

# OFFICIAL RECORD OF PROCEEDINGS

Thursday, 8 December 1994

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 MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.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 SZETO WAH

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

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

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

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 STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

**ABSENT**

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

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

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

THE HONOURABLE TAM YIU-CHUNG

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

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE CHRISTINE LOH KUNG-WAI

**IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR RICKY FUNG CHOI-CHEUNG

PURSUANT TO STANDING ORDER 4AA, HIS EXCELLENCY THE GOVERNOR,  
THE RIGHT HONOURABLE CHRISTOPHER FRANCIS PATTEN, ATTENDED TO  
ADDRESS THE COUNCIL AND TO RECEIVE QUESTIONS.

PRESIDENT: Would Members please remain standing for the Governor?

CLERK: His Excellency the Governor.

PRESIDENT: The Governor will answer questions on the 10 topics which have been indicated to Members and a Member who has asked a question may, for the purpose of seeking elucidation only, ask a short follow-up question. Can I have a show of hands please?  
Mrs Selina CHOW.

MRS SELINA CHOW: *Thank you, Mr President. Mr Governor, given the overwhelming vote that was taken yesterday in this Council in favour of the suggestion that the British Government should take the stranded Vietnamese boat people into the United Kingdom in 1997, should any of them still remain in Hong Kong, may I ask you, Mr Governor, what are you going to do to put this case forward to the British Government on our behalf?*

GOVERNOR: What I shall do in the next two and a half years or shorter, if we succeed in our objective before then, is to work with my colleagues in the Administration to ensure the successful repatriation of all those Vietnamese migrants in detention centres as soon as possible. I have read accounts of yesterday's debate. I wholly endorse the arguments adduced by the Secretary for Security and at the end of studying the honourable lady's speech and other speeches that were made, I was not entirely sure what proposals were being put forward to help us expedite the achievement of an objective that we all share.

As for what the honourable lady has said about the situation in 1997, as I have said before, as others have said, including I note one or two newspapers, I do not myself think it is very sensible to give Vietnamese migrants in the camps the wholly wrong impression that if they only hang on they will be able to be resettled in another country after 1997. I think that that encourages Vietnamese migrants to stay, and indeed it could encourage some Vietnamese migrants to come to Hong Kong. I do not think it is a very helpful proposal. I do not think it represents any sort of reality that I know and I do not think it would be well received by those who want to see us deal successfully with this problem or by those in the international community who have in their turn helped with the resettlement of genuine refugees.

There is one other point that I would make to the honourable lady. I am sure that if she spoke to her honourable friend who was a Member of the Executive Council in 1988, which took the key decisions on policy on Vietnamese migrants, he would be able to assure her that the policy was made by the Hong Kong Government and was not imposed on the Hong Kong Government by the present sovereign. So, I hope the honourable lady will find that a helpful and comprehensive reply to her question.

MRS SELINA CHOW: *Follow-up, Mr President. Does that mean that the Governor would not put the position forward to the British Government as voiced by this Council yesterday?*

GOVERNOR: I will report what the Council said. I will certainly report it, but I shall also add in terms of what I have just said to the honourable lady.

PRESIDENT: Mr HUI Yin-fat.

MR HUI YIN-FAT: *Mr Governor, in view of the explicit rejection by the Chinese Government on the Old Age Pension Scheme proposed by the Hong Kong Government, and a recorded statement of our government officials that the Scheme should not start without the agreement of the Chinese Government, how would you, Mr Governor, propose to introduce the proposed Scheme and when?*

GOVERNOR: The aim which I imagine we all share is to find ways of providing better, more comprehensive assistance to the elderly as soon as possible. Hong Kong has been discussing the possibility of a pension scheme for the best part of three decades. Meantime, the number of those who would be affected by a pension scheme as beneficiaries has increased exponentially, being part of Hong Kong's success story; in particular, the number of those who are very old has increased very substantially. But we still do not have any comprehensive way of addressing the financial insecurities which the elderly face, or which those who are soon going to be elderly and retired face.

A few months ago, as the Council will know, the Government put forward what in our view was the most sensible, immediate and cost effective way of dealing with the problem of providing for the elderly. And since then we have been involved in a consultation exercise which has drawn 6 000 or rather more than 6 000 responses which we are at present examining. Some responses, of course, have not been specifically addressed to us as part of that consultation exercise. For example, one or two Chinese officials, both on and off the record, have suggested that the pension proposals that we put forward are not in the interests of Hong Kong, a point which I would strongly contest.

