

# OFFICIAL RECORD OF PROCEEDINGS

**Thursday, 21 December 2000**

**The Council met at Nine o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE SZETO WAH

THE HONOURABLE TIMOTHY FOK TSUN-TING, S.B.S., J.P.

THE HONOURABLE LAW CHI-KWONG, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

**MEMBERS ABSENT:**

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.

THE SECRETARY FOR JUSTICE

MRS REGINA IP LAU SUK-YEE, J.P.

SECRETARY FOR SECURITY

**CLERKS IN ATTENDANCE:**

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**MOTION****GOVERNMENT MOTION**

**PRESIDENT** (in Cantonese): This Council shall now continue with the government motion.

**MS AUDREY EU** (in Cantonese): Madam President, with regard to balancing an individual's freedom of expression and public interest, the focus of the original motion of the Secretary for Security has missed two important issues.

First, it is about the essence of freedom of expression. The essence of freedom of expression is not about saying something that most people would like to hear; rather it is about tolerating some dissenting voices or even noises in a democratic, open and pluralistic society. So, if the focus is on balancing the interests of the individual and the public or other people, it would easily give rise to the misunderstanding that the minority having to be subordinate to the majority, especially the silent majority, can be the justification for suppressing or restricting the voice made during, or the temporary inconvenience caused to the traffic as a result of peaceful assemblies or processions.

Second, another issue that is easily overlooked is how Hong Kong should balance such rights as freedom of expression and peaceful assemblies against public interests. The answer actually is already given in the Basic Law. The focus therefore is not on how we should balance the rights and interests of the two; rather it is about if the Public Order Ordinance (POO) is up to the standard as set down in the Basic Law for balancing the two.

Before discussing the core issue of whether the POO is in compliance with the Basic Law, I would first of all like to respond to some of the arguments that are usually put forth in support of the existing POO.

First, some people think that amending the POO would spark off violent behaviour. In fact, the topic under discussion is about peaceful processions and assemblies. Should there be any violent or other criminal acts, Hong Kong has adequate laws to deal with them, and the police also have sufficient power to deal with them. Any offender would not notify the police in advance, so there is no direct relationship between prior notice of peaceful processions and assemblies and the occurrence of violence or other criminal acts.

Second, some people think that there is no need to review the existing POO as the freedom of expression is not absolute. In fact, no one has ever said that freedom of expression is absolute. The question remains: Is the restriction as provided in the existing POO too harsh? Is it in compliance with the standard laid down in the Basic Law?

Third, some people think that the existing POO is already more lenient than that of many other territories, so there is no need for any amendment. Those supporting amending the POO have listed those countries that show greater leniency than Hong Kong, and those supporting maintaining the *status quo* listed countries that are being harsher than Hong Kong. Such practices can only be used as reference. We should look at the laws and actual situation of Hong Kong.

Fourth, some people think that the dissenting voice is coming from a small group of troublemakers who are plotting some political conspiracies and causing disruption. However, within the three years since Hong Kong's return to China, there have been over 6 000 processions and assemblies large and small, of which more than 400 were held without giving any advance notice. These assemblies and processions were held for all sorts of reasons, like against price increase, anti-discrimination, labour protection and welfare for the elderly. People holding such processions and assemblies include civil servants, teachers, doctors, and those with negative assets. It was only because of the recent "April 20" and "June 26" incidents that debates on the POO have become heated. In fact, those 400 or so unnotified processions and assemblies clearly expose the problem with our existing legislation. If the Government was to insist on maintaining the existing legislation, it would only make the situation worse. Suppressing any dissenting voice cannot make a society stable, on the contrary, it would only make such dissent boil fiercer. Freedom of expression not only is a "safety valve" to enable the citizen to give vent to their dissatisfaction; it also enables the Government to take early notice of where the problem is and think of ways to deal with it. Freedom of expression is therefore an important factor for maintaining social stability.

Next, I would like to talk about the core issue: Is the POO in compliance with the Basic Law?

The Basic Law has provided for all sorts of basic rights, and Article 39 even expressly states that the International Covenant on Civil and Political Rights

(ICCPR) is applicable in Hong Kong. There has already been consensus among the international community as to the scope of ICCPR, and the Courts in Hong Kong, for example in the case of *SAR v Ming Pao* — the Privy Council case which has been cited in Hong Kong a number of times, and in the recent case of *SAR v WU Gong-zhao*, have applied and accepted these internationally recognized principles, which include:

- (1) All basic rights must be given broad interpretation;
- (2) On the contrary, all provisions restricting basic rights must be given the narrowest possible interpretation;
- (3) The scope and measure of any restriction must be such that it is necessary and clear for a democratic, pluralistic society and is proportional to the intended purpose; and
- (4) The Government has the onus to provide sufficient arguments to support the scope and measure set down.

I therefore cannot agree to the criteria given by the Secretary for Justice in the tenth paragraph of her speech. I do not know on which book or case she bases those criteria. The above principles are the standard for balancing the rights of individuals and the interests of society. The following problems will come to light if the POO is viewed against the above standard.

First, I accept that the police must be notified of any peaceful assembly. According to the existing law, the police must be given seven days' advance notice of any procession having more than 30 participants. What is at issue is not that if it should be left to the citizens to explain if they can give the seven-day notice, or if it is, as the Secretary for Justice said, "a heavy burden", or if it is, as the Secretary for Security said, "based on one's habit or preference"; rather it is for the Government to explain why a procession with 31 participants must give the seven-day notice. The Secretary for Security, in mentioning that the police have been very lenient when enforcing this legislation, pointed out that over 1 000 processions had given less than seven days' notice and on many occasions, no notice had been given. These figures clearly show that the seven-day notice is not necessary. The Secretary for Security also said that the legislation itself also provides that the Commissioner of Police must accept a notification of less than seven days under reasonable circumstances. She therefore does not see

that there is the necessity for any amendment. However, what are "reasonable circumstances"? This can cause some arguments. In her conclusion, the Secretary for Security said that the purpose is to use the most basic and the least possible measures. If implementing these measures can shorten the notice to such length that is absolutely necessary, I believe it would be welcome by all.

Second, if no advance notice was given for a procession and meeting, the peaceful procession and assembly would become an "unauthorized assembly", and all the peaceful participants would become criminally liable under the legislation, with the maximum sentence being five-year imprisonment. Being so, how can the Government say that the punishment is proportional? In explaining the reason for the five-year imprisonment, the Secretary for Security compared processions and meetings to the Lan Kwai Fong tragedy. That incident in fact was purely an accident, which can hardly be related to any peaceful procession. I do not know if it is the thinking of the Secretary for Security that if any accident happened to a peaceful assembly that was held without notice, all participants would be liable to five-year imprisonment. The Secretary for Justice said that the reason for such a heavy punishment and for arresting all the participants was that there was no way to know who the organizer was. I consider this reason totally unacceptable. We cannot say that because the police do not know which person to arrest so the police will arrest everyone. This is not a good reason to explain why all participants have to be given such a heavy sentence.

Third, another major problem of the POO is that the police can use very broad reasons to impose any restriction. Though terms from the ICCPR are used in the legislation, those wide terms are used so that the ICCPR can be applicable in different signatories. If those terms are used in the local legislation of Hong Kong, they must be stated clearly so that the citizens and the police know what the law is, otherwise too much power would be given to the police. For example, the police can object to a procession or assembly on the ground of "national security", but how could there be any "national security" problem in a peaceful assembly? As to the French term "*ordre public*", which is another term used in the Hong Kong legislation, its meaning is even wider than public order, but what exactly it means has never been made clear. Legislating is a serious matter. If the Government cannot explain why these terms are necessary, they should be deleted from the legislation.

Fourth, there are many unreasonable requirements in the operation of the POO, for example, making any announcement about a procession that has not been notified is also a criminal offence. It is not about if it is hard to do, the question is: Why is this restriction necessary in a democratic society? Another example is the police routinely requiring the organizers of processions to guarantee that the number participants would not exceed the notified number. In fact, it is difficult to predict seven days ahead how many people will take part; it is also quite impossible to guarantee that at the time of the processions the number will not exceed the estimated number. However, if there is no reasonable explanation, this will also be a criminal offence under the existing legislation and causes unnecessary psychological burden to the organizers.

Fifth, another problem with the POO is that the police, as the law enforcer, should have the onus of proof to explain why a procession or meeting is to be prohibited. After the organizers have notified the police, and if the police consider that there may be problems, they should apply for injunction from an independent third party, like a duty Judge, to prohibit the holding of the procession or meeting. I do not see why so doing would politicize the work of Judges. I feel that the more politically sensitive a matter is, the more appropriate it is for the matter to be left to the determination of an impartial Judge. As since Hong Kong's reunification with China, only two or three of the more than 6 000 processions were prohibited, making an application to the Court should not create too great an inconvenience.

To sum up, I think it is necessary to review the existing POO. I was glad to hear yesterday that some independent Members, especially those from the professional constituencies, had conducted many surveys. From the results of those surveys, I find that most people agree that the POO should be reviewed. I appeal to these Members to oppose the original motion so that the Government can be made to review and amend as soon as possible the problem areas in the existing POO. In her speech yesterday, the Secretary for Security apparently hinted that there is room for a review, but said that any amendment in the future would be made in accordance with the development of society. Many Honourable colleagues have also mentioned that they often have the assistance of the police, but that does not mean that there is nothing wrong with the legislation itself and there is hence no need for any amendment.

Finally, I sincerely hope that members of the community can remain calm while discussing this issue, and the Government also has to have an accommodating and open attitude. What I mean by accommodating is not to have strict laws and lenient enforcement and to use severe punishment to

intimidate the citizens, then let the Government or the police to decide, under very broad terms, when to prosecute whom. Such an attitude is undesirable, and will be seen as selective enforcement. That is the rule of man, not the rule of law. Moreover, I do not agree with some colleagues who said that the legislation was there just in case, and not for use. If there is the legislation and the citizens are not abiding by it, the rule of law will be subject to very great impact. I therefore hope that the Government would listen to the opposing voice and accept our good advice, and take the lead to remove the hostility and build a harmonious society.

With these remarks, Madam President, I oppose the original motion.

**MRS SELINA CHOW** (in Cantonese): Madam President, the Liberal Party considers the POO necessary, but certainly, we also agree that the POO must clearly balance the rights against the demands of society and the Government made of this legislation. We therefore do not agree that the POO is a draconian law because we in principle think that great dissatisfaction or confusion would result if there were no legislation to clearly define how different rights are protected.

How should the rights be balanced? From 1995, 1997 to now, the position of the Liberal Party has been very consistent. Our involvement in the examination of this legislation began before the reunification. In the course, we sufficiently presented our views, and our work continued during the term of the Provisional Legislative Council, at which we listened to views from all sectors of society and considered the balance reasonable and practicable. Of course, in finding that balance, different people might have different views and it was not an easy task to find the appropriate balance. If I remember it correctly, the Honourable James TIEN and I had expressed our views on this. I remember that the issue that attracted most of our concern was the concept of national security. In our speeches, we also asked the Government to take into account the worries of society with this newly introduced concept.

We do not agree with the Honourable Audrey EU when she said that if it was a peaceful meeting, it could be held anytime. At that time, we looked into every aspect in great depth. I remember that the focus at that time was not on the severity of the five-year sentence, rather it was on public order. So if Miss Audrey EU said that "ordre public" could be deleted from the local legislation, I

believe that there would be views held to the contrary. Not only is it stated in the ICCPR, society in general also considers that public order is an important consideration. Should it be deleted, I believe many people would not agree. After three years, the fact has shown that while enforcing the legislation, the Government has not abused it by blocking any peaceful activities. Moreover no prosecution has been instituted unreasonably. The legislation, as inferred from this, can still be seen to be reasonable in its application.

With respect to the motion proposed by the Government, we basically think that there is no cause for criticism. As to our views on the motion, we shall discuss further in relation to the original motion and the two amendments. However, from the point of view of the Government, the purpose of proposing the motion is to enable the public and the Legislative Council to have discussions on the legislation so that it can understand what the general view of society is and take follow-up work. Mr James TIEN of the Liberal Party, I believe Members will all still remember, pointed out that the debate schedule first set down for the motion by the Government was too tight and hoped that the debate could be postponed to allow more time for society to voice their views on it. His suggestion was supported by this Council and the debate was postponed, enabling us to learn of the views of different sectors of society. This is in line with the intent of the Liberal Party in making the suggestion. Though we found that the schedule originally arranged was too tight, but we did not think that the Government was unreasonable when it proposed that the motion be debated.

Now, let us look at what, up to this moment, the so-called social consensus is. The initial views might hold that the POO was an undesirable draconian law, but now the consensus seems to be that there is a necessity for the POO, only that we may have to look into the appropriateness of the balance struck with respect to some specific provisions. As far as I can see, there are three issues that seem to attract greater controversy, the first one being the reasonableness of the seven-day notice. The Liberal Party thinks that there may be a necessity for the police to require a seven-day notice, as they need to co-ordinate the work of various departments. Of course, the length of the notice can be dependent on the size of a meeting or procession. For example, for those processions that barely pass the threshold, there is no need for a full seven-day notice, as long as the police can make the arrangements as soon as possible. However, for those truly large-scale processions, the police may need more time for making the arrangements. So, on whether the seven-day notice is reasonable or not, and taking the middle-of-the-road line, we think that it is still an acceptable length of notice.

The second issue is the exemption in relation to the number of participants. With respect to this, we can also see that there are very different views. Should the threshold be 30, 60 or 100 or 200? If the threshold is set at 100, some people may find that it is not sufficient. To enforce the law, it is not unreasonable for the police to restrict the number of participants, and they have not abused their power when enforcing the legislation. We therefore think that the restriction set down by the existing legislation on the number of participants is also acceptable. After all, the number to be exempted was decided after our consulting and discussing with the public.

The third issue is the severity of the penalty. On this, both the Bar Association and the Law Society have expressed some views, which Ms Audrey EU has also mentioned. With respect to the five-year imprisonment, the legislation actually has set down two tiers. While an offender on conviction on indictment shall be liable to imprisonment for five years, those on summary conviction shall only be liable to a fine of \$5,000 and imprisonment for three years. In other words, the legislation has made a two-tier distinction. I am not a lawyer, but from what I have learned, instead of meting out the same five-year sentence to all without regard to the process of an offence, an offence must be a very serious one for it to be convicted on indictment. Since society has strong views on this, though it has not been raised previously, this cannot be a reason for us not to study it. I believe the Government should study it, and when it carried out any study in the past, very often it would comment on the severity of the penalty. With the issue that we have now, I think we cannot just isolate it and say that, instead of the five-year sentence, we want to change it to one year or two years. So doing is too arbitrary and is undesirable. As far as I understand, in conducting the study, we must consider the relative comparison. Given that no two pieces legislation are exactly the same, so in addition to considering relative comparison, we must also consider if the relevant legislation is necessary. We have also conducted our study of legislation that the public thinks the element of criminality is not that important, but under which an offender may be punished with imprisonment. The Estate Agents Ordinance is one such example. Under that Ordinance, anyone found operating without a licence shall be liable, on conviction on indictment, to a fine of \$500,000 and imprisonment for two years, or, on summary conviction, to a fine of \$100,000 and imprisonment for six months. Moreover, hawkers without a licence may also be sentenced to imprisonment. This is determined by the Court. However, the severity of sentence also depends on whether the offender is a first-timer. If he is, the prison sentence may be three months and six months

for a repeat offender. All these, I believe, will require a longer period of time for in-depth consideration.

Now, I would like to talk about the views of the Liberal Party on the original motion and the amendments. We support the original motion because we think that there is a necessity for preserving them. However, as I said just now, given that there are such voices in society, the Government cannot say that it would not study the issue, as this is not the proper attitude. I feel that the Government should objectively and calmly consider the issues. As to Mr James TO's amendment, we do not agree to its details. I have stated our position on those controversial provisions and explained that in principle we think there is a necessity to preserve them. Moreover, we do not think that this issue should be referred to the Law Reform Commission, and therefore we do not support the Honourable Emily LAU's amendment.

Madam President, we hope that after this debate, society and the Government can calm down and rationally review this legislation in stages, instead of bickering emotionally over an issue that badly needs our cool consideration. Thank you, Madam President.

**DR LUI MING-WAH** (in Cantonese): Madam President, a new wave of heated debate over the POO is raging like wild fire in society, the situation even sees some people hurling abuses and making personal attacks on the officials. It is regrettable that such irrational behaviour could happen in the civilized Hong Kong.

By moving the debate on the POO in the Legislative Council, the Government is trying to gain the affirmation of the Legislative Council on the existing POO. This is a right of the Government, and there should be no cause for criticism. If, after extensive and in-depth debate, the Legislative Council can pass the government motion, not only can so doing help promote better understanding of the POO among the citizens and remove any doubt and misunderstanding, but also, it is hoped, settle any argument and dissatisfaction, thus making Hong Kong more peaceful and stable.

Here, I would not like to discuss the legitimacy and value of the POO, as many colleagues have already talked a lot on this. I just want to specifically discuss the amendment of Mr James TO.

In his amendment, Mr James TO first of all cleverly recognizes that the police must be notified before any assembly or procession is held. However, he thinks that some specific requirements and the penalty provisions warrant amendment. He also thinks that the penalty for not giving notice should be reduced.

Madam President, the specific contents of the notification system, such as the threshold of the number of participants qualifying exemption of notification and the length of notice, are all actual operational matters and should be determined with reference to the actual environment in Hong Kong and the particular situation of an assembly or a procession. There should only be two purposes for all this: one, safeguarding the legitimate rights of Hong Kong citizens so that when there is the need they can express their views through participating in assemblies and processions; and two, protecting the interests of the general public so that they would not be affected by assemblies or processions. In the process, the police have the responsibility to maintain the order and to ensure the safety of the participants of processions and the public.

Madam President, I cannot say what should be the threshold for notification to be exempted, as this is determined by the actual situation. I also cannot say how many days' notice should be given, as this is determined by the number of participants and the deployment of police manpower by the Government. However, we should trust the experience and decision of the Government on this. On the other hand, those advocating amending the POO cannot produce the arguments and substantiate the urgency that the POO must be amended. On the contrary, the existing POO, in its actual operation, has never caused any hindrance or irreparable damage to the rights of the organizers and participants of any procession and assembly. I therefore do not see the urgency and reason for amending the POO.

Mr James TO considers that the penalty under the existing POO for non-compliance with the notification requirement is too harsh. At first, I agreed to his views, but on further consideration, if, because of any non-compliance of the notification requirement by participants of processions, the police cannot have the necessary arrangement in time for maintaining order, thus resulting in confusion and casualty, who should be liable? Of course, the liability should lie with the organizers and participants of the processions. In fact, the penalty

provisions in the legislation are meant to serve as deterrent. After all, the actual sentence is dependent on the severity of the offence. For the law-abiding citizens, they have nothing to fear.

Madam President, given that the existing POO is in compliance with the Basic Law of the Hong Kong Special Administrative Region and the international law, that it can achieve an acceptable balance in safeguarding the freedom of expression and the rights of peaceful assemblies and protecting the interests of the public, and that it also commands the acceptance and support of most of the citizens, I think that the POO should be preserved with due respect and compliance. Hong Kong will then be able to maintain its stability and the trade and businesses here will prosper and the citizens can work and live peacefully. With these remarks, Madam President, I oppose amending the POO.

**MR HUI CHEUNG-CHING** (in Cantonese): Madam President, since the middle of the year, much argument has been going on in society over the spirit and enforcement of the POO in relation to public assemblies and processions. I think that the provisions of the POO not only are fair and reasonable and proven in enforcement, but are also in compliance with the Basic Law and the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong. It is therefore not necessary to amend the POO.

The major reason for amending the POO when the Government of the Hong Kong Special Administrative Region (SAR) was formed was that the previous British Hong Kong Government had made substantial amendment to the POO in 1995 which was not in compliance with the Basic Law, making it impossible to become part of the laws of the SAR. The amendment made by the British Hong Kong Government restricted the power of the police in maintaining public order, making it a potential factor for social instability. Before the Hong Kong SAR passed the legislation, the SAR Government had issued the consultation paper "Civil Liberty and Social Order", in which were suggestions for amending the POO, and carried out a three-week consultation exercise, in which 78% of those interviewed thought that notification must be given to the police before any procession was held in public places. This at least showed that the public did not oppose a notification system, which is not that objectionable after all.

In fact, to maintain public order, each country has a set of rules to regulate processions and assemblies so that other people will not be affected as a result. Hong Kong is a place with little land but a lot of people. Many processions and assemblies have to be held in busy and congested places. It is therefore necessary for the Government to require the organizers of processions and assemblies to give advance notice to the police so that corresponding arrangements can be made, for example, in crowd control and traffic management. This also has the consensus of most of the citizens. After all, the requirement under the existing POO that organizers of processions and assemblies have to lodge prior application with the police is not meant to restrict such activities, rather it is to facilitate the maintenance of public order by the police. This ensures that the public will not be affected by any protest and procession and that those taking part in any procession or assembly can enjoy their right peacefully.

