

# OFFICIAL RECORD OF PROCEEDINGS

Thursday, 5 February 2015

The Council continued to meet at  
half-past Two o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, G.B.S., J.P.

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

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE VINCENT FANG KANG, S.B.S., J.P.

THE HONOURABLE WONG KWOK-HING, B.B.S., M.H.

THE HONOURABLE JEFFREY LAM KIN-FUNG, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, G.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, S.B.S., J.P.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CYD HO SAU-LAN, J.P.

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, S.B.S., J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, S.B.S., J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG KWOK-KIN, S.B.S.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

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

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE WONG YUK-MAN

THE HONOURABLE CLAUDIA MO

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE STEVEN HO CHUN-YIN

THE HONOURABLE FRANKIE YICK CHI-MING

THE HONOURABLE WU CHI-WAI, M.H.

THE HONOURABLE YIU SI-WING

THE HONOURABLE GARY FAN KWOK-WAI

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

THE HONOURABLE CHARLES PETER MOK, J.P.

THE HONOURABLE CHAN CHI-CHUEN

THE HONOURABLE CHAN HAN-PAN, J.P.

DR THE HONOURABLE KENNETH CHAN KA-LOK

THE HONOURABLE CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE LEUNG CHE-CHEUNG, B.B.S., M.H., J.P.

THE HONOURABLE KENNETH LEUNG

THE HONOURABLE ALICE MAK MEI-KUEN, J.P.

DR THE HONOURABLE KWOK KA-KI

THE HONOURABLE KWOK WAI-KEUNG

THE HONOURABLE DENNIS KWOK

THE HONOURABLE CHRISTOPHER CHEUNG WAH-FUNG, S.B.S., J.P.

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

DR THE HONOURABLE HELENA WONG PIK-WAN

THE HONOURABLE IP KIN-YUEN

DR THE HONOURABLE ELIZABETH QUAT, J.P.

THE HONOURABLE MARTIN LIAO CHEUNG-KONG, S.B.S., J.P.

THE HONOURABLE POON SIU-PING, B.B.S., M.H.

THE HONOURABLE TANG KA-PIU, J.P.

DR THE HONOURABLE CHIANG LAI-WAN, J.P.

IR DR THE HONOURABLE LO WAI-KWOK, B.B.S., M.H., J.P.

THE HONOURABLE CHUNG KWOK-PAN

THE HONOURABLE CHRISTOPHER CHUNG SHU-KUN, B.B.S., M.H., J.P.

THE HONOURABLE TONY TSE WAI-CHUEN, B.B.S.

**MEMBERS ABSENT:**

PROF THE HONOURABLE JOSEPH LEE KOK-LONG, S.B.S., J.P., Ph.D.,  
R.N.

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE MICHAEL TIEN PUK-SUN, B.B.S., J.P.

**PUBLIC OFFICERS ATTENDING:**

MR LAU KONG-WAH, J.P.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

THE HONOURABLE LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.

SECRETARY FOR SECURITY

MR JOHN LEE KA-CHIU, P.D.S.M., J.P.

UNDER SECRETARY FOR SECURITY

**CLERKS IN ATTENDANCE:**

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MR MATTHEW LOO, ASSISTANT SECRETARY GENERAL

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Council will now resume and continue with the debate on the motion "Seeking the invalidation of the decision of the Standing Committee of the National People's Congress and reactivating the constitutional reform process".

**SEEKING THE INVALIDATION OF THE DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS AND REACTIVATING THE CONSTITUTIONAL REFORM PROCESS****Continuation of debate on motion which was moved on 4 February 2015**

**MR SIN CHUNG-KAI** (in Cantonese): President, yesterday, I attended the cocktail reception organized by the Liaison Office of the Central People's Government in the HKSAR (Liaison Office). Before the cocktail reception, I submitted a letter to the Liaison Office, which reads as follows:

"On 31 August 2014, the Standing Committee of the National People's Congress (NPCSC) published the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 (Decision), which sets out the framework for the selection of the Chief Executive by universal suffrage in 2017. The Decision has placed three major obstacles to universal suffrage, including: (1) the nominating committee to nominate Chief Executive candidates shall be formed with reference to the current provisions regarding the method for forming the existing Election Committee of 1 200 members; (2) the Chief Executive candidates must have the endorsement of more than half of the members of the nominating committee, and (3) there will be only two to three Chief Executive candidates, and members of the public can select their Chief Executive by "one person, one vote" only after screening by the nominating committee.

"The Democratic Party strongly believes that the SAR Government will not be able to come up with a proposal that allows members of the public to genuinely select the Chief Executive by universal suffrage in 2017 under the

framework of the 31 August Decision. We have therefore reiterated time and again that the six Legislative Council Members from the Democratic Party will, together with other pan-democratic Members, veto the constitutional reform package proposed by the SAR Government on the basis of the 31 August Decision in this Council.

"After Beijing made the 31 August Decision, a storm stirred up in Hong Kong, with people in pursuit of genuine universal suffrage engaging in peaceful fights. Waves of protests and class boycotts have ultimately triggered a large-scale civil disobedience movement called the Umbrella Movement. I think you ..." — refers to the Chairman of the NPCSC, Mr ZHANG Dejiang — "I think you are also aware that the pan-democratic camp published a report on Hong Kong's recent community situation on 30 December 2014, giving a detailed account of the causes and processes of the Umbrella Movement. The report has also been passed to the Central Government. In brief, most of the participants of the movement have strictly adhered to the non-violent principle and demonstrated the qualities of a good citizen. Their demand is also loud and clear, and that is, to urge the Central Government to honour the solemn undertaking made to Hong Kong people, so that the 2017 Chief Executive election shall comply with the principles of universality and equality and people of different political views can stand for the election.

"As you said when you met with the Delegation of the Hong Kong Federation of Trade Unions in September 2014, the NPCSC Decision has the highest legal authority and is unshakable. However, Article 62(11) of the Constitution of the People's Republic of China provides that one of the functions and powers of the National People's Congress (NPC) is to 'alter or annul inappropriate decisions of the NPCSC.' Thus, the 31 August Decision can be amended.

"The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article 3 of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted at the Eighth Session of the Standing Committee of the Tenth National People's Congress in April 2004, has set out the 'Five-step Process' of Hong Kong's constitutional reform, under which the second step requires the NPCSC to determine whether the electoral methods need to be amended. In the Explanations on the Draft Decision submitted to the NPCSC, the question about

leaving the decision of 'whether there is a need to amend' and 'how to amend' to the Central Authorities has been raised. In the end, the NPCSC endorsed that after 2007, the decision on whether there is a need to amend the method for selecting the Chief Executive shall be made by the NPCSC, and the proposed amendments shall be introduced by the SAR Government to the Legislative Council. Such amendments shall obtain the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive before being submitted to the NPCSC for approval. In other words, the decision to be made by the Central Authorities on 'whether there is a need to amend' appears in the second step of the 'Five-step Process', whereas the decision on 'how to amend' appears in the fifth step. Therefore, the method for selecting the Chief Executive specified in the 31 August Decision has apparently gone beyond the basis on which the NPCSC made its 2004 Interpretation.

"Given that the 31 August Decision made by the NPCSC does not comply with the basis on which the Interpretation is made, which has directly led to a stalemate in Hong Kong's constitutional reform, the Democratic Party considers that the solution is to annul or alter the Decision in accordance with the Constitution ..." — that is, Article 62(11) — "and reactivate the 'Five-step Process'.

"After reactivating the 'Five-step Process, the NPCSC will, in strict compliance with the basis on which an interpretation of the Basic Law is made, first 'decide' that amendment to the methods for the 2017 Chief Executive election can be made, after which the SAR Government will consult Hong Kong people with a view to forging a consensus and formulating the proposals on the election of the Chief Executive that comply with the Basic Law and the International Covenant on Civil and Political Rights. We believe if the election methods comply with the principles of universality and equality, and allows people of different political views to stand for the election, the constitutional reform package will receive the support of the community at large and the endorsement of a two-thirds majority of all Legislative Council Members, and then with the consent of the Chief Executive, it can be submitted to the NPCSC for approval.

"It has been nearly six months since the announcement of the 31 August Decision, you ..." — NPCSC Chairman ZHANG Dejiang — "should be aware of the serious dissension in Hong Kong society. If the stalemate cannot be broken,

the constitutional reform package will definitely be vetoed by the Legislative Council. The methods for the Chief Executive election will remain unchanged, both the Central Authorities and the SAR Government will have a high price to pay and our society will be further divided. This is the last thing that we would wish to see.

"Although time is running short, the Democratic Party still hopes that the NPC will properly deal with the issue. We urge that a motion be proposed by you on behalf of the NPCSC at the Third Session of the Standing Committee of the Twelfth National People's Congress to alter or annul the 31 August Decision made by the NPCSC and reactivate the "Five-step Process", so that there will be light for Hong Kong's political situation at the end of the tunnel."

I so submit.

**MR ANDREW LEUNG** (in Cantonese): President, on 31 August 2014, the Standing Committee of the National People's Congress (NPCSC) made a decision on issues relating to the selection of the Chief Executive by universal suffrage and on the method for forming the Legislative Council in the 2016 (the 31 August Decision).

The second round consultation on constitutional reform has commenced, and the Government planned to submit the constitutional reform package to the Legislative Council for voting in the second quarter, which is the third step of the so-called "Five-step Process" of constitutional development. If the reform package is not endorsed, the 2017 Chief Executive Election will continue to adopt the methods for selecting the Chief Executive of the preceding term and the wish to elect the Legislative Council by universal suffrage in 2020 will also be dashed. The Business and Professionals Alliance for Hong Kong (BPA) considers that the 31 August Decision was made by the NPCSC in consideration of the report submitted by the Chief Executive and in light of the actual situation of Hong Kong, it is therefore a solemn decision with legal basis. Furthermore, the Decision has taken into account the fact that Hong Kong is the part of the State that first implements the universal suffrage system, it cannot be achieved overnight and must proceed in a gradual and orderly manner, thereby providing a constitutional basis for the implementation of universal suffrage. Therefore, the BPA absolutely disagrees with the invalidation of the 31 August Decision and the reactivation of the constitutional reform process.

The original motion of Ms Cyd HO points out that the 31 August Decision throttles the room for implementing genuine universal suffrage, I wish to ask Ms HO and other pan-democratic Members: Today, the opportunity to select the Chief Executive by "one person, one vote" in 2017 is right in front of us, are we going to give up an opportunity that is within reach and insist to start from scratch, then repeating the process over and over again until achieving their desired universal suffrage system in one go, rather than moving one step forward? It is the attitude of the pan-democratic camp that throttles the room for implementing genuine universal suffrage. I wish to stress that there is not only one democratic system in this world; different countries and regions must decide on their own democratic election system in light of their actual situation. Hong Kong is not an independent country, it is a special administrative region of the State, and hence its constitutional development must proceed within the framework of the Basic Law and the NPCSC Decision.

It is a serious fallacy for pan-democratic Members to think that the nominating committee will be manipulated by the 31 August Decision to screen the candidates in accordance with the will of Beijing. The nominating committee, comprising of four major sectors, seeks to manifest representation of the interests of different sectors in Hong Kong. This is consistent with the spirit of broad representation and balanced participation enshrined in the Basic Law and the NPCSC Decision, which ensures that the Chief Executive selected by universal suffrage meets the overall interests of Hong Kong and avoids the rise of populism. To be a candidate, a person must be no less than 40 years of age, a permanent resident of Hong Kong who has ordinarily resided in Hong Kong for the past 20 years, with no right of abode in any foreign country and meet the minimum requirement of loving the country and loving Hong Kong. The Central Authorities and the SAR Government have not ruled out the possibility of any person seeking nomination or stand as a candidate. Nor have they imposed any restriction on the right to vote and the right to be elected. This is clear to all. Furthermore, under the framework of the 31 August Decision, the composition and formation of the nominating committee, the nomination procedures and the arrangements for voting by universal suffrage are still subject to further discussion. So long as the design of the election system is appropriate, voters can absolutely affect the outcome and boost the competitiveness of the election. On the contrary, pan-democratic Members who insist to discuss the detailed arrangements of the future election system can never reflect people's genuine preference as claimed.

Worse still, invalidating the 31 August Decision, reactivating the constitutional reform and challenging the authority of the Central Authorities and the NPCSC will do more harm than good to Hong Kong's long-term development. All such moves are impracticable in reality. Given that the 31 August Decision is an important basis on which Hong Kong presses forward with constitutional reform in accordance with the law, it cannot be arbitrarily invalidated.

As the Government has clearly stated, if the constitutional reform package is vetoed by the Legislative Council, the "Five-step Process" will end at the third step. Instead of selecting the Chief Executive by "one person, one vote" in 2017, previous arrangements for selecting the Chief Executive by the 1 200-member Election Committee in 2012 will continue to be adopted. Discussions on the method for selecting the Chief Executive will not be conducted until the constitutional reform process reactivates, and the soonest will probably be the 2022 Chief Executive election. Members should ask themselves, is that what people want? As Chief Secretary Carrie LAM has pointed out, there is only one step to go before selecting the Chief Executive by universal suffrage in 2017, and the Government has clearly stated that after the 2017 Chief Executive Election by universal suffrage, there is still room for the refinement of the electoral methods. Failure to implement universal suffrage in 2017 will deprive people of an opportunity to elect the Legislative Council by universal suffrage in 2020.

The BPA considers that if the present constitutional reform package fails to get through, our society will plunge into endless political conflicts and internal discords, which are seriously detrimental to Hong Kong's economy and people's livelihood. The livelihood of 7 million Hong Kong people and the overall competitiveness of Hong Kong will be worsened. The pan-democratic camp has unduly pursued their ideal at the expense of the livelihood of 7 million people for the next decade. It is not worthwhile to do so.

Last year, the retail sales value recorded the first drop since the outbreak of SARS in 2003, which has given us a warning. Coupled with the existing problems in the development of industries, shortage of land and manpower, only the successful implementation of universal suffrage will enable the Government to accumulate sufficient political energy to face the challenges. It is now the critical moment. If the pan-democratic Members continue to pursue their ideal without paying heed to the actual situation, persist in their own ways and put forward crazy requests to complicate the issue, it will not do any help at all.

Recently, the findings of a number of opinion polls showed that more than half of the respondents wish to see the implementation of universal suffrage. We can thus conclude that people no longer wish to watch the live television broadcast of 1 200 people voting in 2017, but prefer to cast their own votes to select the Chief Executive. Therefore, the BPA opposes the motion and the amendment, and calls on the pan-democratic Members to stop before it is too late, they should understand the situation, so as not to become the sinner in history.

President, I so submit.

**MR LEUNG CHE-CHEUNG** (in Cantonese): President, regarding the motion moved by Ms Cyd HO with the theme "Seeking the invalidation of the decision of the Standing Committee of the National People's Congress (NPCSC) and reactivating the constitutional reform process", I would describe it as frivolous.

We have just proceeded to the third step of the constitutional reform and the second round consultation is now underway. At this juncture when we have yet to start the fourth step, the pan-democratic Members call a halt to the exercise and want to reactivate the entire process. This has run counter to the suggestion made by them when consultation on the constitutional reform had just started. At that time, they proposed to adopt the so-called civil nomination to replace the nominating committee provided in the Basic Law, thereby seriously impeding the consultation exercise. The pan-democrats have taken various actions, including the Umbrella Movement. They now even propose to boycott the consultation on all fronts. All these clearly showed that their attitude towards the consultation on constitutional reform and the views expressed have completely failed to comply with the laws and the provisions of the Basic Law.

In my opinion, civil nomination as proposed by the pan-democrats will directly doom the present constitutional reform to failure. I will not support such an outcome unless there are reasons to convince me that the existing arrangement to select the Chief Executive by the 1 200-member Election Committee is a better option than the proposal put forward by the Government under the 31 August Decision. Otherwise, I do not think the arrangement of selecting the Chief Executive by 1 200 people can better meet the need of the future constitutional development of Hong Kong.

According to the existing practice, Chief Executive candidates are nominated by the Election Committee, whereas the constitutional reform package suggests that nomination of Chief Executive candidates should be made by the nominating committee for election by people on the basis of "one person, one vote". Judging from a rational perspective, we all know that the proposed arrangement of selecting the Chief Executive is more desirable than the original method. I therefore do not understand why they have to veto the reform package under consultation.

Members from the opposition camp often said that the constitutional reform package under discussion is fake universal suffrage. For proposals that are inconsistent with their views or considered to be inappropriate, are they all fake? Under the principle of "one country, two systems", Hong Kong's political system is governed by the Basic Law. If the restrictions imposed by the Basic Law are fake, does it mean that only the measure proposed by them is genuine? How about their acts of not complying with the law, are they also genuine? In my view, any ideas that are inconsistent with the Basic Law and the NPCSC Decision are fake.

Article 45 of the Basic Law clearly provides that "The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." This provision of the Basic Law, which contains 60-odd words, brings out a few main points: first, gradual and orderly progress, meaning that instead of achieving the goal in one step, we must adopt a step-by-step approach. It also mentioned the nominating committee, saying that a nominating committee must be formed. Therefore, any proposal that does not contain a gradual and orderly progress or a nominating committee fails to comply with the Basic Law. This is precisely why civil nomination as advocated by them is a pseudo proposition.

A senior member of the Democratic Party, Mr LAW Chi-kwong, published an article on 3 February, highlighting out that "To pursue democracy, we must fight for every inch of progress, however little such progress may be". Earlier, the Chief Secretary for Administration, Mrs Carrie LAM also said that "there is no perfect democracy for the system of universal suffrage, it will only get better",

and she called on the opposition camp not to argue the meaning of genuine universal suffrage like chanting slogans. Many Hong Kong people wish to make one step forward and grasp the opportunity to vote for their Chief Executive in 2017.

Who will be happy to see the constitutional reform package being vetoed? I think they include people who think the existing constitutional system is perfect and no amendment is necessary; people who think Hong Kong people will arbitrarily cast their votes and select a Chief Executive who is not fit to rule Hong Kong, and people who do not wish to see any changes in the existing election system. These people will thus stand on the moral high ground to make this and that requests, trying to reap political gain. Members of the opposition camp are exactly that type of people.

The original motion of Ms Cyd HO suggests that "... the election unable to perfectly reflect people's genuine preference", but I cannot help asking, if representatives of public opinion cannot be selected by "one person, one vote", I really do not understand what "genuine preference" means. Does Ms Cyd HO imply that the genuine universal suffrage advocated by her can satisfy all Hong Kong people as the names of all desired candidates can appear on the ballot papers?

The opposition camp has all along claimed to be democratic, but I think the best way to manifest genuine democracy is to visit local districts to listen to public views and make reference to the opinion polls, so as to truly reflect their democratic stance. I would rather describe them as anti-democratic.

I so submit.

**MRS REGINA IP** (in Cantonese): President, I speak to oppose Ms Cyd HO's motion on seeking the invalidation of the decision of the Standing Committee of the National People's Congress (NPCSC) made on 31 August (the 31 August Decision).

After reading Ms Cyd HO's motion thoroughly, I realize that she has proposed this motion because of the 31 August Decision. She thinks that the 31 August Decision "throttles the room for implementing genuine universal suffrage and allows the nominating committee to screen persons seeking

nomination as Chief Executive candidates in accordance with the will of Beijing, thereby rendering the election unable to precisely reflect people's genuine preference and reducing all voters in Hong Kong to voting tools". After careful consideration of the reasons put forward by Ms HO, I think they are completely invalid. First, people of the pan-democratic camp often speak of genuine universal suffrage, but they have never laid down any definition for the term.

In fact, universal suffrage means the common and equal right to vote in elections. I believe Members in this Chamber, particularly those who are professors, know about the movement in Britain in the 19th century in which people heroically fought for their political rights. That was the suffragette movement led by Emmeline PANKHURST and her daughter. What did they fight for? They fought for women's right to vote. During the First World War when many men were in the battlefield, the British Government had to rely on women to keep it functioning. After the War, the British government gave women the right to vote, but it was not an equal right. Men who were 21 years old or above had the right to vote, but women had the right only when they reached 30. The authorities at the time were afraid that men might lose their status because women outnumbered them. That was the famous suffragette movement.

Over the past century or so, have we heard of any women, ethnic minorities or ethnic groups fighting for the right to be nominated? None at all. Members will know who Hilary CLINTON of the United States is. She has fought for the chance to stand for election as President of the United States a number of times, but failed. Has she protested in the United States Congress and demanded that she be recommended as a candidate and assured of the chance to stand for election? No. What is the meaning of "no screening"? There must be screening in any election. As there is only one Chief Executive position and only one person can get it in the end, screening is inevitable. Therefore, proposing to implement genuine universal suffrage is no more than deceiving the public because screening is inevitable.

Regarding Ms Cyd HO's accusation that the 31 August Decision "allows the nominating committee to screen persons seeking nomination as Chief Executive candidates in accordance with the will of Beijing", my response is as follows. First, I think this point of view is unfair to members of the future nominating committee as well as members of the current Election Committee and Ms HO has assumed that these people will only make their selections in accordance with the will of Beijing. Certainly, I will not exclude the possibility

that some members of the current Election Committee or the future nominating committee may have very similar views as those of Beijing and are more willing to support its views. As Members are aware, however, some people from the "love the country, love Hong Kong" camp often act in disregard of Beijing's will and they even consider themselves as heroes, am I right?

Let us not forget that in the current Election Committee composed of 1 200 members, at least 300 members are the professionals from the Second Sector and they are elected by the professionals of their respective professions. How can we assume even before the formation of the nominating committee that its members will not vote in accordance with the preference of their voters, who are Hong Kong people? Why do my colleagues from the pan-democratic camp assume that they definitely cannot get a sufficient number of members to nominate them even before the formation of the nominating committee at a time when the Government has not submitted the proposal? All Members in this Chamber have stood for election. Do we not know that it is necessary to canvass votes? Canvassing votes sometimes works and sometimes does not. Every Member knows that a person standing for election or seeking to be nominated as a candidate has to conduct electioneering activities, prepare an election platform, make publicity efforts, create a good personal image, participate in numerous election forums and be prepared to be subjected to personal attack. Why do Members say that they cannot do these things even before they try but ask others to lower the threshold to fit them? This is like the case in which a student says he will fail the examination and asks the teacher to lower the passing mark so that he can pass even before the teacher has decided on the questions of the examination paper. I think that is totally unreasonable.

I still have a little time left. Since the pan-democratic Members are so fond of "playing their democratic card" to oppose the decision of the NPCSC, I will repeat the opinion given by a United States scholar for them. On 4 October, Mr Alan LEONG and I were lucky enough to be invited by the Hong Kong Students' Association of the Chicago University to participate in a video symposium on the democratization process of Hong Kong. One of the participants was Prof Lynn T WHITE III of Princeton University, who often visits Hong Kong and is very familiar with our situation. Prof WHITE pointed out that the debates in Hong Kong were about democratization, not about democracy *per se*. He opined that there was no absolute thorough popular sovereignty. He said that everybody studying politics knew that "[E]lites, founding fathers and mothers, made decisions first about the boundaries of their

polity, and then within those boundaries where ordinary citizens may or may not help to choose its officials. Even a decision for more democracy gets made, it never results in full popular sovereignty. All polities, public or private, are hierarchical. Companies, churches, schools, universities, political parties, all have leaders, but very few of these are directly elected. Democracy is semi-sovereign.". He means that decisions about all political entities are made by elites. Only after they have set the boundaries will they let the public participate. In fact, democracy is semi-sovereign.

Who are the elites in Hong Kong? Some of them are pro-China, some are pro-Hong Kong and after these elites have set the boundaries, they let the public participate. In the end, the Professor called on Mr Alan LEONG and all pan-democratic Members not to veto the framework set down under the 31 August Decision because he thought that the framework would help Hong Kong to take a big step forward in democratization. Although limits are set on the nomination of candidates, the right to vote is universal and Hong Kong can still take this big step. Therefore, I implore the pan-democratic Members not to veto the constitutional reform package on the basis of their specious arguments.

**MR JAMES TIEN** (in Cantonese): President, the Member spoken just now has used a mix of Chinese and English. It is hoped that this translators can translate for us the speech made by the Member just now.

President, regarding universal suffrage, although I am a Member returned by direct elections, many of my views are leaning towards those of the conservative industrial and commercial sector. The sector has visited all the places where presidents and prime ministers are currently elected by universal suffrage and it is worried that populism will prevail after universal suffrage. Taking countries in Europe as examples, more and more welfare benefits have been provided after each and every election, causing bankruptcy of governments or ongoing tax hikes. Years ago when we were a little against the selection of the Chief Executive by universal suffrage, we viewed it from this prospective rather than considering the issue of whether or not "loving the country and loving Hong Kong". No matter whether or not the Chief Executive "loves the country and loves Hong Kong", the implementation of extensive welfare benefits and significant tax increases by the Chief Executive will cause much reservation among the business sector about the selection of the Chief Executive by universal suffrage.

However, we are also aware that the biggest issue now is the governance of Hong Kong. Hong Kong's governance has gone seriously wrong because the Chief Executive is elected by 1 200 people and thus lacks public credibility. If the Chief Executive is elected by 5 million people and begins to gain public credibility, will the governance be improved? We agree that this will be the case. The Chief Executive elected by universal suffrage needs to balance the interests of various social strata. He cannot tilt sharply towards populism when welfare benefits are provided; nor can he turn aggressive in increasing taxes. Of course, Hong Kong is different from other countries in that our Foreign Exchange Fund, that is, our warehouse where grains are stored against famine, is so fully-loaded that even grains are handed out several times, nothing will go wrong immediately.

Moreover, if we do not support the selection of the Chief Executive by universal suffrage, we will only be left with the old method of the selection participated by 1 200 people. Members of the pan-democratic camp must think clearly in this regard. I have noted that their recent non-cooperation movement has largely targeted at the incumbent Chief Executive, that is, Mr LEUNG Chun-ying. I have at least finished listening to his remarks before criticizing him. The pan-democrats have often turned around and left without even listening to him and then asked him to step down. The easiest way to ask him to step down is to support this package to return the power of government to the hands of the people by allowing over 5 million people to vote. The pan-democrats can then canvass for people who are against Chief Executive C Y LEUNG and become the "kingmaker".

