

# **OFFICIAL RECORD OF PROCEEDINGS**

**Thursday, 12 December 2002**

**The Council met at half-past Two 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, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

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, G.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU KONG-WAH

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

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

DR 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., J.P.

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.

THE HONOURABLE MA FUNG-KWOK, J.P.

**MEMBERS ABSENT:**

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

THE HONOURABLE LAU CHIN-SHEK, J.P.

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

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE ELSIE LEUNG OI-SIE, G.B.M., J.P.

THE SECRETARY FOR JUSTICE

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

SECRETARY FOR SECURITY

**CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**MEMBERS' MOTION****ENACTING LAWS TO IMPLEMENT ARTICLE 23 OF THE BASIC LAW****Continuation of debate on motion which was moved on 11 December 2002**

**PRESIDENT** (in Cantonese): We shall now continue to debate the motion on enacting laws to implement Article 23 of the Basic Law.

**MS MIRIAM LAU** (in Cantonese): Madam President, Hong Kong is a free international cosmopolitan. The people of Hong Kong enjoy various kinds of freedoms and rights, and we cherish such liberties very much. However, if some people should abuse such liberties to use Hong Kong as a base or stepping-stone to conduct subversion activities against our country, how can we just sit back without doing anything, as Hong Kong is part of China? Therefore, we are duty-bound to take necessary precautions to protect national security. The Liberal Party takes a positive attitude towards the enactment of laws by Hong Kong on its own to implement Article 23 of the Basic Law (Article 23).

Recently, the Government has released the Consultation Document on the enactment of laws to implement Article 23, and this has induced heated discussions in the community, and certain provisions contained in the Consultation Document are also quite controversial. The Liberal Party considers that the major direction of the Consultation Document is correct, but some of the individual provisions should be better defined, so that the Blue Bill to be tabled before the Legislative Council in the future can be comprehensive and better address the concerns of the public. Today, I would like to speak on certain areas in the Consultation Document which have attracted greater attention of the public, and I would also present the opinions of the Liberal Party on these areas.

Firstly, the Consultation Document suggests incorporating the element of "levying war" into the offence of treason. The Liberal Party thinks that the meaning of "war" must be clearly defined. If someone goes abroad to persuade overseas countries to launch an economic war against China, does this fall under the definition of levying a war in association with foreigners? Again, if someone joins hand with foreigners to launch an electronic war to paralyze the computer systems of the country, this is obviously one of the ways of levying

war. However, this does not fall under the conventional definition of a war of violence. We feel that the latter could be included in the meaning of "war", whereas there is no need to include the former as "war". Therefore, the Administration must clearly and specifically define the meaning of "war", which should include wars that involve the use of force as well as the unconventional war which involves illegal acts threatening national security. But such acts should not include economic wars or war of words.

The Consultation Document suggests making the offence of misprision of treason. The Liberal Party feels that acts of treason should be subject to punishment, and that the harbouring of people who commit treason should also be punished. This is unquestionable. What is more, similar provisions are found in the laws of other countries, such as the United States, Canada, Australia and Singapore. However, if a citizen has access to certain messages of treason with no understanding of their implications, and if he chooses not to report them to the police, then he should not be considered as having committed the offence of misprision of treason. Another example, if someone had a dinner together with a group of friends, and among these friends, some of them had committed treason, but "someone" was not aware of this. During the dinner, he had heard some social exchanges which were mixed with some incomprehensible remarks such as "Let's go hunting tigers tonight". The people who committed treason were later arrested and it was confirmed that "Let's go hunting tigers tonight" was the code of their treason operation. And there was evidence which showed that "someone" was there when these people committed treason were discussing their operation. But he did not report the offence to the police. Could "someone" be said to have committed the offence of misprision of treason and be convicted? Let me quote another example. If a resident provides for some friends and relatives in his place for a short period, but he does not know that there are traitors in among such guests. Has this resident committed the offence of misprision of treason? We do not wish to see that innocent people have to prove their own innocence when they are suspected of committing this offence. Therefore, the Liberal Party proposes that the Government should clearly define the meaning of this offence, and should include the element of "knowledge of the offence" in the definition, and the onus of proof should rest with the prosecution. So doing would help to ensure that the provision will not catch the innocent public.

The Consultation Document proposes to make it an offence to organize or support activities of a proscribed organization. In order to achieve the purpose

of protecting national security, the Liberal Party does not oppose this legislative proposal. However, the proposed provision has not clearly defined certain possible situations that might arise from affiliation. For example, the head office of Company A which runs a normal trading business is established in Hong Kong. It has set up a subsidiary Company B in a certain city in the Mainland. Obviously, there is an affiliation relationship between Head Office Company A and the subsidiary Company B. However, Company B later deviates from its normal business, which Company A has no knowledge of, and eventually it is proscribed by mainland authorities because of its involvement in activities that endanger national security. In this case, will Company A be proscribed because of its relationship with Company B which has been banned? We suggest that as long as the innocent party immediately severs its affiliation with the banned organization upon discovering the truth, it should not be proscribed. The Liberal Party thinks that the term "affiliation" should be clearly defined in the laws.

The Consultation Document proposes that, on the approval of a police officer of the rank of Superintendent, an emergency entry, search and seizure power should be provided to the police for purposes of investigating some Article 23 offences without the need to apply to the Court for an warrant. The Liberal Party appreciates that the provision of such a power to the police is understandable as evidence could have been destroyed if the police are not empowered to take timely action under certain emergency situations. However, such a practice could make the people worry that the power vested in the police could be abused. In order to allay the concern of the public over this issue, the Liberal Party proposes that the police should, generally speaking, follow the normal practice of applying to the Court for a search warrant before taking actions to enter premises for investigation unless under exceptional circumstances. Even under exceptional circumstances which warrant immediate entry to private premises, the officer responsible for granting the approval should be at least the Commissioner of Police.

As for the offence of sedition proposed in the Consultation Document, it has aroused many arguments in society recently. One of the focal points of argument is that the Government has not followed strictly all the elements of the Johannesburg Principles. Specifically, the Government has not adopted one of the elements in Item No. 6 of the Johannesburg Principles, namely, seditious speech should have a direct and immediate connection with incidents of violence.

The Liberal Party thinks that this element is restrictive in some measure. Firstly, under many different circumstances, acts that endanger national security are not violent acts. Computer crimes, for example, should also be banned perhaps. Secondly, (acts of violence incited by) some seditious speeches, be they made now or in future, should make the persons making them bear the criminal liabilities. For example, in the beginning of the year, someone incites the public to plant bombs in Tiananmen in Mid Autumn Festival (that is, eight or nine months later). Are we going to think that such seditious acts should not be subject to penalties? We should by no means let the instigators go just because the violence does not happen immediately. The Liberal Party agrees with the general direction of the Johannesburg Principles, and we also agree that reference should be made to the Johannesburg Principles as far as possible when the bill on Article 23 is drafted by the Government. However, we think that it is not necessary for us to follow or adopt 100% of all the elements in Johannesburg Principles. In fact, since the Johannesburg Principles was made in 1995, no country in the world has adopted it so far as far as we know. However, the Liberal Party thinks that several factors should be taken into consideration in drafting the provisions on this offence. First, the person at the time of making seditious speeches must have the intention of using his speeches to incite the subsequent acts of violence. Second, there must be some causal connection between the seditious speeches and the subsequent acts of violence. For example, a certain columnist might write an article in the newspaper to call on the unemployed people to go to the Government Headquarters to exert pressure on the Government, but no one paid any attention at all to the article at that time. Yet some years later, in chaos staged by the unemployed, the rioters set fire on the Government Headquarters. Rioters arrested claimed that they had been inspired by the columnist's article published in the newspaper a few years ago, so they set fire on the Government Headquarters and staged a riot several years later. However, there is no causal connection between the comments of the columnist made several years ago and the subsequent riot. Therefore, there is no reason for him to bear the liability of the offence of sedition. Of course, the columnist also did not incite others to set fire on the Government Headquarters. All he had done was just to encourage the unemployed to exert pressure on the Government. We hope that the Government can provide a clear definition on this offence in drafting the relevant provision, so as not to catch the innocent. Meanwhile, the freedom of speech in Hong Kong should be safeguarded and not be undermined as a result of the provision drafted on this offence.

On the whole, the Liberal Party supports the enactment of laws by the Hong Kong Government to implement Article 23. However, the Government should give due regard to the concerns and worries expressed by people from all walks of life in the course of legislation. It should also ensure that the existing human rights and freedoms enjoyed by the people of Hong Kong would not be undermined in drafting the bill. I strongly hope that the Government will listen extensively to the views expressed in society and carefully consider the opinions presented by the public, so as to make the future bill more compatible with the overall interests of Hong Kong. Madam President, I so submit.

**MS AUDREY EU** (in Cantonese): Madam President, I rise to speak in support of the original motion of Mr James TO.

Undoubtedly, upon the release of the Consultation Document on Proposals to implement Article 23 of the Basic Law, the local community has been seriously divided. On the face of it, there are two camps: the proponents and the opponents. In fact, many people in society do not oppose the enactment of laws on Article 23 in principle. The question is how the relevant legislation could be enacted in a suitable manner, so that national security can be protected while the existing way of life in Hong Kong will not be affected.

Unfortunately, soon after the Consultation Document was released, Mr TUNG said resolutely that the rights and freedoms of Hong Kong people would absolutely not be reduced. In my opinion, the subsequent marketing approach of the Government is also problematic. People requesting for the release of a White Bill were all regarded as trying to adopt "delaying tactics", whereas all the people opposing the enactment of laws were said to have "evils in their hearts", or unpatriotic, or emotional or politicized. This polarization approach could only intensify social division, which once again shows that most of the controversial issues have deteriorated due to the poor governance and management approaches of the Government since the reunification.

The focus of this debate is the proposals in the Consultation Document, that is, whether the proposals in the document have reduced the existing rights and freedoms of the people and whether such proposals would ruin the rule of law in Hong Kong. The Consultation Document proposes to repeal certain

obsolete provisions such as the offence of assaults on the sovereign and the treasonable offences. In fact, such provisions have not been invoked for a long time, so their existence is just nominal. Of course, I support that they should be repealed. However, the Government has also proposed to revive certain "ancient" common law concepts, such as the levying of war. Please refer to footnote 17 of the Consultation Document, the definition of "levying of war" is any foreseeable disturbance. Madam President, this is one of the "mummies" as said by the Chairman of the Hong Kong Bar Association. The version quoted by the Government is *Kenny's Outlines of Criminal Law* published in 1966. This book belongs to the "ancient" time, and is out of print. I had not read the book even in my university days because it was obsolete already. So this is really a mummy. As for the so-called "terminator", Member may wish to refer to the tabulated comparison compiled by the Legal Adviser of the Legislative Council. It is a very thick document, altogether 19 pages. The document indeed makes a true comparison between the existing laws and the proposals contained in the Consultation Document. It serves to show that the latter is really more stringent than the former. Yesterday, Mr LEUNG Fu-wah challenged Mr James TO for failing to cite examples to illustrate how the Hong Kong laws are more stringent than the mainland laws. In fact, if he had noted the remarks made by Prof Albert CHEN of University of Hong Kong, who is also a member of the Basic Law Committee, he would surely know that Prof CHEN had cited several examples to show that the proposals in the Consultation Document are more extensive and more stringent than those in the Mainland.

Madam President, 15 minutes are insufficient for detailed discussions on each proposal in the Consultation Document. I just wish to point out five essential principles within the limited time and examine what is wrong with the proposals put forward by the Government according to these principles.

Firstly, I think the purpose of enacting laws on Article 23 should be confined to safeguarding national security. In fact, the existing laws already cover the definition in this regard, that is, safeguarding the territorial integrity and protecting sovereignty. But this does not include safeguarding the stability of the Central Government and the Government of the Hong Kong Special Administrative Region (SAR). As a national of the People's Republic of China, the subject of our loyalty is the country, not any regime, government or political party. If the government is corrupt and incompetent, the people should have the

right to request for a change of regime through peaceful means. This would surely affect the stability of the government of the time. However, banning such acts by legislation is undoubtedly assisting the bad to bully the weak.

If we refer to the Consultation Document, we can see that the legislative intent of the Government is not confined to safeguarding national security alone. Among the proposed offences of subversion, sedition or even the theft of state secrets, the targets of protection include "the basic system of the state" as well as the stability and interests of the SAR, and so on. The meanings of such terms are vague, not useful to helping the public understand the Consultation Document. Presently, the existing laws of Hong Kong are already adequate in dealing with illegal acts that will affect the stability and interests of Hong Kong. If the legislative intent of the Government is to protect national security, the scope should be very narrow, and only very few people might commit such offences and their occurrences would also be very rare. However, what we see now, as the scope covered by the Consultation Document is very extensive, people from the academic, religious, financial, commercial, library management, journalistic, social work, information and technology, educational and legal sectors have all expressed concern.

Secondly, the enactment of laws should not exceed the scope of Article 23. Madam President, let us look at this blue Consultation Document and it is clearly entitled "Proposals to implement Article 23 of the Basic Law". However, if we look at the proposals carefully, we will find that most of them have exceeded the scope of Article 23. The most obvious example is, of course, the fact that while Article 23 only mentions the regulation of the activities and affiliation of foreign political organizations and bodies, the Consultation Document has extended it to proscribing Hong Kong branch organizations which are affiliated with a mainland organization identified as endangering national security by the Central Authorities according to mainland laws. This is a trigger for Hong Kong laws. In fact, when the Central Government proscribes a certain organization on grounds of national security, it is difficult to imagine that the SAR Government and the local courts would hold a different view. The existing Societies Ordinance is adequate for regulating foreign political organizations. Chapter 7 of the Consultation Document should be deleted completely because it has obviously exceeded the scope of Article 23.

In fact, a lot of people have pointed out this problem of "excess"; that is, the proposals in the Consultation Document have exceeded the scope of Article 23. There are so many incidents of "excess" that I cannot possibly finish mentioning them within a short 15 minutes. Even the Government does not refute this allegation, though it insists that they are proposed for the sake of implementing Article 23. This bending of the Basic Law by the Government, that is, interpreting it sometimes more loosely and other times more strictly, basing on its own needs, has made me feel worried and pained.

Thirdly, legislation should not made convict a person merely by his speeches or thought. The Government claims that the present legislative proposals are compatible with this requirement. But when we read the Consultation Document, we find that a person can be convicted even if he is in private possession of seditious publications. This will obviously stifle the freedom of thinking and academic freedom. I find it even more difficult to understand how the possession or handling of publications without actual subversive acts could endanger territorial integrity or affect the sovereignty.

Intent itself is highly subjective. It is very dangerous to convict a person simply by judging his intent in expressing his opinions. Therefore, the Hong Kong Bar Association and many non-government organizations have been striving for the introduction of the Johannesburg Principles to specify that only when the expression of opinions has triggered off or likely to trigger off immediate disturbances before it would constitute the sedition offence. Ms Miriam LAU has just left the Chamber. But she has just now cited two examples. One of the examples was that someone called on others to plant bombs in Mid Autumn Festival, whereas another example was about someone urging others to go on a demonstration or to take action. How can we know what is the personal intent of that person in one of the examples? And in the other example, what is not the personal intent of that person? Therefore, there must be some kind of effects and some tangible connection before an instigator can be convicted. The Government said that it could not accept the Johannesburg Principles because such principles were not widely accepted by other countries. However, I hope the Government can appreciate the special circumstances of Hong Kong. First, the concept of "national security" in China is distinctly different from that in other countries. On the other hand, we have too many incidents, too many to name them one by one, to show that China is very sensitive to "national security", and their idea of its coverage is very extensive as well, and in addition, Hong Kong has sufficient laws to tackle acts

of violence. Therefore, if we have to add a sedition offence which has a strong political overtone to our existing laws, the introduction of the Johannesburg Principles should be a very reasonable safeguard.

Fourthly, the legislation should not undermine the free flow of information and freedom of the press in Hong Kong. In particular, I would like to mention the issue on the theft of state secrets. The Chief Secretary for Administration, Mr Donald TSANG, said yesterday that the proposals were modelled on the practice of the existing legislation, and the scope had absolutely not extended. This I do not agree. In fact, the Consultation Document has said clearly in paragraph 19, "The Official Secrets Ordinance already provides a good foundation for protecting state secrets. Nonetheless, we propose to introduce a new offence of unauthorized and damaging disclosure of protected information obtained by unauthorized access." This is obviously new. Furthermore, this is proposing to shift the burden of protecting confidential information from government employees to reporters, or even the general public. The general public and the mass media shall have to decide on their own whether the information they have obtained is protected or unauthorized information, or whether the release of such information will compromise national security or interests. The relevant provisions have far exceeded those of the existing laws, and are absolutely unacceptable. I have attended many forums on Article 23, and have heard Prof Albert CHEN say that this newly added proposal is very "harsh" and dangerous. Besides, the Consultation Document also proposes to incorporate "information relating to relations between the Central Authorities of the People's Republic of China and the SAR" into the category of protected information. Yet, there is no clear definition on this. After the reunification, the relation between Hong Kong and the Mainland has changed from foreign affairs to internal affairs, and there have been more frequent exchanges between the two places, and the information involved has grown enormously in coverage. Such information can be very valuable in terms of journalistic work. The Government now wants to prohibit such disclosure without clear justifications. I feel that this is an unwise move.

Fifthly, there should be suitable checks and balances on the executive and enforcement agencies. The Consultation Document proposes to enhance the investigation power of the police, so that police officers may enter and search private premises without a warrant. This has obviously violated the above principle. And the Government has not made any suggestions or proposed any mechanism to monitor and check abuses. The proposed offences under Article

23, such as treason, secession, subversion, and so on, are all contrived acts. So if the police suspects someone has committed or is prepared to commit the relevant crimes, the police should have enough time to apply for a warrant. Even in emergencies, the magistrate on duty or his relief personnel could remain standby on a round-the-clock basis to issue a search warrant. Besides, under certain specified circumstances, enforcement officers have already been authorized to enter and search private premises without a warrant. Therefore, the Government really cannot advance sound justifications for enhancing the power of the police.

In conclusion, the Consultation Document has violated all the five principles mentioned by me. The scope of the proposed offences is very extensive and the penalties are very harsh. For example, the possession of seditious publications alone carries a maximum penalty of imprisonment for two years. The Government stresses that the Courts of Hong Kong will safeguard the freedoms and rights of Hong Kong people. However, the Courts have their own limitations. Once the laws are enacted, be they fair or otherwise, the Judges could only pass verdicts according to the laws. What is more, it is also questionable whether the Courts of Hong Kong could have absolute autonomy in dealing with cases which involve national security offences.

According to Article 19 of the Basic Law, the Courts of Hong Kong shall have no jurisdiction over acts of state such as defense and foreign affairs, and the Courts shall have to rely on certificates issued by the Central Government. In future, when the Courts of Hong Kong hear cases on illegal disclosure of confidential information on defence and foreign affairs, will they have to follow the advice of the Central Government? In addition, on matters of state secrets, the Consultation Document proposes to conduct hearings in camera. It also suggests to leave certain matters, for example, the part relating to facts, to be handled by tribunals out of the Courts.

Apart from Article 19 of the Basic Law, Article 158 also stipulates that the Court of Final Appeal shall have to seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress (NPC) if it is hearing cases which involve affairs under the purview of the Central Government as well as affairs concerning the relations between the Central Government and Hong Kong. The Government, on the one hand, tells us not to worry because the laws enacted under Article 23 will not involve the interpretation of the Basic Law. However, it is not willing on the other hand to

guarantee that it will never again seek from the NPC an interpretation of the Basic Law on the enactment of laws on Article 23.

Madam President, for over two decades, that is, since 1980, Hong Kong has issued 22 White Bills, that is, one White Bill per year on average. Now the proposal of enacting laws on Article 23 is so significant that it touches the nerves of "one country, two systems", and its consequences are far reaching. Yet, the Government surprisingly has turned down (the request for issue of a White Bill) by saying resolutely that there is no such a need. In fact, many people, including Mrs Anson CHAN, Prof Albert CHEN, whom I mentioned just now, the Hong Kong Bar Association, and even the Law Society of Hong Kong have indicated (such a need) in certain forums, and I have received letters from the American Chamber of Commerce and even the British Chamber of Commerce, and all of them, though they did not use the term of "White Bill", did mention that there should be a consultation on the provisions. Besides, the representative of the banking sector in the Legislative Council, who is a very rational person, has also requested the Government to issue a White Bill. Maybe some people think that it is not necessary, as they would accept whatever legislative proposals the Government throws their way. But this is not a good reason to convince those who think it is necessary that they should absolutely not suggest the publication of a White Bill, nor can they tell these people that their sole purpose is just to make the issue politicized or emotional or they are just employing delaying tactics. I feel that it is very distressing to see such an attitude. As for the amendment moved by Mrs Sophie LEUNG, I think it is avoiding the core issues of this motion, that is, whether the proposals of the Government have undermined human rights, freedoms and the rule of law. The consultation period will soon be over, and the Legislative Council has already held several hearings. This is the time for us to declare our stances and draw the issue to a conclusion. For this reason, I am sorry that I cannot support this amendment.

Madam President, lastly, I would like to respond to the remarks made by Mr LEUNG Fu-wah. I feel extremely sorry for the attack he launched at the comments made by Bishop Joseph ZEN. Yesterday, Chief Secretary Donald TSANG said he was sorry for what Mr James TO had said. I do not know whether he would respond to the comments of Mr LEUNG Fu-wah tomorrow or in future. In fact, religions are fighting for justice for the people. In this respect, I believe Bishop Joseph ZEN has been able to come forth to voice his

opinions because of his courage, his religious faith and his commitment. On this, I feel that it was because he thinks it had happened in the Mainland that .....

Thank you, Madam President.

**MR ABRAHAM SHEK:** Madam President, this time I speak with mixed feelings. Happy, that the freedoms of objection, criticism and expression are alive and kicking. There are no signs of restriction to civil liberties. But sad, because this is the first time I speak without the support of my daughters. Let me elaborate a little: every Tuesday, my daughters would read what I would speak in the Legislative Council on Wednesday. Normally, they would comment and give support. This time, instead of seeing what I have written, they asked me a simple question: How would I vote? I told them that I would vote against Mr James TO's motion. Unfortunately, the conversation ended there and then. The purpose of telling you here the story of my family's minor crisis is that it reveals a true reflection of a much bigger problem that our society is facing. Our community is seriously polarized, divided as a result of the proposed legislation on Article 23 of the Basic Law (Article 23). Never in my experience as a legislator have I witnessed a proposed legislation that has created so much misconception, misrepresentation and misunderstanding than Article 23. It also generated mistrust between people, and between people and the Government. This is sad for Hong Kong. In the light of this sensitivity, I urge the Government that they should be extremely careful in drafting the proposed law on Article 23, that it should not only be a well-drafted bill to cater for the needs of the majority of Hong Kong people, but should simultaneously be able to bridge the wide gap of differences between the two polarized sectors of our community; for a house divided cannot stand and a state divided cannot be ruled.

Madam President, since Hong Kong's return to Chinese sovereignty on 1 July 1997, the territory has successfully implemented the "one country, two systems" principle, with "Hong Kong people administering Hong Kong" with a high degree of autonomy. In the five years since reunification, we have established a proud new identity.

But the introduction of anti-subversion laws has provoked new fears that Hong Kong's autonomy and freedoms may be undermined. The fears are intensified by overwhelming press coverage on the proposed laws' negative

impact on civil liberties. But many critics have missed one important point. Hong Kong is to enact the anti-subversion laws on its own and by this very Council. It should be noted that legislation related to national security is always a legitimate claim and responsibility of a sovereign state instead of a local government. By granting Hong Kong the right to enact its own security laws, the Central Government shows true respect to the "one country, two systems" principle and the trust and faith they have in the people of Hong Kong. The phobia that Hong Kong may not preserve its autonomy from the Central Government is, therefore, based on misunderstanding and one that is not substantiated.

In my humble view, I strongly believe we should fulfil our legal obligations to implement Article 23 — to protect adequately the State's interests, to maintain our sovereignty, territorial integrity, unity and our country's national security. The question is when and how? The answer is now and through the legal process of law enactment through consultation and Blue Bill.

Some critics believe there is no need to implement Article 23. But they are being too idealistic. Life is not a bed of roses. We have our obligations. The need for legislation is stipulated in the Basic Law which is universally accepted in Hong Kong and the world. Some members of our community, such as the legal sector, instead suggest to the Government the publication of a more detailed draft of the laws. A "White Paper", the legal experts argued, can better address the worries of the local public. I respect their beliefs, their convictions and their courage to oppose and also their good intention for the people of Hong Kong, though I might not necessarily agree with them. In particular, I commend Mr Martin LEE and Mr James TO that they have propagated their faith both locally and overseas. These voices of dissent and expressions of objection are a testament that Hong Kong is still and will continue to be a place for the freedoms of speech, beliefs and press. The Government, I also believe, is sincere when it conducted a three-month public consultation exercise. But given Article 23 is the most sensitive piece of legislation after the handover, a thorough public consultation process is very important to give our community ample time and opportunities to scrutinize what is being proposed. The three-month consultation, as seen by many, may not be all that adequate. But again, adequacy is in the eyes of the beholder. In this regard, the Government should consider extending the public consultation period if there is an absolute necessity and in this, it is the Government's prerogative as to an extension or not.

The current proposed legislation is admittedly very broad and to some, it might affect the personal freedom of Hong Kong people. The question is not whether this legislation shall be passed but how it should be enacted so as to ensure it will not undermine the civil liberties guaranteed by the Basic Law, the Joint Declaration and the Hong Kong Bill of Rights Ordinance.

In my view, the primary consideration of all government officials should be the interests of Hong Kong people whom they have undertaken to serve by providing a stable socio-economic and political environment and to ensure the freedom we enjoy is jealously guarded and preserved. There is no compromise in this belief and principle. The Government should also take careful note that, according to a poll by the Hong Kong Policy Research Institute, the public's confidence in press freedom and the judicial system has dropped 11% and 12% respectively since October, after the Proposals to implement Article 23 of the Basic Law was issued.

The reason for the drop may be because the current Consultation Document outlines general principles only. It omits important specific details and, in some cases, only defines terms vaguely, implying a very broad interpretation that could be open to abuse. As this is a very sensitive issue, the Government must define the terms precisely to avoid any misconception before pushing through the legislation. It also needs to reassure the community at large that the provisions are crystal clear in intent and there will be no danger of misinterpretation or abuse of power. With this in mind, the public consultation should be carried out with great sensitivity and thorough objectivity. I believe the Government has attempted to cater for this as the Secretary for Security and her team have done their fair share of listening and learning during the last two months. For this, I commend her efforts.

Hong Kong is an internationally renowned financial, trading and service centre. Overseas investors establish offices here because of our relatively free business environment and respect for the rule of law. The Heritage Foundation recently named Hong Kong the world's freest economy for the ninth consecutive year. But, these investors now have some concerns about that rule of law and about our freedom of information and human rights. In particular, representatives from both the United States and England have expressed concerns over the proposed implementation of Article 23. They also warned

we could lose our top spot if proposed anti-subversion laws restrict the free flow of economic information. It is apparent that global business confidence in Hong Kong would be eroded if international fears over the anti-subversion law, whether they be well-intentioned or misguided, are ignored. To secure the confidence of international community, the Government should do more lobbying activities in the international community to clarify the enactment of laws to implement Article 23 will not damage their personal freedom and business interests here. However, if foreign investments are secured at the cost of national security, then it is not worth having. I am sure this is not the case. What the Government and each and every one of us need to do is to tell ourselves and the world that Hong Kong is and will be a free city.

Madam President, it is important for the international community to note that the Consultation Document has emphasized the legislation intention is to comply with the individual's fundamental rights. Should there be any challenges to the new laws, the Court will seek to interpret and apply these laws consistently with the basic rights in Articles 27 and 39 of the Basic Law. Thus, the international community should have confidence that Hong Kong's status as an open, law-governed metropolis will be maintained.

Another of Hong Kong's significant competitive strengths recognized internationally has been our reputation for a free and unfettered press. An environment of media freedom nurtures an informed, globally-conscious public, crucial to developing a highly productive intelligent workforce for which Hong Kong is renowned. In the past weeks, journalists and publishers have raised fears over the "grey area" of the sedition and theft of state secret provisions of the Consultation Document. Since Hong Kong's return to Chinese sovereignty, Hong Kong is still internationally renowned for its press freedom and free flow of information. I, therefore, have confidence that the Government will allay such fears and will seriously consider the worries of the press sector and incorporate their views when drafting the precise wording of these provisions for the implementation of Article 23. Hong Kong journalists and publishers have a sterling tradition that they had never in the past or present practised self-censorship. This I believe will also be the case for the future irrespective of whether there is an Article 23 or not. They are the custodians of our freedoms of press, of speech and of beliefs. No laws can change this.

Another group of citizens — artists, teachers and academics — has also raised fears over the proposed anti-subversion legislation. They worry that artistic freedom, academic freedom and the right to teach sensitive topics would be affected. In my opinion, there should not be any restrictive boundaries when it comes to knowledge and learning. If the legislation deters teachers from discussing national affairs, it would not be beneficial to Hong Kong as an international city nor for the well-being of our citizens. The Government definitely understands the importance of academic freedom to the academic standard of tertiary education. Moreover, it is the Government's policy to promote the local universities into world-class educational institutions. I believe that the Government will abide by the existing legal provisions relating to academic freedom when drafting laws to implement Article 23.

In spite of the various concerns, Madam President, I am quite certain the Government will take into account the general public's views when drafting the bill. What the Government needs to do now is to ensure that all offences encompassed in the letter of Article 23, as it is to be implemented, are as clearly and tightly defined as appropriate. Moreover, the proposals should be thoroughly based on common law and international human rights standards, in accordance with the "one country, two systems" principle. I do have full confidence in the Sino-British Joint Declaration and the Basic Law which preserve Hong Kong's freedom under Chinese rule and I do not believe my colleagues and myself would pass any law under Article 23 which would endanger or curtail our freedom. Moreover, I agree with the views of David PANNICK, a veteran lawyer, who was asked by the Government to give opinion on the Article 23 legislation, and he said, "the fundamental rights of individuals are of supreme importance but those rights are not unlimited." Finally, I believe that the Government would seek to strike a fine balance between meeting the demands of national security of the country and the requirements for the protection of the individual's fundamental rights when enacting laws to implement Article 23 of the Basic Law. A good and great government is one that listens, analyses, deliberates and acts, and I trust that the Hong Kong Government would be a good and great government.

Madam President, with these words, I oppose Mr James TO's motion.

Thank you.

**MS EMILY LAU** (in Cantonese): Madam President, I rise to speak in support of the motion of Mr James TO.

The Frontier does not support the enactment of laws on Article 23 of the Basic Law (Article 23). We feel that national security should not override personal freedoms and fundamental rights. Some people say that, "Without the country, how can there be families?" Last Sunday, we held a debate with some students in the pedestrian precinct in Mong Kok. One of the students, though very young, said, "Without the people, how can there be the country?" Madam President, I believe this is the fundamental difference in opinion between the Government and us. The Frontier also opposes the present proposals of the Government, because we worry that the Administration may wish to (or in the name of national security) apply certain mainland standards to Hong Kong, in possible detriment to "one country, two systems". Therefore, we support the motion moved by Mr James TO.

Yesterday, 10 members of the Frontier held a discussion with the Secretary for Justice and her colleagues for two hours. We in the Frontier are very grateful to the Secretary for Justice for finding so much time from her busy schedule to discuss with us. Although we might have different viewpoints, we still felt very satisfied with the two-hour discussion. This was really a long period of time. We also delivered our submission to the Secretary for Security yesterday afternoon. The Secretary for Justice also suggested that we should have a discussion with Mrs Regina IP. The Frontier of course would very much like to discuss with Mrs IP. Yesterday we also mentioned this suggestion to the Secretary, but she was quite busy. So, we shall have to see if an arrangement can be made in future.

However, Madam President, I am quite worried about the drafting instructions. Ms Cyd HO also asked about this in her oral question yesterday. Now as we look at the reply and the timetable provided by Mrs IP yesterday evening, we can see that over 3 000 submissions have been received, and more are on the way until Christmas Eve. I do not know whether the figure would increase to 4 000 or 5 000. But the target is to have all the submissions read, completely analysed and answered by January, so that the Bill can be introduced in February. Therefore, I asked yesterday whether the Bill could be drafted before the drafting instructions were prepared. The Secretary for Security replied in the negative. I believe the Secretary would not lie to us. But if this is so, how can the Bill be introduced in February? And how can the whole Bill

be passed in July? This is really inconceivable. The Secretary said it was a matter of opinion. Maybe the law draughtsmen led by the Secretary for Justice are all very brilliant, so that they could draft such a complicated Bill within a few weeks. This is really incredible.

However, no matter what, Madam President, I agree with many Honourable colleagues that we should not make use of this Chamber of the Legislative Council, with the protection afforded us by the Legislative Council (Power and Privileges) Ordinance, to unleash personal attacks on officials, Honourable Members or even other people. Therefore, I feel extremely sorry about the attacks yesterday, be they targeted at the Bishop or the Chairman of the Hong Kong Bar Association. I do not think that we should use the speaking time to attack others. We should target our discussions at the issue, instead of any individuals.

Madam President, Mr LAU Chin-shek mentioned one point yesterday, and I believe the Secretary for Security must give a response to it, that is, different groups of people have put forward different opinions which can be categorized into two main camps. I just heard Mr Abraham SHEK say that even his family members are divided into two groups on this issue. No matter which group eventually emerges as the winners or which group as the losers or all of us become the losers in the debate today, in the end there will not be any winner. We have voiced our opposition, but I understand there are seriously divided views on this issue in society. Madam President, looking back at the past, if the community was so divided on an issue, the Administration would usually not proceed with any new items. It would only take action when a consensus was reached. Therefore, I do not know whether there will be an exception this time. Or the Government may seek a consensus in a widely divided situation before it proceeds any further. In fact, I believe the Secretary, having listened to the debate during these two days, would be able to seek a consensus without pushing through a decision on the issue.

Madam President, I also wish to make one other point. During the past few weeks, even yesterday, some people attacked those opponents of legislation. Even in this Chamber, when some non-government organizations came before us, certain Members pointed at them, saying that they were not qualified to be the nationals of the People's Republic of China. How are they not qualified to be the nationals of the People's Republic of China? Why should they make such personal attacks? Someone may say, if you do not support the enactment of

laws, you are not patriotic. What does it mean? I hope I would not hear such comments anymore in the debate this afternoon. In particular, we should not make use of the protection accorded us to attack those who are not in this Chamber and could not make immediate responses to such attacks.

Madam President, I told the Secretary for Justice yesterday that Article 23 was not the only unfinished business in the Basic Law. We have discussed the agenda of democratization for five years. Why the Government does not start a public consultation on that? Why must legislation on Article 23 alone be proceeded with? The Legislative Council has passed two motions in support of establishing a certain mechanism. Under the present circumstances, it is no easy task to pass a motion. And we did pass the motions to urge the Government to conduct a consultation immediately, yet the Government is still unwilling to do so. But now, the Legislative Council has never passed any motion to request the Government to enact laws on Article 23, but the Government is so insistent on proceeding with it now. How can the Government convince the people by its selective approach in implementing the Basic Law?

Madam President, we in the Frontier oppose enacting laws to implement Article 23 now because the letter of Article 23 is the political product of the Beijing Massacre in 1989. We know that the Central Government worries that Hong Kong may become a base for subversive activities against it. But we all heard a Member say yesterday that, by comparing with the first and second drafts of Article 23, it is obvious that the third draft is much more stringent. This was a development after the Massacre, and the political intent of the provisions is also very strong. Madam President, due to the above reasons, the Frontier is worried that, once the legislation is enacted, the Government may enforce the legislation to deal with dissidents for political reasons or political needs. The Frontier opposes the present approach because we have witnessed the happenings in our neighbouring countries and territories in Asia. Some of such countries have suppressed dissidents and violated human rights on the pretext of safeguarding national security or taking actions against threats or terrorist activities. What are the countries I am talking about? I am talking about South Korea and India. Both countries have formulated national security laws. Two years ago, when I visited South Korea (although it has democratic elections), I also mentioned this point. I am also talking about Malaysia and Singapore. Both countries have their internal security laws, which were inherited from their former British sovereigns. I am also talking about Sri

Lanka which also has public security legislation. Therefore, after I have seen the situations in these countries, I really do not want to see the same situation arising in Hong Kong. Therefore, if such laws really have to be enacted to control our people, as suggested by someone yesterday and maybe someone would make the same suggestion later, I feel that we should first have the election and let the people choose their government by way of an election. If that elected government really wants to do it, then we can let it enact the laws. But if the effect is not good the laws are enacted, then the people may force the regime to step down. The situation will not be the same as now — that the laws are to be enacted at a time when we are being ruled by an appointed regime.

Madam President, although the Frontier opposes the enactment of laws, we still have read the Consultation Document. Therefore, when we discussed the issue with other Members, we suggested that Mr James TO should take up the job of moving the motion. However, I still wish to express my opinions on this Consultation Document. In fact, many Honourable colleagues have already expressed a lot of opinions. Some of my opinions may overlap with those which have already been expressed. But I will say them even if they are overlapping views, because we have to let the Secretary for Justice and the Secretary for Security hear the opinions of the people and Members. However, before I express my opinions, I have to tell Mr Abraham SHEK that I agree with him: I do admire Mr Martin LEE and Mr James TO for going overseas. They were not "badmouthing" Hong Kong, but they were telling foreign governments that we have such problems. In fact, the Department of Justice has also sent its officials abroad on this issue. If Members want to scold people for bringing this issue to overseas countries, why do they not scold Mr Robert ALLCOCK? During the past few years, many government officials have travelled overseas on this issue. Why should Members launch attacks on Honourable colleagues and even resort to abusive language? I feel that, sometimes it is alright even other people may not hold the same opinions as yours, but personal attacks are unnecessary, let alone saying something that one is not willing to say to his own children.

Madam President, many people say that the Courts will protect the human rights of the people of Hong Kong, and ultimately it should be so. However, let us look at a recent case in which three persons were charged with the offence of unlawful assembly. What was the judgement of the Court? The Court said that in fact the assembly was a peaceful one, and nothing had happened. However, the Court still had to pass a guilty verdict because it was so stipulated

in the laws. But the Judge said that this was politics, and questioned if it was necessary to take the case to court. Can the Court really help us? If the draconian laws are enacted, and the Secretary for Justice and the Secretary for Security have repeatedly refused to guarantee that the Government would never again seek interpretation of the Basic Law by the NPC, so even if the Courts have really protected the rights of the people, once an interpretation is given by the NPC, the rights of many people could be removed immediately. How can such a situation set our minds at peace?

Madam President, I wish to briefly say a few other points, some of which may overlap with those already made by other colleagues. Why do I think that the motion of Mr James TO is valid? What kind of freedoms will be reduced? On the offence of treason, I think the coverage is too extensive. Moreover, the provisions are intended to regulate all the permanent residents of Hong Kong, including residents with foreign nationality. If there is really a war, under what circumstances will that group of people be said to be assisting the enemies? Someone seems to have suggested that the payment of tax and participation in demonstrations in support of their countries would constitute such an offence. Do we have to, like what the Secretary for Security has said, relinquish our status as permanent residents immediately? Is this what we wish to see?

Many Honourable colleagues have mentioned acts of misprision of treason. The Frontier also opposes the formulation of such an offence, because such activities do not involve violence. In a panel meeting, the Secretary for Justice once said that all these were crimes involving violence. But I said there were countless examples which did not involve violence. When we talk about fighting against the offence of misprision of treason, I worry that this will encourage us to spy on others, and report on each others. By then, what kind of world will it become?

The offences of secession and subversion include the use of serious unlawful means, the definition of which includes the serious interference or serious disruption of an essential service, facility or system. Will a large-scale procession (or not really large-scale, just one that involves several scores of taxis or container trucks) constitute sufficient interference? If so, this is an unlawful assembly which cannot be held. So it is easy to be considered as unlawful. As long as a procession is not consented by the Commissioner of Police, it is unlawful. Is it very easy to be step beyond the dividing line of legality?

Madam President, I also worry that our freedom of speech and freedom of thinking will be undermined. On the offence of sedition, the Government all along has been unwilling to adopt the Johannesburg Principles. I feel that we hold a different view from that of the Liberal Party. We hope that all such factors as motives, acts and effects should be taken into consideration. Otherwise, it will make the press very worried, and it will make many people worry.

Besides, on the theft of state secrets, the Government considers that disclosure of protected information which is obtained not through authorized access constitutes a damaging disclosure. I feel that this would affect the press. Under many situations, the press really cannot make use of information only under authorized access. What is a damaging disclosure? The information they have obtained may damage the dignity of the Government, may embarrass the Government. But this is their job. Therefore, I feel that, as I said earlier, most acts in connection with the offence do not involve the use of violence. If many of the relevant activities involve violence, the people may understand better why the Government should draft the laws that way. But many of the acts do not involve violence, and they are intended only to shape the thinking of the people. Even the Chief Librarian of the University of Hong Kong had come to this Chamber to tell us that, with his experience as Chief Librarian in many different countries, he had never heard of the possibility that he might be convicted just for possession of some seditious publications.

Madam President, we have no time for any further discussion. I would like to thank Honourable colleagues for supporting the extension of the speaking time of each Member to 15 minutes. I feel that this is a solemn subject. There is no winner today. I do not support the amendment of Mrs Sophie LEUNG because I feel that, as other colleagues have said, she has deleted what we think the problems with the Consultation Document. If she has sought to add this point, maybe it does not matter. This is because if she said we must protect the rights of the people, it is like adding in some motherly love or an apple pie. It does not matter. But she has sought to delete this part, which is something we cannot support.

With these remarks, I support the motion.

**MR JAMES TIEN:** Madam President, there is no escaping the fact that Article 23 is an emotive topic, and putting it on the statute book always promises to spark intense argument and considerable anxiety among the general public. This is one reason why it was not tabled after the handover.

Hong Kong was journeying into the unknown in July 1997, and no one was quite sure how things would work out. Assurances were not enough. People wanted proof that the promises would be honoured, and there would have been deep and widespread concern if laws on sedition and treason had been enacted at that time.

The past five years have shown that those assurances have been honoured. Hong Kong continues to enjoy its freedoms, protected by common law and guaranteed under its mini-constitution, the Basic Law. Therefore, this is the right time for the Government of the Hong Kong Special Administrative Region (SAR) to do what is legally required of it, namely, to enact laws to protect fundamental interests of the state and protect national security.

Drafting Article 23 now, when everyone is confident of the city's autonomy, and society is safe and stable, is by far the wisest course of action. Laws drafted hastily in response to some crisis or other can be at worst, draconian, and even at best, are never the most moderate. The anti-terrorist laws tabled in the United States after the September 11 terrorist attack are the best examples to illustrate my concern.