More importantly, in the past three years or so, more than 6 500 assemblies and processions, large and small, had been held in Hong Kong, of which only five were objected by the police, and after revising the route, place and number of participants, three of them were not objected by the police. This shows that the police have not abused their power, and have not conducted any political censorship on people taking part in processions or assemblies. In enforcing this legislation, the police have minimized as far as possible the restriction that may be imposed and adopted a more flexible attitude in handling each individual case. I think that the restrictions that Hong Kong has in relation to processions and assemblies are more lenient than those of European and American countries.

Madam President, Hong Kong is pluralistic society where the citizens have the liberty to take part, as well as not to take part, in any procession and assembly. I think that the POO has safeguarded the rights of participants of processions and assemblies and also those of non-participants. The citizens should therefore accept the regulation of the existing POO.

With these remarks, Madam President, I support the original motion.

**MR KENNETH TING** (in Cantonese): Madam President, I would like to say a few words on the POO from the angle of a representative of the business sector.

I believe most Hong Kong people would agree that the rule of law, stability and prosperity have long been the cornerstone of Hong Kong's success. Regrettably, because of the recent arguments over the POO, both local and overseas investors are concerned about the stability of Hong Kong and doubt if this would make Hong Kong suffer as a result of worsening public order.

As an industrial organization, the Federation of Hong Kong Industries considers that our greatest concern is on how to increase Hong Kong's competitiveness. In particular, when Hong Kong is slowly recovering from the financial crisis, should Hong Kong people not devote more resources and effort to reviving our economic advantage than arguing over whether proper regulation must be imposed on such activities as processions and demonstrations. Hong Kong is an international metropolis and a major financial centre in the region. If the citizens can use "civil disobedience" as an excuse for not obeying the law, it would give overseas investors a wrong impression that Hong Kong is a place where the law is not obeyed and strictly enforced.

Madam President, because of the economic doldrums in Hong Kong in recent years, it is normal and understandable that the citizens would express their dissatisfaction and aspirations. However, we think that social stability and economic development should be our prime concern. For example, I think Members will still remember that not long ago estate coaches that serve some of the housing estates staged a going-slow in Central at a time when everyone was going home after work, causing serious traffic congestion. In another case, residents on Lantau Island picked one Sunday to start a going-slow at Tung Chung, causing enormous inconvenience to other residents on the island and citizens and tourists who made a special trip there. These two incidents are examples of acts about which the police were not given any advance notice, and such acts attracted much public criticism.

Hong Kong is a place with little land but a lot of people (and the population is growing). Traffic is very busy. Many industrial and commercial organizations have set up their offices here, some of which are regional headquarters of multinational companies. One can almost be certain that any procession or meeting with participants exceeding a certain number will lead to traffic problems, causing inconvenience to the daily life of the citizens and the operation of businesses here.

Given the congested environment in Hong Kong, there is really a need to set up a system of regulation and notification to govern public assemblies and processions. The existing system of notification enables the police to make the necessary arrangements, which, on the one hand, ensure that processions and assemblies can be conducted in an orderly manner, and on the other, minimize any unnecessary disruption to the operations of businesses and the daily lives of the citizens. Given these considerations, we should set a limit on the number of participants, and the time for staging such procession/meeting must be properly arranged. Within the three years since the reunification, we all feel that the POO has been operating perfectly well. We think that it should not be amended. We support the original motion and oppose the amendment. Thank you, Madam President.

**MISS LI FUNG-YING** (in Cantonese): Madam President, there have been heated discussions on the POO and various organizations and political parties have expressed their views on the legislation. In our discussion over the POO, I think, it should be premised on that a balance be struck between "freedom and the rule of law", which will ensure the stability, prosperity and development of Hong Kong.

Article 27 of the Basic Law provides that Hong Kong people have the right of assembly and procession. Honourable colleagues, whether they support or oppose amending the POO, have cited a lot of figures to show that within the three years or so after the reunification thousands of processions and assemblies have been held in Hong Kong. On average there is almost one procession every day. This clearly shows that the citizens still can enjoy the right of assembly and procession and demonstration, without any additional restriction. On the other hand, continual assemblies and processions naturally gain for Hong Kong the name "capital of demonstrations" or "city of anger", which inevitably will cast a negative shadow on Hong Kong.

I think that every citizen has the right of assembly and procession, but such rights are not absolute. The International Covenant on Civil and Political Rights states, "The civil and political rights possessed by any citizen carries with it special duties and responsibilities, including the protection of national security or of public order (*ordre public*), or of public health or morals and respect of the

rights of others." The freedom of a small group therefore should not be so over-emphasized that their freedom can override the public interests or even affect public order. I would like to cite an example. On a certain day last May, over a hundred estate coaches staged a drive-slow demonstration from Wan Chai to Central. Members must all have seen that the traffic was thrown into chaos, which lasted for a few hours and caused much inconvenience to the citizens. We could see that the exercise of such freedom had affected public order and also the freedom and interests of those not taking part. The incident shows that a civilized society has to have comprehensive legislation to safeguard public order and safety and the rights and freedoms of others. Having engaged in union work for a long time, I understand very well that some organizations, in order to strive for their interests, would easily take to the streets and stage demonstrations when their negotiation effort breaks down or when they feel that they are helpless and their interests have not been adequately protected or respected. Their so doing is to attract the attention of the employers or the government authorities. Such situations often arise suddenly, within a very short time. Under such circumstances, only ad hoc notification can be given to the police. From these examples, we can see that no matter how we amended the legislation — changing the notice to a certain number of days or certain number of hours, there would still be borderline cases or grey areas. The understanding and co-ordination of all parties is therefore required. The police should exercise discretion with respect to such ad hoc incidents. Hong Kong is a society ruled by law and everyone must abide by the law, and the Government should also effect enforcement in accordance with the law. It is only through our concerted effort that can we have an orderly, peaceful and stable society.

Many colleagues have mentioned that Hong Kong is a place with little land but a lot of people, and the traffic is very congested. It is a world famous international metropolis. If, before any procession or assembly, advance notice can be given to the police, it can in fact facilitate the deployment of police manpower and the co-ordination of other departments for the maintenance of order and easing of traffic and prevention of accidents. While ensuring the smooth conduct of processions and assemblies and providing a kind of protection for the participants and those exercising their rights, the notice will also ensure the safety of those not participating and minimize the effects they may be subject to, thus protecting their rights and freedoms.

Madam President, having been buffeted by the financial crisis and with three years' effort, Hong Kong economy is showing signs of recovery. Our imminent task now is to revive the economy and improve the livelihood of the citizens. Most citizens want to have a stable and peaceful social environment so that we can all work together to create a better future. This should also be the objective of any discussion on the POO.

I so submit. Thank you, Madam President.

**MR DAVID CHU** (in Cantonese): Madam President, the purpose of the POO is to maintain and balance two contradictory rights: on the one hand it is Hong Kong people's right of freedom of expression, on the other it is Hong Kong people's right of being free from disturbance. Any debate over where that point of balance should be is a never-ending exercise. If the length of notice is 10 days, does it mean more human rights or less? If the penalty is seven years' imprisonment, does it mean reduced freedom? Or if the penalty is three years, does it mean that we have more freedom? This debate can go on and on. I feel that the most important thing is to see if the POO has successfully safeguarded the two contradictory rights. First of all, in safeguarding Hong Kong people from being disturbed, has the POO achieved its purpose? Within the past five years since the POO was amended in 1995, there were on average about 1 000 processions held in Hong Kong each year, now the annual average is more than 2 000. With enforcement by the police, Hong Kong people have not been subjected to undue disturbance. On the whole, the POO has done a pretty good job in this regard, and has upheld Hong Kong people's right to not being disturbed.

As to Hong Kong people's freedom of expression, I feel that the POO has also done a good job. I cannot think of any Hong Kong citizen who has not been able to express his views because of the POO. Madam President, can you think of such an instance? Can any Honourable colleague think of an instance where a person is not able to express his views because of the POO? For the past five years, the POO has been successful in safeguarding our rights in these two aspects. Why do we have to amend it now? Is it just for amendment's sake?

Hong Kong people study the law and know that there is room for amendment in our laws. However, is there a need at this stage to amend a

legislation that has been effective in operation? Just now a colleague questioned that how a 31-person peaceful meeting can be a threat to the stability or peace of society. I can give an example. On the audience stand of a heated soccer match, just one person's words are enough to cause great tragedy, not to mention 31 persons.

With these remarks, Madam President, I support the original motion.

**MRS MIRIAM LAU** (in Cantonese): Madam President, thank you for giving me the permission to speak. I believe Honourable colleagues, like myself, treasure very much their freedom of expressing their views in this Chamber. However, even in this Chamber, we all know, though enjoying the freedom of expression, we are not unrestricted in our speeches. At least we have to wait for the President's call before we can speak. I am also limited in how long I can speak. If we all recognize this, I believe, it will help our discussion today.

Some groups criticize that the POO may have violated the Basic Law and the International Covenant on Civil and Political Rights (ICCPR) by restricting the citizens' right of assembly and procession. As Legislative Council Members, we have the responsibility to study the relevant provisions clearly and give our independent and impartial judgement.

I want to focus on two issues. The first issue: Is the freedom of assembly and procession as conferred on the citizens by the Basic Law and the international covenant not subject to any restriction? The second issue: Is there any unreasonable requirement in the existing POO compared to those of other countries or territories?

Members should all clearly know that the freedom of assembly as provided in the ICCPR is subject to certain restrictions. The existing POO requires that the Commissioner of Police may object to a public procession only when he reasonably considers that on the grounds of national security, public safety, public order and for protecting the rights and freedoms of others he needs to so object. Besides the ICCPR, the European Convention on Human Rights also has similar requirements. We therefore think that Hong Kong's POO is in line with the standard of international treaties in this regard.

Most people will find this point readily comprehensible. The freedoms and rights of a citizen, though should be free of any condition, are not to be free of any restriction. It could not be simpler for allowing a person unrestricted freedom is equivalent to exploiting other people's freedom. The purpose of imposing restrictions is to strike a balance between safeguarding the freedoms of individuals and protecting the interests of the public. If the freedom of assembly were abused indiscriminately, an orderly society would become a shambles, even the freedoms that the citizens have been enjoying would be gone. The relevant requirements in the POO therefore should not be seen as restricting the freedom of assembly; rather it is a means to maintain order.

As to the specific requirements of the POO, are they really, as some people say, draconian? It is a requirement of the legislation that organizers of meetings and processions must give seven days' advance notice to the police. In fact, this requirement is similar to that of many major cities overseas, while some even require longer notice and impose harsher requirements. For example, San Francisco requires an application to be made at least 60 days beforehand. Of course, the American police has the discretion to allow shorter application period, but I believe they still require an application to be made 15 days before an assembly. Los Angeles requires three weeks' notice. Chicago, like Hong Kong, requires an application to be made seven days ahead. The American police even have the absolute power to reject an application as long as the decision is not arbitrary or discriminatory. Toronto requires organizers of assemblies to make an application 21 days beforehand, and Vancouver requires at least 90 days. In comparison, is Hong Kong's requirement of seven days at all harsh? I think the answer is clear. Many people say that most of the assemblies in Hong Kong are peaceful meetings and peaceful processions, and a seven-day notice is too long. They suggest that the notice be shortened to two or three days. I would like to cite an example. When the World Trade Organization held its meetings in Seattle last November, a group of protesters demonstrated outside the venue of the meeting. I believe the assembly was originally a peaceful demonstration, with the demonstrators just wanting to express their opinions, but it turned into a riot, requiring the police to take action to calm it down. Members may not know that to stage a demonstration in Seattle, it only requires 48 hours' notice to be given to the police. That requirement is similar to those suggested by some people here. The Seattle police conducted a review in the aftermath and the report pointed out that 48 hours' notice was not enough for making appropriate arrangement and manpower deployment, thus leading to riots.

Many cities in the United States also require application be made for staging processions and there are American cases that support such decision. In *Cox v New Hampshire*, the Court unanimously ruled that the Government might impose necessary restriction to ensure effective management of public places. Though the case was decided in 1941, as far as I know, it has never been overruled. Some Americans may have different opinions about the requirement, that is, an application must be made before staging a procession, but I think they would abide by it. I would like to quote another example. Last November, New York's Klu-Klux-Klan intended to stage a procession in Manhattan, but after careful consideration, the New York Police Department rejected their application. The Klu-Klux-Klan did not go ahead with the procession because the police had not approved of their application.

I also want to point out one thing. In countries like the United States and Canada where human rights is held highly, many of their cities also implement a licence system, under which citizens must apply to the police and obtain the approval of the police before they can stage any procession or demonstration. In Hong Kong, instead of making an application, the citizens need only to notify the police. If the Commissioner of Police does not issue a "notice of objection" within a specified period of time, he is deemed to have made no objection. From this it can be seen that Hong Kong's system of "notice of no objection" is in fact even more lenient than the case in many foreign cities.

The Liberal Party therefore considers that the seven-day notice is reasonable, and the legislation also allows the police to accept shorter notice with reference to specific circumstances. There should not be too much difficulty for organizers of assemblies to comply with the seven-day notice. In fact, the police had been very flexible in the past in dealing with processions that had given less than seven days' notice. The Liberal Party hopes that in the future the police will continue with this flexibility.

Another specific requirement of the POO is about the number of participants. The legislation requires that if the number of participants of a procession and an assembly exceeds 30 and 50 respectively, the police should be notified beforehand. In South Africa, a notice is required for an assembly with more than 15 people; in Israel it is 50. In Vancouver, a procession with more than 30 people requires an application to be made to the police. Compared to the requirements of other places, the relevant provisions of Hong Kong's POO do not seem to be particularly harsh.

As to the penalty, the maximum sentence for violating the POO is five years' imprisonment, which has to be considered in the light of the special situation of Hong Kong. Hong Kong is a very congested place. If many processions or assemblies were held without prior notification, this might cause serious traffic problem or even pose a threat to public safety. A penalty for criminal offence is therefore necessary for deterrence. The penalty provision in the legislation is also meant to serve as a deterrent, or else it would be meaningless. In the past three years, though over 6 000 processions and meetings were held, only nine persons had been arrested or charged for violating the POO. Of those charged, the heaviest sentence passed was a fine of \$3,000.

In fact, the penalty provisions have been in the POO for a number of years. They have been there since 1967. Have we not over these three decades seen that they are there? We of course see that they are there. In 1995 we made substantial amendments to the POO and another amendment was made in 1997. Despite the number of amendments, no one has ever mentioned that the penalty is too heavy or outdated. In any case, Mrs Selina CHOW's speech just now has already expressed the view of the Liberal Party. If there are views that because society has changed, the penalty may be outdated, the Liberal Party will therefore not object to the Government carrying out studies and review in this regard.

In a word, the Liberal Party considers that Hong Kong's POO is already quite a mild legislation and therefore we do not see the need for any amendment at the present stage. With these remarks, Madam President, I support the original motion of the Secretary for Security and oppose the two amendments.

**MISS MARGARET NG:** Madam President, this is not a school debate. In a school debate, the government team has only one aim, that is, to win. The Government in real life must try to listen and find the best way forward.

In their speeches, the Secretary for Security and the Secretary for Justice have used double standards. For example, the law in other jurisdictions is relevant when the Government wants to argue that notification is a common requirement. When others try to show that the period of notification is shorter in other jurisdictions and the penalty much less severe, the Government says that this is not relevant.

Where overseas legislation is referred to by the Government, it is quoted out of context. The crux is balance. Yet, when the Government tells us that in England, seven days' notice is required, it omits to tell us that this is required only where "reasonably practicable", and non-compliance attracts merely a fine. Or that in New York, non-compliance incurs only civil liability. It also does not tell us that nowhere in the world does non-notification result in turning a peaceful assembly, which is a right, into a criminal offence.

The Government resorts to sophistry. A system of notification and no objection is permission by another name. The Secretary for Justice says: You do not need permission, because where the police says nothing, the law deems that non-objection is given. This does not mean that permission is not required. It only means that it can be given in two different ways, that is, by letter, or by conduct deemed by law to be the same as that letter.

Criticism is answered selectively. Those who urge for review are characterized as irrational. The Hong Kong Bar Association's (the Bar's) representation is a model of rationality. But the Bar's strong support for review is brushed aside. The Secretary says: Well, the Bar does not say outright that the Public Order Ordinance is unconstitutional. When others, like JUSTICE, do say that the Ordinance is unconstitutional, the Secretary simply says that she does not agree with that view.

Madam President, the Public Order Ordinance was enacted following the 1967 riots. Introducing the Bill in November 1967, the Attorney General said, "If the criticism is made that the Bill errs on the side of safety, this can be attributed to our experiences in the past few months ....."

From the start, this piece of legislation was focused on riot control. Every public gathering was approached as a potential riot. Every protester was treated as a potential rioter. The freedom of expression and the right to peaceful demonstration were far removed from the preoccupation of the Government at that time.

The 1967 Ordinance introduced a licensing system. You had to apply for a licence from the police before any public gathering could be held. To do so, you have to give prior notification. The licence, if granted, would come with

conditions. To hold a public gathering without a licence was itself a crime. The maximum penalty for holding or participating in the gathering was five years' imprisonment. To breach the conditions was also a crime, punishable by 12 months' imprisonment.

The 1995 amendment of the Ordinance replaced the licensing system with a notification system for public processions. You no longer need a licence from the police. But you have to give notification to the police seven days in advance.

Another important change was introduced. The power of the police to intervene was clarified and limited to where it was "necessary in the interests of public safety or public order".

These are obviously improvements. But the draconian provisions still remained: holding a public gathering or procession without prior notification is still a crime, still punishable by five years' imprisonment. Moreover, "notification" means a notification in accordance with the complicated requirements under the Ordinance.

Thus, for non-compliance with administrative requirements, you lose your right to peaceful demonstration. This is wrong in principle and contravenes the International Covenant on Civil and Political Rights (ICCPR).

The imbalance in the 1967 enactment is tempered but not removed.

Madam President, the existing provisions are the result of an amendment in 1997 which, instead of further liberalization, regressed from the 1995 amendment.

Indeed, the 1997 version may be said to have reintroduced the licensing system by another name. I have already addressed this point.

The power of the police to prohibit public gatherings remains. Further, a more seriously problematic amendment is introduced. The police is now given the power to intervene in a public gathering on the grounds of "national interest" and not only when it is necessary for public safety or order; not only when there is an "imminent threat" to public safety.

This is bad law because it is vague on a point which requires the greatest clarity, in fairness to the citizens involved and to the police. The introduction of "national interest" also takes police intervention into the sphere of political stand of the gathering.

"National interest" is defined in the Ordinance as "the safeguarding of the territorial integrity and the independence of the People's Republic of China". Mr Michael SUEN publicly confirmed that this is intended to prevent demonstrations in support of the independence of Tibet or Taiwan. This was reiterated recently by the present Secretary for Security as reported in the press.

It is an amendment directly restricting speech and political conviction. By bringing in, in this crude manner, the concept of "national security", the Government has actually ventured into Article 23 territory without drawing attention to it. Current legislation has, therefore, opened new areas of contravention with the ICCPR, now incorporated into Article 39 of the Basic Law.

Article 17 of the ICCPR says, and I quote: "..... the right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society .....".

The words "which are necessary in a democratic society" are significantly left out in the Hong Kong Ordinance.

It is well established that, in interpreting a constitutional provision conferring rights, the rights are to be interpreted generously, while restrictions are to be interpreted narrowly, so that the citizen is given "a full measure of his rights".

Madam President, Article 39 of the Basic Law imposes upon us a positive duty. The provisions of the ICCPR, including the right to peaceful assembly and freedom of expression, "shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region".

The 1967 enactment certainly did not implement those rights. As I have argued, neither did the 1995 amendment, and the 1997 amendment was even a regression. The Secretary for Security claimed that the 1997 version was more liberal than the pre-1995 version. She did not, and could not claim that it was even as liberal as the 1995 amended version. The time is overdue for us to do our duty. A review of the Public Order Ordinance is a very proper first step.

In many of the representations before the Panel on Security opposing change or review, the recurrent reason given is that relaxation would put public safety under threat. This demonstrates that these bodies and individuals still regard every demonstration as a potential riot, and every participant as a potential rioter. There is no need for such fear. A relaxation of the law of notification is a very long way from condoning disorderly behaviour, let alone violence. As already pointed out repeatedly, we have plenty of laws, statutory or otherwise, directed at controlling, prohibiting and severely punishing such conduct.

Here, we are talking of the law governing peaceful assemblies.

The Panel on Security has also heard detailed and well considered representations from the Bar, the Law Society of Hong Kong, legal academics and non governmental organizations. They strongly argue for a review of a number of provisions in the Public Order Ordinance. In my opinion, we should follow their rational advice.

Madam President, every Member of this Council understands and appreciates that the police have a difficult job. But the review may well result in making their job easier and happier. The peaceful and orderly conduct of demonstrations depends in large measures on the trust and co-operation between police and demonstrator, making it possible for each to adopt the greatest degree of flexibility. Reasonable and rights-sensitive legislation helps to build trust and co-operation and reduces tension. By contrast, a self-righteous stance of the Government would increase tension and hostility.

In the discussion up to now, the areas highlighted for scrutiny are not numerous. The complaints and the proposed solutions, though different, are not so divergent as to make a sensible choice impossible. There are few, if any, demands of an extreme nature.