If the pan-democrats vote down this package, how the 1 200 people will vote is a matter of their own. They may not necessarily select the incumbent Chief Executive. They may select someone else. However, the pan-democrats have always hinted that the Central Government has quite a great influence on those 1 200 people — and I think it is true — its influence on the 5 million people is, of course, relatively small. So, that is all the more reason for the pan-democrats to "pocket it first". However, the pan-democrats have refused to do so. Instead, they have accused the decision made by the Standing Committee of the National People's Congress (NPCSC) of being improper and demanded to reactivate the process. I have to see if this is practicable. Regarding the timetable, how long does it take to finish the "Five-step Process"? If the decision of NPCSC is to be invalidated now and we start from the first step to conduct extensive consultation all over again, the second step to have a decision

made by NPCSC all over again, the third step to conduct second-round consultation in Hong Kong all over again and lastly the enactment of local legislation, the time required will not allow us to have for the election of the Chief Executive in March 2017.

The concept of "one country, two systems" is unique in the world. Everyone agrees that "a high degree of autonomy" does not mean independence. Under these circumstances, how much power does the Central Authorities have and how such power is exercised? The Liberal Party is of the view that the case where candidates acceptable by the Central Authorities will run in the election and the one elected by the people will certainly be appointed by the Central Authorities is better than the case advocated by Members of the pan-democratic camp where the people are allowed to elect but the Central Authorities can refuse to appoint the candidate elected. China is a great nation in the world now. The non-appointment of the candidate elected will throw Hong Kong's governance into dire chaos, which is not something desirable at all. In view of this, I think we should support the 31 August Decision of NPCSC.

Will accepting it first this time guarantee getting more next time? I think it is unlikely that the Central Authorities will satisfy all the expectations of the pan-democrats, that is, anyone can be a candidate and the Central Authorities will appoint whoever elected by the people. This is really not much different from being an independent state. I think the Central Authorities will only relax the definition of "loving our country and loving Hong Kong" in the end to allow some Members with a moderate stance in the pan-democratic camp to run. Such moderate stance means not always advocating to end the one-party rule or to overthrow the Communist Party. This is probably the meaning of the so-called "gradual and orderly progress" and the concept of accepting it first this time and getting more in the future.

President, I still have a little time left and I would like to talk about the proposal put forward by Mr Ronny TONG. He has proposed to have the return of all Members of the Legislative Council by universal suffrage in 2020 in exchange for the passage of the direct election package of 2017. I think this is impracticable as well. First of all, the current-term Legislative Council or Government and the current-term NPCSC cannot make this undertaking for the next-term NPCSC, the next-term Legislative Council or Government. Furthermore, if this undertaking is made by the Government, will there be anyone putting it into practice in the next term? I believe even the pan-democrats themselves query this proposal.

In view of the reasons mentioned above, I hope that members of the public will influence the views of the pan-democrats. President, on the day we vote, if the number of people in support of the package is far more than those in support of the present stance of the pan-democrats, I hope the pan-democrats will adopt their usual practice of casting their votes following the public opinion. Thank you, President.

**MR TONY TSE** (in Cantonese): President, this motion mainly raises two demands: first, the invalidation of the decision of the Standing Committee of the National People's Congress (NPCSC), and second, the reactivation of the constitutional reform process. I think the original motion and the amendment just reflect the personal feelings of the two Members, which stem from their distrust in and dissatisfaction with the Central Authorities, the Chief Executive and the Special Administrative Region (SAR) Government. It may even be due to their pursuit of some unknown political ends. Therefore, I think the substances raised in the original motion and the amendment are just some subjective judgments and wild guesses, which are totally irrational in nature and void of any actual justifications. Such demands are also against the expectation of the majority of Hong Kong people who wish to elect the Chief Executive by universal suffrage in 2017, and will thus deprive Hong Kong's democratic constitutional development of making one huge step forward. Therefore, I will not support the original motion and the amendment.

President, the rule of law is the core value of Hong Kong. At the constitutional level, the National People's Congress (NPC) and the NPCSC are the highest legislature of our country. A decision made by the NPCSC has legal effect. So, it must be adhered to and regarded with respect. A number of legal professionals and experts in the Basic Law including members of the Committee for the Basic Law have made responses one after another to the demand for the invalidation of the decision of the NPCSC. They are of the view that the decision of NPCSC is made after careful deliberations, which is legitimate, fair and reasonable. Therefore, the demand for the invalidation of the decision of the NPCSC is something impossible. The insistence on the invalidation of the decision of the NPCSC is nothing but a divorce from reality and totally impracticable.

Moreover, the amendment states that "Hong Kong people have, through the Umbrella Movement, clearly expressed their objection to the constitutional reform package formulated within the framework of the 31 August Decision". In fact, many people think that the so-called Umbrella Movement is actually a downright illegal Occupy movement where its organizers and participants, in the name of civil disobedience, have spoken of the respect of the rule of law but in reality ignored law and discipline and challenged the rule of law with a total disregard for public interests. Their illegal occupation of roads has made people from all walks of life suffer different degrees of inconveniences and losses. The illegal Occupy movement has caused irreversible harm to Hong Kong people and Hong Kong as a whole. Some members of the opposition camp have so far insisted on putting a moral aura on the illegal Occupy movement and challenged the decision of the NPCSC and the rule of law with forceful unlawful acts. Many people are worried that actions taken by these people may in turn put the overall interests of Hong Kong at risk, making Hong Kong "lose everything in one go" in the end. Can the opposition camp take up such a heavy responsibility? How are they going to answer to the Hong Kong people then?

Moreover, the SAR Government has, in accordance with Annex I and Annex II to the Basic Law, officially activated the "Five-step Process" of the constitutional reform. The first two steps have now been completed. A number of legal professionals and experts in the Basic Law have categorically stated that since the Central Authorities have made a decision on the selection method of the Chief Executive by universal suffrage, it is unfair and unreasonable, as well as unnecessary to demand for the reactivation of the "Five-step Process" of the constitutional reform. Even if the constitutional reform package is voted down, the decision of NPC will not be reversed. It will only prevent Hong Kong's constitutional reform from moving forward. Therefore, I think it is unreasonable to demand for the reactivation of the constitutional reform process. And I do not see at this stage any room for reactivating the "Five-step Process".

President, the implementation of the election of the Chief Executive by "one person, one vote" universal suffrage in 2017 as scheduled is the expectation and the goal of the Central Authorities, the SAR Government and the majority of Hong Kong people. If Hong Kong is unable to implement the election of the Chief Executive by "one person, one vote" universal suffrage in 2017 as scheduled, our constitutional reform will be forced to stay put and the following election of the Legislative Council Members by universal suffrage will directly be

affected. I believe that not many people wish to see the opposition camp "shut the door" for the election of the Legislative Council Members by universal suffrage, leaving Hong Kong people with an unfulfilled dream of universal suffrage and an uncertainty of when it will come true. This is definitely not something we would like to see.

President, with these words, I oppose the original motion and the amendment. And I hope that Members in the opposition camp who still insist on those unrealistic proposals can, in the overall interests of Hong Kong, return to the pragmatic direction soon to facilitate the early achievement of the biggest consensus in society on the constitutional reform package. Otherwise, they will only get themselves and others into trouble and seriously stifle Hong Kong's democratic constitutional development.

**MR WU CHI-WAI** (in Cantonese): President, in the past two days, the pro-establishment camp has stressed that the 31 August Decision cannot be changed since the authority of the Central Authorities is involved. In other words, whether it can be changed or not is decided by the Central Authorities at whim. Of course, before the Central Authorities arriving at any new decisions, those in the pro-establishment camp who know how to love our country and act according to circumstances have certainly advocated that the package we should "pocket it first" is the fruit of democracy bestowed by the Central Authorities. The pan-democratic camp of Hong Kong, in rejecting this fruit of democracy, is like "refusing a toast only to drink a forfeit". Hong Kong people, in rejecting this "fake universal suffrage" system, are inviting self-humiliation. Therefore, even the pro-establishment camp knows it well that this is "fake universal suffrage", "counterfeit-goods" universal suffrage, they have demanded us to yell "thanks for the emperor's mercy".

In fact, no one ever says that the pro-establishment camp is not allowed to be a lackey or a yes-man. However, the pan-democrats, following our conscience, have clearly explained why we have to oppose the 31 August Decision and why the only way out in today's political deadlock is having a political system with genuine choices. Therefore, even in this political atmosphere where current opinion polls show that nearly half of the respondents and even more than half of them have agreed to "pocket it first", the pan-democratic camp has not hesitated to say we will vote down this "fake universal suffrage" package which we are asked to "pocket it first". Even the

voting down of this "fake universal suffrage" package which we are asked to "pocket it first" will bring us landslide losses in elections, we still have to state clearly right and wrong and pursue an important political principle.

The Central Government made a solemn promise in 2007. We will not allow the Central Authorities to go back on this promise nor replace this solemn promise with a "fake universal suffrage" package. Some members of the pro-establishment camp have argued that for universal suffrage, there is no such thing as genuine or fake. However, Ms Starry LEE has clearly stated that it is the aim of the Central Authorities to have the front door watched in order to ensure that the foreign forces they are worried about will not succeed to use Hong Kong as a bridgehead to threaten national security. This is exactly the idea of screening through and through. There is absolutely no evidence to prove that the candidates will threaten national security as accused by Ms LEE. In the case of failing to specify where national security will be threatened, how can a system be established to help the Central Authorities have the front door watched by the nominating committee?

It is even sadder that, as I just said, such screening practically lacks any objective standards. The decision made by more than half of the members of the nominating committee counts, which makes the nominating committee surpass DENG Xiaoping, the chief designer of "one country, two systems". Years ago, DENG Xiaoping set the definition of a patriot as follows: "A patriot is one who respects his own nation, sincerely supports the Motherland's resumption of the exercise of sovereignty over Hong Kong, and does not jeopardize the prosperity and stability of Hong Kong. As long as one fulfils these requirements, no matter whether he believes in capitalism, feudalism or even slavery, he is a patriot. We do not require them all to support the socialist system of China. We just ask them to love the Motherland and Hong Kong." In other words, DENG Xiaoping, in designing "one country, two systems", placed boundless trust on Hong Kong people and believed that Hong Kong people were able to choose someone loving our country and Hong Kong to govern Hong Kong.

It is pointed out in the well-known essay *On the Six States* that the fall of the six states was not owing to their inferior weaponry or lost battles but to their bribing the State of Qin. "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" have resulted in today's outcome precisely because there are countless patriots. They have used different fine rhetoric to argue that in "one country, two systems", "one country" must be in the lead. Other than national

defence and foreign affairs, the Central Government can intervene in Hong Kong's affairs by interpreting the Basic Law. In fact, the well water should never interfere with the river water; nor can the former influence the latter. This is the law of nature. If the river water does not exercise self-control, the well water will inevitably lose its lustre. However, the 31 August Decision has clearly stated that the choice of governance in the well must only be decided by the river water for Hong Kong people. This is because the river water thinks that only in this way can national security be safeguarded. May I ask how Hong Kong, the well water, can influence the surging river water?

In fact, "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" are principles and core values we must uphold. They are also the cornerstones in the whole design of "one country, two systems". During the discussion in these two days, the pro-establishment camp has always been in a rage, criticizing the pan-democratic camp for depriving Hong Kong people of "one person, one vote" universal suffrage. In fact, the pro-establishment camp needs not be so agitated. If Hong Kong people really want to "pocket it first", the pro-establishment camp should then take up Mr Albert HO's challenge for a showdown. If the SAR Government believes that Hong Kong people need to "pocket it first", will it take up Mr Albert HO's challenge and allow us to make decisions following the voting results? If the pro-establishment camp does not even have the guts to take up the gauntlet and just casually claims that public opinion is on its side, is it fair? In fact, the pro-establishment camp needs not worry too much. Just as I said earlier, if public opinion is really what the pro-establishment camp has claimed, the pro-establishment camp will certainly have a big victory in the 2016 Legislative Council election. "Pocketing it first" will then become a dream come true to them. However, being the pan-democrats, we have the responsibility to state clearly what we believe and what we think because we have to distinguish right and wrong and tolerate no calling a deer a horse. Thank you, President.

**MR CHARLES PETER MOK** (in Cantonese): President, I have found myself not talking clearly lately. While I was presenting my views in a television programme on Saturday morning, I mentioned some fruits. In the end, it led to a lot of misunderstandings, which I have found quite embarrassing. So, I have become smarter and learnt a lesson from it, and that is, I will not make too many pointless comparisons, especially about fruits, oranges, apples and so on. It would be best for me to wait until I talk about computers and mobile phones.

I was asked on that day if the Legislative Council could be elected by universal suffrage in 2020 and whether we would "pocket it first". The answer is definitely no. However, very often, I speak in a not very succinct way and branch out to many points, such as what will happen if it is like this or if it is like that, and whether I believe it or not, and so on. For instance, the Government tested public reaction earlier by saying "in accordance with Hong Kong's local environment at that time", "enacting local legislation", and so on. I pointed out that these were just empty talks and we certainly would not "pocket it first". However, what was reported afterwards was another story.

Even when they finally have a promise coming from the Central Authorities, do Hong Kong people actually believe it? It is stated in the resolution of the Standing Committee of the National People's Congress (NPCSC) in 2007 that "the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage." It is written in quite a long-winded way. Years ago, we all took for granted that the so-called universal suffrage mentioned in the resolution was the universal suffrage in our mind. Who would have known that a screening process would be involved? It has turned out that a promise can turn sour in this way.

How can there be mutual trust when things happened like that in the past? Without mutual trust, how can we "pocket it first"? The Government has told us that "pocketing it first" is something good. However, if we have to "pocket something first", it means it is not anything good — again I have not expressed myself clearly — if the next promise will turn sour all the same, what is the point?

However, President, I do care about the abolition of functional constituencies. After discussion of two decades, Hong Kong people have maintained the abolition of functional constituencies. This issue no longer exists in the vocabulary of government officials — perhaps you may say that this has never been clearly stated — so we have particularly noted that government officials have just told us the Legislative Council will be elected by universal suffrage. Since the election of the Chief Executive by universal suffrage can be redefined as an election with a screening process, the so-called election of the

Legislative Council by universal suffrage can similarly be redefined as an election with a screening process. In recent years, the discussion about the nomination by functional constituencies and then the voting by all Hong Kong people means that functional constituencies will not be abolished.

This morning, LAU Siu-kai announced in public that functional constituencies would not be abolished in the short term. I do not know whether he spoke for himself or for the Central Authorities. However, if you accept the election of the Chief Executive by "fake universal suffrage" in 2017, "fake universal suffrage" will similarly be implemented in the following election of the Legislative Council Members in 2020. There is no need to ask me in future whether I will accept the election of the Legislative Council by universal suffrage in 2020 first because LAU Siu-kai and Members in the pro-establishment camp have already said no. In any case, we are not allowed to choose.

President, the discussion on constitutional reform in Hong Kong has indeed reached a deadlock now. However, is it not strange that the Chief Executive and government officials of Hong Kong have just kept asking us to "pocket it first" rather than reporting the demand of numerous Hong Kong people to the Central Authorities and striving for screening-free universal suffrage? Instead, they have helped the Central Authorities promote "fake universal suffrage" with "one screening process after another". Exactly which side do they take? The only explanation is that the incumbent Chief Executive of Hong Kong is not nominated and voted by the people. In other words, the Chief Executive is pre-ordained by the Central Authorities. You know then who actually is the boss of the Chief Executive. It is definitely not the people.

President, Secretary for Constitutional and Mainland Affairs Raymond TAM is not here today. However, he said yesterday that if the constitutional reform package failed to be passed, we would miss the chance as "opportunity never knocks twice at a man's door once". My friend sent me an email after hearing this piece of news yesterday morning, saying this incident and this remark reminded her of a friend's father who exactly seized the opportunity by taking the last boat just in time to leave the Mainland for Hong Kong after the Mainland became communist China. She said only when he could not take this boat just in time could the saying "opportunity never knocks twice at a man's door" apply.

My friend also said that another friend of hers who was in Beijing gave up the opportunity to leave Beijing for another country after the 4 June incident. This friend in Beijing got a brother. He stayed and his brother left. Many years later, the Beijing Government forced to demolish his ancestral home to build a park for the hosting of the Beijing Olympics. She also said that this was exactly what was meant by "opportunity never knocks twice at a man's door".

President, some friends have shown special concern for me lately, saying that it seems many things are difficult for me. I have told them not to worry. Although sometimes my words do not express my ideas, and I know that I do not have much political wisdom, just as Mr Ronny TONG described, when some people asked me if I would hold brief discussions with the SAR Government officials, or if I was willing to discuss with the Central Authorities officials, I told them I was willing to do so. This is because I think I have the responsibility to reflect the views of many Hong Kong people to the officials of the local government and even the Central Authorities in order to strive for the implementation of genuine screening-free universal suffrage in 2017.

Actually, Ms Cyd HO made some really right remarks in her speech. Members in the pan-democratic camp — including those so-called moderate pan-democrats — have all hoped to narrow the gap in society but to no avail. Government officials and Members in the pro-establishment camp are only interested in criticizing Members in the pan-democratic camp in this Council, telling people things like "you should remember them", "you wish to have 'one person, one vote' elections but the Members in the democratic camp do not allow it to happen, so you should remember to kick them out in the District Council elections this year and the Legislative Council elections next year." Actually, in this incident and many others, we cannot see government officials and Members in the pro-establishment camp really wish to narrow the gap in society. They have told us there is only one footstep away. Have Members in the pro-establishment camp pushed the finishing point "further and further away"?

What we have seen now is Members in the pro-establishment camp pushing the finishing point "further and further away". Some packages originally raised for discussion are more relaxed than the framework set by the 31 August Decision of NPCSC. However, they are no longer willing to discuss these packages and even "shut the door". Does the Government really wish to pass a fake universal suffrage package; or even though it is fake, the most

important thing is to make Members in the pan-democratic camp pay the biggest political price, so as to enable Members in the pro-establishment camp to do anything they want in the Legislative Council monopolized by them in future? The Chief Executive selected by "fake universal suffrage" will not gain Hong Kong people's recognition. Hong Kong's political issues will not be resolved. And, there will only be wider divisions inside and outside this Council. Therefore, we must vote down the package made under the framework set by the 31 August Decision of NPCSC.

I so submit. Thank you, President.

**DR KENNETH CHAN** (in Cantonese): This is the year of 2015. Eight hundred years ago, that is, in the year of 1215, England enacted *Magna Carta*. What made me bring up *Magna Carta*? It is because one of my colleagues, Mrs Regina IP, with a sudden keen interest, has just now extensively discussed examples of Britain.

In my more-than-25-year teaching of British politics at universities, I have never heard such a bad presentation or report. Mrs IP has interpreted out of context and cluttered up her speech with some filtered materials. She has considered herself in the right but actually she is neither learned nor knowledgeable.

The story of the 800-year-old *Magna Carta* was against a backdrop that there were always some people in the world who considered themselves in the right with an air of arrogance and boastfulness, thinking "I (the monarch) was the law". They were without substance but pretended to be knowledgeable. Moreover, they remained believing in extreme regalism and feudal autocratic monarchy. That was why they angered the people. The people wanted uprising and confrontation, so as to let those people know when there were public rights, there should be checks and balances.

President, we are not just simply talking about "one person, one vote". We even have to go back to the feudal period 800 years ago to remind people that Hong Kong people are now facing the 31 August Decision of Standing Committee of the National People's Congress (NPCSC), which is utterly feudalistic. This Decision cannot be shaken. We can either take it or leave it.

We can see that all the royalists have acted as the Government's cheering squad last night and today. In a nutshell, if you do not accept the 31 August Decision of NPCSC, you are in the way of the people. They have even cooked up charges and shirked all the responsibilities onto us. They have not bothered to look into the rights and wrongs or the hows and whys. They have only focused on power and kept going round and round the nexus of power. However, this play is not interesting at all. The storyline is boring in the extreme, with everyone seems to be casted with the same mould. It is like watching the model play in the Cultural Revolution, which is not entertaining at all.

Mrs Regina IP has also talked about how women in Britain fought for their voting right after the First World War. I think her words could not express her ideas due to time constraints. Is she telling us that Hong Kong people need not be so serious about the election of the Chief Executive by universal suffrage in 2017 and it might as well ask the men to "pocket it first" and the women to wait a little longer? Is it what she means? Or does she have other ideas? I really do not understand what she wants to say.

Perhaps her example shows that there are always great difficulties in some of the evolutionary processes of the world political system. This is actually the truth. However, she has not told the whole truth. During the time before and after the First World War, women's movements for women's rights and equality between men and women in voting rights all encountered extreme insult and violence.

In the movement mentioned by Mrs IP, some people tried to go on hunger strikes and were forced to eat in prison. The British Parliament passed a piece of outrageously ridiculous legislation at that time, which was named "cat and mouse game" by the people. Why was it called the "cat and mouse game"? The reason was that when those women's right activists were arrested and put in prison, most of them refused to eat. Those nasty British Ministers all agreed that in any case, those women's right activists could not be allowed to turn into martyrs. Therefore, if they could not be forced to eat in prison, they would be released first and then be followed. If they ate again after they were back home, they would be caught immediately and put into prison. This is the so-called "cat-and-mouse-game" law.

Mrs Regina IP reminded us of these historical events. Is this her warning to the Hong Kong people, telling us that if she becomes the Chief Executive in the future, she will treat us in this way? She is now back to her old self. She has attended the Stanford University in the United States and learnt from Prof Larry DIAMOND. So what? She has "cleaned the record" and returned. So what?

She has said in her speech just now that the other professor asked Hong Kong people to "pocket it first". However, Mrs IP has forgotten that her mentor, Prof DIAMOND, was interviewed by the *South China Morning Post* on 3 September 2014 after the 31 August Decision of NPCSC was made, and Professor DIAMOND, Mrs Regina IP's mentor, asked us not to accept it as it was an Iranian-style election.

Mrs Regina IP, you put on one face when you studied and put on another face when you finished your studies. You will put on an even uglier face when you get prepared to run for the Chief Executive. You are biased to such an extent that you have even disregarded your mentor and just quoted another foreigner's words simply because you like that foreigner's words. If you are that capable, you should invite the professor to debate with us here, instead of selectively quoting someone else's words. If such kind of people becomes the Chief Executive, I have to wish everyone good luck. We must all be very careful. In terms of "kingmaking", the Liberal Party has always asked us to be the "kingmaker". But are we all fools?

President, what we want is a genuine democratic election. We also hope that the Government will not stir up trouble and manipulate some unsubstantiated so-called public opinion wars. The Civic Party leader Mr Alan LEONG, now sitting next to me, attended the RTHK programme "Voices from the Hall" last Sunday. It is a deliberative polling programme, in which an opinion poll is conducted before the discussion and then another opinion poll about the same topic is conducted again after the debate of the guests to see if the polling results will be different.

In addition to Mr Alan LEONG, Mr IP Kwok-him of the Democratic Alliance for the Betterment and Progress of Hong Kong also attended the programme that day. The opinion polls before and after the debates have very different results. The percentage of those agreed to "pocket it first" saw a sharp drop while the percentage of those opposed the constitutional reform package

rose from 44% to 50% ... Sorry, please let me say it again. The percentages of supporting and opposing the constitutional reform package experienced some changes. The percentage of people who supported "pocketing it first" dropped from 43% to 39% while the percentage of people who opposed "pocketing it first" rose from 44% to 50%. Sorry, I have presented quite clumsily just now. I hope everyone has now got all these figures right. If all of us are up to it, we may as well hold a debate again to argue the case to see if Hong Kong people genuinely wish to "pocket it first" in the end. A rotten orange is absolutely inedible because it will only make Hong Kong people sick.

I so submit.

**MS CLAUDIA MO** (in Cantonese): President, when pro-establishment Members spoke just now, it appeared as though they had been dancing with wolves and following the twirling baton. They were soliloquizing and they looked wretched. For example, Mrs Regina IP openly and selectively blamed others for colluding with foreign forces. She turned a deaf ear to the master's words and asked us to "pocket it first" after she had heard pleasant and authoritative remarks. Mr James TIEN has kept saying that it is unrealistic to reactivate the constitutional reform process as he is worried that we are running out of time. Why are we running out of time? We currently have an executive-led system and let us considered what has happened at Finance Committee meetings. LEUNG Chun-ying can give priority to the discussion on certain items or take away some others. It is early 2015 and even the Lunar New Year holidays are not yet over, and there is plenty of time. Who says that the decision made by the Standing Committee of the National People's Congress (NPCSC) on 31 August (the 31 August Decision) cannot be changed? What are the reasons? Have these decisions never been vetoed? Changes must have been made and there are hundreds rather than just a few changes. Are they the worms in the stomachs of the Party Central Committee? These are certainly political considerations. The pro-establishment camp has always exhibited that they are excited at being so close to the authority and they expected to have some political advantages soon.

LU Ping said that our constitutional reform was Hong Kong people's business but people like Mr James TIEN and Mrs Regina IP denied in disguise "a high degree of autonomy", which is a great shame. The LEUNG Chun-ying Government commented in the past that "local" meant exclusiveness and discrimination, and he did not even bother to make explanations. He has now

directly stated that this is "advocating Hong Kong independence". He thinks that this is the most powerful weapon but he simply cannot negate the younger generation's fight for local interests. Young people will be able to see things in black and white after he has made very little effort, as evidently reflected by the response of the students of the University of Hong Kong.

President, it is said that there is no distinction between genuine and fake universal suffrage. Let me leave genuine and fake universal suffrage aside and I will focus on universal suffrage around the world and the Chinese-style universal suffrage. According to HAN Han, a well-known intellectual in China, there is only one kind of logic in the world for people in China. A person can even say that his mother is a man; he has the final say after all.

Mr Ronny TONG, who has always been considered a more moderate member of the pan-democratic camp, no longer dwells on whether we should "pocket it first" or ask for a commitment that the system would be optimized in the future. He only focuses on asking for the Government's commitment to abolish functional constituencies in 2020 to leave room for discussion. Unfortunately, soon after Mr TONG has made this comment, LEUNG Chun-ying publicly said that the current-term Government cannot make such a commitment. According to my understanding, being naive may be a major weakness of Mr Ronny TONG. Is there any room for discussion about universal suffrage? There is only Chinese-style universal suffrage. I would like to tell all Hong Kong people that functional constituencies would not be abolished. Evidently, we have been asked to elect functional constituencies by universal suffrage. Have we clearly noticed that so far? Just like what happened in a club, the electors in various sectors recommend one or two candidates, and Hong Kong people will vote for the candidate at a "one person, one vote" election, which will make everybody happy. Will each person have one vote only? Each person may have at least 30 votes, which is really dazzling. This is Chinese-style universal suffrage. Each person has more than one vote, and he may have at least 30 votes or even more votes. How can we trust this kind of universal suffrage?

