majority. They are human, that is to say, they are common to all people. Respect for human rights serves to protect the most vulnerable members of society. Proper respect for human rights on the part of a government would mean the elimination of political excesses and other abuses of power.

Human rights are fundamental rights. They must be enforced even if this means inconvenience to the majority. Inclusion of human rights principles in our statutes without enforcing them or empowering others to enforce them brings them into disrepute and demeans them. Human rights should be living laws and not merely exist in our statute books. If we take human rights seriously, we must make the collective and political commitment to take action to promote and to protect human rights.

History

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were extended to Hong Kong in 1976. Both Covenants oblige the parties to take necessary steps to give effect to the rights recognized in the Covenants.

As this Chamber knows only too well, the Hong Kong Government took no action after the two Covenants were extended to Hong Kong to either promote or protect human rights. In fact, the Government never told the people of Hong Kong that the two Covenants had been extended to cover them, and that they were supposed to enjoy those rights. It was not until the Joint Declaration was signed in 1984 that the Hong Kong public became aware that these two Covenants, theoretically at least, had been extended to Hong Kong.

And in 1988, when the ICCPR had been in theoretical effect in Hong Kong for 12 years, the United Nations Human Rights Committee asked the British delegation what had been done to make people in Hong Kong aware of their rights. The British had to respond, "no publicity has been launched on the Covenant".

Moreover, even reports to the Human Rights Committee have been marked by a distinct lack of candour. The British Government did not tell the Human Rights Committee of such controversial events in Hong Kong as the criminalization of the publication of "false news," or the political censorship of films, both of which had obvious — and serious — human rights implications. If it were not for non-governmental organizations in Hong Kong, the Human Rights Committee may never have known about such issues.

It took a tragedy of massive proportions in June 1989 to convince the Hong Kong Government to finally enact a Bill of Rights Ordinance. Given this promoting and record, it is quite clear that the Hong Kong Government's

commitment to promoting and protecting human rights is suspect. Hence, it is important that the responsibility should be placed in the hands of an independent commission. This is true even in countries where the government's commitment to human rights causes is far more progressive than that of Hong Kong.

Article 2 of the ICCPR specifically requires the parties:

- to provide effective remedies for violations of human rights;
- to provide for the determination of claims of human rights violations by a competent authority, whether judicial, administrative or legislative;
- to develop the possibilities of judicial remedy; and
- to enforce such remedies when granted.

As we all know, both the Joint Declaration and the Basic Law state that the two Covenants shall continue to apply to Hong Kong.

It took the British and Hong Kong Governments 14 years after the application of the Covenants, six years after signing of the Joint Declaration and one year after the promulgation of the Basic Law to introduce the Bill of Rights (BOR) to the Legislative Council. This Bill was enacted in 1991.

The Legislative Council in 1990 and 1991 and the Legislative Council ad hoc group under the Honourable Mrs Selina CHOW held extensive deliberations on the BOR and related issues, such as the setting up of a Human Rights Commission. The ad hoc group recommended the setting up of a Human Rights Commission.

The Honourable Mrs Selina CHOW, chairman of the ad hoc group on the Bill of Rights, said in the debate on 27 June 1990, that, "emerging from the discussion on the Bill is the clear call for the setting up of a Human Rights Commission". The group concluded then that the Commission, if formed, should:

- assume an educational role;
- assume the role of an arbitrator in rights of action between individuals;
- review legislation and recommend changes to those laws that may conflict with the BOR;
- receive and investigate complaints; and

- issue guidelines on definitions of human rights.

I am in general agreement with the proposed functions but would add that the Commission's jurisdiction should be expanded to include the following:

- to advise and to make recommendations on any inadequacies relating to human rights protection in Hong Kong;
- to provide dispute settlement through conciliation or adjudication in the private as well as the public sectors; and
- to commence action before a court or tribunal or to intervene in ongoing proceedings when an important human rights issue arises.

I must make it clear that I do not propose that the Human Rights Commission, when exercising its adjudication role, should enjoy exclusive jurisdiction. Its jurisdiction is concurrent to those of the courts and tribunals and its decisions may be subject to review by the courts on specified grounds.

If it were not for the fear that the BOR would be delayed, the Legislative Council at the time no doubt would have persisted with the fight for the establishment of a Human Rights Commission.

The Administration, on its part, was always lukewarm towards the idea of setting up a full-fledged Human Rights Commission, preferring a body with no enforcement powers. Hopefully, if this motion is carried today, it would force the Administration to take the issue more seriously.

The original BOR was intended to cover both the public and the private sectors. However, the right of action in the private sector was removed with the intention that this would be addressed through separate legislation. The Honourable Ronald ARCULLI in his Legislative Council speech of 5 June 1991 indicated clearly his opposition to the removal and said he was voting in favour of the Bill only because of the Administration's "promise that specific legislation would be introduced to give private individuals protection of their rights."

Two years down the road, we are nowhere close to carrying out satisfactorily the follow-up actions required. Laws which may violate the BOR remain unamended. There has been no visible initiative taken to extend the principles of the Bill appropriately to the private sector. The suggestion made both in and out of the Chamber for the establishment of a Human Rights Commission in whatever form remains unpursued.

Conclusion

Mr President, the Chief Secretary in his response to the Legislative Council debate on 5 June 1991 has this to say,

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

I cannot possibly have said it better. We cannot take human rights for granted. It is a community affair and requires community commitment and participation. The realization of these rights cannot and should not depend solely on legislative or administrative arrangements. Just as importantly, for the rights to become real, they must be capable of enforcement. A Human Rights Commission will do just that, it will help us remember, help us focus our minds, help us seek relief and secure it.

Mr President, I move the motion.

Question on the motion proposed.

MRS SELINA CHOW: Mr President, when the ad hoc group of this Council which I chaired studied the Bill of Rights Bill 1991, it also recommended in its report the establishment of a Human Rights Commission with the terms of reference which Ms WU has very comprehensively mentioned in her speech earlier. This recommendation was adopted in principle by this Council, for it was agreed at the time that public education and research is needed for the Bill as well as the wider concept of human rights. Furthermore, since the Bill only obligates the Government to adhere to the International Covenant on Civil and Political Rights, it was thought that the setting up of a body to deal with private disputes could offer a redress system for aggrieved parties against private individuals or concerns without overloading the courts. I envisaged at the time a body not dissimilar to the Consumer Council in respect of conciliation. The Administration has been firm in resisting any such request. There was a counter suggestion to set up an advisory committee on the promotion of human rights but eventually that suggestion was replaced by assigning the public education on human rights to the Committee for the Promotion of Civic Education for implementation. I must stress this is by no means any criticism of the Committee. But the fact remains that the Committee only has an annual budget of something to the tune of \$2.4 million and a promotional budget of \$800,000. And its terms of reference cover a wide area of civic education. It would be unrealistic and unfair to expect the Committee to give special attention and emphasis to the issue of human rights at the expense of other important aspects of civic education. In the meantime, the Committee cannot be expected to give the necessary attention to the promotion of human rights either.

The Liberal Party is in support of the Legislative Council position on this issue. We consider that the public education and promotion of human rights is far from adequate, in particular, the meaning the Bill of Rights has on our everyday life. In a recent survey, a majority of respondents equate human rights with freedoms without showing any real or in-depth understanding of the complexities of either the Bill or the issues involved. Neither is there the attempt to raise awareness of the duties that individuals have to undertake, to uphold and respect the rights of others. We also consider it unsatisfactory that complaints and private disputes are not being handled or studied with a view to determining further course of action or, if need be, legislation. I must stress at this point that the Liberal Party is quite explicit in our manifesto regarding the importance of ensuring that our laws are compatible with the Bill of Rights and at the same time the need to ascertain that law and order is not compromised by possible abuse of the Bill of Rights by vesting necessary and effective powers in our law enforcement agencies.

Mr President, we support the motion with a slight qualification regarding the Honourable Anna WU's proposal for the Commission to assume the function of adjudication. We do not think that at the initial stage the body needs to take on a judicial role although it should not be ruled out in its long-term development. Mr President, we support the motion.

MR HUI YIN-FAT (in Cantonese): Mr President, if colleagues are not forgetful, they will certainly remember clearly that the Hong Kong Government led by former Governor Lord WILSON, after the June 4 Incident in 1989, was resolved to adopt the International Covenant on Civil and Political Rights of the United Nations as part of Hong Kong's domestic law. The purpose was to reassure the citizens and to curb the emigration tide. Although the preparation and discussions took nearly two years, the Hong Kong Bill of Rights was finally enacted on 5 June 1991, under less than favourable circumstances.

Unfortunately, today, after a lapse of two years, we find that not only has the Government failed to heed the views and reasonable requests presented by Honourable Members during the passage of the Bill of Rights at that time, the Government has also failed to honour the promise it made. For example, the Chief Secretary indicated during the Second Reading of the Bill that the authorities would study the issue of the protection of rights from violation by individuals so as to decide whether there was any need to set up a specific authority to handle disputes over inter-citizen rights. He also said that the establishment of a Human Rights Education Advisory Committee would be considered. However, such promises have not been fulfilled so far. That makes people doubt whether the Hong Kong Government has the sincerity to implement the Bill of Rights. Is the Bill of Rights merely window dressing of a democratic society for Hong Kong? Or is there any real significance to the protection of human rights so as to restore citizens' confidence towards the future? I think the Government today has the obligation of explaining to citizens clearly through concrete action.

Mr President, the implementation of the Bill of Rights is unsatisfactory and that has a lot to do with the Government's lack of intention so far to set up an independent Human Rights Commission. According to the experience of foreign countries, a Human Rights Commission contributes greatly towards the promotion of human rights education, the systematic assessment of any inconsistency between existing laws and policies and the Bill of Rights, as well as the settlement of disputes among citizens. I remember that during the Second Reading of the Bill before this Council, the Chief Secretary clearly pointed out that the Hong Kong Government had four main objectives in the implementation of the Bill of Rights. The objectives included ensuring that the Bill was a practicable and effective piece of legislation and that the Bill can take into full account all relevant issues. If the Government, after some soul-searching, thinks that the authorities have already fulfilled the above two objectives during the past two years, the Government can well ignore today's debate. However, in actual fact, the Government's attitudes and performance have been very disappointing.

The Government gives two major reasons for refusing to establish a Human Rights Commission, namely, the huge financial commitment on the Government's part and the determination to exclude the disputes over inter-citizen rights from the scope of the Bill of Rights. I consider that the Government's means to fool the people because if the authorities do not use a Human Rights Commission to promote human rights education and spread human rights awareness among the citizens, how can they project the amount of lawsuits arising from personal disputes in future and how heavy a financial commitment the Government will have to make? I think that a Human Rights Commission and the Bill of Rights complement each other. If the Government really has the sincerity and determination to make the Bill of Rights achieve the ideal effects, it should not have categorically denied the need for establishing a Human Rights Commission.

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

MR MARTIN LEE (in Cantonese): Mr President, standing here to deliver my speech, I feel like kicking a corner in a football match. This, however, does not dampen my eagerness to speak up on the motion. The term "human rights" stands for a concept that is familiar and yet abstract. The standards for measuring human rights have been moving ever forward with the tide of history. About half a century ago, there were only three human rights organizations in the world. Two of them were opposed to slavery; the other one was opposed to forced labour. Now, there are over 70 human rights organizations in the world; they are involved with a range of things including opposition to sexual discrimination, opposition to racial discrimination, personal freedoms and the right to privacy. This trend is encouraging. It shows that mankind's expectations about human dignity are rising ever higher. Mankind must continue to set higher standards for human rights. Every individual and every government must take active steps to spread a "human rights culture" — a

culture in which people show respect to one another in society, so that human rights may, like sunlight and air, become a way of life.

Hong Kong enacted a Bill of Rights Ordinance (BRO) in June 1991. Yet, regrettably, many people are still taking a negative view of human rights. They have the misconception that human rights and law and order are mutually exclusive and that law and order in society will get worse if individuals' human rights come under better protection. Who is to blame for such misconceptions about human rights among our people? I think that the problems have stemmed from the Government's failure through these years to take active steps to promote and implement BRO.

The Attorney General has made it clear that the Government will not take initiative to amend any Ordinances except where it is absolutely sure that a particular piece of law is in violation of BRO. The Government would rather leave the matters to the judgment of the court. This is actually an irresponsible attitude. In the area of criminal justice, some provisions of the Ordinances dealing with crimes are very probably in violation of BRO. Where the Legal Department prosecutes a defendant under such provisions, the defendant may very well invoke BRO to challenge the validity of the provisions. The court may then find the defendant not guilty and order him to be freed. If this happens, law and order and public confidence in the justice system will be the casualties of the draconian Ordinances. In fact, all that the Government needs to do is to take the initiative to make minor amendments in the relevant Ordinances. This will make them not so easy for the court to declare a provision invalid on the ground that it is in violation of BRO. Such, then, is the better way to safeguard law and order as well as the public's human rights.

One may certainly, by instituting civil proceedings, ask the court to declare a certain section of the law invalid on the ground that it is in violation of BRO. However, it will be a slow and piecemeal process if all Ordinances in violation of BRO are left to be corrected solely through court proceedings. Besides, the losing party in the litigation will have to pay costs and also to pay the winning party's legal fees. Where an ordinary citizen's human rights have been violated by a government department, he most probably will not invoke BRO to challenge the government action, particularly if he exceeds the income limit of eligibility for legal aid.

Mr President, the Government has not only failed to take active steps to amend the statute book. Worse still, its actions have given a lot of negative publicity to BRO. A recent case in point is that of a defendant who jumped bail. The police has widely publicized this case in a bid to prove the absurd point that BRO is hindering police efforts at maintaining law and order. In fact, similar things had happened before. Even before BRO came into existence, there had been cases in which the defendants jumped bail. Why has the police found it necessary to mislead the public?

Regarding public education on human rights, the Secretary for Constitutional Affairs said in October 1991 that the Government was planning a human rights education advisory committee. However, this plan was abandoned in the beginning of this year. In its place, a human rights education panel was set up under the Committee on the Promotion of Civic Education. But the Government has still failed to make sufficient resources available for more effective promotion of human rights education.

From the above facts, we can see that the Government is totally lacking in eagerness and sincerity concerning the full implementation of BRO. Therefore, we need very much to set up an independent Human Rights Commission (HRC). Only such a body can provide the best long-term safeguards for human rights and give the best long-term assurances that a human rights culture will be fostered. I recall that, in the first half of 1991, when the Legislative Council was studying the Bill of Rights Bill, the vast majority of Members were in favour of the establishment of HRC. HRC can help people who cannot afford legal fees and yet are ineligible for legal aid. HRC can protect their human rights by instituting human rights proceedings or by settling disputes through conciliation or adjudication.

The United Democrats of Hong Kong (UDHK) wish to urge the Government to amend the law to forbid a judge from ordering a plaintiff, after he or she has lost his or her case of complaint against a government department, to pay legal fees to the Government, except where the judge finds the complaint to be frivolous and vexatious. This will reduce the likelihood of infringement of civic rights by government departments.

Mr President, if today's motion is carried, UDHK will urge the Governor in Council to act expeditiously to set up HRC in the next legislative year. If the Governor in Council should continue to regard the voices of Members as "some passing thing that annoys the ear", this would show that the Government really does not respect the human rights of the people of Hong Kong. Then, in the next legislative year, UDHK will introduce a Private Member's bill for the establishment of HRC. Mr President, I would like to tell the Government: If you do not take any action in this regard, we will.

With these remarks, UDHK will go all out to support the motion.

MR NGAI SHIU-KIT (in Cantonese): Mr President, four years yet remain between now and the transfer of sovereignty. At a time when everybody is preparing actively for a smooth transition, one of our colleagues, Ms Anna WU, harping on an old tune, is calling for the establishment of a Human Rights Commission (HRC) and expressing the hope that the protection of human rights will be extended to the private sector. All this is being done in the high-sounding name of reassuring the public. I am afraid that the move will backfire and public confidence will be shaken instead. Thus, we would be creating dangerous situations for ourselves where no real problems exist. Indeed, we

would be like the proverbial poor artist who tried to draw a tiger but succeeded only in drawing something that looked like a dog. It will do no good, but serious harm, to social stability and to the operation of the legal system.

First of all, the human rights of the people of Hong Kong are already being safeguarded by common law and by the international covenants on human rights, with our law-enforcement agencies implementing these safeguards. The enactment of the Bill of Rights Ordinance (BRO) has not only been superfluous; it also has had an adverse impact on the legal system. If the Government were to make yet another move by setting up an independent HRC and charging it with responsibility for the implementation of BRO, this body would inevitably come to blows with the existing law-enforcement agencies including the courts of law. Which body will make the final and valid decision: HRC or the court?

I am absolutely in favour of the principle that the Government should do its utmost to protect people's human rights. This is all the more reason why the spirit of putting the authority of the settlement of legal matters in one body under the present system of an independent judiciary should be respected and observed. If HRC's decisions were to be above the judgments of the court, then chaotic situations and power clashes arising out of judgmental differences are bound to occur. Would this not mean the end of the spirit of judicial independence in Hong Kong? Would HRC, despite its purported goal of safeguarding human rights, not wreck havoc on, and challenge, the judicial system under which everybody has equal rights?

Another thing is that, according to the motion, it is proposed that HRC be able to deal with disputes in private sector, thus plugging a loophole in BRO. I cannot agree with such a proposal. As far as I know, in common law jurisdictions, the Bill of Rights is binding only on the government or the public sector. It cannot be invoked to deal with all human rights problems because that would be impractical and any abuse might be a drain on the resources of the judicial system.

Here is an example. Suppose that BRO was extended to private sector, then an employee may be able to sue his employer for firing him. Are we to assume that the purpose behind the enactment of BRO is to enable a person to take his complaint to a human rights enforcement body whenever there is a dispute over something against his wish or interest? His doing so will only waste public resources, provoke inter-personal disputes and disturb the peace. What good will that do to the public?

Human rights are something that we should treasure. But we must bear firmly in mind that social tranquility and the proper use of resources are very important to us. This is the case now during the latter half of Hong Kong's transition period. And it will always be the case.

Mr President, these are my remarks. For the reasons stated above, I oppose the motion before us.

MR ANDREW WONG (in Cantonese): Mr President, I rise to speak in support of the motion moved by the Honourable Anna WU for the setting up of a Human Rights Commission. This motion represents the stance long since shared by most Members of this Council. As early as 1990 and 1991 when the Bill of Rights Ordinance, still in the form of a White Bill, was discussed, this Council clearly voiced its support for the setting up of a Human Rights Commission. This stance was reiterated when the Bill of Rights Ordinance was passed in 1991. For fear that the passage of the Bill of Rights Ordinance might be delayed at the time, Members therefore did not insist on amending the Bill by introducing a clause to the effect of setting up a Human Rights Commission. Nothing could have been done even if Members had insisted, though. It is because Members have no right to introduce any amendment to Ordinances which will result in disposing of or charging any part of the revenue or other public moneys of Hong Kong. Had Members really ventured to propose such an amendment, the Government would have insisted then that it was not a suitable time to set up a Human Rights Commission.

Mr President, this is the time to set up a Human Rights Commission. The grounds in support have been mentioned time and again, and I dare say they sound very familiar to all of us. As Honourable Members here today will once again elaborate on these grounds, I am not going to repeat them.

Mr President, whilst supporting the motion for setting up a Human Rights Commission moved by Ms Anna WU, I shall just point out that a very important function of the Human Rights Commission is not being covered in Ms Anna WU's motion. I think the Human Rights Commission should have the right to commence court proceedings, to challenge before a court any actions on the part of the Government that infringe on human rights, and to challenge any Ordinance or subsidiary legislation that infringes on human rights. To be specific, the Human Rights Commission should have the right, firstly, to represent individual members of the public in court, free of charge, to challenge any actions taken by the Government which may have infringed on human rights, and to challenge the legal justification behind such government actions which may have breached the Bill of Rights. And secondly, the Commission should, where individual members of the public have no *locus standi*, represent the public collectively to challenge any Ordinances which may have infringed on the Bill of Rights. Only then can the Human Rights Commission become an effective body with "real bite", which can stand up and fight for the rights of the people.

Mr President, I support the motion.

MR RONALD ARCULLI: Mr President, in rounding up the Second Reading debate on the Bill of Rights Ordinance Bill on 5 June 1991, the Chief Secretary ruled out the setting up of a Human Rights Commission under that Bill for effectively one reason: the purpose of a Commission would be to add to the filter to stem the flow of inter-citizen actions in the courts; however, since the Bill did not cater for inter-citizen rights, a Commission would no longer be required. The Chief Secretary then proceeded to deal with the alternative approach in the event that inter-citizen rights were ruled out. He referred to two particular aspects in most jurisdictions, namely, privacy and discrimination. The Chief Secretary was content to leave the issue of privacy in the hands of the Law Reform Commission, and as regards discrimination he stated that the Administration had already started considering the question of discrimination in connection with the United Nations Convention for the Elimination of All Forms of Discrimination Against Women.

As regards privacy, the Law Reform Commission Privacy Subcommittee issued a consultative document in February this year. I understand that about 40 submissions have been made and that the consultative period, originally scheduled to end on 1 June 1993, has now been extended for two months. I hope the public takes note as there is still over two weeks to present their submissions. The Subcommittee is expected to finalize its report in October this year with final report of the Law Reform Commission targetted for February 1994.

Mr President, whether we in Hong Kong choose to safeguard inter-citizen rights within the Bill of Rights Ordinance or by individual and separates bits of legislation has little or no bearing on the establishment of a Human Rights Commission except for the Chief Secretary's position that none is required because there are no inter-citizen rights. However, if we and the Administration are serious about safeguarding individual rights and liberties, I cannot see the Administration would wish to be an impediment in this process. If, as the Administration recognizes, sooner or later we will have individual bits of legislation to safeguard individual rights, what reason can there be for delaying or indeed avoiding a Human Rights Commission. Indeed, it seems to me that there are advantages for setting up a Human Rights Commission to advise the Administration on how to proceed with legislation to provide inter-citizen rights. This was actually contemplated by the Chief Secretary in 1991 when he said that the Administration was considering setting up an advisory committee. This rather noble gesture was unfortunately reduced to a Human Rights Public Education Subcommittee formed in May 1992 under the Committee for the Promotion of Civic Education.