The Scheme is some lurch into socialism which the said officials for present purposes regard apparently as being a bad thing. They have made similar criticisms but most of the criticisms that we have seen have been from political groups in this Council or from organizations representing employers. We have to take very seriously what apparently is the view of the future sovereign, though we have not had that put on the record in the Joint Liaison Group, and we have to take account of what is said within the community. I think it would be very difficult for us to proceed without a broad consensus

which embraced first and most significant, because we will have to legislate, a majority in this Council; second, most business leaders and trade union leaders in the community; and third, those who speak for the future sovereign power. Without such a consensus, I think any scheme would have great difficulty moving forward. Indeed I do not think without that consensus that we would be able to get a scheme through this Legislative Council.

So what does that mean? Does it mean that we simply wash our hands of the problems facing the elderly for the next couple of years and hope that the future Special Administrative Region government will deal with the problem, facing exactly the same challenges, working within exactly the same parameters, though they might be a little more difficult than we have to cope with today? I do not think that is a tolerable way of proceeding. We are therefore intent, after considering all the submissions that we have received, on considering first of all in the Executive Council what we will believe is the best way forward and I trust we will be able to do that at the beginning of the New Year and announce our proposals straightaway. I do not intend to preside over an Administration which is not capable of dealing with a major social problem as quickly and compassionately as possible. There are elderly in our community in need and we have to address that need as rapidly as we can, while retaining good economic sense and prudent housekeeping.

I am sorry to respond at length to the honourable gentleman but I just wanted to make two things clear. First, the exercise we have been engaged in has been a genuine consultation exercise. Secondly, we do not intend consultation to turn into indecision.

MR HUI YIN-FAT: *Mr President, can I ask the Governor whether he could be more explicit in saying that even with the objection or the disagreement of the Chinese Government, we will proceed with an amended proposed Scheme?*

GOVERNOR: What I can certainly tell the honourable gentleman is that we will go forward with a policy to help the elderly cope with their financial problems during the course of the coming months. We will put forward proposals to the Executive Council very soon and we will announce the result of our consultations in the Executive Council early in the New Year.

I repeat that it would be unrealistic for us to try to proceed if we (a) thought that we could not get our proposals through this Legislative Council; (b) did not think we could carry the business community and trade union leaders; and (c) were receiving a substantial thumbs down from the future sovereign. In those circumstances, if that was the case, a sensible Administration would refuse to find itself tied hand and foot in a cul-de-sac. It would look for other ways of dealing with an urgent social problem.

PRESIDENT: Mr Marvin CHEUNG.

MR MARVIN CHEUNG: *Mr Governor, will you please advise this Council when will you provide concrete evidence to show what proportion of our old age people now and in the future are in fact in need of financial assistance as envisaged by the arguments in support of the proposal for the Old Age Pension Scheme and other similar schemes? And do you support or deny the statements made by the Financial Secretary in this Chamber on previous occasions, to the effect that Hong Kong has enjoyed a very healthy state of economy for the last 30 years and that our people have been the world's best savers over this period of time, so that there should be very few old people in financial need?*

GOVERNOR: It is true that because of Hong Kong's economic success, because of 34 years of uninterrupted economic growth — not a bad record, I say in passing, for the Administration to allude to — there are fewer people in general in need and fewer elderly in particular in need than would otherwise be the case. It is also true that for cultural and doubtless economic reasons as well, Hong Kong has been able to point to high savings over the years. But I am sure that the Honourable Member also recognizes that those who were building Hong Kong's economic success in the earlier years, by and large, do not find themselves today among the largest beneficiaries of that economic success. You do not have to be a sociologist — to perish the thought — to recognize that in our community today it is the elderly who by and large are likely to be the neediest group. There are others who are in need. There are those who are suffering from disabilities and handicaps. There are single-parent families and some low-paid families with a large number of children, but the biggest category, I think, of identifiable need is among the retired elderly.