Every country has some national security regulations set in place to protect its sovereignty and national safety. These laws are designed and regulated by the central government and local government has no authority to intervene. We should appreciate the opportunity that our own SAR Government has been granted, in allowing it to draft the law on its own.

If our Government is to prohibit acts against national security effectively and efficiently, it must have corresponding legislation and executive power as the basis for action.

Madam President, the Consultation Document outlining the Government's proposals is one which the Liberal Party feels is comprehensive and detailed. So long as the new legislation continues to protect the existing liberties and rights of Hong Kong citizens, life should continue unchanged. It is vitally important

that we should contribute to the process of consultation by voicing our concerns on concepts which might be perceived to affect our freedoms and rights.

The press and the public have raised many questions about legislation. Some strong opinions have been expressed on the subject and this is entirely to be expected in a free society. This will help Legislative Council Members when they scrutinize the Bill and will serve to remind them to keep a balance between national security and personal freedom.

Specifically, the Liberal Party has some suggestions. We feel that certain phrasing in the proposals, are presently too vague, for example, in the matter of "levying war" and "theft of state secrets". These should be much more clearly defined.

In particular, the Government should take into account the very real concerns about the free flow of information and freedom of the press. It goes without saying that if Hong Kong loses its cherished reputation as the only place in South East Asia where information is readily available and reliable, foreign business confidence will suffer a devastating blow, with possibly very adverse consequences for economic growth and foreign investment.

The Government has on a number of occasions reassured the public that the way of life in Hong Kong will not be affected by its proposals. It is equally important for the Government to ensure that the way businesses are done here will in no way be adversely affected, and that investors can continue to do business in an open and predictable environment. And the Liberal Party believes that this message must be spelt out loud and clear.

Understandably, concerns have expressed by some businesses, including the international banks, and the small and medium enterprises, on whether and how laws protecting national security will have an effect on their daily operation. We urge the Government to take every opportunity to clarify such concerns, such as:

- whether doing business with Taiwan which has certain political beliefs will amount to secession or subversion, and this "Taiwan" means Taiwanese or Taiwanese companies;

- whether normal business dealings with overseas organizations will come under the proposed offence in relation to foreign political parties; and
- if a Hong Kong businessman comes into possession certain economic and business information which is classified sensitive in the Mainland, whether this will constitute an offence of theft of state secrets under the proposals.

Madam President, it will not serve the interests of this city if the press feels inhibited from doing its job as a watchdog of the Government and a fearless commentator on society. These are the attributes which have made Hong Kong what it is.

We therefore caution that the Government must take great care to ensure that the freedom of the media should be protected. Therefore the definition of seditious information has to be clearly defined. We also believe the offence of possessing seditious publications is too wide and may incriminate many innocent citizens. We therefore call for a thorough review with the objective of removing this clause.

There is also considerable concern about forceable entry by the police. The Government is proposing to vest the authority for this action in any police superintendent. The Liberal Party believes that this power should be exercised sparingly and only under the most urgent circumstances. Even then it should only be authorized by the Commissioner of Police.

Prior to the introduction of the Bill we would like to see a paper containing the Government's position on the views expressed and received so far, so that the public may be informed as to what views aired during the consultation period have been taken on board. This will certainly help to facilitate a much more balanced and informed debate on the Blue Bill.

Madam President, with these remarks, I support the amendment.

**MR FRED LI** (in Cantonese): Madam President, on behalf of the Democratic Party, I would focus my comments on the proposals of the Consultation Document in several areas, namely, the activities of and connections with proscribed organizations, investigation powers and penalties.

The Democratic Party thinks there are 10 deficiencies in the proposals of the Consultation Document in respect of the activities of and connections with proscribed organizations.

Firstly, Article 23 of the Basic Law (Article 23) only prohibits the activities of or the establishment of ties with relevant organizations or bodies, but there are no provisions on the proscription of organizations or bodies. Moreover, Article 23 only prohibits the political organizations or bodies of Hong Kong from establishing ties with foreign political organizations or bodies, but it has never prohibited Hong Kong organizations from establishing ties with mainland — I stress, mainland organizations.

Secondly, the Consultation Document proposed that: an organization could be proscribed if its objective, or one of its objectives is to engage in any act of treason, secession, sedition, subversion or espionage. In other words, the organization could be incriminated even if it has not made any public statements or conducted any activities, and this is in violation of the freedom of association.

Thirdly, the proposal that a certificate from the Central Authorities should be conclusive proof is undoubtedly meant to bring the mainland concept of national security into Hong Kong and the Court of Hong Kong does not have the right to contend this view. Moreover, even if an organization of Hong Kong is affiliated with a mainland organization, whether or not the two organizations have respectively violated the laws of the respective regions actually has nothing to do with their affiliation or otherwise.

Fourthly, the Consultation Document proposed that the Secretary for Security may proscribe any organization on grounds of national security, public safety or public order. However, since Article 23 is on legislation for national security, the proposal that the Secretary may proscribe any organization on grounds of national security, public safety or public order is obviously outside the scope of Article 23.

Fifthly, the Consultation Document proposed that "an organization" should be defined as an organized effort by two or more people to achieve a common objective, irrespective of whether there is a formal organizational structure. This definition of organization is much too wide and if only there is "reasonable belief", it would be an offence to organize or support the activities of a proscribed organization. This is incompatible with the principle that the

offence of endangering national security should be narrowly defined and the definition of support described above is also too wide and violates the principle of precision in legislation.

Sixthly, the Democratic Party thinks that members of unlawful organizations or those engaged in the legal activities of unlawful organizations should not be regarded as having committed an offence only because certain organizations are unlawful or that they have participated in the activities of that organization. This violates the freedom of association and the principle of minimal legislation.

Seventhly, the proposals in the Consultation Document are incompatible with Principle 8 of the Johannesburg Principles for they have not explicitly offered any protection in relation to "an organization may not be prevented or punished merely because it transmits information issued by or about an organization that a government has declared threatens national security or a related interest".

Eighthly, the proposal that a Secretary for Security appointed by the Central Authorities can proscribe an organization without approval from the Court means inadequate protection for the freedom of association. Furthermore, the proposed tribunal of the Government is endowed with three violations. Firstly, it deprives the Court of its judicial powers and this is against the spirit of Article 14 of the International Covenant on Civil and Political Rights, that is, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. Secondly, it violates Principle 20 of the Johannesburg Principles, which provides for "the right to appeal to an independent court or tribunal with power to review the decision on law and facts." Thirdly, it violates Principle 22 of the Johannesburg Principles, which provides that "a criminal prosecution of a security-related crime should be tried by a jury or by judges who are genuinely independent; and in no case should it be tried by an ad hoc or specially constituted national court or tribunal". The Democratic Party opposes the establishment of the tribunal proposed in the Consultation Document.

Ninthly, the Democratic Party opposes the proposal that the Secretary for Security be empowered to proscribe certain organizations as unlawful because, firstly, the definition of "connections" is too wide and it is in breach of the principle that offences endangering national security should be narrowly defined; secondly, any relevant organization could be proscribed without approval of the

Court; and thirdly, the provision that "an office-bearer or member of an illegal organization" should be incriminated is too harsh and this is in violation of the freedom of association.

Tenthly, since Taiwanese organizations are not foreign organizations and Article 23 does not prohibit Hong Kong organizations from establishing ties with Taiwanese organizations, the proposals in the Consultation Document violate the principle of minimal legislation and the principle of freedom of association. Moreover, since the relevant provisions of the Societies Ordinance were enacted by the Provisional Legislative Council, which was appointed by the Chinese Government, they do not have any public support and this offence should be repealed. The Democratic Party is of the opinion that the legislation on the proscription of the activities of and connections with proscribed organizations is unnecessary and should, therefore, be repealed.

Now, I would like to talk about investigation powers and penalties. The Democratic Party thinks that incidents of power abuse by the police are very common in Hong Kong because the Complaints Against Police Office is not independent of the police, and it reflects that there are no proper checks and balances presently. Therefore, the enhancement of police powers would undermine civil liberties, and we strongly oppose the expansion of the investigation powers of the police.

The Consultation Document proposed that certain penalties for Article 23 offences should be greatly enhanced, including significantly increasing the terms of imprisonment and levels of fines to deterrent effect. However, prosecution against the relevant offences has not been initiated for more than several decades and the Government has stressed that the community is stable, so there is actually no reason why the Government should increase the penalties for enhanced deterrence. Moreover, the rate of increase for many proposed penalties is too wide, too harsh and absolutely disproportionate. The penalty for dealing with seditious publication, for example, is increased from two years of imprisonment to seven years and the fine is increased from \$5,000 to \$500,000. This is in breach of Principle 24 of the Johannesburg Principles, which provides that "penalties should be proportionate to the seriousness of the actual crime".

Finally, I would like to point out that while the SAR Government places great emphasis on its constitutional obligations in relation to enacting laws for the

purpose of Article 23, it has turned a blind eye to Articles 45 and 68 of the Basic Law, which provide that the Chief Executive is ultimately to be selected and the Legislative Council to be returned by universal suffrage. It has refused to fulfil its constitutional obligations of reviewing the political system subsequent to the year 2007 in accordance with Annexes I and II of the Basic Law. The Democratic Party thinks that apart from dealing with the economic crisis, the most pressing task of the SAR Government at the moment is to conduct an immediate review of our political system. Under the circumstances where there is insufficient protection for human rights and checks and balances afforded by a democratic system, it is inappropriate to enact laws for the purpose of Article 23. Under this premise, the Democratic Party therefore opposes the enactment of laws on Article 23, which will infringe upon human rights.

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

**MR BERNARD CHAN:** Madam President, treason, subversion, sedition or secession may sound remote to many of the people in Hong Kong, but the planned anti-subversion law indeed has great impact on each of us.

Hence, following the release of the Consultation Document by the Security Bureau on 24 September, I sent out questionnaires to people in the insurance and business sectors through e-mails.

About 200 people — most are locals, about 13% are expatriates — have so far responded. Most of them are chief executives, presidents, managers and senior executives of big insurance companies and multi-national companies in Hong Kong. I believe their views should be of value to Hong Kong. And here I would like to share with you some of the findings.

Initial results show that 69% of the respondents agreed that the enactment of the anti-subversion laws in the Special Administrative Region (SAR) as stipulated in the Basic Law was necessary. Some 27% disagreed and the remaining 4% remained neutral or undecided.

Of those who supported the enactment of the laws, 54% believed it should first be presented in a White Bill. Another 29% said a Blue Bill was fine. Some 17% was neutral or undecided.

In addition to replying to the straightforward questions, many of the respondents also wrote to further elaborate their views. Those supporting the laws believed the SAR was obligated under the Basic Law to enact anti-subversion laws. Hong Kong can have "one country, two systems" but should not be legally used as a base for "threats" against China. The laws are meant to provide protection to both governments, they said.

Another suggested that some people were just exaggerating the side effects that this law "may" bring to Hong Kong. In the first place, being residents and citizens of a country, the people should not do anything harmful to the country. "If they are not doing anything 'bad', why are they worried so much about the power of this law?" they asked.

It is also interesting to find that some of the respondents did not oppose the enactment of the laws but that they had reservations about the timing of the enactment. They said the timing was not right because the Government and the people had not built up mutual trust at the moment. One suggested the Government should wait till it had built up its credibility before tabling these laws.

Others said they did not see any urgency in having to implement this set of laws at this time. Hong Kong's top priority at this time, some suggested, should be the budget deficit and the general economy.

The enactment of anti-subversion laws at this time, when the trust and confidence of the general public to the Government is at the lowest point, was not appropriate, one respondent wrote. It is also a wrong time considering the current economic environment, when the financial industry is the only prospectus industry for the SAR.

Besides, the findings of the survey showed that a majority of the respondents wanted a White Bill.

But there are also respondents who did not care much whether it is in a White Bill or it is in a Blue Bill. Their concerns are whether there will be sufficient discussion and that whether the freedom of the press could be maintained. "I do not think it is relevant whether there is a White Bill or not," one wrote, "as long as there is sufficient consultation with the people of Hong Kong, the least complicated and bureaucratic the process the better."

Besides the debate on White Bill or Blue Bill, we can also hear in the society arguments like Hong Kong, unlike other free countries which already have anti-subversion laws, does not have democratically elected governments as safeguard. I also raised this argument in my survey. Both supporting and opposing opinions were returned.

But a few pointed out that even democratically elected governments had no safeguard because some of these governments, they claimed, had been known to abuse their powers.

Others said they did not think it would make any difference whether the Government is democratically elected. The important thing is Hong Kong has the rule of law.

"The question is not about how the Government is elected," one respondent wrote. "That has been set up and laid down in the Basic Law and agreed by the United Kingdom and with consensus of the West. The aim of the anti-subversion laws is to protect the Chinese Government and the SAR Government. A government is a government irrespective of its level and degree of its democratisation. It is unreasonable to draw a line and say that a 'democratically' elected government should be protected with anti-subversion laws and others should not."

Every government requires an anti-subversion law. To expect governments not to have this is not practical, another respondent argued. More importantly is to have an independent judiciary which arbitrates on the law. We should make sure Hong Kong courts have final jurisdiction. This will be the best protection, some said.

Other areas of concern from the respondents include whether the freedom of speech would be jeopardized under the proposed law, should reading or keeping materials about Taiwan or Tibet independence be considered a crime?

One respondent asked, "My main concern relates to the definition of 'secession' in relation to Taiwan. Is there a possibility that the mere act of carrying on business with a Taiwan party could, at some stage in the future, be defined as aiding and abetting secession?" If so, the law might be used as a means of putting pressure on Taiwan by effectively cutting off all trade links between Taiwan and Hong Kong. Companies in Hong Kong doing business in Taiwan would then be forced to relocate to Singapore or elsewhere.

Another asked, "The greatest fear for us, businessmen who often work with the government, is at which point does a matter that we work on become 'state secret'?"

A few respondents highlighted the importance of having our courts to have the final say on the Article 23. One even concluded that the only real concern with an anti-subversion law was whether this might, at some future stage, be "re-interpreted" by the National People's Congress.

Although the Government reiterated that such worries are out of the question and assured members of the public that their right of freedoms would be protected, the concerns, at least according to some of the respondents in my survey, seemed unresolved.

Madam President, I am of the view that the anti-subversion laws, as stipulated in the Basic Law, should be enacted. I agree to the comment that every country has laws to protect the fundamental interest of the country. Hong Kong, being part of China, has a duty to enact law on its own to protect national security.

However, we should be cautious about how the laws are to be drafted and implemented. The Government should well understand that the issue is highly sensitive and the world is watching closely. Hong Kong is a cosmopolitan city. Any bad news may affect the image and perception towards us from overseas.

It will not help the legislation if the public gets an impression that the Government aims to rush through the laws. Members of the public may then think the Government has a hidden agenda, which will definitely undermine mutual trust in the community.

Instead, the Government should take the time and get the people to buy in. Besides, I think officials should be careful in presenting the Government's arguments. They should show their willingness and patience to listen to the public, regardless of their career and position in the society. And I believe an open and responsible government does care about our views.

As a respondent in my survey said, he did not feel the Government's approach was acceptable even though he did not disagree with the need for an appropriate legislation.

Madam President, I expect to see more communications between officials and members of the public and that the consultation is a genuine consultation, which means our opinions will be heard and taken into account. Thank you.

**DR DAVID LI:** Madam President, all of us in this Chamber recognize that Hong Kong has an obligation under Article 23 of the Basic Law. There is no argument on this point. Furthermore, no one would deny that a state has the right to protect itself against treason, secession, sedition and subversion.

At the same time, we in Hong Kong has the obligation to uphold the principles that have allowed us to grow and prosper, and become the dynamic community that we are today. The way we approach the enactment of laws under Article 23 is just as important as the legislation itself.

Sadly, in the absence of a draft White Bill, we emphasize our divisions, rather than our common ground.

Instead of discussing concrete proposals, we resort to various forms of name-calling. Let me ask everyone here: Does such conduct do justice to the import of the task at hand?

When I spoke up on the issue of Article 23 last week, relaying the views expressed to me by senior overseas bankers, my primary concern was for the position of Hong Kong as a leading international financial centre.

In this context, I welcome the formal speech made two days ago by the Chief Secretary for Administration at the Hong Kong Bankers' Association.

In his speech, the Chief Secretary for Administration showed that the Administration is willing to be flexible in addressing the concerns raised by the public, and went so far as to give his personal guarantee that the legislation under Article 23 of the Basic Law will in no circumstances undermine the transparency of our legal system and the freedoms that we currently enjoy.

I very much welcome the Chief Secretary for Administration's commitment to the international community and to the people of Hong Kong.

However, as much as I respect and admire the Chief Secretary for Administration, a personal commitment cannot take the place of the clear and concise language of a White Bill.

In the various representations I have received, I see two basic arguments. One side points to the instability in the world today, and argues that we need this legislation to ensure continuing stability in Hong Kong and in China as a whole. The other side examines the concepts contained in the Consultation Document, and explores them to their logical and not-so-logical conclusions.

There is no single point of reference upon which consensus can build. And that, to my mind, is the single greatest threat emerging from this debate.

What must Government accomplish in enacting legislation under Article 23? Clearly, it must satisfy Hong Kong's obligations under Article 23. But if all that the Government does is to satisfy these obligations, it will have failed miserably.

For the Government must at the same time reach out to our community and build consensus. It must earn the respect of the current and future investors. It must be mindful of our relationships with both the Central Government, and the international community at large.

This is no small task. I see a White Bill as the opportunity to accomplish all these and more.

None of us wishes to see this debate drag on any longer than is necessary. The longer it remains in the public eyes, the greater damage could be done to Hong Kong's reputation. At least, that would be the case if the Administration insists on following its present course.

On the other hand, if the Administration alters courses and publishes a White Bill, the benefits would be far reaching. We would be choosing consensus over confrontation. We would be building confidence in the future.

This is an important legislation. It has the potential to impact on the lives of each and every one of us, either directly or indirectly. We can do it right, by publishing the White Bill.

Thank you, Madam President.

**MR WONG YUNG-KAN** (in Cantonese): Madam President, in the five years since the Hong Kong Special Administrative Region (SAR) was established, we have witnessed the full realization of the principles of "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy" and the serious implementation of the Basic Law. During this period of time, most of the articles of the Basic Law have already been implemented successfully. There are some, however, still not yet implemented, and Article 23 is the most obvious example. In order to make the Basic Law more readily understandable to the people and have it implemented fully, as well as to ensure that the community of Hong Kong can operate smoothly in all aspects along the right track of the Basic Law and to safeguard the prosperity and stability of Hong Kong, the SAR Government has released a Consultation Document in respect of Article 23 of the Basic Law (Article 23). This move illustrates that the SAR Government has adopted a democratic and open attitude with due respect to public opinion, and it has been serious and careful in conducting the consultation. This legislative exercise is helpful to making Hong Kong people or even the international community gain a better understanding of the Basic Law and "one country, two systems" in their proper perspective. At the same time, it is also a good opportunity for all the people to learn and promote the Basic Law. It is a good occasion of education for all the people, which is enormously helpful to further enhancing public understanding of the legal system.

Ever since the release of the Consultation Document on the enactment of laws on Article 23, heated discussions have commenced in society, and many different opinions expressed. Yet, on the issue of whether legislation should be enacted to safeguard national security, the opinions of the people could be summed up in two major voices: one is supportive and the other is opposing. Be the views supportive or opposing, if we look at the letter of Article 23, we can understand that the SAR Government has upheld the principles of compliance with the laws on the significant issue of whether legislation should be enacted, recognizing that enacting the laws is the responsibility and obligation of the SAR Government. Therefore, it is reasonable, sensible and lawful for the SAR Government to enact laws in this respect.

Madam President, Honourable colleagues, I shall explain my own views on the issue of enacting laws on Article 23 from the following perspectives.

First, safeguarding national security, territorial integrity and safety are the essential duties of nationals of any countries. Any countries in the world, no matter what kinds of economic systems they have adopted, and no matter whether their economies are well developed, they will invariably insist that national interests should come before everything else and enact laws to safeguard "national security". Generally speaking, all sovereign states would give specific descriptions in their respective constitutions on "protection of national security", and would explain the legal concept of "supremacy of national security". For example, the Constitution of the United States stipulates that only those people who levy a war against the country, or join its enemies, or provide assistance or convenience to its enemies, shall be considered as having committed the offence of treason. The Congress has the authority to declare the penalty for treason. As treason is an offence provided for by the Constitution, the supreme legal instrument, treason and related crimes fall within the jurisdiction of the United States Federal Court. Once convicted, the offence of treason could incur the maximum punishment of death penalty. For offences of inciting, starting, assisting or undertaking chaos or rebellions against the United States Government, or providing assistance or convenience to such activities, the laws of the United States would impose an imprisonment of 10 years or below or a fine of US\$10,000, or both; and meanwhile, the offenders are prohibited from assuming any public office. From this, we can see that, even the United States, a country famous for advocating human rights and freedoms, does not allow its nationals to commit treason, or any acts that oppose its Administration or endanger national security.

Given that is the natural duty of the people to safeguard national security, territorial and sovereignty integrity of their respective countries, it is only natural for Hong Kong, a SAR of the People's Republic of China, to have the obligation and the responsibility to enact laws to safeguard the highest rights of the country. Therefore, the unity and security of the country are no longer issues of little significance to Hong Kong. Safeguarding the unity and security of China is not just our responsibility, it is also necessary and essential to Hong Kong. As early as when the Basic Law was being drafted, Mr JI Pengfei, Chairman of the Basic Law Drafting Committee, wrote in Explanations on the Basic Law (Draft) that, "These stipulations are certainly necessary for maintaining the state sovereignty, unity and territorial integrity as well as for preserving Hong Kong's long-term stability and prosperity." Article 23 stipulates that Hong Kong shall enact laws on its own to prohibit seven offences including treason and secession. This fully embodies the spirit of "one country, two systems", showing that the

Central Government has full trust in the people of Hong Kong. Therefore, it is indisputable that the SAR Government should enact laws to implement Article 23 to safeguard national security.

Secondly, it is consistent with the spirit of "one country, two systems" for the SAR Government to enact laws to implement Article 23. During the past five years, it is a well-known fact in the world that the Central Government has faithfully honoured its pledge of "one country, two systems". The international community holds a high opinion of this. Before 1997, some people worried that people would lose confidence after the reunification of Hong Kong with China, and that investors would relocate their capital to other places. However, the reality has proved them wrong. Some people strongly warned then that the stationing of People's Liberation Army (PLA) forces in Hong Kong would bring about a major disaster. But it has now been proved that the PLA Garrison in Hong Kong has gained increasing popularity with the people of Hong Kong. Now, some people are again making threatening predictions in respect of the enactment of laws to implement Article 23. Let us wait and see what will happen in future. However, I can tell Members that the national laws on the protection of national security are much more stringent than the legislative proposals advanced in Hong Kong, and such laws are currently in force in the Mainland. Yet a few days ago, Shanghai successfully secured the rights to host the World Expo, and the Universal Studios also signed an agreement with the Mainland. China has been absorbing foreign investments at a rate of \$50 billion per annum. Are these not facts? What kinds of facts are they? After the reunification, Hong Kong people have had the opportunity to experience the successful implementation of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", and Hong Kong people also have had the opportunity to feel the sincerity of the Central Authorities in supporting and preserving the stability and prosperity of the SAR. On the national security of China, we all know that an anti-China force always exists in the international community. Frankly speaking, such people wish that China would become divided, would always be backward and poor, and be their colony forever. Such people always plot to upset the stability of China, to hinder the development of China and to conduct subversion activities against the Chinese Government. A small number of spokesmen for the anti-China force are doing all they can to make use of an open Hong Kong to conduct activities that would endanger the national security of China and subvert the Central Government. Therefore, under the principle of "one country, two systems", the move of the SAR Government in enacting laws to implement Article 23 in order to fill the legal vacuum, to prevent the

anti-China force from making use of Hong Kong as a base for conducting secession and subversion activities against China, is actually a right measure for safeguarding the integrity of "one country, two systems".

Based on the principle of "one country, two systems", the legislative proposals made by the SAR Government to implement Article 23 are fully compatible with the actual circumstances in Hong Kong. Firstly, it has not imported the legal principles of the Mainland into Hong Kong. Rather, it follows the original intent of the Basic Law in applying common law to ensure national security, sovereignty and territorial integrity while complying with two international covenants and safeguarding the existing human rights and freedoms. From the Consultation Document, we can see that the SAR Government has endeavoured to narrow the restrictions in amending the existing legislation and making new offences, seeking to strike an appropriate balance when enacting laws to implement Article 23. On the seven offences provided for under Article 23, the SAR Government has not imported the interpretations and standards of the Mainland into the laws of Hong Kong in its proposals on "subversion" and "secession". The legislative proposals are more specific and lenient than the relevant provisions in the Mainland. The proposals have only included levying war, use of force, threat of force, or other serious unlawful means as offences; the mere expression of comments will not constitute an offence. This is in full conformity with the spirit of the common law. As for the remaining five offences, the proposals are just making a full review of those laws that already exist or that are left over by the Administration before the reunification, and some amendments are made to relax the provisions on the offences. Therefore, the SAR absolutely has not introduced any mainland laws into Hong Kong. The proposals are based on common law with due consideration given to the contemporary human rights standards. They have not tightened the human rights and freedoms of the people of Hong Kong. Rather, they have tried to preserve the original frameworks of the existing ordinances, thereby embodying the spirit of "one country, two systems".

Thirdly, the enactment of laws to implement Article 23 is actually a requirement of the Basic Law. The direction is clear and there is no need to conduct a White Bill consultation. Ever since the release of the Consultation Document, many different views have been advanced. Although the views are divergent, the focus is mainly on the divergent views held by different parties on the specific proposals in the Consultation Document, as well as suggestions on ways to make future provisions more specific and meticulous so as to avoid the

emergence of some grey areas. However, the former Chief Secretary for Administration, Mrs Anson CHAN, said in a speech delivered on 2 October in the United States, to this effect, "If the SAR Government agrees to conduct a public consultation in the form of a White Bill before the enactment of laws, everybody could then put their minds at ease." After that, some people in Hong Kong started to make an uproar of demanding for a public consultation by a White Bill. I cannot agree with this proposal. This is because, if a consultation is to be conducted effectively among people from all walks of life, the prerequisite is that the Consultation Document should enable the general public to understand the legislative intent of the Government and the content of the legislation. However, a White Bill would just arouse the interests of the lawyers and other professionals to study the bill, whereas the general public will not understand the legislative intent of the Government. If the consultation on the enactment of laws is not fully grasped by the people, what meaningful purposes could this achieve? Eventually, the consultation would end hastily, and the Government would not be able to effectively collect the opinions of the people on the enactment of laws on Article 23. I can quote an example. A White Bill has been released on the Town Planning Bill. As a result, the Bill has dragged on for 10 years. Sometime ago, the Joint Committee of Hong Kong Fishermen's Organizations conducted a consultation on the enactment of laws on Article 23. We worry that, as the circumstances of fishermen are different, we may come into contact with Taiwanese fishermen and people from many different sectors at sea. We worry that our special situation may make us violate the provisions of Article 23. And earlier on, the Secretary for Security has given us some clear explanations. We are fishermen, we would not breach the laws easily, and we would not conduct subversive activities against the country. So we do not worry.

Besides, the Tai Po District Council has held another debate on the enactment of laws on Article 23 several days ago, and we also raised our opinions. A councillor clearly said to us that, QIAN Qichen had said that people opposing the enactment of laws had evils in their hearts. He said in the end that, instead of saying that such people have evils in their hearts, we might well say that such people had foreigners in their hearts. The enactment of laws on Article 23 is about legislation on major issues that involve national security and the public interests of the community. Therefore, any consultation should be conducted in a way that is readily understandable by the general public, and in a way that will prove that the Government has achieved the purpose of conducting public consultation. In the second stage, technical problems in

respect of drafting should be left to the Legislative Council and the Bills Committee which is responsible for scrutinizing the Bill. If the public continues to make suggestions on the Blue Bill, the provisions could be further amended to incorporate public opinions.

I am a resident of Hong Kong, and I am also Chinese. I am just fulfilling my civil obligation in putting forward my opinions. I am also speaking on behalf of over 130 organizations of the New Territories Joint Association, as well as the organizations we belong to — the 106 organizations under the Joint Committee of Hong Kong Fishermen's Organizations — to express our support for the enactment of laws to implement Article 23 in order to provide against any illegal acts that might endanger national security. The enactment of laws on Article 23 is good for the country, good for the SAR! Only those national traitors and hostile foreign forces would try to make threatening, alarmist comments and adopt irrational actions to oppose the enactment of laws, because they know that they will have a hard time in the days ahead. That is why they have to act in such a sad manner. To these people, let me quote an extract from the poetic works of MAO Zedong entitled *The River All Red*, "On this globe so small, A few flies are running against the wall. Hear them hum, Now drearily, Now wearily. An ant on a locust would boost 'twas a big country; A day-fly could not find it easy to shake one tree."<sup>1</sup>

With these remarks, Madam President, I support the amendment.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, Article 23 of the Basic Law (Article 23) is a nightmare for Hong Kong.

Before the 4 June Incident, the Chinese Government adopted a reconciliatory policy towards Hong Kong and would listen to the opinions of the people of Hong Kong. So it had once made some concession on Article 23 and even removed the offence of subversion. However, after the 4 June Incident, the Chinese Government, fearing that Hong Kong would become a base for subversion activities that might endanger national security, adopted a high-handed policy and eventually established the political offences in Article 23.

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<sup>1</sup> p.222; Earth-shaking Songs; Translated by XU Yuan-zhong.

The Democratic Party opposes the colonial rule of the British Hong Kong Government; it also opposes the dictatorial rule of China and the Hong Kong Special Administrative Region (SAR). So we always look for opportunities to undermine, amend, delete and oppose the political offences that would suppress the freedoms and human rights of the people.

Mr IP Kwok-him said, "Why did you support the Crimes (Amendment) Ordinance in 1996? Is it true that, in your minds, all legislation proposed by the colonial government is worth supporting, whereas those proposed by the SAR Government must be opposed?" Madam President, if Mr IP Kwok-him should care to look up the minutes of meetings in 1996, he would see that how Members of the Democratic Party had tried their very best, employed all means possible to undermine, amend, delete and oppose all the provisions which violated freedoms and human rights in the Crimes Ordinance during the colonial era. And then he would understand why the Democratic Party of today continues to undermine, amend, delete and oppose all the provisions that violate freedoms and human rights in the enactment of laws in respect of Article 23 by the SAR Government.

Let me briefly quote an extract of the minutes of meetings in 1996:

- (1) Mr CHEUNG Man-kwong opined that Article 23 should be amended to delete the offences of subversion and secession.
- (2) As the future legislature (of course this referred to the legislature after the reunification) would enact laws on subversion and secession, Mr Albert HO and Mr CHEUNG Man-kwong suggested the formulation of a minimum guideline for consideration by the future legislature.
- (3) The Democratic Party supported in principle the deletion of the sedition offence. However, in view of the fact that there would be legislation in future, it suggested that the Johannesburg Principles should be included.

As proved by facts, the Democratic Party has always been upholding the human rights and freedoms of Hong Kong, be it in the colonial era or under the rule of the SAR Government.

Unlike the Democratic Alliance for Betterment of Hong Kong (DAB), we are not prepared to safeguard the dictatorial rule of a government in the name of national security. The Democratic Party thinks that both the Governments of China and the SAR are not elected by the people, not subject to control by the people, and will not be forced to step down as a result of any abuses of power. Therefore, it is not the right time to enact laws on Article 23. Even for those draconian laws left over from the colonial era which are still in existence, we should continue to try our best to undermine, amend and delete them now, so as to minimize their harms on the people.

Mr IP Kwok-him said that those opponents of the legislation were using the fallacies to deceive the people; that they were merely opposing the imaginary Consultation Document in their minds; and that they were trying to create panic and provoke conflicts among members of the public. However, the extensive legal net cast by the seven sins are so wide that it is virtually without limits: misprision of treason means that you might have to report on your parents, wife and children; secession also involves the threat of force to resist the exercise of national sovereignty, and it could lead to conviction simply by one's expression of opinions; a person giving support to mainland democratic movements could be charged with the offence of subversion; the possession of seditious publications would make librarians worry; the theft of state secrets is putting a sword above the heads of journalists; organizations proscribed by the Central Authorities on grounds of national security could implicate their affiliated or financially related organizations in Hong Kong. All these political offences are unfamiliar and horrible to the people of Hong Kong, and they would be shipped all the way from mainland China, across the Shenzhen River, finally landing at Hong Kong. These are no fallacies intended to deceive the people, nor were there evils in the hearts of someone. The evil ghosts are coming our way, and the good guys will surely suffer.

Therefore, those who really are creating panic are: QIAN Qichen who teased Hong Kong people as "having evils in their hearts", Elsie LEUNG who threatened the press with a sword, Regina IP who has been excessively patriotic and exceedingly brave; and Maria TAM who said that those who opposed the enactment were not qualified to be Chinese. Their words and behaviour have provoked contradictions among the people of Hong Kong. Yesterday, two opposing groups of people rallied in the car park of the Legislative Council. "Voices of support and opposition could be heard at the same time, and slogans were chanted in dramatic wordings through loudspeakers". The next two

Sundays will see the demonstrations and processions by two groups of people adopting different stands on the issues. In the face of economic adversity, the Government has just finished singing the song "Under the Lion Rock" calling for solidarity of the people to weather the present crisis, and now it creates "So much wind and rain" as it proceeds to enact laws to implement Article 23, thereby causing a major social division among the people. How can Hong Kong enjoy peace? The Government says that this is the best time for legislation on Article 23. If a person puts it this way, he is either stupid, or stupidly patriotic.

Mr IP Kwok-him and Mr LEUNG Fu-wah criticized a legislator as "..... good in a foreign language and bad in Chinese. He would like to enlist foreign help in handling 'national affairs' and 'domestic affairs', and he requested foreign countries to interfere with the work of the Legislative Council of Hong Kong." This legislator, let me do the matching exercise on his behalf, is none other than Mr Martin LEE. He is good in the foreign language and bad in Chinese — I am afraid this is not an offence. At least this is not treason. Otherwise, Mr TUNG Chee-hwa, who speaks better in English than in Chinese, would sooner or later be jailed on conviction of treason. Actually Mr IP Kwok-him and Mr LEUNG Fu-wah were criticizing Mr Martin LEE for "enlisting foreign help in handling 'national affairs' and 'domestic affairs', and requesting foreign countries to interfere with the work of legislation in Hong Kong."

However, Hong Kong is now enacting legislation on Article 23. The Basic Law was drafted by the Chinese Government for the purpose of implementing clause 12 of the Sino-British Joint Declaration. The Sino-British Joint Declaration is an international agreement submitted to the United Nations for record in order to gain support from the international community. The Sino-British Joint Declaration assures the human rights and freedoms in Hong Kong after the handover of sovereignty. Now the enactment of laws on Article 23 is undermining the human rights and freedoms of the people of Hong Kong, why can we not let other countries know this? Why can we not ask other countries to show concern and voice their support? What is more, there is no national boundary for human rights, and the same is also true for freedoms. Why should we restrict other countries from showing their concern for Hong Kong? Why could the Solicitor General talk on Article 23 overseas but not Mr Martin LEE? Was there a domestic rule which allows senior officials to visit other countries but forbids the legislators to do so?

Madam President, I would like to share with Members a human rights story between China and South Africa. Or you may even say this is a subversion story. The former President of South Africa, Mr Nelson MANDELA, is a Nobel Peace Prize winner. He has written an autobiography entitled *Long Walk to Freedom*. He recalls his opposition to apartheid implemented by the white Administration, the process from his peaceful struggle to armed struggle and his transition from a human rights lawyer to the President of South Africa. He had obtained the assistance of the Government of China in training his army "the Spear of the Nation", the military organization under the African National Congress, to enable South Africa to gain freedom eventually. Today, the system of apartheid which violates human rights is no longer in existence in South Africa.

The road of Nelson MANDELA was one which ran from human rights to subversion. But he was given unselfish assistance by many other countries including China. Looking back with a historical perspective, the Government of China had done the right thing. It had demonstrated a human spirit which transcended all national boundaries. As the foreign help for human rights in South Africa, China had done a glorious act which was the pride of the country. Similarly, it is only natural and reasonable for Hong Kong to arouse international concern for the issue of human rights. A country is consisted of the people, and a country of course cannot suppress the rights of the people because human rights are granted by Nature and could not be deprived of by the country. Even Article 23 cannot deprive the people of such rights. Talking about Nelson MANDELA, there was an interesting anecdote — he liked to read the works of MAO Zedong. So he was in possession of seditious publications. He had violated the offences under Article 23.

Mr LEUNG Fu-wah has a keen pair of eyes which can diagnose all the people who oppose the legislation on Article 23 as some kinds of illnesses: anxiety syndrome, panic disorder, paranoid syndrome, selective amnesia and senile dementia. I am not sure if Mr LEUNG Fu-wah has ever read the *Bible*. There are some verses in the *Bible* which are quite meaningful, "And why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye?" Let us take this as the common reminder for all of us. When we criticize others, we had better think carefully whether our criticism had been too harsh or whether we have gone too far to the point of absurdity.

Article 23 is about political offences. Politics is harsh and human nature is violent. People could easily go into some kind of nonsense talk. Mr LEUNG Fu-wah criticized Bishop Joseph ZEN Ze-kiun as a "pathological saint". He has lost sight of his demeanour as a legislator or he has acted in an inappropriate manner as a politician. Many a time, religion is the guardian of society. When the world is in chaos and when the people have lost their sense of direction, the voice of religious leaders is often the torchlight which would enlighten many confused minds and arouse the conscience of the people. Today, I attended an opening ceremony at a school. Mrs TUNG and I were the guests invited to officiate at the ceremony. Mrs TUNG asked me, "Are you a Christian?" I said I was not. She said, "Today when I come to this Christian function, I am really very happy." From this, you can see that religion is very important to many people.

The Catholic Church has endured great sufferings in history. It has gone through days of persecution, reigning and invasion. However, the Church has survived all such blood and fire in history and is now the guardian of the people. Mother Teresa used her frugality and hard work to serve the people, to extend her warm hands to the needy people in the poorest part of Indian. Bishop Carlos BELO of East Timor risked his life to assist the people to stand up against the brutal rule of Indonesia, and today East Timor is an independent country. Bishop Desmond TUTU of South Africa worked together with Nelson MANDELA to oppose the system of apartheid and successfully brought about democratic election in South Africa. Mother Teresa, Bishop BELO and Bishop TUTU were all Catholic saints, and all of them were awarded with the Nobel Prize for Peace. They are respected by the whole world.

Bishop Joseph ZEN Ze-kiun is just taking the same road as many previous saints have done before — he is just serving the SAR with his most sincere heart. Our political stands may be different, but our sincerity is not. Similarly, I have never doubted the sincerity of DAB and Mr LEUNG Fu-wah in their love for the country. Why should they say the insulting words? Why should they hurt the feelings of all the Catholics in Hong Kong? As an old saying goes, "You must have done something worthy of being insulted before others insult you." Members should be careful with their mouths. Do not let your crazy words go into the records of the Legislative Council. We have to be responsible in the face of history. What I am saying today is not targeted at any individual Members, but these words are meant for myself. On such issues, we have to be

particularly careful. In this Council, we should show the kind of wisdom and prudence acquired through accumulation in our culture.

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

**MR MA FUNG-KWOK** (in Cantonese): Madam President, it is the duty of the governments of all states to protect their people against any infringement, and to uphold sovereignty and territorial integrity. To discharge this intrinsic duty, they will usually enact the required national security laws through their legislatures in the light of their practical needs, whereby specific restrictions are imposed on individual or collective acts posing serious damage to the overall interests. The governments are then appropriately authorized to deal with any violations of the laws. China is naturally no exception, which is why it has also enacted its own national security laws.

Until the reunification in 1997, Hong Kong had been ruled as a colony for a very long time; the people's sense of national identity was generally weak, and the concept of national security was altogether alien to them. The prospects of reunification once led to lots of anxieties and worries among them. During the transition period before the reunification, the Central Government, in appreciation of Hong Kong's historical background and political realities, approved the recommendation made by the Basic Law Drafting Committee in the process of drafting the Basic Law, under which Hong Kong is authorized to enact national security legislation on its own following the reunification and the establishment of the Government of the Hong Kong Special Administrative Region (SAR) in the light of the situation in the SAR at that time. Such a historically rare Basic Law provision, under which the Central Government authorizes a local government to enact national security laws on its own, was subsequently passed by the supreme state organ, the National People's Congress. This fully showed how much the Central Government and all the people of the country trusted the 6 million or so Hong Kong compatriots about to be reunited with the Motherland and also their goodwill towards them. This also aptly reflected their great confidence in the SAR Government to be established after the reunification and highlighted their determination to implement "one country, two systems" and "Hong Kong people ruling Hong Kong with a high degree of autonomy". We should really treasure such a special arrangement.

For this historical reason, since the very start of the reunification, the enactment of laws on national security has become a historic task which the Government and the Legislative Council of the SAR must undertake. Such is an important task which we cannot and should not evade. What is more, since "national security is everybody's responsibility", the relevant legislation should, in principle, have been enacted from the very start of the reunification. But as it turned out, the first term SAR Government was faced with various problems in the transition, and there was also the onslaught of the Asian financial turmoil and the bursting of the bubble economy, which led to a myriad of pressing economic problems. That was why the required legislation could not be enacted in good time. But the second term SAR Government is now functioning properly; the accountability system has been put in place, and the Bureau Directors have taken up their respective portfolios. In addition, the implementation of the Basic Law and the strict adherence to "one country, two systems" over the past five years following the reunification have gradually dispelled the anxieties used to be harboured by the people of Hong Kong. That being the case, can there be any better time than now for the enactment of laws on national security? Frankly speaking, anyone who seeks to defer the legislation indefinitely is behaving most irresponsibly towards the Central Government and all the people of the country as well as the people of Hong Kong.

Since the enactment of laws cannot be evaded, we must then go about the task with a highly responsible attitude. As I put it a moment ago, the concept of national security is alien to the people of Hong Kong in general, and even the Government and Honourable colleagues in this Council do not have much experience in national security legislation, particularly when it comes to how we should look at the needs of one country *vis-a-vis* the reality of two systems. That is why they can at most grope their way across the river, making reference to international practices and experience as well as the existing legislative provisions of the State on the acts concerned. We must also listen to the views of all sides.

The SAR Government's preparation and publication of a Consultation Document on the legislative exercise is presumably aimed at presenting its interpretation of the laws required and also at widely consulting the people's views for reference in the course of drafting. This is only natural, and there is cause for criticism indeed.

The publication of the Consultation Document by the Government has been followed by many arguments in society, and these arguments have turned increasingly fierce and bitter recently. It is most unfortunate that the public opinions we have heard over the past two months or so are mostly of a "megaphone" nature. Some of these opinions go so far as to totally rule out the need for legislation and all the proposals in the Consultation Document, criticizing simplistically that the enactment of laws to implement Article 23 of the Basic Law (Article 23) will undermine "one country, two systems".