Mr President, I believe that it is high time for the Administration to come clean with the people of Hong Kong and this Council. Is the Administration committed to promoting and safeguarding human rights in Hong Kong or not? If it is, there can be no doubt that the Administration must stop fiddling around and set up a Human Rights Commission.

In conclusion, Mr President, I believe issues like the composition, the legal status and terms of reference of a Human Rights Commission can be readily settled because we do not have to reinvent the wheel. There are ample examples elsewhere.

With these comments, Mr President, I support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, human rights are the most fundamental and most basic rights of human existence. Economic well-being and the degree of development of democracy are not the only measures for how civilized and advanced a community is. An even more important yardstick is whether human rights in this community are fully safeguarded by law.

In Hong Kong, even during the 1980s, at the height of the movement for democracy, human rights remained a remote and unfamiliar topic. It was only after the June 4 incident that the people of Hong Kong, having witnessed how the Chinese Government trampled upon human rights in various ways, awoke to the importance of human rights. The enactment of the Bill of Rights Ordinance (BRO) was just a beginning. But an Ordinance is just a piece of paper. The realization of human rights will remain a distant goal unless the judicial and the executive branches of the Government implement the Ordinance, unless the situation can be monitored by the general public and by this Council, unless the public and the mass media are alert to human rights issues.

Mr President, given that it is a distant goal, we must forge ahead and act quickly. Where human rights promotion and education are concerned, the Government is taking a relaxed attitude and showing no zeal at all. Yet, as we look around us, we see ubiquitous signs of campaigns for a clean Hong Kong and campaigns against corruption. Most recently, the Government appropriated \$350 million for an AIDS Foundation. And \$50 million of this allocation will be spent on publicity drive and education. However, Mr President, where is the money for publicity drive and education on human rights? Last year, the Jockey Club — the only body to do so — donated \$1 million to the human rights education panel under the Committee on the Promotion of Civic Education to advance the cause. Mr President, why is the Government so partial? The answer is quite simple. Human rights education will wake up the public and heighten their human rights awareness. This will limit the Government's and law-enforcement officers' room for manoeuvre if they want to abuse their powers. This will also deprive them of their operational short-cuts, which are built on the violation of human rights.

Today, Ms Anna WU is moving the establishment of a Human Rights Commission (HRC). I fully support the motion. This is because, up to now, we do not have a full-time independent body to promote human rights education. We do not even have a human rights information centre serving the public and the interested institutions. Let us ask ourselves: When the public has no idea at

all what human rights are, how can they act consciously to safeguard and defend their rights?

Mr President, it is not only the public that knows nothing about BRO. Even law-enforcement officers have no in-depth knowledge of it. What is even more worrisome is that, in the legal profession, only a handful of lawyers are conversant with BRO. Will the public be able to receive adequate counselling and assistance? Besides, legal service is very expensive and the public traditionally has not had the habit of seeking legal redress. An independent HRC that provides free legal aid service to the public or refers members of the public to the Legal Aid Department will greatly help to enhance the effectiveness of BRO and to popularize BRO in the judicial process.

Mr President, an independent HRC will not only provide legal and educational services for the promotion of human rights but, more importantly, serve to monitor the relevant actions of government departments and law-enforcement officers and even the implementation of Ordinance *per se* to make sure that human rights are not violated. At present, the Government reports through the United Kingdom to the Commission on Human Rights of the United Nations on the status of implementation of the International Covenant on Civil and Political Rights. But how can we be so naive as to expect that the Government's report will effectively charge the Government itself with violation of human rights? Therefore, we need reports on human rights that are not compiled by the Government and that contain public comments and criticisms. Such reports will enable the Commission on Human Rights of the United Nations to understand Hong Kong's human rights conditions as seen from various angles. This will then improve Hong Kong's human rights record until it is up to the global standards.

Human rights are a new international culture, a contentious international issue of the 1990s. In less developed areas, the human rights issue can be used to challenge the authority of dictators. In developed areas, the same issue can be used to prevent governmental excesses. The ultimate goal is to protect human dignity and human rights from those who would encroach upon them, particularly the dignity and rights of the weak and the helpless, the dissident and the forgotten. These marginal groups will then be able to live like human beings, free from fear and free from discrimination and oppression.

We still have a long way to go before this ideal can be attained. An independent HRC in Hong Kong is but the starting point of the local struggle for human rights. As a Chinese saying goes, "A 1 000-mile journey must start somewhere." Without a starting point, human rights will have no foundation and consequently no future.

Mr President, for the above reasons, I support Ms Anna WU's motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, on 14 June, about 5 000 or so representatives from 170 or so of the world's 183 countries began a United Nations-sponsored conference on human rights in Vienna. The conference lasted for 12 days and closed on 25 June. The number of signatory countries was 171. Of course, the above information came from press reports. Before that conference, 59 Asian countries had held a conference in Bangkok to prepare for the Vienna conference, and a Bangkok Declaration was made. Some Members in this Council were rather critical of this Declaration; they said that they did not support it.

Mr President, we must understand that even the United Nations, a world body, is arguing, and has different views, about human rights among its member states. So it is not surprising that there should be disagreement among Members of this Council. Mr President, man differs from country to country. There are many countries in the world, some advanced, some backward. Different countries have different cultures, different geographical features, different religions and different kinds of resources. "Man" differs in the same way. Mr President, you, for instance, are seated because you are the President, while I am standing because I am a Member. You and I stand for different things. We are also different in learning and in background. Therefore, I agree with the many Members who say that human rights are our basic rights. On one hand, all of us are in favour of human rights. On the other hand, we understand human rights differently. The United States Secretary of State says that he would like to see a bright light shine on every corner and make this light visible even in places where people enjoy no human rights. However, look at what the United States is doing. It wants Hong Kong to accept Vietnamese boat people but it is treating Haitian and Fujian boat people differently itself. In this connection, the United States had better light up its own dark corners, for many unjust things exist there.

Mr President, Hong Kong is now a British colony. The United Kingdom is a signatory country to the Declaration of Human Rights. Everything that we do is, in principle, already being given a great deal of protection. Free speech, too, is safeguarded in Hong Kong. In other words, human rights are recognized. At present, a row is going on in Hong Kong over the constitutional reform package. I believe that the row could be resolved before the end of the year. And it is precisely this row that prompts the people of Hong Kong to become more concerned about their own rights.

Mr President, the Declaration of Human Rights of the United Nations set out seven points. But the most important point, which is that each country should set up a body for safeguarding human rights, has not been endorsed. This means that the countries attending the conference differed in their views about human rights. After all, respect for human rights is conditional first of all on mutual respect. If one country uses the human rights issue as an excuse for interfering in another country's internal affairs, including religious affairs, or worse still, uses the human rights issue as a trade weapon against another country, will Members of this Council think that the country respects another

country's human rights? Using the human rights issue as a weapon is bullying. Does it deserve our support? Human rights, if we are to support them, should be based on equality, reciprocity, mutual understanding and mutual aid. Therefore, I think that the ways the United States Government interprets human rights do not deserve the support of my learned and wise colleagues.

Mr President, the speeches that we are making today on the particular issue only show our ulterior motives. The Hong Kong Government must realize that Hong Kong will go back to China four years from now. It is explicitly stated in the Sino-British Joint Declaration and in the Basic Law that, after Hong Kong returns to China in 1997, China will have control over Hong Kong's foreign and defence affairs. Personally, I am still of the view that Hong Kong at the present time should not be holding formal discussions with China on the issues of human rights and democratic development. What Hong Kong should be doing now is to help progress to be made in China in the areas of human rights and democratic development. When China begins to share quite similar view on the understanding of human rights with Hong Kong, that will be the time to put forth our views as our future sovereign power will then be able to understand us better.

I am not blindly in opposition to Ms Anna WU's motion today. However, I do hope that she will clarify the functions of the proposed Human Rights Commission. If this body's objective is to interfere with, or pass judgment on, another country's affairs or to solve inter-citizen human rights disputes, then it will practically be following in the footsteps of the United States Government. If the body's objective is to raise people's awareness of their rights or to provide guidance in murky areas, then I will support it. Therefore, I stay neutral with regard to Ms Anna WU's motion, for I do not know what roles it would play.

Mr President, these are my remarks.

REV FUNG CHI-WOOD (in Cantonese): Mr President, it is true that Hong Kong's human rights record is not too poor and its people will not be imprisoned for no reason or tortured. Still, substantial improvements are needed in many areas where human rights are not explicitly the issue.

I would like to cite a personal example to illustrate Hong Kong's human rights record. The incident involved, though not hitting headlines, manifests some serious problems. And efforts must be made to rectify the situation. In January 1990, I attended a function of the Joint Committee on the Promotion of Democratic Government. I was to hand out in public places leaflets opposing the political system provided for in the Basic Law and also to collect donations. For this, I was charged with three offences. My first alleged offence was that I refused to produce my identity card upon request. In fact, I was in a private club when a police officer demanded to see my ID card. I thereupon said that the planned function had not yet begun. A few minutes later, the police officer and I left the club together. Then, when we were in the street, I showed him

my ID card. I also gave him my address and telephone number. Still, I was later charged to have failed to produce any identification paper to the police. During the trial, I learnt that the police had the power to demand to see identification papers even in a private place. It followed that the police could enter a citizen's home and demand to see ID cards. This is obviously problematic. The loophole must swiftly be addressed and plugged. My second alleged offence was that I obstructed a police officer in the performance of his official duty. It was alleged that I had tried to stop the police officer from taking down the particulars of the ID cards of other functionaries. In fact, I merely said at the time that I was the organizer of the function and that there would be no point in taking down the particulars of the ID cards of the nine functionaries. I supposed my own ID card should suffice. Mr President, in the court, the police officer testified that he had to take down the particulars of the ID cards of the other functionaries in order to be able to tell who were the participants when the function was in full swing in the street. However, at the time, with one single exception, all of us had white T-shirts on as some kind of uniform. On the T-shirts were printed two big words: "Democratic Government". Anybody could see from afar who were participating in the function. Besides, there were between 10 and 20 police officers tailing our group very closely, all the way on foot from Mong Kok to Tsim Sha Tsui along Nathan Road. Could the police not tell who the functionaries were? Why did the police have to take down the particulars of the ID cards of all of them? Was there a real need to do so or were there some other reasons? Would the participants in the function have taken part if they had known in advance that the police would be taking down the particulars of their ID cards? The police, in so doing, was obviously abusing their power to demand members of the public to produce their ID cards.

My third alleged offence was that I was unlawfully soliciting donations. I was accused of collecting donations in a public place without the prior approval of the Director of Social Welfare. In the court, a representative of the Director of Social Welfare admitted that the particular function was political fund-raising, which had never been a matter subject to the approval of the Social Welfare Department and which did not come under the scope of fund-raising activities requiring the department's approval. What this meant was that the department could approve only fund-raising for charity, never political fund-raising.

Public fund-raising is a citizen's right. This sort of activities must of course be regulated by the Government. The Government at the time did not have a set procedure for approving political fund-raising applications. Yet I was charged with offences simply because I was exercising my due right as a citizen. I feel that this was a blatant violation of human rights. At any rate, I am glad that the Government began recently to approve political groups to hold public fund-raising activities.

My appeal of the three convictions was unsuccessful. I have no idea when the injustice will be redressed.

I was not the only victim. In 1990, five democrats were charged with using loudhailers without prior approval. Their convictions were later overturned on appeal. This year, three former secretary-generals of the Hong Kong Federation of Students were charged with unlawful assembly; two of them were convicted.

Free speech is a very important human right. It must be protected strenuously. Otherwise, dissenting voices in our community will be suppressed. And society will stop advancing; it will only move backward. Hong Kong's human rights conditions still need to be improved in many ways. Examples are freedom of assembly, the right to organize trade unions with no fear of retribution and the protection of citizens' rights when prosecutions brought against them.

Though we have the Bill of Rights Ordinance, it is just a set of rigid stipulations. If human rights are to be really protected, there must be a body within the Government to deal with human rights issues and promote human rights education. It is therefore very important to have the speedy establishment of a Human Rights Commission (HRC). The chances that it will be set up after 1997 will be even more slim.

Hong Kong is an advanced city. Its human rights record, however, is a backward one by international standards. Why are Government officials not more pro-active in the human rights area? In the past, the Government said that it did not have the manpower or the money to set up HRC. I hope that there was no other excuse. Now such an excuse is no longer valid as an explanation for refusing to set up HRC. I hope that the Government, in its reply to this motion debate later on, will tell us how much money is needed for setting up HRC and when it will seek this funding from the Finance Committee of this Council.

These are my remarks. I hope that the Government will set up HRC expeditiously and not treat this Council's request as "some passing thing that annoys the ear", so to speak.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MRS PEGGY LAM (in Cantonese): Madam deputy, during the drafting of the Bill of Rights Bill, many pressure groups asked the Government to set up an independent Human Rights Commission (HRC) with the responsibility for counselling, education and mediation and for monitoring Hong Kong's human rights records. Despite the fact that the Government did not accede to this request, Hong Kong's human rights records have nevertheless become somewhat better since the Bill of Rights Ordinance (BRO) came into effect in 1991.

First of all, the introduction of the Ordinance has a positive impact on the community. Many people are now aware of the existence of the Bill of Rights Ordinance. They know that their rights are protected by law.

Secondly, in the legislative area, the Legislative Council, before passing a bill, will invariably examine it for possible inconsistency with BRO. Thus, the Legislative Council not only promotes protection of human rights in terms of legislation but also watches out for possible violation of citizens' rights.

It is true that BRO has produced some results. Yet public awareness is still the most basic and most important condition for the lasting protection of human rights. If the public does not understand what their human rights are, how can we expect them to exercise these rights?

Over the long term, the spirit and concept of human rights must be made a part of the culture of the community. Only thus can human rights take roots. In this connection, Hong Kong indeed needs to formulate a long-term comprehensive human rights policy to promote the concept of human rights.

Up to now, there is no clear definition of the term "human rights" in statutes or in school books. Nor is there a definition of "human rights" as a guidance for the public. Many citizens simply do not understand what the term means in respect of individual rights and obligations. A Human Rights Commission (HRC) thus can provide guidance as to what the term "human rights" means. Then the term will not be used wrongly or abused or, worse yet, as a justification for hampering police and Independent Commission Against Corruption (ICAC) operations.

Also, HRC can work together with educational bodies and voluntary organizations to promote the concept of human rights at the grassroots, in schools, in district boards, in sub-district committees, in owners' corporation, in mutual aid committees and in other community organizations, so that the general public, particularly the younger generation, may understand the concept and may learn how to benefit from the safeguards provided by law and how to respect the rights of others. Only thus can Hong Kong's progress in the human rights area be consolidated.

In fact, in its report submitted to this Council's House Committee in May 1991, the Ad Hoc Group on the Hong Kong Bill of Rights Bill 1990 recommended the establishment of HRC. The Government, however, did not follow the recommendation.

Therefore, I earnestly urge the Government to think carefully again about setting up HRC and to make a prudent evaluation of HRC's jurisdiction, its membership, its relations with the Legislative Council and the Judiciary and how HRC should be subject to the public's supervision to ensure that it can more effectively safeguard human rights.

Lastly, I think that human rights must be safeguarded by law. In the protection of one person's rights, the rights of another person should not be violated. This is the only way to make sure that everybody is equal before the law and treated equally by the law.

Madam deputy, these are my remarks.

MR FREDERICK FUNG (in Cantonese): Madam deputy, the Association for Democracy and People's Livelihood (ADPL) and I support Ms Anna WU's motion. We feel that intensive discussions should be continued concerning the jurisdiction and the composition of the Human Rights Commission (HRC). However, the establishment of HRC cannot brook one moment's delay. We feel that the establishment of HRC, coupled with the better education of the public, may lead to a reduction in social problems and conflict.

I would like to try to approach this issue by citing two examples. If HRC is set up, with terms of reference like those proposed by Ms Anna WU, then the problems implied by the following two examples will become trivial or will cease to be controversial. As a matter of fact, a lot of disputes stem from the fact that many of Hong Kong's statutes are incompatible with the Bill of Rights Ordinance (BRO).

My first example is the inequality of the functional constituency voting method as provided for by the Electoral Provisions Ordinance. The Ordinance now provides that a very small minority of people (less than 10% of the population of Hong Kong) can each cast an additional vote in their respective functional constituencies, apart from the votes in their respective geographical constituencies. In some cases, the functional constituency voter is a corporation. This means that, if a person holds more than 50% of the shares of such a corporation, he can, in a way, appoint the corporate voting representative or decide how the corporation should vote. Another point is that now, on one hand, a citizen of Hong Kong can vote only if he has reached the age of 21 and has lived in Hong Kong for seven years. But, on the other hand, it may happen that, if a rich immigrant from abroad buys a corporation and holds more than 50% of its shares, he will be able to vote even on the second day after his arrival in Hong Kong. Therefore, I feel that functional constituency election is obviously problematic.

In this regard, ADPL made a very careful and thorough study one and a half years ago. We presented one copy each of our report to the Governor and to Director LU Ping of Hong Kong and Macau Affairs Office. The report provided a list of individuals, identified the companies that they owned, and showed the number of shares that they controlled. One individual (whose name I will not disclose here) controlled as many as 24 corporations, all of them enjoyed the right to vote. In other words, he could cast 25 votes, including his own vote. As for us, the general public, though accounting for more than 90% of the population, we can each cast only one geographical constituency vote.

Here, I must declare interests. I, too, have two votes: one municipal council vote and one geographical constituency vote. Clearly, the present functional constituency elections are in violation of BRO. Such inequality causes a lot of disputes among political groups, among Legislative Council Members and among members of the public. What constitutes a fair and reasonable election? What kind of functional constituency election will be consistent with BRO?

My second example is the Public Security Ordinance. Many provisions of this Ordinance are incompatible with BRO. For example, suppose that some people want to hold a peaceful demonstration or peaceful procession. They will still be subject to the restrictions of Section 18 of the Public Security Ordinance. This section says to the effect that, where any gathering of 30 people intends or is likely to engage in disorderly, or threatening, insulting or provocative conduct so that others have cause to feel intimidated, or where the gathering is likely to disturb public peace or to cause others to disturb public peace, such a gathering shall immediately constitute an unlawful assembly. Some people think that this provision of the Public Security Ordinance can turn a lawful assembly into something that meets the definition of an unlawful assembly. In other words, suppose that a group of people want to hold a peaceful demonstration in front of Government House, the Government Secretariat or the New China News Agency (NCNA) Office. While they are still on their way there, law enforcement officers or the authorities concerned can already make a judgment as to whether or not the participants of the procession commit an offence under the Public Security Ordinance. If the procession is regarded as having breached the Ordinance, then the gathering will be an unlawful assembly. Such a judgment will be controversial. Clashes may arise over differences in the interpretation of the Public Security Ordinance and BRO. People taking part in the assembly may end up being arrested.

I believe that, if BRO is fully observed and enforced, then the problems in the two examples above should be resolved amicably and peacefully. There will be no more argument over whether there should be functional constituency election and what its voting method should be. There will be no more petitions and protests on account of the Public Security Ordinance. Ms Anna WU proposes that HRC should have five functions: public education, evaluation of laws, monitoring of government actions, resolving disputes, and exercising the power of adjudication. I fully endorse and fully support the first four functions and I feel that public education and evaluation of laws are the most important and should be dealt with on a priority basis. With regard to the evaluation of laws, I feel that actions must be taken expeditiously to amend those Ordinances that are in violation of BRO.

I am a bit concerned about the adjudication power of HRC. I would like to express this concern during the present debate for consideration by the Government. Should HRC have adjudication power? If the answer is yes, then will HRC become a separate judicial system outside of the existing courts? Will there be clashes and contradictions with the existing judicial system? These questions need to be considered. Secondly, does the adjudication power refer

mainly to the power to form opinions or to the power to take action? There is a big difference between the two. We must think about it. If HRC is to have the adjudication power, then we must be doubly careful about how it should be constituted. Should its members be ordinary citizens, elected representatives of the public or members of the judiciary? If HRC is to have the adjudication power, this power must come from legislation in the Legislative Council. And how will this power be exercised and used in practical terms? All this causes worry and concern. I think that the Government should, when considering the establishment of HRC, give serious thought to the matter of its adjudication power.

For the above reasons, and for the fact that, in principle, I basically support the establishment of HRC, ADPL and I support the motion.

MR SIMON IP: Madam deputy, it is recognized by many, but alas not the Hong Kong Government, that Human Rights Commissions make important contributions to the development of human rights. It is particularly so in a place like Hong Kong where history of the legislation is short and development of human rights is embryonic. One of the most important functions of a Human Rights Commission is to provide expert legal knowledge to enable the legislature to repeal, amend and enact laws according to universally accepted standards of human rights and having regard to policy considerations relevant to Hong Kong.

In reviewing laws for inconsistency with the Bill of Rights (BOR), it is obvious to me that the Government has been adopting a "minimalist" approach. This means that the Government has been and is doing the bare minimum necessary to ensure that our laws are compatible with the BOR.

Amendments to the six frozen Ordinances were presented to the Legislative Council so close to the end of the freeze period that there was little time to conduct a full review. Amendments were made only to those provisions which were considered by the Government to be "almost certainly incompatible" with the BOR. Those provisions which were BOR suspect were left untouched despite the prospect of future successful challenges which would result in legal and operational vacuums in our laws. No attempt is being made to apply a generous and purposive interpretation to the BOR and to recast the law accordingly.

The current review of the law affecting freedom of expression affords a good example of government complacency. The Government asserts that freedom of the press is secure under Hong Kong law. It has chosen to review only seven laws despite the Hong Kong Journalists Association having identified 17 laws as a potential threat to press freedom and thus requiring attention.

The fallacy of the Government's position

The Government has maintained that a Human Rights Commission is unnecessary for basically three reasons. First, its functions would overlap with those of the Legal Department and the courts. Secondly, it would entail considerable costs. Thirdly, with the removal of "inter-citizen rights" from the BOR, the mediation or conciliation role of a Human Rights Commission would be rendered redundant. But these seem to me more excuses than reasons. I will deal with them in turn.

First, overlapping of functions. The minimalist approach is testimony to the inadequacies of the Legal Department trying to fill the role of a Human Rights Commission. More fundamentally, as the primary objective of the BOR is to prevent encroachment of rights by the Government, how can that objective be fulfilled by a government department which acts on the instructions of the Government?

