

**OFFICIAL REPORT OF PROCEEDINGS****Thursday, 14 July 1988****The Council met at half-past Two o'clock****PRESENT**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE HONOURABLE THE CHIEF SECRETARY

SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL

MR. JEREMY FELL MATHEWS, J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, C.B.E., J.P.

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE WONG PO-YAN, C.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.

SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

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

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE, J.P.

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT

DR. THE HONOURABLE CONRAD LAM KUI-SHING

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

THE HONOURABLE DESMOND LEE YU-TAI

THE HONOURABLE LIU LIT-FOR, J.P.

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

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

THE HONOURABLE POON CHI-FAI

PROF. THE HONOURABLE POON CHUNG-KWONG  
THE HONOURABLE SZETO WAH  
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING  
THE HONOURABLE ANDREW WONG WANG-FAT  
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.  
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT  
THE HONOURABLE EDWARD HO SING-TIN, J.P.  
THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.  
SECRETARY FOR SECURITY  
THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.  
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION  
THE HONOURABLE CHARLES ROBERT SAUNDERS, J.P.  
SECRETARY FOR LANDS AND WORKS (*Acting*)  
THE HONOURABLE DOMINIC WONG SHING-WAH, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)  
THE HONOURABLE ADOLF HSU HSUNG, J.P.  
SECRETARY FOR HEALTH AND WELFARE (*Acting*)

**ABSENT**

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.  
THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.  
THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.  
THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.  
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.  
THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.  
THE HONOURABLE YEUNG PO-KWAN, O.B.E., C.P.M., J.P.  
THE HONOURABLE KIM CHAM YAU-SUM, J.P.  
THE HONOURABLE RICHARD LAI SUNG-LUNG  
THE HONOURABLE DAVID LI KWOK-PO, J.P.  
THE HONOURABLE HELMUT SOHMEN  
THE HONOURABLE TAI CHIN-WAH  
THE HONOURABLE TAM YIU-CHUNG  
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

**IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

**Members' Motion****DRAFT BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION****Resumption of debate on motion (13 July 1988)**

DR. CHIU: Sir, as the representative of the medical functional constituency to the Legislative Council, I speak on behalf of my medical colleagues.

The cardinal principle of the Sino-British Joint Declaration is embodied in the following provisions:

- (a) 'The Hong Kong Special Administrative Region will enjoy a high degree of autonomy' (section 3, paragraph 2)
- (b) 'The HKSAR will be vested with executive, legislative and independent judicial power, including that of final adjudication.' (section 3, paragraph 3)
- (c) 'After the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years' (Annex I, section 1, paragraph 2), and
- (d) 'The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature.' (Annex I, section 2, paragraph 3)

The main purpose of the Basic Law is to truly and honestly translate the provisions of the Joint Declaration into law so as to ensure that the HKSAR Government will have legal mandate to materialise the promises of the Joint Declaration.

However, to the disappointment of many of us, the principle of the Joint Declaration which I just mentioned does not appear to have been realised in the draft, although the phrases 'high degree of autonomy', 'independent judicial power' and 'independent legislature' appear repeatedly throughout the whole document.

For this reason, some people feel that the Basic Law, even in its drafting stage, has turned into a policy guideline to set a limit to the 'high degree of autonomy', hamper the existing independent judicial system and exercise political control.

Just like many other professionals, my medical colleagues consider some areas of the draft Basic Law as ambiguous, contradictory and inconsistent with the Joint Declaration. Examples are:

- (a) Article 16 paragraph 3 empowers the Standing Committee of the National People's Congress to revoke laws developed and passed by the SAR legislature which the National People's Congress considers to be not in conformity with the Basic Law.

This not only contradicts the spirit of common law practice but also undermines the legislative power of the HKSAR legislature.

- (b) Article 17, paragraphs 2-4 allow the law which gives expression to national unity and territorial integrity enacted by National People's Congress or its Standing Committee to be applied in the HKSAR.

This is not in conformity with section 2 of Annex I of the Joint Declaration which stipulates 'the laws of the Hong Kong Special Administrative Region shall be the Basic Law, the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature' since it opens up a new source of law.

As there is no clear indication of the scope of the laws to be applied here, any laws can be interpreted as directly or indirectly relate to 'national unity and territorial integrity'. Therefore, if this article remains as it is, the rights of the people will be jeopardised.

Sir, with the provisions of articles 16 and 17 of the draft Basic Law, I fail to see how Hong Kong's capitalist system and life-style will be able to remain unchanged for 50 years after 1997.

- (c) Article 18 of the draft Basic Law provides that courts of the HKSAR shall have no jurisdiction over cases relating to defence and foreign affairs and the executive acts of the Central People's Government.

This contravenes Annex I, section 3, paragraph 2 of the Joint Declaration which stipulates 'Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference.'

- (d) Article 22 provides that the HKSAR shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government.

As the scope of the prohibited acts is so wide and so vague that any actions can be put under this category.

- (e) Article 169 provides that the power of interpretation vested in the Standing Committee of the National People's Congress.

This again will lead to conflict with the common law system.

Apart from these, we deem it necessary to clarify the vague languages of a number of phrases in the draft Basic Law, such as 'expression of national unity and territorial integrity,' 'unlawfully arrested, detained or imprisoned,' 'unlawful search,' 'unlawful intrusion,' 'the needs of public security,' 'acts designed to undermine national unity or subvert the Central People's Government,' 'executive acts of the Central People's Government' and so forth.