President, it is a cliché to say that politics is the art of compromise, meaning that we cannot be overly opinionated; otherwise, there will not be any room for negotiation. However, the compromise of the democrats has nothing to do with me because I have not played a part in that. As all of us have noticed, the democrats have compromised for a quarter of a century; what have they got in

exchange for their continuous compromise? I hope the public would obey conscience and tell us what pro-establishment Members have fought for them. Nevertheless, is having something better than having nothing? Politics is never perfect, so, we should never become perfectionists. President, I am not a perfectionist; absolutely not, because life is full of imperfections. Some may say that the Government's package also has shortcomings and we might as well "pocket it first"; yet, the problem is that the shortcomings may sufficiently paralyse Hong Kong as a whole. Hong Kong may disappear or become a place that we are no longer familiar with.

We are now making fun of LEUNG Chun-ying and calling him "689", but LEUNG Chun-ying or his successor in the future may shout loudly that he has the powers entrusted by the people because he is elected by more than a million people. Fanny LAW has said that the future Chief Executive elected this way will not need to get the approval of the Finance Committee so long as the amounts do not exceed certain limits. Then, he will have total authority and he can do whatever he wants, and the situation will be even worse than it is now. Maintaining the *status quo* is better than "pocketing it first" because we originally only suffered minor injuries. If we are punched and kicked, we will just collapse, and we can do nothing.

All of us are talking about "finding out those persons", and pro-establishment Members are jubilantly saying that they only need to get a few more votes. I am sorry but as far as I know, no pan-democrat Member has intended to make a U-turn. It is even more gratifying that Dr LEUNG Ka-lau has also joined us. Doctors in Hong Kong really uphold ethics. (*The buzzer sounded*)

**MR PAUL TSE** (in Cantonese): President, it can be seen from the documents on the decision made by the Standing Committee of the National People's Congress (NPCSC) on 31 August (the 31 August Decision) that apparently because of the increasing controversies then, in order to focus on reaching a consensus on the core issues, we expressed our views in addition to confirming whether there would be universal suffrage. President, what is the nature of the 31 August Decision? If we compare the Decision to the decisions made in 2004 and 2007, the one made in 2004 is obviously an interpretation and the procedures have been properly followed. That decision was made after consulting the Basic Law Committee and therefore it is a very explicit interpretation according to the Basic

Law. The one made in 2007 is only a decision. The procedures have not been followed and the Basic Law Committee has not been consulted. Similarly, the 31 August Decision in 2014 has not really interpreted the Basic Law and it is purely based on the interpretation made in 2004 and the decision made in 2007. The representatives of the Basic Law Committee have been consulted but the Basic Law Committee as a whole has not been formally consulted. Therefore, people will say from a legal perspective that seemingly this decision cannot shake the laws like the interpretation of the law, and in fact there are some flaws.

However, the political reality is that people with a little understanding of the NPC, the national situation and the present situation will understand that any motion proposed now it is just a process which will not be politically fruitful. Even if it happens as Mr Dennis KWOK said, and pointed out further by the Hong Kong Bar Association, that this may be a violation of the Constitution, challenges can only be made in the future in accordance with the law. However, this decision can absolutely not be politically challenged. Even if there are flaws, the NPCSC will take advantage of the future procedures such as the legal measure of "ratifying" to recognize it subsequently. Thus, I think the argument is pointless and it basically cannot benefit or affect the political reality.

President, in everyday life, we know there is a shortlisting procedure in the tendering process, when head-hunters are recruiting or in the recent beauty pageant. The only issue is whether the procedure is carried out properly. In fact, having a shortlisting procedure is better than having no screening or shortlisting procedure because the latter may create more chaos in the final step of decision making.

President, in the first 100 years after the founding of the United States, as political parties were not recognized and accepted, they basically adopted an approach similar to ours today. In the United States in modern times, there is the so-called "party primary" process, that is, a primary election within the political party concerned. But as this process did not exist in the first 100 years after the founding of the United States, there was the so-called public primary process, with informal screening by community leaders, and the voters would subsequently vote in a "one person, one vote" election. Of course, this process can serve as reference but it does not mean that any form of screening has disadvantages.

Ms Cyd HO stated in her motion that we have such a framework but the election is unable to precisely reflect people's genuine preference. Regarding the electoral system of the United States today, we still clearly remember that GORE and BUSH fought for election a few years ago. Although it was the will of the people that GORE should be elected, BUSH was elected under the mechanism. These examples proved that there is no formal or really perfect system.

If a comparison is made to the Legislative Council or District Councils, some people may ask why there are candidates nominated by people in these elections but not in the Chief Executive election. In fact, it is simply because the Chief Executive is too important. As he is the head of government, people should not be casually allowed to make nominations for this position. I have heard a laughable example given by the Vice Chairman of the Liberal Party. He said that if the number can become smaller, everyone might as well be allowed to nominate himself, that is, there will only be a one-person threshold. This is certainly a joke but we cannot rule out this possibility.

President, more importantly, if there is a screening mechanism, those who are more actively in the community, more familiar with the local situation and more concerned about Hong Kong, the so-called "in the know" in the screening or preliminary election process, that is, those who have better knowledge of the actual situation and inside story, are better at making the choice. Similar to the situation in the United States, 97% are not members of a certain political party because party members generally account for 3% only, and the same applies to the two parties. Why is there a preliminary election process before voting by voters nationwide? This is because the United States has had elections for many years and the people believe that the political parties can properly complete the preliminary election process for them. These are examples of other countries adopting the relevant processes.

Many people with opposing views, including Mr Alan LEONG, have repeatedly explained why we cannot "pocket it first." First, he is afraid that China cannot casually tell the international community at that time that the work has been completed. However, he has completely underestimated the confidence of China at present while he has overestimated the concerns of the United States and the United Kingdom about the situation in Hong Kong. He has also failed to understand very well the vertical and horizontal aspects of the previous electoral system in Hong Kong as compared to those of other countries.

Second, he says that if the electoral base is expanded, the Chief Executive at that time can perform a lot of bad deeds, including the introduction of legislation under Article 23 of the Basic Law. Yet, I think he has underestimated the existing system and the qualitative representativeness of "689". Its quantity is small quantity but its quality is high. He has also overestimated the representativeness of a leader returned by universal suffrage. Taking President MA Ying-jeou and OBAMA, who have been returned by universal suffrage as example, they are similarly unpopular and their unpopular policy proposals will not be casually approved. Another example is Margaret THATCHER returned by universal suffrage in the United Kingdom. The poll tax she proposed was also not approved. Hence, we should not base upon numbers alone.

When it comes to talk about letting down our predecessors, successors and everybody, it is time for us to thank our colleagues of the pro-democratic camp for they have done a lot. Yet, it is time for us to move on and I believe this is the right attitude. Just like this glass of water in front of me: one can say this glass is half empty or half full, and this is a personal opinion after all.

Thank you, President.

**DR FERNANDO CHEUNG** (in Cantonese): President, as a lawyer, Mr Paul TSE is of course eloquent and articulate. As regards the election, he said that pre-selection or screening, that is, the so-called shortlisting, is practised all over the world and even in a beauty pageant. If a company wishes to employ a CEO or a general manager, it would advertise the recruitment and then screen out those not up to par. It is very reasonable to do so. Now, a nominating committee is incorporated in the Basic Law as a pre-selection mechanism to shortlist the candidates for the public to select by means of "one person, one vote". What an awesome idea is this! Mr Paul TSE makes it sound so good. If he opens a company and I say to him, "I will pick three persons for you to select one as the general manager who will assume full responsibility to run the company for you," he will definitely not agree. He will ask who Fernando CHEUNG is. What does he know? Why should I let him pick three persons for me to choose?

How is the nominating committee formed? According to the decision made by the Standing Committee of the National People's Congress (NPCSC) on 31 August (31 August Decision), the size, composition and formation method of

the nominating committee shall be in line with those of the Election Committee of the Chief Executive of the fourth term. What is the composition of the Election Committee? It is composed of a total of 1 200 members from four sectors with 300 members each. What are the four sectors? The first sector is the industrial and commercial sector, which includes such subsectors as catering, commercial (first) and (second), industrial (first) and (second), the Employers' Federation of Hong Kong, finance and financial services — I am all confused why there are so many such divisions, for all I know is that there is division between men and women for toilets and beauty salons — and there are also the insurance, real estate, textiles, and tourism industries. I am not too sure how many people are still working in the textiles and garment industries. To sum up, there are a total of 300 such Election Committee members from the above subsectors and in the election of the last term, the total number of voters for this sector was only more than 20 600. Who were these 20 600 voters? Most of them were companies and organizations. The agriculture and fisheries subsector had 60 seats, but how many voters were there? There were 159 voters. In respect of the labour subsector, formidable! How many wage earners are there in Hong Kong? The work force is over 3 million in Hong Kong. But how many voters were eligible to elect the 60 Election Committee members for this industry? Only 626. Of course, they were group votes. There were also 36 Election Committee members for the National People's Congress and 51 for the Chinese People's Political Consultative Conference. By whom were these Election Committee members elected? Only God knows. The sector for the professions had the highest number of voters, well over 200 000 in 2012, but the number of Election Committee members representing them was still 300.

As a matter of fact, only 250 000 persons were eligible to vote and elect Election Committee members. Most people in Hong Kong are ineligible to choose either the nominating or Election Committee members. The two committees are just the same. When the NPCSC shut the door, they already indicated that both were the same. Who are these members? 80% of them are controlled by "Grandpa". Are we not being cheated when they select the candidates for us to elect in the name of universal suffrage? Ms Cyd HO puts it very plainly that it is political bid rigging. Many owners' corporations know very clearly what bid rigging is as they have personal experience of their tenders being rigged. The whole situation is under other people's control. Then these people would pretend that you have a choice but what they give you is not a genuine choice whatsoever.

The Basic Law stipulates that the Chief Executive and the Legislative Council can be selected or formed by universal suffrage. The decision made by the NPCSC in 2007 stipulates that we can select the Chief Executive in 2017 and the Legislative Council of the next term in 2020 can be formed by universal suffrage. But today, our SAR Government has told "Grandpa" the method of election of the Legislative Council in 2016 need not change as its composition of one half of the Members being returned by functional constituencies and the other half by direct elections should remain the same. If we pass this constitutional reform package today, how can the composition of the Legislative Council be suddenly changed from the one in 2016 to all seats being returned by direct elections in 2020 in one go? Will those Members who are used to having free political lunch be willing to make such a change? Who are they? They are the 30 Members returned by the traditional functional constituencies.

In the Legislative Council Election in 2012, 16 functional constituency seats were returned uncontested. Those Members had no need to go through the election and could enjoy free political lunch. For those of us who run in the direct elections, can we be returned uncontested? Have you ever known anyone in the world who has been returned uncontested in a direct election? As for the 30 Members returned by functional constituencies, over half of them were returned uncontested. What does that mean? It means that they have all made deals; if not, how can the result have been like that? You can see just by looking at their electorate base. For a few hundred voters electing one seat, there is no need to elect because most of those organizations are controlled by themselves. They only need to hold a banquet with a few tables in a restaurant and they can decide who is to be elected next after some negotiation. There is no need to talk about Heung Yee Kuk as this is already its tradition. Mr CHAN Kin-por from the insurance sector was returned uncontested and Mr Frankie YICK from the transport sector was elected with zero votes. The three labour sector seats representing over 3 million wage earners were all returned uncontested. I should stop counting as there are no secrets about such matters. If we count on these Members who enjoy free political lunch to fight for universal suffrage for us, we may as well go to sleep as it is just impossible. They are only subservient to authority. Do you think they will really return the power to the people? "Grandpa" already promised in the decision made in 2007 that there would be universal suffrage but he breaks his promise now and shuts the door. The only way out for us is to invalidate the 31 August Decision and reactivate the constitutional reform process as soon as possible, which is very clear; otherwise what path is Hong Kong to take in future? How will this group of people rule Hong Kong in future?

I have heard Mr Ronny TONG, who has great wisdom, say, "Without democracy, we are at risk of being ruled by the inferior." I do not wish to use this word but this is the fact. (*The buzzer sounded*)

**MR CHAN CHI-CHUEN** (in Cantonese): President, as "I want genuine universal suffrage" is the wish of many Hong Kong people, we have it written on the New Year scrolls and they are even more popular than the ones saying "Kung Hei Fat Choi". In fact, many Hong Kong people have paid even a higher price for genuine universal suffrage than for getting rich. However, the Beijing Government does not want to give Hong Kong people genuine universal suffrage. In making the 31 August Decision, the Standing Committee of the National People's Congress (NPCSC) has laid down not a framework, but three big restrictions called "despotism", "hegemony" and "retrogression".

The NPCSC laid down the three restrictions in the 31 August Decision as the second step in the "Five-step Process". Actually, by introducing the "Five-step Process", the authorities have already moved the goalposts. Initially, we had the "Three-step Process", then they substituted it with the "Five-step Process" which is moving the goalposts, but it is even worse than that. When one moves the goalposts, there is still a goal and people can still score a goal. However, in order to prevent us from scoring, they laid down the three restrictions. According to the second step in the "Five-step Process", the NPCSC shall make a determination on the need or otherwise to amend the process of constitutional development, but it has now formulated the actual amendments for us. The NPCSC surely has the authority to interpret the Basic Law, but in laying down the three restrictions in the 31 August Decision, the NPCSC was giving a political order which exceeded its authority to interpret the Basic Law as stipulated in the provisions on administering Hong Kong in the Basic Law.

Earlier on, Mr Paul TSE has eloquently said that the current proposal may be flawed, but that is not important because determinations can be made later on to deal with the flaws. He has also said that the authority of the NPCSC is supreme because it can interpret and amend the Basic Law. After telling me the laws, Mr TSE has said that we do not have to talk about the laws. He has also pointed out that the laws can be amended and determinations can be made later in accordance with the 31 August Decision. What is he trying to tell Hong Kong

people? We consider that the 31 August Decision contravenes the provision for a broadly representative nominating committee. According to the Decision, the provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition and formation method of the Election Committee for the Fourth Chief Executive. In other words, a nominating committee shall be composed of 1 200 members returned from the four sectors. In this connection, we have repeatedly asked the Government why civil nomination, political party nomination or nomination by a nominating committee the members of which are directly elected by the general public is not as broadly representative as nomination by a nominating committee consisting of members from the four sectors? If a greater number of people or even the entire population of Hong Kong can nominate candidates to stand for election of the Chief Executive, everyone in Hong Kong will then have an equal right to nominate. Why is this option not as broadly representative as a nominating committee to be formed according to the Decision? I have then learnt from Chief Secretary Carrie LAM that it is because those options cannot achieve balanced participation of various sectors. Why does nomination by all Hong Kong people fail to achieve balanced participation of various sectors? The reason given is that such nomination lacks representation from the various sectors. This concept of balanced participation of various sectors differs from that of balanced participation with equal right which Hong Kong people have all along understood. Some people say that this issue has to do with GDP contributions, but I think it has to do with contributions of maintaining the stability of the Chinese Communist regime instead.

Furthermore, the 31 August Decision also runs contrary to the principle of gradual and orderly progress according to which constitutional development is to be taken forward. The Decision stipulates that the nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures, and each candidate must have the endorsement of more than half of all the members of the nominating committee. Then, all eligible electors of Hong Kong shall elect the Chief Executive through "one person, one vote" and the selected Chief Executive shall be appointed by the Central People's Government. In comparison with the existing arrangement when "689" LEUNG Chun-ying was elected under which each candidate had to obtain the endorsement of one eighth of all 1 200 members of the Election Committee, the proposed arrangement is actually an even bigger retrogression.

President, you are most intelligent and full of political wisdom. You said earlier that the election method of selecting LEUNG Chun-ying as Chief Executive was one in which "only one candidate can be nominated at the stage of 'committee nomination'", and in the future, "two or three candidates can be nominated at the stage of 'committee nomination'". You said that the future method would surely be better than the existing one. President, as you would be aware, the most severe restriction among the three is that a candidate can be nominated at the stage of "committee nomination" only if he or she has the endorsement of more than half of all the members of the nominating committee. Therefore, whether two, three or four, or even five candidates can be nominated at the stage of "committee nomination", the result will be the same and that is, those who the Communist Party of China does not like cannot be nominated at the stage of "committee nomination". That is crystal clear.

Even if the threshold for seeking nomination at the stage of "members recommendation" is lowered from having obtained recommendation from one eighth of all members of the nominating committee to one tenth, or even 100 members, that is, one twelve of all members, such a proposal is still ridiculous. As Mr Paul TSE mentioned earlier, the Vice Party Chair of the Liberal Party said that requiring persons seeking nomination at the stage of "members recommendation" to have obtained recommendation from all members or one single member of the nominating committee makes no real difference because some of them will not be nominated at the stage of "committee nomination" any way. That is the situation which Hong Kong people have perceived.

Initially, I thought that this motion debate today would not be very meaningful, but I have benefited from listening to the speeches of some pro-establishment Members because I can understand what they really think now. Mr James TIEN of the Liberal Party asked how implementing genuine universal suffrage as proposed by the pan-democrats would be different from seeking independence for Hong Kong. Mr Andrew LEUNG said if the right to nomination is given to the people as proposed by the pan-democrats, it will be no different from supporting populism. Describing an election through "one person, one vote" as a step towards populism reflects that Mr LEUNG does not trust Hong Kong people at all. These Members consider that the right to vote can be played with and so it can be given to the people, but the right to nomination is the real thing and so it cannot be given to them.

Mr Paul TSE has also explained earlier why the right to nomination cannot be extended. It is because the election of the Chief Executive is too important and it is far more important than the elections of the Legislative Council or the District Council. Thus, the authorities cannot allow people to nominate anyone haphazardly. I really cannot understand such remarks. How will nominating candidates to stand for the Chief Executive election by Hong Kong people cause disorder to Hong Kong and affect national security? In the end, the Chief Executive shall be elected by all Hong Kong voters through "one person, one vote".

I want to tell Hong Kong people that as Chinese New Year is drawing near, many Members will go to the districts to write New Year scrolls for them. Let us consider the following story. A Member told the people that they could ask him to write anything. However, when people asked him to write "Good health and vigour", he refused to do so. Then they asked if he could write "Good health" for them, he refused again. The people asked him why. The Member said they could only choose one of two options, which were "Kung Hei Fat Choi" and "Happy New Year". He said they could choose what they liked, but there were only two options. I believe that people would jeer at the Member and scolded him if he adopted this approach because he initially said that he would write anything for them but when the people approached him and made the requests, he said "Kung Hei Fat Choi" and "Happy New Year" were the only choices and they could not even get "Good health and vigour". This is what happens with "fake universal suffrage" as there will only be fake options.

**MR IP KIN-YUEN** (in Cantonese): President, later on I will write spring inscriptions in the Victoria Park and at the Hong Kong Professional Teachers' Union for the public and teachers. I would not limit the contents of the inscriptions. I also hope there will be genuine universal suffrage. Now many people like spring inscriptions with the slogan "I want genuine universal suffrage" written on them.

President, I wish to respond to Prof LAU Siu-kai, Vice Chairman of the National Association of Study on Hong Kong and Macao, who has said recently that the Central Government will not abolish the functional constituencies of the Legislative Council in 2020 and what is most likely is that it may formulate a system to introduce some elements of universal suffrage in the functional constituencies.

As a matter of fact, should the constitutional reform in Hong Kong be very strict and based on an official document as the proof? At the 31st session of the Standing Committee of the Tenth National People's Congress on 29 December 2007, it was decided, "The election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage."

Now the Government says that the Chief Executive is to be selected by universal suffrage in 2016. In the 2020 Legislative Council Election, will all Members be elected by universal suffrage? The paper is very clear about this. How can it be interpreted any other way? What Prof LAU Siu-kai said must definitely be objected.

Six months ago, the Standing Committee of the National People's Congress (NPCSC) announced three major barriers to Hong Kong's constitutional reform. The three barriers are: (1) the number of members, composition and formation method of the nominating committee, that has no representativeness, will remain unchanged; (2) there will only be two to three candidates for the office of Chief Executive; and (3) each candidate must have the endorsement of more than half of all the members of the nominating committee. As a matter of fact, many Members have said that the requirement for a candidate to obtain the endorsement of more than half of all nominating committee members is a very tough barrier. After the candidates have gone through the three barriers and been screened by the nominating committee, they are finally left for the public to select, by means of the so-called "one person, one vote" method, as the new Chief Executive. Such a selection process of the Chief Executive is in effect "genuine screening and fake universal suffrage". The worst part is that the Chief Executive thus selected will enjoy the status of being selected by all people in Hong Kong through universal suffrage. He will be seen as having the mandate of millions of Hong Kong people and his legitimacy established. But the real preference of the people of Hong Kong is completely distorted because an election with three rotten candidates, the one elected will also be rotten. It will never be able to select a Chief Executive whom the people of Hong Kong truly wish to have.

On 6 January this year, the Task Force on Constitutional Development submitted the Report on the Recent Community and Political Situation in Hong

Kong (Report) to the Hong Kong and Macao Affairs Office of the State Council. The concluding remarks of the Report are, "It is the common aspiration of the Central Authorities, the SAR Government, and the people of Hong Kong to implement universal suffrage for the Chief Executive election in 2017 in Hong Kong as scheduled and strictly in accordance with the Basic Law and the relevant Interpretation and Decisions of the NPCSC. This is also an important policy initiative of the current term Government." (unquote)

However, according to the survey conducted by the Public Opinion Programme, University of Hong Kong, soon afterward, 43% respondents agreed that the NPCSC's decision on 31 August (31 August Decision) rendered the Chief Executive election in 2017 a "fake universal suffrage" while only 30% respondents disagreed. From this we can see that the Report cannot truthfully reflect the real public views in Hong Kong or Hong Kong people's aspiration to genuine universal suffrage.

On the other hand, after the announcement of the 31 August Decision, many people have expressed a strong resentment and many staged assemblies, marches, demonstrations and class boycotts.

Members may recall that on 28 September, the Police fired 87 tear gas canisters which incited the Umbrella Movement that lasted 79 days. The survey on "The Public Opinion and Political Development in Hong Kong" conducted by the Centre for Communication and Public Opinion Survey of The Chinese University of Hong Kong found that 20.1% people said they had participated in the occupation at the site. From that we can estimate about 1.2 million people in Hong Kong have participated in the Occupy movement. Please note that 1.2 million is a very big number.

The theme of the Umbrella Movement was "I want genuine universal suffrage" and in every five persons in Hong Kong, one went to the occupation sites or supported the movement. Obviously they could not accept the fact that the Government went against the public's views and wilfully used violence against unarmed people. The SAR Government should reflect deeply, accept the public's views and right the wrong, rather than keep turning a blind eye to the reality and continue with the second round of consultation on the constitutional reform without universal suffrage.

While speaking at an opening ceremony, Mrs Carrie LAM, the Chief Secretary for Administration, said that the implementation of the selection of the Chief Executive by universal suffrage in 2017 was only a step away. But in reality, from the transition of the second step to the third step of the "Five-step Process", we see that whether there will be genuine universal suffrage or fake democracy is a matter of slight difference only. The so-called "a step away" may be a wrong step which will be too late to turn back once it is taken.

President, we urge the SAR Government to strictly follow the Basic Law and the International Covenant on Civil and Political Rights to implement the selection of the Chief Executive of Hong Kong by universal suffrage according to the law as scheduled in 2017. This is the Central Government's solemn pledge, the constitutional duty of the SAR Government and the hope of all people in Hong Kong as well. Therefore, the Government is duty-bound to allow the Legislative Council to pass a constitutional reform package (*The buzzer sounded*) ... which is a genuine package of universal suffrage.

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

Does any other Member wish to speak?

**MR LEUNG KWOK-HUNG** (in Cantonese): I have heard many royalists talk about issues concerning national security or the Chinese people. I would also like to join in. First, over 70 years ago, the Chinese Communists promised the Chinese people the implementation of universal suffrage — I have already quoted from the editorial of the *Xinhua Daily* last time. From 2 February 1944 till now, 71 years has passed. Someone says that the Central Government does not owe us that but, buddy, the fact is the Chinese Communists owes it to the Chinese People. No one asked the Chinese Communists to implement the constitutional system in China and neither were the Chinese Communists asked to write in their party newspaper that any election which had its candidates screened was a fake election as it reduced the people to voting tools. No one asked them to do that. They said it themselves because the election for the national assembly was not conducted by the Chinese Communists at that time but was controlled by the Kuomintang, right?

In 1945, one year after 1944, World War II was over. When the security of our country was under threat during the invasion of Japanese militarism, the Chinese Communists made this promise to all people in the country to counter Kuomintang's one-party dictatorship. Starting from January 1946, at the invitation of the Chinese Communists, Kuomintang held the first Political Consultative Conference. It was the Chinese Communists who said that Kuomintang's one-party dictatorship was wrong and they wanted to implement universal suffrage in the entire country, right? Don't you have any recollection? As the servile followers of the Communist Party, you have to know if you master defecate or urinate.

As Chinese people living in Hong Kong, is it wrong for us to ask the Communist Party to give us back what it promised the Chinese people 70 years ago? They always ask various questions. Are we not Chinese people? Buddy, excuse me, I wish to hear what the pro-establishment camp would say. It is outrageous that Mrs Regina IP could say such things as "love Hong Kong, love the Motherland, and love the Party". She has been immersed in poison too deeply. This is the first point.

Second, what vain hopes do the pan-democrats have? In putting forth the so-called "three-track nomination proposal", the pan-democrats have violated their own principles of universal and equal suffrage. Can we stop you? Can we stop the 1 200 strong nominating committee privately appointing a candidate? Can we stop that? We just say that anyone who gets a certain number of nominations, say 10 000 or 50 000, has the right to run against the candidates nominated by the nominating committee controlled by the Chinese Communists. This is just like a race in which I tied up my feet to race with you on a 100 m track. Are you still afraid of losing? Besides, after the race, a referee can still say, "'Long Hair', you broke the rules during the race and hence you lost." This referee is the NPCSC. Buddy, what are you talking about now? Please do a better job when kissing China's ass.