Reliance on the courts alone for development of human rights law has its limitations. Judges are limited by the confines of the cases before them. A Commission on the other hand can take a more comprehensive approach encompassing political and general socio-economic factors.

Secondly, costs. I accept that the protection of human rights should not involve layers of bureaucracy with exorbitant expense to taxpayers. However, a Commission will decrease the call on judicial resources and reduce publicly funded court proceedings. The likely result would be a net saving of resources.

Thirdly, inter-citizen rights. The absence of inter-citizen rights in the BOR does not mean that a Human Rights Commission is unnecessary. There will be conflicts between citizens and the authorities under the BOR. If resolution of these conflicts is left entirely to litigation with all the costs and delays involved, the average citizen with limited means and requiring quick relief will be greatly disadvantaged. Citizens need a cheap and speedy mechanism to air their grievances and seek redress.

In conclusion, if the Government continues with the minimalist approach, many of the perceived benefits of enacting the Bill of Rights will be superficial. Without a deep-rooted human rights culture transcending each stratum of the community, from policy-makers to the man in the street, our rights and freedoms enshrined in the BOR will be at risk in the uncertain times ahead. That is one of the fundamental reasons why a Human Rights Commission is so urgently needed.

With these words, I support the motion.

MISS EMILY LAU (in Cantonese): Madam deputy, I speak in support of Ms Anna WU's motion.

Just as many Members have noted, about two years or so ago, during the drafting of the Bill of Rights Bill, a suggestion was made to set up an independent Human Rights Commission (HRC) with adjudication, mediation, investigation and executive power. Regrettably, that suggestion was vetoed by the Chief Secretary. Yet he promised to set up a human rights education advisory body. However, today, more than two years later, the Government has not yet kept its promise. I hope that the Government, in its reply later on, will explain to us why it has failed to keep its words. I indeed would like to ask the Government why it has refused to set up HRC, which Members have been demanding for many years. It is not a matter of money. I would also like to ask the Government what it is trying to avoid and what it is afraid of. Are we afraid because Beijing is opposed to the establishment of such a body? If the answer is yes, I urge Mr Michael SZE to show a bit of courage later on, by wearing the word "Bravery" on his chest, so to speak, and tell us whether it is really because the Government is afraid of Beijing.

Madam deputy, it has been more than two years since the Bill of Rights Ordinance (BRO) was enacted. However, I believe that, as even the Government will admit, where the general public is concerned, BRO has been nothing but an adornment. It is vacuous and has had no significant effect on the general public. I therefore believe that HRC, if set up as moved by Ms Anna WU, will help the public to understand how BRO safeguards their rights and why respect for human rights is important to the operation of free society. The Government does not want to set up HRC and has given the work of human rights education to a panel under the Committee on the Promotion of Civic Education. But what has this panel done? Perhaps, the Government will care to make a comment later on. I believe, though, that the panel has produced no significant effect on many members of the public.

Madam deputy, I would like, in particular, to cite a case to show that the panel may have been a fiasco. As Honourable Members may know, 10 months or so ago, some groups applied twice to hold a human rights seminar in Tai Koo Shing. However, it appeared that the highly perched taipans of the Swire Group were not pleased with the groups' plan to hold some activity in relation to human rights on their property. The activity eventually materialized, but only after the organizers having made many representations. The case shows how difficult it is to promote human rights education. It shows that even the highly educated, very wealthy and very powerful taipans have only little understanding of human rights. Therefore, I hope that the Government will reconsider setting up HRC, which will enable those taipans and the general public to have an early understanding of the importance of human rights.

Madam deputy, in fact, one of the most important purposes of promulgating BRO is to tell the public that their human rights are protected and that they will not be discriminated against. Very ironically, however, this

means telling people in Hong Kong, be they rich or poor, that they can invoke BRO to protect their rights and freedoms, that, if they find their rights encroached upon, they can have recourse to law. As everybody knows, litigation is very expensive and time-consuming. BRO deals with a very broad range of controversial issues. Hearings on a case may last for a very long time. How many among the general public can afford to engage solicitors, barristers and Queen's Counsels in litigations against the Government? Suppose that a member of the public loses such a lawsuit, he will then have to pay costs to the court. Will this not make him go bankrupt? I hope that the Government will not give the usual evasive response that members of the public can always apply for legal aid. The Government knows perfectly well that the income limit of eligibility for legal aid is quite low. I believe that many members of the public will not be eligible for legal aid; they therefore cannot rely on legal aid if they want to challenge government actions. Therefore, the Government should make some changes, to stop BRO from acting like a protective shield for the rich, while making available no avenue to the rest of the public to challenge government actions in violation of human rights.

Madam deputy, HRC, if set up, can assist in conducting law review, particularly in the review of statutes identified by Members as in violation of BRO. It is true that this Council's panel on constitutional development has been working hard on this problem, but we lack the resources and the legal knowledge to do the work well. Therefore, I hope that HRC, when set up, will give its undivided attention on that front.

Madam deputy, in less than four years, the British Government will be withdrawing from Hong Kong. I deeply hope, and I believe, that the United Kingdom, at the time of its withdrawal, will be able to tell the whole world that no statute on Hong Kong's law books is in violation of the Bill of Rights. I know that the British Government, including the Governor, wants very much to be able to make an honourable retreat from Hong Kong in 1997. However, suppose that, when this happens, there are still many statutes on the law books that are in violation of the Bill of Rights and that are much criticized by Members. How, then, can the United Kingdom make an honourable retreat?

Madam deputy, we know the Chinese Government's position with regard to BRO. It has said that it reserves the right to repeal BRO after 1997. The Hong Kong Government and the British Government had the courage to promulgate BRO in the immediate wake of the Beijing massacre. I hope that, in the less than four years' time, the Government will have the courage to set up HRC for us, thus reassuring the people of Hong Kong that it really cares for human rights and is making the necessary arrangements for the protection of their human rights in the future.

With these remarks, I support the motion.

MR HENRY TANG: Madam deputy, I believe it is important to all of us that we should do our best to promote and to enforce the Bill of Rights passed in 1991.

The Australian Human Rights Commission of 1986 conducts all human rights affairs in Australia. Its basic functions include reviewing legislation, handling complaints, undertaking educational programmes and research. It investigates and reviews all the existing laws to locate any violations with human rights. Not only that, it also provides legal advice to the public on their rights, so that these rights may be protected. The Commission also studies complaints from the public and helps to settle disputes through creating compensation terms for both parties. Furthermore, through education and publicity, it promotes human rights awareness in Australia.

Although we passed the Bill of Rights in 1991, the majority of the Hong Kong population is still very ignorant about these rights. Therefore, I believe campaigns in promoting and campaigns in educating the public on human rights are desperately needed.

Furthermore, there should be a review on all the existing laws and policies to ensure there are no conflicts with the Bill of Rights. If there are conflicts, it will recommend and urge the Government to amend these laws or policies.

This Commission can help the United Kingdom put together annual report on Hong Kong to the United Nations. Presently, the United Kingdom gathers material on Hong Kong through various government departments and, consequently, it is only a very general report. With the help of this Commission, it can collect and put together the information of the departments and report directly to the United Kingdom. Hence, this report should be more detailed and provide a more transparent and a better accounting of and presentation of the government operations.

The last function of the Commission will be to resolve disputes. Presently, if a person's rights are violated by another person, a firm or the Government, this person can only take the case to court in order to fight for compensation. Three problems may evolve from this process. First, many people are intimidated by the formality of the court. Second, many people are ignorant or confused about the legal process. And thirdly, it requires money and not everyone can afford it. The establishment of this Commission will help to solve many of these problems. First, it can provide counselling service. The Society for Community Organizations (SOCO) claims there are many cases in the High Court in which the concept of human rights is misused. Counselling services can also advise the public whether human rights are applicable in a case or not, so that they will not waste their money in taking the case to court. This will also give the public an idea of the area of influence of human rights. Secondly, it acts as an informal solving agency. It will help to settle disputes between two parties without running up large sums of legal fees.

Looking at 1997 and beyond, the Joint Declaration assures us of "one country, two systems" with a high degree of autonomy. Yet, I am concerned about the socio-economic and political differences between Hong Kong and China. There is a distinct possibility that this difference may lead to a different interpretation of human rights. I do not wish nor am I able to dictate or impose our interpretation of human rights onto China. Since we are assured of a high degree of autonomy, we would want to uphold what we view as our standard of human rights here in Hong Kong. Therefore, I believe this issue of human rights needs to be properly addressed now.

As reported in the papers yesterday, the Executive Council made its decision to relax the right of assembly and demonstration and to restrain police power to search and demand proof of identity in the street. I welcome these amendments. However, these problems already surfaced when the Bill of Rights was passed two years ago. It is not until yesterday that the amendment was passed. A Human Rights Commission will be able to improve this efficiency. In 1991, the Government declined the suggestion of setting up this Commission for whatever reason. But now I think it is time to evaluate this suggestion again.

With these remarks, I support the motion.

THE PRESIDENT resumed the Chair.

MR JAMES TO (in Cantonese): Mr President, economic development is not the only indicator of civilization. Higher buildings, more roads and better food and clothing in a place do not mean that the place is civilized. Nor does the material affluence of a place mean that the human rights of its people are respected. These people may not have the freedom of expression. They may not have the right to say anything when the Government unlawfully gains access to their personal data. They may be deprived of their personal freedom at any time under some vague provisions of law. It is also possible for them to be discriminated against because of sex or race. I think that a civilized place must be one that attaches great importance to, and shows a high degree of respect for, human rights.

Hong Kong is in need of a Human Rights Commission (HRC) to implement and promote the Bill of Rights Ordinance (BRO) and to make recommendations to the Government on law review in a systematic manner. Regrettably, the Chief Secretary already said in June 1991, in his response to Members' request at a Legislative Council sitting, that there would be no HRC. He gave three reasons. Firstly, the Government would have to make extra funding commitment if HRC was set up. However, we can see from the examples of foreign countries that such a body may not incur heavy public spending. Instead, it can save the Government a lot of money because of reduced amount of lawsuits, as HRC will have settled most disputes through

conciliation or adjudication before they reach the litigation stage. This will be good for the plaintiff, the court and the Government as well. Look at Canada for instance. There, in 1991, the provincial HRCs together received roughly 52 000 or so inquiries and dealt with 920 complaints, of which 360 or so were settled through conciliation or by other methods. Only 28 of the complaints had to go to the human rights courts. According to the above figures, only one out of every 24 complaints needs to be adjudicated by a human rights court. This shows that a properly run HRC can save a lot of time for the court and can play a leading role in resolving disputes through conciliation or adjudication. In 1991, the provincial HRCs together employed about 220 or so employees. Clearly, HRC does not need as much manpower resources as is imagined.

The Government's second reason for opposing the establishment of HRC was that BRO dealt only with rights-related disputes between the Government and the public. And BRO did not deal with inter-citizen rights-related disputes. There is not much justification for the establishment of HRC, which was supposed to play a role of conciliation or adjudication. Such reasoning is really specious. Are we to assume that the Government considers that BRO should never have further development but always remain in its present form? It is precisely because BRO has its limitations that we need HRC to do researches and to prompt the Government to draft new human rights bills or to extend BRO to the inter-citizen area. If the Government takes a long-term view, it should be able to foresee a growing trend of human rights litigation and legislation, for instance, legislation for the protection of privacy and legislation against sexual or racial discrimination. All such legislation will touch on inter-citizen rights. When the time comes, HRC will prove to be very useful, will it not?

The Government's third reason for opposing HRC was that Hong Kong already had some bodies responsible for promoting human rights education, for instance, the Committee on the Promotion of Civic Education. But the fact is that the Committee is a composite body that has to handle many other kinds of problems. So how can it play the roles of HRC, which is to specialize in studies of human rights issues? Why should the Government be so reluctant to allocate more resources to the expansion of human rights education, if it really attaches importance to human rights? Many countries in the world have adopted the international covenants on human rights. It has taken them several decades to promote human rights to what they are today. If we do not spend more resources on inculcating in young people's mind the importance of human rights, we will have wasted our previous efforts, will we not?

There are two other points that I would like to make. The first concerns the Government's progress in drafting and amending legislation in light of BRO. What the Government is doing now is to enjoin the Constitutional Affairs Branch to serve as a co-ordinator whereas the individual departments and policy branches do their own review of existing statutes. An amendment will be considered only if it is found that an existing statute may be in violation of BRO. This piecemeal approach to the review of existing statutes not only means that the work is slow but also that it is done passively. HRC, if given the work,

can do it more swiftly and more proactively. HRC's position will be independent and unfettered. It will have a larger pool of professional staff who are familiar with human rights issues. It will therefore be able to act with greater initiative to make progressive, comprehensive and credible recommendations, for instance, concerning the drafting of legislations which do not yet exist in Hong Kong but which will help the implementation of BRO, such as anti-discrimination legislation and legislation for the protection of privacy; and concerning the drafting of specific legislation which are apart from BRO but which are based on international covenants capable of safeguarding human rights, such as the International Covenant on Economic, Social and Cultural Rights and the the United Nations' Convention on the Elimination of Discrimination against Women. Given adequate resources, HRC can become an important and leading body for the development of human rights in Hong Kong.

In addition, it will be very useful to future legislation and to the development of a human rights culture if the court of law or HRC can build a record of authoritative precedents concerning the implementation of BRO for the purpose of the interpretation of some of the provisions of BRO. Some people think that HRC does not need to have the power of adjudication. They feel that a mere expansion of the legal aid programme will be enough to help speed up progress in the implementation of BRO and to speed up the settlement of disputes. I think that the establishment of HRC and the expansion of the legal aid programme must proceed hand in hand if the said objectives are to be attained. For there will be disputes where the issues are not well defined. Where a case involves, for instance, the beating of a suspect by a law-enforcement officer, it may be relatively easy for the plaintiff to obtain legal aid. However, where a case involves an issue that it is not clear how it should be dealt with, particularly those involving a concept or a procedure, it will be hard for the plaintiff to obtain legal aid. For instance, under what circumstances should the prohibition of an assembly be judged as unjustifiable? What constitute encroachment on privacy? Under what circumstances should an administrative procedure be judged as contrary to due process?

A moment ago, Miss Emily LAU referred to disputes between the Government and private citizens. She expounded the point that the legal aid system by itself was not enough even for resolving a human rights dispute of this kind.

In addition, I would like to say a few words about Mr NGAI Shiu-kit's worries that he expressed a moment ago. He referred to inter-citizen disputes. What I wish to say in response is that inter-citizen disputes are in fact subject to the Bill of Rights. This is the case in many countries, including those with anti-discrimination or anti-apartheid laws.

Mr NGAI also expressed the concern that HRC would become a body that would plunge Hong Kong into great disorder. I think that the opposite is true. I believe that, a credible HRC which plays a role in settling human rights disputes through conciliation and adjudication will be of great help to Hong Kong's stability.

Also, he was concerned that HRC would be above the judiciary. In fact, this will not happen.

The buzzer sounded a continuous beep.

PRESIDENT: Mr TO, you have to stop.

MR JAMES TO (in Cantonese): With these remarks, I support the motion.

DR PHILIP WONG (in Cantonese): Mr President, human rights have a historical dimension and a social dimension, which are governed by specific social conditions. The concept of human rights is defined differently during different historical periods, in different countries, by different peoples, in different cultures, by different religions and by different social classes. As society advances and scientific development forges ahead, the concept of human rights has become larger in scope. Human rights are not only the rights of an individual; they are also the rights of society at large. They do not merely refer to political rights, voting rights and the right to monitor the government; they also refer to the right to life and basic rights in the economic, social and cultural areas. They do not merely refer to statutory rights; they also refer to obligations that come with rights. The concept of human rights cannot be split up. If too much stress is placed on individual's human rights, needs, and political rights while ignoring or denying the existence of the rights of society at large and belittling other basic rights, then this is not really respecting human rights, but distorting human rights.

The Bill of Rights Ordinance (BRO) enacted two years ago has been criticized by the public and by law-enforcement officers. I have heard many critical comments that liken BRO to a haven for criminals. The reasoning is quite simple. If the rights of an individual are allowed to expand unrestrained, the rights of the others are bound to be encroached upon. Society will then become less stable. In the end, the individual will suffer.

As we all know, because of different cultural backgrounds and so forth, there is a very wide gap between the Eastern and the Western concepts of human rights. People in Eastern countries live as if in a big family. They put a heavier emphasis on national unity, national dignity, harmonious inter-personal relations, respect for the elderly, morality, conscience and so forth. Western countries put a heavier emphasis on individualism, free thinking, free speech

and the rule of law. In fact, there are common grounds between the two concepts of human rights despite their differences. Which is superior? This question should be left to the judgment of each nation. One country cannot and should not impose its own values or moral standards on other countries and ask them to "use the same recipe and cook the same meal", as a Chinese saying goes.

After World War II, as national liberation movements gathered force like storm clouds, the United Nations passed about 70 or so documents on human rights in the economic, social and cultural areas. Most recently, to prepare for the conference on human rights, countries of the Third World passed three separate declarations, raising the notion of human rights to a new level. A special point of the declarations is that the right to life and the right to development have gained increasing recognition and that the despotic use of the human rights issues to attack or constrain other countries or to interfere in their internal affairs has become increasingly unpopular.

At the world conference on human rights, many delegates noted that, if a country lost its sovereignty or was invaded and occupied by another country, the people would not have any protection from human rights, would they? Chinese and foreign history books contain many such painful examples. In Shanghai in the old days, a sign at the entrance of a park in a foreign concession said, "No dogs or Chinese allowed". This sign is still fresh in our memory. We, children of the Yellow Emperor, should have a deeper understanding of, and take a square look at, the history and the reality of our nation. We should not blindly copy the Western model.

Concerning human rights in Hong Kong, it will be better for us to take a dynamic view of history and make an objective and fair evaluation. The United Kingdom has ruled Hong Kong for 150 years or so. When did it ever advocate or carry out a real human rights policy in the true interests of Hong Kong? I doubt that the United Kingdom sold opium to China for the good of the health of the Chinese people. Nobody can convince me that the United Kingdom invaded and occupied Hong Kong in order to protect the human rights of the people of Hong Kong. Why then did the British Government, soon to withdraw from Hong Kong, suddenly take an interest in the human rights of the people of Hong Kong? The public knows in their minds what is going on. To use a cliché in China, "to judge one's words in the light of one's actions".

I once watched a movie about a poor family. The father of the family was unemployed and could not afford his children's tuition fee. The eldest son went out and stole some food so that his younger brothers and sisters would not go hungry. For this, he was praised by his father. As the father looked at it, the eldest son did nothing wrong. However, morally or legally speaking, this should not be encouraged. If we think about the problem more deeply, would this sort of thing have happened in a wealthy family with better educated children? I do not mean to propose that "if you are poor, you should steal". I am just using the example to show that we could not promote human rights without having regard to reality. Economic development and education are

very important to the protection of human rights. I agree that civic education should be promoted in Hong Kong and that, for now, it is especially necessary to give broader publicity to the Basic Law so that the general public, particularly the young, may fully understand that the rights of the individual cannot exist outside the reality of Hong Kong and cannot be above the interests of society at large. Human rights on one hand and stability and prosperity on the other are inter-related and complementary to one another. Human rights will be really protected and further promoted only if social stability and economic prosperity are achieved.

Mr President, I agree that human rights education should be stepped up to promote and protect the basic rights of the citizens. However, if the move is intended to transplant Western values to Hong Kong or to do so with an ulterior motive, bringing about adverse effects on Hong Kong's stability, prosperity and peaceful transition, then I cannot support it.

These are my remarks.

MR WONG WAI-YIN (in Cantonese): Mr President, in the wake of the enactment of the Bill of Rights Ordinance (BRO) in 1991, lawsuits involving human rights have been on the rise. Still, the concept of human rights has failed to take roots in the minds of the public. In fact, some people have a misconception. They think that BRO restricts their freedom in the exercise of their rights. The truth is that the Government has the responsibility for enforcing BRO and observing its spirit. Meeting Point thinks that no satisfactory results can be achieved if individual government department is responsible for the promotion of human rights. The Government must set up a central independent Human Rights Commission (HRC). HRC should be autonomous and in control in matters of funding, personnel and operations. Also, it should have the following functions:

- (1) It should be engaged in public education and publicity drive. Public education and publicity drive are important ways of promoting the concept of human rights. Education means more than publishing some periodicals or printing some pamphlets. Something must be done about the education system. Human rights curriculum should be designed for Hong Kong's primary and secondary schools to put young students in touch with human rights. Education should be supplemented by publicity campaigns to enable the general public to receive information, through different channels, concerning human rights and their own rights.
- (2) HRC should have a law review function. In this regard, it does not supplant this Council but maintains a co-operative relationship with it. It may help by reviewing legislation. HRC should be empowered to review existing statutes that are incompatible with BRO and to make recommendations concerning proposed

legislation. This will enable it to give effective help to this Council by offering alternative views that are authoritative and professional.

- (3) HRC should have an adjudication function. When one suspects that one's human rights have been encroached upon, one may first go to HRC for advice. Where necessary, HRC will settle the dispute through adjudication or conciliation and return a binding verdict. And the dispute will go to court only if HRC's verdict is challenged. This will not only reduce the case load of the courts but also obviate the need for both the plaintiff and the defendant to pay expensive legal fees.

Up to now, there are members of the public who, for various reasons think that there is no need for HRC. Some think that handling public education and publicity are already in the hands of the Committee on the Promotion of Civic Education, so there is no need for setting up another body to handle the overall responsibility. Meeting Point thinks that the Committee's work is not all related to human rights. People of Hong Kong are entitled to human rights, which form part of the constitution of Hong Kong. A central independent HRC will be able not only to pool resources but also to co-ordinate public education and publicity, making deployment of resources more flexible.

Some think that the existing judiciary already affords adequate protection. In other words, they think that a HRC with adjudication power is unnecessary. But Meeting Point thinks that a HRC with adjudication power will reduce the human rights case load of the courts. It will also provide a channel through which the plaintiff and the defendant may reach settlement before going to court. HRC will be a mediator in human rights cases. This will be quite good for both the plaintiff and the defendant. For this reason, Meeting Point thinks that the establishment of HRC is needed and cannot brook one moment's delay.