The disputed statistics, I suppose, for the number of people in that category would be those who actually claim the benefits which the Government make available to those whose income does not exceed a particular threshold. But I guess that a number of social workers would dispute whether that was a wholly accurate assessment of those in need. I do not dispute for one moment that need is not as acute as in some other communities, but I do think that it is an identifiable social problem. It is not a social problem which is going to get easier to deal with as more people live for longer and as we have more very elderly in the community. And sooner or later we have to address it, and we have to address it in a way, which we believe we have been doing, which does not threaten the same sort of welfare spending problems to which the World Bank, in a very good report, recently alluded. It is a social problem which the community and the Government have to address.



MR MARVIN CHEUNG: *Mr Governor, can I take it from your reply that the Government is unable or unwilling to provide any concrete evidence of the actual number of old people in financial need and if not, can I have a straight answer as to when this statistics will be provided?*

GOVERNOR: No, we can give the Honourable Member the statistics of those who are claiming the benefits to which they are entitled because of need extremely easily. If the Honourable Member thinks that is an accurate definition of the problem, then so be it. Others would dispute that proposition. But it is the literal, statutory, precise, targeted, well-delineated answer to the question.

PRESIDENT: Mr Timothy HA.

MR TIMOTHY HA asked (in Cantonese): *Mr Governor, pre-primary education services are now administered by the Social Welfare Department and the Education Department separately. Will you please advise us what progress has been made in the unification of these services? Does the Government have a timeframe for the completion of this work?*

GOVERNOR: As the Honourable Member, I think, knows because he takes a particularly close interest in these matters, we have set up a working party to deal with this question. We have broadened the membership of the working party in order to try to ensure that we get as comprehensive and swift a response as possible. Obviously, we do not want to sacrifice quality for speed but we also recognize that this Council feels very strongly on the subject — we noted the debate the other day on this subject — so we will want to give a reply as quickly as we can.

PRESIDENT: Mr TIK Chi-yuen.

MR TIK CHI-YUEN (in Cantonese): *Mr President, I am very happy to learn that the Governor is very concerned about the unification of pre-primary services and the Administration is prepared to introduce it as early as possible. However, I would like to remind the Administration that the unification issue will be a very difficult task to encounter as it involves two policy branches and two government departments. Would there be competitions between government departments which would in turn make the situation even more complex? I hope that Mr Governor would urge the departments concerned to deal with the problem proactively. In addition, the question of direct subsidy to kindergartens has already been discussed for a long time, however, it was stated in the policy address that a policy decision on this matter would not be taken*

*until 1995. As you are aware, both the education sector and parents are eager to see the early implementation of the scheme and the last motion debate of this Council has also urged the Administration to implement the said scheme with effect from 1995. The Secretary for Education and Manpower once mentioned that a final decision would be taken by the end of 1995 insofar as this issue is concerned. Mr Governor, can you confirm that the direct subsidization scheme will put into effect as from 1995 so that kindergarten teachers, parents and children would receive a Christmas present from the Administration today?*

GOVERNOR: I think the Honourable Member would be gratified but surprised if I was to say that that was going to be available before this Christmas. On the working party which he mentioned, of course, there is no competition or difference between any government departments. This is a seamless row and we are all entirely on the same side working comprehensively together on these problems. I think it makes sense to put together professionals and administrators from both sectors really in order to avoid the sort of tensions and clashes which might come up later on. We do not believe that having, as it were, a trans-professional membership will delay the work of the working party. We intend that the working party should report during the course of the next calendar year so that we can get on and implement a policy which I think the whole community feel strongly about. And I know that there are anxieties, in particular because of things like remuneration levels, which are understandable.

Secondly, on the question of subsidizing kindergartens, we hope that we can come to a clear decision on that subject early in 1995 and perhaps make a start on implementing that policy later in the year. It does have pretty substantial cost implications, but I guess that it is a mark of the success we have achieved in other areas of education that so much pressure and emphasis is now on kindergartens and child care services.

MR TIK CHI-YUEN (in Cantonese): *Although no Christmas gift is received today, we sincerely hope a final decision on this matter will be made in early 1995, and we expect to have a New Year present will be forthcoming. Concerning the membership of the working party on unification of pre-primary services, some of the members are professionals. Will Mr Government consider inviting parents to join this working party? The reason is that the proposed membership list of the working party consists of both professionals and representatives from government departments. However, I think that the voices of parents are also of equal importance.*

GOVERNOR: Even governors and civil servants can be parents too and I am sure that there are several parents on the working group. We will consider the proposal put forward by the Honourable Member but I think that if he believes, as I know he does, and as I do, that the objective should be to get on with things

as rapidly as possible. We perhaps should not continually tinker with the membership of the working party, but try to ensure that it can do its job as rapidly as possible.