From the perspective of fundamental principles, my friends in the New Century Forum and I totally agree to and support the enactment of laws by the SAR Government to implement Article 23, that is, the legislation on national security. We hope that during the process of legislation, a spirit of maximum latitude can be adopted on the one hand, so as to maintain the free and open environment of Hong Kong as a metropolis, and to avoid interfering with people's daily life, business operation, academic research, dissemination of information and artistic expression. On the other hand, we also hope that the laws enacted in the future can be as meticulous as possible, lest people may be inadvertently caught as a result of grey areas.

Due to all this, I would think that some of the recommendations in the Consultation Document are open to discussion. Some members of the community, such as those from the academic and cultural sectors, have expressed concern about a number of proposals in the document. For instance, they have reservations about the definition of "possession of seditious publication". Some others also think that excessive police powers may result from the proposal of the Consultation Document under which the police can, in case of emergency, enter and search premises with the approval of a Police Superintendent and without a search warrant issued by the Court. All these worries are understandable.

Regarding the free flow of information, I think serious and detailed consideration is required, lest the status of Hong Kong as a financial and information centre may be affected. Some colleagues raised the issue of Internet messages yesterday, and I am concerned about this. To sum up, the Government should seriously consider all the opinions expressed.

However, the presence of worries does not mean that we should defer the legislation indefinitely, or even refrain from legislating altogether, or rule out all

the proposals of the Consultation Document; still less should we rashly stir up any antagonism in society, for all this will do Hong Kong no good. Mr James TO's motion says that the Consultation Document will damage the rule of law and "one country, two systems"; there is hardly any case for this. As for whether the rights and freedoms of the people of Hong Kong will be reduced, one should withhold one's judgement until a draft of the relevant laws is released. If we pass the motion, the enactment of laws will be deferred, so to speak. In that case, our relationship with the Central Authorities may be undermined, and this may really damage "one country, two systems".

Madam President, I think we should handle the matter in a rational and pragmatic manner and seek to ensure that the laws enacted in the future are sound in specific details. For instance, some argue that the mere possession of seditious publication should not constitute an offence, and the Government has also said that the definition of seditious publication will be narrowed. Besides, it has been suggested that in cases where the police do not have a search warrant from the Court, the approval of a more senior police officer should be required before the police can enter and search premises. However, Mr James TO simply describes all this as the bargaining techniques of the Government, showing that he simply does not trust the Government at all. This is really regrettable.

In fact, the various sectors of society have by now expressed certain views. I hope that the Government can seriously consider how best to handle the matter sensibly and strike a reasonable balance between the two important principles of safeguarding national security and protecting human rights and freedoms. It is also hoped that the offences of treason, sedition, secession, theft of state secrets and subversion can be defined in precise language.

There is actually room for improvement regarding the way in which the Government has been handling this issue. From the very beginning, the Government has been adopting a very tough position, making it clear that as soon as the consultation period is over, the relevant bill is expected to be passed before the end of this Legislative Session next year. Such a position does not do any good to the image of the Government.

Madam President, although the enactment of laws to implement Article 23 should not be deferred any further, there must still be sufficient discussion by the various sectors of society beforehand, and amendments may have to be raised

where necessary, because Article 23 involves very complicated issues and its implementation may lead to far-reaching consequences. If Members deem it necessary, the relevant Bills Committee of the Legislative Council may well continue to hold meetings during the summer recess next year to scrutinize the bill. There is no need for the Government to set down any "deadline".

Some people insist that the Government must first publish a White Bill before the community can discuss the issue thoroughly. I personally think that this is just a dispute over technicalities. The Government can actually collate all the opinions once the consultation period is over and publish a bill as quickly as possible, so that the Legislative Council and the various sectors of society can conduct sensible exchanges of opinions and discussions in the course of scrutinizing the bill. This is the only positive attitude.

For the above considerations, I cannot support the original motion proposed by Mr James TO. I think the amendment is more impartial and constructive, and it should thus deserve our support.

Thank you, Madam President.

**MR YEUNG YIU-CHUNG** (in Cantonese): Madam President, I originally thought that we would be able to conduct sensible discussions on Mr James TO's motion and sort things out as the discussion went along. But having listened to Mr James TO's remarks, I now realize that he has intended not so much as to sort things out; rather, he actually wishes to use this opportunity to assail the Government of the Hong Kong Special Administrative Region (SAR) and the Central People's Government. His 14-minute speech can be summed up as follows: "All nonsense and nothing but sweeping generalizations".

The plain truth is that the Central Government trusts the people of Hong Kong and authorizes the SAR Government to enact national security legislation on its own, but in the speech of Mr James TO, the Central Authorities are depicted as suspicious of Hong Kong people, as trying to suppress dissidents by enacting laws to implement Article 23 of the Basic Law (Article 23).

The plain truth is that he himself is anti-Chinese, but then he claims that opposing the enactment of laws is something that a true patriot should do. Such misleading remarks which confound right and wrong only serve to show that he has a guilty conscience, for the truth is not on his side.

Madam President, I wish to discuss one by one all the weird arguments recently put forward regarding Article 23 legislation.

First, the protection of national security and the development of a democratic system are two separate issues. Some argue that it is only when state leaders are elected by "one person, one vote" that it is worth the while to enact laws to protect national security. This is most ridiculous. Whether the state needs to be protected should not be determined by the extent of democratization; democracy does not necessarily equal to "one person, one vote". Anyone who mixes them all up is either naive or trying deliberately to mislead the people. It is only natural for us to protect national security.

There was a sophistry in Ms Audrey EU's remarks earlier. At the very beginning, she said that a national of the People's Republic of China is of course obligated to be loyal to the country. But she added that this did not mean loyalty to the ruling regime, and that the ruling regime could be changed by peaceful means. I wish to apply Ms EU's logic and ask her a question: If she goes to the United States and sets up a "United Front on the Peaceful Toppling of the BUSH Administration", what does she expect the Americans to say about her? Subverting the BUSH Administration? Or, subverting the United States Government? If Saddam HUSSEIN sent a gunman to assassinate BUSH, what do Members expect the Americans to say? A challenge to BUSH? Or, a declaration of war on the United States?

Second, the enactment of local laws to implement Article 23 represents the implementation of Basic Law. Article 23 provides that "the Hong Kong Special Administrative Region Government shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies". Since there are such clear provisions in the Basic Law, the SAR Government must strictly adhere to them, as a demonstration of the true spirit of the rule of law. Any excuses for opposing Article 23 legislation are untenable in law. The ultimate expression of the rule of the law lies with the upholding of the Basic Law. Only the protection of national security can ensure the smooth implementation of "one country, two systems". Before the enactment of Article 23 legislation, no one can claim that the Basic Law has been fully implemented.

The deferment of Article 23 legislation in the past five years was due to the lack of better alternatives in view of the need to effect a smooth transition. This can be excused. The second SAR Government has now come into being; public trust in the Central Government is increasing by the day; and the SAR Government has already spent five years on carrying out very detailed studies. So, now is in fact the appropriate time to enact laws to implement Article 23. No further delay should be tolerated.

Third, will Article 23 legislation restrict the rights and freedoms enjoyed by Hong Kong people? The answer is "no". The freedoms of expression, the press, publication, association, assembly, procession and protest enjoyed by Hong Kong residents are expressly guaranteed under the Basic Law. This can be proved by the experience of the past five years since the reunification. Besides, Article 39 of the Basic Law also provides that restrictions on the rights and freedoms enjoyed by Hong Kong residents shall not contravene the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong. Therefore, anyone who thinks that the enactment of laws to implement the Basic Law will reduce the rights and freedoms enjoyed by Hong Kong residents must be over-worried, and his worries are simply unfounded.

Since existing ordinances already cover such offences as "treason", "sedition", "espionage" and "unlawful disclosure of official information", they can be updated simply by adding the new offences of "secession" and "subversion" to them. The legislative proposals put forward by the Consultation Document, all based on common law principles, are quite lenient and can strike an appropriate balance between safeguarding national security and protecting basic civil rights. People will continue to enjoy the freedom of expression, and the question of criminalizing the mere expression of views simply does not exist. It is only when such expression incites others to achieve the purpose of endangering the state through levying war, force, threat of force or serious unlawful means that it will be criminalized. According to Mr David PANNICK, QC, a human rights authority in Britain and Europe, the legislative proposals to implement Article 23 are consistent with the human rights protected by the Basic Law and by the ICCPR. The principles and direction of Article 23 legislation are also recognized by Prof Johannes CHAN and the Bar Association.

Fourth, it is every man's duty to protect national security. Basically, since the Central Government has always been responsible for the enactment of laws on national security, it could have incorporated the relevant national security laws into Annex III of the Basic Law and apply them in Hong Kong direct. But now Hong Kong can enact laws on its own; this shows that the Central Government trusts and attaches very great importance to Hong Kong, and that it respects the historical realities in Hong Kong and is prepared to look after the interests of Hong Kong people. The Hong Kong SAR is not required to shoulder any garrison expenses, nor do Hong Kong residents have to serve in the armed forces. The Hong Kong SAR is also not required to pay any tax to the Central Government. In brief, the SAR enjoys many privileges. The people of Hong Kong will be most unreasonable if they are even unwilling to discharge their only duty and obligation of protecting national security.

Fifth, some argue that it is not necessary to enact laws to implement Article 23 because in the past five years since the reunification, no one has actually committed the seven offences stipulated in Article 23. Well, by the same token, since there was no war in many countries in the past 20 years, should they then dissolve their armed forces? I believe no country will be so stupid as to do that. There is an ancient Chinese saying which says: "Keep an army even in peace times and you will find a use for it". The aim of Article 23 is precisely this, precisely to discharge the obligation towards the state and the future generations.

Sixth, some say that a Blue Bill cannot be amended, and it is very difficult to alter even a comma in it. This is completely misleading and alarmist, totally against the facts. In the case of the anti-terrorism bill passed in July, for example, the Government, in response to the views expressed by the Legislative Council and members of the public, introduced nearly 30 amendments and withdrew two schedules during the Blue Bill stage. Technically, there is nothing which a White Bill can do but which a Blue Bill cannot. Therefore, all the arguments concerning whether there should be a White Bill or a Blue Bill are largely unnecessary. Some ask the Government to publish a White Bill on the one hand but oppose the enactment of Article 23 legislation on the other. Are they not contradicting themselves?

Seventh, some say that "the devil is in the details". So, let us go hunt the "devil". This is a Consultation Document and amendments can be made as long

as the suggestions advanced are reasonable and constructive. Amendments are similarly possible even at the Blue Bill stage. How can we entirely rule out the need for legislation simply because some provisions need to be amended?

Since the Government's attitude is marked by openness, moderation and latitude, why should people still "fear" the Article 23 legislation? Maybe there is actually an "evil" in the hearts of some people, and they are worried that Article 23 legislation will restrict their actions to undermine national security. Some argue that the Chinese Government is a "one-party dictatorship", and they thus question why it should be protected at all. These people even long for an early subversion against the Chinese Government! That is why they have gone abroad to "bad-mouth" Article 23 and seek American support. They have done all this because they constantly think about having a "peaceful evolution" in China, about toppling the existing Central Government. Their opposition to Article 23 legislation is based on their political stance. It is always hard to change the nature of people, so I think they will still oppose Article 23 legislation, whether a White Bill is published; they will still do so with bills of whatever colour — red, blue, white or green. These people just want to oppose the freedom to protect national security. To them, sovereignty, territorial integrity and national security are not important at all; what is most important to them is a "dynastic change" in China.

Madam President, only a handful of people oppose the protection of national security, but they are extremely powerful, capable of misleading people and distorting the facts. Time and again, we have heard cliches like "Today is the darkest day of the Legislative Council". Before the reunification, did they not seek to scare people by saying that they would become homeless? When the public order ordinance was passed some years ago, did they not assert that "Hong Kong is dead"? Did they not say that the human rights and freedoms of Hong Kong people would be restricted?

Mr James TO is again trying to employ such a tactic today. He says that Hong Kong has depreciated into a city without any hope. But Hong Kong will not thus collapse because of the constant curses of all these people. Hong Kong will definitely stride ahead with the Motherland.

I oppose the original motion but support the amendment.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I speak on behalf on the Hong Kong Confederation of Trade Unions to support the original motion moved by Mr James TO. We oppose the legislative proposals to implement Article 23 of the Basic Law. It is because the proposals seek to protect national security in name but in fact deprive the people of their freedoms and human rights. Apart from using such restrictive laws to effect this deprivation, the proposals have the effect of making everybody feel that there is a sword hanging over their heads even if the laws are not invoked. Thus a chilling effect is achieved in which everybody is too scared to exercise their own freedoms.

Later on I would like to make a detailed analysis of why I oppose this legislation. But before I do so, I would like to make a direct reference to "Dr LEUNG Fu-wah " who said that many people were sick. I am one of those sick people. I suffer from freedom paranoia. The cause for this condition is that in 1974 I read a poster written by him. At that time, I was rather young and later on the "wall of democracy" incident occurred and with other incidents like the call for the release of dissidents WEI Jing-sheng and LAU Shan-ching, my conditions became more and more serious. With the pro-democracy movement in 1989, my mindset was so much affected that I took to the streets to demonstrate and raised funds and brought them back to the Mainland to support the movement. I met leaders of the pro-democracy movement in China and I have kept in touch with them ever since. My conditions are critical. I suffer from repeated attacks of freedom paranoia and when the Government plans to enact laws to implement Article 23, my conviction about freedom induces another severe attack of freedom paranoia.

Patients of this disease all share some beliefs. We believe that the freedom and dignity of the people are above the state. We also believe that the state does not equal to the regime. Mr YEUNG Yiu-chung said earlier that if Ms Audrey EU went to the United States to subvert the BUSH Administration, would this mean she was subverting the United States Government? Although I hate BUSH to his guts, at least he is elected by the people. So what can I say? But he can easily be toppled, and I would think the best time is two years later. I think the United States Government and in fact those rulers in many other democratic governments are being toppled all the time. But it is the people who are doing it. And they have the right to do so. They can do this just through the votes they cast. That is what should be acceptable in all democratic systems all over the world. But since I am sick, please forgive me for saying all these.

All sick people like us believe that if those in power have come to power by force, they should be replaced by way of democratic elections. This is to make sure that the people will have the right to vote. Sick people like us also believe that the state should be founded on freedom, equality and democratic participation of the people and the defence of these three cornerstones should be the first and foremost task of the state. We also oppose to the suppression of freedom and human rights in the name of national security.

Mr YEUNG Yiu-chung said earlier that it is absolutely natural to protect national security. But if national security is invoked to suppress dissidents and rob people of their freedom, would Mr YEUNG think that it is absolutely natural? Sometimes I have no idea what Members would think. Recently I came to learn that this mainlander XU Jian, who is a lawyer in Inner Mongolia, was accused of subverting the socialist system and the national government because he had received a complaint from the workers and filed a suit for them. On 18 July, XU was tried in the Intermediate People's Court at Bao Tou and sentenced to four years of imprisonment. What in fact has he done? He has only filed a suit for the workers. Is this subversion? Is this endangering national security? There are lots of other examples. A man called CU Tian-gui organized a national association of retired workers and he was arrested on charges of inciting subversion against the national government. In Sichuan Province, more than 1 000 workers of a steel factory took to the streets to demonstrate the default payment of their wages and WANG Sen and HU Ming-jun were found guilty of subverting the national government and sentenced to 10 years in jail. So that is national security. Now I want to state that I oppose the use of the ground of national security to persecute the people and suppress their freedoms of expression, speech, association and assembly.

We who are sick are opposed to such things. However, Hong Kong is a pathetic society. We suffer from freedom paranoia while others have a paranoia for the party. These people are blind in their love for the party and they will not utter a word when the party encroaches on the rights and freedoms of the Chinese people. Have they said anything about the examples cited by me to show what the party is doing to the people? Do they love the Chinese people? No, they do not. They just love the party. And they love it blindly. And there are some yes-men. They would say yes to everything the party suggests. They would say that those who oppose the party are sick, that they are sinners of a thousand centuries, being irrational and do not qualify to be Chinese, that they are all speaking nuts and a line must be drawn against these enemies of the

people. Now that the Hong Kong society has become a pathetic society and we must find the roots of the problem before it can fully recover. We must democratize and liberalize the autocratic administration. When democracy was restored in Czechoslovakia, the Czech President Vaclav HAVEL pointed out in a well-known address that Czechoslovakia used to be under moral pollution. Everybody was only caring for themselves. What they said and did was entirely against their wishes. When democracy was restored to the country, it was the time when everyone could speak the truth. We also hope very much that one day we can speak the truth again.

Now I would like to make a few comments on the contents of the Consultation Document. I would think that the most draconian of all is Chapter 7. The chapter heading is "Foreign Political Organizations". It is very misleading for the contents in this chapter have nothing to do with foreign political organizations at all. Apparently, the proposals seek to prohibit links between Hong Kong and mainland political organizations.

Yesterday, Chief Secretary Donald TSANG said that no judicial concepts of the Mainland have been imported into Hong Kong. But I would think that in Chapter 7, there is a wholesale import of judicial concepts from the Mainland. The reason is simple enough. The whole process as seen in Chapter 7 is like this: the Chinese Government classifies a mainland organization as endangering national security and informs the Hong Kong Government, then the Security Bureau will make investigations to ascertain if there are any related organizations in Hong Kong and the police will be called in. The police do not have to obtain any warrants and they can enter premises for investigation. If after investigation some affiliated organizations are discovered, the Secretary for Security will make the decision to proscribe the organizations without having to go through the Courts. Of course, the organizations may file an appeal to the tribunal. But the entire process of proscribing the organizations does not have to go through the Courts. If the courts in China determine that the organizations concerned will endanger national security, the Secretary for Security will act according to the judgement reached in the courts in China and conduct investigations to ascertain if there are any related organizations in Hong Kong. Would this not be importing the judicial concepts from the Mainland into Hong Kong? This is clear enough. The people of Hong Kong are always concerned about the interests of the people on the Mainland. Are we being told not to be Chinese? Are we all in Hong Kong being told to cease to be Chinese, to care nothing about China, but simply love the party? Should they cease to

love the Chinese people, that they should be silent, refrain from maintaining links or contact with them despite their sufferings and not say a word when they are being persecuted? Apparently, that is the primary aim of the whole thing.

Trade unions in the Hong Kong are very much concerned about the freedom of association and organizing independent trade unions. For instance, in the examples cited by me earlier, XU Jian filed a lawsuit on the Mainland, some other organizations may form some worker organizations or some independent trade unions. Then should trade unions in Hong Kong not show any support for them or not have any links with them for fear that they will get into trouble? Should trade unions in Hong Kong not have any links with the international trade unions and if we belong to the same international trade union, do we have any affiliations by any coincidence? Shall we care not for happenings on the Mainland? We all know that the Constitution of China prohibits trade unions other than those in the party. Suppose someone forms an independent trade union and that is a branch of an international trade union with which we have links, then will the Hong Kong trade union be proscribed under Chapter 7? This is clearly a breach of the International Labour Convention No. 87 which provides that there should be freedom of association on an international level and ties can be established with trade unions of any country. Why is it that trade unions in Hong Kong can establish ties with those in other countries but not with those on the Mainland? For if we have links with them, especially those independent trade unions, then it will not be surprising that we will be accused of endangering national security. I have quoted some examples earlier. What should trade unions in Hong Kong do? The worst thing is that it is a criminal offence to have any links with any member of a proscribed organization in Hong Kong or have any links or affiliation with that organization.

This would have very far-reaching impact, for no decision from the Courts would be required. So that is nothing but a wholesale importation of the judicial concepts from the Mainland. So we would think that the greatest problem with Chapter 7 is that it has put a big question mark over all the relationships between every trade union as well as private organizations in Hong Kong with those on the Mainland. For example, some poverty relief activities carried out on the Mainland may be accused of endangering national security, for the poor people and the farmers may rise up against the government. Since we are helping these people, will Hong Kong organizations engaging in poverty relief activities get into trouble because of this? That is making the impact felt

everywhere. So it is because of this that we think Chapter 7 is totally unacceptable for it will cast great doubts on any private links and contact between Hong Kong and the Mainland.

We also think that another situation which is outside the scope of national security is that some activities may in fact have nothing to do with national security but they are nevertheless linked with the SAR Government. For instance, sedition encompasses acts of public disorder that endanger the stability of the SAR. I have no idea what public disorder is. Would cases like the workers at Yau Tong demanding payment of their wages in arrears be considered an act of disorder? Would incidents which happen at Lan Kwai Fong or those which happen on the New Year be deemed acts of disorder? If it is said that some speeches lead to public disorder which in turn endangers the stability of the SAR, that some conflicts are regarded as public disorder, then the people involved may commit the serious offence of sedition. If speeches which may induce such an effect may lead to convictions, then is that not finding a person guilty of an offence on grounds of his speech?

Many criticisms have been made earlier on the concept of serious unlawful means such as sabotage of electronic systems. My daughter told me recently that if e-mails were sent constantly, that could damage the recipient's e-mail system. I am not very knowledgeable on this, but I would think that that can also mean sabotage of electronic systems. As the young people these days are very smart in technology, shall we allow them to make themselves vulnerable to such serious unlawful means? People are considered to have committed the offence of subversion especially when they have intimidated the Government of the People's Republic of China in opposition. Then what is meant by intimidating the Chinese Government? Suppose someone urges the Chinese Government to release some political prisoners, people may say that they are intimidating the Chinese Government. Are they also using serious unlawful means to subvert the Chinese Government? If abolishing the basic system of the state is regarded as subversion, then would the efforts made to urge for an amendment to the Basic Law be considered a subversion of the basic system of the state? If such so-called serious unlawful means are used or damage is done to the infrastructure such as power plants or staging a sit-in before a power plant or on the rails, would these lead to convictions? When people do these, they have no idea whether they have breached any law or not.

The issue of state secrets is another problem, but I would not delve into this in detail. One of the points is the relations between the SAR Government and the Central Government. What are state secrets? There was an example in which a sailor fighting for his wages in arrears was regarded as acting in breach of state secret, for wages are considered as a state secret. The sailor was arrested. I do not know if the popularity ratings of TUNG Chee-hwa will be made a state secret. If someday a reporter tells Premier ZHU Rongji that the popularity ratings of TUNG Chee-hwa are very low and that he can never regain his popularity, then has the reporter disclosed any state secret? So this is what state secrets actually are. That is certainly bad, for state secrets include the relations between the Central Government and the SAR. Thus it can be seen that there are a lot of grey areas. The last point is ambiguous and it can easily be refuted. But I was only joking. But as there are so many ambiguities in this legislation, that would make people come to hold different views.

Lastly, I would like to point out that HAVEL has said the following to this effect, "The moral pollution which I am talking about is not confined to those enjoying special privileges, but everyone. We are used to the autocratic system and accepting facts which cannot be reversed. In this way we are perpetuating the rule of the autocrats, that is, we should be held accountable for making the autocratic machinery work. Not only are we victims of autocratic regimes, but that we are also their creators." I trust we do not want to be accomplices of autocratic regimes. I hope all of us can oppose the amendment. Thank you, Madam President.

**DR PHILIP WONG:** Madam President, since the Government launched the national security consultation document a few months ago, the Chinese General Chamber of Commerce (CGCC) that I belong to and serve has shown great interest and been heavily involved in the understanding and deliberation of the proposed anti-subversion legislation in Hong Kong. We have organized many special discussion sessions, open forums for our members as well as joint meetings with other chambers of commerce to encourage free expression and exchange of ideas, and above all, to debate with various interest groups to ensure that everyone has a thorough understanding of the intention and content of the proposals to implement Article 23 of the Basic Law.

In addition to inviting government officials to come and speak to us, the CGCC's committee members have also actively participated in public hearings including those organized by the Legislative Council. Having listened to the opinions of our members, the CGCC called a general committee meeting a week ago and passed unanimously the resolution to support the Government's enactment of anti-subversion laws under Article 23 of the Basic Law.

In our submission to the Security Bureau, the CGCC stressed the importance of the enactment of laws which we firmly believe is both timely and necessary. We believe that the enactment of laws is in full compliance with the Basic Law, and at the same time manifest the spirit of "one country, two systems". The enactment will not at all undermine the rights and freedoms currently being enjoyed by the people of Hong Kong, and there has never been a better time than now to do it. We have made our stance clear in our submission and would like to stress here again that we support the Government of the Hong Kong Special Administrative Region (SAR) to implement Article 23 unreservedly. As a matter of fact, a lot of our members as well as the general public have also come forward and expressed their positive views. Their rationale and arguments, I am sure, will be repeated in the deliberations by the government officials later, so I am not going to pre-empt them here.

I can still recall vividly what I saw two days ago when I passed by China Building on Pedder Street, for there stood at the busiest spot in the heart of Central our colleague, the Honourable Martin LEE, who has just retired from the chairmanship of the Democratic Party. Standing by Martin was a man shouting through a loudspeaker anti-Article 23 slogans and was pleading for signature support and donations for Martin's solo campaign against the enactment of laws. Yet Martin was backed only by a donation box and a huge sheet of paper. This to me clearly reflects that we can enjoy the utmost freedom of speech in Hong Kong. Indeed, anyone in Hong Kong can express his views and what he stands for like Martin. Therefore, there is no fear that we will lose the freedom of speech after the enactment of laws on Article 23.

However, I have to point out that while Martin is enjoying his unreserved freedom both now and in future, as a genuine supporter of democracy, if he chooses only to announce the number of supporters for his campaign, without counting or mentioning to the public at the same time the number of Hong Kong people who disagree with him or what he advocates, I think it is not only an abuse of personal freedom on his part, but also a show of disrespect for his

non-supporters. I firmly believe that the enactment of laws on Article 23 of the Basic Law is supported by far more people than those who oppose it, though I have no doubt about Mr Martin LEE who has put in more than his fair share of efforts to, in his own words, "bad-mouth" the SAR Government's intention.

Over the last few weeks, Hong Kong people have seen retired civil servants and politicians going overseas to beg for support to intervene in the enactment of laws here. I cannot help but feel really sorry for them, for we cannot and should not in the name of "civil liberty" do things that are unjustifiable, such as soliciting foreign intervention after rejoining China as one country. I am sure all of us will agree that since the handover in 1997, we Hong Kong people have become masters of our own house. The SAR Government has full authority and independence in running its own business and the Central Government has never stepped in or interfered. How on earth can someone ask other countries or sovereignties to interfere with our business, and where on earth can one find a government or people who can tolerate such an humiliating imposition?

As we all know, national security and state integrity are always the primary concern of the leaders of any country. Almost every country or state in the world has some form of national security law or regulation to protect its people's interests. These laws are formed or revised according to different prevailing needs or historical reasons. A good example on hand was the laws that Hong Kong adopted to protect national security of the United Kingdom before 1997. I am sure all of us would agree that some of those laws were really more draconian especially by today's standard. In Article 23 of the Basic Law, it is clearly stipulated that "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, ..... sedition ..... against the Central People's Government". I see the word "shall" being a responsibility which Hong Kong people must take up in order to fulfil our duties as a member of the People's Republic of China. And the words "on its own" clearly indicate that we are given the authority and power to enact the laws all by ourselves. If we choose to ignore the spirit and content of the Basic Law and prefer to rely on or be led by people outside of Hong Kong, as legislators, we are not only neglecting our duties, but are also risking the fate and interests of Hong Kong people as a whole. Remember when we assumed office, we had, in accordance with law, all sworn to uphold the Basic Law of the SAR, and swore allegiance to the SAR Government of the People's Republic of China. How can we forget our pledge so soon, and start challenging the Basic Law when we need to implement it as quickly as possible?

Some people have argued that the implementation of Article 23 of the Basic Law is a retreat and threat to human rights and freedom. This is neither possible nor true. Hong Kong has always been regarded as one of the most open and free to live cities in the world, and Chapter III of the Basic Law has already provided Hong Kong people with further assurance on that. If one cares to take a closer look at that chapter, one will understand and be convinced that after the enactment of laws on Article 23 of the Basic Law, the assurance given by Chapter III of the Basic Law will not be weakened in any way, for it complies fully with the international human rights treaties as well as the common law. Through the enactment of the new law, Hong Kong people will have a clearer direction and guideline in their speech and actions when the issue of national security is involved. This will certainly help to further define our duties and responsibilities as a SAR citizen.

Under the proposal, only seven offences such as treason, sedition and subversion against the Central Government, and the theft of state secrets and so on would be criminalized. The sole objective of the legislation is to prevent such criminal offences from happening and not to evade or replace any legitimate right or freedom that we are currently enjoying. It will, therefore, be an exaggeration or over-worry if one insists that the enactment is something that would undermine Hong Kong's freedom and civil liberties.

As pointed out by David PANNICK, QC, who happens to be a renowned specialist on human rights laws, the proposals presented in the Consultation Document are "consistent with the protection of human rights". The enactment of the subversion laws is crucial to the security of our country and also the prosperity of our homebase, as both local and foreign investors will find the implementation of the Basic Law and support from the Chinese Government more reassuring. As a legislator, I have full confidence in our Government as well as our citizens. I trust that we can maintain a balance between the interests of Hong Kong as a community and those of the individual effectively. I am convinced that most of the people in Hong Kong have already made up their mind, and that the support for the implementation of Article 23 will be overwhelming.

With these words, I support the Honourable Mrs Sophie LEUNG's amendment.

Thank you, Madam President.

**MR LAU PING-CHEUNG:** Madam President, since the Administration published the consultation paper on proposed enactment to implement Article 23 of the Basic Law in September, there has been much public debate both for and against the proposal, though there are also alternative views between the two extremes.

Let me make myself understood: I am in support of the proposal in enacting laws to implement Article 23 of the Basic Law because we are duty-bound, particularly as legislators, to fulfil our constitutional obligation under the Basic Law. However, members of the public are encouraged to put forward their views, no matter how divergent, so as to enable the ultimate ordinance to be as widely acceptable to society as possible.

As far as I can gather, those who oppose the proposed enactment have two main concerns: one, it may infringe on people's rights and freedom; and two, there is no urgent need to enact such a law now as Hong Kong society is currently quite peaceful.

Madam President, whether the proposed enactment will restrict people's freedom or other rights depends on whether the proposed restrictions are "necessary" and "proportionate to the aims". For example, paragraph 3 of Article 19 of the International Covenant on Civil and Political Right (ICCPR) states that:

- "3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals."

It is exactly for the purposes of protecting national security that the proposed enactment is seeking to establish which, I believe, must be the physical and moral duty of every righteous citizen. It is an indisputable fact that every nation in the world has laws to protect its sovereignty, territorial integrity, unity and national security.

Regarding possible restriction on freedom of expression, Chief Justice LI in his judgement on desecration of the national flag and the regional flag in the Court of Final Appeal in December 1999 said:

"Having regard to what is only a limited restriction on the right to the freedom of expression, the test of necessity is satisfied. The limited restriction is proportionate to the aims sought to be achieved and does not go beyond what is proportionate.

Hong Kong is at the early stage of the new order following resumption of the exercise of sovereignty by the People's Republic of China. The implementation of the principle of 'one country, two systems' is a matter of fundamental importance, as is the reinforcement of national unity and territorial integrity."

I wish to stress that Chief Justice LI's judgement is that the reinforcement of national unity and territorial integrity is as fundamentally important as the principle of "one country, two systems".

Thus, there is nothing wrong to enact laws to implement Article 23 of the Basic Law. Article 23 of the Basic Law stipulates that the Hong Kong Special Administrative Region (SAR) "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, ....." The key to the proposal is the scope covered by the proposed enactment. The current consultation paper provides a general framework and members of the public will soon be able to scrutinize the details of the proposed legislation when the Administration publishes the draft bill early next year. Like many others, I, too, have reservations about some of the proposed enactment as currently appeared in the consultation paper.

As to whether this is the right time to enact the relevant laws, I am of the view that Hong Kong is already in vacuum without such a national security law for more than five years since the resumption of sovereignty by the People's Republic of China in July 1997 and that we will stand to benefit from a more relaxed law when enacted during a peaceful time like now (rather than during a time of conflict or war when enactment will tend to be more draconian). Many Members of this Council who were Members of the then Legislative Council before the 1997 handover will recall in 1996 when they legislated amendments to the Crimes (Amendment) (No. 2) Bill and the then Secretary for Security addressed this Council and said: "Honourable Members of this Council, who are

elected to represent the community, have since then continued to impress on the Government the need to have clear legal definitions of these concepts on our statute books at the earliest opportunity before 1 July next year." The situation then in society was rather peaceful and very much like what we are now. And there was no advocacy to use violence, war, threat of force or other unlawful means to resist the resumption of sovereignty by the People's Republic of China over Hong Kong. I can therefore see no reason why this is not the right time to enact relevant laws to fulfil our obligation and to fill up the vacuum in Article 23 of the Basic Law.

Madam President, I would further propose to scrutinize the Administration's proposal upon two main principles, that is, on the issues of "clarity" and whether the proposal is "excessive". As these two involve legal interpretation and that the legal professions has provided pretty detailed opinion of their own including publishing pamphlets which have been despatched to the general public, I hope the Administration will duly consider the views so expressed and will duly address their concern when giving responses thereto.

One of the controversies over the consultation paper is on whether the mere expression of views or mere reports or comments on views or acts and whether possession or dealing of certain publications would be treated as sedition and be criminalized. This I understand has been addressed by the Secretary for Security at various public forum and also covered with the narrowest definition in the consultation document. However, I wish to point out that the Administration has proposed, among other things, a new category of information to be protected and treated as state secrets, that is, information relating to relations between the Central Authorities of the People's Republic of China and the SAR. Although the Administration has clarified that Central Authority does not include provincial and municipal governments. But then what does it include? The details of the Bill when published should clearly define what Central Authority means in order to avoid unintentional contravention particularly by members of the media.

As to the proposed emergency entry, search and seizure power to be provided to the police at the superintendent level for investigating Article 23 offence. As the law shall deal with serious crimes at national level, the proposed search and seizure power should preferably be vested with the law court or at least if emergency situation warrants, such power should be elevated to the level of the Commissioner of Police in order to alleviate fear of unnecessarily excessive police power.

Lastly, I would like to quote from the late DENG Xiaoping, a great leader of our nation and the engineer and champion of the principle of "one country, two systems". He said in 1984 when receiving visitors from Hong Kong and Macao, and I quote in Chinese as follows:

“一九九七年以後，台灣在香港的機構仍然可以存在，他們可以宣傳‘三民主義’，也可以罵共產黨，我們不怕他們罵，因為共產黨是罵不倒的。但是在行動上要注意不能在香港製造混亂，不能搞‘兩個中國’；”<sup>2</sup>

What DENG said was very clear, that is, mere expression of views or advocacy should not be criminalized. But acts of force or violence could lead to and constitute treason, secession or jeopardize national security or territorial integrity.

Madam President, we await details from the Administration particularly on its response to comments received during the consultation period. With these words, I support the amended motion. Thank you.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the economy of Hong Kong has been on a slide in recent years since the Asian financial turmoil. Our jobless rate remains high, deflation persists and times are indeed very rough. People from different walks of life are seriously affected both mentally and in their livelihood. Everyone is subject to great employment stress, and that applies to the common wage earners, civil servants, the middle class, the professionals and people in the business and industrial sectors. People are filled with enormous grievances, grumbles and discontents against the Government, for over the past five years the policy objectives have remained unclear and been subject to frequent changes. Many people think that Hong Kong is no longer a place where they can work and live in contentment. This has become a feeling shared by people from all walks of life.

Now the most pressing task for the Hong Kong Government is not merely reviving the economy, but also winning the hearts of the people. What the Government should do is to devise policies which are closely related to the

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<sup>2</sup> Translation: After 1997, Taiwanese organizations in Hong Kong may still exist. They may still promote the "Three People's Principles", and may criticize the Communist Party. We are not afraid of criticism, as the Communist Party will not collapse just because of criticism. However, attention should be given to ensuring that such activities should not cause disputes in Hong Kong, and that they should not be related to any activities on "two China";

people and which can ease their grievances, boost their confidence and narrow the gap between senior officials and the public at large, thereby minimizing the sense of alienation. Therefore, in taking forward any legislative exercise, the Government must take into account the fundamental considerations of the end-users of these laws, that is, the public. Laws must be narrowly defined and their scope of applicability be accurately set out, hence minimizing the impact of new legislation on the people or completely avoiding to produce any impact. The way to win the hearts of the people and to enhance the well-being of society is to adopt the principle of minimum legislation.

Recently a Consultation Document entitled "Proposals to implement Article 23 of the Basic Law" has been released. The document contains various arrangements intended to implement Article 23. However, there are many legislative proposals which are very much detached from the public sentiment and even serve to rock the very foundation of human rights and freedom in Hong Kong, thus causing uncertainties. This is disappointing.

First of all, on the manner of consultation on the proposals to enact laws to implement Article 23. Various sectors in society such as the political circle, the academia, university students, the legal profession and even the business sector all hope that a White Bill can be issued to enable the public to understand the legislative proposals and details of Article 23 legislation. However, this demand is ignored and the authorities think that there is no need to do so. I fail to understand why the Government insists that a White Bill should not be used as a form of consultation. This is really a technical contradiction rather than a contradiction in terms of principle. Even if more time is used, but if public opinion is better addressed, this will make the people understand this sensitive topic better. Why should this not be done? I fail to see any urgency in enacting laws on Article 23 and there is no need for the Government to devise a timetable for it, specifying when the entire legislative process should complete. Therefore, both the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I would think that in such circumstances, the Government should issue a White Bill so that the people from all walks of life will know what the Government really has in mind and what it is trying to do. For even if it is well-intended, it should not just tell the people that it wants to do some good things but it should also let them see what are the good things intended.

Now the confidence of the people of Hong Kong is weak and when it comes to handling an extremely sensitive piece of legislation like that for Article 23, both the ADPL and I would think that the Government should try all means possible to avoid touching the nerves of the people.

Article 23 provides that "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets". I think that the most important word in the Article is the word "shall". It implies an obligation and something which must be done as a matter of responsibility. In other words, the SAR Government is obliged and has the responsibility for enacting laws to implement Article 23 within the scope defined by the Basic Law. This point is indisputable. The SAR Government must enact laws on this and if the SAR Government fails to do so, it may contravene the Basic Law.

We agree with some of the views presented by the Hong Kong Bar Association in that the SAR Government has the right to enact laws to implement Article 23, but the contents of such laws must meet the requirement of the principle of minimum legislation which I have mentioned, as well as the Johannesburg Principles. In addition, with respect to the legislation and especially in some new laws, efforts should be made to avoid restricting the due rights and freedoms of the Hong Kong people. The contents and wording of such new legislation should also avoid touching the nerves of Hong Kong people.

Due to the time constraints and as I am the only representative of the ADPL in this Council, so I can only focus on three of the important issues among the many found in the Consultation Document for discussion. We are of the view that there are three parts which are particularly sensitive to Hong Kong people.

On the legislative proposals related to the offence of sedition, I think an act of sedition must include three elements: the motive, the act and the effect. If there are only motive and the act but no effect, then it may lead to a problem of definition and people may worry whether their actions or words constitute a breach of the law. So it is likely that people may be convicted on account of their words. That is a damage to the freedom of speech which prevails in the territory. Therefore, the Government should really adopt the principle of minimum legislation, or use the Johannesburg Principles as the guiding principles for this legislation. The part on the effects of acts of sedition should be narrowly defined and there must be proof that the speeches are made with the motive of inciting violence or that they will probably lead to an imminent occurrence of violence and that the speeches made have a clear and direct relationship with the violence that may be caused. Only when these conditions

are satisfied that criminal sanctions may be imposed on grounds of national security.

Owing to the above principles, acts of purely expressing personal opinions should not be considered an offence. The provisions on sedition should not be confined to restricting any person from taking part in any lawful publicity to oppose anything or demonstration. The exercise of these rights *per se* should not be regarded as damaging national security.

Another sensitive topic of the Consultation Document is the legislative proposals on the handling and possession of seditious publications. The Consultation Document stipulates that a person shall commit an offence if in the course of dealing with or possessing a publication, knowing or having reasonable grounds to suspect that the publication is of a seditious nature and no reasonable excuse can be offered. As ordinary members of the public do not have sufficient legal knowledge to determine whether a publication in their possession is of a seditious nature, so the proposal is disturbing and would cause a lot of concern. For the people will worry whether or not the publications in their possession would contravene the law. And so they are very much scared. This would exert pressure on the media and the publishers indirectly and that concern is shared by university professors and librarians as well. Obviously, such a proposal would seriously undermine the freedoms of speech and publication in Hong Kong. What Article 23 prohibits are seditious acts, and persons involved in such acts can be prosecuted with charges of sedition. The proposal as it is fails to comply with the principle of minimum legislation.

In addition, we also have strong reservations about the two legislative proposals under the offence of theft of state secrets, namely, unlawful disclosure of protected information and the ways to protect confidential information. On the issue of unlawful disclosure of protected information, the Consultation Document proposes to add a rather abstract category of information relating to the relations between Hong Kong and the Mainland. As there are increasingly frequent exchanges and interaction between Hong Kong and the Mainland, with all sorts of exchanges of information, it is worrying that the proposal would cause the concern that no one can be certain about what kind of information during such exchanges between Hong Kong and the Mainland would be unlawful. This applies especially to the media workers because they have to commute between the two places very frequently and they are hence very vulnerable. Mrs Regina IP, the Secretary for Security, said earlier that the Central

Government had a certain say in the definition of confidential information by the SAR Government. The remark has caused cultural and media workers to feel even more concerned. That is because there exists a great disparity between cultural values in Hong Kong and on the Mainland. Such a practice would easily lead to constraints on the freedom of the press in Hong Kong or self-censorship in the media. Therefore, the authorities must clearly define the category of confidential information under relations between Hong Kong and the Mainland. Only this can reduce the impact of Article 23 on the freedom of the press.

On the ways to protect confidential information, the Consultation Document suggests that there shall be no unauthorized access to, transmission of or dealing with protected information, as well as their unauthorized disclosure. That would outlaw all acts of unauthorized disclosure and stifle the freedom of the press. What is more worrying is that Ms Elsie LEUNG, the Secretary for Justice, said earlier that if a person should knowingly disclose some protected information and refuse to disclose the source of such information, that would be tantamount to theft of state secrets. This is shattering the golden rule observed by the press, that is, the protection of the source of information. It is also the foundation of the free exercise of the function of the press. This proposal will injure news reporting and the journalist profession.