The key is to achieve a better internal balance and proportionality. For example, the requirement for notification would be more acceptable if advance notice is shorter and the formalities made simpler, and if failure to notify attracts no more than a fixed penalty, instead of having the effect of turning a peaceful demonstration into an "unauthorized assembly" with a maximum of five years' jail sentence.

There may be grey areas less capable of a ready answer. But there is no need to resolve all legal or policy issues today. These can be matters of further consultation, study, and deliberations.

What is important is that we must not deny the need for review. We can do the review in this Council, through our Panel system and working in partnership with the Administration. But it is equally acceptable to me to refer the matter to the Law Reform Commission.

There is one final point that I wish to make. In one of the Panel meetings, when a member of the public raised the issue of civil disobedience, the Secretary for Security reacted to it as an attempt to threaten the Government.

I suggest that we look at civil disobedience also rationally. Civil disobedience is highly respected in civil societies, not scorned. The question is always whether it was justified, in a particular situation, to resort to civil disobedience. Further, in any alleged act of civil disobedience, whether the strict requirements of a true act of civil disobedience have been maintained, such as being always peaceful and never violent.

Civil disobedience is justified, for example, when it is the last resort to make the Government reconsider an unjust law, by arousing the sympathy of the public with the heroism of the act.

It is a matter of judgment whether the stage has been reached for civil disobedience. But one thing is clear. The more the Government insists on shutting out rational discussion by refusing to reconsider or consider reform, the further it drives its critics towards civil disobedience. By its recalcitrance, the Government was in danger of creating the very conditions which make civil disobedience inevitable and justifiable.

Whatever the outcome of this debate, discussion of the Public Order Ordinance would go on. The difference is that blind support of the motion, a

refusal to review despite a clear case having been made out, will heighten the sense of grievance and make rational debates more difficult.

Thank you, Madam President.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, since the passage of the POO in 1997 by the Provisional Legislative Council, debates over the legislation have never stopped. The legislation has been said to be a draconian law and there have been calls for its repeal. The situation became worse when a group of post-secondary school students headed a charge on the POO. Then some Members of this Council took the lead by defying the law and even made personal attacks recently.

The debates over the past three years were in fact an argument over whether we should go for social stability or against it. By draping themselves in a multi-coloured coat of human rights and civil disobedience, people going against it make those not in the know misunderstand that they have the truth in their hands and think that the POO is a piece of draconian legislation that has taken away our human rights. Over the past three years, a lot of evidence has shown that the POO has not exploited our right of demonstration and procession. Not only has our right not been exploited, it has gained for Hong Kong a first in the world — "capital of demonstrations" because of the number of protests held.

Compared to similar legislation of other democratic countries around the world, Hong Kong's POO has not tightened up our human rights. The people's eyes are clear. Wool may be pulled over their eyes for a time, but given time, they can see clearly that the POO is not at all a draconian law. Those who go against stability are changing their tone now and say that the POO is not a draconian law and that there is room for amendment. What is room for amendment? That means affirming the spirit of the legislation and making it perfect. Looking at the issue from this angle and abstractly, every law has room for amendment. How could there not be? Does it mean that if there is room for amendment, the amendment has to be made now? Of course not. As long as the legislation has been operating properly, the stability of the legislation must be maintained. Amending a piece of legislation must not be taken lightly. Let us wait till the proper moment and review the legislation again.

Hong Kong, as recognized by all, is a society where we have the rule of law. The laws of Hong Kong after 1997 all comply with the Basic Law and the ICCPR. There is no such thing as draconian law. In fact, though we do not have any draconian law, we do have some villains. They would cursorily label any law they do not like as draconian and then go against it and try to abolish it. They are intent on challenging the POO and openly defy the law and even euphemistically call their action as "civil disobedience". It is the baddies claiming to be the virtuous, and makes one fear that Hong Kong will become a "City of Villains".

Given the arguments over the POO, I think that we must strengthen legal education in Hong Kong, especially the education on the Basic Law. Within the three years since the reunification, almost all major political arguments, like those over the development of democratic government, interpretation of the Basic Law by the National People's Congress and the POO, revolve around the same argument whether the Basic Law must be upheld. Each time an argument arises, it is a lesson in popularizing the law, enabling us to have a better understanding of the Basic Law.

Madam President, the wording of Mr James TO's amendment makes one feel that the existing POO is inconsistent with the Bill of Rights. The proof is in the conclusion given by the United Nations Human Rights Committee (UNHRC). However, if read carefully, the conclusion given in the report of the UNHRC is based on an interpretation of the concept of national security, instead of the number of people, time and penalty. This is a classic example of taking a minor point to mean the whole. The SAR Government has already given a response to the UNHRC and explained the matter clearly.

In fact, Article 27 of the Basic Law clearly provides that Hong Kong people have the freedom of assembly, procession and demonstration. It is included in Chapter III of the Basic Law — Fundamental Rights and Duties of the Residents. Our freedom of assembly, procession and demonstration is therefore protected by the Basic Law. However, we must point out that fundamental rights are not equivalent to absolute rights, nor can such rights be arbitrarily extended. If certain rights violate or impinge on other people's rights, there should be appropriate restriction on the exercise of such rights. We therefore have to legislate on this, and this is the POO.

Miss Emily LAU's amendment points out that different opinions have pointed to different things and there can hardly be any conclusion. However, the fact can hardly be made clearer. Now everyone's view is that the POO is not a draconian law, it has not exploited our human rights and it should not be repealed. I therefore do not agree with Miss LAU's amendment.

Madam President, despite the peace we have, the stupid folks create trouble for themselves. There is nothing wrong with the POO, but there are some people who have the preconceived idea that only under the British rule could we have the rule of law, and when it comes to Hong Kong people ruling Hong Kong, there is no more the rule of law. We therefore often hear people say that the rule of law is dead in Hong Kong, TUNG Chee-hwa's administration is the most dictatorial of all or has no regard for human rights. What does the fact tell? Of course, just the contrary. "Hong Kong people ruling Hong Kong" and "one country, two systems" would not collapse just because some people lambast it. Over time, Hong Kong people will prove with their wisdom that Hong Kong people can rule Hong Kong and that "one country, two systems" is successful.

I think that the existing POO, first, is in compliance with the Basic Law and the ICCPR; second, is lenient enough with the notification system; and third, has restricted the citizen's right and freedom of assembly and procession, and our human rights have not shown any change compared to the situation before the reunification. Moreover, on the maintenance of public order and public safety, and the protection of the citizen's freedom of expression and assembly, an appropriate balance has struck made and the operation is good, so there is no need for any amendment.

With these remarks, I support the original motion.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak? Mr Albert HO, do you wish to speak?

**MR ALBERT HO** (in Cantonese): Madam President, at the beginning of her speech yesterday and yet touching on the core of the debate, the Secretary for Security first remarked that the furore of argument and the conflict between the Government and a section of the public were mainly caused by the irrational comments and behaviour of many people. She even said, "let us reflect on

these questions: What have we gone through before we could conduct the debate in such a rational manner today? What was the situation like at the initial stage of the controversy, particularly during the period from the end of September to early October, and even in early November before the Government proposed a motion debate in the Legislative Council?" I think we must make ourselves clear about one thing: What are the reasons and the background behind the great conflict and dispute today, or in September or October that lead to this debate in this Chamber?

I feel that I should state what I know and respond to what the Secretary has said. Madam President, I would like to declare my special status. Between August and October, I acted as the pro bono lawyer of the students. I think I should make this declaration.

We all know that the whole incident started with the demonstration that took place in the evening of 25 June and on 26 June. Something unpleasant happened that day and gave rise to the question of whether the police had used excessive force, including the excessive use of pepper spray, and even if improper force had been applied to deal with the demonstrators. We feel that these warrant investigation to find out who should be responsible. That is the crux of the matter. However, unfortunately, the arson on 2 August drew the anger of Hong Kong people. With the public sentiment running high, the police, on 10 August, suddenly required the students to submit themselves to investigation. The police officers in charge of the investigation are officers from the Organized Crime and Triad Bureau, who in June and July had been assigned by the Security Bureau to investigate if the police had used excessive force in the "26 June" incident. During the period when the students were being investigated, we considered the police had taken many improper or intimidating actions, causing much distress to the families of the students and the students themselves. Anyway, in August the authority took statements from the students and went through the identification process.

In September before the National Day, the police carried out another investigation on the students in relation to their demonstration on 20 April against the proposed policy of charging tuition fees by disciplines. The police thought that the students had violated the POO.

Madam President, the students actually had been using the same tactic in staging their demonstrations. They had not given the police the seven-day

notice, but they had given the police prior notice. After all, as far as I know, they have staged their demonstrations peacefully, causing little argument or conflict; at least, we have not had any student being prosecuted in recent years. However, why was there from August to October such a series of investigation? Why were they subjected to the intimidation of being prosecuted? Though different stories were circulating among the public, why had the police to do this? Were they trying to make use of the public sentiment that was fanned up by the arson incident to tighten the law and use the students as the target for suppressing student movement? This certainly had caused great dissatisfaction among the students.

Madam President, it was not until the end of October that the Secretary for Justice had made, we think, the wise decision of not prosecuting the students, that the whole incident was settled. However, the incident has given rise to much repercussion in society. Many people feel that if the police were to intimidate a group of students who just wanted to express what they felt from their conscience, it was better for the police to intimidate them. A group of academics and social workers thus came forward and marched in a procession, and even resorted to civil disobedience to express their great dissatisfaction.

But I would like to stress again that no matter how much the Secretary for Security hated such acts of civil disobedience, they have been using peaceful means to express their thoughts. Just as Miss Margaret NG said, if we have read a bit more of the philosophical works of the West, we would know that civil disobedience has always been a way used by the common folks in their struggle against the Government; it is not an unusual means at all. Given their philosophical basis and clear idea, such actions command the respect of the people. The most important thing about it is that they agree to using peaceful means to struggle. Despite this, the Secretary still finds it unacceptable or even excessive. However, we do not agree to all the views. But some of the views are very clear. The police suddenly tightened the law and we found their so doing went against what the Secretary for Security had said publicly. The Secretary had said that even though no sufficient notification might have been made, if a procession was staged peacefully without causing any distress or disturbance, the authority would not institute any prosecution. This was the basic policy. However, why was there a sudden change in the attitude of the Government? Madam President, that is the reason and background to all these conflicts and debates.

Finally, we feel that the knot has to be untied by the one who tied it. The Secretary for Justice's decision not to prosecute has settled the whole affair so that both sides can enter into a more peaceful and rational discussion. Moreover, we feel that it is time for us to reflect on this system. Should the enforcement of this legislation be left to the whim of the police to be strict or lenient, or even to their magnanimity? Is this in compliance with the demand of a society where there is the rule of law? We feel that this is the time for us to look into the whole situation and exchange our views on this.

Madam President, in the speech of the Secretary for Security yesterday, she repeatedly said that a lot of irrational comments would lead to a danger of turning the situation into confusion or would even create actual confusion. I feel that her comments have gone a little overboard, or even to the extent of being alarmist. In an open and pluralistic society, it is common to have arguments. In fact, it is unnatural to have no arguments. As to the argument itself, what is rational, what is irrational, what is scientific, what is not scientific, what is objective, what is not objective, or even subjective, would change with the elapse of time and shift in people's concept, thus leading to different judgement. When GALILEO said that the Earth was round, he was seen to have an enormous incitement, and even a challenge to social stability. When DARWIN said that human beings had evolved from monkeys, he was also considered to be challenging the moral concepts of society, and he lost his teaching position as a result.

Madam President, if we subjectively say within a period of time that some people are making irrational comments and, fearing that they might affect the stability of society, conclude that some laws should be passed to prevent the so-called confusion state from arising, this is dangerous thinking. We should not always use "being vigilant in times of peace" or "safeguarding the public interests" as the excuse to design laws that restrict freedom. I feel that we are badly in need of a review of such a mode of thinking.

Madam President, the POO definitely is a concern to the United Nations Human Rights Committee (UNHRC). Of course, very often when the members of the UNHRC communicate with our Government or other governments, they would try to be respectful and courteous in their language. They would not lightly use words like "violating the ICCPR" or "not in line with the ICCPR" to criticize the laws of Hong Kong. However, they feel that the message that the POO warrants a review is already very clear. Actually, under some circumstances, the UNHRC also used some strong language to point out how our laws would not be consistent with the Covenant. For example, in relation to the

legislation on interception of communications and the Complaints Against Police Office (CAPO) not being able to become independent, despite the many complaints, and the number of suggestions made by the UNHRC, saying that the wording and the message should be made clearer, has the Government respected the suggestion of the UNHRC? At the end, the Government only expressed that it had different views from the UNHRC, and there are also differences in the operation of the ICCPR in different places, so it would not accept the views of the Committee. I therefore feel that being so particular about the wording actually is not responding to the criticism we are making now. The Government in fact does not respect the views of the UNHRC.

Moreover, on whether the POO needs to be reviewed, there are only just a few points to consider, which include whether there should be a notification system and who should be the regulatory authority. The Secretary for Security told us not to look at the provisions alone, or else we cannot see the wood for the trees. However, what we are saying is a review of the whole system — from the length of the notice, what is necessary, what is reasonable and who should be in control of these to what the appeal channels are and the sanctions. Are they not part of the whole review? Why did the Secretary for Security say that we cannot see the wood for the trees?

In fact, to conduct a rational and comprehensive review of the legislation as a whole, we must address and understand some concepts correctly. For example, do not look at processions through tinted glasses and think that they are senseless, trouble-making and factors that create confusion. In fact, as many colleagues have said, in a pluralistic society, if different voices can be given expression, different political views can be exchanged through debates, it is in fact conducive to social stability.

Moreover, the Government or the legislators should not try to balance on the outset the public interest, public order and personal rights and then tell others where that balance point is. This mode of thinking is wrong. Of course, at the end we would also consider this factor of balance; however, we would start off with the thinking that the civil rights must be respected and the political rights must be respected. The major premise is that restrictions are necessary and people proposing the restrictions must prove that they are necessary. This is the minimum requirement meant to satisfy the demand of a number of public interests. The sanction must also be commensurate with the offence. If any review was made without any clear idea of what the starting point and the concepts are, there could not be any satisfactory result.

Finally, the Government should not use the rights of a minority as the standard. The Government must understand that protecting human rights is to protect the rights of the minority and should not rely on the temporary majority to decide how to protect human rights, or worse, how rights are to be stripped, or how to impose unnecessary restrictions. In fact, based on pure numbers, is not there already more people objecting to the CAPO being subordinate to the Police Force and asking for it to become independent from the Police Force? Has the Government listened to these views?

With these remarks, I oppose the motion and support the amendment of Mr James TO. Thank you.

**PRESIDENT** (in Cantonese): Mr HO, your time is up.

**PROF NG CHING-FAI** (in Cantonese): Madam President, the success of Hong Kong today can be attributed mainly to the spirit of the rule of law that permeates throughout society. Within the three years or so since the reunification, despite the cries of some people that the rule of law is dead, not only has the rule of law not died, it is alive and kicking. Hong Kong's former Chief Justice Sir Denys ROBERTS, who was very active in local affairs from the '60s to the '80s, said in November while commenting on Hong Kong's rule of law, "Hong Kong's rule of law is stronger than ever before." I agree to his comment, but I would like to point out that for the rule of law to become the cornerstone of Hong Kong society today, it has not come by easily. We must stay unswayed and steadfastly uphold it. However, I would also like to point out that the public debates on some legislation often can help increase the public's knowledge in law. We know better now than in the past how to exercise and protect our legitimate rights, which facilitate the consolidation of the rule of law.

The POO debate is an example. If there were no one to ignite this series of public debates, most citizens, I believe, would not spend time thinking about this POO affair. Now, many people are involved in the heated debates on the POO; human rights groups, the Hong Kong Bar Association, the Law Society of Hong Kong, the business sector, professionals, academics and students all come out with their views, which are useful to heightening the citizens' knowledge about the rule of law. Through such debates, we learn of the views from both

sides and the analyses and theories on which their views are based. Not long ago, a doctoral candidate of the Philosophy Department of the University of Hong Kong expressed at a meeting of the Panel on Security what she thought about the view that staging processions and assemblies are basic civil liberties and should not be restricted in any way, and that the compulsory notification system must be abolished. Her comments went straight to the core of the issue. She quoted KANT, the great Germany philosopher, "No one has the responsibility to protect others' rights unless those others give him the mutual guarantee that his rights will be similarly respected." This doctoral candidate criticized that some people can only see their own rights and the responsibility that others should have towards their own rights, but are oblivious to others' rights and their responsibility towards others' rights. She then said that the compulsory notification system for processions and assemblies had nothing to do with violating the rights to procession and assembly, but was about the organizers' responsibility towards those whose rights may be violated. I think that the view expressed by this doctoral candidate of the University of Hong Kong is of a very high order. I congratulate her mentor and the University.

However, Madam President, a point that cannot be overlooked is that the arguments over the POO in the past two or three months also reveal an unhealthy side of things. Denouncing the POO, some people raised their voice loud, took extreme and irrational actions, and showed no regard for the facts and reasons. Their fight against "draconian law", and their anti-this and anti-that do no good to democracy, the rule of law, the economy and people's livelihood.

So, when the Government took the initiative to put on the Agenda of the Legislative Council that the provisions in respect of public assemblies and processions should be preserved, I welcome such initiative very much. I believe, especially after a number of public hearings, that a debate at the Legislative Council will help clarify some of the misunderstandings prevailing in society, and also help the citizens exercise their basic rights in the future. In fact, in this two-day debate, I am pleased that none of the colleagues had used "draconian law" to describe the existing POO. Colleagues from the Democratic Party also consider that the notification requirement is acceptable, which is welcome, giving our discussion a rational basis. The Legislative Council should work like this. While Members may hold different views, they should respect each other; and this is the true spirit of democracy.

Madam President, today's motion debate in fact revolve around two issues.

First, is the POO in compliance with the International Covenant on Civil and Political Rights (ICCPR) and the Basic Law? A number of colleagues have already expressed their incisive views on this. Even those colleagues who think that the existing POO is not very satisfactory also consider that it is not in contravention of the Basic Law. I would therefore intend not to talk more on this.

Second, is the POO harsh or lenient? This is a technical question and the situation is not the same for all major cities around the world. Take London, which we are more familiar with, as an example. An application must be made six days before a procession is held, and the area around the Parliament is out of bounds to processions and assemblies. Even if the police has approved a procession, the police officers on the spot may order immediate dissolution if they think that those taking part in the procession may disrupt the community peace. Should their order not be obeyed, they may use force. It seems that not many people have questioned if the London municipal government has restricted human rights, or if such a practice is non-compliant with the ICCPR. In fact, every city around the world is different, some are built on mountains, some are close to the sea; and Hong Kong, like other cities, also has its own characteristics. To strike a reasonable balance between processions and public interests, a notification period must be set with reference to the city's own characteristics. On this, I tend to agree to the views of some colleagues, that Hong Kong is a small place, with Central being the political and the financial centre, and also a very fragile spot. Let us not talk about others, just on the planning of a pedestrian precinct, it has already taken us a lot of twists and turns but the area is yet to be confirmed; it can thus be seen how fragile this place is. Central is not the only place like this, every place in Hong Kong is congested with traffic and people and packed with all sorts of businesses. Look, besides the area around Admiralty, Causeway Bay is also very congested. If we also consider the appeal mechanism involved, and when there is an appeal, it takes time to handle. I therefore think that the seven-day notice is acceptable. Of course, objectively examining the POO does not mean that we do not need to further perfect it. Specifically, the Government and the people should continue to look for ways to make the application process of processions and assemblies more convenient and better balance the interests of everyone. I have also to point out that like all laws, the POO has to progress with the times. In the

future, when our political centre is not in Central, but moved to a place less congested, there will be less chance for any inconvenience or even conflicts and the notice can be shorter. I appreciate greatly when the Secretary for Security said that after today's debate, she would continue studying the matter. I hope that she would really do so.

Madam President, finally I would like to talk about my expectation of the debate itself on the POO. From the series of anti-POO, anti-draconian law and civil disobedience activities over the past few months, I have seen two unsettling phenomena. First, some people should be very clear that the existing POO is a reasonable piece of legislation, but they confuse right and wrong, giving the public an impression that they are just intent on creating troubles instead of resolving the problem. They even went overboard as to openly defy the law. Among them were some of our colleagues here. It is very distressing. Second, I saw that some young students stood in the forefront, repeatedly requesting that the POO be amended and challenging the law. Their actions were worrying. As a member of Hong Kong's tertiary education sector, I am greatly concerned. University students should be concerned about the happenings in society, so it is a good and encouraging thing that our university students are concerned about our political system and our human rights situation. More than 400 years ago in the late Ming dynasty, the official GU Xiancheng had already advocated at Donglin College to debate the political affairs of the country, saying that "we should be concerned about our family affairs as well as those of the country and the world"; it should be even more so today. However, I hope that our university students, in being concerned about social affairs, should use their heads besides taking action. A Western sage once said, "The whole of a person's dignity comes from his being able to think." Similarly, Chinese philosophers also warned that learning without thinking meant labour lost. While showing their concern for society, the students, I hope, should also learn to think and to raise their ability for independent thinking. Stopping short at some empty slogans will end up in perplexity. Is defying the law in Hong Kong a kind of civil disobedience? Is it just as great as GANDHI? Some of our colleagues have already commented on this, so I do not intend to say any more. We are in different places and in different times facing different governments. It is therefore impossible to treat the issue in one broad stroke. Why do we not look carefully at the existing POO and the international human rights problem before coming to a judgement as to whether the POO is a draconian law? There will not be any deep understanding of anything without careful study in a critical and skeptical attitude. The POO does not target at the students. It is perfectly

acceptable that because of a difference in understanding, the students may think that they are acting for the good of society and raise their doubts through processions and demonstrations. However, they must act within the law and respect the spirit of the rule of law, and be mindful of their own personal safety and public safety, so that they would not let their parents and society down.