PRESIDENT: Mr Alfred TSO.

MR ALFRED TSO (in Cantonese): *Mr Governor, I have repeatedly pressed the Government for information regarding the communication and co-ordination between China and Hong Kong insofar as the implementation of major China-Hong Kong infrastructure projects are concerned. The long-awaited Infrastructure Co-ordination Committee finally comes into being. You also remarked that you welcomed and supported the establishment of such a Committee. I understand that China wants to proceed with several major infrastructure projects which would surely being major benefits to Hong Kong. Can you tell us what your expectations are in regard to the Committee; and, secondly, in case the progress of the Committee does not measure up to your expectations, whether you and the Government will be patient and proactive enough as to take the initiative to promote the implementation of these major infrastructure projects; and thirdly, whether the Government is prepared to provide this Council with periodic progress reports, so that the public and the investors at large can be kept informed of the progress of these projects, thereby enhancing the stability and prosperity of Hong Kong?*

GOVERNOR: I think it is fair to say and it is a commentary above all perhaps on the record of some of my predecessors and of previous civil servants, that this community has a pretty good record at getting on with infrastructure projects. I think it was the late Lord KADOORIE who said that the day there were not large numbers of holes all over the landscape of Hong Kong was the day you should start worrying. We actually managed to complete infrastructure projects more rapidly than most other communities and perhaps I could, if I was in a less mellow and benign mood, refer to one or two infrastructure projects where delays have not been the fault of the Hong Kong Government.

But we do think that it is important to discuss cross-border infrastructure projects with the Chinese authorities. I said that in my speech to the Council at the beginning of October, taking up some suggestions which had been made initially by Chinese officials. We have been very pleased to make as rapid progress as we have in setting up this new Committee. We agreed on all the terms of reference and parameters of the Committee in just a couple of meetings, which I think spoke volumes for the goodwill on both sides. Now I know that those who will represent both the People's Republic of China authorities and ourselves want to get down to the real business of the Committee which is not talking about terms of reference but talking about roads and railways and related things. I have to say that I think we will occasionally find that the Chinese authorities themselves want to think through very carefully and

co-ordinate even more sharply the infrastructure projects which are taking place in China and I am sure that they will find that this Committee is a good way of focusing on some of those projects.

We certainly believe that the Committee should help to expedite decisions and implementation on the infrastructure rather than delay decisions and implementation. That was very much one of the things that we pressed for when we were talking about the terms of reference and we received assurances on that point. So we will go on trying to make the best of this Committee. I hope it will meet, though we have not yet got an agreement on this, early in the New Year. I think it would make a lot of sense to start establishing one or two panels on issues like railways and roads which could do more detailed work under the overall umbrella of the Committee. It is an important step forward and we want to make it work as well as possible.

PRESIDENT: Rev FUNG Chi-wood.

REV FUNG CHI-WOOD asked (in Cantonese): *Mr President, the Chinese and Hong Kong government officials have much arguments over the strategic Sewage Disposal Scheme. Mr Governor, you have once criticized that this issue has been politicized, but the Chinese officials have denied it. Will the Governor please tell us how he has come to this conclusion? Will it be the case that the Hong Kong Government has not been well prepared for the negotiation and has thus failed to make available sufficient information to the Chinese officials to convince them?*

GOVERNOR: Perhaps I can politely correct one thing which the Honourable Member said at the outset. We are not arguing over the Scheme; we are implementing it. The Scheme has two distinct parts. There is the high priority Part One, which involves the collection of the sewage and polluted waste water. It involves the separation of sewage from ordinary stormwater and it involves, having collected the sewage and polluted water, primary treatment and disposal. Now that programme would be necessary whatever you then went on to do. The decisions you take on the first part of the Scheme do not, in any way, constrain the ways in which you can build for the future by either producing a long sea outfall or by secondary or tertiary treatment of what has been collected on Stonecutters. What is even more to the point, or what is as much to the point is that we complete Part One and pay for Part One before 30 June 1997. We were therefore very happy to explain to the People's Republic of China (PRC) officials in the greatest detail how Part One, how Stage I, will operate, but we were intent on getting on with it and that is what is happening. We have let I think 17 contracts so far, 14 of which, I believe I am correct in saying, have been won by Hong Kong firms or by local firms and it is important, not least bearing in mind the health problems that we faced last summer, the cholera problems, to get on with cleaning up the waters in the harbour as Part One of

the Scheme will do. We are discharging 1.5 cu m of polluted water into the harbour at the moment and we have got to stop doing that.