Lastly, I would like to discuss the powers of emergency entry, search and seizure under the investigation powers provided to the police and the scope and exercise of such powers. In my opinion, the proposals are too lax. The authorities now suggest that when investigating offences related to Article 23, police officers of the rank of superintendent or above may issue a search warrant by themselves and conduct the investigation. Both the ADPL and I strongly oppose this proposal and we question this kind of power granted to officers within the Administration is lacking in any external checks and balances. This will easily lead to excessive police powers. Even in the anti-terrorist law enacted in the middle of this year, which the authorities describe as a task which they must fulfil, no powers of such a magnitude are provided to the police. Therefore, we think that the argument presented by the authorities that more powers are needed than those used to combat terrorism is simply unacceptable. We think that when police officers investigate into offences related to Article 23, they should apply a search warrant from the Court before they can exercise the power to conduct any emergency entry and search in a premises and seize the relevant articles. In this way, the independent Judiciary will play the role of monitoring and checking police powers.

The Consultation Document has not mentioned any compensation mechanism for the wrongful exercise of such investigation powers by the police. In general, the police will exercise such investigation powers only when they have sufficient evidence and good justifications. However, a fair law that can balance the interests of all parties should include reasonable protection for innocent victims. Therefore, both the ADPL and I suggest that a proper mechanism for compensation should be set up. When losses of property occur as people are wrongly implicated as a result of Article 23 offences, they can seek civil remedies.

For decades, despite being a tiny spot on the map, Hong Kong has managed to maintain steady and rapid economic growth. This is attributable to our sound financial system, quality infrastructure and our gifted geographical position. More importantly, the people of Hong Kong have always enjoyed a high degree of human rights and freedoms, including the freedoms of association, speech, assembly and publication. All these are indispensable conditions to our vibrant economy, now as in the past. Now the Administration seeks to enact laws to implement Article 23, it must adopt the principle of minimum legislation so that the scope of the laws can be narrowed down and the impact on the people reduced to a minimum or even to nil. This will ensure that the human rights and freedoms we now enjoyed by Hong Kong people will not be affected. However, we feel that the Consultation Document has obviously failed to achieve this.

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

**MR AMBROSE LAU** (in Cantonese): Madam President, the Consultation Document makes it clear at the outset that the enactment of laws by the Government to implement Article 23 of the Basic Law (Article 23) aims to meet firstly, the need to fully implement the provisions of the Basic Law; secondly, the need to sufficiently protect the state's essential interests, namely, sovereignty, territorial integrity, unity, and national security; and thirdly, the need to ensure that all offences encompassed by local legislation to implement Article 23 are as clearly and tightly defined as appropriate, so as to avoid uncertainty in their interpretation and the infringement of fundamental rights and freedoms guaranteed by the Basic Law. This shows that the Consultation Document is focused on how a suitable balance can be struck between the human rights of the people and national interests. The Consultation Document has not specifically

suggested what the Government should do to this end. It has only put forward some general legislative principles and proposals on the basis of the relevant provisions of Article 23 for public discussion. The Consultation Document is published to encourage free discussion by members of the public, so that the Government can widely listen to the views of all sectors of the community. It is not meant to suppress the human rights and freedoms of the people. Some members of the community have distorted the purpose of the Consultation Document as forcing the people to give up their human rights for national interests. This is baffling indeed.

Hong Kong is a society where the rule of law prevails, and the Basic Law is the cornerstone of the rule of law in Hong Kong. All Hong Kong people are duty-bound to support the Government enacting laws to implement the Basic Law. In enacting laws to implement Article 23, the Government is only doing something that should be and need to be done, something that has yet been accomplished. If improvements to some of these laws are required, members of the community can, through the Legislative Council, press the Government to make amendments. We should not support certain laws selectively or with strings attached, or reject certain laws purely based on our own preference. Obviously, we must support the implementation of provisions in the Basic Law that protect the basic rights and obligations of Hong Kong residents, including Article 39 which provides for the application of the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in Hong Kong. We should at the same time support the implementation of Article 23. Only when the Basic Law is fully implemented can the authority of the Basic Law be fully demonstrated. And only in this way can the rule of law be consistently upheld in Hong Kong.

Some people take the view that it is not opportune to enact laws to implement Article 23 now. This, the Hong Kong Progressive Alliance (HKPA) begs to differ. The protection of national security is the first and foremost task of every government in the world. No government in the world would wish to see its national security being compromised. No country, knowing that its national security may be at risk, would proceed to the enactment of laws only after its national security is compromised.

There is also the view that Hong Kong should enact laws for this purpose only after the implementation of universal suffrage. The HKPA also begs to differ. This is against the principle of enacting laws on Article 23, for

Article 23 does not prescribe any precondition for the making of laws. Nor does it allow the Government of the Hong Kong Special Administrative Region (SAR) to set out its own preconditions for the enactment of laws to implement Article 23.

Members of the community should not lead the substantive discussion on how best human rights and national security can be balanced to digress into contentions about the mere form of publication, that is, whether a Blue Bill or a White Bill should be published. The Government has not made any rigid provision as to whether a bill should be published in the form of a Blue or White Bill. Policy Bureaux may, according to the specific circumstances, consult the Department of Justice individually. Generally speaking, when a Policy Bureau considers that the legislation involves complicated technical issues, or if it cannot collect views by way of a draft bill, a White Bill will be published for public consultation. Therefore, whether or not a White Bill will be published bears no direct relation to the Government's sincerity in consulting the public. Indeed, the importance that the Government attaches to public opinion is seen not in the publication of a White Bill, but the publication of a consultation document. The publication of a consultation document is a solemn and serious way of consultation which attaches importance to the rights of the people.

More importantly, after the Government has tabled the Blue Bill, the Legislative Council can surely form a Bills Committee to scrutinize the Bill. The Bills Committee can hold public hearings and also invite members of the public to come to the Legislative Council to express their views. It can also scrutinize the Bill in detail clause by clause. In the course of deliberations, members of the public still have ample opportunities to express their views. If the Bills Committee finds problems with the provisions, the Government will have to propose amendments to the provisions in accordance with the majority view of the Bills Committee, in order to ensure the passage of the Bill by the Legislative Council. Since the Legislative Council already has stringent procedures of scrutiny, it is indeed unnecessary for Members to be entangled with the contentions about a Blue Bill or a White Bill.

The HKPA considers that some legislative proposals mentioned in the Consultation Document are basically more liberal than legislation currently in force in Hong Kong. Let me cite a few examples. Regarding the offence of treason involving "levying war", under section 2(1)(c) of the Crimes Ordinance, a person commits treason if he levies war against the state "in order by force or constraint to compel the Central People's Government or other competent

authorities of the People's Republic of China to change its measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, the legislature". Under the proposals to implement Article 23, the Government has more tightly defined the scope of section 2(1)(c) of the Crimes Ordinance, in that the proposed penalty will be confined only to "levying war by joining forces with a foreigner with the intent to firstly, overthrow the Government of the People's Republic of China; or secondly, compel the Government of the People's Republic of China by force or constraint to change its policies or measures; or thirdly, put any force or constraint upon the Government of the People's Republic of China; or fourthly, intimidate or overawe the Government of the People's Republic of China". In simpler terms, the existing legislation covers a wider scope, whereas the new legislative proposals have a narrower coverage and are more liberal and moderate.

On the offence of treason involving "instigation of foreigner to invade the country", the term "foreigner" is not defined in the existing Crimes Ordinance. In the proposals to implement Article 23, the Government has proposed a clear and narrow definition to mean "armed forces which are under the direction and control of a foreign government or which are not based in the People's Republic of China".

Madam President, the HKPA considers that insofar as the enactment of laws to implement Article 23 is concerned, the Legislative Council and the community must discuss and analyse it in a rational and objective manner and propose constructive views. In fact, in due respect for the principles of "one country, two systems" and "a high degree of autonomy", the Central Government has allowed the SAR to make laws on its own on matters relating to national security which originally come under national affairs. From this, we can see that the Central Government has full trust in the SAR. Therefore, Hong Kong people should be united and should not allow ourselves to become unworthy of the full trust of the Central Authorities. We should make good use of our rights and enact a piece of sound legislation to strike the best balance between the need to safeguard national security and the need to protect the human rights and freedoms of Hong Kong people. The HKPA does not wish to see unnecessary conflicts and divisions among Hong Kong people as a result of the enactment of laws to protect national security. We should deal with the matter calmly, and we should work for a common goal despite minor differences and strive for a consensus.

Madam President, I so submit.

**DR LO WING-LOK** (in Cantonese): Madam President, I have listened carefully to the speeches delivered by a number of Members. While some Honourable colleagues tried to illustrate their points by drawing an analogy with falling ill, quite a number of them have even pretended to be doctors in front of a genuine doctor. I have to remind these colleagues that, under all circumstances, except for Members of this Council who enjoy protection speaking in this Council, a person practising as a doctor without proper registration or posing as a doctor may be deemed to have committed a criminal offence.

Now let me, a genuine doctor, say a few words from the medical perspective, for Honourable colleagues have already spoken enthusiastically on other areas. I support the proposals to legislate under Article 23 of the Basic Law. At the same time, we should ensure a lenient legislative spirit and yet a rigorous legislative process. Being a doctor, I must point out that, in formulating the relevant laws, we must fully follow the professional practice of doctors designed to ensure a good relationship of mutual trust between doctors and patients. On the one hand, the privacy of patients must be fully protected and, on the other, doctors must be allowed to, as usual, devote themselves wholeheartedly to serving their patients, regardless of race, religion and political background.

Madam President, I so submit.

**MS CYD HO** (in Cantonese): Madam President, I rise to speak in support of the original motion moved by Mr James TO and in opposition to the amendment moved by Mrs Sophie LEUNG.

The establishment of a state depends on a few conditions: land, a common cultural and historical background, and a people with common interest. Through a social contract the people give their mandate to a government to represent their interests and govern the country. We should bear in mind that the government should represent the interests of the people and that it should abide by the social contract. So a state does not equal to a government and we should never equate a government with the stability of the SAR.

When a government acts contrary to the interests of the people or when it encroaches on the rights and freedoms of the people, or put it simply, when the government becomes an enemy of the people, those in power would consider

making use of national security laws to suppress the voices of criticism from the people and prohibit them from making any efforts to induce improvements to the system. In fact, national security laws may encompass two aspects, one is for external uses, that is, to defend the country against foreign enemies and to protect the people. However, a more often used aspect is for internal purposes, that is, to protect the government and suppress dissenting voices. A government, irrespective of whether it has the support of the people, may act in the name of maintaining stability use national security laws to suppress its people, especially curbing the freedom of expression and of the press.

The legislative proposals to implement Article 23 of the Basic Law can also be divided into those aiming at internal and external purposes. The fact that the Consultation Document has aroused such strong reactions and queries, especially from the legal profession, is mainly because an overwhelming majority of its legislative proposals are intended for internal purposes. For this reason, many people opine that the proposals found in the Consultation Document have in fact served more than is necessary to implement Article 23.

If we deduct Article 23 from the proposals made in the Consultation Document, we will find that there are a lot of things that have yet to be completed. That is a matter of very simple arithmetics. If all these restrictions are directed against such matters as defence against foreign enemies, for example, prohibiting the participation or assistance in any military action or plans of an enemy state, assisting an enemy state to start armed confrontations of a military scale, theft of such intelligence and information as the number of missiles deployed, and so on, then I would envisage the number of opponents will drastically decrease. Even if there are people who oppose these, they will never be the majority. As Mr WONG Yung-kan puts it, they are just like a few droning flies. However, what we are now hearing are not only the droning noise of a few flies, but dissenting voices from a lot of people. Such queries are becoming a noticeable trend. Let me cite an example. The Consultation Document carries the word "war". "War" as a matter of common sense should be taken to mean the kind of war which involves military action as I have just mentioned. However, according to a definition found in a footnote of the Consultation Document, "war" can mean a large body of men assembled with the intention to debar the government from the free exercise of its lawful powers and are ready to resist with violence any opposition. This is fundamentally different from the concept of war as commonly understood. Words like "sedition" and "subversion" are obviously directed at internal matters and they are used to

suppress dissidents. We are very worried that when the concept of "state" is materialized, the "state" and the people will be placed in a position of confrontation and those in power may then suppress in the name of collective interest the rights and freedoms of the people. Then with the passage of time, those few people who hold the reins of power will begin their autocratic rule. We can see that the national laws in places like Singapore and Malaysia are targeted more against those in opposition than any foreign enemies. As for China, the great number of people prosecuted on political grounds is shocking.

I would now cite two examples. In its report on the human rights situation in China for the year 2002, the Amnesty International pointed out that there was a surge of incidents in China concerning serious encroachment on human rights in 2001. Thousands of people were jailed for offences resulting from peaceful exercise of their freedom of speech, association and faith. In the report for 2001 of the Association for the Protection of Journalists, President JIANG Zemin was listed as one of the 10 greatest enemies to journalists. The media in China are constantly subjected to suppression, countless publications are banned, and outspoken journalists are sent to jail. This is indeed very unfortunate.

The greatest worry of the people of Hong Kong is that such legislative proposals are extending the mainland practice of dealing with political issues to Hong Kong through legal channels. In a programme of Radio Hong Kong, two Members of the Legislative Council made repeated requests to the Secretary for Security to undertake that no attempts would be made in future to request the National People's Congress to interpret the Basic Law. But the Secretary refused to give such an assurance and that makes us feel very worried.

As for national security laws for internal purposes, they are founded on the same law of the jungle where the winner is crowned a king and the loser branded as a bandit. A success will be seen as a glorious revolution and a failure will be called an act of subversion. Dr SUN Yat-sen was called a traitor for the first half of his life and he was lauded as a fighter for the revolution in the latter half of his life. In the end, he was named the father of modern China. So whether some acts are considered as offences or contribution to the state would really depend on how different people would look at them.

We can use the democratic system to replace national security laws intended for internal purposes. If we have a mechanism for democratic

elections, ruling parties can make their peaceful entries and exits on the political stage, bloodshed can be avoided before a government changes hands and those who step down may do so with grace and those who come to power will have the mandate of the people. Everyone can take part in elections and there will be no more acts of subversion. Those who help in electioneering will not have to resort to acts considered seditious. That will be far better than enacting national security laws against subversion and to suppress discontent against the political system, the state and society. Once such a political system is established, the people will all unite behind it wholeheartedly and come to the defence of this fair system. Those who hold different views may resort to subversion with their votes and sedition with their electioneering teams. All these can be done through fair play rather than national security laws as these laws will only give those in power the pretext to crack down on dissidents.

I agree very much with footnote 45 to paragraph 5.3 of the Consultation Document. The footnote defines "subversion" as "actions which are intended to overthrow or undermine parliamentary democracy by political, industrial or violent means". From this definition, we can see that a national security law not being checked by a democratic political system will enable those in power to injure the interests of the people through lawful means.

Madam President, I recall the Secretary for Security once said on a public occasion that the authorities would like to enlist the support of the public instead of merely passing the legislation through the voting mechanism of the Legislative Council. I really hope that the Government will realize this with its own deeds. I am not in favour of enacting laws on this, but I do think that the people must be given a choice to understand the contents of the proposals before they can make a choice after taking different views into account. As the impact of Article 23 legislation is very far-reaching, we must act with extra care and never in haste.

I agree to the request that a White Bill be issued to facilitate better understanding among the public. Those who support enacting laws to implement the Article also agree to this during the whole discussion. If a White Bill is issued by the Government, people can then discuss the details of the various proposals. There are in fact some differences between a White Bill and a Blue Bill. The legislative timetable for a Blue Bill is controlled by the Government in the sense that an advance notice of only 12 days is required to be given to this Council, regardless of whether or not deliberations have completed, before the Bill is submitted to this Council for resumption of Second Reading.

We had memorable experiences when we deliberated on the anti-terrorist laws in July. Consultation for these laws progressed in a very disappointing manner. Despite our repeated attempts to ask the Secretary questions, no scientific and objective standards were given to gauge public opinion. Various different standards were given, for sometimes the emphasis was placed on quality and sometimes on quantity; sometimes the views of the grassroots were respected while sometimes it was made clear that there was no interest in discussions. On top of these, the authorities had formed a stand at the outset of the consultation period. A preconceived view on those who hold different opinions was made. All these gave people the impression that only supportive views would be considered, while those dissenting views would be regarded as lacking in quality and might not be considered. Remarks made by the Secretary for Security added to these apprehensions. For example, she thought that it would be improper to express one's opinions simply by putting a tick without giving arguments. It was because she thought that quality discussions and proposals should be made. May I ask, why people cannot express their views by putting a tick sign? The 24 Members here in this Council returned through direct elections are elected by the people who put a tick on their ballots, though the practice has recently been changed to putting an "x" against the candidate's name. Since the public knows that this sign can represent their choice, why then does the Government refuse to recognize the importance of this sign? For some arguments presented in detail, however, the Government thought that they were too emotive and did not deserve any in-depth study. Such an approach of the Government is really disappointing. In the editorial of the official newspaper of the Catholic Diocese of Hong Kong, the *Kung Kao Po*, on 2 November, it is stated that a government which is sincere in consulting public opinion will not turn a deaf ear selectively to voices of opposition. Therefore, I urge the Administration to tell the public what standards are being used to gauge public opinion, and if the Government is sincere in consulting the public, it should provide all the background information, including a White Bill.

Some people think that this is a delaying tactic by the Government. Some officials said that we should not ask why the proposal to legislate was made in haste, but instead why delays had been made until now. I would like to point out that the preparatory work for this began long ago and it was only on 24 September that it was made public. The authorities has conducted a lot of studies on this, including concepts dating back to the 14th century, cases in the 19th century, as well as old law books such as the one mentioned by Ms Audrey EU earlier which is a 19th edition of a book published in 1966. All these are

used and cited by the Government to support its arguments. I believe such research work could not have been completed during the two-and-a-half months since the accountability system for principal officials was implemented. That can be attributed to the meticulous preparatory work done well in advance.

When I raised my oral question yesterday, I cited some materials from a book on legal drafting in Hong Kong published by the Department of Justice. Let me add something now to what I said. In paragraphs 2.5, 2.6 and 2.7 of the book, it is stated that upon receipt of the drafting instructions, the draughtsmen in the Department of Justice would try their best to understand all related proposals which may affect the laws, study the common law and the statutory law and read related law books and international covenants before conducting a thorough analysis of the relevant proposals. Efforts will also be made to ensure that the proposed concepts will comply with common sense and will not breach any concepts of jurisprudence in implementation. It is after these three steps are completed that drafting will commence. However, the Secretary for Security said yesterday that the drafting instructions had yet to complete. In my opinion, much work has already been done by the Government and the problem I have just referred to is merely a matter of minor importance. For it would not be a bad thing if much research work has been done on the part of the Government. However, I think the information should be made public so that we can all have a full set of information when discussions are made. That will prevent the Secretary from using some piecemeal arguments to support some preconceived conclusions, for that would render the consultation exercise meaningless.

It has indeed been shocking to set the deadline for enactment of laws at July next year. For it is stated in the book which I have just referred to that according to past experience of law draughtsmen in Hong Kong, the time taken for drafting laws of minor importance is three months, that for ordinary laws is six months, and that for important laws is 16 months. The laws to implement Article 23 are extremely important. They are no ordinary laws. The Secretary for Security said that when consultation is completed by 24 December, a Blue Bill would be introduced next February. The actual time involved is only a little bit more than two months. I therefore suspect that unless the authorities do actually have a bill up its sleeves and the consultation is conducted as a matter of formality, it would be amazing to see how quality a bill can be drafted in such haste. As to how much time is considered appropriate, the book cites a remark made by Abraham LINCOLN to the effect that in reply to a question on how long should the feet of a person be, the reply given was as long

as that could make the person stand. For law draughtsmen, the answer is that the time sufficient to complete all drafting work. Likewise, I think a reasonable time required for discussion is that which allows the public to understand all the issues involved and ask questions. If some clarifications are still to be made, then we should not cast our votes in haste.

Madam President, the Government should seriously address different views from all quarters and it should frankly face all problems. If it is looking without actually seeing anything, or hearing without really listening, or if it is trying to twist and distort the facts, that would only serve to undermine its popularity and further divide the community. Up to this very moment, I believe Hong Kong has not yet become a place where lies told a hundred times will be taken as the truth. On the contrary, ours is a society with a free flow of information, and a lie told a hundred times will only remain a laughing stock a hundred times. I hope government officials would be more prudent about their words and do their best to complete the consultation exercise. Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, maybe some people in this world would like to live in their own illusions. But there is no world of Great Harmony in reality. Different nations are still found on the Earth, and so are national boundaries. Like it or not, willing or not, everyone is living in a world made up of different nations — others' nations or that of our own. In all nations, laws on protecting their own security are invariably found. These laws are applied everywhere in a nation, and without any exception, the protection of civil rights and liberties will co-exist with the laws on national security. Hong Kong practises "one country, two systems", which means that the basis of "two systems" is "one country", that is, the People's Republic of China. Since Hong Kong is one component part of China, it is obligated as such to protect national security, in very much the same way as the state is obligated to protect the security of Hong Kong.

Hong Kong can enact laws on its own to protect national security, and it can even wait until five years after the establishment of the Hong Kong Special Administrative Region (SAR) before it starts to enact legislation systematically as required by the Basic Law; this is something never found in other countries and is also a show of latitude. Under the Basic Law, Hong Kong enjoys a "high degree of autonomy". According to the constitutional arrangements, Hong

Kong is not required to pay tax to the Central Government, nor does it have to meet the defence and garrison expenses. Since the establishment of the SAR, the Central Government has adhered firmly to the principle of not interfering in the local affairs of the SAR. But whenever Hong Kong encounters any social and economic difficulties, the Central Government will always entertain the requests of Hong Kong and provide positive assistance and back-up by, for example, abolishing the Hong Kong Group Tour quota. It is worth mentioning once again (some Honourable colleagues have also mentioned that before) what President John Fitzgerald KENNEDY of the United States once said: "Ask not what your country can do for you — ask what you can do for your country." Should we the people of Hong Kong also ask the same question? If we read through the whole text of the Basic Law, we will note that Hong Kong actually needs to discharge extremely few obligations and duties towards the state. There is only one obligation, that is, to enact legislation as required by Article 23. To be fair, one must say that this is not at all an excessive requirement.

Opinions of all kinds are heard during the current discussions on Article 23 legislation. Some oppose the enactment of laws to implement Article 23 simply because they oppose the existence of any national security laws in Hong Kong, and think that if people support the legislation, "one country, two systems" and Hong Kong's "high degree of autonomy" will be damaged, and so will civil liberties and rights. Very unfortunately, it is precisely such a mentality that has taken away the rational basis for discussions in society on Article 23 legislation. So, it is small wonder that it has been asked whether these people have "evils in their hearts", and whether they are Chinese people. Why is it that when it comes to rights and liberties, these people are so very keen and interested, but when it comes to their duties and obligations towards the country, they are so "evasive"? We have seen lots of the so-called discussions, all based on such a mentality, all devoid of good sense; the only thing that could be found is political bias packaged as professional opinions. Some of these discussions were even reduced to personal attacks and insults directed at government officials or downright slanging matches — so-called forums of university students. All this makes us feel that while it is pitiable to see people trying to evade their duty and obligation, it is even more pitiable to see them pursuing liberties and rights so blindly.

The Consultation Document on Article 23 released by the Government is not the law in itself. Since the Document has set out just the general principles, it is only natural that it should lead to discussions on the various possible legal

interpretations. And, this is precisely the objective the Consultation Document has to achieve. Some argue that there are no concrete provisions to form the basis for discussion. However, if the Government now presents both concrete provisions and the Consultation Document, I am sure that some people will definitely criticize the Government for predetermining its position, for conducting a bogus consultation as a matter of formality — in the words of a colleague. If one wishes to oppose the legislation just for the sake of opposing it, one can surely come up with one reason or another no matter what the Government does. Some argue that a White Bill should be published. But as far as detailed discussions are concerned, is not a Blue Bill better able to provide a concrete basis for discussion? In any case, the legislature will have a chance for deliberations, so will the public for participation in discussion. The First Reading of a bill does not necessarily mean that it can pass through the Third Reading intact. If anyone is ever worried that the Legislative Council is just a rubber-stamp, if there is really such a worry, then what difference can a White Bill make anyway?

When it comes to concrete legislative proposals, I must say that all provisions must be as clear as possible, especially when criminal incrimination and restrictions on civil liberties and rights are involved. But when we look at similar laws now in existence, we will see that the best we can do is just to make the provisions as clear as possible, because they are after all written in the languages of man. Had we been able to do more than that, there would not have been any legal disputes in this world, nor would there have been any lawsuits. If we require that all legal provisions must be readily comprehensible by laymen, always readily applied precisely and also free of any semantic confusions before they can be enacted, then I am afraid that it would have been impossible to enact many of the existing criminal laws or even civil laws in the very first place. It will even be more unrealistic and unfair for us to evaluate a consultation document from such a perspective.

(THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair)

The Bar Association has recently published a response, in which many comments on the Consultation Document are made. At first glance, it seems that the response is worth considering, but some of its views are on the other hand open to question. We may just look at the beginning part, the part on

treason, as an illustration. It is criticized that "the intents also reflect an age where the King could do no wrong and the very idea that the ordinary citizen should seek to change the sovereign's 'policies' or 'measures' is unthinkable". But if we read the Consultation Document more carefully, we will see that there is no proposal to prohibit people from urging the government to change its policies or measures. What is prohibited is the levying of war by joining forces with a foreigner with the intent to compel the government by force or constraint to change its policies or measures. Anyone who uses force as a means to achieve an end should always be punished, whether or not the end is legitimate. So, it is meaningless for the Bar Association to make such a criticism. As for the proposal to revise the definition of treason on the basis of this criticism, I would think that they simply wish to revise the definition just for the sake of revising it. The response of the Bar Association also recommends that war should be confined to publicly declared war or state of hostilities. This is even more detached from the reality. We can find many examples of undeclared war in history. One simple example was the attack of Pearl Harbour by Japan during World War II. Is assistance to foreign enemies during such times an act of treason? And, is it treasonable for a person to assist a foreign enemy while knowing that the latter intends to launch an invasion of his own country?

I am of the view that as long as we recognize our obligation under Article 23 to enact legislation, all worries concerning the Consultation Document can be raised for sensible discussions. This will increase the understanding of the public, enable the Government to give its responses and thus establish the concepts more clearly. But the purpose of discussions must never be the creation of panic, or the deferment or avoidance of our duty to enact laws on Article 23, or else society may go to the extreme or simply be polarized. This will not help Hong Kong in discharging its obligations under the Basic Law and at the same time protecting better "one country, two systems", "high degree of autonomy" and the people's rights and liberties. There is an ancient saying which says "It is the responsibility of every ordinary man to strive for the survival of the country". In modern-day context, it should be: "It is the responsibility of the SAR to ensure national security". I wish to share this point with Members. I look forward to conducting rational discussions with Members on the legislation. I hope that Members can scrutinize the legislation rationally and fulfil their inauguration oath — observe the Basic Law and hold themselves accountable to the state and the SAR.

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

**MISS CHOY SO-YUK** (in Cantonese): Madam Deputy, there are laws in every country and regulations in every family. It is inconceivable that there can be any country or place where even treason, secession, sedition, subversion, theft of state secrets and affiliation with foreign political organizations are not crimes. If a government does not enact laws to prohibit various kinds of subversive acts, if it simply turns a blind eye to all those activities which endanger national security, then how can the country survive? If the country falls apart, how can the family survive? When the family falls apart, how can the people enjoy any peace at all? The rationale is so very simple, which is why I am really baffled when I see the blatant opposition of some people to the enactment of legislation on the above-mentioned crimes! Pardon me for not agreeing that these people are patriotic.

Some people avow that legislation must be enacted, but they also claim that now is not the appropriate time for that. According to them, since Hong Kong is politically and socially stable and there is the complete absence of any seditious act, it is entirely unnecessary for the Government to discuss any legislation and poke at the very sensitive nerves of Hong Kong people at this stage. These people are in fact saying that the legislation should be deferred as long as possible. But as we all know, the objective of legislation is precisely the prevention of crimes. These people say that the issue should be deferred indefinitely because of its sensitive nature, but then, are we supposed to accept that the only appropriate time for mooting social discussions on the issue should be the time when a crime of secession really occurs, when the general public finally realize the threat posed to national security?

Madam Deputy, the answer is "no". Precisely because the topic is so sensitive, there is all the more reason for the Government to make haste when the political environment is stable, so that the various sectors of society can rationally and calmly examine all the details of the relevant bill and their implications. Therefore, the DAB is of the view that now is the ideal time for legislation.

As for how we should go about the task of legislation, whether there should be more latitude or the opposite, Members can of course discuss all that in detail, and Members belonging to the DAB will also take this opportunity to examine the issue from different perspectives. Madam Deputy, I happened to read an article about Hong Kong on the Internet yesterday. I wish to read it aloud, in the hope that it can give us some food for thought during our

discussions on the enactment of laws to implement Article 23 of the Basic Law (Article 23). This article is entitled "Words of a Sojourner in Hong Kong: the embarrassment of the 'favoured' Hong Kong people"

The first paragraph reads as follows:

"Two recent news stories, both published on the same day, should cause embarrassment to the people of Hong Kong — God's favoured ones, so to speak.

"The first one. According to the findings of a latest survey, nearly 90% of the Hong Kong tertiary students interviewed have not read the Government's Consultation Document on Proposals to implement Article 23. But this Document has been the 'hottest' focus of the community over the past two months, and the various media have been tracking the issue almost every day. This is a major legislative issue which concerns how the HKSAR should enact laws on its own to implement Article 23 to safeguard national security and territorial integrity, and the three-month consultation is still in progress. However, most university students have not bothered to even look at the Document. Their indifference to the affairs of the country and Hong Kong is really surprising. Interestingly, when the Secretary for Security went around the universities to explain the contents of the Document, these university students, who had not cast even a single look at the Document, all expressed their emotive opposition, and even jeered at the Secretary very impolitely. Some even presented to the Secretary a little flag bearing the words 'A Devoted Patriot', making mockery of her devotion to duty and the rule of law. This is no longer simple 'indifference'; rather it is a serious confounding of right and wrong. I am afraid it is very rare to come across any modern-day society in which loyalty to one's country is regarded by highly educated people as 'shameful' and 'stupid'. From this, we can see the 'rich spiritual legacy' of the past 150 years or so of colonial rule."

Madam Deputy, I do not intend to discuss whether the points made in the article are correct. But whatever the case may be, it does make us realize that when the people of Hong Kong discuss the issue of Article 23 legislation, they should keep their cool and examine the relevant provisions in great depths, instead of lashing out at one another for no good reasons and politicizing the whole matter. Therefore, I hope that when a Blue Bill is tabled before this Council, we can all look at it rationally instead of politicizing the issue of Article 23 legislation by shouting political slogans.

Madam Deputy, I now wish to turn to the effects of Article 23 legislation on the exchanges between Hong Kong and Taiwan and say a few words on that. Last week, I joined a delegation to Taiwan on observing the mayor elections of Taipei and Gaoxiang. During my discussions with the representatives of the Mainland Affairs Council, I found that they were very concerned about the enactment of laws to implement Article 23. On the one hand, they admitted that there was nothing wrong for Hong Kong, as part of China, to enact such laws to implement Article 23. And, they also viewed that even from the perspective of Hong Kong, there was a need for such legislation. However, while admitting the need for that, they were worried whether the exchanges between Hong Kong and Taiwan would be adversely affected, and whether there would be any resultant tightening of commercial and non-governmental exchanges which might hinder the links and interaction between Hong Kong and Taiwan.

Madam Deputy, honestly speaking, because of the successful implementation of "one country, two systems", the political climate of Hong Kong is more relaxed than that of the Mainland. For this reason, Hong Kong can actually serve as a bridge of communication between the Mainland and Taiwan. Such an intermediary role is good to all, including the governments and people in the Mainland, Taiwan and Hong Kong. Therefore, we should not and must not allow anything, including the enactment of laws on Article 23, to adversely affect the exchanges between Hong Kong and Taiwan.

The DAB is of the view that the SAR Government must thoroughly implement the existing principles governing its dealings with Taiwan. This means exchanges with Taiwan should not be subjected to any restrictions as long as they are in full compliance with the laws of Hong Kong and "QIAN's seven remarks". Therefore, the DAB welcomes the Secretary for Security's earlier remarks that the SAR Government encourages the economic, trade and cultural exchanges among the Mainland, Taiwan and Hong Kong, and that even if our friends from Taiwan talk about Taiwan Independence, no one would be charged for any offence. At the same time, the DAB considers that in the process of drafting the specific provisions, the Government must take special care not to affect Hong Kong's relations with Taiwan. Under no circumstances should the Government pay all its attention to national security and sacrifice all other equally important aspects, for this will hinder the normal ties and exchanges between the people of the two places.

Besides, in the process of enacting laws on Article 23, the SAR Government must make sure that those Hong Kong people who have frequent economic and trade dealings and exchanges with Taiwan will not be caught unawares, for this may gradually undermine the role of Hong Kong as an intermediary between the Mainland and Taiwan. In fact, politically and economically, this role should instead be enhanced. The DAB opines that the SAR Government must consider all possibilities in the light of prevailing circumstances, including the establishment of offices in Taiwan for the purpose of strengthening the exchanges and interaction between both places.

With these remarks, Madam Deputy, I support the amendment of Mrs Sophie LEUNG.

**MR LAU KONG-WAH** (in Cantonese): Madam Deputy, there are several words which I think stand above all the discussions today and they are "shall enact laws on its own". The word "shall" by itself has highlighted the responsibility of the 60 Members in this Chamber. The other words "enact laws on its own" are in fact giving us a prerogative. As I see it, there are three principles which can be used to form a judgement on this issue. First, the mainland practice must not be imported into Hong Kong. After reading the entire Consultation Document, I fail to see any inclination in this direction. As a matter of fact, some of the proposals are laws already in existence.

The second principle is that reference must be made to the international practice. Article 19 of the International Covenant on Civil and Political Rights provides that every citizen of a country has a responsibility for the protection of national security. If we oppose enacting laws in this respect, then we are in effect opposing the spirit of this Covenant. It should be admitted, however, that I have not heard any Honourable Member putting forward any argument that this legislation is in breach of the Covenant during the two days' of debate here. Some Honourable Members therefore mention the Johannesburg Principles. I have read this document which contains 25 principles, but some Honourable Members have focused their discussions on Principle 6. If we look at the entire document, we will find that Principle 1 provides clearly that some freedoms which should be free from interference may be subject to restriction on the ground of national security. Principle 2 provides that a restriction on the ground of national security is not legitimate unless it is to protect the country

against the use or threat of force from an external source or an internal source such as incitement to violent overthrow of the government. In fact, the Consultation Document *per se* is precisely in full compliance with the 20-odd principles in the Johannesburg Principles. If the debate is focused on "immediate connection" in Principle 6 alone, I would think that this is remote from the reality, in particular because the Principles were formulated in 1994. Since the September 11 attacks, the issue has been subject to renewed examination in the international community.

The third principle which I would like to consider is that we should take account of the public sentiments in Hong Kong if we are to enact laws on our own. During the consultation period, a total of 128 bodies so far have indicated that they would like to come to the Legislative Council to present their views. The number is record-breaking. They have put forward a lot of concrete and constructive suggestions. Some Honourable colleagues say that this is only a statement of their stands or merely a venting of their feelings. Even if this is so, I would think that this is very important. For irrespective of whether their position is in favour of or against legislation on Article 23, there is a spirit behind their positions and that is something we ought to value. On the issue of giving support for enacting laws to implement Article 23, I would think that this is a matter of serious right and wrong and there is no room for compromise. The world now is not one without war and strife. If only there is still a distinction between sheep and wolves among the countries of the world, there will be a need for the sheep to build a fence and lock their doors. It is perfectly justified. In fact, China is presently facing a problem of separatism and to legislate to prohibit secession is a pressing task necessitated by practical needs.

I have heard many members of the public express that there are certain parts in the Consultation Document which are not clear enough, and they hope that clarifications can be made by the Government. However, most of the people are in favour of legislating to protect national security and it is recognized as a responsibility shared by all.

Regardless of whether these views are supportive or not, they all hope that a concrete Bill can be submitted for that purpose as soon as possible. I am glad to hear the Secretary say yesterday that a relevant Bill would be introduced in February. I am looking forward to the enthusiastic debates on it, for I am convinced that the truth would be made clearer with more debates.

The Democratic Party proposes the idea that consultation should be made in the form of a White Bill. Yesterday, Mr IP Kwok-him cited the example of the Crimes (Amendment) (No. 2) Bill 1996 which was in fact also discussed and deliberated with reference to Article 23. At that time, 16 Members who supported the Bill, including those from the Democratic Party and other Members, did not request that public consultation be conducted in the form of a White Bill. Why? They also did not make the open request to permit members of the public to come to the Legislative Council to present their views. That is vastly different from the occasion this time when 128 groups have come to the Legislative Council to present their views.

That the public feels concerned and worried about the legislative proposals is normal. It is similar to the case when we deliberated on some pieces of legislation that we too were somewhat worried. For example, when we were deliberating on the laws on drink driving, some people were worried if their liberty as a wine-lover would be undermined. Or take the example of giving penalty tickets to litterbugs, some people would worry that their privacy might not be protected. These are perfectly normal and so we all work according to the normal procedures, that is, first issue a Blue Bill and then conduct consultation and make amendments before reaching a consensus finally.

In the process of consultation, I would think that both the Government and the public should form an interactive relationship. The Secretary pointed out that amendments would be made in at least three areas. These include protection given to the press in access to information, restrictions on the disclosure of financial information, and on the issue of police powers, that is, whether only officers of a more senior rank can enter premises and conduct a search or not. In my opinion, such an interactive relationship should be valued, rather than a situation of confrontation. The ideal situation would be mutual respect and accommodation. On the question of worries, I cannot help but think of Mr Martin LEE, it is because some members of the media have told me that whenever Mr LEE appears on the television, one will get the impression that he is the very embodiment of anxiety. He indicated that he was very much worried about the legislation on the garrison and anti-terrorism. Of course, there is nothing wrong with people going to the United States to talk about the situation in Hong Kong, but this time around what we are talking about is the issue of national security. I can hardly imagine why there is a need to spend so much time and effort going to the United States to talk about national security of one's country and seek the advice of the national security adviser of another

country. It is like a few sheep from the flock going to the pack of wolves and ask, "Shall we lock our fold and how thick should the door be?" Would that not be very odd? People no longer feel agitated or indignant about it, they just feel terribly sorry about it.

Actually, there are a lot of things in the United States which we can learn. Apart from going there to bad-mouth Hong Kong, we can learn from the patriotism of its people. The American Civil War was a conflict which threatened to tear the country apart, but Americans showed that they valued the ideal of territorial integrity and they were willing to die for it. That is something we may learn. The virtue of patriotism demonstrated by the Americans in the September 11 attacks is also something we can learn. Why can we not bring a little bit of that back to Hong Kong?

Yesterday, Mr IP Kwok-him mentioned the Crimes (Amendment) (No. 2) Bill 1996 and Mr CHEUNG Man-kwong has made some response today. There are at least three points in his response which are wrong. I have checked the records after Mr CHEUNG Man-kwong said that they had not mentioned the offence of subversion previously. But they in fact opposed the offence of subversion at that time and they are doing the same thing today. On 17 January 1996, Mr Andrew CHENG moved a motion, and the motion was: "That ..... the Government should immediately introduce amendments to existing legislation relating to the act of treason, sedition and theft of state secrets, and enact legislation prohibiting subversive activities .....". That was the content of Mr Andrew CHENG's motion. Then how can it be said that they did not mention it? Mr James TO also proposed an amendment under his name and the amendment was to the effect that any person who with a clear intention and resort to arms or use force to overthrow and subvert the Government of the United Kingdom and that the act may lead to the overthrow or subversion of the Government of the United Kingdom commits an offence. Do they think that overthrowing the Government of the United Kingdom a violation of the law while overthrowing the Government of the People's Republic of China is not? This is the first question I would like to ask.

The second question is on the banning of the possession of seditious publications. Recently, the Democratic Party has been saying sensationally that this is not reasonable. However, in the Crimes (Amendment) (No. 2) Bill 1996 debated in 1997, clause 10 of the Bill was: "Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an

offence". The Democratic Party supported such a provision at that time. Why did it give its support at that time but refuses to do so now? How different was the situation at that time? This is my second question.

My third question is about the view held by the Democratic Party that police powers are excessive. They think that police officers of the rank of superintendent should not be given the power to enter and search premises and only police officers of a higher rank should be vested with this power. Madam Deputy, clause 14 of the above Bill said, "Any police officer may enter any premises or place and remove or obliterate any seditious publication". The Bill said any police officer might do so and why did the Democratic Party give its support at that time? This is my third question for Mr James TO. I hope Mr TO would respond to them later.

I have paid so much attention to the speech made by Mr James TO because he is one of the spokesmen of the Democratic Party. Before the convening of the 16th National Congress of the Communist Party of China, Mr TO said that we should wait until the National Congress was over and there was no immediate need to make any decision. Now the National Congress is over, and Mr TO finds out that the items discussed were practical issues like the advanced productive forces, and so on. I would like to stress that irrespective of whether it is the 15th, 16th or 17th National Congress of the Communist Party of China; whether it is about advanced or developing countries, national security must be protected regardless. That applies to anyone who shall come into power or is already in power.

What is more surprising to me is that Mr TO thinks anyone who opposes the legislation is being patriotic. This idea is very shocking to me. Is the kind of patriotism he has in mind true or false? They oppose the legislation, but they want to stand for the elections to become Deputies to the National People's Congress. They sworn to uphold the Basic Law when they became Members of this Council, but now they oppose enacting laws to implement the Basic Law and hence they are violating the Basic Law. Since they are against the legislation, they are only making a false request when they request that a White Bill be issued. Sometimes they will give support to the idea in principle. Some people in the Democratic Party have proposed the idea that a 50-year consultation be conducted for Article 23. This is sham support. So with respect to enacting laws to implement Article 23, the Democratic Party has a very unclear stand and it has lost its bearings.

Does the Consultation Document contain anything that undermines human rights and freedoms? I consider that most human rights and freedoms have not been undermined. The Document only undermines the freedom to endanger the state and the right to endanger national security. As the Democratic Party opposes legislation, does it want to enjoy such a right? Ms Emily LAU says that national security cannot override human rights and freedom. That is true. But the purpose of this Consultation Document is to moot legislation and the intended result is exactly the opposite, that is, national security is to protect human rights and freedom. We may recall the Japanese invasion of China. Did the Chinese people have any freedom? Did the people of Hong Kong have any freedom? So protecting the country is defending freedom. The September 11 attacks caused a lot of civilian casualties, so that proves that protecting national security is tantamount to protecting the rights of every person. Protection of national security is protection of human rights and freedoms, or our homes. I would therefore like to advise the Democratic Party that they cannot give up their responsibility in protecting the nationals simply because they do not like the government on the Mainland. They should not sacrifice the security of the people because they do not like the institutions on the Mainland. For every country and political party would agree to enacting laws to protect national security.

Madam Deputy, I hope very much that when the bill is submitted to the Legislative Council for discussions, Members can come back onto the right track to conduct rational discussions based on facts. The protection of national security is the fundamental protection of the human rights and freedoms of 1.3 billion people. Thank you, Madam Deputy.