Madam President, the new millennium is just some 10-odd days away. It will be a knowledge-based century. The development of a large number of young people who can master modern technology is an important factor in turning Hong Kong into a knowledge economy. I hope that in our debate on the POO, we must take note of the development of our young people and give them proper care, and I mean truly proper care, Madam President, to their political enthusiasm. I so submit.

**MISS CYD HO** (in Cantonese): Madam President, I rise to speak in support of the two amendments. The Government said that it would continue to listen to different views after this debate. In that case, why does it not consider the necessity of amending the POO? Miss Emily LAU's amendment actually is even more open, as she suggested referring the matter to the Law Reform Commission, and in the meantime, the public can still express their views. I therefore feel that Members should support the two amendments of Mr James TO and Miss Emily LAU.

The right of peaceful assembly and procession is a constitutional right conferred by Article 27 of the Basic Law, and is also a basic human right recognized by Article 21 of the International Covenant on Civil and Political Rights (ICCPR). The right has constitutional status and should therefore not be throttled, with the freedom of procession and assembly reduced, because of the inconvenience it may cause to administrative arrangement and deployment. On the contrary, the executive authorities should safeguard as far as possible the citizens' freedom of procession and assembly, ensuring that the citizens can express their views through peaceful and non-violent processions and assemblies. However, on 4 November 1999, the United Nations Human Rights Committee (UNHRC) published a report on the human rights situation in Hong Kong. The conclusion of the report confirmed that there is a necessity to review the freedom of procession and assembly in Hong Kong. According to the government translation of the conclusion: the UNHRC "is concerned that the authority can use the Public Order Ordinance to improperly restrict the citizens in the exercise

of the right that is guaranteed by Article 21 of the International Covenant." The UNHRC also suggested that the SAR Government should review and amend the legislation to make its provisions comply with Article 21 of the ICCPR.

Madam President, the UNHRC is a monitoring organization established by virtue of the ICCPR, with the responsibility to ensure that governments bound by the Covenant implement the letter of the Covenant. Internationally, the UNHRC is the most authoritative agency in interpreting the ICCPR. Of course, some government officials feel that there are many authorities on the interpretation of human rights. And I would like these officials to talk later about how these authorities look at Hong Kong's POO and whether, according to these authorities, the POO meets the requirements of the ICCPR. Actually, as we all know, every report and suggestion of the UNHRC is made with great courtesy, using very mild words, but we should not take it to mean that their suggestion is not worthy of our consideration. Sometimes, I also wonder why, when the Government came under a barrage of angry voices, it would say that they are irrational, but when it was treated with courtesy and mildness, it would not accept any of the suggestions, thinking that the Committee had not specifically negated the existing POO. The fact therefore is no matter what the attitude is, as long as the Government does not want to listen, it will not listen.

There were Members asking earlier and yesterday if the SAR was to accept the interference of others, if it had to listen to the suggestions of the UNHRC, and if it would be a form of interference in our internal affairs. Madam President, if it is out of China's volition to become one of the signatories to the ICCPR and join the international community, then it has the obligation and responsibility to submit reports, listen to the views and criticisms of the international community. After all, there is a precedent that we accept such views and criticisms; the establishment of the Women's Commission is an example. After listening to the views of the international community, we established the Commission in pursuance of the relevant women's rights convention. Our so doing shows that we comply with the five-year action programme of the World Women's Conference and take follow-up action. What is the problem with this? We listen to these views, would there be any advancement in society? Was the establishment of the Commission welcome by the local women's associations? Has our listening to these views humiliated the country and surrendered our sovereignty? Madam President, under the premise that human right sees no political boundary, we, as part of the signatory, after

listening to the views of others, have to objectively and openly review our local legislation. So doing merits our support, and should not be censured for inviting foreign countries to interfere in our internal affairs.

Madam President, I would like to talk about the severity of the imprisonment sentence. Section 17A of the POO provides that any one taking part in a peaceful procession or assembly may be liable to five-year imprisonment. Many colleagues, as said earlier, felt that it is too heavy. Basically, anyone who knowingly takes part in an unauthorized assembly or procession may be liable to such heavy punishment. The Government said yesterday that section 17B, which is about disorder in public places, was not equivalent to section 17C, which is about illegal gathering, and section 17B, which is about carrying offensive weapons, as both sections 17B and 17C deal with personal behaviour, while taking part in an unauthorized assembly was a collective behaviour, which might cause damage many times greater; hence, the five-year imprisonment was appropriate for conviction on indictment.

Madam President, the key issue with collective behaviour is the number of participants. I would like to point out that on many occasions, Hong Kong will have a lot of people gathered together in public places. For example, during the horse racing season, there are two weekly events, with tens of thousands of people gathering in the race course each time. The executive authorities can always make very good arrangements to enable the crowd to disperse orderly and safely within half an hour or one hour at the end of a race meet. Other than the fire at the race course that happened many years ago, has there been any incident? As regards the festivities held at Lan Kwai Fong, who is responsible for notifying the police how many people would be there? After the last tragedy there, the Government, as long as it is willing, can issue a lot of guides and notices or deploy enough manpower to maintain order. So, why cannot the police take up the same responsibility to help maintain the order of processions and assemblies?

Other than these occasions, very often during festival days, many drivers would drive to Sai Kung and the Peak, and the police also have no one to notify them that who would be where. I used to live in Sai Kung, every time I returned home on the Mid-Autumn Festival day, I had to bear sticking in the traffic jam for two hours. Taking a bus was faster than driving my own car. In fact, not everyone in Hong Kong bet on horses, however, we are very considerate and understanding of the traffic jam caused by punters leaving the

course *en masse* at the close of a meet, or of the special arrangement that has to be made during any festivity held at Lan Kwai Fong. Every time it is done peacefully without any trouble. I do not understand why there have to be so many restrictions set down for processions and assemblies. Why cannot the executive authorities make some special arrangements so that citizens, after giving reasonable notice, can stage processions or assemblies, thus upholding their rights of free expression? Of course, the Government said that though a seven-day notice was required and heavy penalty was set, the authority would only institute prosecution under extremely bad situation; and past cases also showed that offences against the POO were only punished with a community service order. Should the Secretary for Security become a judge, the penalty might be even more lenient and could at most be writing a certain number of lines. However, the legislation has been drafted very strict, and the sanction is not just writing a few lines or a community service order. If a piece of legislation has been strictly drafted, the Government could, in enforcing the legislation, at times be lenient and at time be strict, meaning that there could be different standards and choices. Such a situation would do damage to our confidence in the legislation and the enforcement agency, and we would also wonder when it would be lenient, and when it would be strict. We may even question if the Government would selectively target certain people.

The Secretary for Security in fact has made it very clear that the group of students from the Hong Kong Federation of Students do not abide by the law and give no advance notice. They just flout the law and do not accept the existing mechanism. Such a situation warrants a review. Even if today's debate ends up with the two amendments being negatived and the original motion passed, does it mean that a group of people are convinced? Would they come out again and stage peaceful and non-violent assemblies and processions in their own way? By then, how would the Government handle? Would a sentence of five years be really meted out as a warning to all the others? If it were, I believe the repercussion both locally and internationally would be very great.

Madam President, Mr CROSS, Director of Public Prosecutions wrote in the newspaper recently in relation to this situation. He said that on the part of the Government, it was a major consideration to institute a criminal prosecution. If not out of absolute necessity, they would not do so. He said, "To the defendant, even found not guilty at the end, the result of a trial would still be very traumatic and a prosecution will not be instituted lightly." We still come back to the thorny issue, that is, where to find the balance between the legislative

provisions, enforcement and the actual situation? While reviewing the local law on the right of assembly, Queensland, Australia published a report in 1991, saying that merely relying on the police to exercise their discretion in the institution of prosecution could not provide sufficient protection for the basic rights of the participants of peaceful assemblies. The report made it sufficiently clear that we must provide the necessary protection in clear legal terms, instead of being strict, thus reducing any room, in the legal provision, and leave it to the mercy of the enforcement agency or the Court. On the contrary, we must provide for the right and freedom of procession and assembly in the provisions.

Madam President, the freedom of procession and assembly is not only for a small group of people, and there is not always a political demand. Besides students from the Hong Kong Federation of Students, other citizens also stage processions and assemblies. I am referring to the residents of the North Point Estate. Last March, on suddenly learning that their estate was to be demolished, the residents held a series of meetings and form themselves into a group, demanding local rehousing. They organized 13 activities, with each one of them not complying with the requirements of the POO, but nothing unpleasant happened. Why could they not comply with the POO requirements? They were not deliberately flouting the law; rather it was because very often, after meeting with the representatives of the Housing Authority, they had to report the content of the meeting to the residents so that they could take immediate action. This proves sufficiently that the seven-day notice not only poses difficulty to people whom the Government or some Members consider to be frequent stagers of processions and demonstrations, but also to those who have to hold processions and demonstrations to protect their livelihood. After the police had issued a warning, the number of residents taking part in these activities dropped drastically, feeling that they were intimidated. No one was willing to continue to fight for his interests. These are concrete examples. I feel that the Government should conduct a review to see what legislation can give the rights of the citizens the necessary protection. I support the amendment. Thank you, Madam President.

**MR MARTIN LEE** (in Cantonese): Madam President, regarding the reason why the Secretary for Security proposed the motion, the Government says it is because there have been very heated discussions among different sectors of the community on section 17A of the POO relating to the regulation of public meetings and processions. That is why it hopes to conduct a full discussion at

the Legislative Council to allow different parties to exchange their views frankly and enhance mutual understanding, in order to dispel misconceptions and doubts about the POO.

If it is true that the Secretary of Security proposed this motion purely for the sake of enhancing communication, the Government has obviously achieved its purpose already. Since it has achieved its purpose and the Secretary has promised to continue to listen to the people's views after the motion debate, it is unnecessary for the Legislative Council to vote on this uncompromising and one-sidedly worded motion. In fact, the Secretary should withdraw the motion after Members of the Legislative Council have finished the debate, having accomplished her mission. If the Secretary refuses to withdraw the motion, we have reason to believe that the real purpose behind the motion is not as simple as to "allow different parties to exchange their views frankly and enhance mutual understanding". Instead, its purpose is to mobilize the forces of the "royalist" parties to support the Government and to secure a legal basis for the resurrection of the draconian law on public order by the Provisional Legislative Council.

Actually, from the time the House Committee of the Legislative Council postponed the relevant debate for one month to today, apart from individual comments on "pigs and dogs", the discussions among different sectors of the community have been rational and peaceful. We have been audience to a huge chorus upholding the POO and a smaller Tai Po Children's Choir. Nevertheless, the voices against the existing provisions on public meetings and processions in the POO should also not be ignored.

For instance, at a forum on 11 November, Prof Johannes CHAN pointed out that the maximum penalty of five years' imprisonment for illegal public meetings and processions provided for under section 17A of the existing POO was too heavy and should be replaced by a fine. The Secretary for Security said on the spot that the Government could consider amending it. If the Secretary for Security's response was sincere, then she is contradicting herself with the wording of today's motion.

Moreover, the relevant provisions of the POO are indeed extremely problematic. If the matter is taken to the Court, I have reason to believe that the Government will probably lose its case.

In the case of SIN Yau-ming (cited on p. 127 of the *Hong Kong Criminal Law Reports*), the Judge of the Court of Appeal pointed out that if someone questioned in the Court whether certain provisions were consistent with the Bill of Rights, the Government would have the duty to furnish evidence to prove that the restrictions of the relevant legislation on human rights are (1) necessary and (2) not disproportionate in a democratic society, that is, they are not excessive or overcorrection.

With regard to this issue, the Secretary explained in the last part of her speech the principle that guided the British Government in its review of the law on public order in Britain in 1986, which was (she read it out in English) "to regulate these freedoms, (i.e. the rights of peaceful protest of assembly) to the minimum extent necessary to preserve order and protect the rights of others". Then she said in Chinese to the effect that "that means our objective is to adopt the most basic and minimum measure". However, she neglected to say "if necessary". She neglected to say the word "necessary". She forgot to translate it into Chinese. Actually, the English version is absolutely correct. The two principles are "to the minimum extent" and "necessary". In Chinese, it means "the minimum measure" and "if necessary". But the Secretary forgot to translate the word "necessary". I believe this has influenced the Government's position today, though it may not necessarily be the reason. In any case, this point must at least be amended. On the question of necessity, we have to ask why such a harsh POO is required in a civilized society like Hong Kong. The public meetings and processions in Hong Kong have always been peaceful. Even if something goes wrong, there are penalties in the existing legislation as sufficient deterrence. There is no need to invoke the POO.

Even if the Court is convinced of the necessity of the Ordinance, there is still a second question to consider, the question of proportionality — whether the relevant restrictions under the POO are minimum restrictions.

At the special meeting of the Panel on Security of the Legislative Council last Saturday, that is, at the last meeting of the Panel, the Senior Assistant Commissioner of Police, Mr LEE Ming-kwai, answered Members' questions on the enforcement of the POO by the police. At the meeting, I asked a few specific questions concerning the provisions of the POO relating to the regulation of public meetings and processions in terms of their "necessity" and "proportionality":

- (1) With regard to the requirement that organizers of a public meeting consisting of more than 50 persons or a procession consisting of more than 30 persons must notify the police seven days in advance, how many public processions and meetings since the reunification would have been beyond the police's control, if there had been no requirement to give seven days' notice?
- (2) With regard to the requirement of the notice of no objection, in actual practice, have there been any specific incidents after the reunification that made the police believe that something would go wrong if they did not have the power to issue the notice of no objection?
- (3) As for using the maximum penalty of five years' imprisonment to deter organizers and participants of public processions and meetings from not complying with the requirement of notifying the police seven days in advance in accordance with the POO, have there been any specific incidents after the reunification that made the police think there would be dire consequences if there were no such penalty as a deterrent?

With regard to the first question, Mr LEE Ming-Kwai said that the seven days' notice was absolutely necessary in his view only for 1 July 1997, since there was a large number of demonstrators and groups. He also mentioned the procession of truck drivers. I said at once that if one truck was parked across the road during the demonstration, his war would be over.

I am sure everyone will understand that the wave of demonstrations on the day of reunification was a special case, since the reunification of Hong Kong only happened once. We had another with Macao. We would be very glad to see the reunification with Taiwan. Yet reunification only happens once in every place. On the day of reunification, most places where public meetings can take place were occupied by the various events celebrating the reunification. As a result, all public meetings and processions could only be held on the streets next to the Victoria Park near Tin Hau (I was one of the participants). The events celebrating the reunification organized by different organizations also had quite a number of participants. Naturally, this was more demanding for the police. However, no similar situations have arisen since the reunification. Even for some large-scale public meetings and processions held over the past two years,

Senior Assistant Commissioner LEE Ming-Kwai did not say that the police could not cope with them if the notice period was less than seven days.

With regard to the question on the notice of no objection, Senior Assistant Commissioner LEE Ming-Kwai said that there was one case after the reunification where the demonstrating body had sought to hold a public meeting at the boundary, and the Police Force refused to issue a notice of no objection. After negotiation, the organizers changed the venue of the meeting.

As regards the maximum penalty for non-compliance with the notification requirement, Senior Assistant Commissioner LEE Ming-Kwai admitted that as the police have not made any prosecution since the reunification, no organizer or participant of a public meeting or procession has been punished for that reason. In other words, the police cannot cite any specific incident to prove that there would be dire consequences without this penalty as a deterrent.

Madam President, the information provided by the police is sufficient to show that the restrictions imposed by the existing POO on public meetings and processions fail to pass the two abovementioned tests, that is, the test of necessity and the test of proportionality. If the matter is taken to the Court, I rate the Government's chance of winning very small.

Madam President, I would now like to respond to the speeches of some Members and the Government. First, both the Secretary for Security and the Secretary for Justice said that the notice of no objection was not a licence. Let us see what difference there is between a notice of no objection and a licence. With regard to the licence, first, the organizers have to apply to the police for a licence; second, the police can withhold the issue of licence temporarily; third, if the organizers go ahead with the event without a licence, they will be committing an offence. The question is: Who has the power to prohibit these activities? The answer is very simple: the police. Let us look at this example. According to the provisions of the existing legislation, the organizers have to notify the police in advance, and the police can raise objection. If the relevant persons carry out the relevant activity despite the police's objection, they are committing an offence. If we ask the same question, that is, who is going to prohibit these public processions, the answer is still the police. Thus, in the eyes of the organizers of these activities and processions, there is no difference at all between a licence and a notice of no objection. Maybe there is a difference between them for lawyers. But it makes no difference to the organizers. The

Secretary for Security will no doubt point out that there is already an appeal mechanism. But why are we asking these people to file an appeal to the Court, when most of them cannot afford a lawyer, instead of asking the police to apply to the Court for an injunction? The Government has the money and it has many lawyers. Why can we not switch the roles of both sides? These questions have not been answered.

Some people have compared Hong Kong to other places. In Northern Ireland, due to religious reasons, there is no doubt that bombings frequently occur. Bombings also take place in London, since there are people with different religious beliefs there. However, there are no such conflicts in Hong Kong.

Some people mentioned the Ku Klux Klan. There is no Ku Klux Klan in Hong Kong. The triad society here loves money only and does not like participating in demonstrations in the streets, except for the riots on 7 June 1989. But we all know who provoked that. Unless our Government continues to split the community, no such incidents would happen in this community. Thus, there is no point in comparing Hong Kong with other cities. It is totally irrelevant.

The Secretary for Security then talked about Seattle. This is quite sensational. As the Secretary said in the 44th paragraph, the people in Seattle staged riots or stirred up trouble. If these people come to Hong Kong for a week, can the existing legislation regulate them? Will they give the police seven days' notice? Even if they give the police seven days' notice in advance, will they comply if the police raise objection? Does the Secretary think they will go home peacefully? They cannot be controlled. Thus, the example cited by the Secretary for Security is totally pointless. It is meant for intimidation only. Besides, will any troublemakers in the world come to Hong Kong for a week, and should the rights of the residents of the SAR be restricted for 365 days a year because of these people? Can we call this a "necessity"?

Madam President, I have heard the speeches of several Members and I was really disappointed by them. In my view, many people do not understand what human rights are. They point out that the majority of people support the POO. But even if 99% of the people support the POO, does it mean that the human rights of the outstanding 1% should not enjoy full protection? The Bill of Rights is always intended to protect the minority, because no one dares bully the

majority. No government will be so "dumb" as to bully the majority. The governments will only bully the student leaders, since there are only a few of them. If someone is driving and sees hundreds or thousands of people demonstrating, blocking the traffic, he may find it a nuisance. At the time of the "4 June" incident, as many as a million people demonstrated in the streets. However, people riding on trams waved to us to show their support. Some even got off the trams to join us. Sometimes, when I drive past Happy Valley when the people come out from the races, I also get mad and complain that the crowds are blocking my way home for dinner. Why is it that no one says that the people who go to the races are at fault? Some people want to go to the races, while I dislike horse racing. When I participate in a procession, some people may feel annoyed. But we must bear in mind that if we oppress the minority when we are the majority today, we will be oppressed by the majority when we are the minority tomorrow.

I would like to tell a story about a certain Martin NEOMOLLER. He was a Protestant priest who was persecuted by the Nazis during the Second World War. He said, "when the Nazis started arresting people, they arrested the Communists first. I did not speak up for them, since I was not a Communist. Then they arrested the trade unionists. I did not speak up for them, since I was not a trade unionist. Afterwards, they arrested the Jews. I did not speak up for them, since I was not a Jew. Later, they arrested the Catholics. I did not speak up for them either, since I was a Protestant. Finally, they arrested me. By then, there was no longer anyone in society who could speak up for me." This is my view of human rights. It is not that the human rights of the minority can be sacrificed.

Lastly, I wish to respond to a remark of the Secretary for Security. She said (excuse me, please give me some time to find it): "I trust that Members will agree with me that reason will finally prevail over sophistry and fallacy." I am confident of this too. However, I am not confident that this will happen today. In this Council, rational discussions often lose. Thank you, Madam President.

**MR HOWARD YOUNG** (in Cantonese): Madam President, during the debate, some Members said they found that a number of questionnaire surveys have been conducted to consult their respective constituencies. I believe this is probably because we were given sufficient time for consultation prior to the debate. The motion, originally scheduled for debate in November, was postponed for one

month. I was thus given the opportunity to inform the industry of the content of the motion and invite them to express their views to me.