President, if your father trusted the Communist Party, 71 years has flown by now. Are we asking too much? It is what the Chinese Communists have promised the Chinese people. Are we Chinese people? They say we are Chinese people. President, they are actually incoherent. Another point is that Mr NG Leung-sing's brain is not functioning well. He said that for whatever passed by the NPCSC, if we veto it in the Legislative Council, we breach our oath. Even the Mainland authorities would not say so. Matters passed by the

NPCSC can be overturned by the NPC through specified procedures. The veto power that we will exercise here has been solemnly promised by the Chinese Communists. If the constitutional reform package put forth by the SAR Government is no good, we have the right to veto it. Now the NPCSC has built on the SAR Government's proposal after the consultation by illegally adding unnecessary terms to bar us from entering the race. According to QIAO Xiaoyang's interpretation of the Basic Law in 2007, the NPCSC would only indicate whether constitutional reform should be carried out in the light of the actual situation in Hong Kong.

Mr NG Leung-sing, are you a member of the Communist Party? Even the Communist Party which practises democratic centralism still allows people the right to keep their views, complain to their superiors and change unreasonable decisions, right? Do you think the people or legislative members of a country have to obey everything their government or the dictators say to be eligible to subserviently follow them? Threatening us this way, are you a man or a dog?

President, seven minutes is too short as I can speak for a long time. I am tired of listening to these people. Now I wish to ask only one question, that is, if at a session of the NPCSC in this year it is found that the NPCSC has made an unconstitutional decision, does it have the power to amend it? If so, "XI Daquan"<sup>1</sup> should amend it. "XI Daquan" should not let "morons" like ZHANG Dejiang, ZHANG Xiaoming and LEUNG Chun-ying mess up ... He should straighten out the mess. "XI Daquan" should return what the Chinese Communists promised the Chinese people over 70 years ago to the Chinese people living in Hong Kong 71 years later to make Hong Kong a more democratic place. For those pan-democrats who say they are patriotic and those who claim to be patriotic, they should play their part of wretched lackeys by eating dog dung in a more proper manner (*The buzzer sounded*) ...

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

Does any other Member wish to speak?

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<sup>1</sup> It has the same tone as "習近平" and is a homophonic pun as "集大權" in Cantonese, meaning having all powers concentrated on him

**DR CHIANG LAI-WAN** (in Cantonese): President, in the last two days I have heard pan-democratic Members express many views. As regards their comments, I beg to differ with many of them. I can only describe them with one word, nonsense. I believe everyone has heard the remarks of Mr "Long Hair" very clearly but does anyone remember what he has said? What are his points?

Alright, I would like to talk about Ms Cyd HO's motion first. She says the 31 August Decision of the Central Government (31 August Decision) lays layer upon layer of control over the election result. What is the base of this claim? Does she believe that the vote in the hands of each one of the millions of people in Hong Kong can be controlled by the Central Government? How they can be controlled? I earnestly hope that Ms HO will explain it to us clearly how the Central Government can be so formidable that it can control the vote in the hands of each one of millions of people.

Some of Ms HO's comments are contemptible. Ms HO accuses the Chief Secretary for Administration of confusing right and wrong, twisting the facts and not doing her duty. I would like to ask her to ask anyone in the street who they think is not doing their duty right now. It may well be the opposition Members like her. Everyone in Hong Kong knows that they constantly filibuster and engage in the non-cooperation movement, trying every means to hinder the Government's governance. Who are those threatening to paralyse Hong Kong? Those are the honourable opposition Members. Why do they do so?

Dr KWOK Ka-ki has just voiced their heartfelt wishes. He directly spoke out their fear, which is, if the Chief Executive was selected by 1 689 000 votes, then they would have no more role to play. Mr Alan LEONG was even more direct. He said that only by vetoing the constitutional reform package would they still have hope, which was after all better than falling down a deep abyss. Of course, if the constitutional reform package cannot be passed, Mr LEONG can continue to chant "We want genuine universal suffrage; we want genuine universal suffrage" every day. If this happens, he will of course still have hope as he will be able to keep his job for a long time. However, the situation in Hong Kong will be dire. Every day they fight for their democracy and every day Hong Kong's economy is paralysed. Hong Kong will fall into a bottomless abyss. Mr Albert HO has made it even clearer that as long as there is no democracy in Hong Kong, there will be no economic development in Hong Kong. Their intent is obvious to every man in the street.

President, today Ms Cyd HO's motion proposes to "seeking the invalidation of the decision of the Standing Committee of the National People's Congress and reactivating the constitutional reform process" which, I think, is redundant because the NPCSC has already stated that after the 31 August Decision is vetoed, the selection method of the Chief Executive in the 2017 election will be back to square one. Ms Cyd HO may say it does not matter and it is all right to wait for one more term. But is it true that we just need to wait for one more term? Can she be sure? It may well be that we will not get universal suffrage after waiting 10 more terms. Who is going to bear this responsibility? A friend put it very plainly. She asked whether Beijing would dare to activate another constitutional reform again if this constitutional reform was not passed this time. Who dares to do so? After the activation of the constitutional reform to allow us an election by universal suffrage, they staged the Occupy Central movement, making Hong Kong the focus of global news. Everyone is frightened.

I wonder if Ms Cyd HO has heard the story of King Solomon's judgment, which is about two mothers' fight for a new born child. One woman was the mother of the child and the other was not, whose own child was dead. They asked King Solomon to be the judge. Having thought for a moment, King Solomon ordered the child to be cut into two and each of them to get one half. The fake mother agreed. If she could not get the child, neither could the other woman. But the real mother begged King Solomon not to do so. She would rather give the child to the other woman than having the child killed. She did not wish to have her child destroyed. President, King Solomon settled a dispute with his wisdom. In the end, he gave the child to the real mother because he considered that only the one who truly loved the child would ask him to spare the child's life. And only those who truly love Hong Kong would wish that it could be spared of troubles. They do not have the heart to see it paralysed or let it fall into an abyss.

I hope that Ms Cyd HO and other pan-democratic Members will use their political wisdom to take forward democracy in Hong Kong. I call on them not to be the fake mother who wants to hack down her child and hack down democracy. I hope that they will refrain from destroying good and bad alike, and depriving the people of Hong Kong the chance to select the Chief Executive by universal suffrage.

Finally, I have to respond to Mr Alan LEONG. Other than participating in the movements such as "Trailwalker Universal Suffrage", voting on the

Internet and Occupy Central as mentioned by him, a group of young people have even committed criminal offences. They have done everything they want, and what else will they do? Mr LEONG, please stop. I wonder if Mr SZETO Wah, whom they highly respect, were still alive, what he would tell them. I believe he would tell them to "please support the constitutional reform".

President, I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may now speak on Mr Alan LEONG's amendment. The speaking time limit is five minutes.

**MS CYD HO** (in Cantonese): In this five minutes, I will mainly respond to the Mr Alan LEONG's amendment. As I am aware, Mr James TO has also proposed an amendment but was not approved by the President, I would like to respond to it as well. Although Mr James TO's proposal has not been included in the motion, I consider it necessary to respond to it.

Mr James TO's proposed amendment mainly pointed out that the 31 August Decision made by the Standing Committee of the National People's Congress (NPCSC) is inconsistent with its interpretation of Annex I to the Basic Law made in 2004. They are inconsistent. According to the ruling made by the former President, this amendment is considered to involve accusatory expressions against the NPCSC and has degraded it in the public estimation. As such, the President has followed the previous ruling and ruled that the amendment cannot be proposed. From this, we can see that the NPCSC cannot be criticized in the Legislative Council. Although Mr James TO has clearly stated in his speech that a relevant procedure has been provided in Article 62(11) of the Constitution of the People's Republic of China, he still failed to propose the amendment on this legal basis.

How can we not query that the requirement of "love the country and love Hong Kong" is nothing but a "goalpost" for screening which can be moved at any

time? Simply speaking, "love the country and love Hong Kong" is, as Mrs Regina IP said with a slip of tongue, tantamount to "love the country and love the party", spelling "P-A-R-T-Y". In other words, anyone who wants to criticize the authority and speaks the truth will not be allowed to stand for the election.

Mr Alan LEONG's proposed amendment focused on LEUNG Chun-ying's attitude of turning a deaf ear to the Umbrella Movement. In fact, he has not only turned a deaf ear, but has also been aggressive and provocative by manipulating power. Seeing that more than 1 million people have taken part in the Umbrella Movement to express Hong Kong people's opposition to screening elections and "political bid-rigging", he got so excited and "opened fire" by mobilizing all propaganda machines and channels. As I have said in my opening speech, public officials have not responded to the appeal of the pro-establishment and moderate pan-democratic camps to narrow the gap during the second round of consultation. Was he not interested or has he received an order from his boss that the consultation exercise merely aims to provoke political struggle?

Not only has LEUNG Chun-ying refused to respond to the Umbrella Movement, he has even named and criticized *Undergrad* for exaggerating the issue of Hong Kong independence. By waging a Cultural Revolution-style denunciation against the students, he has dealt a blow to the democratic camp at the same time. This is precisely the tactic adopted during the Cultural Revolution, and that is, isolating a small group of people first and accusing them of committing a serious offence, then calling on other people to distance themselves from them. The so-called "White House spokesman", that is, former member of the Democratic Party Andrew FUNG, also adopted such a tactic during the programme City Forum. As LEUNG Chun-ying is the same kind of person as Andrew FUNG, he also threw questions at Mr Alan LEONG in this way during the Chief Executive's Question and Answer Session.

As a matter of fact, such tactic is easily seen through. By splitting Hong Kong people into two camps, they have become either enemies of students or supporters of Hong Kong independence. The latter will then be isolated and arbitrarily labelled, and eventually convicted by association. As the Chief Executive, he has completely forgotten that he is obliged to uphold Hong Kong's freedom of speech. Instead, he has waged a Cultural Revolution-style denunciation. As pointed out by Mainland public officials, there will be no more Cultural Revolution in the Mainland because people are all aware of the disastrous consequences. It will definitely not happen again. But who could

have imagined that the Chief Executive supported by the Central Authorities and 689 members of a small-circle election would wage a Cultural Revolution-style denunciation in Hong Kong? I hope that not only the pan-democratic camp will find this unacceptable, but the pro-establishment camp will also understand that we depend on each other. If we accept the constitutional reform package today, no one can escape from the denunciation in the end.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I will make a brief response to the original motion moved by Ms Cyd HO and the amendment proposed by Mr Alan LEONG.

After the Standing Committee of the National People's Congress (NPCSC) announced the Decision on 31 August 2014, the SAR Government realized that people from all walks of life have divergent views on Hong Kong's constitutional development and the content of the Decision. As a matter of fact, during our earlier discussion, Members have also expressed different views in this Chamber.

Nonetheless, as the SAR Government has stressed time and again, our constitutional development must be based on the Basic Law and the NPCSC Decision, and this is the only way to implement the selection of the Chief Executive by universal suffrage in 2017. We have now completed two steps of the "Five-step Process" of constitutional development, and the third step to be followed is very critical for there must be the endorsement of a two-thirds majority of all the Members of the Legislative Council. I hope that no Members present will give up an opportunity to put in place the selection of the Chief Executive by universal suffrage in 2017 at this stage. The SAR Government will also work till the last moment to secure the support of all Members present. I hope Members will not let the people down by supporting the constitutional development and not wasting the time.

To design a universal suffrage system that best suits Hong Kong on the basis of the Basic Law and the NPCSC Decision is the purpose of the second round of consultation conducted by the SAR Government. Recently, the SAR Government is happy to see that many conscientious persons, including a number of Members present at the meeting, have worked very hard to search for the largest possible room to implement universal suffrage under the framework of the NPCSC Decision. The Government is not as indifferent as Ms Cyd HO has said just now. This is not the case. We therefore earnestly hope that Members can

look from a pragmatic perspective and proactively take part in the discussions so as to forge a consensus, thereby enabling us to implement the long-desired universal suffrage where 5 million eligible voters will have the right to vote and the chance to take forward our democratic development. Only in doing so can we make the first step towards universal suffrage and genuinely head for the goal of "expeditiously implementing the selection of the Chief Executive and the election of all Legislative Council Members by universal suffrage".

President, as I have said in my opening speech, the SAR Government considers that the contents of the original motion and amendment have not only done nothing to help realize the goal of universal suffrage, but has even made it beyond our reach. Therefore, we oppose the original motion and the amendment, and call on Members to vote against them.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Alan LEONG to Ms Cyd HO'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)

Ms Cyd HO rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for five 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 stop now and the result will be displayed.

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted for the amendment.

Dr LAU Wong-fat, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, Mr Paul TSE, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT, Dr CHIANG Lai-wan and Mr Christopher CHUNG voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 31 were present, eight were in favour of the amendment and 23 against it; while among the Members returned by geographical constituencies through direct elections, 29 were present, 16 were in favour of the amendment and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**MR ANDREW LEUNG** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Seeking the invalidation of the decision of the Standing Committee of the National People's Congress and reactivating the constitutional reform process" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the motion on " Seeking the invalidation of the decision of the Standing Committee of the National People's Congress and reactivating the constitutional reform process" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may now reply and you have three minutes 57 seconds.

**MS CYD HO** (in Cantonese): By using three minutes and three seconds to reply, the Under Secretary has demonstrated what is meant by saying one thing and doing another. He said that the Government has responded, but from the moment he started to deliver his speech to the moment he sat down, he has only used three minutes and three seconds, and he has not responded to the six proposals put forward by me in my opening speech to narrow the gap. This is indeed consistent with the attitude adopted by the Government with regard to the constitutional reform, that is, saying one thing but failing to achieve. People have therefore watched the reality show performed by the Government and know very well the quality of the constitutional reform that it has advocated.

I am very thankful to the total of 42 Members who have spoken, and many of them are from the pro-establishment camp. Pro-establishment Members are so skillful in attacking pan-democratic Members that they are comparable to the old ladies who perform villain hitting acts in Canal Road. They keep repeating the same argument without raising new ideas and have not responded at all. I am very grateful to Mr James TO and Mr SIN Chung-kai for explaining the legal and constitutional justifications for me, so I am not going to repeat here.

After listening for so long, I find that the pro-establishment camp often raised a few key words. The first key word is "one step away". And yet, this is a very difficult step because we are asking the people in power to give up their privileges. Who will be willing to give up the privileges that they are enjoying? The answer is very simple. Let us ask Members if they support the abolition of functional constituencies. We have already found the answer in the debate of these two days, and that is, they will not support. Therefore, people should not believe in the democracy advocated by them. The fact is, while the Government

has provided benefits in exchange for support, the business sector has offered power in exchange for benefits. The Government claims that all sectors must be represented, including the class of people who exploit others, and it allows the exploiters to continue to manipulate political and economic benefits.

The second key word is "unrealistic". Another key expression that is very unpleasant to the ears but has not been mentioned today is "showing mercy". Ms Starry LEE uses this expression most frequently and I am infuriated whenever she says so. It is extremely disgusting for the privileged ones, who have been bullying the people, to play the role of victims and ask for mercy. People are now living in dire straits because the small-circle Election Committee has monopolized the election and ruled Hong Kong for 17 years, thereby causing serious disparity between the rich and the poor. The per-square-foot price of a flat in City One Shatin is \$14,000, anyone earning an average income can only afford to buy a flat there if they spend no money on food, travelling or other expenses for 30 years. Some people said that one need not acquire his own home, but the increase in rent has far exceeded that of salary. As a result, people have to live in "sub-divided units". Some people are worried that election may lead to populism, but 80% of Hong Kong people have to apply for housing subsidies. Such populism, seen as an exploitation of members of the public, is caused by the privileged small circle, with the pro-establishment camp conniving collusion between the Government and the business sector. Hong Kong people, please remember them.

Another key expression is "public views". Why not hold a referendum if they attach so much importance to public views? It would be most desirable if a referendum is held the Government; if so, there is no need for Mr Albert HO to resign. If they want to bundle us all up, they should not only bundle the 20-odd votes of pan-democratic Members; they should instead bundle the 69 votes of the entire Council. The result of the referendum will then decide whether we should be duped or distinguish right from wrong. May I ask Members who attach importance to public views to live up to their words, and join hand with us to urge the Government to implement Prof Albert CHEN's proposal of consultative referendum. If all Hong Kong people choose to "pocket it first" and bundle the 69 votes together, we are happy to do so.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Cyd HO 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 WONG Kwok-hing rose to claim a division.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Albert HO, Mr James TO, Mr Frederick FUNG, Mr CHEUNG Kwok-che, Mr Charles Peter MOK, Mr Kenneth LEUNG, Mr Dennis KWOK and Mr IP Kin-yuen voted for the motion.

Dr LAU Wong-fat, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Miss CHAN

Yuen-han, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mrs Regina IP, Mr Paul TSE, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT, Dr CHIANG Lai-wan and Mr Christopher CHUNG voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 31 were present, eight were in favour of the motion and 23 against it; while among the Members returned by geographical constituencies through direct elections, 29 were present, 16 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, he therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): The motion debate on "Comprehensively reviewing the provision on 'access to computer with criminal or dishonest intent' under the Crimes Ordinance".

Members who wish to speak in the motion debate will please press the "Request to speak" button.

I now call upon Mr Charles Peter MOK to speak and move the motion.

## **COMPREHENSIVELY REVIEWING THE PROVISION ON "ACCESS TO COMPUTER WITH CRIMINAL OR DISHONEST INTENT" UNDER THE CRIMES ORDINANCE**

**MR CHARLES PETER MOK** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, over the years, I have all along been concerned about the possible abuse of section 161 of the Crimes Ordinance in relation to the offence of "access to computer with criminal or dishonest intent" by the SAR Government and the Police. As I am engaged in the computer and network industries, I am particularly concerned about the relevant offence. Over the years, I have found that many cases prosecuted under section 161 are absurd in the eyes of ordinary people. Such cases include selling set-top boxes and illegal Wi-Fi network devices that involve copyright infringements, clandestine photo-taking, fraudulent cases, using company telephone to make private long-distance calls, staff stealing tokens to access amusement game machines, illegal access to colleagues' personal data via computer, as well as an increasing number of conviction for expression of opinions in recent years. The law-enforcement agencies are adopting an "all-inclusive" approach by including various offences pertaining to the broadly-defined term of "computer" in the scope of prosecution.

Some people may ask, since all these acts are alleged crimes, why are they not prosecuted under some other more appropriate legal provisions? In fact, for many cases, it seems that prosecutions can be instituted under some other more appropriate legal provisions, including the Telecommunications Ordinance, ordinances pertaining to theft and criminal intimidation, as well as the Personal Data (Privacy) Ordinance. Other provisions of the Crimes Ordinance can also be invoked. Why then must section 161 be invoked in instituting prosecutions? Why are prosecutions instituted under section 161 only on some occasions while another ordinance is invoked together with section 161 on other occasions?

Though the reference to the legislative intent may not be able to deter how the authorities interprets this provision now, the fact remains that the current practice is not the legislative intent of section 161. Later on, I will explain the legislative background of this provision and the changes evolved, hoping to draw greater concern to this issue which is very important in respect of Internet freedom.

In 1993, the Government amended, through the Computer Crimes Bill 1992, the Crimes Ordinance (Cap. 200) by adding section 161, which provides for the offence of "access to computer with criminal or dishonest intent". At that time, the then Secretary for Security explained that the new provision was added with an aim to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud.

(THE PRESIDENT'S DEPUTY, MR ANDREW LEUNG, took the Chair)

When the provision on "access to computer with dishonest intent" was enacted, the original intent was to target access to a computer for acts preparatory to the commission of a fraud. However, the provision has now been used to target "other crimes committed through the use of computer". Any person who obtains access to a computer with intent to commit an offence, whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for five years.

Today, in moving this motion, I am asking the authorities to stop abusing section 161 and conduct a review of the provision. The major reason is that the definition of crimes committed through the use of computer under this provision is too broad. Basically, any person who uses computer with the so-called "dishonest intent" or "intent to commit an offence" — which is vague and unclear — will have the chance of being caught by the law. There is even a possibility that if one does not use a computer, what he does will not be considered as an offence; but if a computer is used, prosecution can be instituted under section 161. As a matter of fact, if the Police are of the view that a certain person has an "intent to commit an offence" when he obtains access to a computer, an arrest can be made. Since "whether on the same occasion as he obtains such access or on any future occasion" is stipulated in the provision, as long as a person has an intent to commit an offence, even if no actual action is taken ultimately, he can still be arrested anytime on any future occasion.

This draconian law is like a knife hanging over the heads of netizens and all other persons who use computer. Nowadays, who doesn't use computer? So long as computers are involved, one may have committed an offence without his knowing. The provision also enables the Administration to monitor the

opinions expressed on the Internet and other cyber activities, serving as the off-the-shelf "Internet version of Article 23". We no longer have to look elsewhere for monitoring. The Police frequently launch extensive publicity about various acts which may breach the law and then intimidate the public, but members of the public do not have any idea where the bottom line lies. It turns out that the legislation can be so "all-inclusive".

Given that the Police can invoke section 161, it is no longer necessary to enact legislation on Article 23 of the Basic Law as the same effect can be achieved. At present, almost all communications are conducted through computers or mobile phones to the extent that mobile phones have become computers. Basically a mobile phone is a computer. That is the most horrific form of white terror. An ordinary netizen posting messages on the Internet may get into big trouble. Even if ultimately he is not prosecuted, he still suffers as the Police go to his home to conduct investigation, make an arrest and bring him back to the police station for interrogation; the Police will also ransack his home, take away his computer and plague him for several months. It is not until the Court has delivered its judgment that the person knows whether or not he has committed an offence. The entire procedure can achieve the deterrent effect and serves as a good warning. Such incidents have occurred many times during the Umbrella Movement.

I initiated a joint signature campaign to oppose the "multi-purpose key for Internet Article 23" by the end of October last year. Over 5 000 signatures were collected within two weeks. The legislative intent of the ordinance was to combat the use of a computer for acts preparatory to the commission of a fraud. We can imagine what a computer was like in 1993. When answering an oral question in the Legislative Council, the Secretary actually said the legislation that stood a higher chance of convicting the defendant would be invoked when prosecution was instituted. This is the best example to illustrate how this vaguely written provision has been abused.

It seems that the effectiveness of enforcement actions of the authorities is in direct proportion to the political nature of the case. For instance, in the case of CHAN Pak-shan, the brother of Melody CHAN, he was charged for inciting people to take part in unlawful assemblies on Facebook. However, it was later found that he obtained unauthorized access to his neighbour's Wi-Fi, and he was charged for the offence of accessing to a computer with a dishonest intent to cause loss to another. Of course, causing loss probably referred to his access to

the Wi-Fi of other people. However, I believe even if members of the public have sometimes unknowingly or intentionally used the Wi-Fi of their neighbours, the Police will unlikely "make special arrangements under the special situation". Perhaps the Police later found out such act and thus instituted prosecution under section 161 instead, for the offence of using the Wi-Fi of neighbours could be convicted more easily. Thus, section 161 was invoked for prosecution, thereby avoiding invoking other provisions as it was difficult to adduce relevant evidence.

Deputy President, when reviewing the discussion on the enactment of the legislation back then, it was obvious that the objective of enacting section 161 was not to target online comments. As a matter of fact, we did not have online comments at that time. Although reference can be drawn from previous court cases when section 161 is invoked, once such a precedent is set, we may probably consider re-examining the legislative intent meaningless.

From the perspective of the Police, a chance for successful prosecution is all that matters. Just now I mentioned Secretary LAI's reply to oral questions raised by Members, saying that the legal provision which would likely convict the defendant would be invoked when prosecution was instituted; and that it was not necessary to interpret the legislative intent of the provision. However, in our opinion, section 161 is a loophole that can be abused by the Police. I raised a question in this Council in April 2013 and Secretary LAI Tung-kuok gave the following answer (I quote): "The above section (referring to section 161) aims at combating acts of 'access to computer with dishonest or criminal intent', such as technology crimes like online fraud and illegal access to a computer system, as well as other crimes committed through the use of computer". (End of quote) It was April 2013.

However, in November last year, I do not know whether it was because the Umbrella Movement had commenced, when I raised a question on section 161 again, apart from quoting the original text mentioned just now, Secretary LAI had also added "urging or inciting others to engage in illegal activities".

Obviously, the authorities have a motive to impose the concept of "speech crime" under section 161. Officials can talk inconsistently for political expedience sake. "Urging or inciting others to engage in illegal activities" has nothing to do with the use of computer. This is because prosecution for other offences can also be instituted. Thus, the authorities just cook up some justifications. If the authorities insist that section 161 has not been abused, it

should support my motion of restricting the scope of application to target computer frauds only, so as to be compatible with the original legislative intent, thereby allowing the provision to take its effect properly.

As a matter of fact, during the discussion on the enactment of the Computer Crimes Ordinance in 1992, the Legislative Council had invited the sector to discuss how to avoid innocent users from being penalized; and how to ensure that freedom of information would not be suppressed because of this legislation in preventing crimes pertaining to computer. In 1992, these issues were discussed. However, the definition of "access to a computer with a dishonest intent" has become very vague and unclear now. During the discussion, "dishonest" referred to "cause gain to themselves or loss to others" which meant facilitating gain for yourself or causing loss to others, and it was clearly stipulated that the provision "theoretically be used to prosecute people making infringing copies". In other words, it was used to institute prosecution of offences using computer to forge documents with the objective of committing fraud.

The authorities may point out that section 161 is invoked to institute prosecution against hacking attacks. However, as a matter of fact, at present other adequate legislation can also be invoked to institute prosecution. Through the enactment of the Computer Crimes Ordinance back then and the subsequent amendments of the Ordinance, these cybercrimes can now be dealt with under other legal provisions. For instance, in sections 59 and 60 of the Crimes Ordinance, the definition of destroying or damaging property has been extended to cover misuse of a computer program or data, with the maximum penalty being imprisonment for 10 years, which is even more stringent than section 161.

In section 11 of the Theft Ordinance, the definition of burglary is extended to cover unlawfully causing a computer in the building to function other than as it has been established by its owner to function, altering or erasing or adding any program or data; the maximum penalty of which is imprisonment for 14 years.

The Police have certainly been sparing no effort in combating online comments in recent years. The Cyber Security and Technology Crime Bureau was set up last month and the Police have planned to drastically increase to nearly double the existing manpower of the Bureau. Many members of the public are worried that such police manpower is actually a cyber patrol team with the special task of identifying "opinions on the Internet with criminal intent". In the past, such an exercise would not have been admitted by the Police. However,

they have been exposed by *Wen Wei Po*. We always believe the reports of *Wen Wei Po*. Thus, I am afraid that there is not much difference between section 161 and the charge of "picking quarrels and provoking troubles" used by the Mainland to prosecute against the rights defense advocates.