**MR ANDREW CHENG** (in Cantonese): Madam Deputy, Mr LAU Kong-wah has a few questions to ask Mr James TO, but I would like to respond to Mr LAU's criticism on Mr Martin LEE, the former Chairman of the Democratic Party. In the analogy made by Mr LAU, he says that Mr LEE has contact with the wolves. As far as I know, President JIANG Zemin often has contact with the wolves described by Mr LAU and he often goes to their resort, that is, Camp David. I think Mr LAU had better write to President JIANG Zemin to express his discontent.

Madam Deputy, I would like to use two incidents to begin my speech.

The first is a report in *Ming Pao* on 9 December about a female student of the Beijing Normal University who often makes comments on current affairs on the Internet. On the eve of the 16th National Congress of the Communist Party of China, she was secretly arrested by the Beijing police. It has now been more than one month since her arrest, but the authorities have not yet notified her family. Her family told the reporters that she was led away by officers of the Public Security Bureau of Beijing. However, when her family members went there to make enquires, they were not entertained. So far, no one knows whether the student is dead or alive. Her grandmother, who used to be a senior reporter with the *People's Daily*, said that her granddaughter was being investigated for alleged links with unlawful organizations.

Madam Deputy, another incident happened in Russia. One Sunday in May 2000, PUTIN swore into office as the President in the presidential palace in Moscow. He pledged that he would promote democracy and the rule of law in Russia and safeguard human rights and freedom in Russia, especially the freedom of the press. Not long afterwards, that is, four days after his swearing-in, an anti-riot squad dressed in camouflage fatigues and black masks stormed into the headquarters of *Media-most*, the largest media group in Russia. They raided and searched the whole place and arrested the persons in charge. The reason given was that the company had been complained of encroaching into privacy and engaging in other commercial crimes. The whole Russia knows that *Media-most* is the most ferocious critic of PUTIN among the Russian media. So as soon as he stepped into office, PUTIN was too impatient to wait to lay his hands on the media which had shown him disrespect. From this incident which happened in a democratic society, one could well imagine how freedom of the press would be undermined as a result of the Article 23 legislation by the SAR Government which is formed by a small circle of people appointed by Beijing.

Madam Deputy, Honourable colleagues from the DAB try to use provocative patriotic slogans like "Without the country, can there be families" to establish the rationale for their support of the legislation. I would think that this is misleading the public. I would also like to highlight that when the power of the state machinery is so great that it has become the instrument of the autocrats and dictators, the result would be the break-up of families and death of individuals.

In the 4 June pro-democracy movement in 1989, thousands of families lost their beloved ones and for these families, they would cease to harbour any hopes for a totalitarian regime in a country like this. History tells us that dictators will invariably make use of this blind patriotism to gain power and purge the opposition. It was so with HITLER, and so with MAO Zedong. Patriotism is too heavy a burden to bear for those who have weathered the storms of the Cultural Revolution. So do we want to repeat the same mistake today?

Madam Deputy, have not existing Hong Kong laws like the Public Order Ordinance, the Societies Ordinance and the Crimes Ordinance provided for sufficient protection of national and social security? Are they not adequate in dealing with the so-called individuals and societies which threaten national security? I must point out that China today is still run by a regime which stresses one-party dictatorship and which is prone to suppressing dissidents, a regime formed in an undemocratic way. The enactment of laws to implement Article 23 would further consolidate the instruments for the undemocratic regime in the name of protecting national security. Worse still, it will stifle the development of Hong Kong, for it will erode the cornerstones of our society, that is, the rule of law and freedom.

Power corrupts and absolute power will corrupt absolutely. Hence, powers should be diversified and subject to checks and balances. A democratic system is a kind of safeguard, the rule of law and culture are another, and the freedom of the press and the freedom of speech, the monitoring by public opinion and an open civilian society are yet another. All along, the development of democratic politics in Hong Kong has been handicapped. It is fortunate that we still have the rule of law and freedom which have enabled our society to remain full of vitality, creativity and diversity, while not losing the sense of reason. These are the two most valuable assets of Hong Kong upon which Hong Kong has built its achievements. Now the Government seeks to enact laws to implement Article 23 in the name of protecting national security. It seeks to introduce offences like sedition, secession, subversion and theft of state secrets. These are ambiguous offences that have extensive impact. It is also expanding police powers, and people will easily commit these offences as a result of their speeches. These two important cornerstones are being destroyed and so is the room for development in free creativity and uninhibited vitality. It is precisely due to this reason that the Article 23 legislation has caused widespread voices of dissent from various sectors in society.

Vice-Premier QIAN Qichen with his idea of "devils in the heart", Ms Elsie LEUNG, the Secretary for Justice with her idea of "stringent legislation and lax enforcement", as well as Mrs Regina IP, the Secretary for Security, with her idea of "wait and see", all serve to show that this Article 23 legislation is full of the rule of man rather than the rule of law, and that our society is moving closer and closer towards the kind of society which the rule of man prevails over the rule of law as found on the Mainland. This runs counter to the rule of law to which we owe our success. The Chief Executive once said that the enactment of laws to implement Article 23 would never have the slightest impact on human rights and freedoms in Hong Kong. However, the Chief Executive also made many resounding pledges when he sought to restore the draconian public order legislation that there would never be any prosecution of peaceful demonstrators. But five years later, Mr LEUNG Kwok-hung and Mr FUNG Ka-keung were convicted. Now in a high profile, Mr LAU Shan-ching and Mr TO Kwan-hang were prosecuted. Where then is the assurance given by the SAR Government? As the saying goes, history is a mirror, under the threat of the draconian public order legislation, and when the Government fails to uphold its integrity and honour its promises, how can the people trust that after laws have been enacted to implement Article 23 that the rights and freedom of Hong Kong people will stay unaffected?

Madam Deputy, I would like to turn to the offences under Article 23. First, secession. Apart from Pakistan, there is no offence of secession in common law jurisdictions, for legislation on treason and other criminal offences can offer an effective safeguard against related acts. Therefore, the Democratic Party thinks that there is no need to provide for a new offence of secession. Under Article 23, there is only a need to prohibit acts of secession but not to provide for an offence of secession. In view of the fact that existing legislation is adequate in prohibiting acts of secession, there is no need to introduce a new offence.

Under the proposal, the definition of "resisting the Central People's Government in its exercise of sovereignty over a part of China" is too wide and inconsistent with the principle of accurate legislation and the principle of minimal legislation required to implement Article 23.

In addition, the definition of "serious unlawful means" is too wide and this may lead to some industrial actions and demonstrations being regarded as "serious unlawful means". This will hamper the freedom of expression. Any serious interference or serious interruption of a "non-essential" electronic system can also constitute a serious unlawful means. Thus the scope covered is too

wide. As "serious unlawful means" also include "serious interference or serious disruption of an essential service, facility or system, whether public or private", this is also likely to cause some industrial actions and demonstrations to be regarded as serious unlawful means because they may cause traffic congestion. If people appeal to other people to join a hunger strike, that can be considered "creation of a serious risk to the health or safety of the public or a section of the public".

The Consultation Document has not explained how prohibition can be carried out when "individuals or groups of individuals could become involved in organizing and supporting secessionist activities on the Mainland". There is also no explanation as to how it can be ensured that the prohibition will not encroach on the freedom of association. As a matter of fact, anyone who commits an offence of secession is liable to punishment, but if members of these organizations concerned are also held liable even if they have not taken part in such secessionist acts or if they have no knowledge of it, then the proscription of the relevant organizations will go beyond the legislative principle of minimal legislation.

Madam Deputy, the second offence is sedition. The law reform commissions of the United Kingdom and Canada have suggested a repeal of the offence of sedition because such acts are covered by other legislation on related crimes, for example, treason. Sedition constitutes an offence of treason. The Consultation Document proposes that the definition of sedition is inciting others "to cause violence or public disorder which seriously endangers the stability of the state or the HKSAR". This is against the principle of minimal legislation and the principle of accurate legislation, as well as the Johannesburg Principles. One can say that this is a triple violation.

According to Principle 6 of the Johannesburg Principles, expression may be punished as a threat to national security only if a government can demonstrate the following three points: "(a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence". However, the proposal made by the Government does not meet these three requirements at all.

Third, subversion. Madam Deputy, there is no offence as subversion in common law. Australia is one of the few countries which has incorporated subversion into its criminal laws. But its definition of "subversion" is vague. In 1986, Australia replaced the word "subversion" in its laws with acts of

violence with political intentions. In view of the fact that the use of violence to overthrow the government is prohibited under existing legislation, there is no need to provide for this new offence of "subversion".

The definition of "to intimidate" the Chinese Government in the proposal is vague and extensive, and it does not comply with the principle of accurate legislation. The phrase "the basic system of the state" is likewise vague and extensive. The danger of adding these wordings is that the Courts in Hong Kong will find it difficult to explain what is meant by "the basic system of the state" under a socialist constitution. The result may be that officials from the Central Government or legal experts from the Mainland may have to come to Hong Kong to give evidence. More seriously, the Central Authorities may intervene by means of certificates of proof and the Courts in Hong Kong may find it hard to query. Worse still, members of the Standing Committee of the National People's Congress may interpret the meaning of "subversion" in Article 23 and clarify the meaning of "the basic system of the state". In fact, there is no need to add the factor of "the basic system of the state" into the offence of subversion.

Lastly, Madam Deputy, I would like to talk about the offence of theft of state secrets. The Democratic Party would like to point out that the current Official Secrets Ordinance is very harsh already and the wording used is very wide in definition and reasonable. For example, the words "for a purpose prejudicial to the safety or interests of the state or the HKSAR", or "approaches ..... or is in the neighbourhood of ..... a prohibited place" are too wide in meaning and incompatible with the principle of accurate legislation. The provisions on "prejudicial to the safety or interests of the state or HKSAR" have not incorporated the requirement of "seriously" prejudicial and are not modelled on the clearer scope and definition found in the provision on "damaging disclosure". Moreover, the law does not require that there is a direct causal relationship between the act of approaching a prohibited place and the prejudice to the safety and interests of China or Hong Kong. Therefore, if some peaceful demonstrations are held in the neighbourhood of some prohibited place, the people involved may commit an offence of espionage and that will hamper the freedom to stage demonstrations.

The Consultation Document does not comply with Principle 1.3 of the Johannesburg Principles entitled "Necessary in a Democratic Society" which states that "a government must demonstrate that (a) the expression or information

at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles."

The Consultation Document also fails to comply with Principle 15 of the Johannesburg Principles entitled "General Rule of Disclosure of Secret Information" which states that "No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure."

In general, the definition of "espionage" is too wide and not accurate. It has a very low requirement for conviction, but the punishment is very heavy. It is entirely disproportionate. The Democratic Party suggests that the offence under this provision must be clearly defined and the scope of application should be made as narrow as possible in order that human rights are protected.

Madam Deputy, with respect to the disrespectful remarks made by Mr LEUNG Fu-wah to Bishop Joseph ZEN Ze-kun yesterday, as a Catholic, I would like to present an extract from the gospels to Mr LEUNG. It is taken out from the Gospel of Luke, 6:27-29 and I think many people must have heard of this before: "Love your enemies, do good to them that hate you, bless them that curse you, pray for them that spitefully use you. To him that smiteth on the one cheek offer also the other." Madam Deputy, I think Mr LEUNG might have struck the left cheek of hundreds of thousands of Catholics yesterday, and today, many Honourable colleagues who support the legislation may have struck our right cheek. On the coming Sunday, I think many Catholics would pray for Mr LEUNG in the church before they take to the streets. They will also pray for Hong Kong. Finally, may I mention that as the Book of Proverbs says in 6:27 and 6:29, that men are beset with cares. Let us hope that our cares will turn into blessings.

Thank you, Madam Deputy.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Deputy, the recent discussions on the enactment of laws to implement Article 23 of the Basic Law (Article 23) in Hong Kong are very heated and known to everyone. The wording in Article 23 is crystal clear and Mr LAU Kong-wah has summed up

aply the important issues involved with a few words, that is, "shall enact laws on its own". Before the reunification, we had already known the writing of the provision and at that time many people made comments on Article 23. From the part played by the Government of the Hong Kong Special Administrative Region (SAR) and the Central People's Government in the decision-making process with respect to this issue, we can see obviously that the concerns of Hong Kong people were taken on board. I think that if laws were enacted to implement the Article immediately after the reunification, then that might have been completed in just one attempt. But that was not done.

We have experienced the process of the reunification of Hong Kong in the 1980s with all the political arguments and various views held by different people on our country. In fact, this part of history has been in progress for 20 years and in the process we can see that a lot of the worries that we used to have are gradually dispelled. This especially applies to the growing understanding which people have of our country as they make more frequent visits to the Mainland. So as for the legislative proposals made by the Government with regard to Article 23, in my opinion, as Hong Kong has reunited with the Motherland for five years, it is time that laws were enacted to implement Article 23. This is especially true after the September 11 attacks and it is the hope of the Central Government that the SAR Government should enact laws on Article 23. Therefore, sometime ago when someone asked me for my opinion, I said that it was the time for legislation then. It is because there are many terrorist activities in the world these days and they may happen all of a sudden. It would not work if laws are not enacted for this purpose.

Therefore, I have read Article 23 over and over again and found that it is provided that the SAR Government shall enact laws on its own. As I have said, I recall many Honourable colleagues have said that when the Article was drafted at that time, the focus was on addressing the concerns of Hong Kong people about "one country, two systems". As many people know, the capitalist system is practised in Hong Kong while the socialist system is practised in China. In such circumstances, many people did not have a good understanding of China or they might be worried due to some historical reasons or some other reasons. So when Article 23 was drafted, it was provided clearly that the SAR Government shall enact laws on its own and that this right to legislation would be vested in the people of Hong Kong. Now that five years have passed since the reunification, if it is said that now is not the right time for legislation, then when? What can we do if laws are not enacted considering the conditions of the world today?

Today sees the opening of the bazaar organized by a group of unemployed people at Wong Tai Sin. I met a lot of people there and when they learned that I had to return to the Legislative Council they asked me why. I said that a debate on Article 23 would be held today. They told me to hurry back to support the enactment of laws to implement Article 23. They were worried that I would be late and so they urged me to come back early.

Under the present circumstances, I would think that there is need to enact laws. I have particular feelings about "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". As people with political wisdom, why should we shun away from this issue? If this is good to Hong Kong as well as our country, then why should we shun away from it? Why should we not be practical about the stipulations in the Basic Law that the SAR Government shall enact laws on its own? We ought to do so because of this provision. Admittedly, there will be some difficulty, for we may have different views on certain things. This applies especially to the fact that Hong Kong has been a colony for more than a century and people may have different views on our country. However, it is precisely because of this that we can see how the political figures of Hong Kong are discharging this responsibility, walking on the road of "one country, two systems".

I have said this to a group of young students, and also to Honourable colleagues. What could be done if laws are not enacted? We should think about what Hong Kong would become if laws are not enacted. Unless we are engaging in confrontational politics — but I do not think that we are, and my Honourable colleagues here in this Council are not looking at the issue from this perspective — so from a political point of view (and I have not yet mentioned the point of view of the state), I would think that on the premise of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", we should face the issue squarely and do a good job with this legislation.

On the other hand, I would think the speech which I have just heard from Mr Andrew CHENG is very interesting. I think Mr CHENG considers himself to be a patriot. But he has a lot of doubts about China obviously. However, I think that is not very important despite his doubts. The most important thing is his views are very rigid and he is viewing the issue in the context of the situation many years ago. Why can we not look at these issues in the light of China's recent developments? Why can we not examine how people in other countries look at our country?

I have visited two countries this year, namely, Australia and Britain. The people in these two countries are very concerned about the rapidly developing China. They would like to learn more about China from us. They are very astonished at the rapid development of China and they think that Hong Kong's important position would be lost soon as it would be caught up by some cities on the Mainland, such as Shenzhen and Guangzhou. They say that these places are outstanding not only in terms of hardware, but also software such as talents, and so on. That is how other people look at our country

The overseas Chinese are also very concerned about the development of our country and they are very impressed by it. When I was in Britain, I had a meal with an old Chinese at his place. It was raining hard that day, but he drove and picked me up to his home for dinner. He told me why he had come to Britain many years ago. At that time, he was the cook of a taipan in Hong Kong and he went to Britain because things were not so good at that time. He also talked about his feelings about the strength or weakness of China. I was very impressed by his words. He said that China was strong now and overseas Chinese like him would feel proud. Therefore, when we are to enact laws on Article 23, we must look at how we can do our fair share for the country.

Last year, I visited the United States where I was given another bout of feelings. I found the Americans were very patriotic and one could see their national flag flying everywhere. At the end of last July, I arrived at a small town near Washington D.C. and I was surprised to see the American flag flying everywhere. I asked, "Is the Independence Day not 4 July?" Then I went to Seattle and many other places, where I also saw the American flag flying everywhere. Now that the Republican Party is the ruling party, the Democratic Party may have a lot of different opinions. But I find that both parties accept the United States as their country and although they may have different political views, they will still defend and love their country. After I returned to Hong Kong, I talked with some colleagues about this and I said it might be due to the fact that for more than a century Hong Kong was under colonial rule so comparatively, our concept of the state was very weak.

The discussions on the enactment of laws to implement Article 23 may have made many people feel worried. I would think that the Hong Kong Government should be open about this, and so should this Chamber. We should not elevate the issues for that would benefit Hong Kong people struggling in such

adverse economic conditions. If we elevate the issues and put our different relations with the state in a position of confrontation, then it will benefit Hong Kong or our future development. Many people say that for Hong Kong to steer out of the doldrums, we should solve the problem of unemployment. And one of the favourable factors we have over other people is that we have a strong country. As our country is fast growing, there would be a lot of opportunities for development. I think we should not be so rigid sometimes and politicize every issue. We should set aside our prejudices and discuss the issue of Article 23 legislation in a pragmatic manner, for I believe some people do have apprehensions.

A few weeks ago, our trade union called a general meeting of representatives and we discussed the issue of enacting laws to implement Article 23. Quite a number of our members are in the book selling business. They were worried about the offence of possessing seditious publications. They cited the example of a beauty contest to illustrate their concern. On that day, there were some government officials in attendance and we had some rational discussions. Finally, we were able to find a way to look at this issue from a Hong Kong perspective and it was not from a point of view of opposition and disagreement. If we focus only on the arguments, then how can we enact laws on our own?

Madam Deputy, given that the relevant legislation would be made by Members of this Council, any conclusion as to whether the SAR Government has made any consultation or listened to the views presented by the people or simply ignored them should be made only after 24 December. During the consultation, there were times when I would sit by these government officials and hear what they had to say, and I do not think that they were not receptive to opinions at all. For example, the other evening when representatives of the Hong Kong Department Stores and Commercial Staff General Union held a meeting, some officials from the Security Bureau were also present. Our members raised a lot of questions and at that time the officials were open about these. We discussed the issues from a constructive point of view, hoping that it would be beneficial to Hong Kong. I do not believe the SAR Government cannot come up legislation on Article 23 which complies with the common law system in the SAR. I hope that we can work on this common ground to enact laws to implement Article 23.

Thank you, Madam Deputy.

**DR LUI MING-WAH** (in Cantonese): Madam Deputy, every country has its own set of laws as the basis for its governance. Every country has laws to protect its national stability and security so as to uphold its territorial integrity. Since its reunification with China, the Hong Kong Special Administrative Region (SAR) has enjoyed the special arrangement of "one country, two systems". Although it enjoys a special status, it should have laws to protect national security and the territorial integrity of the country. I think, the Central Government did have the authority to impose the relevant laws of China on the SAR at that time, and the people of Hong Kong would have no choice but to abide by them. But the Central Government did not opt for this simple approach. Instead, it chose to stipulate clearly in Article 23 of the Basic Law (Article 23), "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies." Obviously, this action by the Central Government was meant to allow Hong Kong to enact laws on its own which would best suit the circumstances in Hong Kong in the interest of protecting national security. This reflected that the Central Government has the greatest trust in the people of Hong Kong and this approach fully embodies the spirit of "one country, two systems".

Ever since the SAR Government started the consultation exercise on the enactment of laws, people from all walks of life and different sectors have expressed their views. After analysing and sorting out such views, we may classify them into three categories. The first category is the conspiracy theory. People who hold this view think that the SAR Government just wishes to make use of the enactment of laws on Article 23 to undermine the freedom of speech and civil rights of the people of Hong Kong. Therefore, they strongly oppose the enactment of laws on Article 23. The second category of views are put forward by those who welcome the enactment of laws. They believe in the motives behind the enactment of laws by the SAR Government as well as the provisions. The third category of opinions are submitted by people who accept the enactment of laws on Article 23, but they worry that the coverage of the legislation could be too wide and the fine too heavy. They worry people could easily be caught by the laws and jailed.

Madam Deputy, in the past two months, I have consulted people in the commercial and industrial sectors through various channels of their opinions on

Article 23 legislation. Their views are quite unanimous. They consider that the Government should and must enact laws to implement Article 23, but hope that it could take three major principles into consideration when formulating the provisions. First, reference should be made to similar laws in other developed countries; second, the legal provisions on Article 23 should be drafted in a relatively lenient manner with a narrower scope and lighter penalties; and it is also hoped that, upon the enactment of laws, the present freedoms enjoyed by the people of Hong Kong not reduced and their civil rights not undermined. With all this, the people of Hong Kong will set their minds at peace.

Madam Deputy, I am glad to note the attitude adopted by people in the commercial and industrial sectors on the issue of the enactment of laws on Article 23. These people, who have always been the silent majority, are the pillars of the community. On this occasion, they have managed to understand rationally the implications of the enactment of laws on Article 23 and the responsibility of the SAR in safeguarding national security and the territorial integrity of the country. I strongly hope that people from all walks of life and different sectors could adopt a rational attitude in discussing the issue of enacting laws on Article 23. In this way, we could help to expedite the enactment of laws, put forward constructive suggestions and conduct sincere discussions so as to provide reference and a basis for the Government in drafting the provisions. This will help to make the legislation on Article 23 better and more readily acceptable to the people of Hong Kong. In fact, if we consider the issue in greater details, we will find that the successful enactment of laws on Article 23 will provide the best guarantee for the implementation of "one country, two systems", and it will serve as a better guarantee for the people of Hong Kong to continue enjoying their existing civil rights and freedoms.

**MR HOWRAD YOUNG** (in Cantonese): Madam Deputy, since September, when the Government published the Consultation Document on enacting legislation to implement Article 23 of the Basic Law, there have been very extensive discussions in the community. It must be admitted that since the establishment of the Special Administrative Region (SAR), this has been the most sensitive piece of legislation, one which requires more time for discussion. Even the tourism sector I represent, which is normally apolitical and interested only in promoting the tourism industry, will hold a discussion session on this issue tomorrow evening, just before the consultation period comes to an end. This discussion session, at which the Permanent Secretary of the Security Bureau

would be invited to speak, was originally initiated by only one organization. Owing to subsequent developments, it will be jointly organized by several organizations. I am sure that many opinions will be expressed during the discussion.

(THE PRESIDENT resumed the Chair)

I have been following the views expressed by various community figures and my own constituency over the past several months. I initially did not know anything about the issue, did not know anything about Article 23, but having listened to public opinions and the views expressed in various discussions, I now begin to know more about the issue. I think before conducting any discussions, we must first establish two fundamental principles, or else there will be no basis for any discussions at all. The first principle is about the absolute necessity of legislation. This means that legislation must be enacted. To begin with, we all know that the Basic Law is a mini-constitution for Hong Kong, and Article 23 of it provides clearly that "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession ....." It is now already five years into the reunification, so if we still do not tackle this issue, it will be very difficult for us convince others that the Basic Law is being fully implemented. I think we must not seek to implement the provisions of the Basic Law on a selective basis, or according to our own liking, because the Basic Law itself is a national law applied in Hong Kong. Under this principle, I think we need to enact laws to implement Article 23. Besides, when I look at the rest of the world, I cannot find any country where there is no law to prevent or prohibit acts to subvert the ruling regime, whether such a regime is the product of peaceful evolution, or even revolutions, wars and negotiations. Such laws are found not only in Western democracies admired by many, but also in regimes disapproved by some. Therefore, we do not think that there is anything unusual about such legislation. We are obligated, and obligated as a matter of course, to effect the full implementation of the Basic Law, including the enactment of laws required by it.

The second principle concerns the question of timing. Is it the most appropriate time now? I think one can only answer this question in the relative sense. Understandably, those colleagues who think that no one in Hong Kong now is interested in secession and treason and that we are not at war would

question the need for legislation at this stage. But the opposite argument is that since it is so peaceful and we can thus discuss the issue calmly, it will be most appropriate to enact legislation now. My opinion is that, relatively speaking, now is the most appropriate time. There are many laws in Hong Kong, but should we wait until there is a major fire before we enact laws on fire safety? Should we wait until there are many murder cases before we criminalize such acts? No, that would not work. We did learn a lesson early this year when we endorsed the anti-terrorism ordinance. At that time, I felt that all was in a rush. But since a very serious incident had occurred and the whole world was very concerned about terrorist attacks, we had to rush along, and we even hoped that we could complete the legislation before the anniversary of the September 11 incident. Then following the completion of the legislative process, we still had to follow up many things, mainly because of the great haste. This makes me think that if we proceed with the legislation now, we will have relatively more time to explore and discuss the issue in detail, and to arrive at a satisfactory outcome.

Having talked about principles, we must still discuss some specific points. Shortly after listening to the views of the community and seeking to understand the issue, we in the Liberal Party have already presented a written representation. I now wish to explain my personal views about several sections in the Consultation Document. Paragraph 4.18 in Chapter 4 of the Consultation Document, for example, is about the possession of seditious publications. Members must have heard many academics and library staff say that they do not know what to do. I believe the Security Bureau must also have heard many such views. I really hope that the Blue Bill to be submitted by the Government to the Legislative Council can clearly define the mental element in possession of seditious publications and possession of such publications for academic purposes, so as to allay the anxieties of many academics and journalists.

Besides, paragraph 6.19 in Chapter 6, which deals with unlawful disclosure, sets out five categories of protected information. There is of course no problem with security and intelligence information, defence information and even information relating to international relations. But when it comes to point (iv) on information relating to the relations between the Central Authorities of the People's Republic of China and the HKSAR, I would think that the way it is written will make interpretation difficult. If the disclosure of such information will really endanger national security or even lead to very serious consequences, that can be accepted. But the information involved may just be about very

simple relations, such as who and who proposed by the Chief Executive as Bureau Directors are not so favoured by the Central Authorities. The disclosure of such information will at most cause embarrassment, not any national security problem, unless the post involved is Secretary for Security. I think there must be clear definitions in the future Blue Bill, because there are many types of relations between the Central Authorities and the SAR.

Finally, Chapter 8 proposes to give the police the new power of entering premises under emergency circumstances. But who is going to exercise this power, a superintendent or an Assistant Commissioner? Is there any case that must require the prior approval of the Judiciary before entry can be effected? I hope that as in the case of our scrutiny of the anti-terrorism bill, there can be a convincing and acceptable definition, one that can balance all views and wishes.

Such much about specific points. I also wish to say a few words on the motion today. I think the original motion is essentially against the enactment of laws. At the beginning of my speech, I already pointed out the absolute necessity of this legislation. There can be no bargaining here. Laws must be enacted. But I think it is much too early to conclude before the completion of consultation that the rights and freedoms enjoyed by the people of Hong Kong will surely be reduced. Well, if one is talking about the curtailment of people's freedom to engage in secession and treason, I will surely agree that there should be less freedom, because I do not want anyone in Hong Kong to have such freedom. As for the amendment, I shall support it. We hope that the Government, having listened to the views expressed, can submit to the Legislative Council a Blue Bill which can safeguard national security while maintaining the rights of Hong Kong people and all the rights and freedoms given us under the Basic Law. This is a desirable approach. Therefore, I will support the amendment, but not the original motion.

Madam President, finally, I wish to tell Members an incident. This time last year, I was having a trip in the United States. It was just after the September 11 incident. I was once on an inland flight. What the pilot said before take-off really touched me a lot. He said that he was the pilot of the plane and welcomed us on board. He said that he started to learn flying because he wanted to fight in Vietnam. Whether he was telling the truth is up to Members to decide. But he did say that he had had several decades of flying experience, that he loved his job and also his country, and that he would do his

utmost to fly us to our destination in safety. Their patriotism is so deeply rooted among the people themselves.

It is frequently said that the people of Hong Kong lack any feeling of patriotism and any sense of national identity. I think this is true. A decade or so ago, a friend told me a very interesting observation about his encounter with Chinese people overseas. Well, if a Chinese person comes from the Mainland, he will say he is Chinese, and so will one from Taiwan. But if the person comes from Hong Kong, he will say he is a Hong Kong believer. This is the legacy of history. The British once ruled Hong Kong for over 100 years, and six generations of people lived under their rule. The British did not want the people of Hong Kong to have any sense of national identity. That is why we the people of Hong Kong must catch up on this. Many people admire the United States. The ordinary pilot I talked about could blend his job and his patriotism into one whole and turned it into a force of cohesion. I think the people of Hong Kong should really learn from him. I hope that a way forward and a force of social cohesion can emerge in Hong Kong as a result of this legislation.

With these remarks, I support the amendment and oppose the original motion. Thank you, Madam President.

**DR LAW CHI-KWONG** (in Cantonese): Madam President, one of the themes of the debate going on in these two days is what should be the correct time for legislation. Dr David CHU said that there should not be any further delay, not even a delay of just one minute. According to Dr CHU, the Hong Kong Special Administrative Region (SAR) was established as early as five years ago, so we must enact the laws expeditiously, and not even a delay of just one minute should be tolerated. His argument is based on the assumption that there are no existing laws to deal with the related problems. But in reality, a lot of protection for national security is already provided for in many criminal laws. Therefore, the problem of having no laws to protect national security basically does not exist. This reminds me of Mr YEUNG Yiu-chung's theory about keeping an army even in peace time. It is not so much that we do not have any soldiers, but rather the soldiers are stationed in many existing ordinances.

One viewpoint is that since national security is not subject to any threat now (all is so peaceful, in Mr Howard YOUNG's words), if we enact the laws now, we will be able to discuss calmly, and there will be more latitude in the

legislation finally enacted. But if we wait until national security is threatened, the laws enacted will necessarily be very stringent. Therefore, we should adopt the stocks market tactic of buying when the prices are low, and so enact the laws as quickly as possible. This viewpoint sounds convincing, but it actually overlooks one basic fact. Article 23 of the Basic Law (Article 23) was drawn up in the wake of the pro-democracy movement in 1989, when a million Hong Kong people took to the streets, and when "the well water" was told not to interfere with "the river water". In other words, the existing Article 23 actually asks for too high a price, is much too demanding, so we simply should not have any stocks transactions at all. The most appropriate time to buy when prices are low will come only when the state worries less about Hong Kong being used as a base of subversion and when Article 23 has been amended.

I do not quite understand certain viewpoints. Why do so many people argue that if one opposes the Article 23 legislation, one in fact also opposes the need to protect national security. In all past discussions, I frankly never heard anyone say that he or she opposed the protection of national security. I only heard people say that they opposed the enactment of laws on Article 23 at this stage. Maybe, as Mr NG Leung-sing said, this was nothing but a way of packaging these people's opposition to protecting national security. However, the accusation is very unreasonable. We should not try to infer people's motive on the basis of their opposition to the legislation. We should discuss whether the reasons for opposition are valid. I am also very surprised, because the Democratic Party has never said that those who oppose the legislation are necessarily patriotic. I do not know when people ever heard us say so. Has Mr LAU Kong-wah in fact heard something? The Democratic Party has only said that one who opposes the legislation can still be patriotic. According to Mr LAU Kong-wah, protecting national security will be the same as protecting the people's security, and this in turn will mean protecting the people's human rights and freedoms. His reasoning is kind of interesting. According to him, the grounds for protecting the people's security are the grounds for restricting their liberties. Is he saying that the people's liberties should both be protected and restricted? What kind of reasoning is this? I really look forward to edification by him, so that I may know how to handle this conflict.

As Members can well guess, I am sure, besides Mr James TO, Mr LEUNG Fu-wah is the Member who has been most reported and talked about for the remarks he delivered in the debate yesterday evening. His name is quoted by many today, and I also wish to comment on his remarks yesterday. I am no

Catholic, so I am not going to quote the *Bible*. His remarks remind me of STALIN of the former Soviet Union. There was one very well-known incident about him. STALIN simply threw Major General GRIGORENKO into confinement in an asylum for reasons of "pathological paranoid development of the personality with the presence of reformist ideas". Pathological paranoid was what Mr LEUNG Fu-wah referred to. I hope that Mr LEUNG Fu-wah is not a faithful disciple of STALIN, and that it is not his intention to follow the Stalinist practice of treating dissidents as mental patients, shutting them into asylums. He talked about how Bishop Joseph ZEN had broken the religious sector's convention of not engaging in political discussions in a high profile. But he has again forgotten that the religious sector has always been taking an active part in discussions on human rights, justice, freedoms and democracy, and all these are political discussions. That said, I dare not copy Mr LEUNG Fu-wah's practice and label him as a sufferer of senile dementia, because he is not yet old enough to command others' respect.

There is another aspect to Mr LEUNG Fu-wah's remarks which is open to question. He said that Bishop Joseph ZEN frequently expressed inflammatory and provocative opinions, and he might thus be a pathological saint. Madam President, I am sure many people will say that Legislative Council Members frequently express inflammatory and provocative opinions in this Chamber. Are Members pathological then? I guess Mr LEUNG Fu-wah will probably be regarded as such, but he needs not worry. Though I am addressed by others as Dr LAW, I have no intentions of pretending that I am a medical doctor; I just wish to show that I know something about mental health. I simply cannot think of any disease the symptoms of which include the frequent expression of inflammatory and provocative opinions. Therefore, this is actually no mental illness. There is no need to be over-worried.

There is also the point on "Without the country, can there be families?". When I first saw this slogan, I immediately said to myself, "We may well take a photograph of it here and somehow tone it sepia, and then ask people to guess when the slogan was put up. Most will surely guess that it was put up at the time of World War II." Is our country under invasion? This slogan will only make one think of some typical movie scenes: a country is under invasion; a husband is going on conscript services, he has to defend his country; his wife is sad to see him go; and, so the husband says to his wife, "Without the country, can there be families? I must defend my country." But ours is an age of peace.

So, we will instead ask, "Without the people and without the family, can there be a country?" The people's liberties are a significant prerequisite for the wealth and power of a country.

The Consultation Document is full of ambiguities, and this worries us a lot. As the representative of the social welfare sector, I must voice the worries of some of my colleagues in the sector. Many international welfare organizations, particularly those providing rescue assistance, are especially worried. These organizations may have to work in countries or places which are adversaries of China, or they may even have to work in those parts of China with larger numbers of separatists. That being the case, will the staff of these organizations be charged for treason or secession? When they learned that the Government would not publish a White Bill, they became even more worried. Why? The answer lies with one fundamental difference between a Blue Bill and a White Bill.

As mentioned by both Mr IP Kwok-him and Mr LAU Kong-wah, sometimes, we must spend a lot of time handling certain bills — one or two years maybe. But in the case of the so-called accountability system for principal officials, the Government simply set a deadline and then forcibly put forward its amendments. In the case of a Blue Bill, the Government can resume the Second Reading and Third Reading at any time it likes and then force it through the Legislative Council. This is precisely the difference between a White Bill and a Blue Bill. A White Bill is a show of sincerity towards the people of Hong Kong and the Legislative Council, in the sense that all the legal provisions are written down for public consultation, that the bill will not be forced through the Legislative Council.

Very often, I hear the Government and supporters of the legislation say that people who demand the publication of a White Bill do not trust the Government. I am really puzzled. Members should realize that when the Government wants others to believe them, it will say that there is no trust. How can it be possible to force others to believe it when there is no trust? We should ask this question: What should we do to secure others' trust in us? A White Bill is one of the effective means, for it can let the people of Hong Kong know that the Government does not intend to force through any Article 23 legislation. Very often, in the legislative process, the Government will ask the people and the Legislative Council to have more trust in it, to give it more powers in the

legislation. But power and trust are two separate things. We simply should not have too much trust in power. Power has to be balanced or checked, and a democratic system is one of the most important means to check the power of the government. A democratic system can make a government which has exercised its power improperly step down. Or, at least, the unnecessary powers of the government can be removed by a democratically elected legislature through legislative amendments.

The Government constantly asks the people to trust it, but then, it must do something concrete to increase the trust it wishes to command. That should include how best to perfect the development of a democratic political system of Hong Kong. When the Government fails to come up with a clear and concrete direction for the political development of the SAR, and when even a timetable for review is lacking, how can it command the trust of the people? When it even refuses to publish a White Bill, how can it increase the people's trust in it and believe that no Article 23 legislation will be forced through the Legislative Council this time around? The debate today has been extremely exciting, and it will probably go on for quite some time. I hope that our discussions can be objective and rational. Personal attacks are unnecessary. With these remarks, I support the motion. Thank you, Madam President.

**MRS SELINA CHOW** (in Cantonese): Madam President, I believe several colleagues of mine have explained very clearly the position of the Liberal Party. We support in principle the Government's proposal to enact laws to implement Article 23 of the Basic Law (Article 23), and I do not intend to repeat their arguments and justifications in detail. All I wish to say is that we basically cannot support Mr James TO's motion, because his motion actually opposes the enactment of laws and is therefore inconsistent with Article 23. I am not sure whether Mr James TO means that laws need not be enacted or they should not be enacted or they should not be enacted forever, or whether he actually has another meaning. In his speech, he gave a very bad description of the situation and seriously lacked confidence in the Government. This is a downright revelation of mistrust. If he does not trust the Government, then whatever the Government says would make no difference. Even though the Government, when explaining the provisions, said that this could be done or that could be done, he would remain unconvinced. If mistrust exists, it would be very difficult to have truly rational debates.

In fact, Members must differentiate between two things. One is that if I do not trust you, I would not believe you no matter what you say and do. In that case, many debates, like what we have been hearing today, would appear to be meaningless. But at the same time, we also hear many voices in society supporting the enactment of laws to implement Article 23, and they consider it opportune for the Government to enact laws now. Having said that, however, the community has indeed raised some concerns. The Liberal Party very much hopes that the Government or the Secretary concerned will not be overly affected by remarks made by those people who invariably raise objection disregarding what the Government says, and hence overlook the actual concerns of the people. We hope the Secretary can address squarely the worries and anxieties that may arise in relation to sedition, freedom of speech or freedom of information, as pointed out by the Liberal Party. Be it in the media sector or the business community, we have in fact heard some voices. All enterprises, be they large ones, medium ones and small ones, have also questioned what exactly protected information refers to in relation to the theft of state secrets. The Government said that there are five categories of such information. Two of these categories may arouse worries or queries particularly from the general public; one category has to do with information relating to international relations; and another category is about information relating to relations between the Central Authorities of the People's Republic of China and the Hong Kong Special Administrative Region. With regard to this information, very often it is possible for people engaging in commercial or academic and cultural exchanges to breach the relevant provisions. Will the innocent people be dragged into troubles? Will a person be convicted guilty even though he is innocent? I believe many people do have these questions. So, it is necessary for the Secretary to explain these in detail. And when drawing up the specific provisions, these must be stated unequivocally and there must also be express provisions on, for instance, the arrangements in respect of enforcement. I do not wish to repeat all the concerns raised by the public in respect of, say, seditious publications, possession of seditious publications, and so on. They do have certain anxieties and misgivings.

Many colleagues have mentioned the Johannesburg Principles. But I do not know why they have seldom mentioned the opinions of an authoritative Queen's Counsel in the United Kingdom, Mr PANNICK. I have not heard that his opinions have ever been mentioned by the legal profession. As far as I understand it, Mr PANNICK is an authority of high repute in human rights and international laws. I think his opinions should also be quoted. On the proposal to enact laws to implement Article 23, he, firstly, considers that the

Government's proposals are all acceptable and that the proposals are not excessive. He also considers that after the enactment of laws on Article 23, it does not mean that the laws enacted can override provisions in the Basic Law on the protection of human rights and the two international covenants, namely Article 27 of the Basic Law which provides that Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration, and the right and freedom to form and join trade unions, and to strike, and also Article 39 of the Basic Law on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. His view is that Article 23 absolutely cannot override these rights enshrined in the Basic Law. On the contrary, the legal provisions relating to Article 23 must have regard for these rights, and as a matter of fact, the Government has clearly stated at the outset that these rights will be taken into account. Under this premise, the legislative proposals appear to be acceptable. Even Dr Frances D'SOUZA, an expert on the Johannesburg Principles, is not absolutely against the enactment of laws. She considers that there is a need to enact laws to protect national security. But she hopes that the legislation can look for a right balance.

In the final analysis, do we really need to enact laws for the protection of national security? This is the prime consideration. If such a need is considered unfounded, further discussion would be unnecessary. But if there is this need, we have to consider how, under this premise, we can address all the concerns of the people and ensure that the freedoms and rights enjoyed by the general public will not be undermined and interfered. To this end, we have to put our heads together and discuss it together. So, it is absolutely appropriate to do it in the form of a Consultation Document. Moreover, I think if we raise objection to the enactment of laws right at the beginning, putting up different reasons to argue against the enactment of laws, further discussion would not appear to be meaningful at all. But if Members can reach a consensus on Article 23, and if everyone of us respects Article 23 and acts in accordance with Article 23, then our discussion would be totally different, for it would be more constructive. Certainly, this does not mean that we must agree on everything. We still have to work hard for our objectives and strike the right balance in the process. Having listened to the speeches of many Honourable colleagues who oppose the enactment of laws, I do not hear this basic consensus, the consensus that this is what we basically have to do. They do not speak on this basis from the beginning and so, their speeches have mostly served to make attacks, criticizing this and that. As a result, it is impossible for us to conduct constructive discussions.

I would like to further talk about the opinions of Mr PANNICK. In fact, his opinions are already stated very clearly here and one of the lines reads, "Mr PANNICK said that the debate on the proposals cannot proceed on the assumption that fundamental human rights will be over-ridden". If it is considered at the outset that fundamental human rights will be overridden by the proposals, it would be impossible for discussion to proceed any further. But without this assumption, in-depth discussions on many issues would be possible. From the Liberal Party's viewpoint, and as many Honourable colleagues said earlier in the debate, if Members consider that laws should not be enacted, then it would be unnecessary for us to engage in further discussions. If they said that it is not an appropriate time, then we must ask: When will be the appropriate time? It is because judging from the present conditions in Hong Kong, "one country, two systems" has been implemented for some time, and if we can begin to be more rational and objective and at the same time listen to the voices of all sides and take into account the interests of all sides, and then if we can draw on collective wisdom and work in concert to accomplish this task, it would definitely be beneficial to Hong Kong and to the country.