Tourism is a relatively conservative industry. People in the industry would like to see a stable and harmonious community in which everybody can easily develop his business. Although the sector has been politically apathetic, I have received quite a lot of responses from it this time. In my following speech, I will mainly reflect the views of the industry.

Hong Kong is a free society. It is undoubtedly good to have freedom of assemblies and processions. However, excessive freedom or inadequate regulation may lead to unimaginable consequences. This point has actually been mentioned by some Members today and yesterday. People in the tourism sector have never been happy to see processions and demonstrations because these activities, whether or not they have sought approval or given a notice, will do no good to the industry. I believe this is understandable. Very often, these processions and demonstrations are turned by the media into negative news. Those people who know little about Hong Kong will misunderstand that Hong Kong is a chaotic and lawless place. When I paid a visit to the Secretary of Tourism of the Philippines recently, some local people told me that some tourists, who originally planned to tour round the Southeast Asia, thought that there was social instability in the Philippines and changed their destinations to other places recently because of a series of processions and demonstrations demanding the stepping down of their President, even though these activities were held in a peaceful manner. Even the officials of the Ministry of Tourism of the Philippines said that they hoped the incident could soon be over for fear that the number of tourists would drop. This can reflect the views of the tourism industry outside Hong Kong.

A peaceful and stable society is a fundamental element for the development of tourism. The purpose of enacting the Public Order Ordinance (POO) is to ensure public order and safety, and reduce unnecessary chaos and losses in society. In our opinion, the existing POO, in terms of regulating public assemblies and processions, is far less stringent than the pre-amendment version in 1995. Compared with the relevant legislation of other countries, the POO, which regulates assemblies and processions in Hong Kong, is not too strict. Tourists coming to Hong Kong will not appreciate the great number of processions. We do not think that the 6 000-odd processions taken place since the reunification are a "great honour", which is worth publicizing.

At present, processions and assemblies are regulated by a permit or licence system in our major tourist markets, such as Taiwan, Japan, Singapore, Malaysia and the Philippines. Although we do not have information showing the situation in Hong Kong's largest tourist market, mainland China, I believe many people share the view that the laws regulating public assemblies and processions in the Mainland are much stricter than those in Hong Kong. In the United Kingdom, it is even stipulated that no assemblies or processions are allowed in the area around the precinct of the two Houses when meetings are held in the Parliament. When we entered the Legislative Council Building yesterday, we saw at both the front and the back doors were packed with demonstrators. Although they have the freedom of expression, I could hardly hear what they were trying to say because it was too noisy.

As the saying goes, "A piece of bad news travels far". What will tourists or tour groups think of Hong Kong if they see demonstrators holding banners and chanting slogans when they tour round the scenic spots on Hong Kong Island or pass by the Central Government Offices or the former Government House on their way to the Peak? What impressions will they get of Hong Kong? What will they tell their relatives and friends about Hong Kong when they go back home? In particular, if they tell other people after returning to their own countries that even the legislators of Hong Kong do not comply with the law when staging a demonstration in opposition to the so-called draconian law, will their friends and relatives consider Hong Kong a place worth visiting? They may even think that Hong Kong has a great number of draconian laws. Actually, it is impossible for tourists staying in Hong Kong for a limited period of time to tour round the whole territory in a couple of days. Their trip will be further delayed if they run into a demonstration for it will usually cause traffic jams or inconvenience.

Of course, we are not discussing how to promote tourism. I just want to tell Members a fact: It is really very difficult to persuade the tourist sector to welcome processions and demonstrations. This is natural. The Secretary also mentioned yesterday that the Travel Industry Council had sent a letter to convey its view: If the POO is repealed without careful consideration (this is not what we are trying to do today) or amended deliberately (we are now discussing making amendment to the Ordinance), so that public assemblies will no longer be regulated, the community will be thrown into chaos and disorder. How can we expect foreign investment to pour into Hong Kong? How can Hong Kong maintain its status as a popular tourist spot? I consider these opinions quite

moderate, for I have received a more strongly worded letter too. It reads, "we, as members of the Hong Kong community, do not want to see a few individuals staging arbitrary demonstrations in the street under the banner of freedom and democracy all the time ....." This is a more strongly worded objection. However, I have not received any views asking for relaxation of the Ordinance.

Based on the views I gathered from the sector, we conclude that if processions and demonstrations are not subject to a certain degree of regulation, the development of tourism will certainly be impeded no matter how many tourist facilities, such as the Disney theme park, Aberdeen Fisherman Wharf, a cable car system, and so on, will be built in future. We hope Hong Kong can maintain its status as the shoppers' paradise, Events Capital of the World and gourmets' paradise. We certainly do not want it to be named "a city of demonstrations".

For these reasons, the tourism sector supports the Government in preserving the existing POO with a view to stabilizing society, creating a friendly business environment and giving us a break.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

**MR LAW CHI-KWONG** (in Cantonese): Madam President, I do wish to agree to the views of the Secretary and the large number of Members who lend support to the POO in preserving the provisions therein. I do agree that though there are provisions in the POO that should be preserved, there are others that warrant improvement. Moreover, I agree with the stance taken by the Secretary and the numerous Members who support that government stance to the effect that the notification system should be preserved. I can find no reason not to agree, but I think some of the arrangements and restrictions should be made more civilized.

An objective of the POO is to maintain social peace, and, at the same time cater to the interests of the majority. By and large, I agree with the idea that it would be putting the cart before the horse or distorting public opinion if we say processions and meetings are just activities of the minority, meant to focus on their interests but ignore the rights of the majority. However, I would say that catering to the interest of the minority from time to time does not mean ignoring those of the majority. Some views hold that there are quite a few people who

demand democracy without regard to law, or freedom, without regard to order and thus it is the illegal behaviour, not the law, that requires amendment. That I also agree, up to a point. However, I just disagree with the part that says it is not the law that has to be amended. As legislators, we amend laws every day. When there are some problems with the law or when it has defects, we should improve it. Of course, we should try our best to abide by the law.

Some hold this view, which is interesting: If the police are not aware of it, the busy city of Hong Kong will be inflicted at all times with situations where people may burn car tyres, carry coffins, sit on railways, occupy Mass Transit Railway stations, raid on embassies, set fire on immigration offices, and so on, leading to loss of control and all sorts of calamities endangering the lives and properties of the people. If that scenario comes true, it would indeed be a detriment to the people of Hong Kong. However, I find the view strange because those who hold this view have been criticizing the few individuals who travel abroad "bad-mouthing" Hong Kong. Now, why are holders of the view doing the "bad-mouthing" just to support the Government? In this debate, and in previous ones, such exaggerations abound. Such views are either extreme, far from being balanced, or are meant to vilify. They are neither open nor aboveboard.

In response to the Government, I would quote from the *Analects of Confucius*: "Fondness for courage without fondness for study: its shortcoming is rebellion. Fondness for strength without fondness for study: its shortcoming is impetuosity."<sup>1</sup> That means if one vehemently supports the Government's stance without proper study or acceptance of other people's views, one would definitely be hitting at others blindly; and if one is frank and sticks to one's principles without proper study or making an effort to understand other people's position, one would definitely become too impetuous in criticizing others. At this point, I must declare an interest. Though I have never been organizer of any processions or assemblies, I have 30 years' experience in attending processions and demonstrations. In the 30 years that I have taken part in processions and demonstrations, I have never requested the organizers to show me any documents of approval or notices from the Government before deciding to take part in them. Had I requested, and, if the answer was that they had not received any "notice of no objection", I would have a hard time deciding whether to

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<sup>1</sup> THE CONFUCIAN BIBLE, BOOK 1 ANALECTS  
(English and Modern Chinese Versions) authored, compiled and edited by John B. KHU, Vincent B.K. KTTU, William B.S. KHU and Jose B.K. KHU World Affairs Press 1997 Beijing.

believe in what they said or not. What is most unfair is that as a participant, I may have to incur criminal liability should an accident happen to anyone during the procession. This makes me particularly vulnerable when from time to time people who oppose the processions or demonstrations may rush into the files during the procession and minor scuffles may ensue. It now dawns on me that I may be legally involved even if I am an on-looker, though I recall many organizers of processions and demonstrations said they welcome people to join them. If the POO remains unamended, when we welcome people to join us in the procession, we may need to specify that we have received a "notice of no objection" from the Government, and people would then feel more comfortable. Is that what we want?

Social workers will often find themselves criticized for helping people to fight for their interests. The critics are actually trying to protect the vested interests because they want to maintain social stability. Why? When social workers help the minority to fight for their interests, they are helping them to voice their dissatisfaction against the establishment or some policies. The process is like a valve letting steam off when too much of it is trapped in a container. The release of pressure materializes in the rights to processions and demonstrations. After the steam is let off, the container would not explode. Thus, in helping the people or the minority to organize processions and demonstrations, the social workers have in fact enhanced social stability, thereby protecting the vested interests.

I have not carried out any opinion polls as some other Members from the functional constituencies for professionals have. But almost all of the social workers we have had contact with in the social work sector agree it is a must for us to maintain social stability and for people to live and work in peace and contentment. However, to achieve that goal, we must give people abundant opportunities to express their views readily. These opinions of the minority often sink into oblivion in the community, given their small number. So, they need to do something to let everyone get their message conveniently. Therefore, though the act gives people the impression that it is slightly radical, it is exactly what it takes to achieve social stability and prosperity. That means to say, a relaxed system allowing people to express themselves must be maintained.

I am not sure what the message the Government is trying to send in this exercise. The impression it gave during the discussion and the comments it made on the motion seem to be calling for an end to processions and assemblies

for the sake of everyone. I hope we can adopt a rational and open attitude in our discussion on the POO today to enable it to fit better the present social conditions and the way we provide opportunities for dissenting groups and the minorities to express their demands in a civilized community like Hong Kong. Of course, this involves how we strike a balance between the interests of the minority and those of the majority. Today's debate on the POO boils down to the question of whether there is such a balance point, which is why we have put forward so many viewpoints. I hope the Government can make some adjustments in this respect.

Thank you, Madam President.

**MR FREDERICK FUNG** (in Cantonese): Madam President, though the debate today is about the POO, I think it is in fact about the art of governance, that is, how a government should govern a cosmopolitan city. Under the motion, the art of governance seems to involve a contrast between two things: order and human rights. Put in black and white, order means laws. In contrast, is governance, which, in ordinary terms, is about how one can gain the ardent support of the people. Great conflict may be created if we set one factor against another. If, however, one can strike a balance between the two, one may enjoy both the ardent support of the people and orderly administration of Hong Kong. If I had to choose between support of the people and orderly administration, I think the former is the most important and basic factor. When a government enjoys the ardent support of the people, it may actually do without laws. On the other hand, if the government fails to gain support from the people, laws cannot help it in any way. So, if the Government can gain the support of Hong Kong people because its policies and the future towards it leads its people into live up to the expectations of everyone and are respected by everyone, the popular support it gains or the people of Hong Kong themselves may generate a social pressure to subdue the efforts or harmful views of those people who want to stir chaos in Hong Kong so that no real damage can be done.

Hong Kong, as it is now, is different from what it was before 1997, when it was under British colonial rule. It might be a pawn for Western countries then, facing a vast and strong People's Republic of China, which is a communist country playing the role of the greatest rival to capitalist countries. Moreover, more than 98% of the subjects were Chinese, but only 1% of the population was British. Thus, we had a situation where a handful of the people were ruling

what was a predominantly Chinese community, with a Chinese country in the background. I believe the ruling party then was never sure whether they could gain the support of the people. As expected and understandably, they governed Hong Kong with the rule by law, the rule of law, statutes, and they even used the police and criminal sanctions.

After 1997, there was a change in that the People's Republic of China is our motherland, a Chinese country. I do not think the People's Republic of China would want to destroy Hong Kong. Nor do I think Hong Kong people will start a revolution from Hong Kong. It is even less likely for a tiny place like Hong Kong to be able to subvert the People's Republic of China, which has a vast territory and a huge population amounting to 1.2 billion-odd. This is a possibility that does not exist. Are we worried that someone from the international community will use Hong Kong for subversion against the People's Republic of China or for anti-unification or secession purposes? This is a possibility that exists. I do not think the Hong Kong Government is the party that can best eliminate the possibility. I still think it is our Motherland that can do the job. It can, as a matter of course, use intelligence or diplomatic maneuvers, and so on to tackle the problem. The Hong Kong Government does not have the means to eliminate the possibility. No matter how strict the provisions in the POO are worded, they can do little to help. From this analysis, I do not think we should extend the line of thought from the previous colonial government to the post-1997 present. Because I hold this view, I think we should cherish support from the people if we do want a good administration of Hong Kong, because popular support is the most important factor.

What is the relationship between support of the people and the Hong Kong Bill of Rights Ordinance (BORO)? We have been debating at length about this in these two days. We have been saying we need to be rational, study the subject and discuss with each other but we must not be emotional or hurl invectives. I agree with all these, but I can also tell Members that Western communities usually rely on reason. What is contained in international covenants on human rights, political rights, and so on is in fact about support of the people. That means apart from reason, there is support of the people, which is at issue. Now, support of the people is not only about reason. Humans pursue not just reason but sentiments as well. So, apart from reasons, we need to talk about sentiments. The BORO is doing the same thing. Human rights form part of the emotional aspect, an aspect about gaining support of the people. I will use these two points as the basis for my speech today. I want to tell

Members I agree entirely with the idea of the Chief Executive, Mr TUNG Chee-hwa, to govern Hong Kong with Confucianism. Let us look at the starting point of Confucianism. In Confucianism, the philosophy of governance does not start with the rule of law but from the thoughts of Confucius and Mencius, both of whom expounded on ways to gain support of the people. Law was not mentioned until Xunzi, the third generation representative of Confucianism, came along. Thus, I think if we want to administer Hong Kong well, we have to come up with ways to deploy manpower, time, ideas and even resources to gaining the support of the people. This is far more important than coming up with laws derived from the old values from the days of the colonial government.

After talking about how I look at the issue from the point of view of values, I would like to urge the Government to tackle the problem by reference to support of the people. There are three possible ways to deal with the POO. First, we may abolish it altogether. Second, we may preserve the entire POO as it is without any changes at all. Third, we may amend it as appropriate so as to gain the support of the people. On the first possibility, the official speakers, that is, both the Secretary for Justice and the Secretary for Security said we should not abolish the POO. I agree with most of the arguments, reasons and precedents cited by them because I am against the abolition of the POO. Without the POO or laws for governance specifying what should be done under certain circumstances, including situations where there are processions or assemblies, we may easily find ourselves in an anarchy, which is certainly not what I want in Hong Kong. Well, support of the people alone is not enough. Some rules must be laid down. I do not agree to preserving the POO in its entirety. As I said, the POO comes from a colonial government and the provisions contained therein do not aim at gaining support of the people. As such, it has fundamental defects, which I will explain later. But for now, among the three possibilities, I can only choose the third one, that is, we need to single out the areas that prevent us from gaining support of the people and amend them to achieve the ultimate goal of gaining the ardent support of the people so that they feel Hong Kong is their home. We must work hard in concerted effort to build Hong Kong into a place where we would choose to live in eventually.

Based on what is contained in international covenants or on what I said, we should govern with support of the people. We should not start by assuming the people will break the law or any rules. I have come up with one more assumption myself: whatever law the people of Hong Kong have broken, they

cannot achieve subversion against the People's Republic of China. Nor can they become a fundamental factor that comes in the way of the unification of China. Hong Kong just cannot achieve that. If Members agree that this assumption is tenable, we may then look at the numerous alternatives to deal with the people whose acts may jeopardize national security or public safety. In what ways, can we deal with applications for processions and assemblies? I am sure it is possible to find means that can gain the support of the people.

The first method to gain the support of the people. Let us not assume application has to be made for a procession or an assembly. Under Article 39 of the Basic Law or international covenants, the right to processions or assemblies is a civil right. As such, how can we change that personal right to a statutory right? Can I ask the Secretary for Justice and the Secretary for Security whether I need to seek approval from them to return home? Certainly I do not have to do that because returning to my own place is my right. When do I have to seek approval? For instance, if I want to go to Teacher WONG's house, then I need to ask Teacher WONG for approval in order to go there. But when I return from there to my own place, I do not have to ask anybody. That means to say if taking part in processions or assemblies is a right, only when I have acted in breach of the rights I am entitled to will someone decide that I should not so take part. Hence, from this point of view, I would suggest that the POO should not require that applications be made in respect of processions or assemblies or treat offences under the relevant provisions as crimes. Why criminalize the offences? Offenders may have broken a rule for omitting to notify or to make applications, but what penalties should be imposed? The offenders have not acted to endanger national security or social stability, so why should they be held criminally liable and punished by imprisonment of up to five years? This penalty is even more overbearing than that against some women travelling on two-way permits to Hong Kong for prostitution. This is the first point we should consider.

The second consideration is: Since the matter is not deemed to be criminal in nature, who should be in a position to prohibit processions or assemblies? If we want to gain support of the people, we should not give the police the power of prohibition. The first reason for this is that the police give people the impression that they are a representative of force, a team of men and women who maintain order with force. Moreover, there may be a conflict of interest. If the police are mindful of performing well in maintaining order and seeing to it that people behave to the standards set by the police, would the police tend to

apply a tight hand? In contrast, if we think taking part in processions or assemblies is the people's right, and we want to act in a way that is compatible with international covenants and the Basic Law, would it be better and more appropriate to refer the matter to a third party for arbitration regarding the legality of the notification given to the Government in respect of a procession or an assembly? I think that in order to gain the support of the people, the power to conduct the arbitration should be vested in a judge in an institution that has the image of the police and the power to convince people that Hong Kong is still a place with the rule of law. I trust this is more convincing to the community and the people who take part in processions. Hence, my position is that an organizer still need to make applications, notify the police and present to the police some details or procedures concerning the procession. If the police consent to it, the organizer may continue the preparation and organization of the procession; otherwise, or if the police think some conditions should be imposed, they should state their case to the Court and let the Court decide which conditions are compatible with civil rights or are not part of these rights.

Lastly, I would like to mention that under the POO, there is a real distinction between a participant and an organizer. I have been an organizing executive of the Society for Community Organizations since 1976. Well, Members may not know much about the Society but if I mention the name HO Hei-wah, Members will surely know who he is. So, Mr HO and I come from the same organization. If I may have the liberty to say so, I am more senior than Mr HO. For more than 20 years, the Society has organized many processions. We have made applications for a large majority of the processions, but for a few of them we have not. We would not tell participants whether we have made an application for a certain procession because we do not think notification to the police or a lack of the same would make things more convenient for us or cause barriers to the procession or assembly. If taking part in processions or assemblies is my right, I do not think it matters whether I notify the police or not. As the organizer, I have a duty to ensure the whole process proceed according to plan. As the organizer, I am willing to shoulder responsibilities. Should any problem arise, I will assume responsibility for the consequences. If the police send someone to investigate, they would usually demand the production of my identity card and I would produce the same on demand. However, there might be people who want to jeopardize national security or public safety and disturb social peace. If such people do exist, they will not make any application for their procession. Even if they do, and tell the police the particulars of their processions and the assemblies, the reality would

not turn out to be as told when the processions or assemblies take place. In that case, the police could invoke other laws to make the procession or assemblies proceed in the prescribed manner. The police can even take some action as appropriate.

Finally, I still opine that the motion today is not about some major or minor issues in the POO. Rather, the discussion is about how one, as a Chinese national, may govern a place inhabited by Chinese people to make them feel that the place is their home; and about how governance starts from gaining the support of the people. Thank you, Madam President.

**DR TANG SIU-TONG** (in Cantonese): Madam President, we have had a thorough discussion about the controversies surrounding the POO at the Yuen Long District Council and the New Territories Heung Yee Kuk. Most of our members agreed that the existing POO should be preserved because it can effect stability in the community.

During the debate yesterday and today, those who oppose the POO in general assume all processions will proceed peacefully. That assumption is open to question. No doubt, the 6 500-odd cases of processions that took place in the past three years were by and large orderly ones. However, that does not mean order can be taken for granted. One case of riotous procession may cause immeasurable loss to a commercial city like Hong Kong. "A single spark can start a prairie fire." Although the police in Hong Kong have enjoyed high ratings, it would be difficult to find any administration in the world that can have a police capacity that can handle without warning any processions or meetings from one person to 10 000 people or more.

Despite the provisions in our laws which can adequately deal with the possible chaos and disruptions to social stability caused by processions, it would be difficult for the police to cope with any chaos or enforce the law unprepared.

The debate surrounding notification and application is a case of ideology. It is understandable for the police to object to meetings or processions on grounds of protecting social stability or for other compelling reasons. Moreover, we have an appeal mechanism to check any abuse of police power.

Whether the penalty contained in the relevant legislation is heavy is arguable. In the past three years, however, there have not been any unusual penalty imposed or cases of substantially excessive punishment. It would seem groundless for one to make inferences on sheer speculations.

However, since the Government maintains that the POO should be preserved, it must enforce the law properly. It must not ignore the law during enforcement; otherwise the law would become void and people would take chances by trying to break the law.