Lastly, Mr President, before our sitting began today, there were a great number of citizens petitioning outside this Council in support of Ms Anna WU's motion on the establishment of HRC. They composed a song in traditional Cantonese tune to express their sentiment. They told me to echo their feelings in this Council. I cannot sing. Let me now read the lyrics:

"Human rights should be yours and mine, but BRO is not affording adequate protection. We thought that BRO would be effective and would protect everybody. But now we know that it governs only the public sector as private sector is beyond the scope of BRO. The Government, too, often encroaches on people's rights, but it is protected by law and people can do nothing about it. Take it to court perhaps? But people cannot afford the legal fees. What can be done to remedy the problem? BRO should be extended to cover the private sector, so that people's rights in various aspects could be protected. A HRC should also be established. We want it to be a body with special responsibility of promoting human rights education. It can additionally offer professional views to the Government and help citizens by handling

uncomplicated cases. To tell the truth, it is painful to have one's rights encroached upon. HRC should be empowered to handle such cases and find the remedy."

These are my remarks. Meeting Point supports the motion.

MISS CHRISTINE LOH: Mr President, I draw the attention of this Council to the words of China's Vice Foreign Minister LIU Huaqiu, during the recent World Conference on Human Rights in Vienna. Mr LIU said that:

"Each and every Chinese citizen enjoys genuine democracy and freedom, civil and political rights as well as extensive economic, social and cultural rights".

I submit that if the Chinese Government believes the conditions now prevailing in China amount to "genuine democracy and freedom", and if the Chinese Government believes its subjects now enjoy full "civil and political rights", then Hong Kong has every reason to fear for the future of its own rights and freedoms after 1997.

The current spate of harassment of religious leaders, and arrest and re-arrests of trade unionists and dissidents in China have a chilling effect on Hong Kong.

It is true that the Joint Declaration and the Basic Law commit China to upholding Hong Kong's rights and freedoms. But quite clearly, words like "rights" and "freedoms" and "democracy" have a very limited meaning for the Chinese Government. If, indeed, they can be said to have any meaning at all, by our standards.

For Hong Kong to truly preserve its present rights and freedoms after 1997, in substance as well as in name, it is going to have to rely upon its own legal and administrative mechanisms. It must concentrate now on doing everything possible to ensure that those mechanisms are well established by the time 1997 arrives, and that they command the respect of society.

The introduction of the Bill of Rights in 1991 was an encouraging step in the right direction, even if it took the horrors of Tiananmen to shock the British and Hong Kong Governments into taking a step which they should have taken many years earlier.

Since the Bill of Rights was introduced, however, the Government has seemed reluctant to give full expression to its spirit and principles. In particular, the Government has been excessively slow in striking down or amending lesser laws which conflict with the Bill of Rights. The courts of Hong Kong are meanwhile too crowded and too expensive to offer a realistic avenue to private citizens seeking to enforce provisions of the Bill of Rights.

Most worrying of all, China refuses to give any firm undertaking about upholding the Bill of Rights after 1997. Mr President, you will remember in June 1991 when a Chinese Foreign Ministry official threatened to do away with the Human Rights Ordinance after 1997.

For these reasons, the Bill of Rights is still a very incomplete and fragile reassurance.

Further protection of Hong Kong's rights and freedoms ought to be available through the United Nations Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights. The Joint Declaration says the provisions of this Covenant will continue to apply to Hong Kong after 1997, a pledge echoed in the Basic Law.

But serious political and technical obstacles render the worth of that pledge somewhat dubious. For China is not a signatory to the International Covenant. The Foreign Secretary, Douglas HURD, told us last week that he brought the subject up during his Peking visit. He said that China reaffirmed its obligation in the Joint Declaration but was not in a position to elaborate on how it intends to fulfill that obligation.

China may claim that it intends to observe the spirit of the Covenant in its dealings with Hong Kong. But based on its present rhetoric and its past performance, China is highly unlikely to understand the obligations of the Covenant in the way that those obligations are understood here in Hong Kong. And it must also be reckoned highly unlikely that China will accept the discipline of reporting on human rights in Hong Kong to the United Nations Human Rights Committee. Yet this discipline forms an integral part of the Covenant's provisions and protections.

For these reasons, I believe that there are at least two essential jobs which a Human Rights Commission could do for Hong Kong. One of those jobs relates to the Bill of Rights and the other to international supervision.

A Human Rights Commission should serve as the guardian of the Bill of Rights. It should be an independent and expert body, able to hear complaints and submissions from the public, and able to advise the Government on new and existing legislation.

As to powers, I suggest that the Commission be delegated an unusual and specific principal power. It should be capable of originating legislation, and of securing the introduction of legislation directly into this Council, whenever it believed that such legislation was needed or to amend existing Hong Kong laws in order to bring them into conformity with the Bill of Rights.

Whether or not such legislation was enacted would, of course, remain a matter for this Council. But the effect would be to create a "fast track" through which deficiencies in our law could — at the discretion of this Council — be

corrected. This would be a formal innovation of considerable magnitude; but one which the fundamental importance of the Bill of Rights would fully justify.

A Human Rights Commission should also serve as this territory's link with the Human Rights Committee of the United Nations. It should assume the job of reporting on the human rights situation in Hong Kong. It should also be placed under a statutory *duty* to alert the United Nations Human Rights Committee, should it believe there to be any systemic abuse of human rights in Hong Kong.

There is a job to be done; and we need a Human Rights Commission to do it. Such a body would have to be headed by a strong-minded and legally-skilled executive commissioner, and supported by a professional secretariat. I further suggest that dismissal of such a commissioner should require a two-thirds vote of this Council.

By these means, we would create a body with concrete and specific power. It would be closely associated with this Council and enjoy the protection of this Council in time of crisis. It would cost a very modest amount of money, which we might regard as a premium very sensibly paid to insure our priceless rights and freedoms.

Mr President, I support the motion.

MR JAMES TIEN: Mr President, we gather here today to discuss whether an independent Human Rights Commission should be established to help promote and protect human rights in Hong Kong. I am sure everyone in this Council would like to see our rights secured. But we must ask ourselves what do we need to do to achieve the objectives.

The enactment in June 1991 of the Bill of Rights Ordinance is of course the most conspicuous and the most significant development. We admit that in a number of other respects, the protection of human rights in Hong Kong has undergone a metamorphosis. To say that Hong Kong people have become more conscious of human rights is superficial. Interpretation of human rights varied in different sectors of the community. I do not intend to put all the blame on the Government. But the mere fact is, the Government's commitment to the Ordinance has been half-hearted and hesitant since its enactment in 1991. Despite the need for inter-departmental co-operation in carrying out the Ordinance, there is no such organization to co-ordinate and oversee its overall implementation.

In the past two years, people had repeatedly called for the setting up of a Human Rights Commission. I believe it is time for the Government to do something about it. But before we come to any conclusion, Mr President, we must be sure what kind of a commission do we want.

I believe it is most desirable that the Human Rights Commission should be a hybrid of the Law Reform Commission and the ICAC. In other words, the independent Human Rights Commission should evaluate relevant laws and policies, as well as investigate human rights intrusion cases.

The educational role of the Human Rights Commission has also been overlooked by many. At present, the Committee on the Promotion of Civic Education is responsible for promoting the Bill of Rights Ordinance. Not only was the amount of funds allocated to the Committee meagre, but its lack of expertise and overload of work also undermine the effectiveness of the promotion efforts. The Government should be determined to make an impact on the hearts of the citizens. It is now time to put more resources on educating the public.

However, Mr President, I cannot bear myself to support the latter part of the motion. I strongly believe an independent and impartial Judiciary is essential for the effective protection of human rights. No more and no less. Vested with the power of adjudication, however limited its scope may be, the Human Rights Commission would become all too powerful as the Commission investigates, prosecutes and passes judgements all by itself.

It is thus advisable that the Commission should instead be an independent investigator similar to the ICAC, responsible for investigating human rights intrusion cases. When a case was established, the Commission could then refer the case to the court, and at the request of the court, to appear as a witness of the court to provide information and argument.

Meanwhile, some also argued that while everyone's attention was drawn to the implementation of the Bill of Rights Ordinance, hardly any thoughts were given to human right issues between private citizens.

I see no strong reason why the Human Rights Commission should dwell on this domain which would very likely invite more controversy and possible abuses. It is worth noting that the common law has already entailed comprehensive protection against individual human rights abuses. The Employment Ordinance, for instance, has secured the basic rights of the employee and the employer. According undue emphasis on the issue would politicize and even polarize labour-employer interests. We are hoping to enhance our human rights, but not to disturb a good labour-employer relation. The Bill of Rights Ordinance is supposed to bring harmony and equality among us, but not to divide and alienate us.

The existing Ordinance may by no means be perfect or ideal. We could, nonetheless, refine them as deemed fit. There is no point in creating another administrative mammoth to do the job which only incurs additional costs on the Government.

Finally, I would like to emphasize that we must be careful as to decide what kind of organization we wish to set up for undertaking jobs of such complexity. The Commission should be established to solve problems over human right issues, not to create yet more. It is not our wish that the Commission would in any way undermine the impartiality and independence of the Judiciary, nor surpass the power of the executive or the legislature. To ensure the effective and efficient operation of the proposed Commission, it is thus sensible to render it an independent body responsible for education, research and investigation but not arbitration, nor private citizens' disputes.

Mr President, subject to the above reservation on arbitration and private citizens' disputes, I support the motion.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I wish to thank Members for their views, so eloquently expressed. It is clear that most Members who have spoken are strongly in support of the idea of setting up a Human Rights Commission to help promote and protect human rights by various measures, including:

- public education;
- evaluation of laws and policies;
- monitoring of government actions and practices; and
- resolving disputes through reconciliation or adjudication.

The Government appreciates and respects these views, but we do not think there is yet a sufficiently strong case for setting up a Human Rights Commission in order to perform these functions. This is not to say that the Government does not fully subscribe to the implementation and promotion of human rights in Hong Kong. Nor are we affected in our thinking by non Hong Kong factors, as one Member suggested. Our record on standing up for Hong Kong and what is right for Hong Kong has been fully demonstrated since October last year. Indeed, since the enactment of the Bill of Rights Ordinance, the Government has tried to meet the demands arising from its application through a number of channels. In some cases, because of competing priorities, we may not have been able to proceed as fast as we would wish. Nevertheless, the machinery is already there, as my following remarks on each of the proposed functions will show.

Public education

On human rights education, a Human Rights Education Subcommittee was set up under the Committee on the Promotion of Civic Education in May 1992 to promote public understanding of human rights.

This is entirely logical. Human rights is part of civic education and I made no apologies for putting this under the ambit of civic education. Despite doubts cast by some Members on its effectiveness, I am glad to report that, in the 14 months or so since its coming into operation, the Subcommittee has been very active. It has organized a number of projects, very successful ones, including Community Participation Scheme, "Infoline" messages, radio programmes and a large scale exhibition on human rights. It attempts to educate and to interest the man in the street on their human rights. I do not think that our priorities are the Tai Pans of Hong Kong. They should know better. More are being planned for the coming months, for example, the production of a teaching kit for educators and young people, as well as seminars for promoting its use. Meetings of school heads to promote human rights education in the school setting will also be held. I would, Mr President, like to take this opportunity to express the Government's sincere appreciation to the Committee for its hard work though not always appreciated.

In addition, the Government has published introductory booklets on the Bill of Rights to help the public understand the significance of the Ordinance.

Evaluation of laws and policies

Concerning the evaluation of laws, many Members are well aware that the Government is conducting an ongoing review of legislation in the light of the Bill of Rights (BOR). Since the enactment of the Bill of Rights in June 1991, 12 Amendment Bills have already been enacted to bring existing legislation into line with the Bill of Rights. One further amending Bill, namely, Inland Revenue (Amendment) Bill, is expected to have a Third Reading next Wednesday, 21 July. We shall be completing our preparations for amending the Public Order Ordinance in the next couple of weeks and will introduce amendments to it very early in the next Legislative Session. The Summary Offences Ordinance will be amended along with the Public Order Ordinance. The Governor in Council will also be asked to amend the Prison Rules and Mental Health Regulations in the next few months. Three other amending Bills are expected to be introduced into the Council in 1993-94.

In the context of the separate but related review of laws which might affect press freedom, the Government has also identified a number of legislative provisions which are either obsolete or which seem at odds with the BOR. These will be repealed or amended as soon as the legislative programme allows.

We appreciate Members' wish to see a faster pace of review and amendment of legislation. But only the courts can determine whether a particular provision is inconsistent with the BOR. Unless there is a clear case of inconsistency we would not want to pre-empt the courts by jumping to conclusion. The need for caution is made more evident by the fact that human rights law in Hong Kong is new and developing. The Privy Council has urged that BOR issues be approached with realism and good sense and be kept in proportion, or the Bill might become a source of injustice rather than justice.

The review of legislation is aimed at finding that balance. Such a delicate task does not lend itself to excessive haste. Besides, the legislative programme can only take on so much every year. Examining corresponding policies and the need for operational change can also be time-consuming.

This brings me to the question of Members' suggestion that a Human Rights Commission should also perform the function of evaluation of policies. My response to that is that while outside bodies are not prevented from evaluating government policies — indeed, we already have a network of advisory bodies to advise the Government on policies, for example, the Law Reform Commission — the responsibility for reviewing and introducing any changes to such policies ultimately rests with the Government. We do constantly review our policies, including those having an impact on human rights, and are publicly accountable for them. The checks and balances are provided by this Council.

Monitoring government actions and practices

The same applies to the monitoring of government actions and practices, except that in this case, an additional safeguard is that, where the Government has by its administrative action allegedly breached the BOR, the offended individual could seek legal remedies through the courts. Apart from that, the Commissioner for Administrative Complaints (COMAC) is empowered to investigate complaints that fall within his remit in relation to alleged maladministration. Maladministration covers abuse of power including any action which is unreasonably unjust, oppressive, or improperly discriminatory. It would include administrative acts which may have BOR implications. In this connection, Members will probably be aware of the various legislative proposals to strengthen the COMAC redress system which will be introduced into this Council next Wednesday. One of the proposals will be for COMAC to be more accessible to the public.

There are other existing avenues for redress of grievances arising from human rights infringements concerning specific law enforcement agencies such as the Police Complaints Committee and the ICAC Complaints Committee.

We have reservations about a Human Rights Commission's role in dispute resolution, at least in the Hong Kong context.

Reconciliation, a less formal way of resolving disputes, is expedient for dealing with actions between private parties — an area excluded from the BOR Ordinance. Full-fledged judicial intervention, on the other hand, is often warranted in a case of alleged government breach, for the chances are that the breach has a greater impact on the individual. In fact, most BOR disputes have hitherto arisen from criminal proceedings. It is hard to imagine these disputes being dealt with by a Human Rights Commission.

There are other ramifications. In Hong Kong, BOR disputes essentially concern questions of law and statutory interpretation. Unless a Commission's legal ruling is final, in which case the Commission will assume a law-making role, the courts will remain the forum of last resort. If the courts do remain the forum of last resort, most Commission cases end up in the courts. The role of the Commission as a separate adjudicating body will be thrown in doubt. If, on the other hand, most cases go no further than the Commission, development of local jurisprudence will be adversely affected, at least in the early stages.

Other difficulties include defining the Commission's powers and staffing it with the right candidates. All these strengthen our belief that the BOR disputes are best resolved through the judicial process. And I have to say that they are being done very actively by the courts.

There is concern that some BOR points are not pursued in courts because of the prohibitive legal costs involved. The inter-departmental Working Group on Legal Aid Policy Review has addressed this point in the Consultative Paper on Legal Aid which is at present going through the public consultation process. The Working Group's preliminary view is that the existing scope of civil legal aid is broad enough to cover cases involving challenges on BOR grounds. In criminal cases, the Director of Legal Aid has the discretion to provide legal aid in such cases in the interests of justice even if the applicant fails the means test.

This discretion of the Director, coupled with the expansion of the Duty Lawyer Scheme since 1991, also means that the Government has fully met its obligations under Article 11(2)(d) of the Bill of Rights Ordinance. That Article provides that legal assistance should be provided to any person charged with a criminal offence "where the interests of justice so require and without payment by him in such cases if he does not have sufficient means to pay for it".

Many Members today suggested problem areas which a Human Rights Commission might somehow be able to deal with better, easier or more speedily. I hope what I have said earlier demonstrated that a Human Rights Commission is not a panacea. Incidentally, one of these problem cases mentioned by Mr Frederick FUNG is evidently not one which is ignored by the Government. Mr FUNG highlighted some of the more obvious deficiencies of corporate voting in the functional constituencies. I have to remind Mr FUNG that this is one problem area which is acknowledged by the Government and which we are set out to rectify in our proposals for the 1994-95 electoral arrangements.

Mr President, while we appreciate Members' preference for more to be done on the human rights front, including the establishment of a Human Rights Commission, we have to acknowledge that Hong Kong does have a good human rights record, comparable to the best in Asia. Our citizens will agree, I think, that we are a free society. I am not saying that we should be complacent, but Members should accept that a Human Rights Commission is not essential for the performance of the functions envisaged by Members, and it has indeed its

dawbacks. We do not see a strong case for setting up a Human Rights Commission at this time, but obviously we always keep an open mind and would look at it again if and when future developments so warrant. Accordingly, the official Members will abstain from voting in this motion.

PRESIDENT: Ms Anna WU, you have got four minutes for your reply.

MS ANNA WU: Thank you, Mr President. It is absolutely true that human beings are different, but despite these differences we have the same fundamental needs. It is also absolutely true that there is controversy in the international community on human rights. But even those who take the minimalist approach could not get themselves to say that human rights are not universal. The Bangkok Declaration signed by many Asian countries is evidence of that.

I propose an independent Human Rights Commission for Hong Kong because we need it, because we need to put our own house in order, not because someone else needs it. We should consider what equivalent laws we need in the private sector, such as privacy and anti-discrimination laws which are available elsewhere. We need a Human Rights Commission to be a force of stability creating a balance between conflicting demands. The protection of human rights is protection against executive, administrative and political excesses. A body that is separate from the government is in a position to command respect, credibility and turn high-sounding ideals into reality.

Human Rights Commission is expected to advise and resolve problems that the Government is unable or unwilling to address.

Experiences in Canada, Australia, New Zealand, the United Kingdom and elsewhere have shown Human Rights Commissions and equivalent bodies to be effective and cost efficient. A Human Rights Commission does not override the courts but complements the jurisdiction of the courts.

I would remind Members that we have the Lands Tribunal, The Labour Tribunal, the Securities and Futures Commission and many others. None of these have threatened the independence of the Judiciary or have usurped the powers of the court. It is absolutely untrue that if the court is the last resort most Commission cases would end up there. We have examples in New Zealand and Australia; comparatively very few, two to three cases may be a year from the commissions and tribunals there end up in court. That cannot be too many.

Between 1990 and to date there have been seven submissions made to the Legislative Council Complaints Division urging the establishment of a Human Rights Commission. This, together with the petition I received at the entrance to the Legislative Council today, takes it to eight or more. The Administration has repeatedly stated that the need for a Human Rights Commission has not been demonstrated and the case has not been sufficiently made. I see and hear

differently. The need is unquestionable, the call is unequivocal. But the Administration chooses not to see and not to hear.

If monitoring government action within or outside this Council on the ground of the Bill of Rights or any other human rights grounds might be regarded as possible injustice, then it is a strange sense of justice and all the more we need an independent Human Rights Commission to be entrenched in Hong Kong as soon as possible.

Thank you, Mr President.

Question on the motion put and agreed to.

WORKING RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATURE

MR VINCENT CHENG moved the following motion:

"That this Council urges the Government to review together with the Legislative Council the present communication and working relationship between the Executive and the Legislature with a view to establishing a more efficient and effective working relationship between the Executive and Legislature."

MR VINCENT CHENG: Mr President, I move the motion standing in my name in the Order Paper.

I am glad to be able to move this motion today before the end of the current Legislative Session. The reasons for this debate are clear and simple. It has nearly been two years since we were sworn in as Members of this Council in 1991 and we have only two more years to go. It is the right time to review this important subject. The two years should give us plenty of experience to assess intelligently the relationship between the Government and this Council.

For the first time, Hong Kong has a legislature with some directly elected Members. How has this impacted on the Administration and the governance of Hong Kong? What lessons can we learn from it? We also have had two Governors with very different background and style. We tried coalition government in 1991. We now have completely separated the Executive Council and the Legislative Council. Which structurally is better? These two years' experience should give us some insight into how we can strengthen and improve the working relationship between the executive and the legislature for the benefit of Hong Kong. Before I make my own suggestions on the way forward, perhaps I should explain my perception of the problems or potential problems arising from the current political structure.

The problems are actually well known as Members of this Council have not hesitated to discuss them in public. First is the absence of any guarantee that government policies would be supported by this legislature. Despite the claim that we have an executive-led government, we probably have the weakest government in Hong Kong's history in terms of influence in the legislature. The Government only has three votes in this Council which will disappear in 1995. Should this Council decide to be unco-operative or should there be a complete disagreement over policies, there is a real danger of an impasse stopping Hong Kong from moving forward. A case in point is the Court of Final Appeal.

The second problem is the imbalance between power and responsibility of this Council. Despite some people's claim that this Council is only an advisory body, the truth is that this Council has enormous power, through its power to approve funds and pass legislation. Yet, on the other hand, because we cannot initiate policy and do not have the task of actually governing Hong Kong, we do not need to make difficult choices and assign priorities. Making choice is not a simple matter. One has to take into consideration the needs and aspirations of the different segments of our society and balance them against the resource constraints and conflicting sectoral interests that we have to face. This imbalance does have an impact on the behaviour of this Council. To some people, it allows the Legislative Council to ignore constraints which the Government has to consider; it allows the Legislative Council to take a populist stance and condemn the Government for not having done enough. It is natural that Members have different views on, and varying degrees of acceptance of, the nature and magnitude of such constraints. Nonetheless, the different perceptions of practical constraints compound the difficulties faced by the Government in getting the Legislative Council's support.

The third problem is the lack of communication between the Executive Council and the Legislative Council. The separation of the two Councils has completely removed all formal channels of communication between the two bodies. We can only rely on informal contacts. Invariably, Executive Council decisions are made without any discussion with the Legislative Council and the decisions are presented to this Council as a *fait accompli*. We are thus put into a very difficult position. If we endorse the decision, we would be seen as a rubber stamp. But if we make some vocal protest and then endorse we would still be seen as a rubber stamp though a rubber stamp with a voice machine. But if we throw Executive Council decisions out, we would be accused of being unhelpful, destructive and obstructing Hong Kong's development. In the end, we are reduced to only making some technical changes to improve Bills or resort to some cosmetic amendments and then package them in such a way so that we could claim a victory over the Administration. These are all very unhealthy and would undermine the authority of the legislature and the Administration. Were we able to have some initial discussions with the Executive Council before final decisions are made and announced, the chance of deadlock and confrontation should be reduced. Admittedly some of the differences are of a fundamental nature mainly due to different political and

economic philosophies rather than a lack of communication. Nevertheless, better communication would still allow the two Councils to discuss our concerns before we are locked into our position.