After all, under "one country, two systems", we are Hong Kong people and we are also Chinese. So, if we do not consider the latter and look on ourselves as Hong Kong people only and thus conclude it is unnecessary to consider the safety and interests of China as a country, then I think it will not be meaningful at all to continue the discussion. I am very glad to see that the Hong Kong Bar Association, for instance, has not stated opposition against the enactment of laws in the many views that it has put forward. I have also seen that many legal experts have adopted the same attitude, in that they have proposed amendments and improvements to the Consultation Document. I hope the Government can clearly listen to and take on board their views as far as possible. The Government cannot think that Hong Kong people in general are not concerned about this. They do have concerns, for these political offences and matters relating to national security, endangering the state, sedition and treason are known to all as sensitive issues. So, we must be equally sensitive in dealing with these issues. But do we have to be evasive in order to be sensitive? We do not agree that we should be evasive. We must genuinely adopt an objective and rational attitude and identify ways that are considered reasonable by all and ways that can balance the needs of both sides. Therefore, I absolutely support the amendment of Mrs Sophie LEUNG.

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

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, in the course of drafting the Basic Law, in which I had taken part, all members, at the initial stage of the drafting work, already appreciated that the enactment of laws to protect national security was imperative, because the colonial laws originally adopted from the United Kingdom would no longer be applicable after the reunification. If no legislation is enacted for this purpose, Hong Kong might be used as a base for acts that would endanger national security. But having considered the differences in the social systems between Hong Kong and China, it was considered inappropriate to extend wholesale mainland laws to Hong Kong. After extensive consultation with Hong Kong people, the Central Government finally agreed on the present representation in the Basic Law, which provides that "The Hong Kong Special Administrative Region shall enact laws on its own". This is indicative of trust in the Hong Kong Special Administrative Region (SAR) and in Hong Kong people.

Judging from the Consultation Document on Proposals to implement Article 23 of the Basic Law (Article 23) published by the Government, the direction of the SAR Government in respect of the legislation has fully lived embodied "one country, two systems". The Government has stressed that mainland laws on national security will not be extended to Hong Kong. It has also guaranteed that the legislation must be in compliance with the Basic Law, the provisions of the two international covenants on human rights as applied to Hong Kong, as well as the common law principles observed in Hong Kong. Therefore, all sectors of the community and the academia generally agree that the legislative proposals are relatively lenient. The Government's legislative proposals can protect national security and at the same time ensure that the freedoms and rights of Hong Kong people will not be affected. For example, the offences of "subversion", "secession", and so on, will be established only by means of war or by force, with specific actions involved. It is not true that a person will commit such offences simply because of what he or she has said, which is a common misconception in the community. The legislation is not meant to suppress certain organizations or curb the freedom of speech. On the proscription of local organizations affiliated with unlawful organizations in the Mainland, the Government has reiterated that the Hong Kong Government will, in accordance with the laws of the SAR, make an independent decision after

examining all the evidence. The Secretary for Security can exercise this power only if he or she reasonably believes that this is necessary in the interests of national security or public safety or public order. Organizations which feel aggrieved at their proscription have the right to appeal to an independent tribunal or seek judicial review in court. It is not true that the matter would be dealt with hastily with the Court being completely bypassed, as described by Mr LEE Cheuk-yan. On the contrary, such channels are indeed provided in the proposals. These arguments are supported by Mr PANNICK, QC, a human rights expert in Britain. Mr PANNICK, QC has stressed at the same time that according to the relevant precedents in Britain, the role of judicial review is of paramount importance in cases involving national security. Therefore, the mechanism for judicial review as proposed in the Consultation Document is precisely an important measure for human rights protection.

The Consultation Document published by the Government has clearly stated the need and principles for the enactment of laws, and made policy proposals on the enactment of laws in the future, with a view to inducing rational discussion in the community. Given that the proposals in the Consultation Document are not detailed legal provisions, it is inevitable that the public may have questions about the uncertainties therein. However, some people and organizations with ulterior motives have exaggerated these questions. Once a sector of the community has raised a question on the Consultation Document, this will be immediately played up as opposition to the enactment of laws, thus intensifying an aura of social panic. Their campaign against the enactment of laws is, therefore, launched extensively. As soon as a position on a particular policy has developed into a campaign, the room for rational discussion will be diminishing. As Mr PANNICK, QC, a British human rights expert, has said, the debate on the proposals cannot proceed on the assumption that fundamental human rights will be overridden. This is obviously not in the interest of society. Nor is this in the interest of the public.

Some people who have an axe to grind said that they oppose the legislation because the existing political system is far from democratic. But they have forgotten that they had supported the enactment of similar laws during the colonial rule by Britain. My colleagues, Mr IP Kwok-him and Mr LAU Kong-wah, have mentioned this point. However, I must point out that they had even demanded that laws be enacted at a quicker speed. On 17 January 1996, the Democratic Party moved a motion in the Legislative Council of the Hong

Kong-British Government, urging the Government to immediately amend the legislation on treason, sedition and theft of state secrets, and enact laws against subversive activities. In 1997, the then Hong Kong-British Government, without conducting any public consultation like what is being carried out now, amended the Crimes Ordinance, providing for the offences of subversion, secession, and so on, and amending the provisions on treason and sedition. Who were the supporters of all this back then? Could it be that in the minds of these people, legislation on national security proposed by a colonial government is worthy of support but that by the SAR Government is objectionable, come what may? What they dare not say straightforwardly is that they prefer to trust a colonialist country rather than their own Motherland.

These people have also said that there is no pressing need for such laws to be enacted in the community of Hong Kong. But why could they scarcely wait to urge the colonial government to expeditiously enact such laws back in those years? The Crimes (Amendment) Bill back then paled in comparison with the present proposals of the SAR Government in terms of their leniency. But why did they not raise opposition in a high profile then?

What is more, they consider that the Chinese Government lacks a mandate from the people, for it is not returned by democratic elections. They have gone further to say that many people are still locked up for the offence of subversion and so, it is unnecessary to protect national security. They have even openly advocated that the Chinese Government should be subverted and China be divided. In their eyes, the People's Republic of China is primarily defied.

Here, I wish to respond to the argument recently put forth by the Democratic Alliance for Betterment of Hong Kong: Without the country, can there be families? Some people have sarcastically said in response, "Without the people, can there be the country?" This statement is logically correct, but it has neglected the history of human development. This remark takes the human kind back to the prehistoric days and to the era of barbarians. It is true that the state is made up by the people. But before the formation of ethnic tribes and countries, every person is only a natural person who must protect his own life and his own property. He must, on his own, fight against robberies and killings that may happen any time around him. Of course, these natural persons have absolute freedoms. They have the freedom to kill, to set fires, to rape and to loot. It is because when there is no state and no government, their freedoms are

not subject to any restriction. A state confers on its people the status of legal person and protects the lives of its people, the property of its people, and the statutory rights of its people in accordance with law. But the people must surrender in return some of their freedoms, such as the freedom to kill, the freedom to rob others of their properties, and so on. Likewise, the people must also surrender the freedoms to treason, secession, sedition and subversion. What I have said is well founded. In his famous book on political science entitled *On Liberty*, J. S. MILL had discussed this relationship between the state and the freedoms and rights of the people.

Being Members of the Legislative Council, we have the duty and obligation to uphold the Basic Law and comply with the law. All of us took this oath an assumption of office. But now, some people have turned their backs on these vows. They have been making every effort to spur acts that violate the Basic Law and the rule of law. I consider this absolutely disagreeable.

Supporting the enactment of laws to protect national security is not blind patriotic passion. It is the duty of all nationals to protect the integrity and independence of their country. Subversion against the government must be outlawed, and this is the very foundation of the rule of law. I have heard that some people are confusing right and wrong here; they are equating elections, votes and elections conducted in accordance with law with subversion, sedition and treason. This is an attempt to confuse right and wrong, to substitute lawfulness with unlawfulness.

Here, I wish to say a few words about my colleague, Mr LEUNG fu-wah, becoming an "unregistered doctor". I trust that Mr LEUNG Fu-wah did not wish to become an "unregistered doctor". He was only trying to analyse the current discussions in society on Article 23 and to trace the origins. However, Mr CHEUNG Man-kwong and Mr Andrew CHENG have escalated the remarks of Mr LEUNG Fu-wah to a political plane and extended the remarks of Mr LEUNG Fu-wah to the entire religion and all its followers, in an attempt to create confrontation and conflicts. I think this is not something that we should do. I trust this is absolutely not the intention of Mr LEUNG Fu-wah.

Earlier on, I also heard some arguments made by some Members in their speeches, and I would like to discuss them with Members.

Ms Audrey EU suggested that the purpose of the legislation should be confined to the protection of national security and that the protection of the stability of the Central Government and the SAR Government should not be included. I consider her comment incorrect. The legislation on national security is certainly necessary to protecting the territories of the country from foreign invasion, protecting the country from being overthrown, and protecting the people from becoming international refugees. But these only reflect the concepts relating to international laws and international relations. Moreover, the legislation on national security must also serve to uphold government systems and the constitution, because government systems and the constitution are the backbone of the existing legal system and the vanguard of the social system. To overthrow the government by force or by violence and to advocate revolution are entirely acts that go against institutional civilization. All modern civilized countries adhere to the principle that legislation on national security must serve to uphold government systems and the constitution.

Earlier in the debate, I also heard Members raising various concerns in their speeches. I have obtained a pamphlet entitled *Proposals to implement Article 23: Myths and Facts* published by the Security Bureau. In fact, these concerns are also mentioned in the pamphlet. Perhaps Members are too busy with their work that they have not read it. For example, Mr Michael MAK is worried that when a Taiwanese gives him a name card, he would be afraid to keep it. In fact, this is also explained in this pamphlet. On the question of whether doing business with Taiwan will constitute "assisting public enemy" under the offence of treason, the pamphlet has expressly stated that this is a misconception, because "to constitute the offence of treason, the element of collaboration with a foreign enemy is essential. As Taiwan is a part of China, doing business with Taiwan has nothing to do with treason." Therefore, if Members have time to take a serious look at this pamphlet, perhaps many of their concerns can be addressed.

Mr LEE Cheuk-yan said that sending e-mails or facsimiles to advocate a democratic system may constitute the offence of subversion. But this is not true. The truth is that serious unlawful means must themselves be "criminal acts". Sending e-mails or facsimiles is not a criminal act. There are many other examples. But I do not wish to dwell on them. It is better to give each Member a copy of this pamphlet in order not to spend too much time on this, because I have already been speaking for quite some time. I have to stop now. Thank you, Madam President.

**MR MARTIN LEE:** Madam President, at the first joint meeting of the Panel on Security and the Panel on Administration of Justice and Legal Services on 26 September 2002, the Secretary for Security agreed with me that as in all consultation documents, the devil is in the details.

Although the Government has, for no good reason at all, absolutely refused to publish a White Bill to enable the people of Hong Kong to see for themselves whether there are indeed devils hiding in the generalities of the proposals contained in the Consultation Document, one can readily see the tails or fingers of some devils sticking out in some of these proposals, even without the details.

The devil of all devils is hiding itself in paragraphs 7.15(c) and 7.16, which seeks to confer power on the Secretary for Security to proscribe a Hong Kong organization "affiliated with a mainland organization which has been proscribed in the Mainland by the Central Authorities, in accordance with national law on the ground that it endangers national security".

I call this proposal the devil of all devils because it effectively gives to the Central People's Government the power to strike down any organization in Hong Kong which it frowns upon.

According to this proposal, there are two separate and distinct stages: The first stage takes place in the Mainland, while the second takes place in Hong Kong.

Let me use the example of the Falun Gong to illustrate how this is supposed to work.

Today, the Falun Gong is banned in the Mainland on the ground that it is an evil cult. But if the proposed legislation were enacted, the Central People's Government could easily add one more ground for its proscription, namely, that it endangers national security. The Central People's Government would then notify the Government of the Hong Kong Special Administrative Region (SAR) formally of this fact, which would be conclusive and binding on the SAR. The Secretary for Security would then have to decide whether the Falun Gong in Hong Kong, consisting of about 500 practitioners as I am told, is a branch or affiliate of the Falun Gong banned in the Mainland. If she thought so, she

would then have to decide whether the Hong Kong Falun Gong constitutes a threat to national security or "public order" in Hong Kong. While it is impossible to even suggest that the peaceful demonstrations of the Falun Gong in Hong Kong would endanger national security, the Secretary for Security might well think that they constitute a threat to public order, having regard to the rather frequent though peaceful demonstrations held by the Falun Gong in Hong Kong, and, in particular, the recent prosecution and conviction of some Falun Gong practitioners of causing obstruction in a public place in Western, Hong Kong. And in this way, the Secretary for Security could quite legitimately ban the Falun Gong in Hong Kong, even though it did not in any way pose a threat to national security.

I used the Falun Gong as my example advisedly, because despite the loud protestations of the Secretary for Security and others to the contrary, it is difficult to pretend that the proposal is not targeted at them, particularly bearing in mind what the Vice-Premier, Mr QIAN Qichen, had said some five months ago, namely, that the Hong Kong Government should proceed to legislate under Article 23 of the Basic Law, and that the Falun Gong should not be allowed to continue its activities in Hong Kong.

But the question is: Why would it stop with the Falun Gong?

As the Roman Catholic Bishop Joseph ZEN said, "If it happens to the Falun Gong today, it will happen to the Catholic Church tomorrow, because I have to admit that there are ties between the Catholic Church in Hong Kong and the Underground Church in the Mainland."

So far, Madam President, I have considered the Government's proposal on exactly the way it is supposed to work, namely, that the Central People's Government would issue a formal certificate stating only that a particular organization has been proscribed in the Mainland on the ground of national security, which would then trigger off a series of steps to be taken in Hong Kong by the Secretary for Security.

But what if the Central People's Government does not want to leave so much say with the SAR Government? And using the same example above, what if the Central People's Government were to state more facts on the certificate? For example:

"It is hereby certified that:

- (1) The Mainland Falun Gong has been proscribed on the ground that it endangers national security;
- (2) The Hong Kong Falun Gong is a branch or affiliate of the proscribed Mainland Falun Gong; and
- (3) The Hong Kong Falun Gong also endangers national security."

In this situation, would the "facts" stated in the certificate issued by the Central People's Government in relation to the Hong Kong Falun Gong be binding on the SAR Courts or could they be challenged by the organization in question?

I have raised this question with the Government on numerous occasions, and up to date, I have not received any satisfactory answer.

It is not exactly an easy question to answer.

After all, the explanation given by the Government as to why "formal notification of the Central People's Government " should be "conclusive of the fact that the organization has been so proscribed" is that the Central People's Government has "comprehensive information" as to whether a mainland organization endangers national security.

By the same token, the Central People's Government, through its secret agents in Hong Kong, may likewise possess more and better information than our own Police Force as to whether a particular Hong Kong organization is or is not a branch or affiliate of a proscribed mainland organization; or whether the Hong Kong organization poses a threat to national security through such connection or affiliation with the mainland organization.

But the fact that the Central People's Government has better intelligence than our own Police Force is neither here nor there.

The policy of "one country, two systems" mandates that crimes committed in the Mainland be dealt with by mainland courts, while crimes committed in Hong Kong must be dealt with by Hong Kong Courts.

Thus, if the Central People's Government sees fit to proscribe a mainland organization on national security grounds, that is entirely a matter for them. But the proscription of the mainland organization cannot constitute a valid reason for proscribing a Hong Kong organization, even though the two organizations may be affiliated. There should never be guilt by association, or affiliation.

Thus, the whole idea of letting the Central People's Government press the button in Beijing to start the whole engine of investigation and proscription in Hong Kong is wrong in principle.

I can understand the idea behind it. From the point of view of the Central Authorities, if it be known that there is a large group of people all over the country combining together with a view to overthrowing the Government by force, then no doubt, that information should and would be passed on to every provincial government in the Mainland, with instructions that they take immediate action to stop the movement.

I have no problem with that. Nor do I see anything wrong if the SAR Government is also informed about that. And once informed, no doubt, the SAR Government would immediately investigate into the matter and take whatever follow-up action which is necessary.

But there is no need, and it is wrong in principle, to formalize the whole thing, by giving the Central People's Government the power to certify conclusively that a certain organization is a threat to national security, and thereby justifying the proscription of its branch or affiliate in Hong Kong, unless the latter has actually done something which amounts in itself to the criminal offence of treason, sedition and so on, in which case, the offenders will no doubt be dealt with according to the laws of Hong Kong.

Because of the policy of "one country, two systems", it is vital to draw a line between the SAR and the Mainland.

Thus, while it may be a good idea to adopt the method of certification in the Mainland, it is wrong to apply it to the SAR, because of the high degree of autonomy promised. But more importantly, because there is no such provision in the Basic Law.

The only provision for certification of fact in the Basic Law is in Article 19 in relation to "facts of state". But as the Department of Justice has rightly stated in LC Paper No. CB(2)86/02-03(02): "the question of 'act of state' is irrelevant to the proscription mechanism as proposed in the Consultation Document"; although the Solicitor General did say during the first Joint Panel meeting that the method of certification proposed is similar to that in Article 19.

Further, the method of certification of fact proposed is both unnecessary and disproportionate in the circumstances of Hong Kong. And it will certainly become an extremely dangerous precedent once it is adopted. For we will be opening a hole in the relationship between the Central Authorities and the SAR. And there is little doubt that once opened, the hole will only grow bigger.

So I say to the Government: This is a thoroughly bad idea. Drop it.

As for the proposal to give a discretionary power of proscription to the Secretary for Security, it is also a thoroughly bad idea. For even if it be shown that such a power is necessary in the present stable political climate of Hong Kong, it should surely be left with the Courts, which will only act on the evidence of witnesses who will be subject to cross-examination in the usual way — with the right of appeal, both on fact and law, and the usual way.

If today, only a Court can disqualify a driver from driving after a conviction of a serious driving offence, the more reason why we should leave it to the Courts to decide whether an organization should be proscribed. For in the former case, we are dealing with just one convicted driver, while in the latter case, we may be dealing with hundreds or thousands of members of a particular organization. And, of course, under paragraph 7.17, there are other organizations the operation of which may also be prohibited if they are shown to have a "connection" with the proscribed organization.

For these reasons, I urge the Government to send this devil of all devils to where he belongs — Hell.

**MR MARTIN LEE** (in Cantonese): Madam President, I will now speak in Cantonese. In the first press conference on this issue, the Chief Executive expressly told the people of Hong Kong, "I wish to emphasize our proposals would not undermine, would not undermine in any way, the existing human rights, civil liberties enjoyed by the people of Hong Kong. Nor would our

existing way of life be affected in any way." The way that he pointed his forefinger was like this. Ms Audrey EU and Miss Margaret NG have pointed out that this Consultation Document has proposed some new offences and our human rights are therefore undermined. Indeed, we do not have to argue over this point. In paragraph 1.11 of the Document (on the fifth page of the Chinese version), one of the lines reads "We are satisfied that the legislative proposals put forward ..... which would impose restrictions on such rights and freedoms are both necessary and proportionate to the legitimate aims of protecting the sovereignty, territorial integrity, unity and security of our country." It means that restrictions do exist, but we do not have to be afraid of them given the protection provided by international human right covenants, and that such restrictions are necessary and proportionate. The question lies in whether they are necessary and proportionate. Many people are of the view that they are unnecessary and disproportionate, and this is precisely the point at issue. The Chief Executive has often said that the rights of the people would not be undermined and now, the Chief Secretary is also saying the same thing. I am very worried about whether they have actually read this Document or whether they understand its contents even if they have read it, and whether their legal adviser has told them clearly the meaning of this line. If they have read this line, the Chief Executive would not have made such remarks and pointed his forefinger that way, because our human rights will certainly be undermined. The only question is whether this is necessary and proportionate.

Yesterday, Mr LEUNG Fu-wah of this Council criticized our Bishop. Members of the Democratic Party then said to me, "Martin, you are a Catholic. Let us hear your response." Some journalists had also been very eager to have my response. They are not Catholics and so, they may not know this. When we were small, father taught us that Jesus had said that if someone slaps you on one side of your face, let him slap you on the other side as well. Having said that, however, I am worried that our Honourable LEUNG Fu-wah, after hearing this, may think that he has made a new discovery: Jesus is a masochist.

Madam President, many people have made reference to the opinion of Mr PANNICK, QC. Indeed, his opinion is short and provides little in-depth analysis. Recently, I visited the United Kingdom and met with the Chairman of the Bar Council, Mr BEAN, QC. After listening to my account of so many problems, and after learning that a member of his profession, Mr PANNICK, had presented his opinion, he said, "Right. I will immediately form a panel comprising four QCs to look into this issue, and we will furnish a report to your

Government." He added that this service is free. I wish to tell the Government that only an opinion provided free of charge is valuable, for it is compiled with plenty of time and efforts of the authors. The situation in Hong Kong is the same. Many lawyers in Hong Kong choose not to make money and instead, they humbly work for the people by compiling an opinion consisting of dozens of pages. Only such an opinion has value. So, I hope the Government can refer to it more.

Finally, I wish to say that recently, several friends of mine in the Mainland said to me, "Martin LEE, you must continue to fight for democracy and safeguards for freedoms, because we in the Mainland are looking at you. If your people do not have freedoms now, when are we going to have them? If your people cannot preserve the existing rule of law or freedoms, when are we going to have the rule of law and when are we going to have freedoms?" So, I told colleagues in this Council that we must continue to fight. We must preserve our rule of law and we must persevere with this principle. We cannot allow any of the human rights and freedoms enjoyed by the people of Hong Kong to be damaged, for these are conferred on us by virtue of the Sino-British Joint Declaration. Thank you, Madam President.

**MR JASPER TSANG** (in Cantonese): Madam President, Dr LAW Chi-kwong criticized that the Democratic Alliance for Betterment of Hong Kong (DAB), in writing "Without the country, can there be families?" on our banners, appeared to have retrogressed to the days of World War II. I think perhaps Dr LAW Chi-kwong seldom takes part in the activities of the Hong Kong Coalition for Preserving the History of World War II in Asia and activities against Japanese militarism vigorously organized and promoted by his party comrade, Mr Albert HO; or perhaps Dr LAW Chi-kwong considers that Mr Albert HO's activities against Japanese militarism are obsolete, that it has no realistic significance only to trace responsibilities for past mistakes, and that these activities are just empty talk about the revival of Japanese militarism.

Madam President, newspapers reported this morning our debate yesterday, saying that there were fiery scenes in the Legislative Council in the debate on Mr James TO's motion. One of the newspapers even described that "sparks were flying in all directions". Madam President, the "sparks" were not ignited by the six diseases mentioned by Mr LEUNG Fu-wah. Rather, as a newspaper said, the fiery scenes broke out when Mr James TO fired the first shot. After

listening to what Mr James TO had said in moving his motion, I must say that I was somewhat taken by surprise. It is because the motion proposed by Mr TO actually seeks to discuss facts. According to his motion, this Council considers that enacting laws according to the proposals in the Consultation Document will reduce the rights and freedoms enjoyed by the people of Hong Kong and damage the rule of law and "one country, two systems". After he had moved this motion, I thought he would immediately cite examples and evidence to explain the reasons why he thought that enacting laws according to the proposals in the Consultation Document would reduce the rights and freedoms and damage the rule of law and "one country, two systems". But he had only made many emotional remarks, such as shining the wrong boots, being naive, and so on and so forth. Is all this necessary? How far are these remarks helpful to corroborating his argument that the Consultation Document would damage the rule of law, damage "one country, two systems" and reduce our rights and freedoms?

In today's debate, Ms Emily LAU and Mr CHEUNG Man-kwong have quite sternly criticized our colleagues for making personal attacks. However, Madam President, I do hope that Honourable colleagues can be fairer and go by a more consistent yardstick. If we are against personal attacks, we should make it clear. If someone said that opposing the enactment of laws on Article 23 of the Basic Law (Article 23) is unpatriotic, and if this amounts to a personal attack, then for people who said that supporters of the enactment of laws are "shining the boots of the Central Authorities" and that this reflects "blind loyalty and ignorance", are they not also making personal attacks? If some people consider that it is escalating the issue to a political plane to say that opposing the Article 23 legislation reflects there are evils in the hearts of the opponents, and if they consider that supporting the legislature amounts to forfeiture of the interest of Hong Kong people and forfeiture of "one country, two systems" in Hong Kong, are they not also escalating the issue to a political plane?

Dr LAW Chi-kwong also remarked that some people had concocted stories about the motives of other people by, for instance, questioning whether the motive of those people asking for a White Bill is to purposely cause delays in the process. But if the motive of people who support the enactment of laws is questioned and alleged as attempting to suppress dissidents, is this not also imputing motives to the acts of other people? Perhaps, from the viewpoints of Mr CHEUNG Man-kwong and Ms Emily LAU, for criticisms that are substantiated, more such criticisms should be made; criticisms made against

people who take an opposite position would amount to personal attacks. I would not find this too surprising. Ms Emily LAU said that she had held Mr Martin LEE in high repute, because he had gone to the United States and brought to the attention of the Government of the United States the question of human rights protection in Hong Kong. I do understand Ms Emily LAU's viewpoint. But I also hope that Ms Emily LAU will understand another viewpoint. It is because some people have actually come to me and said indignantly that this foreign government has openly stated that it will continue to send spying planes to China and now, a Member of the Legislative Council in Hong Kong is outrageously asking this government to help opposing the enactment of laws in the territory of China to protect national security. Is this patriotic? Should there be people condemning such acts as acts of a traitor to the country, I hope that the people being accused would not respond merely by dismissing this as a personal attack.

Mr LEUNG Fu-wah grabbed the press limelight today. If we suppose that the purpose of Members' speeches is to boost Members' appearances on television or exposure, then he could be considered very successful. A number of Members dislike his comments about Bishop Joseph ZEN. But I think if Members do not see eye to eye with Mr LEUNG Fu-wah's view on Bishop Joseph ZEN, they can directly raise opposition against his remarks. Criticizing the Bishop is not tantamount to criticizing the entire Church. Nor is it tantamount to criticizing the entire religion and all of the worshippers. This is the same as the argument that criticizing JIANG Zemin is not tantamount to criticizing all the people of China. Furthermore, the Bishop is, after all, not returned by democratic elections. So, if Members allege that others have made personal attacks, we should be fairer; we should listen to Mr CHEUNG Man-kwong and should show the demeanor required of parliamentary assemblies. Let us make no personal attacks, irrespective of which side we are on. I wonder if Mr CHEUNG Man-kwong, in criticizing Mr LEUNG Fu-wah, considers the speech made by Mr James TO yesterday as befitting the demeanor required of parliamentary assemblies. Will Mr CHEUNG advise his party comrade to respond in his reply later to the utmost regret expressed by Chief Secretary Donald TSANG and tender an apology to Secretary Regina IP?

Indeed, Madam President, our debate in this Council is a miniature of the open debate in society. Over the past two and a half months, we have heard people making many attacks on each other in the debate on the enactment of laws to implement Article 23. Obviously, some people do think that the more attacks

the better, and Dr David CHU is one of them. Yesterday, when the meeting was suspended, he said to me that there were not enough "sparks". He said, "Jasper TSANG, when you speak last tomorrow, use a machine gun to gun down everyone!" First, I do not have the means. Second, this is absolutely not what I wish to do. Indeed, I find it very regrettable that in the past two months or so, what we have seen in the media often appeared to be the sort of "name-calling" as mentioned by Dr David LI earlier, that is, war of words. There was once a newspaper showing a big photograph of Secretary Regina IP at a university forum. The background was all black, and a remark or two of hers were used as the headline. Yet, I feel that behind the war of words, and behind all these quarrellings and bickerings, a rational debate is actually going on. We have seen that some veteran members of the Hong Kong Bar Association, whether on public occasions or at the so-called forums, succumbed to this forum culture, taking part in this sort of quarrelling and expressing their views in some rather emotional language. But when they put down their views and comments on the Consultation Document in writing, I think many of the points made by them are worthy of serious consideration and incorporation by the Government. I note that Mr Bob ALLCOCK and colleagues in other departments have attended these debates and also published articles in the media to give a detailed response to comments.

I think this sort of debate is actually ongoing. But much to my regret, in the last couple of weeks, when I asked some groups of university students with whom I had met (of course, they had discussed Article 23 with me) for their views on the Consultation Document, I found that they had not read the Consultation Document, not even one single article published in the press discussing the specific contents of the Consultation Document. In fact, in the course of exchange of views, consultation is actually going on. Consultation is also going on during these two sessions of our debate. Madam President, apart from those comments which are alleged by some colleagues as personal attacks earlier, dozens of Members have actually spoken and many of their views are, in my opinion, worthy of consideration and reference by the Security Bureau and Department of Justice. So, I hope the Secretary for Security will not mind that some of the views are expressed only after those personal attacks or by people who have made personal attacks on her. They are, after all, views on the enactment of laws to implement Article 23 and views on the enactment of laws to protect national security at this point in time. Particularly, many are views that have truly reflected the various fears and concerns of the community on the Article 23 legislation, and views about how such concerns can be allayed and

how the current proposals can be revised in order to dispel these concerns. I think all these are worthy reference for the Administration. After listening to these views, I do feel that some of them appear to have distorted or exaggerated the original intent of the Consultation Document. Yet, our government departments and officials can certainly understand this.

Madam President, the DAB has collated our opinions on the Consultation Document, and they are now being circulated among Members and members of the DAB in the legal profession for the purpose of amendment. But since we consider that the core question in today's debate is whether it is necessary to enact laws to implement Article 23, we do not consider it most opportune to submit the views of the DAB on the Consultation Document on this occasion, although some of our colleagues have made mention of this. Nevertheless, before the expiry of the consultation period, we will provide the full set of our opinions to the Government for its serious consideration.

I think tomorrow's newspapers will inevitably report those "sparks" that are most exciting, "sparks" that have flown in all directions today, so to speak. But if some newspapers can report the views put forward by Honourable Members over these two days that are genuinely related to the contents of the legislation, I believe this may be more beneficial to the general public. Thank you, Madam President.

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

**MR SZETO WAH** (in Cantonese): Madam President, just now Mr Jasper TSANG said that Mr CHEUNG Man-kwong and Ms Emily LAU had made personal attacks. I think it does not amount to a personal attack to say that someone is blindly loyal. But it is truly a personal attack to say that someone has senile dementia and to say that someone is a pathological saint. Many other people were also said to be sick. Sickness concerns health, and this really has to do with the person. Saying that someone is blindly loyal, in my view, does not amount to a personal attack.

Mr Jasper TSANG started with the display board recently put up by the DAB on which it is written "Without the country, can there be families?". I will also start from this. I do not know why I will think of the first two lines of

the lyrics of a song when I see this display board. They are: "Heaven and earth are great but greater still is the kindness of the Party; Parents are dear to us but not as dear as Chairman MAO". Since the Party is greater than Heaven and earth, it is naturally greater than the state. Chairman MAO was the Chairman of the Party and he was dearer to us even than our parents and naturally, families become secondary. Indeed, this mentality is the evil legacy of extreme leftist thinking. This is a grave sickness which has not yet been cured. I wonder if they remember that Premier ZHOU Enlai had criticized that "大公無私" (meaning great impartiality excludes consideration of self) was wrong. He considered that without the smaller self, there will not be the greater self. Only when there are individuals will there be groups, and a group is made up of individuals. The state is made up of the people and every family.

Speaking of the state and families, in fact, since the founding of the People's Republic of China in 1949, national security has never been threatened and it has never been in peril, and yet numerous families have broken. To put it simply, during the land reform, the movement against the three evils, the movement against the five evils, suppression of counter-revolutionaries, elimination of counter-revolutionaries, the anti-rightist movement, the Cultural Revolution, and so on, how many people's families broke and how many people lost their loved ones? How many elites of our nation were forced to commit suicide? The country is here, but many families have been ruined. The country is here, but numerous families have varnished. Now that these laws have not yet been passed. But Mr Abraham SHEK already said earlier that he had some arguments with his daughters over this issue. There is a small crack in their relationship. I hope that this legislation, if enacted, will not do damage to his family.

Indeed, since the founding of the People's Republic of China in 1949, our country has engaged in wars. Let us take a look at the time of the wars and determine if there was the need to protect national security. In respect of the Korean War, according to the classified information made public only now, the truth has already been revealed as to who actually started this War. The war on Zhenbao Island lasted for a short time. The Sino-Indian Border War and Sino-Vietnam Border War did not take place on the soil of China, and the wars broke out not because China was being threatened. The wars were started just to teach others a lesson. In all these wars, it was unnecessary for our people to protect the state. The word "state" carries two different meanings. To

socialist countries and even to the communist party, what theories did they base on to establish their countries? It is *The State and Revolution* by LENIN. According to *The State and Revolution*, what does the state mean? The state is the machine for the oppression of one class by another, including the army, police, laws, courts, prisons, radio stations, and so on. I love my country. But what of this country do I love? I love not the machine for the oppression of one class by another. I love the people of the Motherland, the traditional culture, the great mountains and rivers. What is the other concept of the state? It means people, land, sovereignty, and these, I think, are worthy of protection. We should be concerned about their security. But for the machine for the oppression of one class by another, the more secure it is, the better it is for oppression and the more frequent the oppression will be.

Some people said that the history of China has seen many magnificent, awe-inspiring revolutions. No, this is not true. Rather, it should be seven magnificent, awe-inspiring sins, for our history is full of the seven sins listed out now. Let me start from the last sin, connections with foreign political organizations. The Communist Party of China (CPC) is a branch and a member of the Third International. It listens to its instructions, obeys its orders, and accepts its funding. During the Northern Expedition, Mikhail BORODIN from the Soviet Union was sent to China as a military adviser to lend a hand in the war. On subversion, for example, I think the most typical instance of subversion is the overthrow of LIU Shaoqi. He was the Chairman of the state, the head of the state. But what was his fate? His grave did not even bear his name, nor could his ashes after cremation bear his own true name. Secession, for another example. Was the Soviet base established in Jiangxi in the '20s another country? Earlier on, Mr LAU Kong-wah mentioned the Japanese invasion of China. Mr Jasper TSANG also said that perhaps Dr LAW Chi-kwong had not taken part in Mr Albert HO's association for preserving facts of history. I think many people may remember that MAO Zedong had said to Japanese guests visiting China that he must thank them for invading China, for the CPC was then given the opportunity to grow strong and finally seize power. I do not know whether the person who made such remarks could be considered treacherous. Sedition, for another example. Almost all leftist literature is seditious. LU Xun proposed the overthrow of feudalism, and this is sedition. Sedition again. I wonder if MAO Zedong, in crying out loudly that "it is right to rebel" and crying out loudly that "it is right to rebel" when he himself was in power, is considered seditious. Theft of state secrets, for example. WAN Yanhai, founder of the

Action Aids Project, disclosed the number of people with AIDS in China and was arrested for leaking state secrets.

Yesterday, Mr LEUNG Fu-wah became an "unregistered doctor", a judge of history, the Roman Pope. He judged that many people had fallen sick. He said that I had panic symptoms and that the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China had developed panic symptoms. He said that we are taking the condemnation personally. In fact, we are not taking the condemnation personally. As Members may recall, shortly after the 4 June incident in 1989, commentators in *People's Daily* explicitly called us subversive elements. We are not taking the condemnation personally. We are explicitly named in the condemnation. He said that I had developed panic symptoms, that many people had sneered at me, and that I had said in tears overseas that I was afraid of not being able to return to Hong Kong after 1997. I was not afraid, because I had not applied for emigration. I cried because I was sad. Some people said that those things have not happened after all. Let me borrow the words of the Secretary for Security, "Let us keep our eyes peeled!" It has only been five years though. Moreover, there are still some factors that have prevented the things that we are worried about from happening. It is because Hong Kong people have been fighting for their human rights and freedoms. The international community is also keeping a close eye on Hong Kong. He said that the Democratic Party would be judged by history. He made himself a judge of history. We will have to leave it to the future. But history has already passed judgements on many things. The 1967 riots are an example. These do not have to be judged, for everyone knows only too well what had actually happened. For instance, it is said recently that the history textbooks in the Mainland have denied that YUE Fei and WEN Tianxiang are national heroes, because China is a multinational state. In fact, do Members remember when was the idea of "great harmony among the five nationalities" proposed? If that reason stands, then WU Sangui would be a national hero, a hero who unified China by unifying China under the rule of Manchuria. And if the human kind would someday enter a state of great harmony as a global village, then every person who keeps his own nationality now would be considered a sinner in history in the future when the world becomes a global village, because they have not worked to turn the world into a global village of great harmony.

I also wish to make one point. Under the proposal in the Consultation Document, failure to report a known offence would be constitute an offence. I

am old, and I have seen many more things. We have seen that during past political movements in China, there were cases in which the wives reported misdemeanours on the part of husbands, husbands reported misdemeanours on the part of wives, and their children did the same to each other. Such cases simply abounded. Finally, I wish to add one more point. He said that Mr Martin LEE speaks English much better than he speaks his mother tongue. I do envy him. He has hurled criticisms on many people. Indeed, many Members have spoken in English in these two days .....

**PRESIDENT** (in Cantonese): Mr SZETO Wah, your time is up. Please sit down.

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

**MR ALBERT HO** (in Cantonese): Madam President, I have listened to almost all the speeches delivered by Honourable colleagues over the past two days. I notice that some Members, especially those from the DAB, have strongly criticized or assailed those colleagues who advocate democracy, human rights as well as the rule of law and use these ideas as the basis of questioning the legislative proposals of the Consultation Document. They even argued that this mindset of ours is unpatriotic, completely devoid of any concern about national security. They even said that we do not bother about the existence or otherwise of the state. Such a fallacy in thinking is actually related to the misleading and erroneous concepts about state supremacy and chauvinist nationalism. These people think that the state encompasses all; the government exercises its powers and in so doing, it bestows happiness, liberties and rights on the people. Since the people owe their well-being and all their liberties and rights to the ruling regime and the state, the state is supreme and must be protected unconditionally. But is the relationship really so simplistically one-way?

I think if these people can get to know more about the theories about the state, they will certainly not draw the conclusion that the people should be subordinated to the state and the ruling regime. Why do they not adopt another perspective, update their mindset and look at the state and the ruling regime as just a machine serving the people? If we put the cart before the horse like this and regard the people simply as the subordinates of the state, we may easily think

that a state with security but no freedom can still be accepted. These people will also think that if national security is being threatened, it will be meaningless to talk about anything else. They may even think that it is justified to intimidate and suppress the people, using every possible means under the law, as long as national security can be absolutely protected against any threat. Are we, people brought up with modern education, supposed to think that way? Should this be the thinking of people who live in such an open cosmopolitan city like Hong Kong?

It is in fact very easy for one to be influenced by such a mindset of state supremacy. Mr Jasper TSANG just now said that he was puzzled as to why Dr LAW Chi-kwong had not attended the Hong Kong Coalition for Preserving the History of World War II in Asia organized by me. But then I noticed that Mr Jasper TSANG himself had not done so. I am therefore even more puzzled. Why? Well, please do not think that nationalism is the aim of upholding historical facts. Nationalism is not the point, as evidenced by our manifesto. What we aim at is more than just nationalism and patriotism. Through the upholding of historical facts, we aim to promote peace among nations, peace of mankind, and the dignity of the oppressed, especially those peoples once oppressed by wars. Had our aim been otherwise, how could we have managed to enlist the support of our friends in Japan, which once invaded our country? Therefore, please do not think that nationalism must be involved. Please do not think that our campaign on upholding historical facts is welcomed in the Mainland. Our organization has more than once requested permission to visit the museum of the Nanjing Massacre in Nanjing, but our request has been repeatedly turned down, because an organization like ours is looked upon as "trouble-making" in nature. If Mr Jasper TSANG thinks that our cause merits his support, I hope that he can advise the state leaders not to look at our campaign from such a narrow perspective.

The most important point I wish to raise is: Can trust alone solve many the problems? I remember that the last time we met with the Chief Executive, he said somewhat emotionally that we had no trust in the country. It is a pity that his mentality is still kind of old-fashioned. In this age now, can trust alone solve all the problems? Can a government expect to command the trust of the people simply by asking the people to have faith in it? In our society today, we need to focus on systems and checks. We understand very clearly that only a government checked by the rule of law should command our long-term trust.

Madam President, Members have discussed many of the problems connected with the Consultation Document over the past two days. But if our thinking or premise is still blurred, if our arguments are still entirely misguided by nationalism and patriotism, then we will fail to see things in their proper perspectives. Therefore, I must respond further to colleagues' remarks.

Miss CHAN Yuen-han has described us as rigid. I can tell her that we are not rigid; we are just stubborn. We are stubborn because of our insistence on the just cause. We are stubborn because of our firm conviction. We are not rigid. They also told us to take note of the current developments in China. Mr SZETO Wah has talked much about history, so I need not make any repetition here. Let me just say a few words about the current developments in China. Miss CHAN Yuen-han has been a devoted trade unionist. She may well look at the workers in the Mainland. How many of them can enjoy the same rights enjoyed by their Hong Kong counterparts — the much treasured rights of workers to form unions and fight for their welfare? She told us to look at the China today. But has she read a news story in *Ming Pao* yesterday? It was reported that a current student of Peking University, formerly a reporter of the *People's Daily*, had been arrested and put under investigation simply for having downloaded some published articles from the Internet. The student's whereabouts are unknown, and no one knows if the student is still alive. This is the China today. One may go to other countries and say that overseas Chinese are very happy because our country is now very powerful and we are one of the strongest military powers in the world; one may thus be very happy; one may think that this is national glory and equate it with patriotism. Then sorry, I do not share such feelings. I think this type of nationalism is much too superficial, because it talks only about the sharing of national glory instead of pointing out fairly that the people of China are deprived of the valuable freedoms and rights we now enjoy. This type of nationalism is just about sharing the glory of the Chinese people in other countries. I am sorry that this is not something I wish to do, and I think it is shameful to do so.

Miss CHAN Yuen-han also said that when she saw Americans hoisting their national flag in their country, she realized that Americans were very patriotic. Well, I must say that if she simply looks at hoisted national flags and concludes that Americans are patriotic, she is much too naive. What she fails to see is that in the United States today, many human rights organizations are staging a continuous anti-war campaign, are criticizing their own government for violating the law in suppressing ethnic minorities, including citizens of Arabic

descent. This is true nationalism. She fails to see that in this country, people are constantly criticizing their own Government, their own President and even trying to subvert them — non-violent subversion, I mean. Mr LEUNG Fu-wah wondered whether this should be permitted. I can tell him that people in other countries can do so. Can we not see that they did subvert Richard NIXON peacefully? NIXON was forced to step down before the end of his tenure. I think only this can be regarded true nationalism. Please therefore do not look at the case in foreign countries in such a superficial manner.