The present debate, initiated by the Government as it tabled the motion on the POO, is called for in response to demands from the community. The debate gives the people and legislators a chance to restate their views and search for the truth through a debate. Understandably, the human rights of a minority have to be sacrificed in the interests of the whole community. We must think twice in deciding whether to allow every one of us to assert one's human rights without regard to the effect the assertion may have on the human rights of other people and the stability of the community when such rights are expanded without limit.

With these remarks, Madam President, I support the original motion.

**MR JAMES TIEN** (in Cantonese): Madam President, Mrs Selina CHOW of the Liberal Party has explained the Liberal Party's stand on today's motion on the POO in detail. As for other views, several of our members have also expressed the views of their respective constituencies.

Madam President, I wish to discuss the impact of the POO on the Hong Kong community in general from a broader perspective. I will not digress. I am talking about the POO. Many of us attach great importance to the POO and compare it with relevant legislation overseas to test if it is consistent with the International Covenant on Civil and Political Rights (ICCPR). Actually, the provisions of the ICCPR are very broad. One may say they are loose or stringent. In any case, the provisions relating to processions and demonstrations in the ICCPR are catered to the special circumstances overseas. Maybe Hong Kong is a rather special case. Why do I say that Hong Kong is a special case? Because the majority of the several million people in Hong Kong

are Chinese. We do not have many of the problems confronting overseas countries. For instance, in the United States, there are many so-called public order laws regulating processions and demonstrations. This may have to do with the racial situation in the United States. There are many black people in the United States. In the '60s and '70s, black Americans participated in processions and demonstrations to fight for their basic rights. In those days, in the southern states of the United States, many restaurants did not welcome blacks and they were not allowed to ride on buses. They were fighting for their basic rights, not material gains. In Israel and Arabia, for instance, which are not too familiar to us, many of their problems have to do with religion. They are religious problems left behind by a long history.

However, there are no racial problems in Hong Kong, nor are there problems of religion or discrimination. That is why we have a relatively harmonious society. Among the processions and demonstrations in Hong Kong, the only ones that involve our beliefs are the candlelight vigil to commemorate the 4 June incident or protests relating to the Diaoyu Island affair. The majority of them (such as those relating to the taking of examinations by English teachers, the implementation of a two-tier or three-tier system for doctors, the depreciation of assets, employees' wages and social welfare) have to do with benefits in monetary terms and are merely attempts to gain more benefits for the individual sectors. In overseas countries, they also have many issues that arouse the people's concern. As parents, we naturally wish for social stability. However, there are some things that we need not worry about, such as whether our children have to take up military service and whether Hong Kong will go to war. People in overseas countries face problems that are of immediate concern and that parents need to worry about. I have asked several friends what they think of the POO. My friends have the ability to make investments and can choose to emigrate. However, the majority of them said they are willing to stay in Hong Kong, since the Hong Kong community as a whole can balance different interests.

I will now talk about the notice period of seven days in the POO, whether it is too long and whether it can be shortened to two or three days. The Government says that there are more and more people and groups participating in processions and demonstrations. There are thousands of these demonstrations each year. If the Government is not given seven days' notice,

how can it know how many people are demonstrating on a certain Sunday? Since the demonstration areas are all popular sites in Central, how should the Government deal with them if several groups demonstrate at the same time? Yesterday, for instance, there were demonstrations in support of the POO and demonstrations against it. There were not too many participants. Some newspapers reported that there were 200 people on one side and a few dozen on the other side. Other newspapers reported that there were 300 people on one side and 100 on the other side. There was such a crowd gathered outside the Legislative Council alone. If the police had not been there to control the situation yesterday, fighting might have broken out, something that we do not wish to see. If on a certain Sunday various groups want to assemble at the Chater Garden and march together to another place and there is no police to keep the order, can we allow them to handle the situation by themselves? Actually, I mentioned this question when I talked to the Government. The Government said my suggestion was irresponsible. I said the Government could ignore them. Since they had no wish to notify the Government, the Government should be ignorant of it. Why would the Government know if it was not notified and why would it help them to implement crowd control? The Government said it could not ignore them. It would be irresponsible if fighting broke out or pedestrians were run over by buses. Thus, even if the relevant parties did not inform the Administration, it had some means to find out and help them implement crowd control. Actually, the Government pays attention to these incidents. If so, why should the police be notified? Even if the Administration is not notified, it will know and will be there to implement crowd control.

In fact, as far as we can see, Hong Kong is a harmonious society. Both the demonstrators and the police are very peaceful. Sometimes, when we watch news reports about overseas countries on television, they may seem like movies. Only they are not movies, but the reality. The demonstrators and the police in demonstrations overseas do not act anything like those in Hong Kong. For instance, one of the celebrities who participate in demonstrations in Hong Kong (of course, I am not referring to Members of this Council), Mr Long Hair, may seem quite "radical" here. However, his actions are nothing compared to those of demonstrators in other countries. They are not even in the same league. Any football fan in Britain who has had a few drinks acts much more violently than Mr Long Hair. How do the Hong Kong police compare with the police in overseas countries? On television, we can see mounted policemen of overseas

countries charging their horses into the crowds and injuring them. In Hong Kong, the most serious incident was that in which pepper spray was used, while other incidents only involved pushing on both sides. In my view, the problem between both parties is not that serious. Hong Kong people do not know their own luck. It seems that there are no other problems that deserve their special attention. We have no war and our children do not have to go into the army. When the police refuse to yield and demonstrators refuse to yield, the police seem like parents and the people seem to be their children. The parents naturally wish that their children would tell them whether they would come home for dinner and whether they would return before midnight. The children do not think they have to notify them in advance. The police are like the parents who want their children to notify them seven days in advance whether they will come home for dinner. However, the children think that they are already 18 years old and need not notify their parents one week in advance when they will come home for dinner. They think that two or three days' notice should be enough. The Government thinks like the parents who will prepare some chicken soup to fortify their children if they know they are coming home for dinner. It has the people's interest at heart, but the people are not grateful. They do not want the Government's solicitude. They want to come and go as they please.  
*(Laughter)*

I do not think the problem is serious. The Liberal Party has made its stand clear, while the Democratic Party also recognizes the need for the POO. Nor does Miss Emily LAU say that there is no such need in her amendment. She merely proposes to refer the matter to the Law Reform Commission. Since we have this consensus, the Government should take action today. We in the Liberal Party are supportive. But we also encourage the Government to listen to other views and consider whether the notice period of seven days and the requirement that notice must be given if 30 participants are involved are negotiable in future.

Madam President, sometimes, when I discuss issues with Mr LEE Cheuk-yan or the labour sector, they would criticize me for adopting a businessman's attitude, since I always talk about compromise. Nevertheless, I consider it a good thing for a harmonious society to compromise. As such, the Liberal Party encourages the Government to continue to talk to demonstrators over the next few years. Thank you, Madam President.

**MR HENRY WU** (in Cantonese): Madam President, ever since the Administration gave notice on 8 November to move a motion on 21 November, the House Committee of this Council has spent quite a lot of time on discussing whether the date of moving this motion is appropriate. Finally, the House Committee passed a decision to defer the date of moving this motion, and the Government subsequently withdrew its notice to move the motion on the date originally scheduled and postponed it to yesterday.

Madam President, I wish to say that, in fact, the Government is not up to any "skulduggery" anyway. It has only given notice according to our Rules of Procedure and House Rules.

During the period between 8 November and yesterday, the Legislative Council conducted a number of hearings and there were also heated discussions in the community. Though I have not consulted my constituency on this issue in the form of any questionnaire survey, I have actually met with my constituents on many different occasions and at different times over the past one and a half month or so. I did not ask them for their opinions about the POO, but, somewhat casually, they expressed their views to me on whether the existing POO should be preserved. Most of them think that since the interests of different parties are already fully considered and balanced under the existing POO, it should be acceptable.

Madam President, apart from rights, people also have obligations. I think that rights should not and cannot be separated from obligations. Therefore, when we exercise our rights, we must also be aware of our obligations and seek to discharge them. Obviously, when we ask for the right to hold peaceful demonstrations and processions, we should also fulfill our obligation of lodging applications, so as to ensure that the rights of other members of the public can be safeguarded. To be law-abiding is the most fundamental obligation of a citizen, and I think that as Members of the Legislative Council, we should set a good example for the public.

During the motion debate today and yesterday, some Members said that some front-line disciplined officers had used excessive measures in the discharge of their duties. I think that since disciplined officers have all undergone rigorous training, they should be able to exercise sufficient self-restraint. I am also convinced that most of them will discharge their duties in an appropriate manner. Honestly speaking, a lot of demonstrations and processions may be peaceful at the beginning, but when they reach a certain stage in the process, especially when some protesters feel that their rights have been infringed upon,

and when they are incited by those with ulterior motives, rushes at front-line disciplined officers may occur. Very often, we can see on television that such rushes are usually very violent and damaging. If such demonstrations and processions are intended to be peaceful, then should the participants consider exercising self-control? I often tell myself, "Do unto others as you would have them do unto you". If protesters can pause for a little while, calm down a little bit, and put themselves in the position of front-line law enforcement officers before they resort to any rushes and extreme actions, perhaps today we will not have to hold a debate on the POO.

Madam President, as times and society change, it is indeed reasonable to review the POO, but is there really such a great urgency, or such a need, to amend the legislation now? I have reservations about this. Under the major trend towards a global economy, we can notice a similar trend with demonstrations and processions all over the world. When the East Asia Summit of the World Economic Forum is held in Hong Kong in October next year, or when similar international events are held here in the future, I do not wish to see the outbreak of any riots similar to those in Seattle and Melbourne that we saw on television because of any violent demonstrations and processions staged by trouble-makers. I also personally believe that if everyone (including those from overseas) can observe the provisions of the existing POO, we can be sure that such riots will not break out.

Hong Kong is an international financial and trade centre. If we can attract more organizers of major international conferences or events to choose Hong Kong as a venue, I am sure that the status of Hong Kong as an international financial and trade centre will be further strengthened, and more inward investments can also be attracted to Hong Kong. Apart from promoting the tourism industry, this can also promote the economic development of Hong Kong.

Madam President, I always say that we should "strive for growth in prosperity, and work for ideals in stability". I have one conviction. If a society is marked by economic sluggishness, lack of prosperity and instability, and if the people there are always worried about their livelihood, how can they have the time, mood and energy to talk about development? In such a society, how can people be expected to talk about growth and ideals? I think that as long as Hong Kong is prosperous and stable, we will have a better tomorrow.

Madam President, I so submit.

THE PRESIDENT's DEPTY, Mrs SELINA CHOW, took the Chair.

**DEPUTY PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**DEPUTY PRESIDENT** (in Cantonese): Secretary for Security, you may now speak on the two amendments.

**SECRETARY FOR SECURITY** (in Cantonese): Madam Deputy, I should like to make a few points in response.

To start with, regarding the amendment proposed by Mr James TO, it is mentioned in the amendment that the United Nations Human Rights Committee (UNHRC) was not satisfied with the implementation of the Public Order Ordinance (POO) in Hong Kong and suggested we review the Ordinance to bring its provisions into compliance with the relevant international covenant on human rights. Mr TO questioned why the Government paid no regard for the authority of the UNHRC or to its opinion. First of all, I have to explain that legally speaking, as Miss Cyd HO said just now, the UNHRC is the monitoring organization of the International Covenant on Civil and Political Rights. While the Hong Kong Government has an obligation to submit annually a report on Hong Kong's human rights situation to the UNHRC, the opinion of the latter does not have any binding effect on our Courts. Nevertheless, I wish to emphasize that we certainly respect the opinion of the UNHRC.

We have not introduced amendments to the POO right away in accordance with the suggestion of the UNHRC not because the opinion of the UNHRC does not have any binding effect on our Courts, but for three reasons. Firstly, the opinion of the UNHRC is a comment made after we have submitted our report on Hong Kong's human rights situation, which is a rather broad and general comment; this is in no sense any verdict on a specific case.

Secondly, although the UNHRC has suggested we review the POO, before making the suggestion it did mention that it was aware of the frequent public demonstrations in the Hong Kong Special Administrative Region (SAR) and had taken note of the SAR Government delegation's statement that applications to

hold demonstrations had never been rejected. Notwithstanding that, the UNHRC has nevertheless considered that we should review the POO and bring its terms into compliance with Article 21 of the Covenant. For our part, we hold that even though it is the hope of the UNHRC that we review the POO, but since the conclusion it made was not based on any substantial argument, we should not make this opinion of the UNHRC reference of our orientation.

Thirdly, I have had meetings with Mrs Mary ROBINSON, United Nations High Commissioner for Human Rights, and with the Deputy Chairperson of the UNHRC before. When Mrs ROBINSON visited Hong Kong in January this year, we had two meetings during which government officials from other departments and I have exchanged with her many views on Hong Kong's human rights situation. However, she made no mention of the POO to me then. Then, in summer this year I also met with the Deputy Chairperson of the UNHRC. Our meeting lasted for about an hour, but it was towards the end of the meeting that he raised the issue of the POO. His only opinion on the POO was that the seven-day notice requirement seemed a bit too rigid to him. So I explained to him that while the Commissioner of Police was authorized by the Ordinance to exercise discretion to accept notice shorter than seven days, we had all along accepted notices shorter than seven days. I also explained to him that being unable to make any prediction, it was necessary for the Commissioner of Police to be notified seven days in advance. Upon hearing my explanation, the Deputy Chairperson raised no further opinion on the issue. Hence, we consider that the comments made currently by the UNHRC are insufficient to convince us of any need to amend the POO immediately.

As regards the amendment proposed by the Honourable Emily LAU, it urges us to refer the issue to the Law Reform Commission (LRC) for consideration. Actually, the Secretary for Justice has already explained the reason why we cannot agree to this proposition. Normally, the Government will only refer an issue to the LRC for consideration under three particular circumstances. The first one is where the subject does not fall readily under the ambit of any particular bureau of the Government. For some new subjects like privacy and stalking, for example, a final decision has yet to be made as to which Policy Bureaux should be given charge of these issues. The second case is where the subject involves issues which go beyond the Government's day-to-day activities, or where the issues raised cannot be dealt with by a single Policy Bureau. New subjects like stalking and loitering are good examples. The third case is where the subject is of such broad and deep scope that it requires the dedication of full-time lawyers to conduct a review, such as subjects of a broad

coverage involving even moral or philosophical issues. One very good example is criminal liability. For example, at what age should a child be held criminally liable, the age of seven, 10 or 14? This is a rather philosophical and moral issue requiring the dedication of full-time lawyers to conduct a review.

In other words, the subjects the LRC looks into are generally some newly emerged legal subjects the conclusion on which has yet to be drawn by the legal profession, or subjects of a broader and more profound scope. The POO is not one of such subjects. From the speeches made by Honourable Members during the debate we can see that there is indeed a consensus amongst us in this Chamber, and the consensus is that it is necessary to give notice. We all respect this notification system, only that we disagree over certain specific details, such as disagreements over whether seven days' notice, four days' notice or three days' notice should be required. There are other disagreements over whether a meeting of no more than 50 persons or a meeting where the attendance does not exceed 500 persons should be exempted from the notification requirement, and whether the right to appeal should be determined by the police or by the Courts. All these are specific issues and have nothing to do with basic principles, we therefore consider the provisions of the POO are not suitable matters for LRC examination.

I should like to speak on a few more points. Mr James TO and many other Members have repeatedly criticized the POO for being an evil law made by the former colonial government in the face of the riots in 1967 to suppress the people. I cannot but wonder whether they are really so forgetful and cannot even recall that the existing POO is no longer the one made in 1967 in the midst of riots. Can these Members not recall that the existing POO was reviewed thoroughly in 1994 and 1995 by the Government in collaboration with the former Legislative Council? There were altogether 13 Members on the Bills Committee, with the Honourable Zachary WONG as Chairman and the Honourable James TO as Deputy Chairman. Among these 13 Members on the Bills Committee, 11 were affiliated to the Democratic Party. The relevant provisions were scrutinized by the Bills Committee from 1994 to 1995, during which period the deliberation was suspended for a few months to consult the Court's opinion on whether or not the independent Appeal Board could be chaired by a Judge. Upon receiving opinions from senior judges, the Court rejected the proposal. So, this was what happened then. As a matter of fact, the POO today is not the same as it was in 1967, the year of riots. Rather, it is a piece of legislation made in 1995 with thorough participation by the Democratic Party.

I notice that Dr the Honourable YEUNG Sum gave a rather short speech when the former Legislative Council debated the POO in 1995. In his short speech, Dr YEUNG commended the then Government many times for relaxing the provisions of the POO. The only opinion he raised then was that the provisions controlling the use of loudspeakers were too stringent and must therefore be relaxed. At that debate Dr YEUNG said, "As a matter of fact, the amendment this time by the Administration on the Public Order Ordinance is commendable because the Administration has done a lot of things. For example, it listened to the suggestions of the Bills Committee regarding the appeal mechanism and the appointment of a judge to chair the Appeal Board. They were proposed by the Democratic Party at meetings of the Bills Committee. We are grateful they were finally accepted by the Administration." Hence, with regard to the allegations made just now by many Members that the POO is an evil law made in the '60s, or that the POO is a harsh and outdated law aiming at suppressing the people's human rights, I wish to point out that these allegations do not tally with the truth or the records of the former Legislative Council.

In addition, many people have considered the seven days' notice requirement too harsh and would impact on the exercise of human rights. These people therefore questioned why could not the requirement be changed to four days' notice or three days' notice instead. Some others also questioned why the threshold must be set at 50 persons and instead of a higher number. There have indeed been many different opinions. I agree with the view of a few Members like the Honourable LAU Kong-wah and the Honourable David CHU in that so long as we accept the establishment of a notification system, whether the length of notice is seven days, five days, four days, 24 hours or 12 hours makes no difference fundamentally. After all, prior notification is still required. Strictly speaking, to say that three days' notice is more lenient than seven days' or 12 hours' notice more lenient than seven days' is no different from the pot calling the kettle black, for the essence of the requirement is just the same in any of the cases. I think Dr the Honourable LUI Ming-wah is right in saying that if we accept the notification system, we should consider the matter with reference to the actual operational needs concerned, which is the actual time the enforcement agencies required to make the relevant arrangements. I think this is a fair enough view.

I should like to use an example which Members are all familiar with to help discuss this notification system, and that is the notification system of VIP suites at airports. With Christmas holidays approaching, I know many Members will soon be leaving Hong Kong for destinations overseas. As Members all know, while it is a rule of VIP suites for travellers to arrive one

hour before departure on ordinary days, travellers are required to arrive at the VIP suites at least two hours before departure during holiday seasons. Perhaps some Members would query why should a streaming system not be implemented. For some people travelling alone and have no hold baggage to check in, the departure procedure is very simple. In that case, why should they be required to arrive one hour before departure when they could simply show their identity cards and depart? Some Members may suggest requiring people travelling alone to arrive half an hour before departure, people travelling in a company of three or above to arrive at least an hour before departure, and a company of nine persons or more to arrive three hours before departure. But then other Members may suggest streaming travellers in the light of whether or not they have any hold baggage. On the other hand, there may also be Members suggesting streaming travellers with reference to the number of children they travel with because a group of law-abiding adult travellers can go through departure procedures rather quickly, but travelling with children can be more troublesome. But can we really do so? In the first place, that would cause much confusion and the management of the VIP suites would be at a loss as to what standard to adopt. Moreover, out of politeness and consideration for others should we not make some adjustment for people who provide services for us, so that we could make things easier for each other?

As a matter of fact, it was on the basis of this same principle that we introduced the notification system whereby seven days' notice to the Commissioner of Police will be required for any public procession consisting of 30 persons or more and public meetings of no less than 50 persons. The aim of the police is to enable as far as practicable members of the public to exercise their rights to freedom of speech and freedom of peaceful assembly. Why must we not consider things from a practical point of view and make accommodation with each other to facilitate the work of our police officers? This is also our appeal to the public. We do not have the least intention to make use of the provisions of the POO to suppress the freedom of speech of the public. It has been more than three years since the reunification, during such period has the people's freedom of speech been suppressed ever? Many people have talked about political censorship. Does political censorship exist in Hong Kong? I believe the people have sharp eyes, they know we have never resorted to political censorship.

I understand that some English newspapers are rather independent and often criticize the Government. Nevertheless, in recent months I have noticed in these newspapers some editorials giving praise to the SAR Government. For instance, on 2 October the *South China Morning Post* commended the SAR

Government for safeguarding the people's freedom of speech and freedom of peaceful assembly in accordance with the law and thereby enabling all public meetings to be held in an orderly manner. Why was the editorial published on 2 October? This was because the editors had seen the way we handled the many processions and demonstrations held on 1 October. Besides, the *i-mail* also made similar comments in its editorials yesterday and the day before. Having seen the way public processions and demonstrations are being dealt with overseas, these newspapers come to realize that the officials of the SAR Government, regardless of whether they are senior officials at the top level or front-line police officers, will always strive to abide by the Basic Law and other laws and regulations in force in Hong Kong and make every effort to help people participating in public processions and demonstrations to express their views in a peaceful manner.