Stage II is different. Stage II is different for a couple of reasons. First of all because it is going to be implemented after 1997 and it raises issues in which those who are concerned about the responsibilities of the Special Administrative Region government and its challenges naturally concern themselves. It is also different because one of the options which has been proposed for Stage II involves a long sea outfall which would discharge primarily treated sewage into Chinese waters. So for both those reasons, it is wholly legitimate for Chinese officials to raise questions and for us to try to engage in a dialogue and try to find agreement on how to deal with Stage II of the strategy.

We will be, early in the New Year, publishing a document which will consider the various options for Stage II and the community and PRC officials will have to weigh on the one hand environmental benefit and on the other hand cost. They will have to consider the advice of experts, some of whom think that long sea outfalls are a perfectly sensible environmental option when you are discharging to deep water.

I guess it is a fair point to make that if Chinese officials conclude that Hong Kong should bear the costs of more expensive treatment, that is, secondary or tertiary treatment, they would also conclude that the same should apply to Shanghai and other coastal cities in the PRC, because if the objection is an environmental one that long sea outfalls into one's coastal waters do not make good sense then that does not just apply in Hong Kong but it applies in other places as well. It has very considerable cost implications, as the United States is finding at the moment, as Europe has found, but nevertheless that is a perfectly valid option for people to consider.

So a simple answer to the Honourable Member's question is we are implementing rather than arguing where we have the direct responsibility to do so. But we are also engaged in an open-minded consideration of the best options for Stage II which the community and PRC officials and this Council will, I know, take an active part in.

REV FUNG CHI-WOOD asked (in Cantonese): *Mr Governor did not seem to have explained how the issue has been politicized. He only talked about the pollution of our waters and the feasibility of the scheme. Will the Governor elaborate how the issue has been politicized?*

GOVERNOR: I got the impression with one or two things that were said about Stage I that some people believed that holding up Stage I would provide leverage more generally in discussions with the Hong Kong Government, but maybe I was wrong to get that impression. It was certainly the impression that one might have got if one had read statements and leading articles and

commentaries in some of the — I do not know whether one is still allowed to use this expression — left wing newspapers in Hong Kong.

PRESIDENT: Mr Simon IP.

MR SIMON IP: *Mr President, I would like to ask a question about the Court of Final Appeal. A suggestion has been made that if and when the Court of Final Appeal bill is presented to this Council, one amendment will be moved to delete reference to the 4:1 composition of the Court and substitute a provision following the wording of Article 82 of the Basic Law so that the Court of Final Appeal would have complete flexibility to invite overseas judges as may be required. If such an amendment is passed, what would the Hong Kong Government do and how it will set up the Court of Final Appeal in accordance with the amendment?*

GOVERNOR: I have had reason, perhaps too frequently, in the past to point out in the Council that I find governing Hong Kong quite challenging enough dealing with real questions rather than dealing with hypothetical questions, and I think that it is probably the case that my colleagues in the Administration share that view. But let me, without making life more difficult for myself, address some of the issues which the Honourable Member raised and about which he has considerable knowledge.

This Council will, over the course of the next few months, have to consider legislation on the Court of Final Appeal. That is necessary if we are to stand any chance at all of establishing a court before the middle of 1996 so that it can take over the role of the Judicial Committee of the Privy Council. We do not make up the deadlines. We need to legislate during this Session. The Council, with the advice of lawyers both inside and outside the Council ringing in its ears, will have quite a simple, in my judgment, decision to make. Either Hong Kong gets a Court of Final Appeal before 1997 — indeed before the middle of 1996 — or it does not. I do not think anybody should kid themselves. It is not an argument between principle on the one hand and expediency on the other. This is not Thomas MORE country. It is quite clearly an argument about whether we have a Court of Final Appeal which is set up in accordance with the Joint Liaison Group (JLG) Agreement and with the Joint Declaration and the Basic Law or whether we do not have a Court of Final Appeal.