Despite all these problems, which are at times frustrating and have led to mutual accusations through the press, by and large we have managed to get legislation passed and funds approved. To the credit of the Administration, despite the absence of any guarantee that their policies would be supported, despite the barrage of sarcastic and sometimes naive questions, despite the fact that this society would not allow civil servants to respond in similarly sarcastic manners to get even, there has been no reluctance on the Government's part to initiate new policies to move Hong Kong forward. On the whole, we have not done too badly.

The problems I mentioned are just some examples and I am sure Members of this Council will identify more in the discussion that will follow. But we are not here to find problems, rather we should put forward suggestions to the Government through a well-thought-out discussion. I hope Members of this Council will make meaningful and practical suggestions to the Government for consideration.

There are a number of ways to improve the present working relationship and communication between the two Councils. I would propose two:

First, to reinstate the Exco/Legco meeting which was abolished when the OMELCO was dissolved. We should have a monthly closed-door meeting so that the two Councils would sit together to discuss important policy matters. The agenda should be set jointly and the meeting could be chaired by the Senior Member of the Executive Council. The meeting should be behind closed doors so that Executive and Legislative Council Members could express their views freely. This would give Members an opportunity to exchange views and the Executive Council would be able to gauge more accurately the sentiment of this Council on various issues.

Second, Executive Council Members should be invited to join our panels. They could choose their areas of interest and participate in the discussions on an equal basis.

I would like to hear Honourable Members' views on these suggestions.

Yet, as we would all agree, recent disagreements between the legislature and the Administration cannot be attributed wholly to a failure of communication between the Executive and Legislative Councils. While an efficient communication system would go a long way to reduce the chance of misunderstanding and increase the likelihood of accommodating views, it would not necessarily lead to consensus on every issue. There will still be disagreements due to different economic, political and social philosophies. Not even dual membership of the two Councils could resolve this problem. I

understand that some Members would put forward their views on dual membership in this debate. To save time, I will not make any comments on this area.

Mr President, no political structure would ever resolve all the problems. We need goodwill on both sides for any system to work. Democracy is not just about votes. It should be a system through which we could discuss important issues rationally, accommodate different views and arrive at a compromise or consensus.

Our political structure is rather unusual. Yet on the whole, this Council has been every co-operative with the Government. Whenever we are given a deadline on a piece of legislation, we would aim to finish the scrutiny of the legislation within the time frame. Not infrequently, we allow Bills to be passed without forming a Bills Committee when we are satisfied with the Government's explanations. There is tremendous goodwill and willingness in this Council to make the system work.

Mr President, summer recess is coming very shortly. I must admit that I am waiting very eagerly for such break. I hope all of us in this Council, the Governor and our Executive Council colleagues, when lying on beaches, will reflect seriously on last two years' experience and consider very carefully the suggestions put forward this evening.

Mr President, I beg to move.

Question on the motion proposed.

MR ALLEN LEE (in Cantonese): Mr President, the communication problems stemmed from Governor PATTEN's decision to separate the Executive Council and the Legislative Council last year are amply reflected in the motion on the relationship between the two Councils moved by the Honourable Vincent CHENG today.

Under the present circumstances, the policies formulated by the executive branch of the Government may not win the support of the legislature. Likewise, the results of the debates on government policies, such as today's debate, held by the legislature may not necessarily be considered and accepted by the Administration. It is expected that such a situation will deteriorate after the 1995 elections.

The Liberal Party thinks that the separation of the Executive and Legislative Councils under the present arrangement has deprived the two Councils of proper dialogue and this is detrimental to an executive-led government. Furthermore, Executive Councillors assisting in the formulation of policies should be held responsible for any political repercussions. We think that the Governor should regard the promotion of the communication and

co-operation between the Executive and Legislative Councils as the essential prerequisite. And the role of the Executive Council and the relations between the two Councils should be reconsidered. Meanwhile, appropriate arrangements should be worked out for the policymakers to undertake political responsibilities and be accountable to the public.

Mr President, Hong Kong will become China's Special Administrative Region in less than four years' time. Now Governor PATTEN has separated the Executive and Legislative Councils, thus giving rise to communication problems between the two Councils. Worse still, he has failed to take any timely and effective measures to improve the situation. The question we need to address is that after the Chief Executive of the Hong Kong Special Administrative Region (SAR) is selected and appointed, how he or she can set up a government which is both executive-led and capable of effective ruling of Hong Kong. The Liberal Party thinks that the roles of policymakers should be assumed by politicians and then they should bear political responsibility for their policies. For the part of the civil servants, they with expertise in administration, should be responsible for the implementation of the policies laid down and advising policymakers. This is the ministerial system that we have in mind and consider worthwhile for Hong Kong to study and develop.

Since China has expressed reservations about such a ministerial system or even opposed it, some people in the community thus consider our proposal unfeasible but they fail to put forward other practical proposals to maintain effective rule in the future SAR Government. "Executive-led" cannot be an empty slogan but something to be put into practice. The Liberal Party's proposal is in compliance with the provisions in Chapter IV, "Political Structure", of the Basic Law. And we think that our proposal should be studied in detail and pursued.

The Liberal Party's focal concept of the political system for Hong Kong is that, on the executive front, policymakers should shoulder political responsibilities. Civil Service is a pillar supporting the Government and the whole society and it is not appropriate to politicize it. The legislature has the power to examine and endorse bills and budgets. It should also counterbalance the executive to ensure that government policies have public support and serve the public interests.

In addition, under such a system, Members of the Legislative Council can, in order to play the role of monitoring the Government's performance in terms of its implementation of policies, echo public sentiment and the reality through consultation with the Administration. Only with such a relationship between the executive and the legislature can the Government's transparency be further enhanced.

Mr President, with these remarks, I support Mr Vincent CHENG's motion.

MR HUI YIN-FAT (in Cantonese): Mr President, the separation of the Executive Council and the Legislative Council is intrinsically an essential process as Hong Kong progresses towards democracy and nobody should be against it in principle. However if it takes place before a practical solution is worked out to deal with the problems of communication and working relationship arising from the separation, it might inevitably lead one into thinking that the decision is made too rashly and hastily.

In his first policy address last October, at a time when mature conclusions were yet to be reached from the discussion on the separation of the two Councils, the Governor announced that the Councils would be separated and in an attempt to solve the problems of communication and co-operation resulting from the separation, he also announced the establishment of a Government-LegCo Committee. The Governor's idea was, however, subsequently proved to be not feasible as the Committee did not have a well-defined scope of jurisdiction and in addition, power was to be unevenly distributed. What is being blamed now is not whether Members of this Council co-operate or not but the fact that the embarrassing situation is a result of the Governor's omission of prior discussion with this Council and his belief that the separation would certainly win the support of the Council. The recent issues on the arrangement on obtaining a BN(O) passport and on the franchise of the Western Harbour Crossing are two sequelae of the lack of communication following the separation of the two Councils.

Despite the fact that the Governor answers questions from this Council regularly and openly and the three most senior Secretaries hold regular briefings with this Council, I would tend to think that these are measures without substance since such contacts would only give the Administration chances to reiterate prevailing policies or to explain new policies. They do not involve any pre-decision-making communication and consultations. Here let me stress that most of the Members of this Council are not advocating a "legislature-led" government. We are only demanding reasonable treatment from the Administration and the Executive Council.

Mr President, as it is never too late to mend, I think as long as the Administration has the sincerity to admit its mistakes and respects this Council as an authority representing public opinion, there should still be ways to tackle the problems of communication and working relationship between the two Councils. Although we are unable to change the "executive-led" mode of administration in the near future, as the political climate is one which favours more democracy, it is my view that the Government should be more open and be held more accountable in its administration. Under such circumstances, with the exception of sensitive issues, I see no reason why this Council should not be consulted in the process of policy formulation especially on issues that are of great concern to people.

I suggest that the Administration make full use of the Council's present 17 panels, which have comparable functions to those of various policy branches,

as channels to maintain communication with this Council before policies are formulated. When necessary, Members of the Executive Council can be invited to attend meetings so that this Council's views can be made known to them directly. Although eventually the Governor in Council's decision may not be on all fours with the one this Council would have favoured, as long as this Council understands why our views are rejected, then on the basis of the principles of mutual understanding and mutual accommodation, I believe policies may in the end still be passed or accepted by this Council.

Mr President, I hope the Administration would understand that close co-operation with this Council must be maintained during the latter half of the transition period in order to strengthen the recognition and acceptance of its policies. As a matter of fact, the power politics prevalent in colonial rule is fading in the territory, and additional administrative difficulties would be created if the Administration does not follow the trend.

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

MR SZETO WAH (in Cantonese): Mr President, it is stipulated in the Sino-British Joint Declaration that "the executive authorities shall abide by the law and shall be accountable to the legislature." That is the right and supreme principle governing the relations between the two branches of government. If the Sino-British Joint Declaration is to be truly abided by and implemented, then the relations between the Legislative Council and the Executive Council during the latter part of the transition period should also be gradually developed according to that right and supreme principle.

It is also stipulated in the Sino-British Joint Declaration that "the legislature shall be constituted by elections" and that "the Chief Executive shall be selected by election or through consultations held locally and be appointed by the Central People's Government." We can see from such requirements that the legislature is constituted in a more democratic manner and as such tends to be more representative of public opinion and more difficult to manipulate. The Chief Executive who represents the executive may not be produced in a democratic manner and as such may not represent public opinion and may be easier to manipulate. In this regard, there are people who like to mouth slogans like "Hong Kong people ruling Hong Kong" and "a high degree of autonomy for Hong Kong" but who actually wish to restore the good old days of "total control" and "concentration of power". In the course of the drafting of the Basic law, it was these people who would try everything they could in their attempt to restrict, diminish, or even remove the power of the legislature to act as a counterweight to the executive. What they did was a far cry from the right and supreme principle that "the executive shall be accountable to the Legislature." It represented a big step backward.

The deviation, and the retreat, from the Basic law are manifested in the following ways.

First of all, the ways in which the Administration should abide by the law and be accountable to the legislature are merely restricted to the following practices: to enforce the laws which are already in force; to regularly present a policy address to the legislature; to answer queries of Members of the legislature; to secure the approval of the legislature in matters of taxation and public expenditure.

Furthermore, the Chief Executive is to be elected by an Election Committee. This is not a democratic election. In so far as the membership of the legislature is concerned, every means has been explored to restrict the number of directly elected members and in consequence the representativeness of the legislature as a representative body of public opinion is diminished.

According to the Basic Law, there has also been a requirement that the legislature adopt a special voting procedure. Under this new procedure, the passage of motions, bills or amendments to government bills introduced by individual Members of the Legislative Council shall require a simple majority of each of the two groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies through direct elections and the Election Committee. This requirement is the notorious concept of "bicameral legislature".

The crux of the whole system is as follows: the Chief Executive is appointed by the Central Government and since appointment can be manipulated, the power of the appointee may be expanded as far as possible; the legislature is to be returned by elections and since the process is more difficult to manipulate, attempts are therefore made on the one hand to restrict the franchise so the representativeness of the elected legislator is diminished, and limit the power of the legislature in its role as a counterweight to the executive on the other. That is the hidden agenda of people advocating an executive-led government.

Given that the Basic Law which is meant to be implemented after 1997 has already incorporated such undemocratic features, what sort of demands can we make of the Executive Council which we have today and which will remain until 1997?

The most radical solution to the problem is the establishment of a democratic political system. In the absence of a democratic political system, or at any rate, before we are able to put in place a democratic political system, it is up to us to continue our campaign for democracy. Under the present circumstances, we can only hope for a government which is run by good and benevolent men who will give due regard to public opinion and who will not become so oppressive as to make popular rebellion inevitable.

Whether we choose to review the situation or enhance communication, we have to bear one point in mind. Failing to do so, we would run the risk of dealing with the issue in a superficial manner without conducting an in-depth

study, and limiting the communication to superficial contact without attempting to obtain a thorough mutual understanding. The one point I have in mind is public opinion. If both the legislature and the executive could respect public opinion and abide by public opinion, then it may not be necessary to conduct any reviews or to maintain any communication channels. And the two branches of government will naturally coincide because they have the tacit understanding.

Directly elected seats have been introduced to this Council since the 1991 direct elections. More than half of the seats on this Council are returned by elections. There has been a qualitative change. However, there are people who turn a blind eye to this qualitative change and to the representativeness of this Council, in particular the views of the directly elected legislators who represent public opinion. They would still like to continue to conduct business as usual, according to the 100-odd-year practice of the colonial years. It is in this context that a widening gap has developed between the Legislative Council and the Executive Council. And the problem of inco-ordination, incidentally, has given rise to the motion debate today.

Let me say this again. The most fundamental solution to the issue on which the motion debate is held today lies in the establishment of a democratic political system and we must spare no efforts to put it in place. Before this cause is achieved, we should request that the Governor in Council should respect, attach great importance to, and accept the public opinion as represented by this Council, in particular by the elected legislators and the directly elected legislators, so that communication between the Legislative Council and the Executive Council can be conducted on the basis of public opinion.

Mr President, these are my remarks.

MR ANDREW WONG (in Cantonese): Mr President, I speak in support of the motion moved by Mr Vincent CHENG, in respect of the relations between the executive and the legislature. Through the years, I have been making the point that in the process of political development, it is vitally important that the relations between the executive and the legislature should be correctly delineated. Indeed, it is an issue which is more important than other issues such as the number of directly elected seats and the pace of the introduction of more directly elected seats. In this regard, through the years, I have been going to great lengths to ask Members to attach greater importance to this issue.

The so-called communication problem at issue has its origins in the relations between the executive and the legislature. I think that it is not a problem of co-ordination; rather, it is a problem which will inevitably arise as a result of the introduction of elected elements to the Legislative Council. The greatest problem is not so much the lack of communication between the executive and the legislature (indeed, communication has always been going on between these two branches of government and communication is taking place now in the same manner). The problem which we are faced with now is that the

Legislative Council is no longer made up of Members from the same faction. Neither is it made up of Members from one faction in close collaboration with other factions. There is no clear majority in this Council to speak of. I do not intend to reiterate on this occasion the points I made regarding this issue in an article published in a contributors' column of a newspaper on Monday, 12 July 1993.

I would like to refer to, and perhaps comment a bit on, some of the views contained in the 1988 report of the OMELCO Standing Panel on Constitutional Development Report on Draft Basic Law. I would also like to inform Honourable Members and the public at large that the issue before us today was in fact identified by us in as early as 1988 and some specific recommendations were made consequently. In the report, the relations between the executive and the legislature was discussed in a number of sections in Chapter 5 which dealt with the political system. I would like to quote some sections and I will follow this up with a short commentary.

"Members favoured retaining the existing system of executive-legislature relationship but were aware that the selection through election or consultation of the Chief Executive (it does not matter too much either way) and the election of the legislature would usher in circumstances very different from those obtaining at present"

Members who are returned by elections must of course be accountable to their constituencies, and if they are to have any clout at all, they may have to form alliances and factions. This will naturally give rise to a completely different

8.00 pm

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

ATTORNEY GENERAL: Mr President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

Question proposed, put and agreed to.

MR ANDREW WONG (in Cantonese): Mr President, if I may continue with my quote of Paragraph 5.4. "Members took note that there were two main types of executive-legislature relationship. One was the "parliamentary executive" which featured executive responsibility or accountability to the legislature in that executive authorities as a whole or individually were subject to the criterion of majority support of or non-opposition from the legislature." That is to say, a

stable relation between the executive and the legislature is only possible if a simple majority among the legislators is achieved in support of the composition of the executive or they raise no objection to it. The second scenario described in paragraph 5.4 pertains to the American system which I have no intention of analysing at this point. It is also mentioned in paragraph 5.4 "..... that there were variations in the "parliamentary executive" type insofar as membership in the executive authorities was concerned. The British system provided for all principal officials called ministers to be members of either the House of Lords or the House of Commons, the French system however made the holding of executive and legislative mandates incompatible, requiring legislators to resign their parliamentary seats if appointed principal officials (also called ministers), while other systems (such as Japan and Germany) provided for arrangements in between." Whereas a requirement system is practised in Britain and an incompatibility system in France, a compatibility system is practised in Japan and Germany, and previously in Hong Kong. In this regard, the present problem is not whether the executive should be separated from the legislature, but whether the composition of the executive could secure the majority support of the legislature.

Mr President, I would also like to quote paragraph 5.6 of the report. "Members agreed that constitutional changes mainly be based on the existing system, and were inclined to support a close executive-legislature relationship such as by way of selecting the Chief Executive and/or principal officials from amongst the legislature. However, Members were not averse to other arrangements of the "parliamentary executive" type." We may not necessarily follow the Westminster-style ministerial system because we can just as well go for either the incompatibility or compatibility system. If I may continue with my quote: "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 (that is, should be subject to) forces emanating from the political will of the people and the legislature and should continue to hold office when they enjoyed majority support of the legislature." (That is to say, if they are not able to secure the majority support, they should resign.) In a nutshell, members of the executive branch should be politically appointed. Although political appointment may take different forms, the simple majority support from the legislature should in any case be secured.

Mr President, since we are not able to set up a system which sets out the right relations between the executive and the legislature, the Legislative Council has already degenerated into a talk shop. One scores points by simply opening one's mouth. It does not matter whether one says the right thing or not because either way one is able to get credit for speaking. It does not matter whether the Government is willing to listen or not because the Government is able to get credit if it listens and it is even able to get more credit if it does not. The Government has become a dictatorship of sorts. It is thanks to the strong sense of responsibility of Members, who take the larger interests of Hong Kong into account, that they choose to live with this situation, though reluctantly. It can be seen from the way the discussion of the Human Rights Commission has been

going that one cannot rule out the possibility of a no-confidence motion being endorsed in the next Session of this Council.

Mr President, now is the time for review and reform. With these remarks, I support Mr Vincent CHENG's motion.

MR RONALD ARCULLI: Mr President, for the purpose of this debate it might be helpful to look at how the Administration describes the roles of the Executive and the Legislature. I will quote from three sources: first, the fact sheet on "Government Structure" by the Government Information Services published in April 1993; the second and the third are the official yearbooks *Hong Kong 1992* and *Hong Kong 1993*. To quote the fact sheet, thus

"At present only the three *ex-officio* members are members of the Legislative Council. The separation of the non-official members of the two Councils enables each to perform and develop their different roles: the Executive Council provides impartial advice to the Governor, the Legislative Council to act as a counterweight to the Executive."

"The Legislative Council to act as a counterweight to the Executive." What a curious expression! It is as if the Executive is convinced that this Council will always hold a different view from the impartial advice given by Executive Council. Perhaps history might add to the confusion and I quote from the 1992 Year Book where Executive Council is described as follows:

"The depth of experience and the range of community interests represented by council members means that they are able to subject government policy to a rigorous examination before implementation. In this way potential problems can be identified and ironed out, and legislation to enact policy tailored to reflect public aspirations and concerns before introduction to the legislature."

It seems that the role of Executive Council has changed since the separation of the two Councils because in *Hong Kong 1993* Year Book, what I just quoted is replaced by the following:

"Members tender their advice on individual capacity and the council (meaning Executive Council) is collectively responsible for the decisions made by the Governor in Council. Individual non-official members do not hold personal responsibility for given subjects or portfolios. This is a matter for the government."

I have assumed that the change came about because of the separation of the two Councils under Governor PATTEN. It is quite tempting to suggest that the Administration is tantamount to admitting that policies decided are no longer tailored to public aspirations or concerns or at least the Administration is no longer confident in achieving the same.

Mr President, the lack of a good and workable relationship between Executive Council and this Council is a matter that warrants serious attention not only of this Council but also of the Administration and Executive Council. The Governor obviously believed that de-politicizing Executive Council was the right thing to do. This is not irreversible as the Governor acknowledged at the time. In de-politicizing Executive Council the Civil Service was politicized. The two biggest flaws in the current arrangements is this: how can Executive Council be de-politicized when it is in the thick of policy-making! It is said that each Member of Executive Council does not have individual responsibility for given subjects or portfolios because this is a matter for the Government. This seems to me to be a clear case of ivory tower thinking and wholly devoid of the realities of life and politics. Worse still it has thrust our Civil Service willingly or unwillingly into the political arena. It seems extraordinary that after 150 years of being apolitical our Civil Service find itself in danger of losing that much valued and respected description "public servants". Where has this left us? In my view, with the worst of both worlds. An Executive Council that has no political responsibility and a Civil Service that has been politicized.

Mr President, it is not too late to reverse this unfortunate state of affairs. It is against this background that the Liberal Party has put forward a Hong Kong-style ministerial system. The Honourable Allen LEE has dealt with this and I shall not repeat what he has said except to emphasize that, as we in Hong Kong develop our democratic institutions, this Council will want to influence policy making. Any Executive/Legislative Council relationship that hinders that process cannot expect to have the continuous support of this Council.

DR LEONG CHE-HUNG: Mr President, Winston CHURCHILL once said and I quoted, "Men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing had happened".

The truth before us today is that there is a breakdown in communication between the executive and the legislature. And the Administration unfortunately is pointing its accusing finger to Legislative Council for bringing about such predicament.

Mr President, on June 30, the Chief Secretary, in answering a question in this Chamber on the same topic said and I quote, "Could I just remind Members of this Council that there was a strong view in this Council that the institution of the OMELCO should be abolished, pursued particularly strongly by one political party? It was in response to that that we in the Administration set up an independent Legislative Council and that is one of the reasons why the channels of communication are that much more difficult".

Mr President, it would not do justice to this Council if the record is not put straight. The majority of Members of this Council support the separation of Executive Council and Legislative Council in so far as to ascertain a division of

labour between the two bodies. None has requested for a separation of membership, definitely not a severance in relationship.