I should like to advise Honourable Members that although a minority of people (I still consider those people a minority) have expressed strong disagreement with the issue, many from the international community whom I come into contact in my day-to-day work, such as consular officers of foreign countries in Hong Kong, foreign business associations, foreign investors, and even the senior officers of a major American investment bank I had lunch with a few days ago are very pleased with the public order and human rights situation in Hong Kong. A number of foreign government representatives and even some foreign media workers have told me that they considered the debate on the POO today a full manifestation of our being a free and pluralistic society. These foreigners considered the debate a good thing rather than a threat to the human rights or freedoms of the people of Hong Kong.

I should like to respond to some views relating to the law enforcement aspect. Over the past two days, many Members have expressed their opinions on the enforcement work of the police. Some have criticized the police for enforcing the law selectively, while some others considered the enforcement work of the police inconsistent and not stern enough, seeing that some of the law offenders have not been prosecuted. I wish to point out that the actual situation is not like that, for the enforcement work of the police has all along been very consistent.

First of all, it has all along been the policy of the police to make every effort to provide assistance for all kinds of peaceful public activities, and this policy will continue to remain in force. In handling any public activities, the Police Force have endeavoured to strike a suitable balance between the need to ensure the right of participants to express their views, and the need to .....

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): I am sorry I have to interrupt you, Secretary, but I hope you will confine your remarks at the moment to the explanation of your stance on the two proposed amendments, since you still have time to speak in reply later on.

**SECRETARY FOR SECURITY** (in Cantonese): Yes, Madam President, perhaps I should wait until I give my speech in reply to explain our prosecution policy. I hereby conclude my remarks on the two proposed amendments.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, do you wish to make a point of clarification?

**DR YEUNG SUM** (in Cantonese): Yes, Madam President, because the Secretary for Security has just quoted my remarks.

Honourable Members, the Secretary has just quoted what I said in 1995. I would like to solemnly clarify that at that time, we were very dissatisfied with the Bill moved by the Government. However, since it was then close to the end of that Legislative Session, we did not want to cause any delay to the introduction of the Bill by the Government .....

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, please clarify the part of your speech that has been misunderstood, instead of talking about history.

**DR YEUNG SUM** (in Cantonese): The Secretary referred to my speech in 1995.

**PRESIDENT** (in Cantonese): The Secretary referred to your speech in 1995, so would you please tell us how it has been misunderstood?

**DR YEUNG SUM** (in Cantonese): Madam President, the Secretary seems to think that we were very satisfied with the situation in 1995, but we only said that we would follow up at a later date because we did not want to cause any delay to the introduction of the Bill. However, the Secretary seems to think that we were very satisfied with the situation at that time. I just want Members to know this background.

**PRESIDENT** (in Cantonese): Members, when the Secretary for Security began to speak in response to the two amendments, I received a request to speak. A Member had prepared his speech but had to leave the Chamber because of the call of nature. So, he could not respond to the Deputy President's question on whether any other Member wished to speak.

I now give special permission for this Member to speak, and after that, I am also prepared to allow other Members to respond to the speech of this Member, and if any other Members left the Chamber for the same reason, I will also allow them to speak.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, I am very grateful to you. This is because I went to the toilet after copying for the whole morning. The situation was completely different when I came back. Nevertheless, I promise I will not comment on what the Secretary for Security said afterward. Madam President, I will begin my speech now.

The first question I would like to raise today is: Why can a spark start a prairie fire? The dispute surrounding the Public Order Ordinance (POO) has led to the question of who is actually playing with fire. In the past three years after the reunification, more than 8 000 meetings and processions have taken place in Hong Kong, with more than 300 failing to give advance notice. The reasons were varied — some people were dissatisfied with the POO, and some could not give notice in time. Yet no prosecution has been taken against these meetings for they were all conducted in a peaceful manner. Nevertheless, an opposition tide against the POO was triggered off because the community reacted strongly to the two selective arrests of students of the Hong Kong Federation of Students and university students by the Security Bureau and the Bureau's consideration of taking prosecution action. The tide was regarded by the Secretary as a spark that could start a prairie fire. But why was the POO

enforced selectively? Why were the Hong Kong Federation of Students, university students and some POO opponents singled out from the 300-odd peaceful assemblies failing to give notification for prosecution? Was it because the Hong Kong Federation of Students persistently disagreed with the POO and even angered the Government by occasionally chanting the slogan of "Down with TUNG Chee-hwa" in the course of marching that the Federation was subsequently penalized by selective arrests? What upset the community more was the abuse of power by the police during peaceful assemblies in which unarmed students and citizens were greeted by the police with pepper spray and fists from the back. Moreover, the police were reluctant to concede their mistakes. Is Mrs Regina IP, head of the Security Bureau, not required to be responsible for this improper conduct? Actually, the so-called spark was ignited by Mrs Regina IP herself. It was she who had ignited the spark that eventually started the prairie fire. Therefore .....

**PRESIDENT** (in Cantonese): Mr CHEUNG, please confine your speech to the POO. Yesterday, Mr LEE Cheuk-yan did the same by giving a speech lasting more than eight minutes not directly relevant to the subject. We have debated this subject for eight hours. Members should speak concisely as far as possible in delivering their speeches. Mr CHEUNG, I expected you to speak concisely as far as possible when I gave you the permission to speak.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, I see your point. I was actually responding to the speech delivered by the Secretary yesterday. Therefore, the person who should be asked to copy as a penalty should be Mrs Regina IP. She should copy "I will not ignite sparks again" 500 times.

My second question is: Both Chief Executive TUNG Chee-hwa and Secretary Regina IP have made it clear that the POO is not going to be amended. The motion moved by the Government today also serves to reiterate the Government's position of preserving the relevant provisions intact, implying that they are not going to be amended. It has been the Government's consistent policy to uphold the POO. Under Article 74 of the Basic Law, the consent of the Chief Executive is required before laws relating to government policies are introduced. The Chief Executive is actually the behind-the-scene supporter of the POO. It will be extremely difficult for us to seek the Chief Executive's

consent to amend the Ordinance. It will be even more difficult if the Government's motion is passed today for this means that this Council has appended its seal of "public opinion" endorsement. For certain people and organizations casting strong doubts over the POO or believing strongly in civil rights, civil disobedience provides the only way out when there is nothing this Council can do to change the POO. Such resistance, albeit weak, is meant to arouse the community's concern over the POO and the predominance of police power over human rights. Therefore, in criticizing civil disobedience, we should understand that people are forced by undemocratic political regimes and parliamentary assemblies to put up weak resistance in the form of civil disobedience. Members criticizing the students for disobeying the law and threatening the Government while withholding criticisms of the autocratic rule exercised by powerful government and of the undemocratic system are no different from those bullying the weak and helping a tyrant to victimize his subjects.

My third question is: The 1997 amendment of the POO is considered a retrogression in human rights. Many pro-China friends of mine branded the amendment of the POO in 1995 a conspiracy and considered it a time bomb left behind by the British Hong Kong Government which should be removed. But is this really the case? The POO was no doubt introduced in 1967 for the purpose of cracking down on leftist riots. It was since strictly enforced until 1989. Before 1989, as far as I remember, people taking part in processions had to divide themselves into small groups of 20 even the number of participants reached a few hundred. During the "1989 democratic movement", the Government found it no longer possible to execute the 1967 POO since it had already collapsed. As a march organizer of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, I once organized a procession of 1 million participants. When 1 million demonstrators flood to the streets, how could we expect them to split into 50 000 small teams of 20 people and march forward one by one in accordance with the POO? How could the strict licensing system provided for in the POO be preserved when millions of people gather themselves in marches within a short period of time every day?

In reality, it was the Chinese Government, not the British Government, that actually challenged and negated the POO enacted in 1967. This is because the marching tide broke out in Hong Kong at that time, which practically destroyed the POO, was actually triggered off by actions taken to suppress and combat democratic movements. At that time, the former Governor, Chris

PATTEN, had not yet arrived in Hong Kong to assume office. Amendment was made to the POO in 1995 by incorporating the 1990 Bill of Rights subsequent to the collapse of the 1967 POO. In any case, the 1995 amendment marked a very important direction in the sense that human rights were considered the fundamental value of the POO. Since then, police power and the power of the executive started to diminish gradually. These powers were subsequently transferred to an independent appeal board and the judicial organ. On the basis of human rights, the regulation on assembly changes from an application system to a notification system. Nevertheless, the police are still empowered to impose conditions on processions and meetings and even prohibit processions on the grounds of public safety and public order. What is more, the police are empowered to, under section 17 of the POO, interrupt and dissolve a meeting if the meeting will put social peace into jeopardy, even though prior notice has been given to the police. Such ultimate power works like a superior sword that prohibits processions and meetings. For these reasons, there is no point for us to worry that the 1995 POO may lead to riots. The police have basically adequate legal support and power to suppress riots, including riots similar to the Seattle case.

Under section 19 of the POO, the police can prosecute any persons who have taken part in riots. In addition, the police can invoke sections 20, 21, 22, 23, 24, 25 and 26 to prosecute those who use force to vandalize during riots. These provisions have never been doubted by the public in 1995, 1997 and today, not to mention being amended. It is indeed unnecessary for the Government to cite the Seattle riots as an example to intimidate us into believing that there is a legal vacuum in Hong Kong with respect to riots. Our laws are firm and strict. Subsequent to the 1997 amendment, the police have been given more power. The most obvious features include the system of "notice of no objection" and other related systems and amendments aimed at enhancing protection of national safety, the rights and freedoms of others, and so on. Nevertheless, these amendments have given rise to a fundamental dispute which lies in not only whether the police can make use of the notice of no objection, but also, and more importantly, whether the national safety test will be abused.

At that moment, provisions related to subversion, mutiny, secession and treason as contained in Article 23 of the Basic Law have not been enacted into laws. If these provisions are enacted into law, national safety might combine with the POO so that the Ordinance will turn into an extremely powerful weapon to restrict people's freedom of expression. While different people might see

national safety differently and the penalty imposed by the POO can vary, the Government can be strict or lax in enforcing the law too. There are just too many uncertainties, excessive discretionary power, looseness and tolerance in the law. The rule of man, when executed by the police, is going to be dangerous. Why should we enact law to impose strict penalties on peaceful demonstrators to achieve a deterrent effect and then treat them with generosity and tolerance? Human rights are natural rights. They are not supposed to be a gift bestowed on us out of police tolerance. We should not enact laws with the tone and mentality of a dictator. This is because laws should be used to regulate peaceful petitioners, not people's enemies. Petitioners should not be subject to strict treatment unnecessarily. They are not only Hong Kong citizens. They should enjoy human rights as well.

I believe the motion on the POO will definitely be passed today. But what will happen even if it is passed? It is very likely that this piece of law, aimed at restraining human rights, will not be respected by the people. As a result, civil disobedience will continue and the credibility of the Government and the law will still be challenged. That will impose an unnecessary barrier and cause unnecessary fuss. Just now, the Honourable YEUNG Yiu-chung quoted a poem as saying: "Though peace reigns over the land, the stupid people create trouble for themselves". Actually, TANG Tuo, a Chinese historian, once changed this poem to read: "Though peace reigns over the land, the stupid people create barriers for themselves". The POO has been continuously creating conflicts between the police and the civilians, igniting sparks and providing the firewood to fuel the prairie fire. Members who are wise should not allow this barrier to exist. The only way out is to amend the Ordinance.

The POO is actually a product of history. It is very strict for it was enacted for the purpose of suppressing riots in 1967. As riots only took place on land rather than at sea at that time, the law imposed by the Government to regulate demonstrations on land and at sea varied in terms of the severity of penalties. For demonstrations taken place on land and at sea, the maximum penalty was six years' imprisonment and a fine of \$2,000 respectively. In the case of land demonstrations, the police can forfeit "loudspeakers", impose additional conditions, raise objection, and so on. In the case of marine demonstrations, however, the police cannot do so except for imposing additional conditions. In particular, the police can prohibit land demonstrations on the grounds of national safety. However, marine demonstrations are not subject to regulation on the grounds of national safety. Why is there such a big difference

between processions taken place on land and at sea? The answer is historical reasons. This is because the POO was enacted for the purpose of suppressing land riots. Today, history is past tense. Both the leftist and democratic parties should cherish these peaceful years and stop inciting riots. There is no need for the Government to impose people's concerns and value in times of riots on laws regulating demonstrations and meetings so that riots and meetings shall be separately regulated by relevant laws. In doing so, different laws can be made to effect different regulation. What is more, the Government will no longer need to raise alarmist talk.

Thank you, Madam President, and thanks for your generosity.

**MR JASPER TSANG** (in Cantonese): Madam President, I am not only responding to the remarks made by the Honourable CHEUNG Man-kwong just now. I was outside this Chamber when the President's Deputy asked if any other Member wished to speak, and I could not indicate immediately that I wished to speak. I also knew that we should not re-open the debate after the government official had spoken, therefore, I request the President to rule whether you would allow me to speak now.

**PRESIDENT** (in Cantonese): As I have given permission for Mr CHEUNG Man-kwong to speak, I cannot disallow you to speak. Mr Jasper TSANG, please make your remarks.

**MR JASPER TSANG** (in Cantonese): Thank you, Madam President. Madam President, the amendment proposed by Mr James TO is based on some comments made by the United Nations Human Rights Committee on the Public Order Ordinance (POO) of Hong Kong. I listened very carefully to the remarks made by Members during yesterday's debate, but none of them who proposed that the Basic Law should be amended asserted the existing POO had contravened the international covenant on human rights or the Basic Law. I certainly agree with Mr James TO that the international human rights organization may have been courteous and very polite to us, and we cannot say that the Ordinance has not contravened the international covenant on human rights since other people have not specified how we have contravened the Covenant. We need not consider whether other people have been courteous or

polite when we have a debate in this Chamber. Colleagues who think that the Ordinance has contravened the Covenant or the Basic Law should point out this during the debate, however, I did not hear such comments yesterday evening. Ms Audrey EU only raised this core issue this morning and I listened very carefully to what she said.

Ms Audrey EU touched upon the POO and the Basic Law. I expected her to point out on what counts we had contravened the POO and the Basic Law, but she only made four points relating to the protection of the freedom of expression, peaceful assembly and procession on which the international community has reached a consensus. She thinks that we should take this consensus as the standard rather than the points made by the Secretary last evening. As a layman, I think this consensus is not a yardstick, and we will not be able to know if certain provisions have contravened certain consensus only by means of the yardstick and, by making amendments to the provisions, we will comply with the consensus.

Having discussed the consensus, Ms EU turned to analyse the existing POO. She pointed out two major problems. Firstly, if we are to place restrictions, the Government has the responsibility to explain why these restrictions are necessary. The Honourable Martin LEE also emphasized this necessity when he spoke. Ms EU made a very strong argument, that how the Government could prove that a seven-day advance notice was essential for a procession of 31 persons, especially after the Government had said that nothing happened during a procession for which a seven-day advance notice had not been given. This proves that the notice requirement is not necessary. Why is it necessary for a seven-day advance notice to be given for a procession of 31 persons? I found this reasonable at that time, but after I had thought deeply about it, I found it very hard to solve this problem. If the Government accepts the proposal of the Democratic Party and changes the threshold from 30 persons to 100 persons and seven days to 48 hours, that is, notice needs not be given for a public procession of 100 persons or less while a 48-hour advance notice must be given for a procession of over 100 persons. I also wish to ask the Government how it can prove that a 48-hour notice must be given for a procession of 101 persons. Who can prove this? We do not think the Government will enforce the law strictly without exception even if the provision is so relaxed. In other words, for processions of over 100 persons, if those concerned can give reasons for failing to give a 48-hour advance notice, should the police object to the procession? I do not think we will agree that the police should do so. Thus,

there will similarly be exceptions. If it is fine for the people concerned to fail to give a 48-hour advance notice for a procession of over 100 persons, why is a provision for a 48-hour advance notice for a procession of 100 persons necessary? According to this kind of reasoning, it is impossible to prove the necessity of strictly enforcing the provision as the two Members said. How can we prove that a 16-hour advance notice or a few hours' advance notice as specified in foreign countries is essential? Are we saying that there will certainly be injuries or disturbance to public order if those concerned fail to give a few hours' advance notice? Who can prove this? The argument seems untenable.

As regards the five-year imprisonment sentence, the Secretary for Security and the Secretary for Justice said in presenting their arguments that as a procession is a collective action involving a large number of people, it may cause grave accidents if an advance notice is not given. The Secretary for Security referred to the Lan Kwai Fong accident. Ms Audrey EU refuted very correctly that the Lan Kwai Fong incident was just an accident, and it showed that the notification system could actually not prevent crimes. Will an offender give advance notice? Will an offender who wants to destroy something with violence give an advance notice? This is right, but as far as I understand it, the POO is not intended to stop people who intend to use violence. Verbal violence is often used during debates in this Chamber, but we are not worried that the expression of different views by Members will turn into scuffles. We are also not worried that an interesting debate between the legal representatives of the prosecution and the defence in Court will turn into violence. A few Members mentioned the situation outside the Legislative Council Building yesterday afternoon. There will frequently be physical bumping when people of different views come together. Let us take the Lan Kwai Fong accident as an example. We all agree that it was an accident but in all fairness, did we affix responsibilities to the security departments after the accident and did public opinion let off the police? As we knew very well that many people were gathering there, had the police taken adequate precautions? Had it properly diverted the crowd? Had sufficient police strength been deployed to maintain order there? The police were responsible. Demonstrations are held normally to express people's views in a peaceful manner in a democratic society and we do not want these demonstrations to become violent acts as a result of inadequate precautions taken by a law enforcement agency. The situation is not unique to Hong Kong, it also happens in other parts of the world. Can we not take this issue into consideration? Ms Audrey EU made light of the issue and she said that she did not object to the notification requirement but she had not explained

why. Then she went on to talk about balance and reiterated the views of the Hong Kong Bar Association. As far as balance is concerned, we should protect an individual's freedom of expression, peaceful demonstration and peaceful procession and assembly, and we should also protect the community and maintain public order. People will think that the weights on either ends of the balance are more or less the same and we can restrict one in favour of the other and we can also suppress the freedom of the minority for the convenience of the majority. Many Members have expressed their views and Members of the Democratic Party do not object to the POO while Dr YEUNG Sum has declared once and again that the POO and the notification system should not be abolished. Why should the POO and the notification system be preserved? If we do not need to consider public order and whether assemblies or processions may cause inconvenience to other people or infringe upon the freedom and rights of other people, why should we preserve the Ordinance? Is the purpose of the provision merely to notify the police so that the police can serve the protesters as some Members or officials have said? I do not think so, and I wonder why we cannot talk about balance.

Some Members referred to the background of the enactment of the POO in 1967 during our debate. Prof NG Ching-fai said that fortunately nobody had referred to the POO as the "draconian law" in our debate these two days. He said so earlier and Mr Martin LEE spoke soon after he had spoken. Mr Martin LEE criticized that if the Government did not withdraw the motion, people would have doubts — I do not know shorthand but that was what I had recorded — people would suspect that the Government had proposed this motion to find a legal basis for the restoration of the draconian law on public order by the Provisional Legislative Council, and it seemed that the ghost of the restoration of the draconian law on public order was still there. After listening to the remarks of Mr Martin LEE, I think that during this period when some people have proposed amendments to the POO, if there is not any strong evidence to prove that the existing Ordinance restricts the freedom of speech, peaceful assembly and procession, people will definitely doubt if the queries about the POO is another political attack perpetuated by those people who oppose the Provisional Legislative Council. We have heard the remarks on the restoration of the draconian law for quite some time, and when the discussion of the POO was first proposed, the draconian law theory caused a temporary clamour and quite a few had mentioned the Provisional Legislative Council. This Ordinance became a draconian law as a result of certain moves made by the Provisional Legislative Council in 1997. If we need the three versions of the

Ordinance together, that is, the version before 1995, the version from 1995 to 1997 and the existing version, we can hardly say that the existing version is the same as the version before 1995. At the most, we can only say that compared to the version from 1995 to 1997, there is an additional provision for "notice of no objection" and also two additional grounds that have now been seriously condemned. As a Member has just responded to this point, I will not dwell on this. But if we discuss the restoration of the draconian law again, it will really make people think that it seems we have political intents and we do not really wish to hold a rational discussion over the existing Ordinance.

Madam President, in 1967, two of my family members were arrested and convicted and they had to serve prison sentences. They were students then and one of them was my 16-year-old sister. The arrests were made in the playground of their school. In this incident, the 14 female students assembling in the school playground were arrested, convicted and sent to jail. Madam President, I would like to tell my colleagues via you that I ask them to consider calmly on the basis of the facts whether this may happen under the existing POO. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Ms Audrey EU, have you pressed the button to indicate your wish to speak or do you wish to clarify the part of your speech that has been misunderstood?

**MISS AUDREY EU** (in Cantonese): Madam President, I just wish to clarify two points made by me to which Mr Jasper TSANG referred just now. First, he said I mentioned an international consensus. I did talk about an international consensus. I also said that this international consensus had been accepted by Hong Kong Courts. I mentioned two cases. One is the case of *Attorney General vs Ming Pao*. This case went to the Privy Council. I also mentioned the case of *Government vs NG Kung-siu*. I merely wished to show that this international consensus had been adopted as part of Hong Kong law and could serve as a benchmark to measure or balance the principles of both sides.