Deputy President, I wrote to the Department of Justice (DoJ) by the end of last October, asking for the details of cases pertaining to section 161 in recent years, including the case numbers. I wrote to the DoJ because I could not get the relevant information from the Security Bureau despite my incessant request for the information over the past two years. Regrettably, up till now, the DoJ has not provided the relevant information. Apart from insufficient manpower, it turns out that the DoJ does not have a database which records crimes in accordance with case numbers. As a matter of fact, not only information about this type of crime is not available, there is no relevant information for all crimes. However, if statistics of individual crime can be compiled, what is the reason for not being able to trace the case numbers? If such a database can be established in the DoJ, we need not ask colleagues of the DoJ to search the information for us. I understand that tracing cases one by one is hard work. If the authorities do not intend to cover up, I can only say that the digitization of legal data of Hong Kong is indeed very outdated.

Deputy President, the current scope of application of section 161 of the Crimes Ordinance is already beyond the original intent of dealing with technology crimes and frauds.

I so submit and I ask Members to support my original motion to review the Ordinance, so as to protect people from unreasonable arrests and prosecutions.

**Mr Charles Peter MOK moved the following motion: (Translation)**

"That, when the Administration amended the Crimes Ordinance (Cap. 200) in 1993, the provision on 'access to computer with criminal or dishonest intent' (i.e. 'section 161') was added, with an aim to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud; in recent years, to make prosecution easier, the Police have repeatedly abused section 161 to institute prosecutions against persons using computers or mobile devices to engage in acts which are not in violation of other legal provisions and against persons alleged to have contravened other legal provisions; such a practice has seriously distorted

the legislative intent of section 161, and has turned this provision into a draconian law; in this connection, this Council urges the Administration to review and amend section 161 to make it applicable only to computer frauds, so as to protect people from unreasonable arrests and prosecutions."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Charles Peter MOK be passed.

**DEPUTY PRESIDENT** (in Cantonese): Two Members wish to move amendments to this motion. This Council will now proceed to a joint debate on the motion and the two amendments.

I will first call upon Ms Claudia MO to speak, to be followed by Dr Elizabeth QUAT; but they may not move amendments at this stage.

**MS CLAUDIA MO**: Deputy President, it is a matter of online freedom versus online security. When it comes to online security, Mr Charles Peter MOK has just made it very clear to everyone here that we have plenty of laws to protect cyber security; what are we getting so uptight about? And we have to safeguard your more-than-apparent actual blatant use of police abuse of section 161. We have a full catalogue of what you have been doing; apparently, even more so after the Umbrella Movement. It is so obvious. Why is Mr Charles Peter MOK getting so concerned about your blatant abuse of this particular power, this power you use against "netizens"? Because the sheer number of police prosecutions has become so obvious and rampant to everyone concerned.

Now, what I have put in my amendments, or the key point I am trying to make, is to protect online journalism, that is, what we would call citizen journalism. This law is applicable to and on anyone using a computer including online journalists. What about press freedom in Hong Kong? What has been happening is rampant self-censorship amongst our conventional news labels. Our young people do not read newspapers anymore. They go online for information. Our young people do not bother watching conventional TV news reports because the broadcaster concerned is known as CCTVX.

In my amendment there is actually the term "the fifth power of modern society". Personally, in English, I would rather put it as "the fifth estate of any civilized society", meaning the power on top of the three powers or the three branches of the Executive, the Legislature and the Judiciary. Journalism is supposed to be the fourth power, the fourth estate of our civilized society. But in Hong Kong we are fast losing that.

Look at our traditional media, well, give me a break — look at the way they report news, more often than not, it is simply disgusting. So everyone goes online. I have many favourite online news websites. Are they exposed or not to this abuse of power on the part of the Hong Kong Police? The answer is definite, of course, yes. Anytime, if they somehow consider it appropriate, they want to use it. You said something jolly inappropriate, "Oh, it is nothing political"; we are just using some laws that are perfectly relevant to what you have said online, and we can at least create some atmosphere of terror. And maybe not just terror, you could make online journalists lose their jobs or even shut down a website completely, for example, "We are terrified, and we need to go."

We have to put in some checks and balances in the cyber world against this practically autocratic regime — I hate to use that word but it is practically what is being practised in Hong Kong at the moment. There is a complete lack of trust between the regime of C Y LEUNG and our civil society, and you are just going on and on and on about abusing your power. Somehow, the laws are always on your side. Of course, you are supposed to be on the front line, in the front line, executing the laws and safeguarding what you would call public security including what is in the cyber world. But at the same time, this Government always stresses the importance of "one country" coming before "two systems". What is "one country" about in this regard? Let us look at it.

I got this huge *Ming Pao* piece — I think I have somehow left it behind upstairs — saying that China has upgraded its anti-network or cyber world efforts. What are they doing? They are trying to shut down all these virtual private networks with contents supplied by foreign suppliers or from foreign sources. Oh, it is also a case of no collusion with foreign or outside forces.

I have many Mainland Chinese students who did journalism in Hong Kong and then went back to the Mainland. They kept communicating with me, mostly via Facebook, now and then via Gmail. And I would always ask, "How do you

guys manage to talk to me, even from Harbin?" And they said, "We are very good at going over the 'wall', climbing over the 'wall'." No more, not after all these Beijing efforts to clamp down on online freedom in the Mainland.

As a matter of fact, I did more research after reading *The Washington Post*. Some Liberation Army daily in Beijing actually had an editorial — mind you, not just any ordinary comment but a proper and official editorial — accusing online companies on the Mainland, the Weixin companies, of being untruthful and dishonest about China's history, particularly about the Party's history. What for? With the ultimate goal to shake the rule or ruling of the Chinese Communist Party. How about that? Is that going to be adopted here, if "one country" comes first, right? That is what they are doing up north; let us copy, could not wait. Oh, there is no relevant laws ... oh, yes, exactly, the section on dishonest use of the computer. Is that what you are doing? We really need to look at things, look at what you are doing. Basically, we are here to see what the Government has done wrong. If they have done well, we do not particularly need to clap because that is their duty. But if they have done wrong, we have to point it out and raise public awareness of what they are up to.

In Hong Kong we have no particular legal protection when it comes to access to information or the right to access information. This Government ... well, it is outside your security sphere now, but C Y LEUNG actually made a promise and he said, "Yes, yes, freedom of information law would be very important for Hong Kong", and he would do everything to help safeguard Hong Kong's press freedom. Has he done that? Come on, let us be honest with ourselves, or be intellectually honest at least. In fact that is no archives law in Hong Kong either. You can destroy all the records. At the same time you could withhold any information that should be relevant to any journalistic research or, for that matter, if any member of the public wants to ask for, say, medical records of sorts, you could say it is all very sensitive, so it is not allowed. *(The buzzer sounded)*

**DR ELIZABETH QUAT** (in Cantonese): Deputy President, Hong Kong is a society with freedom of information and Internet is a part of people's daily lives. While the cyber world seems very free, it should absolutely not be lawless. Most legislation for prevention of crimes in the real world is also applicable to the cyber world. In 1993, owing to the prevalence of computers, the Government

amended the Crimes Ordinance by adding section 161 to combat computer crimes. The offence of "access to computer with criminal or dishonest intent" was stipulated.

Section 161 can indeed combat technology crimes that emerge in recent years. Offences such as online fraud, online theft, hacking attack, clandestine photo-taking, stealing artists' photos, as well as inciting other people on the Internet to engage in illegal activities are all caught under section 161.

However, today Mr Charles Peter MOK and Ms Claudia MO are worried that section 161 is too powerful; that the target has deviated from the original legislative intent and that the Police will abuse the provision to suppress freedom. In addition, Mr MOK has once criticized that the definition of the term "computer" in the provision is not clear. I am afraid that I cannot agree with their worries and criticisms.

Mr Charles Peter MOK has in recent years written articles and raised questions on the legislative intent of section 161 on a number of occasions. Just now he has also quoted the speech by the former Secretary for Security Mr Alistair Peter ASPREY at a Legislative Council meeting in 1993. The former Secretary for Security said at that time: "The offence is aimed at penalizing access to a computer for acts preparatory to but falling short of the commission of a fraud." Judging from the original motion and the amendment proposed by Ms Claudia MO, the two Members may have taken the above statement as the golden rule and therefore think that section 161 is only applicable to computer fraud.

As a matter of fact, the former Secretary for Security made the above statement to briefly explain the reason for amending the Ordinance. How can we just take a simple statement as the only legislative intent of section 161? I would like to cite a case to elaborate on this, and I hope you will see my point.

Many colleagues may have heard about the TSUN Shui-lun case in 1999, which caused a big sensation. TSUN was charged with "access to computer with criminal or dishonest intent" for obtaining unauthorized access to a computer in the hospital he worked and faxing the medical records of the former Secretary for Justice Ms Elsie LEUNG to the press. He was convicted and later lodged an appeal to the Court of Appeal. Although he succeeded in having his sentence reduced by Chief Judge of the High Court Mr Justice Patrick CHAN, he was not

acquitted. In his judgment, Mr Justice CHAN pointed out that section 161 caught acts preparatory to the commission of a crime or fraud but he did not agree that it was restricted to such acts. A person who made an unauthorized access into another person's computer might breach section 161 even if he did not have any intention to commit a crime or fraud. For instance, he might be a businessman who wanted to acquire information about his competitors in order to enable himself to have an advantage over them. Such act might result in a gain to the perpetrator or cause losses to others. But it was not necessarily criminal or fraudulent. The perpetrator's access to the computer could not therefore be regarded as an act preparatory to the commission of a crime or fraud. However, if such access was obtained dishonestly, the perpetrator ought to be charged with "access to computer with criminal or dishonest intent" and punished. Mr Justice CHAN further commented that when the former Secretary for Security was addressing the Legislative Council in 1993, he was only making a generalized statement in order to summarize what the section was aimed at doing.

Judging from the above, the legislative intent of section 161 is not confined to computer frauds at all. Mr Charles Peter MOK and Ms Claudia MO are probably barking up the wrong tree by proposing to amend section 161 to make it only applicable to computer frauds. Therefore, I have deleted the sentence concerned in my amendment.

Some people (including Mr Charles Peter MOK) also criticize that the Police have abused section 161 to suppress freedom. I find this accusation unreasonable. Freedom is of course important, but it should be enjoyed without harming others. In recent years, many people conduct illegal activities on the Internet, including fraud, intimidation and hacking. Take for example the Occupy movement which was supported by the pan-democratic Members, many people abetted and induced others on the Internet to block the road, storm the Police, wreck the Legislative Council Complex, besiege the Central Government Offices, occupy MTR stations and launch network attacks. Most abominable of all, some supporters of the Occupy movement even appealed on the Internet to hurt the children of police officers, threatening to chop off their hands and legs. Such acts are utterly devoid of conscience. Do Mr Charles Peter MOK and Ms Claudia MO really think this is freedom? Has the Police's decisive action to enforce the law restricted the freedom of hurting the children of police officers? It is no longer a matter of freedom. It is a matter of conscience.

Moreover, according to the information provided by the Security Bureau to the Legislative Council, between 2011 and 2013, there was a yearly average of

several dozen convicted cases under section 161, which accounted for 80% to 90% of the total number of prosecution cases under the same provision in each year of the same period. In 2013, 50 out of 55 prosecution cases were convicted. In Hong Kong, a city that upholds judicial independence and rule of law, how can the conviction rate be so high if the Police have really abused section 161 to institute prosecutions? What is abuse? Thus, the allegation that the provision is abused to suppress freedom is totally unfounded.

Mr Charles Peter MOK has mentioned that the term "computer" in "access to computer with criminal or dishonest intent" is not clearly defined, and therefore worried that citizens may breach the law inadvertently. I am baffled by his argument. I believe Mr Charles Peter MOK is well aware that computer technology advances rapidly. Any definition of computer may soon become obsolete, making law-enforcement difficult. Thirty years ago, the size of a computer was as large as a house. Today, the processing power of a smartphone at several inches long has surpassed that of a giant computer in the old days. Thirty years later, a computer may just be as small as a pill. So what can be regarded as a computer? In fact, we can use our common sense to judge and there is no need to impose a definition on the term in the provision. In daily life there are many things that we may understand but are very difficult to explain and define clearly. For example, we all know about time or love (as Valentine's Day is approaching). However, how many people can clearly explain what is time or love?

Technology crimes have become rampant in recent years. According to the statistics from the Police, the total number of technology crimes surged 32% in 2014, and the number increased by 10 times in the past decade. Today, social media frauds and blackmail cases involving "naked chat" happen almost every day. In foreign countries, there are websites that teach people how to make a bomb and even promote terrorism. In light of the prevailing trend in technology crimes, we must not harbour or tolerate them and should review the existing legislation to see whether it can keep abreast of the advances in technology so as to protect the interests of the people and society.

Deputy President, I therefore oppose Mr Charles Peter MOK's original motion and Ms Claudia MO's amendment. Deputy President, there must be limitations to any form of freedom. Internet freedom should never be used as a "golden shield" against criminal acts.

I so submit.

**UNDER SECRETARY FOR SECURITY** (in Cantonese): Deputy President, Mr Charles Peter MOK's motion proposes that the Administration should comprehensively review the provision on "access to computer with criminal or dishonest intent" under section 161 of the Crimes Ordinance (Cap. 200), and narrow the scope of application of the provision to make it applicable only to computer frauds. In reply to an oral question raised by a Legislative Council Member last November, the Secretary for Security explained clearly that in consideration of the legislative background and legislative intent of section 161, the trend of an upsurge in technology crimes, the number of prosecution and convicted cases, as well as the Court's judgments on cases involving section 161, and so on, the authorities considered that there was no urgent need to comprehensively review section 161.

Section 161 "access to computer with criminal or dishonest intent" is added to the Crimes Ordinance through the Computer Crimes Bill 1992. The Bill sought to make certain forms of computer misuse criminal offences. On 1 April 1992, the then Secretary for Security said in moving the Second Reading of the Bill (I quote), "the Bill seeks to make certain forms of computer misuse criminal offences. Although there is no evidence at present that computer-related crime is widespread, the Government believes it is necessary to put in place appropriate legal sanctions against computer misuse, which can result in dishonest gain for the wrongdoer or loss to others ... the Bill will create a new offence of gaining access to a computer with dishonest intent or with intent to commit an offence. This would apply irrespective of whether the access was unauthorized or not, and irrespective of the means of access." (End of quote)

Deputy President, as quoted above, section 161 is added to make access to computer with criminal or dishonest intent an offence. It is not what Mr MOK has said. He has cited one part of the speech of the then Secretary for Security, saying that section 161 was purely aimed at penalizing access to a computer for acts preparatory but falling short of the commission of a fraud. I think Mr MOK's interpretation is out of context and not comprehensive.

Concerning the process of section 161 being passed by the then Legislative Council, the Computer Crimes Bill 1992 was introduced into the then Legislative Council on 1 April 1992 for First and Second Readings. The Bills Committee formed to scrutinize this Bill held a number of meetings. Apart from meeting with the Administration, members of the Bills Committee met with the representatives of the banking, accounting and computer sectors, and had

considered the submissions made by a number of deputations. The entire Bill, including the then new section 161, was examined and considered very prudently and carefully before the Third Reading of the Bill was passed by the Legislative Council.

The heading and contents of section 161 are very clear and unambiguous. Please allow me to read out section 161:

Heading: Access to computer with criminal or dishonest intent

- (1) Any person who obtains access to a computer-
  - (a) with intent to commit an offence;
  - (b) with a dishonest intent to deceive;
  - (c) with a view to dishonest gain for himself or another; or
  - (d) with a dishonest intent to cause loss to another,

whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

It can be seen that any person who obtains access to a computer with one of the above intents or purposes commits an offence. At present, when computers are extremely popular and have even become indispensable in people's daily life, this section is most effective in combating illegal acts such as online frauds, illegal access to computers and the use of computers to commit other offences.

In fact, since the legislation has come into effect, the Court has not queried the prosecution instituted under this provision; on the contrary, when cases pertaining to this provision were handled at the High Court, the judges once clearly consented that section 161 aimed to combat offences related to the access to computer with criminal or dishonest intent, and not restricted to acts preparatory to the commission of a crime or fraud. Just now Dr Elizabeth QUAT mentioned the judgment of Mr Justice Patrick CHAN on a related case. She also summarized the translations of some of the details of the judgment. Deputy President, to avoid losing the original meanings through translation, please allow me to quote the English original of the judgment.

"S.161 offence requires proof of a specific criminal or dishonest intent or purpose and is more serious. It follows that not every kind of access into a computer constitutes an offence under s.161 ... What s.161 is intended to do is to punish access into a computer with a particular intent or for a particular purpose.

The intent with which or the purpose for which the access is made must be either criminal or dishonest. It would also follow that it is the intent or purpose of the offender at the time of the access which must be looked at, not his intent or purpose at some later stage ... It is clear from the section that it catches acts preparatory to the commission of a crime or fraud. But I do not agree that it is restricted to such acts. A person who makes an unauthorized access into another person's computer need not have any intention to commit a crime or fraud ... All these acts may result in a gain to the perpetrator or cause huge losses, great embarrassment and serious harm to others. But they are not necessarily criminal or fraudulent. The perpetrator's access to the computer cannot therefore be regarded as an act preparatory to the commission of a crime or fraud. However, if such access is obtained dishonestly, the perpetrator ought to be punished."

It is also clearly stated in the judgment that as long as the perpetrator obtained access to a computer, and he had any one of the four intents or purposes specified in the section at the crucial moment, he committed an offence under section 161. As explicitly stated in the judgment, section 161 catches acts preparatory to the commission of a crime or fraud, but the Judge did not agree that the provision was restricted to such acts. The Judge stated that even if acts of the offender were not preparatory to the commission of these crimes or frauds, or he did not have any intention to commit a crime or fraud, so long as he obtained access into the computer dishonestly, he ought to be punished. This is the purpose of sections 161(1)(c) and (d).

Due to the extensive use of computers, more and more criminal acts involved the use of computers. Although the criminal conviction threshold is very high under the common law, among 264 prosecution cases pertaining to section 161 from 2008 to September 2014, the defendants in 224 cases were convicted, with a high conviction rate of 85%. Evidently, this section has been very effective.

Let me emphasize, the Police have invoked section 161 for handling cases such as online frauds, illegal access to a computer system, clandestine photo-taking using smart phones in non-public places such as toilets or changing rooms, online publication of obscene or threatening information, as well as inciting others on the Internet to engage in illegal activities. The perpetrators may also be charged with other crimes.

Deputy President, Mr Charles Peter MOK claims in his motion that, to make prosecution easier, the Police have "abused" section 161 and he describes this provision as a "draconian" law. I absolutely do not agree with these allegations.

First, in the appeal case (HCMA723/1998) that I just quoted, the High Court Judge made it clear that not every kind of access to a computer constituted an offence. I quote the judgment on this case by Mr Justice CHAN as follows:

"S.161 offence requires proof of a specific criminal or dishonest intent or purpose and is more serious; not every kind of access into a computer constitutes an offence; s.161 specifies four kinds of access into a computer that constitutes an offence." (End of quote)

The above judgment was also quoted by Mr Justice Barnabas FUNG in another appeal case (HCMA77/2013) in the High Court in 2013. It can be seen that prosecution is definitely not easy.

Second, I have just cited some illegal activities prosecuted under section 161. Such illegal activities have caused great harm to the properties or privacy of other people. How can we describe the provision that can effectively combat such offences "draconian", and why should a review be conducted to restrict the effectiveness of the provision?

Deputy President, regarding the criticisms that the Police "freely interpret section 161, "enforce the law selectively" or "threaten online freedom of speech", I absolutely disagree. If some netizens publish guidelines on storming the Legislative Council Complex; if some netizens claim to harm other people or the children of police officers; or if some netizens incite other people to participate in illegal occupation and advocate storming the Administration, these online comments pose serious threat to public safety and public order in Hong Kong, as well as the personal safety of individuals. These acts are unacceptable in all societies and all members of the public. Under section 161 and other laws, the Police are duty-bound to enforce the law.

Ms Claudia MO said that the Police enforce the law to "suppress freedom of the press and freedom of speech". This argument is totally absurd and

unreasonable. Article 27 of the Basic Law ensures that Hong Kong residents shall have freedom of speech and of the press. The Hong Kong Police Force have always respected freedom of the press and of speech.

I truly believe that all Honourable colleagues would understand that freedom of speech and of assembly cannot be without constraints. The provisions of the International Covenant on Civil and Political Rights (the Convention) as applied to Hong Kong, including Article 19 about the right to hold opinions and the right to freedom of expression, and Article 21 about the right of peaceful assembly, have been incorporated into the Hong Kong Bill of Rights Ordinance (Cap. 383). Article 19 of the Convention and Article 16 of the Hong Kong Bill of Rights Ordinance specified that the exercise of the right to freedom of expression 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 for respect of the rights or reputations of others; or for the protection of public order and public safety.

As I mentioned earlier, last year someone published in an online discussion forum a document entitled "A guide to storming the Legislative Council Complex". It is suggested that assembly participants should break the doors and windows of the Legislative Council Complex with tools, and that they should even take radical actions such as snatching the Police's shields. This person was eventually sentenced to a rehabilitation centre for 12 months for "access to computer with criminal or dishonest intent". This is precisely the result of a fair and impartial trial in a Hong Kong court. The authorities will definitely not and it is impossible for them to suppress freedom of the press and of speech under section 161.

Dr Elizabeth QUAT is concerned about the increasing number of technology crimes and she hopes the authorities would make greater efforts to combat these offences.

As people become increasingly reliant on information and communications technology infrastructure and coupled with the growing popularity of the Internet, the number of local technology crime cases has surged nearly 24 times since 2002, from 272 cases in 2002 to 6 778 cases in 2014. In the past five years from 2010 to 2014, the related economic losses increased from \$60 million to \$1.2007 billion, an increase of nearly 19 times.

To enable the Police to better protect the security of the information systems of critical infrastructure, and enhance the Police's ability to prevent and combat technology crimes, the Police upgraded the Technology Crime Division in January 2015 to form the new Cyber Security and Technology Crime Bureau.

(THE PRESIDENT resumed the Chair)

Currently, the Police accord priority to expeditiously putting the work of the newly established Bureau on track, such as stepping up the detection of syndicated and highly sophisticated technology crimes, preventing and detecting cyber attacks against critical infrastructure, enhancing incident response capability to major cyber security incidents or massive cyber attacks, strengthening thematic researches on cyber crime trend and mode of operation, vulnerabilities of computer systems and development of malware, and strengthening partnership with local stakeholders and overseas law-enforcement agencies. In addition, the Police will closely monitor the enforcement of section 161 and the relevant laws as well as computer technology development. A review of the relevant laws will only be considered when appropriate and necessary.

President, the use of computers and the Internet is growing very rapidly nowadays, and it continues to penetrate all aspects of everyday life. While computers and the Internet provide convenience, more lawless people have taken advantage of these means, resulting in an astonishing surge in the number of technology crimes and the related economic losses. Under such circumstances, it is necessary for the authorities to strengthen the combat of the related crimes and enhance enforcement against technology crimes. Narrow the definition of section 161 and let off those using the Internet with criminal intent is tantamount to putting the clock back, which is totally unacceptable to the authorities. I will make a detailed response after listening to Members' comments on the motion in this debate. Thank you, President.

**MR KENNETH LEUNG** (in Cantonese): President, for all governments in the world, they seek to achieve four objectives in enacting and enforcing laws pertaining to crimes, namely, first, to protect the rights, safety and properties of individual person; second, to maintain social order; third, to uphold the established moral values in society; and fourth, to penalize offenders.

However, in enacting and enforcing laws pertaining to crimes, every government has the responsibility to ensure that the laws comply with basic human rights and the prevailing social situation. In Hong Kong, the laws also have to comply with the spirit of the Basic Law.

Just now, I heard the Under Secretary mention the judgments of Mr Justice Patrick CHAN and Mr Justice Barnabas FUNG. President, I would also like to talk about the judgment handed down by the European Court of Human Rights in the case of *G v. The Federal Republic of Germany*. Application number: 130798/87. A paragraph in the judgment said: "In the sphere of criminal law Article 7 paragraph 1 of the Convention (Convention for the Protection of Human Rights and Fundamental Freedoms) confirms the general principle that legal provisions which interfere with individual rights must be adequately accessible, and formulated with sufficient precision" — and I emphasize that sufficient precision — "to enable the citizen to regulate his conduct." "Article 7 paragraph 1 of the Convention prohibits in particular that existing offences be extended to cover facts which previously clearly did not constitute a criminal offence."

President, the judgment of the European Court of Human Rights has precisely mirrored some current criticisms voiced by the community against the offence of "access to computer with dishonest intent". The current criticisms voiced by the community are mainly related to the over loose and unclear definition of the relevant offence in the provision, as well as the low threshold for conviction.

Just now, the Under Secretary said that there was a high threshold for conviction of a criminal offence under the common law. I agree to this. Basically, two factors determine whether an act constitutes a criminal offence — I believe those who have attended the second year programme of the law college have learnt about this — the first one is *mens rea*, with a guilty mind, that is, a criminal intent; the second one is the external factor of conduct, that is, *actus reus*. These are the two factors.

The question is, why is the conviction rate of section 161 so high, as mentioned by the Secretary just now? That is because once the offender has a criminal intent, it can constitute an offence already. There is no need for him to execute that intent. In other words, "use of a computer with a dishonest intent", "use of a vehicle with a dishonest intent", "use of a phone with a dishonest intent", "commit a certain act with a dishonest intent" will be sufficient to constitute an offence. This is the crux of the issue. There is an important element of offence in section 161, and that is, "intent to commit an offence" and "dishonest intent". When compared to the requirement of "attempting to commit an offence" stipulated in the Crimes Ordinance, the requirement of this element of offence in section 161 is even harsher.

I would like to illustrate with an example. A novelist is trying to conceive a perfect murder. What is a murder? It is a premeditated plan of causing death to a person. Of course, there must be a criminal intent or mental element to premeditate the death of a person; second, it is a conduct, *actus reus*, that is, causing the death of a person, and that person is genuinely dead. These two factors must be combined in order to constitute a murder. Otherwise, if there is only the first element, it cannot constitute any criminal offence. If there is only the second element, it may only constitute manslaughter or death by accident.

This novelist has written down the details of the murder on a piece of paper and put the paper in a drawer. President, I am of the view that this will not constitute any criminal offence. He has put the paper depicting the procedure of the murder in a drawer. On the contrary, if he has stored the information on the murder details in his computer and uploaded it in his website or stored it in a corner of his Facebook page, and unfortunately, someone has seen such information, what will happen then? Will this act fall into the category of "intent to commit an offence" under section 161? Can the provision be invoked to convict the novelist? The novelist is only conceiving a murder case. He stores the information in his own computer and he has not hacked into the computer of other people. Neither has he used the network of other people to commit an offence. He is only conceiving such a plan.