The need for a division of labour between the Executive and the Legislative Councils is common sense, Mr President. For whilst the Executive Council plays the role of direct adviser to the Governor in formulating policies, the Legislative Council performs the functions of scrutinizing and monitoring these policies. The fact that many of the former OMELCO panels were headed by Executive Council Members was a farcical flop. These panels were formed to scrutinize and monitor government policies. But how could the chairmen chosen monitor well the policies they themselves formulated? So with respect, it would be Doomsday if the defunct OMELCO Panel System was to be revived under the proposal made by the Honourable Vincent CHENG just a few minutes ago.

The Senior Executive Councillor, Baroness DUNN, in her usual, brilliant television interview on Sunday, supported a divorce of Executive Council and Legislative Council. She was quoted as saying, "Executive Council and Legislative Council are two different bodies. And it is for the differences between these two bodies that a check and balance is achieved". But how can one check and how can one balance if there is in absence a continuous dialogue, a sustained rapport and an ongoing understanding between these powers? Anything less would be confrontational when the legislature has to make a choice between vetoing and rubber-stamping something that is dumped onto their lap at the eleventh hour.

It has been said that Executive Council Members being appointed by the Governor as his own advisors are not accountable to Legislative Council. This I would agree. But it is the executive administration which comprises the chief executive (that is, the Governor), the Executive Council, the policy branches and the departments that must be accountable to the legislature. This is what the whole governmental structure of today is all about, and this is what the whole governmental structure after 1997 would be if the spirit of the Joint Declaration were to have any meaning whatsoever. As it is very specifically stressed that whilst the future government will be an executive-led one, the executive will have to be accountable to the legislature.

Many have pointed out that the Administration has tried its best to establish a meaningful relationship between the executive and the legislature by proposing a Government-LegCo Committee. But, Mr President, I doubt the workability of this body until Legislative Council is being voted on a political party basis.

Mr President, Meeting Point would want to see a lasting relationship between the legislature and the executive. For this will ensure a continuous dialogue, understanding and consultation between the Government and the people.

It would also avoid the last-minute clashes resulting from Legislative Council vetoing the passage of any Bill or stopping the allocation of funding proposals from the Government. Let me emphasize that: no legislature would like to paralyse the administration.

The problem therefore lies with the hole-in-the-corner method of business in Executive Council that it all too easily leads to suspicion and misunderstanding, if not worse.

Let me now turn to some proposals which myself and Meeting Point consider as the possible way forward:

Mr President, Executive Council should incorporate elected Legislative Council Members and that some form of a "ministerial" system should be established whereby elected Members would be given a portfolio, officially or otherwise.

Let me remind the Government that this idea came from the Administration and was contained in the 1984 Green Paper on the further development of representative government.

Such a move, Mr President, would mean that at least some if not all Executive Council Members would be politically appointed and be accountable to the people. This practice would relieve the Civil Service to execute important functions of government in a non-political manner.

It has been a long-standing proposal by Meeting Point that principal officials should be politically appointed. Policy Secretaries should be responsible for policies they so formulated. Top civil servants could choose whether they want to take up political appointment and relieve those who work under them from public pressure and exposure.

Mr President, this proposal also ensures that the Government would have a wider choice in choosing suitable candidates from outside the Civil Service. Such practice indeed is not new. The appointment of Sir John BREMRIDGE as Financial Secretary and the appointment of Mr James BLAKE as Secretary for Works are two very good examples.

Another proposal is to set up a well-defined Legislative Council standing committee system whereby committees would be set up to mirror policy branches. These committees would move in step with the policy branches through the embryonic stage of policy formulation up to the point when a Bill is being drafted. This would ensure continuous dialogue, mutual understanding and consultation.

But, Mr President, institutional reform is only part of the answer. What is more is co-operation, mutual trust and respect between these two bodies. These are needed to develop solid and healthy conventional guidelines to be observed

and followed by these two bodies and my colleague, the Honourable Fred LI will elaborate more on this aspect for Meeting Point.

Mr President, my proposals only meet the minimum requirement that a healthy democracy can expect. Anything less than this modest set of reforms will leave an indelible image that the Government is but a lame duck dragging on to be choked and served in pieces in less than 48 months from now.

With these words, Mr President, I support the motion.

MR JIMMY MCGREGOR: Mr President, in a democratic country, a government will be formed from a party voted into office by the will of the electorate. The successful party will maintain the policy making institution, most often called the Cabinet, which will apply party approved policies to the functions of government. Government officials at the highest level not only take policy instructions from the ruling party and its Cabinet but contribute substantially themselves their vast store of knowledge. They also have the important task, indeed essential task, of providing continuity to the huge range of government led or influenced services to the people, and of course in the maintenance of foreign policy, in its thousand shapes and colours.

The government of a democratic country works within well established rules of conduct and procedure, changing these when necessary or appropriate, but broadly maintaining all the principal elements of democratic government. Every four or five years, the electorate in secret ballot will decide whether the ruling party has done its job properly or whether it should be replaced by another party which promises to do so. The Cabinet, in the British Government, for example, has very great power, but each member of the Cabinet must perform his duties well or may find that the Prime Minister moves him sideways or out altogether. No government gets through its five years without Cabinet changes. And no Cabinet minister can escape responsibility for the duties given to him.

Here in Hong Kong we have a very different situation. Our Government is not elected, our Governor is not elected, our Executive Council is not elected and many of our legislators are not elected. This is not a democratic government nor can it be as far ahead as I can see. The Basic Law takes us to 2007 when only half of our legislators will be directly elected and when there will be some form of vote, no doubt, to decide if the Legislative Council will ever be fully elected by the people of Hong Kong. Even at that time therefore the Executive Council, the inner Cabinet, will not be composed of elected councillors. There will therefore be a continuing difference in character and composition as between the Executive and Legislative Councils. It is hard to see therefore how a formal working relationship, based on institutional understandings and mutual respect, can be established.

During Hong Kong's colonial days and until quite recently the Legislative and Executive Councils were composed of appointed people graduating from the Legislative Council to the Executive Council or sitting on one or both and all well disposed to each other, working for the common good. They were however commonly seen as a collective rubber stamp, whether they were or were not. We have no possibility of such a system continuing and yet we cannot aspire to its normal replacement, a Cabinet and Parliament elected by the people of Hong Kong. Democracy in Hong Kong is a pale shadow of that ideal. No good whining for what cannot yet be. We must work with what we have been given and try to make it responsive and effective. That includes the relationship between the Legislative and Executive Councils. At present, it does not exist in any formal way; it does not exist in any informal way either. In the Legislative Council, we do not know what matters have been discussed by the Executive Council until we learn of it from the media. We do not know the agenda for any Executive Council meeting nor any decision not published. We do not meet Executive Council Members regularly nor do we normally address the Executive Council on matters of great concern. It is as if we are on two different planets with different orbits, related but distant.

For myself, I have not been unhappy with that situation, being something of a loner and happy in my own company. I was not supportive of the Government's proposal to have the small Government-Legco Committee since I do not want somebody else representing my views, probably incorrectly, and I did not feel that I should represent any other Legislative Council Member's view, probably incorrectly. Similarly I was never happy with Executive Council Members heading OMELCO panels since they probably knew more than I about government policy. I felt that that gave them an unfair advantage over Legislative Council Members. Had they been elected, I might have felt differently.

So I do not favour the re-establishment of Exco/Legco committees or panels. I do not favour a ministerial system in the Executive Council since the so called ministers would have much too much power and influence for my liking. I would only agree if I could be one of the ministers. I do not support the idea of an Exco/Legco liaison committee for the reasons I have given. What does that leave? Since Mr Vincent CHENG wants a better connection and since I respect him as a brilliant and eccentric banker (*Laughter*), a man of undoubted talent and a potential minister himself, I can support the proposal to have a monthly closed-door meeting between all of the Executive Council and all of the Legislative Council, no holds barred and no subsequent complaints or misunderstandings or misrepresentations or leaking, which is a natural phenomenon.

Mr President, I support the motion.

MRS ELSIE TU: Mr President, until the year 1985, the Hong Kong Government operated under an unelected colonial system. The Governor appointed Members of both the Executive and Legislative Councils, and there was a cross-membership element. Everything worked very smoothly for the Government because there was no opposition, but the public had no representative voice.

From 1985 to 1991, the system included indirectly elected Members, but there was still cross-membership of the Executive and Legislative Councils. It still worked fairly smoothly for the Government, because opposition was still small. The public was still only marginally represented.

The new system introduced in 1992 is a cross between a colonial and a western concept, and the two do not mix very well. Like the western system, there are directly elected Members in Legislative Council. Unlike the western system, there is no ruling political party except the colonial appointees in Executive Council, who have no backup support in the legislature. The Government therefore has to run something like a colonial dictatorship, with a potential majority opposition in its legislature. The system is a formula for disharmony.

Owing no party loyalty to the ruling Executive Council, we, Members of the Legislative Council, are free, if we so wish, to vote down any Bills put before us by the Government, and of course the more we oppose the Government, the more likely we are to attract the attention of the media, and consequently the voters, especially on issues that touch the pockets of the taxpayers.

I imagine that Executive Council finds this opposition potential very frustrating. Legislative Council is also frustrated, because on matters of policy we can be only a talk-shop. We can put forward motions to our hearts' content, and they can be totally ignored by the Government.

The Governor's proposal last October to set up a Government-LegCo Committee may have been intended to fill the gap, but it was a non-starter, because it created the impression that a few Members of this Council would have access to the Governor, when what we needed was some kind of link with Executive Council.

Our motion today calls for the Government and Legislative Council together to review the situation. I welcome this, and would like to put forward two proposals among the many that may come out of this debate.

One way would be to hold meetings with Executive Council twice or once a month, in private, as the Honourable Vincent CHENG has already proposed — similar to the old OMELCO In-House meetings, where Executive Council Members used to explain issues under discussion to get input, without revealing

confidential matters. Such meetings could easily be arranged, but they would only succeed if both sides set out to listen and discuss, and not just to argue.

A second proposal would be to follow Article 55 of the Basic Law, and this would have the advantage of preparing for 1997. Article 55 stipulates that the Executive Council shall be composed of principal officials, public figures, and Members of the Legislative Council. The Council could nominate from among themselves a few Members to represent, as far as possible, all parties and opinions and they could be rotated, of course. These Members would then be appointed by the Governor to Executive Council. They would, of course, have to observe the rule of confidentiality and collective responsibility, except that they should have the right to abstain from voting in Legislative Council on issues in which they disagreed with Executive Council.

The present situation is frustrating for both Executive Council and Legislative Council, and no doubt for the Administration too. Legislative Council Members feel that their views on policies are being ignored, and the Government finds that some of its Bills are having a hard passage. From all appearances the present Executive Council is a one-man dictatorship, but no one really knows the situation. On policy issues, the system could lend itself to total dictatorship, both before and after 1997. On Bills and finance, Legislative Council could be the dictator.

Mr President, I suspect that this motion, like many others we have discussed in the current Session, including the one we discussed just before this one, will receive the usual bland reply, and then be quietly dropped. I hope I am wrong on that. Anyhow, I support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, the issue which we are discussing today is the relationship between the executive and the legislature. The executive mainly refers to the Administration and the Executive Council. During the past year, despite the shelving of the Government-LegCo Committee proposed by Governor Christopher PATTEN, the Government was able to make use of the various channels to communicate with the various political groups in the Legislative Council. The problem lies in the attitude of the Government towards the views expressed by the Legislative Council. It has always been praising to the skies those views which it found agreeable, equating them with the public opinion, whilst discarding those views which it found not agreeable or taking no notice of them. The resolutions passed by the Legislative Council on the setting up of the central provident fund and the abolition of the Double Rent Policy for well-off public housing tenants have neither been respected nor acted upon by the Government. If we choose to turn a blind eye to this political reality and instead indulge in all these talks about enhancing the communication between the executive and the legislature, it is nothing other than a self-deceptive act and it is not going to solve any problem at all.

In this regard, Mr President, I would like today's debate to focus on the relationship between the executive and the legislature. Ever since Governor PATTEN announced the separation of the Legislative Council and the Executive Council, the two Councils have gone their separate ways and there has been little communication between them. Members of the two Councils are prone to exchange views through the media (rather than formally and personally) because there is little chance for them to meet except at dinner parties when they are more likely to socialize (than engage in serious discussion). The result is that the decisions taken by the Governor in Council are frequently at odds with the will of the Legislative Council and opposition becomes inevitable.

Incidentally, today's debate is also a result of the lack of communication. Indeed, we all have the good intention to see that the opposition will become a thing of the past if certain direct links and channels of communication between the two Councils can be restored. The Executive Council will then be able to take the views of the Legislative Council into consideration in the formulation of government policies. I tend to think of such good intention as being rather naive. Mr President, I am not saying that communication is not a good thing. I am saying that if what we have to resolve is only a small problem, or a technical problem, or an ordinary problem, then communication would of course go a long way towards finding a solution. However, we are living in critical times and there are invariably critical issues which we have to resolve in the transition period. Decisions regarding these issues are nominally taken by the Governor in Council. However, in practical terms, they are taken by the leaders of the Chinese and British Governments. By virtue of the rule of confidentiality, the Executive Council is a mute rubber stamp. Even if communication is in fact enhanced, the situation is unlikely to change for the better and there is no way we could overrule an agreement made between China and Britain.

Mr President, there are so many examples which I can quote to illustrate the point I wish to make. The issues at stake involve the Court of Final Appeal, the corporatization of Radio Television Hong Kong, the Western Cross Harbour Tunnel, the British National (Overseas) Passport, the consensus between the Legislative and Executive Councils on political development, and the Memorandum of Understanding on the Airport. All of these important political decisions are completely in the hands of Britain and China. Quite honestly, the Executive Council has completely failed to play its role in terms of fighting for the interests of Hong Kong people. If we pin all our hopes on the Executive Council unilaterally, it is after all nothing more than an act of self-deception. It is not going to solve any problem at all.

There is of course no harm in communication. Indeed, as passengers in the same boat, members of the Executive Council and the Legislative Council may as well talk more to each other. But we should not think that once communication is established then all problems will be solved. We are still governed by the invisible hands of China and Britain which control our destiny and determine our future. In order to defend ourselves, there is no other way but to campaign tirelessly and persistently for a legislature which is returned by

universal suffrage. This is the only way in which the healthy relationship between the executive and the legislature set out in the Sino-British Joint Declaration may develop and be seriously implemented. It is stipulated in the Sino-British Joint Declaration that the legislature is to be constituted by election and that the executive should be accountable to the legislature.

Mr President, I apologize for my bluntness. In any case, good intentions should always be appreciated.

I support Mr Vincent CHENG's motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the motion before us today illustrates that the constitutional reform package proposed by the Governor in his policy address on 7 October 1992 is rash and ill-considered. In any case, we shall just limit ourselves to debating the relationship between the Executive Council and the Legislative Council.

As we are all aware, the Executive Council is in theory and in practice a group of private advisors to the Governor. The Governor wields immense power and he is very powerful. Even the whole British Cabinet has seen fit to give him convenience of all sorts and its full support. No wonder then that the Governor has such immense power in Hong Kong. Presently, there are nine unofficial members in the Executive Council. Indeed, if members of the public and our colleagues want to examine the list of Executive Councillors to find out who are likely to have the Governor's ears, who are the more influential and who may be used by him to serve certain functions, the answer is obvious.

Insofar as the Legislative Council is concerned, it is dismissed by many people who always tend to see it as nothing more than a rubber stamp. However, some legislators believe that the Chinese and the British Governments should inform the Legislative Council of anything which may affect Hong Kong. I cannot agree with their line of argument at all. It is indisputable that the Chinese and the British Governments have the right to decide on matters of diplomacy and other issues. Indeed, the House of Commons in the United Kingdom or other statutory body can legislate for Hong Kong. There is no way Hong Kong can refuse to accept and implement such legislation. On the other hand, for (internal) matters that are affecting Hong Kong, they should be dealt with by legislative means by the Legislative Council. The Legislative Council is responsible for amending the legislation and studying the draft bills. Issues of this nature should of course go before the Legislative Council. In this regard, we as legislators should be well-informed of every issue and we will then adjudicate the rights and wrongs on that basis. Put it in another way, I can safely say that the Legislative Council in its present form is not a rubber stamp. The rubber will cause the stamp to recoil if pressed too hard. (You know what I mean?) In this regard, we would very much like to have the assistance of the Executive Council in the legislative process; we would like them to liaise and

communicate with us beforehand. Even if they do not have a high opinion of legislators, it is for them to do just that.

Colleagues have just now given a lot of examples and for my part, I will only give the example of the Western Cross Harbour Tunnel. It has been said that it must be endorsed at all costs. As a matter of fact, the interests represented by legislators today are quite different from the interests represented by their predecessors. First of all, the existence of political parties means that legislators with party affiliation must vote along party lines. Put it in another way, the interests of the political party will prevail over the interests of the public. If the political party is working for the people, then it would let public interests prevail. Secondly, we have the problem of personal interest. Honestly speaking, since there are some legislators who want to win votes in the elections in 1995, they will go to great lengths to appear to be active and responsive. Nevertheless, so long as the existing arrangement is in place, I am inclined to think that the Executive Councillors, in addition to being accountable to the Governor and dealing with those administrative affairs which do not require legislation or legislative amendments, should also seek to enhance their communication with the Legislative Councillors. Insofar as matters requiring legislation are concerned, they should make sure that the legislators are well briefed in the first place. In this way any disagreement between the two Councils and any work delay which may result will be eliminated.

Being Legislative Councillors, we have the right to express our opinions. However, I am quite concerned about the remark made by Mr SZETO Wah just now with regard to the uselessness of the Basic Law. I worry for him. Now that the Governor, and the British side for that matter, is fighting for us legislators that we should enjoy the through train ride on the basis of Article 104 of the Basic Law. We are hoping that the through train arrangement will not be challenged by the other legal provisions. It is unfortunate that the Basic Law, before it is even implemented, has now been criticized as a document hardly worth the paper on which it is written. I recall that in previous debates, Mr SZETO Wah quite consistently either abstained or voted against the motions. However, it must be borne in mind that the rule of the minority abiding by the decisions reached by the majority should prevail. He should well understand the rationale behind this rule as a political participant. I am not criticizing him personally. I only wish to take this opportunity to remind the people of Hong Kong not to be misled by his views. It is something which we should all bear in mind. It goes without saying that if the public is misled it would produce very negative results for the future of Hong Kong.

In this connection, the point I wish to make is this: There is no need for us to be overly worried under the prevailing political climate of Hong Kong. The only condition is that every party should face up to the problems and well understand their powers. Legislative Councillors, Executive Councillors, and government officials too, should understand the problems which they have to face. I think that whether before or after 1997, it is vitally important that our

civil servants should provide a pillar of support for Hong Kong. Hence, I rather not express my position with regard to Mr Vincent CHENG's motion.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR FREDERICK FUNG (in Cantonese): Madame deputy, I believe the motion debate which we are engaged in today has been motivated by a series of events which have happened recently. Examples include the issue involving the British National (Overseas) Passport, the Double Rent Policy which applies to the better-off public housing tenants, and the Western Cross Harbour Tunnel, and so on. Members are worried that the poor relationship between the Executive Council and the Legislative Council will affect the efficiency of the Government. Although these worries are not totally unjustified, if we just concentrate ourselves on the improvement of efficiency without looking at the problems which beset the relationship between the two Councils, the situation will not be improved even if we step up the co-ordination and communication between the two Councils. Unless the Executive Council resorts to mandatory means to make sure that the Legislative Council follows its decisions and legislate for reasons which nobody is privileged to know, I cannot see how improvement can be made solely on the basis of enhanced communication. The fundamental problems which beset the two Councils are unlikely to be resolved just like that.

I think that the problems and conflicts which have arisen with regard to the two Councils are manifold. Indeed, I am inclined to see the emergence of conflicts as a clear indication that the current Legislative Council is developing in a more open and democratic direction. Although the process is relatively slow, it is nevertheless moving in the direction of change. The Executive Council is indeed the policy-making body though it is theoretically an advisory body. Its status has not changed over the years. The Governor who presides over the Executive Council is not returned by direct election and he does not have any party affiliation. We would imagine that in the appointment of Executive Councillors, the Governor will consider the degree of loyalty of candidates to the colonial system and the extent to which they will identify with the values that the colonial government stands for. The higher marks one scores on these two counts, the more likely one will be appointed. Conflict will naturally arise as a result of change happening to one Council and not to the other Council. The Executive Councillors are prone to find the legislators who are returned by direct elections difficult to understand. One impartial function of the election system is to enable the elected legislators to react to an issue from the people's perspective. They will seek to act as a check on the Government when it embarks on a course of action which runs contrary to public opinion. It is not a matter of who is right and who is wrong. There are some Executive Councillors who have very little contact with the grassroots or who have only very superficial contact with them. So they are likely to have a partial view of the concerns of the grassroots. The saga of the Western Cross Harbour Tunnel

and the Double Rent Policy are results of such conflicts and a lack of full understanding.

The Association for Democracy and People's Livelihood (ADPL) and I take the view that it is not an easy thing to seek a solution to these problems over the short term. Given the fact that the conflicts which have arisen due to the speed of change are structural, the existing differences are not likely to be resolved fundamentally. The Governor has mentioned in his policy address that a Government-LegCo Committee would be set up. I do not think that this set up will solve any problem because its meeting will only be attended by the Governor, the Financial Secretary, and a small group of legislators. What is more, such a set up is likely to become too cliquish and it is likely that Members belonging to small political parties and independent legislators will not be able to have their voices heard. I and the ADPL are always opposed to the meetings of the two Councils being restricted to a few participants. I would consider that formal joint meetings should be held between the two Councils at regular intervals. This measure will enable the Administration and Executive Councillors to have a better grasp of the views of legislators from different political groups inside the Legislative Council. These views can then be taken into account in the formulation of policies such that a compromise can be reached which is acceptable to all parties concerned. In addition to formal meetings of this sort, I think Executive Councillors should consider taking part in the various panel meetings of the Legislative Council in order to understand the latter's attitude towards certain policies. They may also consider meeting with legislators irregularly. This will not only put an end to the bickering caused by misunderstanding but also, more importantly, enhance mutual respect due to better understanding.