The second point I wish to clarify is that Mr Jasper TSANG specifically referred to the point why it was necessary for organizers of a procession consisting of 31 persons to give seven days' notice to the police and who was to decide whether this was necessary. In fact, as I have already explained, since

the international consensus is applied in part of Hong Kong laws, it is incumbent on the Government, that is, the party that restricts the freedom of expression or procession, to prove why it is necessary for organizers of a procession consisting of 31 persons to give seven days' notice. It is not a matter of personal liking or habit. Instead, the Government has the duty to explain why it has to place a restriction on such a small number of people. I have already said that it is the duty of the Government. Objectively speaking, Hong Kong is such a densely populated place. Even a bus carries more than 30 persons .....

**PRESIDENT** (in Cantonese): Ms EU, you have already clarified your two points. Members, I am sorry, I have to keep the debate as concise as possible. Otherwise, we may not be able to end the meeting in time for the celebration of the winter solstice.

**PRESIDENT** (in Cantonese): I now call upon Mr James TO to move his amendment to the motion.

**MR JAMES TO** (in Cantonese): Madam President, I move that the Secretary for Security's motion be amended, as set out on the Agenda.

**Mr James TO moved the following amendment: (Translation)**

"To add "This Council notes that, in its concluding observations issued after considering the report on Hong Kong's human rights situation submitted by the Hong Kong Special Administrative Region (HKSAR) Government in 1999, the United Nations Human Rights Committee stated that the HKSAR Government should review the Public Order Ordinance and bring its provisions into compliance with the relevant international covenant on human rights;" after "That"; to add "also" after "this Council"; to delete "reflect a proper balance" and substitute with ", in balancing"; and to delete "and that there is a need to preserve these provisions" and substitute with "need to provide for a notification system, but the specific requirements and penalty provisions need to be amended, such as by increasing the maximum number of participants to be exempt from the notice requirement, shortening the required notice period and lowering the level of penalty for non-compliance with the notice requirement, so as to bring such provisions into line with the relevant covenant and the aspirations of a modern, democratic and liberal society".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to the Secretary for Security's motion, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr David LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong, Mr Michael MAK and Dr LO Wing-lok voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung,

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 30 were present, seven were in favour of the amendment and 23 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 15 were in favour of the amendment and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**MRS SELINA CHOW** (in Cantonese): In accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in respect of the government motion or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the government motion or any amendments thereto, the division bell will only be rung for one minute.

**PRESIDENT** (in Cantonese): Miss Emily LAU, you may now move your amendment.

**MISS EMILY LAU** (in Cantonese): Madam President, I move that the Secretary for Security's motion be amended, as set out on the Agenda.

**Miss Emily LAU moved the following amendment: (Translation)**

"To delete "this Council considers that" and substitute with ", in view of the diversity of views in the community on"; to delete "existing"; and to delete "reflect a proper balance between protecting the individual's right to freedom of expression and right of peaceful assembly, and the broader interests of the community at large, and that there is a need to preserve these provisions" and substitute with ", this Council urges the authorities to refer this issue to the Law Reform Commission for consideration"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Miss Emily LAU to the Secretary for Security's motion, be passed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Miss Emily LAU has claimed a division. The division bell will ring for one minute.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. Mr SIN Chung-kai, is there a problem with your vote?

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, it is all right now.

**PRESIDENT** (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr David LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr David CHU, Mr NG Leung-sing, Prof NG Ching-fai, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 30 were present, six were in favour of the amendment and 24 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 15 were in favour of the amendment and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**PRESIDENT** (in Cantonese): I will call upon the Secretary for Security to speak in reply.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I will be as brief and concise as possible.

First of all, I would like to continue with my explanation on our prosecution policy. With regard to all peaceful public activities, the police have tried their best to facilitate. In discharging their duty of crowd control, the police will endeavour to remain fair and impartial. As to what kind of actions should be taken to regulate public assemblies and processions, the police commander at the scene will make decisions in accordance with the law and having regard to the circumstances of each case.

At a peaceful event with a minor, technical or unplanned breach of the Public Order Ordinance (POO), the police commander will give a verbal warning to the person in charge of the event. Details will be recorded and the event allowed to proceed.

At a peaceful event where the organizer has deliberately breached the law or disobeyed the lawful orders given by the police, the police commander will give a verbal warning to the person in charge of the event. The latter will be informed that the police will consider possible prosecution action. Evidence of offences committed will be collected and presented to the Department of Justice for advice.

At an event where a possible or actual breach of the peace occurs, the police commander will give a verbal warning to the person in charge and the participants of the event directing immediate cessation of any unlawful activity.

If the warning is ignored, the police commander will consider peaceful dispersal or physical removal of the crowd or arrest action as appropriate. Evidence of any unlawful activity will be collected and legal advice will be sought after the event with a view to initiating prosecution.

The police have been applying the above-mentioned principles in their handling of all unauthorized assemblies and the same principles will be applied in the future. Despite the fact that no prosecution has been made to date in respect of any unauthorized assemblies, that does not mean that the police will not enforce the provisions of the Ordinance. The police shall continue to act according to the enforcement guidelines and to consider the circumstances of each case in an objective manner before follow-up action is taken as appropriate. I wish to stress that all people are equal before the law and no one can consider himself to be above the law and no one can be permanently exempted from prosecution.

I would like to talk about a few points in brief. First of all, I would like to thank Mr Martin LEE for pointing out that when I was quoting the remarks made by the British Government, I omitted the translation of the word "necessary" in the sentence. I wish to thank him for correcting me. As a matter of principle, when human rights and freedom are to be regulated, there must be legal sanction for it. It must be to the minimum extent necessary and be able to facilitate the members of the public to exercise their human rights and freedoms. I believe in this respect our objectives are consistent with those of the Democratic Party and those from the democratic camp. The only difference lies in our views on the existing legislation and its enforcement.

I also want to make it clear that in my motion I have not stated that the POO can never be amended. I only say that the proper balance has been struck in the current legislation and it should be preserved. I believe no government can say at any point in time that a certain piece of legislation can never be amended. What I am trying to point out is that this piece of legislation is proper in terms of jurisprudence and it has been effectively enforced. If any one puts forward the idea that the legislation should be amended, he must be able to provide sound justifications before it is considered, for it is a serious matter to amend the law. This applies to, for example, issues like whether the penalties concerned are excessive. We will listen to the views put forward by Honourable Members carefully and we will study them.

The last point I wish to make is that, after a debate of eight hours, a diversity of opinions can be seen in the Chamber. There are differences in opinions as to who have ignited the fire, who have added fuel to the fire, who have been over-reacting and who are representing the views of the majority, and so on. I do not wish to make any comments on these, for I do not think that it is meaningful. I just wish to quote from an ancient sage and share his words with Honourable Members. Please bear with my being pedantic for another time. I think the remarks I shall be quoting indeed worth our pondering. This is what Mencius says on the question of analysing the words of others.

Mencius said, "One should be able to pinpoint where the bias, exaggerations and evasions of others' words lie. These aberrations come from their thoughts and do harm to politics; if these thoughts are applied to political measures, they jeopardize politics. If the Sage (Confucius) were to return to earth, he would agree with me."<sup>2</sup> The above is Mencius' reply to GONGSUN Chou on analysing other people's words. He said that incomplete comments will enable us to know the inadequacies; exaggerated language will enable us to know the pitfalls; and language which deviates from the truth will enable us to know how it deviates from the truth; evasive language will enable us to know how weak it is. When these four kinds of language are grounded in the thoughts, they will definitely cause harm in politics. If they are realized in political measures, they will certainly endanger the country and work in all aspects. If the Sage should appear again, he would certainly agree that these remarks are true. Honourable Members may notice that Mencius was very confident in what he said and he was very proud of it. He said if the Sage appeared again, the Sage would agree to what he said. I do not know if people will think that Mencius was being too arrogant.

Many of us have been debating for eight hours on the controversies surrounding this subject and Mr Martin LEE has said rightly that it is difficult to make any conclusions today. I think members of the public would form their own views and history will be the final judge.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Security, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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<sup>2</sup> 《孟子》 *Mencius*, 華語教學出版社 1999

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for one minute.

**PRESIDENT** (in Cantonese): Honourable Members were very eager and they had cast their votes before the division bell has finished ringing. *(Laughter)* Please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr David LI, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Miss Emily LAU, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 58 Members present, 36 were in favour of the motion and 21 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

### **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motion. Two proposed resolutions under the Interpretation and General Clauses Ordinance.

First resolution.

### **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, in my capacity as the Chairman of the Subcommittee set up by the House Committee to study the subsidiary legislation gazetted on 24 November 2000, I move the motion standing in my name on the Agenda.

The purpose of the motion is to extend the scrutiny period of 12 items of subsidiary legislation relating to revision of fees and charges.

At the Subcommittee's meeting on 13 December 2000, the Administration was requested to provide additional information for members' consideration. Pending receipt of the information and to allow time for the Subcommittee to report its deliberations to the House Committee, the Subcommittee has agreed that I should move a motion to extend the scrutiny period to the Council meeting on 10 January 2001.

With these remarks, I urge Members to support the motion.

**Mr SIN Chung-kai moved the following motion:**

"That in relation to the:

- (a) Dutiable Commodities (Amendment) (No. 2) Regulation 2000, published as Legal Notice No. 330 of 2000;
- (b) Firearms and Ammunition (Amendment) (No. 2) Regulation 2000, published as Legal Notice No. 331 of 2000;
- (c) Firearms and Ammunition (Storage Fees) (Amendment) Order 2000, published as Legal Notice No. 332 of 2000;
- (d) Pawnbrokers (Amendment) Regulation 2000, published as Legal Notice No. 333 of 2000;
- (e) Bills of Sale (Fees) (Amendment) Regulation 2000, published as Legal Notice No. 334 of 2000;
- (f) Fees for Official Signatures and Miscellaneous Services (Amendment) Notice 2000, published as Legal Notice No. 335 of 2000;
- (g) Hong Kong Court of Final Appeal Fees (Amendment) Rules 2000, published as Legal Notice No. 336 of 2000;
- (h) High Court Fees (Amendment) Rules 2000, published as Legal Notice No. 337 of 2000;
- (i) District Court Civil Procedure (Fees) (Amendment) (No. 2) Rules 2000, published as Legal Notice No. 338 of 2000;
- (j) Coroners (Fees) (Amendment) Rules 2000, published as Legal Notice No. 339 of 2000;
- (k) Small Claims Tribunal (Fees) (Amendment) Rules 2000, published as Legal Notice No. 340 of 2000; and
- (l) Legal Practitioners (Fees) (Amendment) (No. 2) Rules 2000, published as Legal Notice No. 341 of 2000,

and laid on the table of the Legislative Council on 29 November 2000, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 10 January 2001."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr SIN Chung-kai be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr SIN Chung-kai be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): The second proposed resolution under the Interpretation and General Clauses Ordinance.

**PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MRS SELINA CHOW:** Madam President, I move the motion standing in my name on the Agenda.

At the meeting of the House Committee on 15 December 2000, Members decided to form a Subcommittee to study five items of subsidiary legislation gazetted on 8 December 2000 which are related to revision of fees. These five items are Amendment Regulations made respectively under the Country Parks Ordinance, the Marine Parks Ordinance and the Electricity Ordinance.

To allow time for the Subcommittee to convene meetings and then report its deliberations to the House Committee, Members proposed that the scrutiny period of these five items of subsidiary legislation be extended to the Council meeting of 17 January 2001.

Madam President, I urge Members to support the motion.

**Mrs Selina CHOW moved the following motion:**

"That in relation to the:

- (a) Country Parks and Special Areas (Amendment) Regulation 2000, published as Legal Notice No. 349 of 2000;
- (b) Marine Parks and Marine Reserves (Amendment) Regulation 2000, published as Legal Notice No. 350 of 2000;
- (c) Electricity (Registration) (Amendment) Regulation 2000, published as Legal Notice No. 351 of 2000;
- (d) Electricity (Wiring) (Amendment) Regulation 2000, published as Legal Notice No. 352 of 2000; and
- (e) Electrical Products (Safety) (Amendment) (No. 2) Regulation 2000, published as Legal Notice No. 353 of 2000,

and laid on the table of the Legislative Council on 13 December 2000, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the meeting of 17 January 2001."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mrs Selina CHOW's motion be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Proposed resolution under the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

**PROPOSED RESOLUTION UNDER THE RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**MRS SELINA CHOW** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

After the two former Municipal Councils were dissolved on 1 January 2000, the Administration set up a new administrative structure within the Government to take over the provision of municipal services. The first Legislative Council also passed a motion at the Council meeting on 26 January 2000 to extend the terms of reference of individual panels to cover various matters related to monitoring the services used to be provided by the two former Municipal Councils.

After this Council started working in October, the House Committee conducted a review on how the terms of reference of various panels of the Council could be re-determined in respect of monitoring various government policies and issues of public concern.

At the meetings of the House Committee on 20 October and 1 December, Members agreed to the formation of an additional Panel, namely the Panel on Food Safety and Environmental Hygiene, to handle various government policies and issues of public concern relating to food safety, environmental hygiene and agriculture and fisheries. Corresponding arrangements should accordingly be made to the terms of reference of the Panel on Health Services and the Panel on Environmental Affairs.

Madam President, at the two meetings of the House Committee, Members have discussed other amendments in the motion such as the re-naming of the Panel on Trade and Industry following the reorganization of the Commerce and Industry Bureau to tally with the corresponding Policy Bureau. Members agreed that the English name of the "Trade and Industry Panel" should be changed to the "Commerce and Industry Panel" while the Chinese name should be changed to "工商事務委員會". The reorganization of the Commerce and Industry Bureau also involves making rearrangements to the functions of the Bureau and other Policy Bureaux. The House Committee has agreed that the

future Panel on Commerce and Industry should handle issues relating to commerce, industry, business and services promotion, innovation and technology, intellectual property rights protection and inward investment promotion matters. The Panel on Economic Services should handle issues relating to economic infrastructure and services, including air and sea transport facilities and services, postal and weather information services, energy supply and safety, consumer protection, competition policy and tourism. The House Committee has also proposed that the terms of reference of each and every Panel should be set out in the Schedule to the motion and that the wordings of the terms of reference should be amended to reflect the provisions of Rules 77(3) and (14) of the Rules of Procedure. The relevant amendments have been endorsed by the Panels and the House Committee.

Madam President, to implement the various changes proposed by the House Committee, I move a relevant motion to reorganize the Panels and re-determine their terms of reference so as to assist this Council in the continuous monitoring of government operations.

**Mrs Selina CHOW moved the following motion:**

"That:

- (1) the formation of an additional Panel, namely the Panel on Food Safety and Environmental Hygiene, in respect of the policy areas of the corresponding bureau and its terms of reference, as considered appropriate and as recommended respectively by the House Committee;
- (2) the amended list of corresponding bureaux/bodies and policy areas in respect of which the 17 existing Panels are formed by resolution made and passed by this Council on 8 July 1998 and amended on 26 January 2000 and their amended terms of reference, and the re-naming of the Panel on Trade and Industry as the Panel on Commerce and Industry, as recommended by the House Committee,

set out in the Schedule, be approved.

## SCHEDULE

	Panel on	Corresponding Bureau/Body	Policy Area	Terms of Reference
1.	Manpower	Education Manpower Bureau	and Labour and manpower and planning matters	Part 1
2.	Commerce and Industry	Commerce and Industry Bureau	Matters relating to commerce, industry, business and services promotion, innovation and technology, intellectual property protection and inward investment promotion matters	Part 2
3.	Public Service	Civil Service Bureau	Matters relating to the civil service and Government-funded public bodies, and other public service matters	Part 3
4.	Administration of Justice and Legal Services	(a) Judiciary (b) Department of Justice (c) Administration Wing of the Chief Secretary for Administration's Office	Matters relating to the administration of justice and legal services	Part 4
5.	Home Affairs	Home Affairs Bureau	District, community and rural matters, human rights, civic education, data protection, press freedom, building management, youth and women matters, the	Part 5

Panel on	Corresponding Bureau/Body	Policy Area	Terms of Reference
		provision of leisure and cultural services as well as matters relating to development of arts and culture, public entertainment, sport and recreation	
6. Transport	Transport Bureau	Transport matters	Part 6
7. Housing	Housing Bureau	Private and public housing matters	Part 7
8. Security	(a) Security Bureau (b) Independent Commission Against Corruption	Security, public order, public safety, corruption-related matters and nationality and immigration matters	Part 8
9. Constitutional Affairs	Constitutional Affairs Bureau	Matters relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations	Part 9
10. Food Safety and Environmental Hygiene	Environment and Food Bureau	Matters relating to food safety, environmental hygiene and agriculture and fisheries	Part 10

Panel on	Corresponding Bureau/Body	Policy Area	Terms of Reference
11. Financial Affairs	(a) Finance Bureau (b) Financial Services Bureau	Financial and finance matters	Part 11
12. Education	Education Manpower Bureau	and Education matters	Part 12
13. Planning, Lands and Works	(a) Planning Lands Bureau (b) Works Bureau	and Lands, buildings and planning matters, works and water supply and Public Works Programme	Part 13
14. Welfare Services	Health and Welfare Bureau	Welfare and rehabilitation services matters	Part 14
15. Information Technology and Broadcasting	Information Technology and Broadcasting Bureau	Matters relating to information technology, telecommunications, broadcasting and film services	Part 15
16. Economic Services	Economic Bureau	Services Matters relating to economic infrastructure and services, including air and sea transport facilities and services, postal and weather information services, energy supply and safety, consumer protection, competition policy and tourism	Part 16
17. Health Services	Health and Welfare Bureau	Medical and health services matters	Part 17
18. Environmental Affairs	Environment and Food Bureau	Environmental and conservation matters	Part 18

**Part 1****Legislative Council  
Panel on Manpower****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to labour and manpower planning matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 2****Legislative Council  
Panel on Commerce and Industry****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to commerce, industry, business and services promotion, innovation and technology, intellectual property protection and inward investment promotion matters.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

### **Part 3**

#### **Legislative Council Panel on Public Service**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to the civil service and Government-funded public bodies, and other public service matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 4****Legislative Council  
Panel on Administration of Justice and Legal Services****Terms of Reference**

1. To monitor and examine, consistent with maintaining the independence of the Judiciary and the rule of law, policy matters relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 5****Legislative Council  
Panel on Home Affairs****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to district, community and rural matters, human rights, civic education, data protection, press freedom, building management, youth and women matters, the provision of leisure and cultural services as well as matters relating to development of arts and culture, public entertainment, sport and recreation.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

## **Part 6**

### **Legislative Council Panel on Transport**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to transport matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy area prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 7****Legislative Council  
Panel on Housing****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to private and public housing matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 8****Legislative Council  
Panel on Security****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to security, public order, public safety, corruption-related matters and nationality and immigration matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

## **Part 9**

### **Legislative Council Panel on Constitutional Affairs**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters and district organizations.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 10****Legislative Council  
Panel on Food Safety and Environmental Hygiene****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to food safety, environmental hygiene and agriculture and fisheries.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 11****Legislative Council  
Panel on Financial Affairs****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to financial and finance matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

## **Part 12**

### **Legislative Council Panel on Education**

#### Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to education matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy area prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 13****Legislative Council  
Panel on Planning, Lands and Works****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to lands, buildings and planning matters, works and water supply and Public Works Programme.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 14****Legislative Council  
Panel on Welfare Services****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to welfare and rehabilitation services matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

## **Part 15**

### **Legislative Council Panel on Information Technology and Broadcasting**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to information technology, telecommunications, broadcasting and film services.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 16****Legislative Council  
Panel on Economic Services****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to economic infrastructure and services, including air and sea transport facilities and services, postal and weather information services, energy supply and safety, consumer protection, competition policy and tourism.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Part 17****Legislative Council  
Panel on Health Services****Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to medical and health services.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

## **Part 18**

### **Legislative Council Panel on Environmental Affairs**

#### **Terms of Reference**

1. To monitor and examine Government policies and issues of public concern relating to environmental and conservation matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed.

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

**MR FRED LI** (in Cantonese): Madam President, I will speak on the Panel on Food Safety and Environmental Hygiene.

During the last term, the Council worked hard in following up the issue concerning the dissolution of the two Municipal Councils. Now that the five-star food establishment system that I was most concerned about has been abolished, the Government should consider how it can handle matters such as the principles observed by the two former Municipal Councils in determining the rents of markets, the policy for itinerant hawker licence and the recently announced demolition of the Central Market. These are the concerns of the Panel.

Although I know that time is pressing, I still hope that colleagues can find time to take part in the Panel, handle the above matters and follow up the work of the two Municipal Councils in the spirit of this Council.

I so submit.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member responded)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Those against please raise their hands.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): Honourable Members, we have finally dealt with all the items on the Agenda of this meeting. I wish you a peaceful Christmas and a happy New Year.

I now adjourn the Council until 2.30 pm on Wednesday, 10 January 2001.

*Adjourned accordingly at twenty-five minutes past One o'clock.*