I simply do not understand the arguments of those who seem to suggest that they would get a better Court of Final Appeal if they waited until after 30 June 1997. I cannot understand that reasoning at all. Nor do I understand the arguments of those who say: Well it does not really matter if we do not get a Court of Final Appeal because the Privy Council only deals with a handful of cases every year. Anybody who says that sort of thing and still argues about principle, really should consider, I think, their position rather carefully.

The proposals which the Government will translate into legislative form will be wholly in line with the Joint Declaration and the Basic Law and the JLG Agreement. They will be wholly acceptable in principle and they will make great sense in practice as well. We have looked at all the legal arguments. We have considered the Vienna Convention on the Law of Treaties and we believe our position is absolutely sound. And I repeat, the question is whether this community gets a Court of Final Appeal before 1997 or not. That is the simple issue and nobody should kid themselves that it is something else. There are consequences of individual actions and I hope that the legal profession in Hong Kong will recognize that.

MR SIMON IP: *The Governor has sidestepped my question on the ground that it was hypothetical. It was not hypothetical, it raises a very real issue in that we know already — unless Mr Martin LEE tells me otherwise — that there will be an amendment moved to the bill which will track the wording of Article 82 of the Basic Law. The question which I wish to put is: Could we have a Court of Appeal before 1997 along the lines of Article 82 of the Basic Law and not along the lines of the JLG Agreement? It is because that would be the effect of the amendment, if passed, and there must be a realistic possibility of the amendment being passed.*

GOVERNOR: I agree that it may not be hypothetical that an amendment to a bill that is not yet published in its final form will be tabled. On the other hand, it is certainly hypothetical to consider what we would do if such an amendment was passed. But I just put this point to the Honourable Member. This happened in good faith before I became Governor of Hong Kong. In 1991, in good faith, in line with the Joint Declaration and the Basic Law, totally in line with the Joint Declaration and the Basic Law, an agreement was made on the Court of Final Appeal. Is the Government of Hong Kong to conclude that the PRC who were party to that agreement would be happy with some differently composed court? I do not think that is likely for one moment and I think you have to be particularly naive to think that they would be happy with some other sort of court, particularly when they have suggested otherwise.

Let me just deal with one other linguistic issue because it seems to me that the main argument of the critics of our proposals, insofar as it has any merit, depends on whether the use of judges — in the plural — in the sacred texts means judges in the plural at the same time or judges in the plural sequentially. The plural, in English, can of course — and in other languages I imagine — refer to both. The Legislative Council could conclude that the Governor could take lunches in the Legislative Council canteen whenever he wanted. That would not mean more than one lunch at the same time, that would mean lunches every other Friday. So the proposition on which some lawyers seem to base, I think, is a wholly invalid and damaging stack of arguments, representing a curiously narrow minded view of the English language.

PRESIDENT: Mr SZETO Wah.

MR SZETO WAH (in Cantonese): *Mr Governor, just now you made a linguistic discussion on terms and I wish to avail myself this opportunity to take you on the same line. Recently, you coined a new term — the "sick parrot", which has evoked enormous response from different quarters. A parrot is a bird and a sick parrot is therefore a sick bird. The word "bird" in Chinese, however, has another meaning. Mr Governor, are you aware of this other meaning? When the new term was coined, were you also intended to imply this other meaning?*

GOVERNOR: There are many alternative meanings of the word "bird" in the English (*Laughter*), one of which I will not refer to but one can also accuse somebody of "giving one the bird" which does not mean handing over a parrot, whether healthy or unhealthy. It is not as laudatory a salutation as one would like. I would be interested to compare ornithological metaphors with the Honourable Member. (*Laughter*) My ornithological metaphor was drawn from one of the most popular Western, and indeed Eastern cultures, and that is football. As for definitions of "sick parrots", I am reminded of someone who once, when asked to define or describe an elephant, said that they were very difficult to describe but you knew them when you saw them. And I think the same is true of sick parrots. (*Laughter*)

PRESIDENT: Mr Martin LEE.