With regard to the long-term solution to this problem, it would seem that the first requirement is that people in key positions in the executive and the legislature (that is, the Chief Executive and members of the legislature of the future Special Administrative Region) should be directly elected by universal suffrage. Meanwhile, the Chief Executive may appoint members of the executive according to his personal wish. The political background of these people is not important. I think the Chief Executive and the legislators who have been returned by direct elections held during the same period of time would not be too ideologically opposed to each other. And the Chief Executive, because he is popularly elected, would not be inclined to appoint people whose work style is totally incompatible with the popular will. In this regard, the scenario of strong opposition in the course of policy implementation will not arise at all.

The administration and the legislature which are returned by elections in a mature society with a free economy normally consist of two to three political parties which do not have strong basic differences. There are such examples if we take a look around the world. The United States and the United Kingdom, to a certain extent, provide good examples of this sort.

However, the last question I wish to raise is what problems will arise if there is a difference of stance between the executive and the legislature. In any political entity which practises the separation of powers between the executive and the legislature, it is very easy for a difference of opinion to occur between the executive and the legislature, unless the executive and the legislature are made up of people with the same kind of background. For example, if they come from the same political party, then differences will not arise between the two branches of government. I would also like to inform Members that difference of opinion is very commonplace between the legislature and the executive in many countries. During the presidency of George BUSH, the United States Congress was dominated by the Democratic Party. However, even though conflicts may arise between the Congress and the executive, or between the law-making body and the executive, a solution to the problem can always be found. Now that the United States is led by the CLINTON Administration, and given that the Congress is still dominated by the Democrats, one would have thought that the bills sponsored by the President will be guaranteed a smooth passage through the legislature. However, one can see that the last presidential bill was nearly defeated in the Congress; it was only saved by the deciding vote cast by the Vice-President. We can also look at Japan for a closer example. For the past 30-plus years the Liberal Democratic Party has held the reins of the Japanese Government. The Liberal Democratic Party has been the dominating force in both the executive and the legislature. This state of affairs has persisted for the past 30-plus years. However, the Liberal Democratic Party is now facing with the prospect of disintegration. So the existence of one dominating monolithic party does not mean that factionalism can be averted. It is very easy for political parties to merge and for a political party splinter due to political conflicts. However, the Japanese example has proved to us that the dominance of one party will give rise to money politics and corruption. We therefore can see that the dominance of one party in a capitalist society is likely to give rise to money politics and corruption. As a matter of fact, there is no system in the world which can ensure that no rift will ever develop between the executive and the legislature. There is no other way to ensure uniformity of view except for the executive and the legislature to be led by the same person.

In this connection, I would consider that a fundamental solution should be sought for the problem. I am convinced that this problem will not be solved for as long as members in the executive and the legislature (that is, the Chief Executive and members of the Legislative Council) are not directly elected by universal suffrage.

With these remarks, I support the motion.

MR SIMON IP: Madam deputy, in the debate on the Governor's policy address last October, I expressed reservations on the separation of the Executive Council and the Legislative Council. I considered separation as a temporary political expedient introduced by the Governor as what he perceived to be the lesser of two evils in circumstances prevailing at the time. I was concerned about the

accountability of the Executive Council to the Legislative Council and the efficiency of communications between these two organs. The Executive Council and the Legislative Council have recently disagreed over a number of issues which might have been avoidable if there had been a better system. I think it is timely to review the constitutional "partnership" between the two bodies.

I say "partnership" (a term borrowed from Lord WILSON's last policy address) because there is no reason why the relationship between the two bodies should be anything else. The Executive Council and the Legislative Council perform different roles within our constitutional framework but they have the identical aim of pursuing the common good of Hong Kong.

As Hong Kong is evolving towards a high degree of autonomy, the composition and accountability of its decision-making bodies will be of utmost importance. As the future legislature and the Chief Executive will be elected, the Executive Council will stand alone as being the sole appointed organ. It is, therefore, imperative to ensure that its accountability to the people of Hong Kong is commensurate with the very great powers it possesses and the heavy duties it discharges.

Recent disagreements have been attributed to a failure of communication between the Executive Council and the Legislative Council. An efficient channel of communication is important. While it cannot preclude a difference of view, it can promote better understanding of different opinions and can help towards the accommodation of opposing positions. It is better to agree to disagree than to disagree disagreeably. But the problem, I think, goes deeper than mere communication.

The crux of the problem is really the inevitable divergence between an elected body and an appointed one. Legislative Council Members are becoming more assertive because they have to demonstrate their accountability to their diverse constituencies. Executive Council Members, on the other hand, are only accountable to the Governor. It is hardly surprising then that disagreement will surface from time to time between two bodies so different in nature and composition.

The solution, I believe, lies in appointing Members of the Legislative Council to the Executive Council. If we accept that the Legislative Council is broadly representative of the community, there is no reason why some Legislative Council Members should not also sit on the Executive Council to reflect the views of the community and to ensure that the Executive Council's decisions will enjoy the support of the Legislative Council.

Worries have been expressed that with overlapping membership, the Legislative Council will not be able to monitor the Executive Council and the separation of powers cannot be maintained, but I do not think these worries are justified.

Another argument against overlapping membership is that it will merely elevate disputes from the Legislative Council to the Executive Council. While this may be true to a certain degree, we cannot ignore the political realities of Hong Kong. We have a partisan Legislative Council composed of disparate and diverse views and it is naive to suggest that we can somehow block out a wide spectrum of views from the Executive Council. It is impractical to banish partisan politics from the Executive Council and require that its Members can only be unaffiliated "independents". As Hong Kong is becoming increasingly political, it is only natural that people in public service will affiliate themselves with political parties and groups. To deprive these people of the opportunity to join the Executive Council cannot be conducive to the grooming of our future leaders.

Other arguments against cross-membership involve the rules of confidentiality and collective responsibility. I support the rule of confidentiality. All Members of the Executive Council must respect that rule if the business of governance is to be conducted efficiently. No government can function if sensitive issues cannot be discussed without fear of disclosure. I do not, however, consider the collective responsibility rule to be sacrosanct. A Member of the Executive Council should be free to take a position in public contrary to an Executive Council decision if he disagreed with that decision. He should not be neutralized and prevented from discharging his public duties as a Legislative Council Member just because he took part in a decision in the Executive Council which he opposed.

Cross-membership need not reflect proportionately the composition of the Legislative Council. A fair cross section of Members of the Legislative Council would suffice. The selection for appointment to the Executive Council will remain the sole prerogative of the Governor.

For these reasons, I hope the Administration will review the composition of the Executive Council and consider appointing Members of this Council to that body. Indeed we have always had such a system until the shake-up of the Executive Council last autumn. That system ensures that the limited democracy we enjoy in this legislature will not be vitiated by decision-making at the highest level.

With these words, Madam deputy, I support the motion.

MR LEE WING-TAT (in Cantonese): Madame deputy, I am sure honourable colleagues are aware that we cannot expect everyone to hold the same view and indeed, politics is far from being a utopian business. In this regard, it is only inevitable that the executive and the legislature should have different views from each other. The important thing which we should not lose sight of is to resist the temptation to find a scapegoat over a problem. What we need to do is to address the problem seriously and to adopt some measures to rectify the situation.

First of all, as we are well aware, the executive has to be answerable to the legislature. That is not only a basic principle in any democratic constitution but also a matter of vital importance to Hong Kong during the transition period.

It is inevitable that Hong Kong would go through a democratic process as it transforms from a closed colonial political system into a Special Administrative Region which will enjoy a high degree of autonomy. It goes without saying that it is our wish that the Chief Executive will be returned by universal suffrage so that Hong Kong will be democratically governed. However, the present political development is still far away from that ideal. It is still very difficult for the man in the street to exert direct influence on the executive. Under these circumstances, it is even more important that the executive should be made accountable to the Legislative Council which has a wider representative base.

With the introduction of directly elected elements to the Legislative Council, public views have been more capably grasped and reflected and the wish of the public has been more effectively expressed. Hence, the executive, including Executive Councillors and government officials, should seek and consider public views in a more active manner, through the Legislative Council. But the reality has turned out to be extremely disappointing. The Research Centre of the United Democrats has conducted a statistical survey of the resolutions of the Legislative Council debates with a view to acquiring a better understanding of their implementation on the part of the Government. It is found that the Government has only implemented about 10% of the 30 resolutions passed by the Legislative Council. The Government has not taken any action on 20% of the resolutions. Moreover, the Government has openly expressed its opposition to 13% of these resolutions. Examples include the resolutions on the Housing Subsidy Policy (Double Rent Policy), the retirement protection system, an independent body to handle complaints against the police force, and greater transparency in respect of the Sino-British negotiations.

If the above situation is the result of too many motion debates that the Government does not have enough time to attend to them, then the performance of the executive departments may be excusable. However, if the situation is the result of complacency on the part of the executive departments which are unwilling to take heed of and consider the views of this Council, then we are faced with a very serious situation.

It is of course not the wish of the Legislative Council to see its resolution not acted upon by the Government. However, if in a spirit of mutual respect, we are convinced, through meticulous study results and rational argument, that it is reasonable for the Government not to implement our resolutions, then this Council and the public at large will be quite willing to accept the situation. We would at least know where the problems lie and what difficulties the Government is facing with. However, if the Government takes the view that these debates are just about rhetoric and the resolutions passed will neither be legally nor morally binding and therefore pays no heed to them, then the will of

the public will be suppressed in a high-handed manner. That sort of attitude is incompatible with the frequently projected image of an open and responsible government. The Government does not practise what it preaches.

We believe that it is through an open and rational debating process, in which the spirit of mutual respect prevails, that a democratic tradition can be rooted in our system. This is the only way Hong Kong people can participate in the establishment of a democratic system and the promotion of democracy. In this regard, the important thing is not whether the Government, or the Executive Council, is willing to accept partly or wholly the views and the results of each debate. The important thing is for the Government and the Executive Council, when they cannot agree with the majority will expressed by the Legislative Council, to have the courage to explain openly to the public their policy direction and to win the vast majority over to their side through continued open debate. The question is whether the Government and the Executive Council, has the courage and whether they have actually tried every means to explain openly their case and defend their own policy. I do not see this happening. What I have been able to see is every now and then the flash image of a gentleman or lady being chased around by reporters before television camera, responding to questions courteously but in an evasive tone. I wonder if that is the way the top government officials or a heavyweight in the Executive Council should make themselves answerable to the public. I wonder if these top government officials and the Executive Councillors are really so incapable of keeping abreast with the social and political development of Hong Kong.

As a matter of fact, in as early as 1987, there was already a scholastic view at the Hong Kong University Political Science Department that in the development of democracy in Hong Kong, the administrative departments and the civil service as a whole must develop a responsible attitude and a new value system. It is only in this way that the government policy can keep pace with the democratization of the political system. It is only in this way that a genuinely democratic, open and accountable government will evolve in due course. When we come to think of it, just as times have changed and the public have higher expectations and greater demands of the Government, elected representatives in our three-tier political system have developed a sense of responsibility in terms of reflecting public views and influencing public policies on that basis. One finds it difficult to believe that the top government officials and Executive Councillors can resist the baptism of this democratic process.

Madam deputy, these are my remarks.

MR ERIC LI (in Cantonese): Madam deputy, the separation of the Executive Council and the Legislative Council has been regarded as a milestone in the political development of Hong Kong. However, scarcely a year has gone by when Hong Kong people who are no fans of confrontational politics are already

getting impatient with the new political arrangement which is aimed at maintaining a system of checks and balances.

I am convinced that Hong Kong people have no strong views whatsoever, if I may borrow a term frequently used by the Hong Kong Government, with regard to the issue of whether separation is a good thing for the two Councils. The man in the street is more concerned about the efficiency of the Government. Thus the Honourable Vincent CHENG's motion which looks at the issue from the efficiency point of view certainly has its positive significance. The question though is whether under the present system, administrative efficiency and the working relationship between the Executive Council and the Legislative Council can be enhanced through improved communication. I will attempt to look at the issue from the three different perspectives of the Administration, the Executive Council and the Legislative Council.

If by the executive authority we mean the Executive Council and government officials, there is no question of the problem of communication between government officials and members of the Legislative Council. It is because they tend to meet each other quite frequently. There is only a need for improved communication between members of the Legislative Council and the Executive Council. However, if we look closely at the problem, we will find that under the present system, the administrative powers are firmly in the hands of the government officials. The powers of Executive Council members are not in their own hands. A legitimate question to ask therefore is: What good results will be achieved if there is better communication between the members of Executive Council and the Legislative Council? If after channels of regular communication have been established, the Executive Council is still unable to get the desired results and nothing concrete has been achieved, then insofar as Executive Council members are concerned, they may wish that there were fewer meetings of this sort. As a matter of fact, Executive Council members have actually made it known on public occasions that they were quite pleased to make an effort to communicate, if only for superficial results. This attitude is a reflection on their satisfaction with the present *status quo*. However, given the fact that Executive Council members are charged with responsibilities but given very little power, they may be the greatest victims of the separation of the two Councils.

The attitude of the Legislative Councillors is also quite clear. Although legislators who belong to different political groups may hold different views on the specific composition of the Executive Council, they are nevertheless hoping to have their own representatives joined the Executive Council so that they may be able to share the policy-making experience. The Legislative Councillors are well aware of the fact that whereas they would emphasize in their election campaign that they would see to the implementation of their political platforms, there is no proper channel through which they could live up to their public promises. In this regard, if the Government is not able to incorporate their views into the policy-making process, then the political party, whatever its ideological inclination, will have practically no other alternative but resort to

the veto power of the Legislative Council in order to put pressure on the Government and make it comply at the end of the day. However, if this tactic is used too frequently, they will have the negative image of a party which is only good at confrontational politics. Meanwhile, the government officials are unlikely to have a good time under this kind of arrangement. They will have to play a political role in terms of dealing with legislators who have powers but no responsibilities and who will never be satisfied. It is a mission which may not be accomplished despite the greatest effort made. Since the Government has only three votes in the Legislative Council, it will have to engage in hard bargaining with legislators belonging to the various parties. It often happens that the Government will have to pay a certain price (give political concessions) before safe passage can be secured for a given bill. It is due to such irrational arrangement that perhaps our Policy Secretaries will gradually be reduced to an endangered species.

Communication is only good for eliminating misunderstandings which are totally unnecessary. It is not good enough for solving major policy differences. In order for these policy differences to be resolved there is a need, and I dare say it is a must, for Legislative Councillors to be consulted in the policy-making process.

There are less than four years between now and 1997. We have to develop a pool of talents who are not only versed in law-making but also in policy-making, if the goal of Hong Kong people ruling Hong Kong is to be achieved. What is more, despite what the British Government has reiterated about the need for the Chinese Government to turn the reins of government over to the people of Hong Kong, one can see very clearly that power is still in the firm grip of the British. One wonders whether the British are equally worried about losing control such that they are no longer able to maintain their executive-led government.

I am convinced that improved communication will at least be conducive to reducing the all too visible tension. It will also make the public less disillusioned by the political bickering which has been going on. The proposals made by Mr Vincent CHENG are feasible and many of them are in fact quite suitable for immediate implementation.

- (1) I take the view that the Executive Council should have a clear division of labour. I am in favour of the Governor appointing Executive Councillors to be heads of the executive departments so that they will have power as well as responsibilities. Then it will make sense for them to communicate with legislators and such communication will have real significance.
- (2) Though there is not an official Government-LegCo Committee, it is also possible for the Governor or other related government officials and Executive Councillors to invite legislators who have indicated a clear interest in a given issue to meetings before a major policy

decision is taken. Thus the policy-making process will benefit from some serious consultation.

- (3) With all seats in the Legislative Council being elected by 1995 at the latest, the Executive Council should have not less than half of its seats taken up by either incumbent or former legislators.

In the long run, although we are faced with the problem of transition to 1997, it is time for Hong Kong people to begin to think about when the ministerial system should be implemented. Since the future Chief Executive should be returned by universal suffrage, it is particularly important that the ministerial system should be implemented in good time so that the people of Hong Kong will be able to choose from among candidates with real administrative experience the one with the best calibre.

With these remarks, I support Mr Vincent CHENG's motion.

THE PRESIDENT resumed the Chair.

MR HENRY TANG (in Cantonese): Mr President, with the dramatic political development which is going on in Hong Kong society, the introduction of direct elections in 1991, the emergence of party politics, and not least, the separation of the Legislative Council and the Executive Council, it is clear that relations between the Legislative Council and the Executive Council have become quite tense. Indeed, the tension is reflected over the issues of the establishment of a central provident fund and the introduction of the British National (Overseas) Passport. If the conflicts and differences which have appeared are allowed to continue then it will certainly have very negative consequences for Hong Kong society as a whole. It is undeniable that since the separation of the Legislative Council and the Executive Council there has been a lack of mutual communication. It has proven to be inadequate for a working relationship to be maintained between the two sides if communication is to take place at informal functions alone. In this regard, it is up to us to study and consider the setting up of any worthwhile and constructive channel of communication. As a matter of fact, sincerity is the most important element in the process of communication; it is also the most useful. For if there is no sincerity, it is not going to help at all even if Members of the two Councils should meet everyday, just to re-assert their differences.

I am sure we are all quite familiar with the phrase which the Governor has made a point of repeating time and again over the past year. The political reform proposal will be one which is, he says, "open, fair and acceptable to the people of Hong Kong". I am convinced that if the Administration and the Executive Council are not able to keep pace with the development towards an open government and abide by public opinion, the Legislative Council, even if it transforms into a fully elected body, will become no more than an enormous

political pressure group whose ability to balance and check is nevertheless limited because Hong Kong will continue to be run by an executive-led government. To be sure, the Legislative Council will still be able to veto or amend certain legislation which it deems to be unreasonable. But we, as legislators, are quite powerless in terms of dealing with legislation involving government finance or policies which do not involve legislation at all. For example, with regard to the issue of a retirement protection scheme for the elderly, we are not able to take the initiative in legislating for the implementation of a central provident fund, nor are we able to amend the private retirement protection scheme in such a way as to make the Government act as a guarantor of risk because this would entail extra spending by the Government. I would be very surprised indeed if it is thought that the reason why the Legislative Council has not been able to secure the provision of the central provident fund is that there has not been adequate communication between the Executive Council and the Legislative Council over the above mentioned issues. As a matter of fact, the Government is only all too aware of the position of the Legislative Council. The only problem is that the Government has failed to adjust its view and attitudes and accept public opinion, in keeping with the developments which have been taking place in the Legislative Council and the community as a whole. This is an example of our failure to achieve even-keel political development in Hong Kong.

Mr President, the Governor has reiterated that this Council has endorsed his constitutional reform package and that it is for this reason that there is a need for the relevant proposals to be respected and implemented. However, given that this Council has also passed the resolution to set up a central provident fund and a whole lot of other constructive proposals, the Government would literally be disregarding the existence of this Council if it is to insist on not implementing our resolutions and letting them be forgotten. This practice of selective listening whereby the Government turns a deaf ear to public opinion when it does not suit its agenda is certainly not conducive to the normalization of relations between the Executive Council and the Legislative Council.

Meanwhile, there is a fundamental problem with the structure of boards and councils of Hong Kong. The Executive Council should have, as part of its membership, representatives from the Legislative Council. This will entitle legislators to participate in the formulation of policy in its initial phases, enabling them to participate in the discussion and examination process while at the same time making them responsible for supporting the policy which eventually emerges. However, it is unfortunate that Governor PATTEN has committed his greatest mistake by evicting legislators from the Executive Council. Executive Councillors are only accountable to the Governor. Without the participation of legislators and political party members, it is possible the Executive Council as a whole will only look at an issue from the administrative and management points of view, to the neglect of public needs. The whole BNO saga may be a testimony to this failing.

Mr President, it is stipulated in Article 55 of the Basic Law that the Executive Council of the future Special Administrative Region will be made up of the principal officials of the executive departments, Legislative Councillors, and community leaders appointed by the Chief Executive. It would not be a far cry from the truth to say that, given the prevailing political environment in Hong Kong, given the proliferation of political parties nowadays, the lack of any provision for any legislator to participate in the policy making process of the Government may be said to be a step backward in the development of democracy in Hong Kong. We wish Hong Kong would evolve into a democratic society run by an open and accountable government which is as much executive-led as it is checked by the legislature. This is the only way to ensure that government policies will be acceptable to members of the public. If the Government is not able to review ways to alleviate the conflicts which have arisen between the Executive Council and the Legislative Council then the situation would surely deteriorate.

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

DR YEUNG SUM (in Cantonese): Mr President, with the introduction of a directly element into the Legislative Council in 1991 and the arrival of Governor Chris PATTEN, the policy to separate the Legislative Council and the Executive Council has been implemented. Legislative Councillors are barred from the Executive Council. The relationship between the Executive Council and the Legislative Council has undergone a great change. It is an appropriate time now, with the current legislative Session coming very soon to a close, to conduct a review on the relationship between the two Councils.

We have been able to observe the following phenomenon following the introduction of direct elections in 1991 and the separation of the executive and the legislature.

First of all, there has been a lack of communication and consultation channel between the Executive Council and the Legislative Council. One can see that there are many issues over which the Executive Council and the Legislative Council have held totally different views. Examples are the double rent policy for better-off public housing tenants and the introduction of the British National (Overseas) Passport. It is clear that the Executive Council has completely failed to feel the pulse of Legislative Councillors and the public at large.

The way in which the Executive Council operates still gives the public the impression that it is lacking in transparency as well as representativeness. The mandate of the Executive Council is open to serious question.

Secondly, given the fact that there has been a lack of communication and consultation between the executive and the legislature, decisions taken by the Executive Council, and government policies as well, are receiving greatly reduced support in the Legislative Council. In the context of a western

parliament, given that the ruling party usually has the majority of seats in the legislature, and also given that cabinet members have to attend parliamentary meetings, it is generally the case that the executive decisions will secure a certain degree of parliamentary support. In the past, appointed Members in this Council — and I include both *ex-officio* and non-government appointed Members — often turned into an alliance lending support to government policies. However, the changing times and circumstances have meant that executive decisions will not necessarily win the support of the Legislative Council. In this regard, the operation of the Administration will surely suffer a certain impact. I am sure this will become an issue of still greater concern for the Government with all of the legislative seats being returned by elections in 1995.

The Chief Secretary, Sir David FORD, said in an open statement during the political reform review exercise in 1987 that Hong Kong's Civil Service should have a facelift to the extent that the past patriarchal attitude would have to give way to greater public accountability and greater sensitivity and responsiveness to public needs and public opinion. We are able to see now a more positive response by most of the policy secretaries to the questions raised by legislators. There have been only a few bureaucrats who are not able to adapt to the demand of the new political situation and who have chosen to stick to their old ways instead. In any case, in the absence of adequate communication between the executive and the legislature, it is inevitable that the policy secretaries are faced with ever greater pressures.