According to Dr Elizabeth QUAT, it is morally wrong for a person to have a criminal intent. Even the thought of a criminal intent is wrong. If that is the case, does it mean that we have to control the thinking of a person? This example is really very simple. The novelist has written on a piece of paper a murder plan and put the paper in a drawer. In comparison, he has stored his plan

in his computer. He has not released any message about the murder, but has only stored the plan in his computer. However, such information has been seen by someone. Does this constitute an offence penalized under section 161? Is this what Mr Charles Peter MOK has been trying to convey, that is, should we lower the requirements of the two factors that must be met for the conviction of a criminal offence?

According to section 161, any person who obtains "access to computer with dishonest intent" commits an offence and is liable on conviction to a maximum imprisonment for five years. The offences relevant to section 161 can be cases of fraudulence, intimidation or theft. On instituting prosecutions of these offences, if the prosecutor or the Director of Public Prosecutions fails to meet the standard of proof, and is unable to prove that a certain person has committed an offence of theft, intimidation, or fraudulence, he may invoke section 161 to institute prosecution instead. This is precisely what I am worried about. The standard of proof for section 161 is that a person with intent to commit an offence can be convicted. In other words, if proof cannot be found for charges of fraudulence, theft and intimidation, section 161 can be invoked. This is precisely what I am worried about. I hope that the Under Secretary will respond practically to my worries when he gives a reply later on.

President, I so submit.

**IR DR LO WAI-KWOK** (in Cantonese): President, first of all, I would like to thank Mr SIN Chung-kai for allowing me to speak first, as I need to attend a radio programme. President, when the Government amended the Crimes Ordinance (Cap. 200) in 1993, the provision on "access to computer with criminal or dishonest intent" (that is, "section 161") was added with an aim to penalize all acts related to access to computer with criminal or dishonest intent, including online fraud, illegal access to computer systems, using computers to urge or incite others to engage in illegal activities, as well as other crimes committed through the use of computers. Obviously, the provision is not "only applicable to computer frauds" as pointed out by Mr Charles Peter MOK in his original motion.

In fact, modern technology is already inseparable from the life of the people. As the Internet has become increasingly popular, security loopholes in the virtual world are very often exploited for crimes committed through the

application of computer technology. According to the information I got, the number of technology crimes in Hong Kong rose from 272 cases to 5 133 cases between 2002 and 2013, a dramatic increase of 18 times. The related economic losses between 2009 and 2013 also increased from \$45 million to \$920 million, an increase rate of 20 times. To date, section 161 is still the main legal basis to combat technology crimes. It is applicable to a wide range of crimes, which means the provision still plays an important role nowadays. The situation is not as depicted by Mr Charles Peter MOK that "such a practice has seriously distorted the legislative intent of section 161, and has turned this provision into a draconian law".

As indicated by relevant statistics, between 2011 and 2013, there were 128 prosecution cases pertaining to section 161 and during the same period of time, there were 114 convicted cases. This indicates that there were many successful prosecution cases pertaining to section 161. If the Police have inappropriately invoked or abused the provision, I believe the Court would not turn a blind eye and surely, the Court would deliver a fair and impartial judgment after considering all evidence. We should have confidence in Hong Kong's judicial system.

President, in essence, there is not much difference between technology crimes and traditional crimes, the only difference lies in the use of computers as a medium of criminal acts. With the rapid advancement of technology and coupled with the prevalence of the Internet and social media, many people mistakenly think that they can hide their real identity in the virtual world; some even think that the virtual world is lawless. Hence, quite a number of people organize and engage in illegal activities on the Internet and the trend is aggravating. In addition to fraud, gambling, prostitution, and criminal intimidation, in recent years there are netizens abetting on social media platforms people to launch illegal network attacks.

During the Occupy movement that happened at the end of last year, there were netizens inciting others to participate in unlawful assemblies and storm the Police; some people even appealed for paralysing the railway system. Recently, there is another wave on the Internet inciting people to attack parallel goods traders and to set fire at different places. Video clips of people burning rubbish bins have been uploaded to the Internet. Under such extreme incitement, an

arson attack finally broke out. An assailant threw a petrol bomb outside a parallel goods shop some days ago. By invoking section 161 to combat the illegal activities of abetting and inciting others to breach the laws, the Police's law-enforcement actions are well supported by most of the law-abiding members of the public. Ms Claudia MO's accusations of the authorities suppressing freedom of the press and freedom of speech as well as hindering discussions of the civil society and development of social movement are absolutely ungrounded and confounding right and wrong.

President, in the face of an upward trend of technology crimes, and coupled with the increasing complexity of the related cases, the Police often have many difficulties in investigation and evidence collection. As many online crimes involve cross-border criminal activities, additional resources are needed to enhance the capacity of the Police in combating technology crimes. The Government upgraded the Technology Crime Division of Hong Kong Police Force to form the Cyber Security and Technology Crime Bureau in 2014, and provide the Bureau with additional manpower resources and enhanced relevant technology, so as to enhance the Police's capabilities in preventing and combating technology crimes.

President, with the development of information technology, new problems, as well as new criminal technology and forms, exist in the cyber world, we thus need to have new order and appropriate protocols. Hence, while the Administration needs to review and revise section 161 and relevant provisions when necessary, I do not agree with Mr Charles Peter MOK in saying "to make it (the provision) applicable only to computer frauds". I think what Mr Charles Peter MOK advocates is a regression. To keep abreast of the times, the relevant legal provision should be capable of dealing with the growing complexity of technology crimes and various challenges arising from network security. Hong Kong can make reference to the experience of Europe, the United States and Japan in that by formulating specialized laws to target computer and technology criminal activities, empowering law-enforcement departments with appropriate authority, and eliminating effectively grey areas of the legislation, technology criminals can hardly make use of the ever-changing network technology to go unpunished. Adequate laws and regulations can provide network suppliers and service providers with a fair and level operating environment, and the legal rights of the masses, computer and Internet users can also be protected as well.

President, my fellow colleagues from the Business and Professionals Alliance for Hong Kong and I do not support Mr Charles Peter MOK's original motion and Ms Claudia MO's amendment, but we support Dr Elizabeth QUAT's amendment.

President, I so submit.

**MR SIN CHUNG-KAI** (in Cantonese): President, it has been more than 20 years since section 161 has been added to the Crimes Ordinance. If we are level-headed, we would agree that it is time to review the provision. As Ir Dr LO Wai-kwok has said in the last part of his speech just now, since 1993 various places of the world have amended the laws and regulations specifically related to combating technology or computer crimes. I believe the main objective of adding section 161 in 1993 is to target hackers, and the provision is on "access to computer with dishonest intent". Let us look at the laws and regulations of other countries. For instance, in Australia, many of its laws are written in a more specific way, such as "A person is guilty of an offence if the person causes any unauthorized access to data held in a computer; or any unauthorized modification of data held in a computer; or any unauthorized impairment of electronic communication to or from a computer". The wording is clearly different from "access to computer with dishonest intent" in section 161. Mr Kenneth LEUNG has explained this point just now.

Let me cite a simple example. In the words of the Under Secretary, if someone incited other people to storm the Legislative Council on the Internet, the Government could prosecute that person under section 161. What if someone did not incite others on the Internet, but printed 10 000 or 20 000 leaflets to be distributed in the streets. What charge can be pressed against that person? That person should be charged with the offence of inciting others to commit a crime. This is where the problem lies. That person should be charged for inciting others to commit a crime, not for access to computer. Computers and current social media have become two different entities; the Under Secretary should not mix the two up. The law in Australia I mentioned just now specifies "unauthorized access to data", the addition of section 161 in 1993 should originally aim at targeting this kind of acts.

Objectively speaking, nowadays many people indeed use social media dishonestly. I do not know whether you have used Facebook. Some Facebook users use the photo of a dog or a cat as his or her profile picture, should those

users be considered as obtaining access to a computer with dishonest intent, Secretary? According to the Government, those people obtain access to a computer with dishonest intent, but they do not have criminal intent. Hence, they will not be prosecuted. However, social media are different from what they used to be years ago. When section 161 was added in 1993, computers were not in a connected environment. At that time, hackers hacked into other people's computers to change their data. The addition of section 161 is to target this kind of act. Nowadays, if someone makes use of the media or mobile phones to disseminate a message, the Government will institute prosecution under section 161 as "convenience overrides appropriateness". I agree that the series of crimes mentioned by the Secretary just now should be combated, the problem lies on whether section 161 should be invoked in instituting prosecution. The Government should not confuse people, and it should not use one provision to charge with a series of offences.

For the past 20-odd years, Hong Kong has not made much progress in combating crimes for it still invokes a provision added more than 20 years ago. On the contrary, many countries have already enacted new laws and regulations to plug the loopholes. Of course, some countries may overkill, in particular the Patriot Act of the United States. I think it is time for the Government to commission a review by the Law Reform Commission of Hong Kong by drawing references from the practices of other countries over the world. According to the Government, section 161 should be invoked more frequently owing to an increasing number of crimes. It has even quoted the judgment given by Mr Justice Patrick CHAN, stating that the Government can invoke this provision more frequently, so that more cases can be brought to the Court. Why is it that it is not suitable to review the provision now in a calm manner? Is it that after the Occupy Central incident, the Government will invoke this provision against all acts? Is the Government going to invoke section 161 in a full-scale manner to monitor social media? In the social media culture, many people do not tell the truth. I am worried that the Government has abused this provision. For instance, if a message "Let us join a rally tonight" is posted on the Internet, appealing people to participate in the event, and many people give a "Like" to the post, saying that they will join the rally. However, it turns out that less than one twentieth or one thirtieth of the people have joined the rally. For those who originally promised to join the rally but eventually did not show up, are they guilty of fraud, should they be considered as gaining access to a computer with dishonest intent?

The Under Secretary should gain a clear idea of the situation and conduct more researches. The current network culture is completely different from the time when the provision was added. The Internet, which became popular in 1995, did not exist in 1993 when the provision was added. Today, when the Government invokes this provision, its coverage is much wider than the time it was added. Should we still invoke old provision to institute prosecutions under new circumstances? I think the Government should review the provision based on certain circumstances, and I do not agree totally that online crime should not be tackled. Strictly speaking, many existing regulations related to criminal offences are applicable to online acts, and they can simply be invoked to institute prosecutions. Why do the authorities have to invoke section 161 to institute prosecutions? If the authorities really have to invoke section 161 to institute prosecutions, should they state clearly whether a review should be conducted? I think the Secretary should conduct more researches on these related problems and should not vote down the need to conduct a review at this stage. The laws of Hong Kong should keep abreast of the times and we should learn more about the practices of other countries in recent years so far as this issue is concerned.

**MR FRANKIE YICK** (in Cantonese): President, with the advanced development of technology and the growing popularity of the Internet and social media, more crimes are committed through these channels. The crimes involve various serious illegal activities, such as prostitution, criminal intimidation, as well as disruption of public order.

According to the provision on "access to computer with criminal or dishonest intent" of the Crimes Ordinance (section 161), any person who obtains access to a computer with any one of the following intention or purpose:

- (1) with intent to commit an offence;
- (2) with a dishonest intent to deceive;
- (3) with a view to dishonest gain for himself or another; or
- (4) with a dishonest intent to cause loss to another,  
commits an offence.

As we can see, the above four conditions include not only technology crimes like online fraud and illegal access to a computer system, but also urging or inciting others on the Internet to engage in illegal activities, as well as other crimes committed through the use of computer. The scope is fairly wide and is by no means "applicable only to computer frauds" as stated in the motion. As

such, we consider it reasonable for the Government to invoke the provision on "access to computer with criminal or dishonest intent" to combat these related crimes.

The literal meaning of the provision is very clear. The Police have not, as alleged by Mr Charles Peter MOK, deliberately distorted the provision in order to combat against any persons engaged in cyber crimes.

Let us look at the relevant facts. According to government statistics, between 2011 and 2013, there were a total of 128 prosecutions cases pertaining to this provision. The number of persons convicted was 114, some of whom were involved in inciting others on the Internet to participate in illegal activities.

Since last year, the social conflicts of Hong Kong have intensified, resulting in many more related cases. In early October last year, a hacker group threatened to launch cyber attacks on Hong Kong government departments. Meanwhile, some people had, via the Internet, incited members of the public to participate in the cyber attacks, as well as made available certain tools for such attacks.

Furthermore, last year on an Internet discussion forum, a man incited others to participate in unlawful assemblies in Mong Kok and to storm the Police, suggesting protesters to paralyse the railway system by gathering on railway platforms in an attempt to create chaos, in case Mong Kok could not be successfully taken back.

In addition, during the Occupy movement, someone uploaded the personal data of a police officer and his family onto the Internet. Apart from incessant personal attacks via social media, the person posted messages on an online discussion forum, claiming that somebody had been directed to assault the police officer and his family, subjecting the police officer and his family to unnecessary harassment.

As for the more recent cases, last week somebody released the "Strategy on burning parallel traders' warehouse in Sheung Shui" on the Internet, illustrating with pictures and words the aim, time, scale and evaluation method of the operation, as well as the escape strategy after the operation. As expected, a few days later, an attempted arson occurred. While the Police timely stopped the

arson attack, another gangster burnt some goods at a shop in Sheung Shui less than four hours after the Police held a press conference to explain the event. The situation has become rampant indeed.

The above cases were rather serious in nature, threatening social security. Just imagine, if the Government cannot invoke the provision on "access to computer with criminal or dishonest intent" for prosecution, what would become of our society? Thus, if society allows these people to use computers for illegal activities and exempts them from criminal liability, this will be extremely irresponsible and dangerous. As such, the Liberal Party opposes the proposal of Mr Charles Peter MOK, lest online crimes would go unpunished.

However, the Secretary must also pay attention to a very good point raised by Mr SIN Chung-kai just now. Mr SIN pointed out that apart from online incitement, people are instigated to take part in illegal activities through words, in the form of leaflets or posters. I believe the Government should also review whether the relevant provision can be invoked to bring the offenders to justice.

President, I so submit.

**MR MA FUNG-KWOK** (in Cantonese): President, Mr Charles Peter MOK moved the motion to discuss whether the Police have inappropriately invoked the provision on "access to computer with criminal or dishonest intent" to institute prosecutions, and whether this provision should be reviewed and revised, so that it will only be applicable to computer frauds.

To analyse these two issues, we must first understand the meaning of the provision. According to section 161 of the Crimes Ordinance, "access to computer with criminal or dishonest intent" refers to any person who obtains access to a computer with intent to commit an offence; with a dishonest intent to deceive; with a view to dishonest gain for himself or another, or with a dishonest intent to cause loss to another, whether on the same occasion as he obtains such access or on any future occasion, commits an offence. In answering Members' questions at the Legislative Council meeting earlier, the Secretary for Security also cited examples of relevant crimes, such as technology crimes like online fraud and illegal access to a computer system, urging or inciting others on the

Internet to engage in illegal activities, as well as other crimes committed through the use of computer. All such acts may also become an offence under section 161.

According to some of my colleagues, the legislative intent of this provision is to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud, rather than combating other acts other than computer frauds. In addition, they also pointed out that the Police have adopted a very broad definition for the offences stated in the provision. As long as there is a reasonable reason to suspect a person who obtains access to a computer with criminal intent, actions can already be taken. The Police may invoke the provision selectively, thereby threatening the freedom of speech.

President, although the legislative intent of this provision is against computer frauds, its contents clearly provide that any person who obtains access to a computer with intent to commit an offence, with a view to dishonest gain for himself or another, or with a dishonest intent to cause loss, will be regulated by the provision. Moreover, if the Police want to institute prosecution against any persons arrested, they must first seek the advice of the Department of Justice as to which legal provisions shall be invoked when pressing charges. Hence, we do not have justifications to say that the Police can selectively invoke or abuse the provision for prosecution. Furthermore, whether a person is to be convicted is a matter to be decided by the Court and the judge. Between 2011 and 2013, there were a total of 128 prosecution cases pertaining to section 161, and there were 114 convicted cases. These figures rightly reflect the need of enforcement actions. Hong Kong has always been renowned for its sound and independent judicial system. Owing to the gate-keeping roles played by the Department of Justice, the Courts and the judges, I believe that fair and impartial judgments can be made. In addition, we also have a highly efficient public opinion monitoring mechanism. Any cases that may involve the possible abuse of the law can hardly escape the media scrutiny. Therefore, I find it very difficult to agree that these enforcement actions are unreasonable, or they are political prosecutions as alleged.

President, as to whether this provision should be reviewed and amended, I adopt an open attitude. The provision on "access to computer with criminal or dishonest intent" was added in 1993 when the Government revised the Crimes Ordinance, which had already been put in place for more than 20 years, and

perhaps part of the contents would be relatively obsolete. As time changes, we need to acknowledge that nowadays computer-related crimes have become increasingly diversified. For example, crimes such as stealing personal data by hackers, criminal intimidation, and so on, would not have been taken into account when the legislation was enacted 20 years ago, and other new types of online crimes, such as cyber bullying, prostitution, infringement, incitement to illegal acts or rumourmongering, would not have been anticipated in the past. Should we now consider whether this provision can cover all related offenses? Therefore, I think the Government is duty-bound to ensure that this provision can keep abreast of the times, and a timely review should be conducted. If necessary, certain appropriate amendments can be made to enhance the protection for the public.

However, if this provision is to be amended to make it applicable only to computer frauds, as suggested in the original motion and one of the amendments, I think the scope will be too narrow and hence I cannot agree. As I have pointed out, owing to the various types of computer-related crimes, and the fact that the types and forms of criminal offenses will increase but not decrease, this provision should combat crimes including but not limited to computer frauds. Of course, when considering to amending or reviewing this provision, we must be very cautious and carefully balance and consider the views of all parties.

President, Hong Kong has always been a place which respects divergent views and enjoys the freedom of speech as well as network freedom, but freedom should not be overly interpreted, and it is necessary to maintain a peaceful, rational and law-abiding environment without hurting others, whilst public security and social order should not even be disrupted.

President, I so submit, I oppose Ms Claudia MO's amendment and support Dr Elizabeth QUAT's amendment. Thank you.

**MR YIU SI-WING** (in Cantonese): President, the Internet is no longer the virtual world perceived at its birth, but an extension of the real world. One is closely related to such an important public space, wherever one is and whatever sector one is engaged in. Internet crimes shall be governed by law as in the real world. For example, provision of sexual services through online arrangements may be in violation of various legal provisions. While online arrangements serve as a medium, provision of sexual services violates section 137 of the

Crimes Ordinance (Cap. 200) "Living on earnings of prostitution of others", and the offender shall be liable to imprisonment for 10 years. Mr Charles Peter MOK proposed in his original motion to amend the provision on "access to computer with criminal or dishonest intent" to make it applicable only to computer frauds, such an amendment is hardly meaningful. As seen in many cases, such prosecutions were not based solely on section 161, but were brought under a number of existing ordinances. Therefore, it is clearly unreasonable to denounce section 161 as a draconian law.

President, in the face of the ever-changing cyber world, legislation against cyber crimes in Hong Kong is limited and fails to keep abreast of the changes in web behaviour. Many unlawful acts in the grey area are beyond the Government's control. As in the cases mentioned by Dr Elizabeth QUAT in her amendment, apart from criminal cases involving fraud or hacking, other acts such as cross-border electronic-commerce, cross-border online shopping, invasion of personal privacy and cyber bullying are not covered by law. Victims have no means of redress.

Information containing pornography and violence, endangering national security, and inciting racial and religious hatred or discrimination have been clearly defined as harmful by legislation in many countries around the world. Germany is the first country in the world to enact cybercrime legislation. South Korea has imposed stricter criminal sanctions against cyber defamation. On 29 March 2011, a bakery owner was convicted of defamation by Seoul Central District Court for spreading rumours about his competitor online, and was sentenced to 18 months' imprisonment.

Many states in the United States have legislation on cyber bullying, such as New York State's Dignity for All Students Act, and Florida State's law against cyber bullying. Clearly, democratic and civilized countries regulate cyber speeches by law. The aim is not to limit freedom of speech, but to create a cleaner cyberspace, promote basic Internet ethics, avoid irresponsible speeches that are detrimental to the interests of the public, and impose different penalties for spreading improper speeches on the Internet. The phenomenon of cyber bullying (commonly known as "cyber-profiling") also exists in Hong Kong. Data subjects attacked by a group of web users suffer from a great deal of mental stress, and may even commit suicide. Ms Claudia MO's amendment described section 161 as being used by the Administration to suppress freedom of the press and freedom of speech. I believe that obviously, no comparison should be

drawn between the two, as cyber speeches with criminal intent, or those inciting or abetting others to commit unlawful acts or criminal damage and invade others' privacy, clearly go beyond the realm of freedom of speech.

In addition, with the prevalence of online transactions, geographical boundaries have been broken down by the globalization and virtualization of cyberspace, which provides a cross-region and cross-border space for criminals. For example, many consumers have complained about hotels booked online, which they described as inconsistent with the specifications, and significantly different from the pictures on the web. Some consumers were even cheated to stay in love hotels. Yet, cross-boundary enforcement against overseas booking agents is not permitted under the existing legislation in Hong Kong. Victims thus have no means of redress and compensation.

In this connection, various governments around the world and international organizations have, in recent years, actively enacted relevant legislation and signed relevant conventions, and taken international joint actions to combat cyber crime, maintain cyber-security and safeguard all interests. As early as 2001, 30 countries including the European Union member states, the United States, Canada, Japan and South Africa signed the Convention on Cybercrime. One of the aims of the Convention is to provide a common reference for international legislation on cyber crime. Another aim is to support signatory countries' cyber crime detection and investigation with an international convention for greater international co-operation.

Hong Kong should also change with the needs of the time. Existing legislation should be reviewed to clarify the responsibility and consequences of web behaviour. Besides, international co-operation should be enhanced to facilitate joint imposition of penalties to combat cross-boundary crimes, resulting in better legislation and greater protection to both consumers and victims.

President, I so submit, I support Dr Elizabeth QUAT's amendment, but oppose the original motion and Ms Claudia MO's amendment.

**MR KWOK WAI-KEUNG** (in Cantonese): President, according to the latest figures from the Police, the overall crime figure for 2014 was 67 740, the lowest since the handover. But in recent years, the crime rates related to the Internet and social websites have increased. For example, 638 blackmail cases involving

"Naked Chat" were recorded, a rise of over 30% from the previous year; cases of "Social Media Deception" also increased by 25% from the previous year; more increase was seen in "Online Business Fraud", a rise of 150% over the previous year. Hence, we must introduce legislative provisions against computer crimes to combat them effectively.

According to the explanation provided by the Security Bureau, section 161 was added to the Crimes Ordinance (the Ordinance) in 1993, with an aim to combat acts of access to computer with criminal or dishonest intent, such as technology crimes like online fraud and illegal access to a computer system, as well as other crimes committed through the use of computer. Any persons who commit such an offence are subject to a maximum penalty of five years' imprisonment on conviction. Section 161 aims specifically to combat the increasingly rampant computer crimes. However, Mr Charles Peter MOK's motion requested the Government "to review and amend section 161 to make it applicable only to computer frauds", which seems unreasonable to me. From the statistics that I have just cited, while the rates of all crimes have declined, Internet-related ones have increased. The scope of section 161 will be too limited to provide sufficient protection if it is narrowed to cover only frauds.

Moreover, many people or groups have indeed incited others on the Internet to commit crimes in recent years. For example, during the Occupy Central movement, a group known as "Anonymous" launched a wave of cyber attacks against the websites of the Information Services Department, pro-establishment parties, anti-Occupy Central groups, and even the Occupy Central movement. These cyber attackers even uploaded software and manuals for hackers, and announced that cyber attack can be launched with just a smartphone or a tablet. They not only committed crimes themselves, but also encouraged others to launch cyber attacks. A recent hot case was incited through the Internet, following the incited attack on the Legislative Council Complex. Responding to an appeal on the Internet, a young man attempted to set fire to a Sheung Shui warehouse storing parallel goods. Fortunately, the attempt was stopped in time, or there could have been casualties as there were residents near the warehouse.

President, actions such as launching cyber attacks by hackers, inciting others on the Internet to storm the Legislative Council Complex, or appealing others to commit arson, and so on, are all offences doing harm to others but not beneficial to oneself. Section 161 aims specifically at such unlawful acts.

Section 161(d) also stipulates that any person who obtains access to a computer "with a dishonest intent to cause loss to another" commits an offence. Narrowing its scope as proposed by Mr Charles Peter MOK will render the provision ineffective. How can it address the increasingly serious cyber crimes nowadays?

Previously, a young man who had stolen his neighbour's Wi-Fi connection was found by the Court to have used his computer with dishonest intent under this provision. After receiving the judgment, the young man argued that his neighbour did not set a password on his Wi-Fi router. What was wrong with him using the connection? He was at most morally inappropriate and the authorities casually found a reason to prosecute him. In fact, he did steal the property of others, and the Court has made a judgment. But why couldn't this young man understand his offence? What he said reflects some young people's misunderstanding of cyber crimes. They think the theft of intangible resources cannot be considered as a crime, or they have done nothing wrong making some online comments. However, such views are totally wrong. Evidently, someone really committed arson or stormed the Legislative Council Complex in response to appeals on the Internet, and those incited were arrested for violating the law.

Normally, people will correct these misconceptions, but some Members turned right into wrong by denouncing the provision as a draconian law, fostering misconceptions and promoting misuse of the Internet to incite others to commit crimes. Are they doing good for the young people? Or are there any other ulterior motives?

President, a computer is in fact more than just a computer, but a machine connected to the Internet. I use a metaphor to explain. If one types a blackmail letter or a threatening letter with a traditional typewriter, of course there will be no problem as long as the letter is not posted, because the letter is only read by that person. But if the letter is posted, one clearly commits an offence. And this is the case on the Internet. Others can read the letter after it is uploaded to the Internet, just like it is posted. Why this point is now presented as not problematic? In fact, this is highly problematic. In addition, if section 161 is amended to cover only frauds, only deception of money or sex can be prosecuted under this provision. I believe that nobody will consider it unnecessary to regulate the use of computer to abet others to commit crimes, incite others to commit violent acts, or harm others. In fact, such use requires more regulation.