Mr LAU Kong-wah said that he had read the Consultation Document and did not think that there is any violation of the human rights covenant. This worries me a lot. First, he may not have read the Consultation Document carefully. Second, he may not fully understand the letter and scope of the covenant. Owing to the time constraint, I can quote a few examples only. The freedom of expression guaranteed under Article 19 of the covenant is actually very clear. We must note that restrictions should be set out very clearly. But the restrictions being proposed, such as the expression "seriously endangers the stability of the state and the HKSAR" under the crime of sedition and the protected information regarding relations between the Central Authorities of the People's Republic of China and the Hong Kong Special Administrative Region, are all very vague. I do not know whether all this will be defined clearly in the future. But is it at all reasonable, when all these important things are not defined, when they just present all the things to us, saying that they are acceptable and in line with the provisions of the covenant.

In 1999, the United Nations Human Rights Committee criticized that there were many ambiguities in our criminal provisions. Yes, I agree that adaptation is required to enhance clarity, and that reviews must be conducted. The further adoption of a minimalist legislative approach may not necessarily encounter any opposition. But if the existing laws are too ambiguous or extensive in scope, they should be tightened at the same time. This is the position of the Democratic Party. Besides, Chapter 7 of the Consultation Document mentions the proscription of some organizations which have not broken the law simply on grounds of their affiliation with some mainland organizations classified as endangering national security. This is definitely in violation of the freedom of association. How then can we say that the Consultation Document does not violate the covenant?

Mr LAU Kong-wah said that the former Chairman of the Democratic Party had "bad-mouthed" Hong Kong in foreign countries, describing his tone as sad and dreary. I also feel sad and dreary. If our country could solve problems by its own democratic means, it would not have been necessary for us to seek international support overseas. I agree that it is indeed sad and dreary, but it is definitely not shameful. The shame should be on our own government. In the past, the peoples of oppressed countries did so — Singapore and Malaysia, for example. Their human rights activists all did that. Nelson MANDELA did that, and so did Dr SUN Yat-sen. My only point is that the offences of subversion and secession now under discussion can actually be grouped under the offence of treason after a simple process of adaptation. We once attempted to set down the standards required to restrict the definitions of these offences as much as possible, lest they may become too broad. Therefore, I hope that our friends in the DAB can carefully study the remarks and arguments presented by the Democratic Party in 1996. That way, they should be able to understand our thinking clearly.

Many people say that since we oppose the enactment of legislation on national security, we would not love our fellow countrymen. Mr SZETO Wah has said quite a lot on this, and it is unnecessary for me to repeat the points here. I wish only to say that in the past, for the sake of the collective interests of the country, our state labelled many people, including state leaders, as rightists, anti-party roaders and counter-revolutionaries. If proper national security laws are not enacted, and if a sound mechanism of checks is not formulated, then all these laws will not only become a means of political control, but will also be reduced to a means of persecution.

Lastly, Mr LEUNG Fu-wah did a diagnosis on us yesterday. I almost forget that he has recently become a Justice of Peace, who can sign a document and send us to an asylum. We know that the Communist Party was best at doing this in the past. But I believe, and I hope, that this is not going to happen in Hong Kong. However, all these talks about mental diseases are very horrible, and they may well become a tool of suppression.

**PRESIDENT** (in Cantonese): Mr Albert HO, please sit down.

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

**MR CHAN KAM-LAM** (in Cantonese): Madam President, the debate going on in these two days is really "something". We are of course very disappointed that at the beginning of the debate, Mr James TO did not explain the wording of the original motion. That is to say that he did not explain why the enactment of laws to implement Article 23 of the Basic Law (Article 23) will reduce the people's freedoms and fundamental human rights. As a result of this, the people of Hong Kong have been misled by him. From the very beginning of his speech, Mr James TO started to do what he is best at — assailing others. He did that from the beginning to the end. He assailed the Chief Executive, also the Secretary for Justice, also the Secretary for Security, and so on. He distorted the original intent of Article 23 legislation and threatened people that they must not accept the enactment of laws to protect national security, trying to put the protection of national security and the protection of personal freedoms and human rights in diametrical opposition. I think this is the most important point to note about the whole debate. It has been most funny that the several Members belonging to the Democratic Party appeared to have not read the Consultation Document at all. As pointed out by Mr TAM Yiu-chung, the Government has actually disseminated a lot of information. If people had read such information, they would have got the answers to many of their questions. But then, they still say that Article 23 legislation will create "panic and traps everywhere". This reminds us of the time before the reunification in 1997, when the Democratic Party threatened people and the international community in a similar manner, also without any justifiable grounds. The Democratic Party talked about how Hong Kong would "wither", would enter a "dark age" after the reunification, as if it were to be handed over to Adolf HITLER of Germany. What Mr WONG Sing-chi said is a ready example. He said that a son might report on his father because he felt that his father was engaged in some kind of treason acts, commenting that this would create widespread worries and panic. They like to talk about things out of their mere imagination, without any justifications. For instance, Mr Michael MAK questioned whether a person would be charged with the offences of treason and secession if he exchanged name cards with somebody in Taiwan and then took over a Nationalist Flag. I think it is a great pity that a Legislative Council Member should have said something like this. A man in the street can be excused for harbouring such a worry. But how can our Legislative Council Members behave like this?

I think that Mr James TO, like other Members belonging to the Democratic Party, has always been thoroughly anti-Chinese and anti-Communist. All these years, they have probably been trying to second-guess the wishes of

anti-Chinese forces in the world. I think so because as we can notice, over the years, they have been acting against China and the SAR Government in whatever conceivable aspect. That is why I do think that opposing China on every front has actually become the main political objective of the Democratic Party. We see that no Member belonging to the Democratic Party would say that he is unpatriotic. All of them claim to be patriotic. But when it comes to protecting national security, they will put up all kinds of hindrances and advance various excuses. This moment, they will say that since the economy is in such a poor shape, the most urgent task should be to revitalize the economy, and the next moment, they will argue that since it is now politically calm and there is no sign of subversion, there is actually no urgency for legislation.

Dr YEUNG Sum is comparatively frank. According to him, since the government of our country is not returned by universal suffrage it lacks any mandate. The people do not enjoy any freedom, and "the country is falling apart", so we need not enact any legislation to protect the totalitarian regime. Well, as we can see, the position put forward by the Democratic Party Chairman can at all times best represent the stance of the political party. Some years ago, when the United States and the NATO forces bombed the Chinese Embassy in Yugoslavia, Mr Martin LEE, instead of criticizing these foreign countries, laid the blame on the Chinese people. What should be regarded as "a country falling apart"? When a country comes under foreign invasion and its people are displaced, can one still talk about freedom? The ravaging of our country by the allied forces of eight foreign powers and the Japanese militarists' massacre of innocent people all over our country — does all this lead one to think of "a country falling apart"? If we look at the history of our country in the past century or so, we will see that now is basically the most stable time ever. We have thrived economically, succeeded in bidding for the hosting of the Olympic Games and the World Expo as well as entering the WTO. There is no denying that the status of the Chinese people in the world is rising all the time. The objective of enacting Article 23 legislation is precisely to prevent the recurrence of "a country falling apart". Dr YEUNG Sum and those Members belonging to the Democratic Party are just trying to confound right and wrong.

The modern history of China is actually a history of resisting foreign invasion. Eversince the founding of New China, foreign forces have been looking for opportunities to thwart the development of China, and attempts to split up China have never stopped. Can we not see that attempts are constantly being made to sever Xizang from China and to hinder the reunion of Taiwan with

the Motherland? Can we not see that the reunification of Hong Kong with the Motherland similarly encountered resistance of all kinds? Can we not see that international media, local politicians and organizations with backing from foreign forces are all trying to "bad-mouth" Hong Kong, to prevent the SAR from having further interactions with the Mainland?

When we now wish to discharge our obligation under the Basic Law, those who cling to "struggles for democracy" once again hoist the banner of "human rights and freedoms" as a pretext of refusing to enact laws to protect national security. They have long since treated their own country as an enemy, long since looked upon their own country with hostility and abandoned their own country. That is why they have gone overseas to seek foreign intervention in Hong Kong's enactment of laws to protect national security. To them, this is only natural. But who, in this world today, are actually infringing upon others' territorial integrity and sovereignty? Who actually are violently interfering with the domestic affairs of other countries? To arouse the concern of foreign governments and parliamentary assemblies about the enactment of laws in Hong Kong is tantamount to inviting foreign intervention in Chinese domestic affairs, to seeing in a wolf. Regarding such attempts to subject the SAR's legislative authority to the indiscreet remarks of foreign countries, Mr CHEUNG Man-kwong says that the Basic Law is the product of the Sino-British Joint Declaration, which is an international treaty, and for this reason, there is nothing wrong with inviting the concern of foreign governments. This is nothing but sophistry, an attempt to rationalize foreign intervention in the domestic affairs of Hong Kong. A group of so-called foreign academics have sent a joint submission to the President of the United States, strongly requesting him to interfere with Article 23 legislation and to use sanctions against Hong Kong as a threat. This is precisely a collusion of forces without and within, and they are determined to make Hong Kong enact its national security legislation according to the wishes of foreigners. If they succeed, the laws eventually enacted will never protect our national security but will instead ensure an infringement of our national security by foreign forces. At a public hearing of the Panel on Security, Mr Martin LEE remarked that the protection of human rights is not meant for the majority, nor the minority, but for all the people. This is really a grand statement, but upon careful analysis, we will realize that what he wishes to protect are actually the liberties and rights of those who are engaged in treason, the betrayal of the country, secession and illicit connections with foreign powers. This is no surprise, for when we look at the past, we should know only too well the stance of Mr Martin LEE.

The situation in Hong Kong is apparently calm, with no signs of any subversion. But we must remember that politics are essentially evil deeds conducted in secret. The common people will not know, of course. As the ancient saying goes: "As distance tests a horse's strength, so time reveals a person's heart". It has become increasingly obvious as to who in Hong Kong are standing for the interest of foreigners. The new party head of the Democratic Party, Dr YEUNG Sum, has recently talked about the need to improve their relationship with the Central Government. But if they do not change their present course and abandon their hostile attitude towards the Motherland, there will be very little likelihood that they can do so.

Those who oppose the enactment of laws to protect national security mainly aim to disarm the country in terms of the laws required for national security. They intend to plunge the country into a dangerous and vulnerable situation. This is of course absolutely unacceptable. Many organizations have recently expressed their views in the Legislative Council. One of the human rights organizations said that even if Taiwan declared independence through self-determination, the Central Government still should not interfere by force. They thought that they were right, but if we listen to them more carefully, we will know that they are blatantly advocating secession. Is this the attitude that Chinese citizens should hold? An organization named the Chinese Democratic Party even hastened to say that what it was doing were all against national security. It added that Article 23 legislation would make them feel unsafe, so they would vigorously oppose it. The Democratic Party claims that Article 23 legislation will reduce people's freedoms and fundamental human rights. I think this is wrong. Article 23 legislation will not deprive the ordinary people of their freedoms and fundamental human rights, but will actually take away the liberties and human rights of all those who are engaged in sedition, secession and subversion. Mr Albert HO said that there must be checks and balances in law. But I hope that in our discussions on human rights, freedoms and the protection of national security, we do not "drag" law-abiding common people into the scene. We hope that we can refrain from making the common people panic as traitors and seditious elements.

Mr CHEUNG Man-kwong said that "Article 23 is a nightmare of Hong Kong". But I would say that it should be the "nightmare of the anti-Chinese forces in Hong Kong". He still thinks that the Chinese Government today is just the same as the South African government which Nelson MANDELA confronted, one which practised apartheid and racism. This shows that he is living in the past.

Dr LAW Chi-kwong said that ours is an age of peace, and that it appears such legislation is unnecessary. I think this is entirely wrong. Ours is actually an age which sees the co-existence of war and peace. Dr LAW sees only the side of peace; he is obviously very naive. If we treasure the peace today, there is all the more reason for us to make laws to protect it. Besides, we are required by the Basic Law to enact laws on our own. Is it true that Members belonging to the Democratic Party do not wish to discharge this obligation? Admittedly, the Basic Law was finalized after the 4 June incident, and Dr LAW thus thinks that the requirements under Article 23 are much too demanding and should not be accepted. But has Dr LAW ever read Article 23 in detail at all? The SAR Government is allowed to enact laws on its own, and the state is not going to impose its national security laws on the SAR. Can this be regarded as much too demanding?

Our country is developing rapidly, and its international status is ever rising. To love the country and protect national security is the obligation and duty of all Chinese citizens. Mr SZETO Wah openly admitted that he was pathological. It was very brave of him to admit so, and it is small wonder that he is the party whip of the Democratic Party. But behind his emotive and eloquent speech, one can sense precisely a kind of hysterical panic. Mr SZETO's speech only let us see his deep hatred towards the Communist Party. He seems to be living in the historical past. Thank you, Madam President.

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

**MR ALBERT CHAN** (in Cantonese): Madam President, Mr Jasper TSANG said earlier that Dr David CHU had suggested to him that he should gun down the democratic camp with a machine gun. I just managed to hurry back from a meeting with the public in Tsuen Wan, for I hoped that I could arrive in time for the voting. On my way back in the MTR, a kaifong asked me why I was in such a hurry. I said I must go back to the Legislative Council to vote on the motion on the enactment of laws to implement Article 23 of the Basic Law. He said, "Very good. Fix those 'leftists' in the DAB with a canon!" A cannon is obviously more powerful than a machine gun.

Madam President, after listening to the remarks of Mr CHAN Kam-lam, I feel frightened and sad. I feel sad because in this Chamber there is a Member with such a mentality. I also feel sad for the DAB, and for Mr Jasper TSANG, Chairman of the DAB. Despite the fact that Mr TSANG, Chairman of the DAB, is of high quality and has great political wisdom, it is surprising to see that his party would have such a member whose quality is so poor in this Chamber. This is saddening indeed. Just now Mr CHAN Kam-lam cited many examples. The more he spoke, the more I felt that he resembled QIN Gui, who had meted out the penalty of decapitation for unfounded charges. The many examples cited by him are not supported by clear facts and justifications. One example is about Mr Martin LEE's response to the bombing of our country's Embassy in Yugoslavia. But does Mr CHAN know that Mr Martin LEE had led demonstrations and protests at the United States Consulate? He has completely ignored the historical facts, and this is precisely a disorder on the part of Mr CHAN Kam-lam. If Mr CHAN Kam-lam considers the remarks made by many Members of the democratic camp regrettable, then there is all the more reason for him to feel sad and shameful at Mr LEUNG Fu-wah's remarks. It is because by logical reasoning and theoretical analysis, one will know that there was no substance in his speech, other than personal attacks on many dignitaries and abusive remarks that had gone too far.

I think the biggest problem with Mr CHAN Kam-lam is that he is not in the least confident in our country, for he thinks that the democrats in Hong Kong, people who are defenceless, can subvert and overthrow the rule of the Communist Party of China (CPC). Those who are most lacking in confidence are these "leftist masters" like Mr CHAN Kam-lam. If the CPC has exercised able leadership, and if the Chinese people support the leadership of the CPC, even without such legislation, we absolutely should not have worries and fears about the possibility of our country being subverted and overthrown. The support of Hong Kong people for Premier ZHU Rongji has even outweighed their support for TUNG Chee-hwa and many Directors of Bureau and Secretaries of Departments in Hong Kong. I hope that Mr CHAN will open his eyes wide and see for himself how supportive Hong Kong people are of their Motherland. To people who claim to love Hong Kong and the country, if they do not have confidence even in the Government of their Motherland or in their own country, please stop uttering empty words about patriotism. I hope Mr CHAN will not ignore the objective facts, turning a blind eye to the fact that the millions of

people in Hong Kong, including the democrats, all love their country and Hong Kong. These divisive words and remarks of his are creating a social crisis, division in society and factors of instability in Hong Kong; they are damaging "one country, two systems" and the stability and prosperity of Hong Kong. Therefore, they must be very careful in employing these tactics which will cause social division or deal a blow to society.

Judging from the present conditions in society, despite the incompetent leadership of TUNG Chee-hwa, the Hong Kong Government still has full control of society, and all the powers are also in the hands of the Government. If the Hong Kong Government asks some cultural organizations, social entities, and societies including the "quality chicken" association or children's choir and so on and so forth, to support the enactment of laws on Article 23, they will show up and offer their support any time. The Government can mobilize as many people as it wishes to stage a petition or demonstration. The Hong Kong police entirely have the ability to maintain the present law and order in Hong Kong. The Police Force have the ability to curb any activity that may impact on the stability and prosperity and social order of Hong Kong. Therefore, do not think that our Police Force would be incapable of controlling and governing the community of Hong Kong if laws are not enacted for Article 23. So, when we look at a problem, we must look at the facts, look at the realities of society. The biggest crisis now faced by Hong Kong is not the sort of "poison" as mentioned by Mr CHAN Kam-lam, but the poison of the leftists, the poison of leftist thinking. If they do not eliminate the toxin in their thinking, the conflicts, divisions and confrontations in Hong Kong would only become more and more serious, which would deal a blow to the stability and prosperity of Hong Kong.

Madam President, when the Chief Executive, Mr TUNG Chee-hwa, came to the Legislative Council on the last occasion, I pointed out that the Hong Kong economy is faced with a crisis, the unemployment problem is serious with numerous cases of bankruptcy, and the people are caught in economic plights. I also said that Hong Kong is facing a social crisis, for many people are emotionally unstable and leading unstable lives. I pointed out that Article 23 will create a political crisis, and unfortunately, this crisis is taking shape gradually and may even explode. The explosion of the crisis may possibly be triggered by the mistakes committed by government personnel in their work, or remarks about "HITLER"; and it may be triggered by Members such as Mr

CHAN Kam-lam and Mr WONG Fu-wah..... It should be Mr LEUNG Fu-wah. My apology, Madam President. I do not wish to be accused of changing the name of another people's ancestor and making abusive and insulting remarks. The explosion may be triggered by such Members as Mr LEUNG Fu-wah who has created even more conflicts and political crises. So, when dealing with Article 23, all parties concerned, including the Government and Members of the leftist camp, must be very careful.

The contentions about Article 23 have led to the formation of two major camps in society. One is the new Unholy Alliance made up by the Government, the leftists, the industrial and business sector, the Breakfast Group, a "quality chicken" association and children's choir, and so on. This is a completely new camp which supports the Article 23 legislation. The other camp is opposed to the enactment of laws on Article 23, or to be more exact, the enactment of laws on Article 23 without a White Bill. This camp is composed of the democrats, students' groups, social activists and members of the religious sector; and I think what the Government should be most worried about is that even the Hong Kong Bar Association also stands on this side. The formation of this camp is induced by the Government. In fact, there should not be such confrontation between these camps. As a result of their confrontation, we have seen the gravest conflict, tension and social resistance in the territory since the reunification in 1997. The Government should, at this point in time, learn a lesson from painful experiences. Our friends in the leftist camp should also see clearly at this point in time the objective reality, and the objective reality is that the Hong Kong Government and China's organizations in Hong Kong basically have full control of the entire community of Hong Kong, and all the powers are in their hands. If, under such circumstance, conflicts and confrontations are further created, I absolutely do not believe that this is what Mr DENG Xiaoping would like to see.

The leftists have this cliché to chant: Stability overrides everything. This, however, is a complete distortion of the guiding political principles traditionally upheld by leftists and the CPC towards Hong Kong. They have not only failed to create the factors for stability. They have, on the contrary, created the factors for confrontations and conflicts. A single spark can start a prairie fire. As I have told the Chief Executive, Hong Kong is already faced with economic and social crises. If a political crisis is further created by this issue which is downright unnecessary, coupled with the fact that members of the

religious sectors are worried, isolated and made targets of attacks, and when the general public in Hong Kong feel worried too, then, with a small spark, the conflicts and confrontations in Hong Kong may be fuelled, leading eventually to riots. Let us not underestimate the possibility of this happening.

Madam President, I very much hope that through this debate in the Legislative Council, our communication can be enhanced, and our differences narrowed. But regrettably, the result is that conflicts are intensified and differences widened, and the scenario is one of a machine gun versus a cannon. This is absolutely not right, and we should not allow this to happen. Through this debate, I hope the Government can appreciate clearly how serious the problem is and understand clearly to what extent our society is in crisis now. The Government has listened to many different opinions during the consultation period. While adhering to the guiding principle that the enactment of laws must go ahead, the Government should endeavour to come up with different options to ease the conflicts and confrontations in society, thereby allaying the mistrust of all sectors of the community in the Government and their discontent towards it. If, where society is full of confrontations and conflicts, the proposal to enact laws on Article 23 is forced through the Legislative Council, it would only bury a time bomb in society. This is absolutely not the original intent of making legislation on Article 23. Nor is this the original intent of the drafting of the Basic Law back in those years.

Madam President, I also wish to say a few words about the Bar Association. I feel very sad that while the Bar Association should be the representative of all the elites in the legal profession and the most authoritative representative of the legal profession in Hong Kong over this legal issue, the Hong Kong Government has nonetheless said that their opinions are not right. The Government has taken heed of the opinions of a foreign expert, and considered his opinions infallible. The opinions of the Bar Association are, however, considered radical and emotional. I think the Government must be very careful in handling this. When someone requires the service of a lawyer in future, should we tell him not to approach barristers in Hong Kong because barristers in Hong Kong are incompetent, emotional and of very poor quality and so, he had better turn to lawyers overseas? As Hong Kong is an international metropolis, the status of professionals in Hong Kong must be protected. The Hong Kong Government should defend the qualifications and authority of professionals in Hong Kong. However, the Government is doing just the opposite. It has, on the contrary, suppressed the status of the Bar Association

and its credibility in the international community to serve its own political purpose. I think what the Government has been doing is indeed very dangerous. This is not only an instance of community-versus-community or class-versus-class confrontation. What has happened now is that the Hong Kong Government has gone so far as to damage and belittle the status of the most authoritative representative of the legal profession in Hong Kong, namely, the Bar Association, in order to serve its own political aims. So, I hope that senior government officials — Mr Donald TSANG is not here — will really be careful in handling these issues which will cause divisions in society, and be careful about their impromptu remarks made only to covet a moment's pleasure. I can make such remarks, but Bureau Directors cannot, because our status is different and their salary is many times more than mine.

Moreover, Madam President, Mr SZETO Wah has urged me to respond to what Mr YEUNG Yiu-chung has said — Mr YEUNG Yiu-chung is not here in the Chamber — Mr YEUNG Yiu-chung said that it is easier to change rivers and mountains than to change our nature. Yes, this is exactly my reflection. My nature is unchangeable. Mr SZETO Wah would wish to respond through me that our position has always been consistent and we will not make volte-faces as we please. We will definitely persevere in our opposition against the enactment of laws on Article 23. Thank you, Madam President.

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

(No Member responded)

**PRESIDENT** (in Cantonese): Mr James TO, you may now speak on Mrs Sophie LEUNG's amendment.

**MR JAMES TO** (in Cantonese): Madam President, Mr Albert CHAN just mentioned that "it is easier to change rivers and mountains than to change our nature". But I feel that it should be "it is easier to change rivers and mountains than to change the nature of the Party". Maybe we can say that it is not easy to change the nature of the Democratic Party, and the same can be said of the Communist Party. However, before I respond to the amendment of Mrs Sophie LEUNG, maybe I should say something to Mrs Selina CHOW's liking.

Recently, we, Members of the Democratic Party had a meeting with the Chief Executive. When discussing topics on the people's livelihood, we saw eye to eye with each other and the atmosphere was good. We had many common viewpoints, and we found many areas in which we could have co-operation. I felt the meeting had a good beginning. However, when the discussion came to Article 23 of the Basic Law (Article 23), both parties became very "sincere". We conveyed our concerns to the Chief Executive very "sincerely", and he told us what he thought was wrong with us very "sincerely". I had been quite "disrespectful" in interrupting the Chief Executive by asking him whether he intended to use that as the baseline. At that juncture, I said this, "Mr TUNG, can you listen to me? I sincerely believe that you, the Chief Executive, sincerely feel that there is something wrong with us: that we do not trust the Central Government and the SAR Government. I sincerely believe that you are so sincere. But I hope that you can respond by telling us that whether you sincerely feel that we are sincerely worried in having these reservations, and that we are not like what some Members (who are present) accuse us of, that we do not believe in ourselves as well as the criticism that the worries mentioned by us overseas were false." I was happy that the Chief Executive agreed with me. Besides, I also said we did not know what our new leaders would think by then.

After the 16th National Congress of the Communist Party of China, I have talked to several leftists. We exchanged opinions during the election of deputies to the National People's Congress (NPC). Some leftists, especially those belonging to the grass-roots level, said that had we mentioned any idea in the thought of the "Three Represents", or suggested that capitalists should be allowed to join the Party, we would be accused of "subversion". So these people said that they were confused and not sure how far "Ah Gong" (his exact wording) would go, and how progressive it would become. Therefore, I told the Chief Executive that we hoped we could discuss that later because we would continue to provide our opinions. But the problem is, we have discovered so many problems in the Consultative Document (We are not alone. The submission from the Hong Kong Bar Association also mentioned many problems. We are still drafting our submission. In the course of drafting the submission, we have found a lot of problems). It would be unclear if we say that we can support part of the Consultative Document, but not the majority of it.

If you ask me, insofar as this Consultative Document is concerned, why we oppose the amendment of Mrs Sophie LEUNG, I can point out that it is because the problems we have discovered with the Consultative Document as well as those discovered by the Hong Kong Bar Association have reached such an extent that if we wish to make the Consultative Document compatible with our viewpoints, it would have to be amended so extensively that it would be completely different. If the suggestions of the Hong Kong Bar Association are taken on board, such as the proposal of incorporating the Johannesburg Principles, the non-inclusion of conviction on mere expression of opinions, the exclusion of vague and unclear expressions, the removal of certain mechanism that might easily be triggered by some "foreign devils" as mentioned by Mr Martin LEE, and so on, and if all such contents are deleted from the Consultative Document according to such suggestions, there will not be much left of the Consultation Document. Probably the remaining part will just be similar to those contents proposed in 1996.

Therefore, let me respond in passing here. I do not support the amendment of Mrs Sophie LEUNG, firstly, because she has not addressed the contents of the Consultative Document. She should not avoid the issue of whether our rights and freedoms have been reduced. It is fine even if she thinks that our rights and freedoms have not been reduced, because at the end of the day she would still have the chance to vote on the original motion even if her amendment is not passed. Given the chance, I hope Members can think about this: In fact, they can choose between voting against my motion or abstaining. So Members do not have to vote against it, because if they think certain parts are really valid, but somehow it seems politically inappropriate to vote for it, then at least they may choose to abstain. This may prove to be more meaningful.

In the latter part of 1996, our Mr Andrew CHENG moved a motion to propose that we should discuss these contents as soon as possible. The reason is simple. The Provisional Legislative Council had been established at that time, and the so-called "midnight legislation" would proceed several months afterwards, and in fact it should be so. The Administration then made some amendments to the original Hong Kong Bill of Rights Ordinance, and some amendments were also made to the Societies Ordinance and the Public Order Ordinance. All these amendments were made by way of "midnight legislation". Therefore, judging from the prevailing political circumstances then, we actually hoped to complete compiling a contrasting model during the period before the transition in 1997, so that should any discrepancies arise in the future, we could

bring them to the attention of the Government. I know the Secretary has carefully studied our speeches because we have had some communication beforehand. She understands our stand and position.

As for more in-depth details, just like the point asked by Mr LAU Kong-wah. He mentioned that not only Superintendents, but also even Police Constables might enter premises and conduct searches. I feel that the researcher of the DAB has been quite lousy. He read only paragraph 14.1, but missed 14.3. The very existence of 14.3 has made Mr LAU and the researcher the losers. The reason is that paragraph 14.3 stipulates that police officers, in accordance with paragraph 14.1, may enter any premises or place, that is, a police officer must first secure the consent of the owners of private premises or a warrant from the Court before he could enter such private premises. I have read this very clearly. I have not made their errors. Although the time was limited, I still read the provisions clearly. Therefore, from this, we can see that you had just read clause 14.1. In fact, paragraph 14.3 has already listed out the relevant qualification, that is, it is not true that ordinary Police Constables may enter private premises without a warrant. I hope they can read the provisions more clearly in the future. Now I have responded to this point clearly.

A moment ago, a Member of the DAB said that if the freedom of endangering national security was really reduced, it would be exactly what we had wanted for it would mean reducing the freedoms of subversion and secession. However, Members must read the proposals of the Secretary in the Consultation Document carefully. Is it mentioned *inter alia* that whether the people have the freedom of reading seditious publications? Will the reading of seditious publications be considered endangering national security? It is considered so, that means the people will follow the advice of such publications after reading them. As for the word "possession", even librarians are also considered to be in possession of such information. If so, the people will lose the freedom of reading. Although many colleagues may not support my motion, they would still insist that the people should have such a freedom. By reducing such a freedom, we are not just reducing the freedom of endangering national security, but we have reduced the freedom that should be enjoyed by the ordinary public.

Besides, I can quote one more example. Reporters should be allowed to report information on certain economic policies that would be implemented in the Mainland and the SAR in the future, because the managements of the newspapers attach great significance to such information on international finance and

monetary affairs. Such information would not endanger national security. And as far as I know, the Secretary would also seriously consider whether the need to keep the relations between the Central Government and the SAR Government should render such financial information not to be released easily. However, the Consultation Document really proposes to reduce the freedom in this regard. In this way, we are not just reducing the freedom of endangering national security, but we are reducing the freedom of the people in reading press reports on economic policies in the context of the relations between the Central Authorities and the SAR. This, in effect, is not reducing the freedom of endangering national security.

On the other hand, Members in this Chamber, including those of the democratic camp and even all the Members of this Council, actually are confined to a spectrum. Several colleagues have asked me, "Can Hong Kong become a base for peaceful evolution in China?" This is an issue we need to address, but I cannot see that the Consultation Document has tackled this issue specifically. Many leftist Members said that the issue should not be tackled in this context. According to my understanding of China, especially in the light of the post-1989 developments — just now Mr SZETO Wah quoted the *People's Daily* as saying that the circumstances in the Mainland have been changing to this very day — I think that maybe an evolution in thinking is not possible. This is where the problem lies. Since Hong Kong has the Basic Law, and since two human rights covenants are applied here, how can Hong Kong be developed into a base for peaceful evolution in China? A peaceful evolution means changes in thinking and ideologies as a result of certain influences. If this can be achieved, it is really a big deal!

I do not know whether the Government can tell us in effect what our positioning is? This is because if China has proscribed a certain organization, then Hong Kong has to consider whether it has to follow the proscription. In Hong Kong, even this organization has not done anything wrong, yet so long as it is affiliated to that mainland organization, then it has to be proscribed. We are talking about a peaceful evolution. Yet, as the mainland laws on national security are more stringent than ours, so a lot of the opinions, acts, assemblies and associations are disallowed. Prof Albert CHEN has also raised this issue: Even if a political party was to be established, still it would not be possible to bring about a peaceful evolution in the Mainland. However, Prof Albert CHEN did not elaborate whether this was possible in Hong Kong. I believe if the Government makes this suggestion, the officials in the SAR, especially the

Secretary for Security, will have to shoulder enormous pressure for this policy. The situation is very much like the one in which we are dealing with Falun Gong activities now. However, we have to bear in mind that Hong Kong really does not have sufficient laws to deal with the Falun Gong issue. This is because their students just perform some breathing exercises in public places. We cannot charge them for any misconduct. At most, we can only accuse them of obstruction. However, if we say that they are causing obstruction — Mr Martin LEE had said that the public order was really disturbed by obstruction, but was it necessary for such people be handcuffed and removed to other places? On this issue, the Secretary will meet some difficulties, so she still needs to consider it. However, once such a new mechanism is in place, it would be much easier, much easier for China to give instructions and exert pressure. Hong Kong will be subject to much greater pressure, and it will be much more difficult for us to maintain "one country, two systems" and the freedoms presently enjoyed by the people of Hong Kong.

Some moments ago, some colleagues, especially Mr Jasper TSANG or Mr CHAN Kam-lam, said that the proposer of the motion had not explained the wording of the motion. This is not true, is it not? Fortunately, I have already given a copy of my script to the reporters in the first instant. Of course, I was also subject to the time constraint. But I did mention those items that would reduce our freedoms, and the descriptions were very detailed. Besides, I also mentioned that our relations with Taiwan would be undermined. I mentioned the impact on the Taiwanese, and gave a detailed analysis of this. One of the paragraphs described the ways in which the proposals had exceeded the scope of Article 23 — I had explained all these. They said that I had not established my stand, had not given any explanations. Maybe it was just because after they had heard me say that someone is "shining the shoes of the Central Government" on the first page, then they became very angry. However, the one who should feel angry should be the Secretary. Our friends in the DAB have no justifications for not reading my speech to the end. On personal attacks, I have seriously read my speech once again, and asked many of my colleagues to review it for me. I did quote the Secretary as relating to great revolutions; she could say that. However, she also mentioned the subversive rebellion of Huangchao. Maybe in her mind, Huangchao was surely a vicious fellow. But this is not the view of the Communist Party, which thinks that the Huangchao Uprising was a peasants' uprising. It was considered that the Huangchao Uprising had triggered the class struggle and a dynastic struggle, and was a progressive force. Yet the Secretary made a laughing stock of herself. I was speaking from this perspective, and I

did not comment on the hairstyle, the way of dressing and the taste of the Secretary. I have never intended to do so. However, if it was still considered a personal attack, then all I can say is that it is very difficult to judge on what was mentioned in a speech. In fact, what I have spoken was just some basic facts and assumptions.

Some Members said that the proposals put forward by the Secretary would not convict a person merely for what he had said. On the first day of release of the Consultation Document by the Secretary, Mr Martin LEE and I and some Members asked whether this was a good thing. The Secretary kept selling the proposals to us and said that a person would be convicted only when violence was involved. Miss Margaret NG and I attended the briefing for about 20 minutes and then the Secretary said she had to rush to another meeting. We thought that the proposals should be good enough if they were what the Secretary had described. However, as we read on, we found that there were really many examples in which a person could be convicted for mere expression of opinions. The best example is the threat of force. (Prof Albert CHEN has made a list of all the examples that would not convict a person for mere expression of opinions.) "Threat of force" does not necessarily involve force. As we all know, Hong Kong people often say things to the extreme, and when it goes to the extreme, it could lead to conviction for the expression of opinions. What some people say may not be realistic and is never intended to materialize. However, if a person says something very emotional, he could have made his point to the extreme, and this could lead to his arrest for what he has said, that is, conviction for what he has said. Therefore, he suggested there should be a change of certain formulae. Besides, it does not involve any violence at all if someone discloses certain confidential information in connection with the Central Authorities and the SAR Government.

I would also like to respond to the comments made by Mr PANNICK, QC, whom many government officials and our colleagues have quoted. He said that there was no special problem with the proposals on the surface. But just as Mr Martin LEE had said, it would be clearer if the issue is viewed from the perspective of legal practitioners. He thinks that (this is his major worry) it all depends on how the details are spelt out. Please bear in mind, we have, up to this moment, not said that the proposals would definitely violate the human rights covenants. Mr PANNICK, on the contrary, said that the proposals might not be compatible with the covenants, and it would depend on how the latter half was formulated. Please remember, Mr PANNICK did not enjoy the benefit of

knowledge of the Hong Kong context (that is, Hong Kong may request the NPC to re-interpret certain laws and violations of the Basic Law as well the fact that the Government has repeatedly refused to guarantee that it would not seek an interpretation of the Basic Law again) in his consideration of the issue. Therefore, there was a major loophole in his study of the issue because what was put before him was the system of Hong Kong, but the examples he quoted were laws of the United Kingdom. So the same laws could bring about totally different effects.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, the proposals on implementing Article 23 contained in the Consultation Document may not be perfect. But they are fully consistent with the Basic Law and with Hong Kong's obligations under international covenants on human rights. They are put forward in order that members of the public, and of this Council, may contribute to the development of ideas on this crucial subject.

Many comments received so far have been very constructive and will be seriously considered. However, alongside the constructive comments there has also been a lot of rhetoric. Cliches have been trotted out. References to "a chilling effect", "self-censorship" and even "police state" or "reign of white terror" receive wide media coverage. In such circumstances, it is not surprising that concerns are reported to have grown in the community.

The debate over these two days provides an opportunity for rational analysis to take place. The motion, and the proposed amendments to it, raise serious issues concerning rights and freedoms, the rule of law, and "one country, two systems".

The Secretary for Security will demonstrate that the proposed new laws are in some respects more liberal than current laws, and in other respects are largely the same. The net effect will therefore not be to reduce rights and freedoms enjoyed by the people of Hong Kong.

I wish to emphasize that the fundamental rights and freedoms enjoyed by Hong Kong residents in accordance with the Basic Law will not, and cannot, be reduced by the new laws. In implementing Article 23, the Administration accepts that it is constitutionally obliged to comply with other parts of the Basic Law that guarantee human rights. Article 27 provides that, and I quote, "Hong

Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike."

Article 39 provides for the continued application of the International Covenant on Civil and Political Rights (ICCPR) and precludes restrictions on rights and freedoms that are inconsistent with such continued application.

My Department has advised that the proposals contained in the Consultation Document do comply with those human rights obligations. That view has been endorsed by a leading human rights expert — Mr David PANNICK, QC. Mr PANNICK is satisfied that the contents of the proposals are consistent with human rights law and also considers that none of the proposals are objectionable as a matter of legal principle.

Honourable Members, in particular the Honourable Albert CHAN, criticized the Government for dismissing the views of the Bar Association. In fact, shortly after the receipt of the submission, both the Secretary for Security and I have stated that the submission made by the Bar is practical and rational, and we will carefully deliberate on details of the submission.

But neither the Department of Justice nor Mr PANNICK have the final say on the consistency of the proposals with human rights law. That right is vested in our independent Courts. Under Article 11 of the Basic Law, no law enacted by this Council shall contravene the Basic Law. If our Courts decide that any part of the Article 23 laws is inconsistent with the human rights guarantees in the Basic Law, it will not give effect to them. It can therefore be seen that the safeguard against improper legislation is already in place.

I accept that, after enactment of the laws, it will be essential to ensure that their application is consistent with fundamental rights and freedoms in individual cases. However, the Administration is obliged to apply the law in this way, and the Courts will ensure that this is the case. To underline this fact, the Administration proposes to include in the legislation an express provision to the effect that nothing in it is intended to contravene Articles 27 or 39 of the Basic Law, and that restrictions apply only in so far as they are lawful pursuant to those Articles. Adequate safeguards will therefore be in place to prevent improper implementation of the laws.

Some commentators have suggested that compliance with our human rights obligations is not sufficient; and that our laws should also comply with the Johannesburg Principles. However they are unable to point to any other jurisdiction or country, except possibly Peru, which has adopted that standard or which has laws which fully comply with the Principles. Nor is any country or territory, including Hong Kong, legally obliged to have such laws.

The Johannesburg Principles are nevertheless useful reference materials in respect of limitations on freedom of expression and access to information on grounds of national security. Broadly speaking, the Article 23 proposals comply with most of the Principles.

For example, Principle 7 enumerates a list of protected expression which should not be considered a threat to national security, including expression that advocates non-violent change of government policy or of the government itself; and criticism of, or insult to, the government. The Article 23 proposals do not seek to prohibit any such forms of expression.

It is however true that our proposals in respect of treason and sedition do not comply rigidly with Principle 6 of the Johannesburg Principles. Principle 6 states that expression may be punished as a threat to national security only if a government can demonstrate that:

- (1) the expression is intended to incite imminent violence;
- (2) it is likely to incite such violence; and
- (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

In our view, Principle 6 is unnecessarily restrictive.

If it were strictly applied, a state would be powerless to prohibit the broadcasting of enemy propaganda in wartime; the incitement of terrorist outrages (say) several months in the future; and the indirect incitement of violence, for example, through the spreading of Internet messages.

The fact that the Administration does not propose to follow Principle 6 does not mean that rights and freedoms in Hong Kong will in any way be reduced.

Further, Hong Kong is a very free society and has entered into visa free arrangement with 123 countries. There is freedom of speech and no application for approval but notification only need to be made to carry out demonstration or procession. We cannot wait until the damage to life and property is done before measures are taken to safeguard national security.

Two other Principles, which neither the current law nor our proposals would satisfy, require defences of public interest and prior disclosure in respect of offences of unauthorized disclosure of official secrets. The possibility of including such defences will be considered as the proposals are further considered.

I would reiterate that the proposals on implementing Article 23 fully comply with the human rights guarantees in the Basic Law and the ICCPR, and comply with most of the Johannesburg Principles. There is no basis for alleging that rights and freedoms in Hong Kong will be reduced by the proposals.

Let me turn to the rule of law. One fundamental aspect of the rule of law is that the government itself must abide by the law. This principle is expressly set out in Article 64 of the Basic Law.

Article 23 requires the Hong Kong SAR to enact laws on its own to proscribe acts that might jeopardize the state. How ironic it is that many of those who claim to support the rule of law are telling the Government that it should not comply with Article 23.

The indisputable fact is that there is a constitutional obligation to implement Article 23. In doing so, the Government is upholding the rule of law, not damaging it.

As to the substance of the proposed new laws, these too are entirely consistent with the rule of law. One of the guiding principles that underpin the proposals is, and I quote,

"the need to ensure that all offences ..... to implement Article 23 are as clearly and tightly defined as appropriate, so as to avoid uncertainty and the infringement of fundamental rights and freedoms guaranteed by the Basic Law."

In complying with this principle, the Administration proposes to repeal overly broad provisions relating to treasonable offences, and offences relating to the head of state; to replace the current offence of sedition, which is antiquated and draconian, by a much narrower offence based on incitement; to create new offences under the labels of "subversion" and "secession" that broadly speaking only cover activities that are offences at present; to ensure that expressions of opinion and criticism of the government remain lawful; to continue to deal with the theft of state secrets under the Official Secrets Ordinance, which is based on the British Official Secrets Act 1989; and to ensure that any proscription of organizations in Hong Kong based on national security grounds is governed by Hong Kong law, by Hong Kong's concepts of national security, and by international human rights standards, and that safeguards are provided in the form of judicial review and appeals on points of fact and law.

These proposals fully comply with the rule of law. And, if they are enacted, the Government would continue to be subject to the rule of law, and to judicial oversight, in respect of their implementation.

I fail to understand how the proposals will have any "chilling effect", lead to "self-censorship", or lead to the creation of a "police state" or the "reign of white terror". So far as press freedom and the flow of information are concerned, the two most relevant laws are sedition and the theft of state secrets. The law of sedition will be liberalized under the proposals; and the law relating to official secrets will remain largely unchanged. How can these developments have such alleged negative effects?

Some commentators have referred to "grey areas" or ambiguities in the proposals. Insofar as their comments identify particular areas of concern, they will be given serious consideration. As I mentioned earlier, one of the Administration's guiding principles is that the new laws should be as clearly and tightly defined as appropriate. The Administration intends to ensure that, when drafted, the bill should not give rise to rule of law concerns based on uncertainty. There is no cause for concern in this respect.