MR MARTIN LEE: *Mr Governor, are you aware that in early 1988, the then Chairman of the Bar had a meeting with the then Attorney General, Mr Michael THOMAS, followed by subsequent correspondence, in which the then Attorney General confirmed that the Government's understanding of the Basic Law and the Joint Declaration provision as to the Court of Final Appeal in fact accords that with the Bar, namely, that the Court of Final Appeal shall have complete and unfettered discretion in deciding on how many judges they should invite to sit in a particular case, not just one, but two or more as required? And when I put this at a recent Bar seminar, the former Attorney General, Mr Michael THOMAS, confirmed at the seminar that that was the Government's view and that he also confirmed that in his view that the present Bill which is based on the 1991 secret deal, does not accord with the Joint Declaration and the Basic Law. Would you please care to explain?*

GOVERNOR: Well, I must allow the distinguished fellow silk to whom the Honourable Member refers to reply for himself. But I am not sure that the former Attorney General would entirely share the Honourable Member's description of that correspondence or of that recent exchange. I think, if I may say so, that there is the world of difference and I do not accept the Honourable



Member's description of the position. But there is the world of difference between the objectives that you set yourself when you go in for a negotiation and what you conclude at the end of the negotiation is an acceptable deal, albeit conceivably not as splendid a deal as you would have liked at the outset. Conceivably it is the case, for example, that Chinese officials going into those negotiations would have liked a Court of Final Appeal sitting as the Judicial Committee of the Privy Council does in the capital of the sovereign. That is doubtless the sort of issue which they argued about or may have argued about during those discussions, during those negotiations. I do not know. What I do know is that the negotiations concluded with an agreement which in my judgement, in the judgement of the Hong Kong Government, in the judgement of the British Government, is wholly in line with the Joint Declaration and the Basic Law. What is more, it is an agreement which provides in our view the only basis for the establishment of a Court of Final Appeal before 30 June 1997.

I repeat what I said earlier, I think the alternative is that we either have such a Court before 1997 or we do not have such a Court with all the implications. I do not think the Honourable Member is going to get a Court in which he has greater confidence if it is not set up until after 30 June 1997.

MR MARTIN LEE: *Mr Governor, are you prepared to have a debate with me on this issue at a date and at a time and in a place and in a forum of your choice?*

GOVERNOR: I have been happy to debate with many Members of this Council, though not in a head to head way. But as the legislation goes through, I would be perfectly happy to argue my case and the Administration's case, in public, with the Honourable Member or other Honourable Members, anywhere. I feel very strongly about this though I had no direct part in negotiating the agreement. I think that it is incumbent upon me to do everything I possibly can to ensure that the rule of law and the institutions of the rule of law survive and prosper beyond 1997. I think the argument about the Court of Final Appeal is highly germane to this. I find it difficult to understand why some lawyers, having taken the position they did in 1991, have so much difficulty in looking again at the arguments and the facts and coming to a different set of conclusions in the interests of Hong Kong. I think that some of the arguments that are put forward against going ahead with the Court of Final Appeal are very bad arguments indeed, and having said that, in due course, I will be happy to debate with the Honourable Member. I would be happy to debate with the head of his professional body or with any other lawyers or non-lawyers in Hong Kong. I happen to take the view that the law is so important that sometimes non-lawyers like me should be able to have a word about it.

PRESIDENT: Mr Albert CHAN.

MR ALBERT CHAN (in Cantonese): *Mr Governor, you have drawn up a list with a total of 10 items for today's discussion, amongst them include dangerous slopes, the airport, sewage disposal and the Court of Final Appeal. I hope that the questions of sewage disposal and the Court of Final Appeal will be dealt with separately. Many of the other problems remain to be solved. Mr Governor, since your arrival in Hong Kong, you have returned to Britain many times for consultations and also gone on many business trips to countries like the United Kingdom, the United States and Australia, so much so that these trips have earned you the name of an "offshore Governor". In view of the great number of problem to be dealt with, will you reduce the time that you stay abroad and spend more time, in with Hong Kong to take care of our 10 domestic problems, such as the major items on today's discussion list? For example, in relation to dangerous slopes, what measures, if any, will be taken by the Government to prevent any landslides so that the lives and properties of the people of Hong Kong can be better safeguarded, particularly at a time when we are already in the rainy reason?*

GOVERNOR: The answer to the first question is a resounding no. I think it is an absolutely ridiculous question. I have actually travelled in two and a half years slightly less than my distinguished predecessor. Like my distinguished predecessor, the trips that I have made have been in the interests of Hong Kong. If when last year the Cabinet was discussing the negotiations with China about, for example, our electoral proposals, I had not gone back to join those Cabinet Committee meetings, the Honourable Member and others would have been vociferous in their criticism of the fact. So I and the Chief Secretary and the Financial Secretary and other Hong Kong Government officials will continue to travel abroad when necessary. This is an international community, and not to put the case about Hong Kong's future internationally would be a dereliction of duty and that is not something that I intend to be guilty of.