I hope Members of the pan-democracy camp can refrain from according a higher priority to democracy and freedom than people's rights and lives, prejudicing the latter. I hope Members will seriously consider the above.

I so submit. Thank you, President.

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

**MR IP KWOK-HIM** (in Cantonese): President, section 161 of the Crimes Ordinance on "access to computer with criminal or dishonest intent has been implemented for more than two decades. However, as the Police have invoked this provision in recent years to institute prosecution and arrest radicals who appealed on the Internet for unlawful assemblies, incited the Occupy movement and even instigated violence, the opposition party has now denounced this provision as a draconian law that suppresses freedom of speech. In the eyes of the opposition party, the draconian law may not only refer to this provision, but also a number of other provisions as well. Legislation disliked by the opposition party will be denounced as draconian laws. During the Occupy movement, the opposition party even denounced provisions prohibiting street blockage as draconian laws. Hence, one can conclude that the opposition party's definition of a draconian law is not based on legal consideration, but based on political needs.

How draconian is the offence of "dishonest use of computer"? President, as I am not a legal expert, my analysis is based on objective facts. According to Police information, when the provision on "dishonest use of computer" was first introduced in the 1990s of the past century there were only 10-odd prosecution cases each year, and for some years, there were only a few cases. However, the figure has surged in recent years, with 55 cases in 2013 alone. I have no statistics on the number of prosecution cases in 2014. However, the Occupy movement happened in 2014, and leaders who organized the Occupy movement had repeatedly, through the Internet, urged the masses to block the roads and storm the Police cordon lines. Between 26 September and 1 November 2014 alone, the Police had already arrested 12 persons for allegedly committed the offence of "dishonest use of computer".

It is worth noting that the conviction rate of prosecution cases instituted under this provision is very high, about 80% to 90% on average. This proves that the Police will only institute prosecution when there is sufficient evidence. The Police have not, as alleged by the opposition party, abused the provision to suppress freedom of speech and freedom of the press. One of the justifications cited by Mr Charles Peter MOK in demanding to amend this provision is that the scope of the offence "dishonest use of computer" has been extended indefinitely by the Police, turning the provision into an all-purpose key and many members of the community may breach the law inadvertently. I do not find this justification valid. In fact, as long as members of the community do not challenge the law and do not purposely step over the line, they would not be caught in the net of justice.

The opposition party has demonized this provision, misleading people into thinking that it is a draconian law on speech crime. As a matter of fact, the Police will only take action on those online comments that disrupt social order. Mr Charles Peter MOK questioned the Police's invocation of the "dishonest use of computer" provision to arrest a man for allegedly appealing, through the Hong Kong Golden Forum, for the masses to occupy Mong Kok during the Occupy movement, as well as another arrest of the Police of a person who posted the "Occupy Government House Strategy" on the Internet by invoking the same provision. Mr MOK considered that the Police have suppressed freedom of speech on the Internet.

President, the cyber world is tantamount to the real world in that every person should be responsible for his own words and deeds. In no way should one violates or disrupts social order under the pretext of freedom of speech. Given the rapid speed at which Internet messages are spread, if someone spread a rumour or even advocate and instigate violence through the Internet, the stability of the Hong Kong society will definitely be jeopardized.

Mr Charles Peter MOK criticized the Police for arbitrarily expanding the scope of the offence on "dishonest use of computer" in instituting prosecution; in fact, it is Mr MOK who has arbitrarily expanded the individual's right of freedom of speech. Freedom of speech is not without restriction. Even the Hong Kong Bill of Rights Ordinance, which is commended by the opposition party, has also expressly stipulated that freedom of speech comes with responsibility and obligation, and cannot jeopardize state security or social order. Many colleagues have cited a recent example in which a young man was arrested for attempting to set fire to a warehouse storing parallel goods in Sheung Shui,

purportedly in response to an appeal on the Internet. The person who has incited the arson act on the Internet cannot evade his responsibility by saying, "I just make a suggestion, can't I make a suggestion? I have not taken any action." He simply cannot do so. Therefore, I am of the view that a review of this Ordinance is indeed warranted. However, the direction of the review should be to strengthen the combat against illegal acts associated with the use of computers, as proposed by Dr Elizabeth QUAT in her amendment.

According to a case in 2013, the definition of "computer" refers to devices capable of processing data in the same way as computers do. The smartphone used by the defendant in the case was eventually defined as a computer. In this respect, a review is indeed warranted. With the rampant development of technology, it is important for us to review our legislation from time to time to see if they can keep abreast of the technological development.

I hereby appeal to my fellow colleagues to support Dr Elizabeth QUAT's amendment. I object to the original motion and Ms Claudia MO's amendment. Thank you, President.

**MR WONG YUK-MAN** (in Cantonese): President, in order to implement authoritarian governance in Hong Kong, the regime of LEUNG Chun-ying has gone so far as to suppress the freedom of speech of Hong Kong people. Hong Kong is not far from the days when "chance remarks can lead to public execution". In delivering his Policy Address on 14 January this year, LEUNG Chun-ying expressly criticized a cover story entitled "The Hong Kong people deciding their own fate" in the *Undergrad*, the official magazine of the Hong Kong University Students' Union and the book *Hong Kong Nationalism* for misleading some facts and LEUNG asked us to stay alert. In conformity to this policy from the above, other law-enforcement departments have escalated political suppression thereafter.

Recently, *Wen Wei Po*, the mouthpiece of the Communist Party of China, reported that the Police Force had upgraded the Technology Crime Division under the Commercial Crime Bureau to form a new Cyber Security and Technology Crime Bureau. With an increased manpower of 180 staff, the Bureau will target their efforts towards acts of urging and inciting violence on the Internet. The Police's monitoring and control over the Internet is already a known secret and I believe that this is hardly surprising to us.

After the Umbrella Revolution, to avoid being accused of using computer with criminal or dishonest intent, some people have, in the name of "gouwu", meaning shopping in Putonghua, mobilized the public to go to Mong Kok to strive for universal suffrage. For those who join the "gouwu" group or for Mr Charles Peter MOK, who moves this motion today, they have attended to trifles to the neglect of essentials by focusing on the provision on "access to computers with criminal or dishonest intent".

There are indeed certain grey areas in the provision on "access to computers with criminal or dishonest intent" that call for clarification in the first instance. The basic elements of crime include criminal acts and criminal intent. For criminal act that relates to "access to computers with criminal or dishonest intent", access to computer is a requisite and this will give rise to a number of problems. First of all, whose computer has the alleged offender gained access to? The provision has not specified whether it refers to the computer of some other people or that of the alleged offender.

Secondly, what is the definition of "computer"? In April 2013, the term "computer" was defined in detail in the judgment of the High Court on a case related to clandestine photo-taking by mobile phone in a female toilet — the *Secretary for Justice v WONG Ka Yip, KEN case*. Prior to this case, there was no clear definition of the term "computer". Thirdly, retrieving information from computer disks also constitutes an offence, as in the disclosure of the medical records of Elsie LEUNG, the then Secretary for Justice in 1999 — The *Secretary for Justice v TSUN Shui Lun case*. It can thus be concluded that there are indeed a lot of ambiguities under the context of criminal act.

As for criminal intent, the Security for Security had, during the Second Reading of the Bill, expressed the intent "to penalize access to a computer for acts preparatory to but falling short of the commission of a fraud". However, the High Court had, in respect of the TSUN Shui-lun's case, pointed out that the provision was not confined to this area. The scope covered by this provision is much wider than we originally understood. It is possible for law-enforcement departments to misinterpret the criminal intent and hence impede the free flow of information and even freedom of speech.

In order to maintain the free flow of information, we should introduce clear and reasonable mandatory exemptions or mandatory rationales for defence, for instance, disclosure of malpractice of high-ranking officials and maintenance of

the right to know of the public, and so on. We adopt the same attitude as the Law Reform Commission in withdrawing the offence of stalking. While we may dislike the paparazzi of some media as they infringe privacy, we cannot accept making stalking a criminal offence for the same reason of defending the freedom of news reporting.

Therefore, we have to maintain a free flow of information so that we can have a chance to uncover malpractices, buddy. If our chance to uncover malpractice is affected, the Police can abuse their power and members of the public would be blamed for whatever actions they take. The victims can only defend themselves in court.

The crux of the matter lies in the indiscriminate arrest by the law-enforcement departments. Mr Charles Peter MOK has repeatedly raised this issue in the Legislative Council. The Government has, in its reply, stated that most of the prosecution cases could be convicted, but it has not mentioned the number of arrests. As the saying goes, "He who has a mind to beat his dog will easily find a stick". The Police can always find a reason to justify their indiscriminate arrest, without having to exploit the legal loopholes. The root of the matter lies in the unchecked power of the Police.

The Complaints Against Police Office conducts peer investigation and the Independent Police Complaints Council is a "toothless tiger". In the face of indiscriminate arrest cases such as the so-called "818 Incident" of the Hong Kong University and the "young lady of the "Lennon Wall graffiti", we feel powerless and cannot do anything to stop them. A number of lackeys and toadies proposed to introduce the national security law into Hong Kong or to enact legislation on Article 23 of the Basic Law, thereby allowing law-enforcement departments to effect political suppression through indiscriminate arrests, so as to lower the governance cost of the authoritarian government. We strongly oppose such acts as they would only lower the opportunity cost of Hong Kong people's valiant protest. Since taking actions constitute an offence and giving comments also constitute an offence, people may as well take actions. The above practices of "ruling by law" will certainly cause greater social unrest.

Though a number of draconian laws had been enacted by the former colonial government, such laws were very often not invoked; they only served the purpose of reining people in. The offence of unlawful assembly under the Public Order Ordinance is a case in point. At that time, this provision was enacted for the maintenance of social stability. However, the offence of

unlawful assembly has now been abused. After the Umbrella Revolution, the Police have indiscriminately arrested the prominent figures who participated in the peaceful demonstration, and have also threatened the young students. Such acts, which are devoid of political wisdom, would cause greater social instability. Frankly speaking, with LEUNG Chun-ying the idiot in position, how can government officials have political wisdom? They keep asking people "to look closely at the Members". Are they members of the triad society? Secretary of Security, I am telling you, this is tantamount to identifying targets one by one! You should go and arrest them (*The buzzer sounded*) ...

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

**DR PRISCILLA LEUNG** (in Cantonese): President, for many young people, the Internet world of today is their whole world. They have basically grown up on the Internet. Friends who are not familiar with the Internet must gain access to the Internet world before they can understand the lives of young people, what they are thinking, or even how they communicate with one another.

Ten years ago, everyone thought that the Internet was a virtual world and many people (especially those who are senior in age) did not care much about it. However, today, if we were to understand the new generation, we must go on the Internet. We must be clearly aware that the Internet, which was once considered as rather virtual, has now affected many things in the real world. In recent days or years, some extremely horrible crimes have appeared in the Internet, which are shocking, abnormal or even against human nature, such as cases in which children murdered their parents with detailed planning. We have tried very hard to make sense of such incidents.

Many people told us that it is habitual for them to play online games on killing or chopping the heads of people they dislike, and they do not there is anything wrong. Over time, they have come to think that they need not bear responsibility for things they have done online. I remember what Mr SIN Chung-kai has said earlier that people who tell lies online will also tell lies in real lives. When we consider problems of the Internet, we must also sort out a number of issues, many of which may be controversial ethically, and others are related to behavioural problems that involve legal issues, which may be civil or criminal in nature.

Let us take defamation as an example. Several years ago, we helped some people apply for an injunction with regard to online defamation, but of course, we have to get sufficient evidence on publication of untrue and defamatory statements. It turns out that defamation may also be considered as a criminal offence, but most people will not institute prosecution; they will instead resort to civil litigation to claim compensation. Why does defamation constitute a criminal offence? It is because some acts of defamation are deliberate and may even be carried out with the intention of hoping the victim, who is known to be very vulnerable, will do things to hurt himself or herself or may even commit suicide. Similar acts may occur at school campus and it is known as bullying. Some people, knowing that peers are very important to young people and minors, have deliberately make them unable to hold up their heads in their own circles or even hurt themselves by means of applying peer pressure, thus resulting in what I call tragedy and people who fail to cope with such pressure may even commit suicide.

The conviction threshold for criminal offences is very high, it needs to be beyond reasonable doubt and that means adequate proof is required. As provided under the Ordinance, both *mens rea* (criminal intent) and *actus reus* (the criminal act) and other elements of proof must be present. As such, many steps must actually be taken before we decide whether prosecutions should be instituted. While I think there is a need to review the provision, I do not agree with the saying of Mr Charles Peter MOK or Ms Claudia MO, for they have at the outset accused the Police of abusing the provision. I think their motive for proposing the review is wrong in the first place.

As Dr Elizabeth QUAT has said earlier, this provision may be out-dated and may not be able to tie in with some acts or events which have taken place on the Internet some 10 or even 20 years later. How should we deal with overseas cross-border cases on the Internet? Some websites even teach people how to kill people, how to make bombs or more recently, as a colleague has mentioned earlier, how to launch a series of attacks to cause damages to the Legislative Council Complex and harm the Police Force effectively in great details. I think that such behaviours are beyond the scope of the so-called freedom of expression, for such information will lead to real actions and can be regarded as continuous offence. On the Internet, we will be able to see whether these people have a real criminal intent that will eventually lead to actual action causing harm to some people.

Another example is the so-called "shopping". Some people have used their real names online to call upon others to go on "shopping" with the intention of taking revenge on certain shops, the personnel of which have expressed anti-Occupy Central sentiments that are different from their views. The purpose of this act is to stop such shops from doing business, causing panic among shop employees and making them feel harassed. In fact, there is a chance that such incidents will lead to criminal or civil litigations, depending on which provisions they have violated. If an unusual number of people have gathered to besiege some shops, the persons involved may have violated the existing Public Order Ordinance. We have to let these friends and young people know that it is not true that they do not have to take any responsibility for their actions on the Internet; many people have to undertake civil or criminal liability for their actions and this includes telling lies. A person who lies to his girlfriend or parents will not commit an offence if he does not have criminal intent. However, if he lies and causes other people to buy his goods, then there is a chance that this will constitute an offence of selling by dishonest means.

I earnestly hope that if there is a chance to amend the provision, the amendment exercise will serve publicity and education purposes, as in the case of the amendment of every legislation. People who often go on the Internet should understand, since we do not wish to have our freedom and pride being unreasonably abused, we should also respect the freedom of other people and should not use the computer in an unreasonable, irresponsible and arbitrary manner to do whatever we like in the cyber world. In fact, some women have complained of being bullied or even sexually harassed online and there are also many slandering acts that target women, so how should we deal with these problems? In my view, legislative amendments can be considered, but definitely not in the direction of what Mr Charles Peter MOK and other Members have suggested.

Thank you, President. I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I think using the computer with dishonest or criminal ...

(Mr Charles Peter MOK stood up)

**PRESIDENT** (in Cantonese): Mr Charles Peter MOK, what is your point?

**MR CHARLES PETER MOK** (in Cantonese): President, since Mr LEUNG Kwok-hung often requests to count the quorum, I would also like to make the same request. Will the President please do a headcount.

**PRESIDENT** (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

(While the summoning bell was ringing)

**PRESIDENT** (in Cantonese): Will Members please return to their seats, so that the Clerk can do a headcount.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please continue.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, there are many kinds of dishonesty, isn't it? There are cases of dishonest attendance, as someone always leaves the meeting at a certain time, will that be regarded as dishonest attendance? However, this Council will not expel someone on grounds of dishonest attendance. Frankly speaking, the current provision on access to computer with criminal or dishonest intent has an ulterior motive. What I mean is, for the same action that has been taken, it may not constitute an offence on certain situations, but if access to computer is involved, it may constitute an offence. For example, if I say "President Jasper TSANG is really very bad for he often cuts off the filibuster; I cannot wait to see him dead". I have not committed a crime if I write such words in my diary or if I put the document with such words in a drawer. However, if I upload such words in the computer, the consequence will be grave because I have offended President Jasper TSANG and it will lead other people to make associations.

This example can actually be seen as a precedent. As we can see, the regime has been suppressing freedom which has never been suppressed in our community in order to maintain its existence. I am not merely referring to the Communist Party. The same situation occurs in the United States, the Anti-Terrorism and Homeland Security Departments are established to deprive people of all freedoms. In face of such circumstances, the Americans would definitely react and the first thing they did was to propose a constitutional amendment. It is a pity that Hong Kong does not have such legislation. So, we have people like Dr Elizabeth QUAT who aids and abets the evildoer. President, do you understand? It is because unlike the Constitution of the United States, our Basic Law does not have such a provision. As said by JEFFERSON, what he needed was freedom of the press and freedom of speech; he did not need an army even if he were given one. But, buddy, we do not have such freedoms. Article 39 of the Basic Law has only been "tagged on" by plagiarizing the Human Rights Law which has in turn plagiarized the United Nations' International Covenant on Civil and Political Rights. Since only one part and not the other was plagiarized, universal suffrage has been lost in the process. Therefore, as regards the issue of universal suffrage which have been under discussion, the Chinese Government followed the footsteps of the British Government which said no to universal suffrage back then. This seems to have opened a back door for Dr Elizabeth QUAT to rob us of our wallets.

President, I would like to quote a very simple example. One day, I went to bail out a young man who was charged with access to computer with dishonest intent. What he did was only to voice his grievances on the Internet. Surprisingly, the Judge did not allow the young man to go home because he had previously used his neighbour's Wi-Fi connection at home. According to the Judge, if the young man returned home, he would once again use his neighbour's Wi-Fi connection. Is the Judge insane? Even if the young man comes to the Legislative Council Complex, does he have the right to use my Wi-Fi connection or Mr Gary FAN's, or that of the Legislative Council? As such, President, we can see how absurd and shameless the provision is.

Members may say, buddy, the impact of computer is very far-reaching and it is difficult to trace. Let me tell you all, the common law has a history of several hundred years, and it has boundless power for all the dirty acts of the English people have been written into it. The common law has been established through court trials. The trickiest and most shameless acts as well as all possible charges have been written into the common law. When the common law was

established in Hong Kong, there was not enough time to make some deletions, and the same thing happened in the United Kingdom. This was because the United Kingdom did not have a constitution and it still does not have one now, but we have followed its footsteps. Frankly speaking, if the Hong Kong Government has to institute prosecutions, as in the case of the earlier charge pressed against me for barging into that useless by-election consultative meeting and arbitrarily prosecuted me of an charge which has not been applied for more than 50 or 60 years, then there is no way I can escape because the law back then imposed great restrictions on human rights. As such, if the Government really wants to target everyone by means of draconian laws, it can simply say that the use of computers is not allowed and hence, there is no need to cover up its motive.

President, as such, can I use a loudspeaker? By applying the same logic, we must have universal suffrage and we will work hard to strive for universal suffrage. In future, the authorities may force us to express our views in silence, and we are not allowed to use a loudspeaker so that more people can hear us. Otherwise, we will be charged with using loudspeakers with malicious intent. Should this be allowed? On this point, it can really be said that "the choice of becoming a Buddha or a devil hinges upon one thought" and there is a chance that Dr Elizabeth QUAT will become a devil. It is not that she cannot see the problem, but she has missed the point.

President, if the defendant uses computer to commit an offence under the common law and we convict him for using computer, then we are not convicting him on the basis of his views, but on "the use of a device" right? President, if I hit a person, what are the differences between hitting him with my hands, my feet or biting him? We cannot say we can hit a person but we cannot bite someone. What is the ground for this? Of course, there is a ground due to the concern for AIDS and the consequences will be dire if there is blood through biting. What is wrong with using computers? The reason is actually very simple for the ruling authorities find it hard to lay charges against offences committed through the media of computers. So, they invented some charges to institute prosecutions if a computer is used. This is similar to asking people to apply for a Notice of No Objection under the Public Order Ordinance, the absence of which will result in peaceful assemblies being unlawful assemblies. Therefore, this is virtually a draconian law (*The buzzer sounded*) ... I hope that Dr Elizabeth QUAT can seriously consider not becoming a devil.

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

**MR LEE CHEUK-YAN** (in Cantonese): President, I am very grateful to Mr Charles Peter MOK for moving this motion today which gives Hong Kong people an idea of our current situation. From Mr Charles Peter MOK's motion, we can see that he is very worried about one thing, and that is, "Internet Article 23". This is precisely the reason why he has stuck a "knife" on his computer. However, Dr Elizabeth QUAT of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has proposed an amendment to his original motion. It can be said that Dr Elizabeth QUAT welcomes "Internet Article 23". As such, we can now see very clearly that they have different positions. We, in the pan-democratic camp, are against "Internet Article 23", while those in the pro-establishment camp think that it is very terrible that people are disseminating information through the computer with the intention of inciting others to storm government departments, thus they want to take advantage of "Internet Article 23" to spy on the computers of these people and have them arrested.

This gives me an impression that: Hong Kong is no longer Hong Kong anymore and what we basically have to do now is to be completely the same as the Mainland and emulate its authoritarian and rule by law systems. There is no longer any rule of law in Hong Kong but it must be ruled by law. As such, the Government has started to search for legislation which can be used and found section 161 "access to the computer with criminal or dishonest intent" of the Crimes Ordinance in the process. The provision was used for dealing with computer frauds in the past, and since there was no Internet and people only used computers back then, section 161 was enacted for the purpose of combating computer crimes.

When this provision was found, the Government discovered that no definition was made on the term "computers". As the Internet can be covered under this provision, the Government thus invokes this provision to suppress freedom of speech on the Internet. This is how the Hong Kong Special Administrative Region (HKSAR) Government works at present. It adopts the practice of the Communist Party of China (CPC) in ruling Hong Kong by finding legal provisions that can be used, instead of taking into consideration that there is the Hong Kong Bills of Rights Ordinance and the Basic Law. China does have a Constitution which lays down provisions on protecting the freedom of speech.

There are no problems with the "main laws" of both places, but the "main laws" are useless for the Governments ignore these laws and will only consider which legislation can be applied to serve the political regime, the state machinery and suppress the freedom of speech under current circumstances. These are the only things our Government thinks about.

Sometimes, I cannot help but wonder whether I am now in Hong Kong or in the Mainland when I watch certain news on the television. I also think of PU Zhiqiang who was arrested on the charge of "picking quarrels and provoking troubles". At first we thought that he was arrested for attending the 4 June seminar last year, but it turned out that it was not so simple. The Mainland authorities have recently indicated that several additional charges were made against him on the basis of the criticisms he made against the CPC on his microblog.

The CPC is now trying to apply its Mainland practices to Hong Kong. What is the practice of the CPC on the Mainland? The CPC is now drafting the national security law which covers Internet security. The National Internet Information Office (NIIO) has recently specified that microblogging should be monitored and microblogging remarks should not endanger national security. Mr Charles Peter MOK likes to use the term "universal key"; the term "national security" has now become a "universal key" and everything is linked to "national security" or is related to "public interest". Apart from remarks which touch upon "national security", remarks which will affect "public interest", "social morals" and "racial harmony" are also banned on microblogs. The latest regulation of the NIIO has been issued with the intention of suppressing the freedom of speech on the Mainland.

As the Chinese Government has now implemented these practices and proposed to enact legislation on "national security", including "Internet Article 23", NG Chau-pei, the Hong Kong Deputy of the National People's Congress, has proposed to introduce the national security law into Hong Kong. In that case, should "Internet Article 23" also be introduced? In fact, it is actually not necessary to enact "Internet Article 23" for we have already got a similar provision, that is, section 161.

As regards to frauds, we certainly agree that no one should commit frauds. However, if the Government splits the charges, we will not know the number of charges on speech crime. As regards the issue of whether the Government can

split charges, can the Secretary give us a reply later? Section 161 is actually applicable to all situations including computer frauds, false sales or even intimidation, criminal intimidation, extortion, indecent assault, theft, fraud, criminal damage or anything else; and what is worst is that prosecutions can even be instituted on grounds of public security.

How many offences are exactly covered under the Public Order Ordinance, and how many offences are covered under other legislation? We actually do not know whether the authorities have made such classifications. To what extent has section 161 been abused by the authorities to suppress the freedom of speech? We would really like to know.

The Government has also recently stepped up its actions on combating Internet crimes and 180 more people have been employed to control the Internet. If this is the case, where has the freedom of Hong Kong gone? Frankly speaking, young people of today often go on the Internet. They may have said certain things when chatting to one another on the Internet but they do not have any real intention to take action. However, the Government has assumed that they will really take action and thus press charge against them for having criminal intent. This is speech crime. Is that what the Government intends to do? Is it going to purge all online comments? If that is the case, what sort of innovative technology is the Government going to develop? Innovative technology is most often applied on the Internet. As such, the Government is very contradictory.

Thank you, President.

**MS CYD HO** (in Cantonese): President, why do we support the development of creative industry but have great reservation about the establishment of the Innovation and Technology Bureau under the governance of LEUNG Chun-ying? The reason is that law enforcement by the entire Government is pretty messy now.

I thank Mr Charles Peter MOK for moving today's motion. In fact, save today, he has, on many occasions, proposed to discuss section 161 of the Crimes Ordinance, "access to computer with criminal or dishonest intent". The scope of application of section 161(1) is very wide. It provides that any person with intent to commit an offence; with a dishonest intent to deceive; with a view to dishonest gain for himself, commits an offence. The provision also provides the case of "causing loss to another". That is, as in the case of Mrs Regina IP, her

account was being hacked into and several hundred thousand dollars had been transferred out. Such act certainly falls into the category of dishonest use of computer.

When the legislation was amended, it was related to these fraudulent cases and online crimes. However, this provision has been increasingly abused now. The severity of the abuse can be reflected from the Secretary's reply to an oral question raised at the Legislative Council in November 2014. According to the Secretary, this provision covers urging and inciting others to engage in illegal activities. In other words, acts like posting messages on the Internet and Facebook, writing blogger articles and writing articles censuring the Government, especially pinpointing the Secretaries, can be indicted any time for speech crimes.

Of course I find the comments just made by Mr LEUNG Kwok-hung on the President not appropriate. He should have said the President is someone who greatly supports democracy and protects human rights. Nonetheless, there might also be people who regard these remarks as dishonest use of computer, that is, seeing things from an opposite angle.

In fact, the case of the Government abusing the law does not start from this provision. In the past, the provision on waste disposal under the Public Health and Municipal Services Ordinance had also been invoked to prosecute protesters for displaying placards. Mr LEE Cheuk-yan had that personal experience. He was once charged under the Places of Public Entertainment Ordinance. The authorities claimed that it was an offence for the Hong Kong Alliance to exhibit the statute of the Goddess of Democracy on the street without applying for an entertainment licence. Mr LEE was taken to the police station for two consecutive days.