Let me turn now to "one country, two systems". I think we all agree that Article 23 is a litmus test of this principle. In my opinion, there can be no greater example of the existence of two systems than Article 23 itself. Where else in the world does a national government allow a regional government to enact its own laws on national security?

Of course, when the Administration implements Article 23, it should ensure that the "two systems" principle is adhered to. But that is precisely what we intend to do.

Mainland laws or concepts will not be introduced. The proposals are all based on common law principles and concepts. Let me compare some of the relevant laws under the two systems.

The equivalent of treason in the Mainland is found in Article 102 of the Criminal Law. The offence consists of colluding with a foreign state "to endanger the sovereignty, territorial integrity and security of the People's Republic of China". The Administration's proposal for treason does not refer to such concepts, but to specific actions that are familiar to the common law — levying war, instigating a foreigner to invade the People's Republic of China, or assisting a public enemy at war with the People's Republic of China.

The mainland law on subversion is found in Article 105 of the Criminal Law. It refers to "subverting the state power or overthrowing the socialist system". Our proposed law of subversion would only cover actions that amount to levying war, the use or threat of force, or criminal action that is akin to a terrorist act.

In relation to the theft of state secrets, our proposals involve retaining the current Official Secrets Ordinance. That means that Hong Kong law, and Hong Kong Courts, will determine whether official information is protected from unauthorized disclosure. The manner in which a document is classified in the Mainland, and mainland law, will be entirely irrelevant to that process.

The examples cited by the Honourable LEE Cheuk-yan, the Honourable Andrew CHENG, and the Honourable Albert HO would not constitute criminal offences in Hong Kong, if the facts of the cases are as simple as what they said.

In relation to the proposed power to proscribe organizations in Hong Kong on grounds of national security, it has been frequently alleged that mainland laws or decisions will be imported into Hong Kong. That is not correct. If an organization were banned in the Mainland on national security grounds, that would not lead to any automatic banning of an affiliated organization in Hong Kong. It would merely mean that the Secretary for Security would have the power to consider: whether any organization in Hong Kong was a subordinate

branch of that mainland organization; and, if so, whether there were reasonable grounds for believing it to be necessary in the interests of national security to ban that Hong Kong organization.

That decision-making process would be entirely separate from the process in the Mainland and, as I have said, would be subject to the final decision of the Court based on human rights guarantees. It is entirely possible that an organization in Hong Kong, which was a branch of a banned organization would not be banned. This is another excellent example of how "two systems" would operate in relation to the security of "one country".

Mr Martin LEE criticized the proposal to empower the Secretary for Security to proscribe a local organization. He contends that it is wrong for the Secretary to be able to proscribe a local organization which engages in peaceful demonstrations, simply because it had a previous conviction of obstruction of public places. The principles of human rights law have demonstrated that proscription under such circumstances would not be proportionate with the protection of public order. Mr LEE also disagrees with the formal certification system by the Central People's Government, even though such a certification would only serve to prove that a mainland organization has been proscribed on national security ground in the Mainland. He seems to suggest that the Secretary should ignore this fact, as if it has never happened. To adopt such an attitude is not a responsible way to protect national security. Mr LEE said that if the mainland certification not only certified the proscription of a mainland organization, but also that Hong Kong organization was subordinated to the former or that the Hong Kong organization posed a threat to national security, then this would tantamount to letting the Mainland make a decision on the matter. But in such an event, the Court would only consider the part of the certification concerning the mainland proscription, it would not accept the other parts of the certification. Mr LEE's attempt to demonize this proposal is not supported by fact.

The ICCPR has yet to be ratified by the National People's Congress of the People's Republic of China, and has no legal effect there. Hong Kong has obligation to give effect to the ICCPR and has done so through the Hong Kong Bill of Rights Ordinance. In accordance with Article 39 of the Basic Law, any legislation promulgated in Hong Kong cannot contravene the provisions of ICCPR as applied to Hong Kong. This is a distinguishing feature between the two places.

I can give other examples of the differences that will continue to exist after Article 23 laws are enacted; discussion of the independence of Taiwan, and even the advocacy of such independence by peaceful means, will be lawful in Hong Kong; and the unauthorized publication in Hong Kong of state economic secrets will be lawful. Transcending all such differences is the fact Hong Kong alone will provide justifiable guarantees, not only that relevant laws comply with fundamental human rights, but also that the implementation of those laws will do so.

Many detailed comments have been made on the proposals during this debate that has lasted more than 10 hours. They will all be treated as submissions in response to the Consultation Document and, like other submissions, will be given serious consideration by the Administration. Therefore, the fact that I do not respond to them all immediately does not mean that I do not value them. I would, however, like to respond to some particular comments on legal issues.

Some Honourable Members criticized what they consider to be vague terminology in the proposals. I accept that the proposed new laws should be drafted as tightly as possible. There is no intention to create vague laws and to enforce them selectively.

However, some of the expressions that has been criticized are found in most common law jurisdictions. These include "levying war" and "assisting a public enemy at war". We will consider the comments made about them. However, there may be some advantage in retaining such familiar common law concepts, since jurisprudence in other common law jurisdictions can ensure that our laws on national security remain in line with those jurisdictions.

Moreover, I note that some of the critics of such expressions are the same people who have urged us to retain current laws, which include those expressions.

Comments have also been made on the proposed appeal channels in respect of a possible banning of a local organization. Under the general law, the only way in which such a banning could be challenged would be by way of judicial review. We do not propose to take away that remedy through the Courts. On the contrary, the Consultation Document proposes to add two further appeal avenues: An appeal to the Courts on points of law, and an appeal to an independent tribunal on points of fact.

Some Honourable Members have suggested that both types of appeals should be to the Courts. The Administration will give serious consideration to that suggestion.

Another comment that has been made is that the proposals go beyond what is required by Article 23. I wish to make two points. The first is that this Council's legislative competence is, of course, not limited by Article 23. Its competence is governed by the whole of the Basic Law. There are therefore no grounds for suggesting that the Courts could strike down the proposed legislation if it goes further than Article 23 requires.

The second point is that laws to implement Article 23 cannot be dealt with in isolation from related laws. Take the theft of state secrets as an example. It is not proposed to enact a new Ordinance to deal with this subject. Instead, the Government proposes that the current Official Secrets Ordinance, which is based on the English Act of 1989, should be retained. That Ordinance protects certain categories of official secrets in Hong Kong that may not be "state secrets". When amending that Ordinance in the context of Article 23, the Government has no intention of repealing provisions that protect Hong Kong's legitimate official secrets. And if the implementation of Article 23 involves plugging a loophole in the Ordinance relating to state secrets, it is perfectly legitimate to plug a similar loophole in respect of Hong Kong's official secrets.

The Honourable Frederick FUNG quoted me as saying that it was a violation of the Official Secrets Ordinance for not revealing the source of information. The example that he quoted was wrong as I was referring to the situation of the Mainland. I invite Mr FUNG to take a look at my article on the freedom of press dated 17 October 2002 which could be found on the Department of Justice website. Mr Andrew CHENG quoted me as saying: "stringent legislation, relaxed enforcement". This is also a mis-quote. I invite Mr CHENG to look at my response to Mr NG Chi-sum's criticism in today's *Ming Pao* Daily.

Most bills contain amendments that are consequential upon its main provisions. There is no reason why the bill to implement Article 23 should be any different.

The principle of "one country, two systems" will therefore be both observed and reinforced by the proposals to implement Article 23.

In conclusion, I turn to the wording of the original motion, and see that it is entirely unjustified. A rational analysis of the proposals makes three things crystal clear: they would not reduce rights and freedoms enjoyed by the people of Hong Kong; they would not damage the rule of law; and they would not damage "one country, two systems". I would urge all Members to reject the original motion.

I would like to thank the Honourable Mrs Sophie LEUNG for moving an amendment to the original motion, which reminds the Government, while enacting laws to implement Article 23 of the Basic Law, to provide adequate safeguards to the rights and freedoms enjoyed by the people of Hong Kong against any erosion and to ensure that the rule of law and "one-country, two systems" will not be undermined. The Department of Justice has the obligation to ensure that all legislative proposals submitted to this Council must be consistent with the human rights provisions in the Basic Law. Article 11 of the Basic Law stipulates that any law enacted by the legislature of the SAR must not contravene the Basic Law, including the provisions concerning human rights. I believe that this serves as the best guarantee against any violation of the rule of law. The Courts will not give effect to any law which is in violation of the Basic Law. Article 23 of the Basic Law offers the best guarantee for the protection of "one country, two systems", as it authorizes the SAR Government to act in accordance with the SAR's own legal system in enacting Laws and implementing the Article.

Thank you, Madam President.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I greatly welcome today's debate, because I am convinced that the more the truth is debated, the less obscure it is. I am very pleased to have this opportunity to listen to the views expressed by a number of Honourable Members. If I have not done my sums wrong, 51 to 52 Members have spoken in this debate. This should be a record.

I have listened to hours of speeches over the past two days. The only point I would like to raise is that, many of the comments raised by Members, to which I have been audience, are irrelevant to the proposals put forward by us. Many Honourable Members referred to the experiences of other places, from events taken place on the Mainland or happened decades ago to laws enforced in

South Africa, Singapore, Malaysia and Sri Lanka. Many a time, I found that what I was told reflected merely the observations of Members about the laws practised in or experiences of other parts of the world. They were actually not discussing our proposals. Furthermore, several Members pictured our proposals in such a way that they are greatly different from the actual ones. Although the Secretary for Justice has already explained the content of the proposals at length, I still wish to spend some time to explain again why we have come up with such proposals from the perspective of policy.

The first response I would like to make is that some Members have expressed their wish for the Government to keep legislation to the minimum, or merely adapt existing laws or amend them slightly. But what is the true picture? In our opinion, although the existing laws are able to provide sufficient safeguards for national security, they were actually formulated on the basis of a British constitutional monarchy. The definitions of such concepts as "secession" and "subversion" are far from clear. We have serious doubts as to whether national security can be protected if only an adaptation is made according to the principle of the Interpretation and General Clauses Ordinance. Furthermore, the extensive coverage of existing provisions may not be consistent with the requirement of the Basic Law with respect to human rights protection. Therefore, amendments must be made to bring the provisions in line with the constitutional requirements. At the same time, the provisions must be modernized in the light of advances in modern technology and the international situation, as well as the development of common law. This can be done by deleting certain inappropriate or ambiguous provisions in compliance with the overall requirements of the Basic Law. Furthermore, loopholes in certain areas should be plugged to ensure full protection for human rights and effective safeguards for national security. In this respect, I would like to elaborate from the angle of government policy on why the offences of "treason", "secession" and "subversion" are proposed in the Consultation Document.

The offences of "treason", "secession" and "subversion" actually originated from the existing concepts of "treason" and "treasonable offences". Existing offences are based on British laws enacted under constitutional monarchy, whereby the sovereign is seen as a symbol of state power, institutions and government. After the reunification, due to constitutional changes, this assumption can no longer apply. Furthermore, under the existing provision, an act of "manifesting the intention of overthrowing the sovereign" is considered to be "treason". The scope of this provision is indeed too wide.

For such reasons, we propose to, according to the constitutional order put in place after the reunification, the Article 23 requirement of enacting laws to prohibit acts of endangering national security and the Basic Law protection for civil liberties to define the general scope of the existing offence of "treason" as follows:

- (1) to repeal such loosely-defined concepts as "an overt act" and narrow the offence of "treason" to the commission of acts involving the "levying of war", "use of force", "threat of force" or such other serious unlawful means as "terrorist acts" referred to in similar ordinances;
- (2) to repeal the existing approach of equating "assaults on Her Majesty" to treason;
- (3) to incorporate acts under the original "treason" offence where foreign elements and war are involved into the proposed offence of "treason". In other words, "treason" shall involve levying war by joining forces with a foreigner to overturn or intimidate the People's Republic of China Government, instigating a foreigner to invade the country, and assisting public enemy at war with China;
- (4) the existing offence of "treason" does not include reference to foreign elements. The offence of "secession" is defined as withdrawing a part of the country from its sovereignty or resisting the Central People's Government in its exercise of sovereignty. A "subversion" offence is defined as intimidating the Central People's Government; or disestablishing the basic system of the state as established by the state constitution, by levying war or use of force.

We can thus see that all the offences mentioned above involve war, use of force or means akin to terrorist acts that endanger national sovereignty, unity, territorial integrity and national security. All these acts are grave criminal acts that will bring serious damage to the state and the people. Such acts are actually disallowed in any country or under any system. This point is stated clearly in the documents distributed together with the published Consultation Document to the media and Honourable Members, in which relevant provisions in the laws of Britain, the United States, Canada and Singapore are compared. Therefore, I cannot concur with those who accused the Government of making treason, secession and subversion "political offences".

As I have already pointed out, these offences should be considered, from the angle of law classification, to be crimes against the State or offences against the State. Contrary to the suggestion made by some people who imply a person can be incriminated because of the political stance he holds, these offences are not "political offences". Our proposed amendments have absolutely nothing to do with thought, or the mere expression of thought or of speech.

We seek to set out current offences in clearer terms, merely for the purpose of enabling members of the public to better understand the objectives of the law by providing for statutory offences for inchoate and accomplice acts relating to the offence of misprision of treason and related offences.

Under the proposal relating to sedition, existing seditious offences will be substantially narrowed. Moreover, excessively broad provisions, such as making "seditious intention" to cover "bringing into hatred or contempt against the SAR Government or the judicial system", "raising discontent among inhabitants", and so on, are proposed to be repealed. Instead, such acts will be dealt with under the common law offence of incitement. This attempt is meant to reform the unreasonable provisions inherited from the colonial past. I believe Honourable Members will still recall the incident in which *Ta Kung Pao* was charged with sedition in 1952, and agree that the judgement at that time was unreasonable when we look at it again today. Our proposals are consistent with the recommendations made by law reform commissions in other parts of the world, and are based entirely on modern common law principles. In other words, all seditious offences shall involve war, violence, serious unlawful means, and so on. "Sedition" is defined in such a way to better comply with the requirements under the International Covenant on Civil and Political Rights (ICCPR). To constitute an offence of "sedition" under common law, it must be proved that the instigator has the intent of breaking the law, and has forced or incited others to break the law by verbal or other means. Broadly speaking, there is no question of a seditious offence being constituted by the staging of processions and demonstrations, chanting of slogans, and even criticizing policies or government officials, even if violence is triggered off unintentionally. There is also no question of undermining the freedoms of speech and of assemblies, demonstrations, and protests staged in a peaceful manner.

The scope of existing crimes will be substantially narrowed as a result of our proposed definition of "seditious publication". This is because such elements as "knowledge" or "reasonable suspicion", and "reasonable excuse" are

proposed to be added. We certainly appreciate the worries of the people and their wish for more comprehensive proposals.

I would like to say a few words on certain concrete doubts raised by Mr SIN Chung-kai concerning the recommendations made by the information technology sector with respect to seditious publication. Subsequent to the narrowing of existing offences through adding the element of "knowledge" or "reasonable suspicion", Internet service providers (ISPs), telecommunications providers, web hosts, chat room operators, and so on playing an intermediary role similar to a conduit will not, according to the current proposals, be held responsible for merely transmitting such messages through their systems or services. Neither will these service providers be required to assume the responsibility of taking the initiative to censor or filter the messages under our proposals. Furthermore, ISPs will not be required to take any measures to retain the log-in record of their clients. Our proposals essentially seek to repeal those excessively strict provisions concerning seditious publication that providers might very often contravene inadvertently.

Our view of theft of state secrets is that we should make use of the existing Official Secrets Ordinance as far as possible. We have proposed to adopt existing laws, instead of providing a new definition for "state secrets" or introducing the definition adopted on the Mainland.

At present, it is an offence if a person who is not a public servant knows the information disclosed by a public servant through unlawful means is protected, obtains and makes a damaging disclosure of such information. However, if the same is obtained through unauthorized channels by way of hackers' intrusion or theft, rather than through the unlawful disclosure by public servants, the damaging disclosure of such information is at present not covered by the law. It is indeed unreasonable for penalties to be imposed on the damaging disclosure made by a person who obtains protected information through unlawful disclosure, whereas a person who obtains information he knows is obtained by such unlawful means as hacking, theft, and so on, is not going to be penalized. We therefore propose to plug this loophole. This is entirely contrary to certain distorted reports that all information must be authorized before it can be disclosed, or the scope of protection is going to be greatly expanded. Actually, a person who is not a public servant may commit the offence of unlawful disclosure only when he knows or has reasonable cause

to believe: first, the information disclosed is protected; second, the disclosure has a damaging effect; and third, the disclosure of the information is unlawful or unauthorized. At the same time, after listening to the views and concerns expressed by people from various sectors over the past two months or so, we are now studying ways to improve the clarity of the provisions.

As regards official secrets, a number of Members stated that it appeared to them to be a novel idea when we talked about protecting the information affecting the relations between the Central Authorities and the SAR. I must reiterate that this is by no means a novelty. As I explained in my reply to an oral question in this Council several weeks ago, under section 12 of the existing Official Secrets Ordinance, the definition of "international relations" has indeed covered information relating to relations between China and Hong Kong. This means that such information is protected since the reunification. Nevertheless, since this proposal was made in the context of international relations, we consider it inappropriate for the relations between China and Hong Kong to be dealt with as international relations under the present situation of "one country". Therefore, it is necessary for adaptation to be made. In this respect, we propose that the relevant provision be adapted to "affecting the relations between the Central Authorities and the HKSAR". I believe Honourable Members will all agree that this expression is narrower in scope than "the relations between China and Hong Kong". In other words, our proposal is narrower, not wider, than the existing law. I heard Prof Albert CHEN raise a similar point when I attended a forum held by a political party last Saturday. He also agreed that those suggesting that the implication of the provision would be widened should note that this is already the case. He also suggested the Government to consider revising "the relations between the Central Authorities and the HKSAR" as "the relations between the Central Government and the SAR Government". This means that only information affecting the relations between the Central Government and the SAR Government will be protected. I indicated on the spot that I was willing to consider this.

As regards the proscription of organizations that endanger national security, all proposed proscription powers are expressly provided. The Secretary for Security must exercise such powers according to international human rights standards subject to checking by appeal procedures and judicial review. The freedom of association in the SAR shall continue to be protected.

I noted that many comments had taken no account of this essential element contained in our proposal, the freedom of association guaranteed under Article 27 of the Basic Law constitutionally, and the various safeguards under Article 39. Instead, many scare-mongering, or even paradoxical conclusions such as "introducing the mainland concept of national security" and "damaging the 'one country, two systems'" were drawn. Actually, as opposed to the Societies Ordinance, the proposed proscription criteria are even tighter. Besides complying with international human rights criteria and safeguards guaranteed under the Basic Law, it must be proved that: First, the objective, or one of the objectives, of the organization is to engage in any act of treason, secession, sedition, subversion or espionage activities; second, the organization has committed or is attempting to commit any of the acts mentioned above; and third, the organization is affiliated with a mainland organization which has been proscribed on the Mainland by the Central Authorities in accordance with national law on the ground that national security will be endangered.

I note that some Members have questioned why certain political organizations of Taiwan should be proscribed. I would like to clarify that there is no mention of proscribing such organizations throughout the whole Consultation Document. This is because it is stated in the Basic Law that only foreign political organizations should be proscribed. As Taiwan is part of our country, political organizations of Taiwan cannot possibly be considered as foreign political organizations. It is unnecessary for one to worry that our proposals will affect our connections with organizations of Taiwan. We have listened to a lot of suggestions and tried our best to explain.

Some Members also questioned why we have apparently gone beyond the requirements of Article 23 by mentioning organizations affiliated to the Mainland, apart from proscribing certain foreign political organizations from carrying out prohibited activities. I would like to explain that paragraph 7.12 of Chapter 7 of the Consultation Document clearly states: "For the purpose of protecting national security, separate provisions are needed to prevent foreign political organizations from conducting political activities in the HKSAR, or establishing ties with local political organizations, that are harmful to national security or unity". This suggests that the scope of political activities carried out by foreign political organizations that may be proscribed has been greatly tightened. The proscribed activities are political activities that are harmful to national security or organizations, not political activities in their general sense. This is point number one.

Second, the reason for us to mention in Chapter 7 that organizations affiliated to the Mainland are subject to proscription is that, as mentioned in paragraph 7.13 of the Consultation Document, "organized political activities endangering the security of the state must be proscribed by effective measures, regardless of whether such threats originate from foreign or domestic elements". I believe Honourable Members will concur with the logic that given crimes that endanger the overall national security are different to those that can possibly be committed by one person, such as pickpocketing, burglary, robbery, and so on, crimes endangering national security will believably not be committed by one or two persons. The activities must be organized. As such, it is necessary to formulate measures to prevent anyone from making use of organized activities to endanger national security. Since it is always possible for subversive organizations to be set up in Hong Kong to commit treason or secession, all organized activities involving these crimes must be proscribed. Chapter 7 actually refers to all organized political activities. If the proscription mechanism is not spelt out in Chapter 7, we may as well repeat it in Chapter 5 by spelling out how the mechanism can be applied if an organization is found to have engaged in proscribed activities. It is only that we do not want to repeat it several times. Therefore, all organized activities that might endanger national security are put under Chapter 7 for discussion. We do not agree that our proposals have exceeded the requirement of Article 23.

I would like to say a few words on extra-territorial jurisdiction. Insofar as this subject is concerned, a number of people have expressed concerns and worries over the past two months or so over the reasons for jurisdiction to be greatly expanded. Our consideration is actually very simple; we do not want to see loopholes appear just because there is a lack of extra-territorial jurisdiction at present. Insofar as the existing Official Secrets Ordinance is concerned, the unlawful disclosure of official secrets actually involves extra-territorial jurisdiction. Let me cite the example of a civil servant who chooses not to disclose official secrets in Hong Kong because he is not authorized to do so. Will it be very dangerous if it is legitimate for him to make disclosure in Macao? Is it a big loophole because he can disclose information by just taking a one-hour ferry trip to Macao or Shenzhen? As such, the existing Official Secrets Ordinance actually has extra-territorial jurisdiction over the authorized disclosure of official secrets. For these reasons, we see it necessary to plug these loopholes to prevent people from leaving Hong Kong to neighbouring regions to engage in activities that endanger national security. The principle of

extra-territorial jurisdiction is fundamentally consistent with the recognized principle of common law. Under what circumstances in our view will the SAR's jurisdiction apply? First, the suspect has a close connection with Hong Kong. For instance, he has committed an offence outside Hong Kong but he has a close connection with Hong Kong for such reasons as he is a permanent resident of Hong Kong. Or alternatively, his intent of the activity or the act performed outside Hong Kong takes place or partially takes place in Hong Kong, or is related to Hong Kong. This explains why we consider extra-territorial jurisdiction is essential.

I have answered a number of questions relating to whether permanent residents might be held criminally liable if they break the law outside Hong Kong, particularly if the residents are foreigners. If they have played safe, what can be done to deprive them of their right of abode (ROA)? Based on facts and the law, I pointed out in my reply that under Article 24 of the Basic Law and the existing Immigration Ordinance, it is already stated clearly in the Ordinance that, under the Basic Law, a foreigner must reside in Hong Kong for a continuous period of seven years and is willing to make Hong Kong a place of permanent domicile before he will be granted the ROA. Under the Immigration Ordinance, his right of abode will be lost if he leaves Hong Kong for over 36 months and fails to return. This is because he will then be assumed to have refrained from making Hong Kong a place of permanent domicile. This answer is based entirely on the facts.

Now I would respond to some of the accusations made by Mr James TO. I have never appealed to Taiwan compatriots to give up their permanent residence. Both nationality and ROA are complicated matters. However, I wish to explain briefly that there is a significant difference between permanent residents of Chinese nationality and those of foreign nationality. Permanent residents of Chinese nationality will not be deprived of their ROA unless they lose their Chinese nationality. Honourable Members might still recall the heated debates on ROA among members of the community prior to the reunification. Honourable Members might still remember that Hong Kong residents of Chinese nationality were told by the then Director of the Hong Kong and Macao Affairs Office, Mr WANG Fengchao, that permanent residents of Chinese nationality could retain their ROA indefinitely. In other words, it is simply impossible for a permanent resident of Chinese nationality to lose his ROA, unless he gives up or loses his Chinese nationality.

It is simply impossible for me to openly appeal to Taiwan compatriots to give up their ROA. This is grossly far from the truth. I hope Honourable Members can in future ascertain what I have actually said if they wish to repeat my words.

I would like to move on to the issue of expanding police powers. We have explained on different occasions that what we ask for is merely to exercise the powers to enter premises or carry out investigation under emergency situations, not powers that can be exercised indiscriminately. If time allows, the normal procedure of applying to the Court for a warrant must be observed. Furthermore, it is stipulated in Article 29 of the Basic Law that the homes of residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home shall be prohibited. The proposed new powers shall be strictly defined. The police can only exercise such powers when it is reasonably believed that: First, an offence relating to endangering national security, that is, an offence mainly involving the levying of war, use of force, or the use of serious unlawful means, has been committed or is being committed; second, unless immediate action is taken, evidence of substantial value to the investigation of the offence would be lost; and third, the investigation of the relevant offence would be seriously prejudiced as a result. The police can exercise such powers only when these three criteria are met at the same time. In most other circumstances, the police must apply to the Court for a warrant for entry into premises.

Of course, we have listened to a lot of suggestions made by Honourable Members. Concerning such questions as whether it was adequate for a superintendent to authorize an emergency entry, we have stated several times in public that police officers of higher ranks can be considered. Moreover, additional safeguards will be built into the legislation to ensure that authorized police officers will not exercise such powers indiscriminately.

Finally, I would like to say a few words on public consultation and the question of publishing a Blue Bill or a White Bill. Today is already 12 December. There is only 12 days left before the consultation period concludes. As pointed out by a number of Honourable Members earlier, I believe this consultation exercise is unprecedentedly big since the unification in several aspects. As Mr LAU Kong-wah remarked earlier, insofar as public opinions are concerned, this Council has listened to the submissions by more than 125 deputations. I believe this is a record for this Council. Likewise, the Security

Bureau has broken a number of records too. My colleagues from the Security Bureau and the Department of Justice have, over the past two months or so, attended nearly 200 forums, conferences and media interviews, with nearly half of them being attended by me personally. More than 500 000 copies of the Consultation Document, published in English and Chinese, and summary versions have been handed out. Over 500 000 copies of the leaflet on Article 23 have also been distributed. I said yesterday that I had received more than 3 000 submissions in response to the Consultation Document. I think the number would possibly rise to over 4 000 today for I was told when I returned to my office that more submissions had been received. I believe many more are forthcoming in the next 10 days or so. This proves that even though the consultation is conducted in the form of a consultative paper instead of a bill, we can still fully consult the public and induce open and heated discussions among members of the community. In comparison, for instance, only 27 submissions about the Organized and Serious Crimes Ordinance dealt with by the Security Bureau a decade ago were received during the consultation period, albeit the public consultation was conducted by way of a White Bill. As such, it can be proved that consultation by way of a Consultation Document can achieve the same purpose of enabling full discussion in the community. I definitely concur with a number of Honourable Members and some of those who have expressed their views that the bill should preferably be published as soon as possible. As I said yesterday, after sorting out all the submissions, the bill will hopefully be tabled before this Council in February 2003.

I wish to remind Honourable Members again that the consultation exercise is, as remarked by Mr LAU Kong-wah, essentially an interactive process. While listening to opinions, we also tried to make it clear that amendments would be made. I wonder if Honourable Members still remember that in less than one month after the document was published on 24 September, I already stated clearly in a meeting held by this Council on 21 October that, first, we would not seek additional financial investigation powers; second, in response to the concerns expressed by the media, I made it clear that the protection for news materials provided under Chapter 1 of the Laws of Hong Kong will be applicable to offences relating to Article 23.

Owing to the concerns expressed by people from various sectors, such as some librarians and scholars, over the possession of seditious publications over the past two months, we indicated our willingness to review our proposals and examine the necessity of retaining this particular offence.

As for the exercise of police powers, we have indicated that we will actively consider ways to tighten the mechanism and consider vesting the powers in police officers of higher ranks. In other words, the Government is absolutely conducting a genuine consultation by constantly listening to opinions and introducing amendments. I believe, after thoroughly considering thousands of submissions, we can definitely identify some areas that need to be revised. I also believe it is entirely up to this Council to decide, after the bill has been tabled, when to have it passed. As for the number of provisions that need to be amended, I believe from the past experience gained in handling other legislation that we must first seek support from Members of this Council. This is because the bill will not be passed unless they agree that our views are legitimate, rational and reasonable. For this reason, Madam President, I totally disagree with Mr James TO's motion since an assumption is already made at this very stage. I also concur with Mr Jasper TSANG that Mr TO's speech has become part of history. People consulting the record of this meeting will be able to see at what lengths he has talked about people and about facts. This should be clear to all. After listening to the speech delivered yesterday, the Chief Secretary for Administration gave his immediate response that the speech amounted to a personal attack. This has been put on the record. I have the feeling that Mr James TO was trying to "make amends" in his later analysis of the Government's proposals. I think it is because he realized it had not been right to give undue attention to people instead of facts. I believe history will pass its fair judgement.

Insofar as the entire debate is concerned, I very much agree with Mrs Sophie LEUNG, who expressed her hope at the very beginning of her speech that we could discuss the matter with a rational and dispassionate attitude. This is very important for we have at least several months to discuss this subject. Extreme or emotional remarks will not help us explore what is right or wrong, or what needs to be improved. I hope that, in discussing the subject concerning Article 23 in the next few months, both government officials and Honourable Members can continue to explore all details with an objective, calm and dispassionate attitude as far as possible.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mrs Sophie LEUNG to Mr James TO's motion, be passed. 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)

Mrs Sophie LEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG 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:

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, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms 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 amendment.

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

Geographical Constituencies and Election Committee:

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, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted for the amendment.

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

Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, 23 were in favour of the amendment and five against it ; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 28 were present, 12 were in favour of the amendment, 14 against it and one abstained. 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 now call upon Mr James TO to reply.

**MR JAMES TO** (in Cantonese): Madam President, first of all, I would like to point out that the comments made by me in response to Mrs Sophie LEUNG's amendment were not "amends". My original script actually contains mostly comments, no matter how they are "weighed". Like many Honourable Members who referred to the history of numerous places in Asia, such as Sri Lanka and Taiwan, I referred to Chinese history for the history of all these places represents the conclusion drawn on experiences in implementing national

security laws in certain undemocratic regimes. In this debate, a number of Members have expressed their views on democracy. Perhaps through concluding the experiences of these places in implementing national security laws, it can help us examine whether it is possible for us to, in a certain position or by drawing up certain technical details, balance national security against personal freedom. With these experiences, we should be able to make a better judgement. After going through my entire speech, one will find that it is entirely based on facts. I welcome the Secretary to give me a written response to any facts of relevance. Of course, she still has many opportunities to do so.

Besides, I would like to raise another point. I have mentioned in the motion that freedoms will be reduced. Is this true? In the speeches delivered by the Secretary for Justice and the Secretary for Security earlier, they made an analogy to a scale to illustrate that some provisions of the legislation have been relaxed, and some are additions. After repeated so-called balancing, freedoms will, if not increase, at least not diminish. At the end of the day, they say that there is no reduction in freedoms.

If Honourable Members have listened attentively to the explanation given by the Administration, they would have heard the Government say that certain obsolete laws based on constitutional monarchy are essentially null and void. Why is it necessary for the Government to adapt the laws? Amendment must be made because the court proceedings cannot proceed successfully under those laws. We can thus see that the Government is not trying to amend the existing laws, notwithstanding that they are valid. The truth is that the existing laws are essentially null and void. For instance, a provision dealing with assaults on the sovereign cannot be changed into one dealing with assaults on a leader (such as the President, General Secretary TUNG) because the two provisions are based differently. The law is essentially null and void if it is not amended. Therefore, it cannot be said that there are more freedoms because a certain provision is now subject to less legal constraint. This is not really the case. There is no such thing as "balancing".

Another very important point I would like to raise is that the existing laws are already adequate. However, the Government still insists that new provisions be added. Let me cite an example. Mr Martin LEE might appear to some people to be very stubborn. I guess he will insist on citing paragraphs 7.15 to 7.18 for discussion even a decade later. When accompanying him to do lobbying, I found that he could patiently mention those paragraphs again and

again, from a dozen to perhaps several hundred times, when trying to illustrate how unsatisfactory the Consultation Document is. Today, he is still insisting on citing the paragraphs for discussion. It seems that he will never get bored. Why is he behaving like that? This is because the existing Societies Ordinance (this is stated in the Consultation Document) actually contains provisions that empower the Secretary for Security to make a proscription order if it is found that the activities conducted by an organization, which originates from abroad or the Mainland, or even Taiwan or Hong Kong, will endanger national security. There is no need for the Secretary for Security to wait until legislation is enacted under Article 23 of the Basic Law before taking action. So why does the Government have to incorporate paragraphs 7.15 to 7.18 into the Consultation Document and make reference to so many criticisms, and even go so far as to suggest setting up a new mechanism and introducing mainland laws? I still cannot understand this.

A government official (not the Secretary) pointed out in a seminar that the provisions had to be stipulated clearly because those who are worried about the situation can see that there is a mechanism. I think he was actually trying to convey a message by speaking in such a roundabout manner. In other words, the Government was attempting to let "Ah Gong" know by prescribing them in law. I was once told by a grass-roots member of a leftist group that the objective of formulating the legislation is to please "Ah Gong" and show him that the Government has the power to proscribe certain acts because there are provisions in place. The existing legislation alone might not be able to please or convince "Ah Gong". Should the legislation be passed, the situation described by Mr Martin LEE will arise. As regards whether the issuance of certificate on national security acts or facts will cause problems to three paragraphs instead of just one, the Secretary replied that the Court can choose to ignore two of them. Nonetheless, we must not forget that the Court's decision actually depends on whether the Court has the power to intervene. Under Article 19 of the Basic Law, the Court might have no jurisdiction over the matter.

Insofar as this specific point is concerned, we once requested the Government to undertake not to seek interpretation of the Basic Law. However, the Government refused to do so. Summarizing the points mentioned above, we can see that it is possible for a loophole to appear. This means that the Mainland can issue a certificate in which several paragraphs, instead of one, may appear. At the end of the day, there is nothing the Secretary can do. A question Mr Martin LEE has been asking over such a long period of time is: Can

the Government choose to ignore the certificate? The Secretary only said that the Court could do so. I think I finally got her point today. She did not say we could ignore the certificate. If she is bold enough, she may perhaps say, "I can choose to ignore it because I am the Secretary for Security. This power is conferred by the law. Only the first paragraph is valid because the fact that a certain organization has been proscribed by the Mainland is mentioned therein. The rest can be ignored." Obviously she dared not say so. She only kept on saying that the Court might choose to ignore. If this is really the case, in what way should Article 19 of the Basic Law be interpreted? Does our Government have jurisdiction over acts of the state? The answer is probably "no". The Government has completely failed to answer the questions put by us.

The Government emphasizes that legislation must be enacted for failing to do so is tantamount to violating the rule of law, since this is prescribed in the Basic Law. Many of my colleagues said the same thing too. This is quite interesting. A Lord Chancellor (this official title is unique to the United Kingdom) named Lord ERWIN once visited Hong Kong and, in a closed-door meeting, commented that it was mandatory for laws to be enacted on Article 23, or else the constitution would be violated. I was joined by Mr Martin LEE in the debate with Lord ERWIN. We found the debate the most heated, and yet most fruitful. This is because we finally managed to persuade him to reconsider the matter for he might have made a mistake. In a seminar held the other day, Mr K S CHU happened to come up with a completely identical idea with him. According to Mr CHU, "the SAR shall enact laws on its own" does not carry the same meaning as "the SAR Government shall enact laws on its own". Prof Albert CHEN also shared that it was wrong to say that the SAR Government shall enact laws on its own for it should be the Legislative Council, not the Government, to legislate. By the same token, the SAR shall cover the people, the Legislative Council and the Government. In terms of this concept, the Judiciary and the Courts shall be excluded in this legislative exercise.

According to the latest opinion poll conducted by the Lingnan University, 57% of the respondents rejected the idea of legislating at this moment. Some even challenged that five years and five months have passed since the reunification, so should it be considered unlawful if legislation is not enacted under the Basic Law within three years? What about five or seven years? This is merely a matter of degree. If it is clear that the people reject the idea of legislating at this moment when being asked by the Government in the Consultation Document published whether legislation should be enacted and

whether the time is now suitable for legislation, I think the Government should act accordingly. The whole exercise should be postponed, and all legislating work put on hold. No bills, blue or white, should be submitted. It might still be possible for the people to see the need to legislate in the future. Given that "the SAR", as appeared in "the Special Administrative Region shall enact laws on its own", covers the people, the Government should not be considered as violating the constitution even if it is decided after consulting the public that the legislative exercise should be put on hold. The decision made is but a manifestation of the rule of law.

Although mention was made of the Johannesburg Principles, the Government still maintains that it will be too late if proscription action is taken when force or violence is imminent. This argument is actually highly contentious. To what extent can we consider the situation to be too serious? According to the Government, the answer is when there is a "direct and obvious consequence". Similarly, certain examples have been cited by some people. For instance, Ms Audrey EU once questioned the relevancy if she proposed early this year that all Members take part in an uprising in the Mid-Autumn Festival. It will be too loose if the Government cannot put relevance in words to illustrate the degree of relevance to convince people that they will not be incriminated easily or put in a dangerous position. Consequently, a "chilling effect" will be produced and every one of us and every newspaper will be affected. Having no idea of the extent, people will feel strongly insecure. If the Government is willing to make a big concession, it should, even if the Johannesburg Principles are not applied, at least illustrate clearly the relevance and implication involved. Otherwise, the people will be extremely worried.

A government official, actually the Secretary for Justice, indicated earlier that she had taken part in a discussion on Taiwan Independence. It is obvious that she has thought the matter through. I have also made an effort to read the two exceptionally lengthy articles deliberately written by the Secretary. She can act in such a brave manner because she has a "strong backing", for she is trusted by the Central Government. She once remarked: "I see no problem with discussing Taiwan Independence, or even making suggestions — we deliberately write in this way after careful consideration — but putting it into action is no good. The publication of information related to national economic secrets is deliberately put in such a way that no apparent problem will thus be caused." Will government officials find out for themselves what is supposed to be irrelevant to economic issues insofar as the relations between the Central

Authorities and the SAR are concerned? There is utterly no mention of it here. The Secretary for Security remarked earlier that the meaning could be further narrowed. Even Prof Albert CHEN shared that it would be better to confine it to the Central Government and the SAR Government.

There are bound to be so-called economic and cultural secrets between the Central Government and the SAR Government. National defence is excluded because it belongs to the first category. What will remain given that these secrets are neither intelligence nor information relating to cases under investigation? What areas will those secrets come under if they are considered to be totally irrelevant to the economic or cultural spheres? Probably nothing will remain. But why must it be written explicitly if nothing remains? After writing it down, the Government will feel obliged to make an adaptation, though it is actually unnecessary. We might perhaps review the past when there were close relations between London and the colonial government in Hong Kong. Are such relations still being maintained? After considering the matter over and over again, I can think of only one example. A directive was issued by the Central Government in connection with the implementation of the United Nations resolutions numbered 1042, 1337 and 1373 as part of an anti-terrorist measure being recently scrutinized by the international community. Miss Margaret NG once asked to look at the relevant information. Yet I was very much concerned about the confidentiality of the information. Is it supposed to be confidential? What else is considered to be confidential too? The Government should really think it over to see if there is any other information deemed confidential. If there is such information, the Government must not say that the matter can be resolved simply through adaptation. This is going to affect those people whose duty is to cover the relations between the Central Authorities and the SAR every day. This is very important indeed. For instance, the Chief Executive, Mr TUNG, is going to make a duty visit. President JIANG Zemin may probably tell Mr TUNG to think about if there are any good suggestions. In doing so, Mr TUNG will need to communicate and his action might involve the economic sphere. Under such circumstances, will such information be treated as confidential? Yet it may have nothing to do with national defence, foreign relations, or other specific areas. As such, it is imperative that the Government must handle these matters with extreme care.

It might be argued by some that, according to the arguments put forward by the Government a moment ago, offences prejudicial to national security should neither be treated as political offences nor political comments. It should be well understood that general acts that might possibly lead to social instability

or even small repercussions should be dealt with according to ordinary criminal law, such as the Public Order Ordinance and the Societies Ordinance. However, once laws are enacted in this manner, we will be imposing very heavy penalties, such as life imprisonment, to proscribe certain violent acts, or even acts not necessarily violent, such as threat of force. Prof Albert CHEN also shared that this way of imposing punishment is extremely dangerous. In some cases, though the act itself might be slightly exaggerated, only a small measure of violence is involved and the objective might even not be achieved. Yet the combination of the two is punishable by life imprisonment.

As regards the question of what constitutes a serious unlawful offence, some officials hold the view that such acts as "jamming" someone else's e-mail account, an example mentioned by Mr LEE Cheuk-yan's daughter, should not be taken as a serious unlawful offence. Perhaps the act of lying on a track should be considered so. This is mentioned in a pamphlet entitled "Myths and Facts" published by the Government. Nevertheless, we should bear in mind that the Government is adamant that they are offences. However, no distinction is drawn between serious and non-serious offences, unless this is spelt out clearly in draft legislation. The Government has obviously failed to do so when drafting the anti-terrorist legislation.

Let me cite an extreme example. A person lying on a track in an attempt to oppose a fare increase is not going to cause any major problems, because the second half of his action clearly shows what he is trying to achieve. However, does it mean there is entirely no problem? Will someone lying on a track seriously affect the stability of the SAR? Furthermore, the act of lying on a track, probably regulated by the Railways By-laws, is an offence. It has been pointed out by the Hong Kong Bar Association, as well as in many forums, that insofar as this so-called serious act is concerned, the crime committed in the first instance may be trivial or extremely serious. But then we need to establish an objective. An objective is still an objective even if it cannot be achieved immediately, or it takes time for the objective to be achieved, or the objective is simply not achievable. A criminal act and an objective will add up to an offence punishable by life imprisonment. I hope the Government can understand that it is for this reason I hold that this offence is political by nature. An attempt is now being made to turn certain crimes that can be dealt with by ordinances pertaining to ordinary crimes to crimes prejudicial to national security, which can be punishable by life imprisonment. This will cause tremendous fear among the people. It is also for this reason that such crimes can produce a "chilling effect" and cause worries.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO, as set out on the Agenda, be passed. 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): I see that a number of Members have attempted to claim a division. I think it was Mr James TO who claimed the 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:

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

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, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, 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 motion.

Ms LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

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

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, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, five were in favour of the motion, 22 against it and one abstained; 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 motion 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 motion was negated.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council. I believe Honourable Members very much welcome this announcement. However, Members may wish to wait for a while before leaving. (*Laughter*)

I now adjourn the Council until 2.30 pm on Wednesday, 18 December 2002.

*Adjourned accordingly at five minutes to Eleven o'clock.*