Meanwhile, with legislators becoming more involved in the work of the legislature, there has been a marked increase in the number of motion debates and questions than was the case previously. However, bearing in mind that Hong Kong has always been run by an executive-led government, and that policy secretaries do not have to be politically accountable, it has actually turned out that most of the resolutions passed by the Legislative Council are dismissed or otherwise not taken seriously by the Government. Over 20% of the more than 40 resolutions passed at the end of motion debates have not been positively acted upon by the Government. Indeed, 10% of these resolutions have even been openly opposed by the Government. It is a scenario which is most unlikely to occur under a politically mature parliamentary system.

Mr President, it would seem that I have spoken so far on the problems which have arisen as a result of the introduction of direct elections and the separation of the Legislative Council and the Executive Council. However, I would like to make it very clear that there has been far greater public concern about, and far greater public expectations of, the Government since direct elections to this Council were held. I am sure that public consciousness and social solidarity will continue to increase. Hong Kong people have their own expectations of the future of Hong Kong and they will also strive to actively participate in and contribute to the cause of Hong Kong people ruling Hong Kong under the auspices of a high degree of autonomy.

Looking into the future, how are we going to improve the relationship between the executive and the legislature? I wish to make the following proposals on behalf of the United Democrats.

1. First of all, the Governor should reconsider the appointment of directly elected legislators into the Executive Council. This measure will enhance the mandate, the representativeness and the transparency of the Executive Council tremendously. Directly elected legislators will then be able to bring public opinion to bear on the policy making process of the Government so that the interests of the vast majority of the community will be properly looked after and social solidarity enhanced consequently. Moreover, this will also increase the level of support which executive policies will be able to enjoy in the Legislative Council.
2. Standing committees should be set up. They should correspond to the policy branches of the Government and be charged with the scrutinizing of Bills on the one hand and the discussion of policies on the other. These standing committees may also increase the ability of the Legislative Council to scrutinize Bills and monitor the performance and efficiency of the Government. Presently, the separate operation of the Policy Panels and the Bills Committees, and the highly mobile membership of these two types of bodies, has had an impact on the above mentioned function as well as on its effectiveness.
3. The Government-LegCo Committee should be set up in order that the communication between the Government, the Executive Council and the Legislative Council will be strengthened.
4. Finally, the executive branch of government should step up their effort to consult the views of legislators and the public at large, give due weight to and act on their expressed views.

Mr President, it is now the time to institute reform; I am only hoping that it will not become too late for reform to materialize.

With these remarks, I support the motion.

MISS CHRISTINE LOH: Mr President, the exalted views of the Executive Council, as a repository of sacred wisdom, is quite simply out of date.

Some years ago, when the Legislative Council was a rubber-stamp body, the role of the Executive Council was indeed much more crucial. Its unofficial Members were deemed to speak for Hong Kong.

But the Executive Council has never had any popular mandate. Instead, it has exploited a popular mystique.

The basis of that mystique has always been secrecy. If nobody is allowed to know what the Executive Council advises, then nobody can disagree with its advice. Ignore the mystique, and we can see the Executive Council for what it really is: a convenient but anachronistic group of somewhat randomly selected, part-time advisers.

If we start trying to invent new structures or conventions through which to integrate the workings of the Executive Council with those of the Legislative Council and other arms of government, then we are assigning to the Executive Council a broad role which it has no right, and no claim to play.

The Governor may appoint whomever he likes to advise him, and put whomever he likes on the Executive Council. If he wants to appoint Legislative councillors to the Executive Council, or not, then he has a free choice in that matter.

Under the Letters Patent, the Executive Council is there to "advise" the Governor, and no more. The Basic Law requires the future Executive Council to "assist" the Chief Executive.

The essential precondition for a satisfactory working relationship between the Executive Council and the Legislative Council can be stated very simply. The Legislative Council, and the Hong Kong public, must know what issues the Executive Council is deliberating. It must know what recommendations the Executive Council makes. And it must be able to argue in an informed way against any recommendation with which it disagrees.

If the Legislative Council has those freedoms, then it ceases to matter whether the Executive Council and the Legislative Council agree or disagree. It will be for the Governor to decide whose view he prefers. But I believe that it would be in practice difficult for a Governor to uphold the views of a small cabal of advisers over those of his legislature.

As the motion before us recognizes, communication is of the essence.

This Council has no problems communicating with the Executive Council, or with anybody else. This Council is a public body.

Anybody who wants to know what this Council is saying, or thinking, need only to park themselves in the public gallery, switch on the radio, or pick up the next day's newspaper.

The problems are entirely in the other direction. It is from the Executive Council that the changes need to come.

Executive Council secrecy prevents the public discussion of policy decisions, policy options and policy agendas. Executive Council secrecy undermines the capacity of the Legislative Council to debate, to influence and to intervene effectively.

If this Council is to play its full role in the policy-making and decision-making process, it requires much more direct and open co-operation with the Administration. It must have access to the information and to the arguments on which policy is made. It can only do so if the Executive Council's monopoly over such information is broken.

Debates about cross-membership of the two Councils, and possibly new committees, are neither here nor there. The interests of Legislative Council are identical with those of the general public. We simply require an Executive Council which no longer hides its face from those people whose interests it claims to safeguard. As such, suggestions of closed meetings would be a retrograde step.

The stature of the Executive Council has been diminishing in the past decade, mainly because the stature of the Legislative Council has been increasing. The rebalancing process is going to continue, as this Council acquires still more directly-elected Members and still greater political legitimacy.

The pace of constitutional change is uncertain but the direction is not. Even the Basic Law foresees a Legislative Council elected entirely by universal suffrage some time after 2007. For myself, I hope and believe that this goal can be reached a great deal sooner.

The Joint Declaration and the Basic Law endorse a pre-eminent role for the post-1997 legislature by identifying it as the institution to which the executive arms of government should be accountable.

This in itself should argue for a more open Executive Council. The notion of "accountability" can have little meaning if the supervising institution — that is this Council — does not know in advance what issues are being considered by the senior policy-making conclave — that is the Executive Council — of that government; and if it does not know afterwards what other options have been developed and discarded.

We must also address the relations between the Executive Council, the Legislative Council and the senior ranks of the Civil Service. We need to be sure that the Civil Service recognizes and adjusts to the shift in political gravity which is taking place, away from the Executive Council and towards the Legislative Council.

Great fogs of secrecy and introspection wrap around the whole upper reaches of government. For this, Executive Council privilege serves more often as a convenient excuse than as a specific reason.

If we can open up the Executive Council to comment and question and criticism, then we will have moved a big step closer to open government.

We need more understanding and more trust between administrators and legislators. Work needs to be done from both sides to close that gap.

The Legislative Council has been operating with indirectly elected Members for five years, and with directly elected Members for just two. A learning curve is inevitable. But the gravity of the elected Members' mandate must be respected. It is for the people of Hong Kong alone to judge whether or not their representatives are doing a satisfactory job. And it is for the Government of Hong Kong to accept the people's judgment.

As a first step towards a more satisfactory working relationship with the Executive Council, I suggest that Executive Council meeting agendas be published in advance. I further suggest that a minute be published after each Executive Council meeting listing the decisions which have been taken. I would then like to see an official Executive Council Member, perhaps the Chief Secretary, made available to the Legislative Council on a regular basis specifically in order to answer factual questions about the background of Executive Council decisions. He would not be expected of course to disclose how individual Executive Council Members had spoken or voted.

Responsibility for taking such steps rests directly with the Governor himself. The composition and conventions of the Executive Council derive from the Governor alone. The Executive Council is there solely to advise him, and there is no present or future constitutional requirement for secrecy to surround its working.

If the Governor chooses to keep his back turned on the Hong Kong public, and take his most important decisions in secret conclave, he has the constitutional right to do so. But he can hardly expect Members of this Council, elected Members above all, to feel comfortable with such a situation.

Mr President, I support the motion.

MS ANNA WU: Mr President, at the heart of this motion are the constitutional roles of the executive and the legislature and the political system within which we work. Much depends on what we mean by an executive-led government, separation of powers, checks and balances and accountability.

What does an executive-led government mean in tangible form?

In today's government, it means all laws and policies must be initiated by the executive save for Private Members' Bills without financial implications. It means that the sentiments of the Legislative Council reflected by the motion debates need not be accepted by the executive. It means that the Governor may dissolve the Legislative Council at any time.

Under the Basic Law, it means all laws and policies must be initiated by the executive and virtually all Private Members' Bills need executive approval. It means that the sentiments of the Legislative Council as reflected by the motion debates can continue to be ignored by the executive.

It means that the Chief Executive may return a Bill to the Legislative Council for reconsideration. It means that the Chief Executive may dissolve the Legislative Council if it passes the same Bill twice or refuses to pass an important Bill or Budget presented by the executive.

What do we have by way of separation of powers and checks and balances?

Whereas both before and after 1997, the Legislative Council may refuse to pass a Bill or a Budget, these are not powers that the Legislative Council would exercise lightly. In the case of the SAR Government, the dice are loaded against the legislature specifically because the penalty for refusal is possible dissolution, a move which the Chief Executive can take after consultation with the Executive Council. Irrespective of the standing of the non-government Members of the Executive Council, neither the Governor before 1997 nor the Chief Executive after 1997 is obliged to heed their advice.

Further, under the Basic Law, a Legislative Council Member is required to vacate office if he or she accepts a government appointment and becomes a public servant.

What is the role of the Executive Council?

The role of the Executive Council is to advise the Government on policies and in the case of the SAR Government to be constitutionally consulted when dissolution of the Legislative Council is contemplated by the Chief Executive. Given the fact that there is no indication that the Executive Council will have either transparency or representativeness, I do not see how this body can command confidence, particularly when it is exercising this very important advisory function concerning the dissolution of the Legislative Council.

What about accountability of the executive?

The Governor is accountable to those who appoint him and, in a sense, to the Legislative Council. Under the Basic Law, the Chief Executive is stated to be accountable to the Central People's Government and the SAR and the SAR Government is stated to be accountable to the Legislative Council. Although the

Basic Law provides for the Chief Executive to resign under certain events, this only occurs after a previous legislature has been dissolved.

The Basic Law also empowers the Legislative Council to impeach the Chief Executive on breach or dereliction of duties. This is a very convoluted procedure leading up to a report to the Central People's Government for decision.

Without a fully elected government, neither the Governor nor the Chief Executive can be politically accountable to the Hong Kong public.

What about a ministerial form of government?

Although the Legislative Council Members cannot at the same time be public servants, neither the current system nor the Basic Law precludes legislators from being appointed to the Executive Council or assuming political portfolios. Indeed the current tension that exists between the executive and the legislature and between the Executive Council and the Legislative Council points to a ministerial style or quasi-ministerial style of government as the logical conclusion.

The Governor makes himself available to answer questions at the Legislative Council Chamber once a month and on special occasions but frequently legislators do not like his answers — or lack of answers. The Secretaries consider themselves career civil servants and do not feel they should have to assume the political job, as ministers do, of facing a barrage of questions from legislators. The legislators who at this point can claim to be least unrepresentative and who thus command greater political legitimacy do not like being ignored by the executive or playing second fiddle to the Executive Council. The non-government Members of the Executive Council do not like accusations of being out of touch, unrepresentative, not accountable, deliberating in secrecy, rubber-stamping or the notion of "collective responsibility" which effectively gags them.

This is a recipe for disintegration and deadlock. The executive has no certainty of securing majority support from the Legislative Council at any time. The Legislative Council is powerless in ensuring that its wishes would be respected by the executive. The non-government Members of the Executive Council who used to play a lobbyist role for the executive is now out of the picture.

Without further belabouring the issue, I propose that the Government considers the feasibility of the following measures as a start:

First, establish the convention whereby the Secretaries are selected after discussion with the Legislative Council;

Second, re-establish the convention whereby the Legislative Council Members are selected by the Governor for appointment to the Executive Council or consider having the Legislative Council or its dominant party nominate candidates for selection by the Governor;

Third, establish and record clearly conventions on the notion of accountability vis-a-vis the sovereign power and the legislature to ensure that there shall be no conflict between the two forms of accountability;

Fourth, consider making public part or all of the agenda of the Executive Council meetings; and

Fifth, consider removing collective responsibility so that those non-government Executive Council Members who are in major disagreement with the executive may present their own views when the matter comes into the public domain.

Although I may be running the risk of being called unrealistic for asking for too much, I believe these to be modest measures to reduce the prospect of deadlock occurring and to better equip Hong Kong for an eventual fully elected government and Legislative Council.

Thank you, Mr President,

MR JAMES TIEN (in Cantonese): Mr President, to a Member who has only recently rejoined this Council after an interval of two years, the changes this Council has undergone during these two years have been momentous. But this period also enabled me to observe detachedly as a bystander the changes in this regard and calmly analyze them.

First, I would like to talk about the relations between the Legislative and the Executive Councils.

Before 1991, the common practice was that Legislative Council Members who also served as Executive Council Members would bring the varied opinions of the Legislative Council to the Executive Council for discussion before making proposals to the Governor in the Executive Council. These Members would also make use of the In-House meetings of the then OMELCO to explain the policy orientations of the Executive Council to Members of the Legislative Council. Very obviously, these Members played the role of a bridge between the two Councils and also an access window to the closed chamber of the Executive Council where proceedings were and still are confidential.

Currently, the ties between the two Councils can be said to be completely severed. There is no built-in institutional link between the two Councils under the existing mechanism. In fact, the Executive Council of today is more politicized than any time before. With no members from any of the existing

political parties on the Executive Council, it is easier for the Governor to dominate that Council.

Mr President, I would now like to turn to the relations between the Legislative Council and the Administration.

Such relations have also undergone great changes since 1991. In the absence of an effective channel for the executive to explain its decisions to the Legislative Council, officials of the policy branches have taken up the responsibility of explaining the policies adopted. We can see that our officials have in the past year made a great effort in discharging such a responsibility. But there have been situations which, viewed objectively, have made me worry that the efficiency of the executive branch of government will be undermined because it will be busy explaining the policies, or it may become shortsighted in forward planning for fear of committing errors and attracting the reproach of this Council.

As regards the situations mentioned above, many have put the blame on the insufficient communication between the executive and the legislature. But I believe that the existing problems are in fact the result of the change in our constitutional structure. The lack of communication between the two Councils is just the catalyst to trigger the problems which hasten the exposure of the disharmony of such a constitutional change.

In the parliaments of some foreign countries, although it is common that the two chambers disagree with each other, the constitutional mechanism in those countries will ensure that the policies of the executive will obtain the support of the legislature. The ministerial system practised in the United Kingdom is an example of such kind of mechanism.

I would like to ask: In democratizing Hong Kong's political system and increasing the number of elected Members in the Legislative Council, how could the United Kingdom with its long history of representative government have overlooked the consequences of such a constitutional change and not taken any preventive measures?

I must emphasize that I am supportive of communication between the Executive and the Legislative Councils. However, I must also point out that a thorough solution to the problems would be that the executive branch of government, including the Executive Council, must keep in pace with the constitutional development and not lag behind the democratic development of the Legislative Council.

When we talk about democratization, we should not only set our sights on the various boards and councils. With the development of party politics in these boards and councils, the implementation of a ministerial system that fits the requirements of Hong Kong seems to be one of the ways to synchronize the development of the executive and the legislature.

However, subject as Hong Kong is to the precondition that great changes are not advisable during the latter part of the transitional period, I think that such a ministerial system should not be implemented before 1997. The Chinese and British Governments can have detailed discussion in the coming few years on the actual arrangements for the implementation. I believe that what can really help to establish sound and effective relations between the executive and the legislature is the parallel development of the two institutions.

In the meantime, the Chinese and the British Governments are holding negotiations on the electoral arrangements for Hong Kong. I hope that the two Governments can take this opportunity to also consider the relations between the executive and the legislature, which subject has scarcely been touched upon in the White Paper on Representative Government and the Basic Law, otherwise such a problem will always remain unresolved.

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I am grateful to the Honourable Vincent CHENG for introducing a motion debate today on this important subject which bears on the system of government in Hong Kong. I can say up front that my *ex-officio* colleagues will vote in support of the motion.

Let me begin by stating what the Government's guiding principle is. In the words of the Governor, when he addressed the Legislative Council in October last, our intention is "to ensure that we have vigorous and effective executive-led Government that is properly accountable to this Legislative Council". To achieve that objective, the following changes have taken place in the current Legislative Council Session:

First, we have separated the non-official membership of the Executive and Legislative Councils, so as to allow both Councils to play their proper roles. At the time, we envisaged that within this Council political parties and groups could be free to develop their programmes and platforms, without the constraints that membership of the Executive Council would impose. That, as everyone now knows, has happened. We have seen, over the last year, the formation of a substantial political party, and the development of other political groups in this Council. That has indeed made the debates of this Council a much livelier affair. And, on the whole, this Council has fulfilled its role as an effective forum for the expression of the wishes of the community.

Secondly, this Council now has its own elected President, and this enabled the Governor to be answerable to this Council as the head of Government. Indeed the Governor has done so through his question and answer sessions with this Council, of which there were eight in the past year, and the ninth would take place tomorrow. The Governor has also had many meetings with Members of this Council, individually and in groups. Furthermore, senior officials,

including the Chief Secretary, the Financial Secretary and the Attorney General have given many briefing sessions to Members of this Council and Policy Secretaries keep in regular and close touch with Members of the relevant Legislative Council panels. These consultations and briefings are far from being superficial, as one Member claimed. For example, the consultations carried out by the Financial Secretary prior to the last Budget were recognized by many Members as genuine consultation which significantly affected the content of the Budget.

Thirdly, this Council has in turn taken decisions on how it runs its own affairs. It has, for example, instituted a series of reforms to its procedures and committee structure. And I believe the Council is well on the way to establishing its own secretariat support on a proper, statutory footing.

All these developments are well within the framework of Hong Kong's government structure mapped out in the present constitutional documents, that is, the Letters Patent and Royal Instructions, and the future constitution of the Hong Kong SAR, that is, the Basic Law. They are healthy developments. Some Members have spoken about developing further towards a "ministerial" or "quasi-ministerial" system of some sort either now or after 1997. I should just point out that such a system is not envisaged in the current constitutional arrangements or, as far as I know, in the Basic Law. It is important that we should build on what has proved to work well, rather than discard it all for some imported system the suitability of which for Hong Kong is untested.

So, on the whole, I believe that the relationship between the executive and the legislature is developing along a path that meets our objective. But equally clearly, there should be steps that could be taken to oil the machinery and to make it work smoother. One proposal that was made by the Governor in his Legislative Council address was to establish a Government-LegCo Committee, where the Administration can discuss with Members of this Council the handling of the Administration's legislative and financial programmes. We have not yet established such a committee but, if Members of this Council — and I do recognize that there are different views — would like to take this proposal further forward, we on our part would be perfectly happy to co-operate.

Some Members of this Council have alleged that there is somehow a communication gap between this Council and the Executive Council when the Executive Council takes a view on certain policy issues which is different from theirs. I have to say that they have misunderstood the respective roles of these two Councils. It is for the Governor, on the advice of the Executive Council, to take decisions on policies, and on the introduction of legislation and financial proposals to this Council. It is the Legislative Council's role to debate these policy decisions, and to decide on whether the legislative and financial proposals should be approved. In an ideal world everyone would see eye to eye on everything and agree with each other. But we do not live in an ideal world: Members of this Council, for example, do not always see eye to eye with each

other. In a pluralistic society like ours, that is bound to happen; in an open society like ours, that happens publicly.

There are many informal channels of communication between Members of the Executive Council and the Legislative Council. And, today, some Members suggested that we should also have formal channels of communication between Members of the two Councils. No doubt they would recall that the former OMELCO meeting system was abolished at the suggestion of some Members at the time. But if Members now wish, we would certainly look at some similar arrangements for the future. I can assure Honourable Members that their views are fully taken into account when decisions are taken in Executive Council. But so long as the two Councils with or without dual membership are separate and play different roles, no one should be surprised if occasionally there are disagreements.

That said, I and my colleagues in the Executive Council are fully alive to the need to promote an effective working relationship with this Council. Many Members have, in today's debate, made thought-provoking suggestions. I assure Members that we will examine these suggestions seriously, and we look forward to working together with this Council to move ahead

Thank you, Mr President.

PRESIDENT: Mr CHENG, do you wish to reply? You have 5 minutes 2 seconds.

MR VINCENT CHENG: Thank you, Mr President. I will not be long. I just would like to thank Honourable Members for their contribution to this discussion. I may be an eccentric banker — I do not know how Mr Jimmy McGREGOR got this impression — but I have no illusion that communication alone would resolve all the differences between the Administration and the legislature, which are fundamental.

The purpose of this debate is really to draw suggestions out from this Chamber. We have a number of suggestions with varying degrees of support in this Council. I am not sure if I have understood all the proposals. However, I hope the Administration will consider these proposals or suggestions very carefully and come back with counterproposals, if any, in due course. I think we would like to take them forward in October so that we shall have a better working relationship and better communication between the legislature and the Administration.

Thank you, Mr President.

Question on the motion put and agreed to.

Adjournment and next sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Thursday 15 July 1993.

Adjourned accordingly at thirteen minutes to Ten o'clock.

Note: The short titles of the Bills/motions listed in the Handsard, with the exception of the Leveraged Foreign Exchange Trading Bill, Supplementary Appropriation (1992-93) Bill and the Amusement Game Centres Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWER**Annex I****Written answer by the Secretary for Security to Rev FUNG Chi-wood's supplementary question to Question 1**

The Police Public Relations Bureau (PPRB) is a headquarters unit in the Police Force, charged with overall responsibility for co-ordinating the territory-wide community relations activities of the Force; planning and implementing police recruitment and crime prevention publicity campaigns; and providing feedback from the media to all formations in the Force.

At the District level, liaison and public relations is done through Police Community Relations Officers (PCROs). The PCROs are responsible for establishing and maintaining close contact with community organizations; organizing the activities of the Junior Police Call and the Duke of Edinburgh Award Scheme; educating District police disciplined staff about community relations matters; and advising the Police District Commanders of local public opinion about the service provided by the Force.

All officers in the PPRB and the PCROs have been given specific training in public relations work.