We can tell that these legislations, including the provision on "access to computer with criminal or dishonest intent" under the Crimes Ordinance, have been abused more and more often by the Government and have been increasingly deviated from their original intent. The outgoing Chairman of the Hong Kong Bar Association had once said that rule by law by the Government was a very rudimentary form of rule of law. In reality, the underlying spirit of safeguarding the rights and security of members of the public is present in every piece of legislation. This "security" covers regulating the Government's exercise of power, preventing the Government from using its power indiscriminately to violate the freedom of communication and the freedom of personal safety of Hong Kong people.

Yet much to my surprise, the situation has now reversed. The Government searches all legislation to see which provision can be invoked to make prosecution easier. Apparently, in his reply to Member's question at the meeting of the Panel on Information Technology and Broadcasting, the Secretary stressed that he has not abused the relevant laws. Yet he divulged that it was necessary to determine the charge(s) to be laid with regard to the fact and evidence of individual case. He also admitted that he would consider pressing charges under which particular legislation would have a better chance of conviction. Then of course section 161 stands a better chance of conviction since its definition is very loose.

Therefore, when the Government is abusing its power in this way, it is easy to get incriminated for speech crimes or for using mobile phones. However, according to the logic of section 161, if we say using mobile phones or tablet computers can be an act of indictment for speech crime ... if we say any intent to conduct a certain act is liable to arrest and prosecution, then even breathing can be an offence. It is because when the Government alleges someone of having intent to commit crime at a particular moment, the person is breathing to maintain his life at that point, and can we also arrest him for that?

President, a lot of views regarding the enactment of legislation under Article 23 of the Basic Law have been expressed recently. Some people have even proposed to introduce the national security law into Hong Kong, which is yet to be enacted and is currently under discussion in the Mainland, to censor public discussion in Hong Kong. Hong Kong people are very worried about it. Compared to the possibility of universal suffrage of "one person, one vote", we are even more worried about losing freedom of speech. Some have said that if he can only choose between democratic election and independent media versus freedom of the press, he would opt for the latter because the media and the press can monitor the Government and help the civil society to become aware of the injustice of the system. The public can then strive for democratic policies. However, the incumbent Government is taking a dual approach to suppress both. Not only Hong Kong people are denied true democracy, legislation like section 161 has been abused to incriminate people with speech crime and with intent. In fact, Article 23 has long been implemented in Hong Kong.

**MR CHAN CHI-CHUEN** (in Cantonese): President, do you recall in which year your first email account was opened? I also want to ask Under Secretary John LEE, in which year his first email account was opened?

To my surprise, in his speech just a moment ago, the Under Secretary said that the Security Bureau found that there was no need to review or amend the provision on "access to computer with criminal or dishonest intent", that is, section 161 of the Crimes Ordinance at this stage. That provision was enacted in 1993. Even for an ordinary piece of legislation that was enacted some 20 years ago, if someone proposes for a review, it should be duly done. How much more valid if it is a provision related to computer?

Development of the Internet is very fast and ever-changing. In 1993, the Under Secretary might not have even opened any email account or accessed the Internet. How can he categorically deny any need for review or amendment? He can disagree with Mr Charles Peter MOK's proposal to amend the provision making it applicable only to computer frauds, but he must respond to Mr Charles Peter MOK's motive for review, that is, to protect people from unreasonable arrests and prosecutions. We often mention about our concern on speech crimes. Of course, in the hands of the authorities, section 161 is a highly useful tool with infinite power limit that can be applied according to personal preference. Apparently, the authorities do not want any constraint over that power.

Just now, Mr KWOK Wai-keung has made some good points. He quoted an example: If someone has typed a blackmail letter, an intimidation letter with a typewriter and then put it in a drawer, no offence has been committed. I also want to ask this question: Say I have typed an intimidation letter to blackmail the richest man in Hong Kong, and I put it inside my diary, this is not an offence. However, if I save it in my computer, I might be liable to an offence. The Police can charge me for "access to computer with dishonest intent" under section 161. This letter could be a creative writing; it could also be personal indulgence in flights of fancy. How come it is not a crime when put inside a diary while becoming a crime and access to computer with dishonest intent when saved to a computer? What exactly is the difference? Of course, when the letter is posted, such as being mailed to the addressee, the Police can invoke relevant legislation to charge the writer. This is also a direction that needs review.

Nowadays, many people would use Facebook or similar social networks to make friends. They might use fake photos such as photos of some good-looking boys and girls as their profile pictures; or use Photoshop software to edit an ugly face into a pretty lady or a handsome man. This is, *de facto*, dishonest use of computer to cheat friends and win "likes". However, if they agree to meet up after they have made friends on the social network and proceed to deceive money, then it constitutes fraud. If during the course of investigation, the Police have found out that the case stemmed from their use of fake photos as profile picture, an additional offence of "access to computer with dishonest intent" can be added among the charges in that case.

From this, we can tell that there is respective legislation to deal with each crime. The Secretary for Security has often reminded us, "Internet is not an unreal world that is beyond the law. As far as the existing legislation in Hong Kong is concerned, most of the crime-prevention laws in the real world are applicable to the Internet world." The fact is: if someone deceives other person, there is appropriate law to deal with it. Why an extra offence applies when computer is used?

Suppose I have made a friend and then convinced him to meet up to "get free wining and dining". If the message is displayed in the form of a poster, I will not be alleged of "dishonest use of wall". Yet if I post it on the Facebook, I would be regarded as dishonest use of computer. Even if I have the message printed out, or published fraudulent advertisements on newspaper or magazine, there is always other legislation to monitor my acts and I will not be alleged of dishonest use of vehicle or tools.

This is the point that we are worried about and hope to have a review. The Secretary has just said this provision is highly useful. Between 2011 and 2013, there were a total of 128 cases pertaining to this section, of which 114 were convicted. The conviction rate is pretty high. But has he informed us about the arrest rate? How many people have been arrested? We fail to get an answer from him despite repeated enquiry. The authorities keeps on saying that this provision is very useful, while the fact could be among 1 000 persons arrested, over 90 out of 100 prosecuted have been convicted. Arrest actions are taken under this provision.

The Copyright (Amendment) Bill 2014 is now under examination, I have actively participated in the work of the relevant Bills Committee. We always

say that this "Internet Article 23" is like a knife hanging on one's head. Yet section 161 is not only a knife hanged on the head, it is a knife in the hand which can stab people at any time.

The so-called "Internet Article 23" now under study is targeted against parody, "spoof", photo editing, and so on. We have requested the scope of copyright exception be clearly provided because we worry that "spoof", photo editing, such as turning LEUNG Chun-ying into "D7689", the Government could use the Crimes Ordinance to press charge even the copyright holder does not initiate prosecution. Therefore, we request that the legislation must provide for the scope exempted from criminal liability, covering pastiche, parody, caricature, commenting on current events, satire, and so on. Nonetheless, no matter what exemption we have discussed, it does not help the situation. Whenever someone has edited the picture to "D7689", the Police can use the provision on "dishonest use of computer" to institute prosecution on grounds that the person is intimidating LEUNG Chun-ying or inciting the mass to assault LEUNG Chun-ying. Is it like that?

Therefore, the Security Bureau should also attend the meetings of the relevant Bills Committee and participate in the discussion. It is because even appropriate exemption areas are provided under the Copyright (Amendment) Bill 2014 covering "spoof", photo editing, parody, satire, and so on, the Government can still press the alternative change of "access to computer with dishonest intent" to prosecute the person who, say, has used other's photo and edited it to "D7689". This is in fact speech crime, it is also "Internet Article 23 (*The buzzer sounded*) ...

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

(No Member indicated a wish to speech)

**PRESIDENT** (in Cantonese): Mr Charles Peter MOK, you can now speak on the two amendments. The speaking time is limited to five minutes.

**MR CHARLES PETER MOK** (in Cantonese): President, after reading Dr Elizabeth QUAT's amendment to my original motion, I found that the amendment is in exact opposite to my original motion.

At first, we were very worried that the Government, the Police or the Department of Justice would abuse this provision to institute prosecution against someone who has committed computer crimes or they would specifically invoke this provision to institute prosecution, that is, though the Government can invoke other legislation to institute prosecution, it does not do so, resulting in unfairness. I have also anticipated that the Government would cite many horrible illegal activities, such as prostitution, gambling, criminal intimidation or storming the Legislative Council, and so on. We are strongly against these crimes. The question is, there are relevant legislations to combat such crimes, such as prostitution, gambling, frauds or criminal intimidation, inciting on the Internet to launch cyber attacks or storming the Legislative Council Complex or the Central Government Offices, and so on. Apart from invoking section 161 for prosecution, other appropriate legislation can in fact be invoked, why then must section 161 be invoked? Therefore, this is not what the Under Secretary has said earlier — the Secretary is back, thanks for coming back — to let the defendants off. This is absolutely not letting people off, but invoking appropriate legislation for prosecution, which is a legally fair, reasonable and appropriate approach.

Mr SIN Chung-kai has just given a very good example, that is, if someone incites others through access to computer, prosecution can be instituted under section 161. But if someone prints leaflets and distributes them in the streets, it will not be possible to invoke that provision. However, there are still other legal provisions to prohibit the distribution of leaflets in the streets for making incitements. That being the case, by the same token, other relevant legislation can also be invoked to institute prosecution against computer crimes. As we are often told by the Secretary or the Police, the cyber world is not lawless, this is absolutely right. Although access to computer is involved, the law in the real world is fully applicable, so we must not defy the law. Sir HUI often makes such remark to remind the public and I am fully aware of it, but why do the Police only invoke section 161, which targets computer crimes, when instituting prosecutions?

Although we have been stressing this issue, the pro-establishment colleagues have repeatedly pointed out that this would be very dangerous, and that would be breaching the law. They also question whether law-breakers would be let off. I absolutely do not have such intention; I just want to invoke the appropriate legislation to combat crimes, but speech crime is an exception. I

have consulted the legal professionals, for example Dr CHEUNG Tat-ming told me that the scope of such crimes should be clearly defined, but the authorities have entirely refused to discuss the issue of definition with us.

Please do not ignore the judgment just read out by the Under Secretary, which also involved computer hacking crimes. However, the current scope of the provision is indeed relatively wide. Even if I use my own computer and have not hacked into other people's computer, I may also get into trouble. Members of the public may not be aware of that. I have to thank a number of Members. Even pro-establishment Members query why a review cannot be conducted since the legislation has been enacted some 20 years ago. Not only the computer has changed, the use of social media has also changed. Of course, we need to review, and we do not rule out the possibility that a legislation can be formulated to target computer crimes. Since the Government is aware of our expectation, why is it reluctant to take actions?

President, I hope Members will negative Dr Elizabeth QUAT's amendment, and I support Ms Claudia MO's amendment. Thank you, President.

**SECRETARY FOR SECURITY** (in Cantonese): President, having carefully listened to Members' speeches just now, I understand that many Members ...

(Some Members spoke loudly in their seats)

**PRESIDENT** (in Cantonese): Will Members please keep quiet. Secretary, please continue with your speech.

**SECRETARY FOR SECURITY** (in Cantonese): I understand that many Members are of the view that reviews should be conducted and amendments made to legislations relevant to technology crimes, including section 161 of the Crimes Ordinance. Having listened to Members' speeches, I also understand that Members hold different positions. Mr Charles Peter MOK and Ms Claudia MO have pointed out that the provision has been abused by the authorities as a pretext to combat opinions expressed on the Internet. They are also of the view that the Administration should not invoke section 161 to institute prosecution

against those people with intent to commit an offence. On the contrary, Mr IP Kwok-him, Dr Elizabeth QUAT, Ir Dr LO Wai-kwok, Mr Frankie YICK and Dr Priscilla LEUNG opine that as more and more people are committing offences through the use of the Internet, the Administration should conduct a review of section 161 and other relevant legislations with a view to stepping up efforts to combat computer-related crimes.

I have to emphasize clearly that I can understand the practice of conducting a review of a legislation in order to keep abreast of the times, or with the aim of improving the inadequacy of a legislation or plugging its loopholes. However, if Members, based on their own distorted misunderstanding or one-sided and narrow interpretation of section 161, demand the Administration to amend the legislation or even restrict the scope of application of the legislation to the extent of changing completely the intent of a provision which has proven to be effective, I absolutely cannot accept such a rationale.

At present, among the many operational duties of the Police, combating technology crimes has been accorded top priority in our work. The Police have all along carried out law-enforcement actions in accordance with the law in a fair, just and impartial manner.

With the rapid surge of technology crimes posing an increasing threat to the public, the Police have already upgraded the Technology Crime Division to form the Cyber Security and Technology Crime Bureau (CSTCB), in order to upgrade and expand the capability in combating technology crimes and dealing with cyber security incidents on various fronts. The upgraded CSTCB will enhance its efforts in information collection and international co-operation in a comprehensive manner to detect local as well as cross-country and cross-boundary technology crimes.

The CSTCB will also closely monitor the application and effectiveness of ordinances related to technology crimes, including section 161 of the Crimes Ordinance. Meanwhile, the CSTCB will also closely monitor the advancement of technology, the trend of technology crimes, whether the Police is capable of ensuring sustainability and effectiveness of law enforcement in accordance with the relevant legislation, and the global development of ordinances related to technology crimes. It will consider whether it is necessary to conduct a review of the relevant legislation at an appropriate juncture.

With regard to whether it is necessary to conduct a review or amend a legislation, the Government has always considered a series of factors, among which the Court's judgment or view in relation to relevant cases is one of the very important factors. The Administration has all along monitored closely the Court's judgments. If the Court has any views on the interpretation of any legislation, including that of section 161, they will certainly be humbly listened to and given serious consideration by the Administration.

Section 161 has come into effect for over 20 years during which many cases have been heard by the Court. Nobody has ever raised doubts about the provision of section 161. As a matter of fact, we are of the view that the provision of section 161 is very clear and not all at vague.

I do not agree with Members' allegation of the so-called conviction for expression of opinions. People may query whether the Administration should have a different interpretation of section 161 in tandem with developments in technology. In an appeal case in 2013 (HCMA 77/2013), the Court had already given a clear answer to this question.

In the abovementioned case, a man placed a smart phone inside a female toilet of his office and set it to the video-recording mode to capture the toilet seat area. A female colleague discovered the phone and called the Police. The man was charged with obtaining "access to a computer with a view to dishonest gain", and was sentenced to two weeks' imprisonment, suspended for 12 months. During the trial, both the prosecution and the defence had engaged in an in-depth argument on the definition of "computer". Since the issue of whether the respondent's phone was a "computer" had to be considered, the Court must consider whether the dictionary definition of "computer" should be restricted in the context of the statutory purpose when determining whether the respondent is guilty. The Court pointed out back then, the Legislative Council did not define the term "computer" under section 161 of the Crimes Ordinance because science and technology were fast-developing; while the definition of "computer" was broad and ever-evolving and could never be exhaustive. In this case, the High Court was of the view that the term "computer" should be construed according to its dictionary meaning which reads "an electronic device which is capable of receiving information in a particular form and of performing a sequence of operations in accordance with a predetermined but variable set of procedural instructions to produce a result in the form of information or signals".

According to this understanding, the respondent's phone was, in fact, a "computer". During the process of construing the statute in this case, the Court had also cited another case in the United Kingdom. President, allow me to quote the judgment of the Court:

"In construing a statute, the Court should start with the statutory language rather than working all the way back from the conduct to determine the guilt or otherwise. Scientific and technological provisions should be construed to be 'always speaking'. Its context should be taken in its widest sense according to the statutory language and applied to the evolving circumstances since its enactment, unless such construction went beyond the natural and ordinary meaning of the statutory language or might result in absurdity or manifest injustice."

There is an important message in the above text, and that is, in construing a statute, the Court should start with the statutory language rather than working all the way back from the conduct to determine the guilt or otherwise. Scientific and technological provisions should be construed to be "always speaking". Its context should be taken in its widest sense according to the statutory language and applied to the evolving circumstances since its enactment, unless such construction went beyond the natural and ordinary meaning of the statutory language or might result in absurdity or manifest injustice.

It can be seen from the above judgment and the judgment of the case mentioned in the opening speech that there is nothing wrong when the Administration, in accordance with section 161, institutes prosecution against people who obtain "access to a computer with intent to commit an offence". Such a practice is totally not what the Member has alleged — distorting the legislative intent of section 161. It is all the more not what has been referred to as "abusing the provision".

Mr SIN Chung-kai raised the point of whether section 161 had been overused. I would like to point out, among all technology crimes prosecuted, invoking section 161 to institute prosecution accounts for only 10% of all relevant offences. In other words, prosecution of 90% of technology crimes is not instituted under section 161. These offences include fraud, money laundering, and bomb threats. As for the decision of invoking which ordinance to institute prosecution of technology crimes, the DoJ has to abide by the Prosecution Code.

Issues to be considered include whether the evidence is sufficient legally to justify the institution, the excuse for his act given by the person involved in the case, and whether it is in the public interest to prosecute. As a matter of fact, the process of determining whether an act has violated the law, irrespective of whether it is conducted online or offline, has to include investigation, collecting evidence, prosecution, verdict handed down by the Court, before the conclusion of whether the defendant is guilty can be arrived. President, in fact, I can cite many court cases, but due to time constraint, I would suggest Members conduct an in-depth study of the relevant judgments first, before they ponder whether their understanding of section 161 and their stance towards this provision are correct.

Just now Members also pointed out that the threshold of section 161 was relatively low, thus, it had been frequently invoked for prosecution. I absolutely cannot agree to this.

As pointed out in the opening speech, the threshold of section 161 is not at all low because there is a need to prove a specific criminal or dishonest intent, which is a relatively serious offence. Under the common law, such a threshold for instituting a prosecution is absolutely not an easy one. Second, generally speaking, the Police will first consult the views of the DoJ before instituting a prosecution pertaining to section 161. As for whether or not conviction can be successful will depend on the Court reaching a fair and just verdict after considering all evidence. Over the past five years, the percentage of ultimate successful conviction through prosecution by invoking section 161 was on average 85%. Such a high percentage also proves that section 161 is a very effective provision.

President, with the rapid development of technology, the damages and threats brought by technology crimes are unprecedentedly extensive and serious. I have noticed the trend of devising plans to expand the scale of combating various technology crimes through amending the law in many regions in recent years. For instance, the United Kingdom had started from last year to examine the amendment of ordinances with the objective of defining serious cyber attacks as serious crimes. They also have plans to raise the imprisonment term of some relatively serious cyber crimes to life imprisonment. Take Macao as another example. Through implementing the Law Against Cyber Crime since 2009, they have regulated a number of computer crimes. Targeting crimes committed on the Internet, consequential amendments have been made to the Penal Code,

such as including blatantly abetting violations, openly denigrating to the legislation. We will continue to monitor global developments of ordinances pertaining to technology crimes, the trend of offences committed through the Internet, and the current enforcement of local legislation. A review on whether there is a need to amend relevant legislation will be conducted at an appropriate juncture.

President, I reiterate that in the course of handling cases involving section 161, the Police will continue to uphold the spirit of the provision, adhere to the objective of ensuring strict enforcement of laws in a fair, just, reasonable and legal manner.

With regard to the comments made by Mr MOK and Ms MO, alleging that the provision has been abused by the Administration and used as a pretext to combat opinions expressed on the Internet, and that the Administration should review section 161 with a view to restricting the scope of application of the legislation, I opine that under the current situation of an increasing number of technology crimes which poses a growing threat to the public, such a practice is absolutely not appropriate. I implore Members to oppose the amendments of Mr MOK and Ms MO.

As for the amendment of Dr QUAT which points out that as more and more people are conducting illegal activities on the Internet, the Administration should review section 161 and other relevant legislation so as to strengthen the combat against crimes associated with the use of computers, I opine that we should give ample time to the CSTCB upgraded just last month to monitor the application of the relevant legislation. Depending on whether the legislation is adequate to address new development trends, as well as future technological developments of computer systems and telecommunications, it will be more suitable for us to consider conducting a review at an appropriate juncture.

Thank you, President.

**PRESIDENT** (in Cantonese): I now call upon Ms Claudia MO to move an amendment to the motion.

**MS CLAUDIA MO:** President, I move that Mr Charles Peter MOK's motion be amended.

**Ms Claudia MO moved the following amendment: (Translation)**

"To add "according to records," after "That,"; to add "furthermore, the Police have also from time to time invoked section 161 to prosecute the network media which records tomorrow's history and promotes social reform, so as to suppress freedom of the press and freedom of speech of the fifth power of modern society, as well as to hinder discussions of the civil society and development of social movement;" after "provisions;"; to delete "a practice has" after "such" and substitute with "practices have"; to delete "has" after "section 161, and" and substitute with "have"; and to add "and to stop abusing the relevant provision to suppress freedom of the press and freedom of speech," after "frauds, "."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ms Claudia MO to Mr Charles Peter MOK's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Claudia MO rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Claudia MO has claimed a division. The division bell will ring for five 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 James TO, Mr Charles Peter MOK and Mr Kenneth LEUNG voted for the amendment.

Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Mr KWOK Wai-keung, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Cyd HO, Mr WONG Yuk-man, Ms Claudia MO, Mr Gary FAN, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, three were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 12 were in favour of the amendment

and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**MR ANDREW LEUNG** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Comprehensively reviewing the provision on 'access to computer with criminal or dishonest intent' under the Crimes Ordinance" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the motion on "Comprehensively reviewing the provision on 'access to computer with criminal or dishonest intent' under the Crimes Ordinance" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Dr Elizabeth QUAT, you may move your amendment.

**DR ELIZABETH QUAT** (in Cantonese): President, I move that Mr Charles Peter MOK's motion be amended.

**Dr Elizabeth QUAT moved the following amendment: (Translation)**

"To delete "," after "That" and substitute with "information shows that"; to delete "penalize access to a computer for acts preparatory to but falling short of the commission of a fraud; in recent years, to make prosecution easier, the Police have repeatedly abused section 161 to institute prosecutions against persons using computers or mobile devices to engage in acts which are not in violation of other legal provisions and against persons alleged to have contravened other legal provisions; such a practice has seriously distorted the legislative intent of section 161, and has turned this provision into a draconian law; in this connection" after "an aim to" and substitute with "combat acts of access to computers with criminal or dishonest intent; with the prevalence of the Internet and social media, more and more people organize and conduct illegal activities on the Internet, including prostitution, gambling, fraud and criminal intimidation, and also there are people appealing on the Internet for the masses to launch network attacks and storm the Legislative Council Complex and the Central Government Offices; according to the information provided to the Legislative Council by the Administration, between 2011 and 2013, there was a yearly average of several dozen convicted cases under section 161, which accounted for 80% to 90% of the total number of prosecution cases under the same provision in each year of the same period; as the crimes involving the use of computers have become increasingly rampant at present"; to delete "and amend

section 161 to make it applicable only to computer frauds," after "to review" and substitute with "section 161 and other relevant legislation to strengthen the combat against illegal acts associated with the use of computers,"; and to delete "from unreasonable arrests and prosecutions" immediately before the full stop and substitute with "and social interests"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Elizabeth QUAT to Mr Charles Peter MOK's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Charles Peter MOK rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Charles Peter MOK has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Mr KWOK Wai-keung, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted for the amendment.

Mr James TO, Mr Charles Peter MOK and Mr Kenneth LEUNG voted against the amendment.

Geographical Constituencies:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted for the amendment.

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Cyd HO, Mr WONG Yuk-man, Ms Claudia MO, Mr Gary FAN, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 16 were in favour of the amendment and three against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, nine were in favour of the amendment and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr Charles Peter MOK, you may now reply and you still have two minutes 29 seconds.

**MR CHARLES PETER MOK** (in Cantonese): President, I am really very disappointed to hear the reply just given by the Secretary. Although the Secretary has managed to attend the latter part of our debate and heard the speeches made by some Members, what we have been saying all along is that the Administration should institute prosecutions with the right legislation, instead of pressing charges with this "all-purpose key" indiscriminately. Yet our pledge has fallen on deaf ears, or perhaps the Secretary still wants to mislead the public by saying that we are trying to undermine the enforcement powers of the Police or the authorities.

The Secretary has never responded to our question as to why under a particular legal provision, an act would be unlawful there is an access to computer, but not so if an access to computer is not present, and that prosecution in the latter case would be instituted according to convention legislation. That is unfair. Nonetheless, the Secretary told me to study the cases myself. In fact, the Secretary also knows that for the past year or so I have been chasing him for the total number of such cases and their case numbers. But the Secretary could not provide such information to me, and I have to look them up myself. The Secretary only told me the total number of such cases, but if he knew the total number, why didn't he know what those specific cases are? Then I made enquiries with the Department of Justice (DoJ). So far, I have yet to receive any information from DoJ. I dare not say the DoJ is hiding anything because it actually told me that it had not maintained such a database — I will follow up on this matter — how can Hong Kong society of today ... While there is definitely record for High Court cases, it turns out to be really difficult if we want to look up cases in the lower courts. This is totally unreasonable.

The Secretary told me to study the cases. I also want him to know that I would very much like to do so, but I cannot. I want to know the nature of those cases; I want to know why in some prosecution cases, only section 161 is invoked and in other cases, other charges would be added. If I were able to analyse those cases, I could ascertain whether the Secretary was telling the truth or not, and whether the provision had been abused. Yet, President, I can do nothing at all.

The Secretary only said that I should believe him. Secretary, how can something like this happen nowadays? Can you at least make the whole process more transparent?

President, I will not use up all my speaking time. I hope Members will support my original motion, but I do not expect that my motion would get passed today. Nonetheless, let me put in these final words. I hope that through this motion, the general public will make greater efforts in monitoring the Government's invocation of section 161, so as to prevent any further abuse. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Charles Peter MOK 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 IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr James TO, Mr Charles Peter MOK and Mr Kenneth LEUNG voted for the motion.

Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHAN Kin-por, Mr IP Kwok-him, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr KWOK Wai-keung, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Ir Dr LO Wai-kwok, Mr CHUNG Kwok-pan and Mr Tony TSE voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Cyd HO, Mr WONG Yuk-man, Ms Claudia MO, Mr Gary FAN, Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr SIN Chung-kai and Dr Helena WONG voted for the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr LEUNG Che-cheung, Miss Alice MAK, Dr Elizabeth QUAT and Dr CHIANG Lai-wan voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 12 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11 am on Wednesday 11 February 2015.

*Adjourned accordingly at 7.51 pm.*