Secondly, and I recognize that there are a number of problems in Hong Kong, happily not as many as there would be had we not run the economy in Hong Kong conspicuously successfully and had we not been able to use some of the proceeds of that economic growth for developing our educational, health and social problems as well as we have.

On the specific issue which the Honourable Member raised, we are at present considering the outstandingly good MORGENSTERN Report. We were also considering the Coroner's jury recommendations yesterday. We have in addition a report which is being prepared by the Secretary for Works which is going to be considered by the Executive Council early in the New Year. It must be our priority to do everything we can to stop further tragedies like the one to which the Honourable Member quite properly drew attention and we will be looking at engineering issues, we will be looking at questions of resource allocation and in due course we will have to look at questions of liability and responsibility as well.

MR ALBERT CHAN asked (in Cantonese): *Mr Governor has said that my first question is ridiculous. But do you think that your past performance might give people an impression that your focus has not been on local issues? Will you pay more attention in dealing with local matters in the future so that you will not be called an "offshore Governor"?*

GOVERNOR: I think the Honourable Member should learn the difference between being rhetorical and being offensive.

PRESIDENT: Mr WONG Wai-yin.

MR WONG WAI-YIN (in Cantonese): *I intended to raise a question also concerning public health. Regarding the "sick parrots" as mentioned by Mr SZETO Wah, what problems will the germs carried by the "sick parrots" or "the sick parrots" themselves bring to Hong Kong? And how would the germs spread? In the event of a spread of the germs, what preventive measures will be taken on the part of the Government? Or by what means will members of the public be able to acquire immunity?*

GOVERNOR: Any germs that are the result of pollution in Hong Kong's waters, I hope, will be eliminated when we remove 70% of the pollution from Hong Kong's waters with the Stage I of our Sewage Strategy. Political germs are not, I think, for me.

MR WONG WAI-YIN (in Cantonese): *Were you, Mr Governor, suggesting just now in your reply that these "sick parrot" germs were carried by water?*

GOVERNOR: I think that all of us at this point in the saga of "sick parrots" should remember the advice of Lord PALMERSTON: never to abuse metaphors.

PRESIDENT: Mr Jimmy McGREGOR.

MR JIMMY McGREGOR: *Mr Governor, I would like to ask you, if I may, about the present situation of Container Terminal No. 9 (CT9). I think it fits in one or two of these headings, (laughter) I did not mean, Mr Governor, as a sick parrot.*

GOVERNOR: I do not have anything to add to what I have said in this Council and outside before. We put forward proposals for constructing and running CT9 which in our view, and I think when we put them forward in the view of many Members of this Council and many members of the community outside, represented the best balance available between on the one hand increasing competition in the port, while on the other hand being able to move ahead with the development as rapidly as possible. We handled that issue as we have handled other infrastructural developments — it was handled exactly the same way as several other container terminals had been handled — and we do not intend to politicize the handling of these matters in Hong Kong which would, we think, have appalling implications for investors' confidence and for our future prosperity. So we have nothing to add at present to what I have set out as our position in the past.

But obviously we keep a concerned eye on growing congestion in the port. We recognize that we not only have to get on with CT9 but also with CT10 and CT11, and we will do everything we can in the interests of the long-term prosperity and stability of Hong Kong to continue to develop our port on which so many jobs as well as so much of our prosperity depend.

PRESIDENT: Mrs Elsie TU.

MRS ELSIE TU: *Thank you, Mr President. My question is actually a follow-up and it is so simple that it will not take more than a one-word answer. Would the Governor be surprised if I told him that for once I totally agree with his interpretation of the CFA in the Basic Law and that I have not changed my stance since 1991?*

GOVERNOR: I am delighted to find myself in complete agreement with the honourable lady. I hope this will be a harbinger of better and happier times. I shall certainly keep my fingers crossed that that is the position.

#### **ADJOURNMENT AND NEXT SITTING**

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 14 December 1994.

*Adjourned accordingly at twenty-seven minutes to Four o'clock.*