The above are some of the deficiencies of the draft Basic Law. As they have done yesterday, my hon. Colleagues will continue to point out other areas of concern in the draft Basic Law at today's sitting.

Before I conclude my speech today, I would like to urge the people of Hong Kong to make use of the present opportunity given by the consultation exercise to express their views on the draft Basic Law. The Basic Law is for the people of Hong Kong and there is no reason why we should be reticent now when such an important document affecting us and our children for many years to come is being drafted.

I am sure our views will be taken into account by both the United Kingdom and the Chinese Governments and in order to have a Basic Law which we can live with it is necessary that we let our views be known.

With these remarks, Sir, I support the motion.

MR. CHUNG (in Cantonese): Sir, as Hong Kong progressively develops its system of government and a preliminary round of consultations has begun on the Basic Law, this is a predictable development. What gives rise to concern is the fact that people have serious differences of opinion on the draft.

You, Sir, said in your policy address last year that the Basic Law would have a bearing on the development of Hong Kong's system before the establishment of the Special Administrative Region.

In view of that, I believe that this Council should not only discuss the Basic Law and related issues but also propose solutions to some of the problems that have arisen.

The main issue is the excessive politicisation of Hong Kong's legal system in the provisions of the draft. It is weighted towards the control of local administration by the exercise of central sovereignty such that there are no legal provisions available to check direct rule by the Central Government or so-called 'executive acts.' As to the relevant provisions in the draft, there will be six categories of law enforced in Hong Kong.

- (1) The Basic Law;
- (2) Previous laws, namely common law, rules of equity, Ordinances, subsidiary legislation and customary law. The only exception here are laws that contravene the Basic Law.
- (3) Laws enacted or amended by this Council.
- (4) Laws which the Standing Committee of the National People's Congress deems it necessary to promulgate in Hong Kong and directives from the State Council arising from such laws.
- (5) Judicial case law in common law jurisdictions.
- (6) International Covenants and agreements recognised as applicable to Hong Kong by the Basic Law. Sources of law for the SAR therefore fall

into four levels; those enacted by the Legislative Council, Chief Executive, the State Council and the Standing Committee of the National People's Congress—in ascending order of legislative power. This may result in the situation that laws passed by Hong Kong's own Legislative Council could be repealed or Hong Kong could be coerced into enforcing decrees it might be unwilling to accept.

Articles 16 and 17 provide that Hong Kong's legislature will, to a large extent, be at the command of the Central People's Government. How in that case can a high degree of autonomy be achieved? What safeguards can there be of civil rights and freedoms? These are the basic questions arising from the Basic Law.

As for Hong Kong's judicial power and adjudication, article 18 provides that the courts of Hong Kong 'shall have no jurisdiction over cases relating to the executive acts of the Central People's Government or that the courts of Hong Kong will be bound by executive statements in the course of their proceedings.'

Obviously, the restrictions on judicial independence and the executive intervention in the judicial process run contrary to the terms of the Joint Declaration.

The most serious constraints and interference of Hong Kong's legal system may be seen in articles 169 and 170. These relate to the power of interpretation of and to the power of amending the Basic Law. The draft proposes that the power of interpretation of the Basic Law rests with the Standing Committee of the National People's Congress but allows for interpretation by the courts of Hong Kong. The power of making amendments belongs to the National People's Congress and Hong Kong's Legislative Council gets only one third of the power to propose amendments.

Section 3 of Annex 1 of the Joint Declaration clearly states—and I quote: 'That the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.' The current judicial system is such that the judge in the course of the proceedings holds full powers of interpretation on points of law and his interpretation carries absolute legal effect.

Sir, Hong Kong is an internationally renowned territory where the rule of law prevails. The rule of law is paramount in the maintenance of freedom, prosperity and stability. The spirit of the Joint Declaration and relevant provisions clearly indicate the recognition of Hong Kong's excellent system of the rule of law on the part of China and the United Kingdom.

The basic structure of the rule of law comprising the legislature, the Judiciary and adjudication is now under serious threat from the draft Basic Law. The relevant authorities should give careful consideration to making appropriate amendments to the draft.

We all know that Hong Kong will change from a British Dependent Territory into a Chinese Special Administrative Region. In order not to endanger the elements making up the territory's stability and economic prosperity, an unprecedented and Herculean legislative project is under way to prepare a Basic Law to be enacted in 10 years. In this context, whatever the merits and demerits of the draft, I would like to pay tribute to the members of the Basic Law Drafting Committee and the Consultative Committee for the time and effort devoted and their vision.

The openness on the part of the Chinese Government in the drafting process is such that I am confident that remaining issues will be resolved. The task is complicated, heavy and formidable, but the draft itself can be simplified. I believe the Basic Law needs only contain the following elements:

- (a) The provisions of the Joint Declaration and its annexes.
- (b) The basic principle of 'one country, two systems.'
- (c) Pragmatism on the basis of Hong Kong's circumstances.

On this basis and working around the provisions for powers of legislation, independent judiciary and final adjudication, a popular Basic Law should not be difficult to produce.

Other matters, such as economic, social, and cultural policy should be subject to separate legislation enacted by the Hong Kong Legislative Council under the guiding principles of the Basic Law, according to special circumstances.

I therefore make the following suggestions:

- (I) Power of legislation.
  - (1) The Hong Kong Legislative Council is vested with legislative power.
  - (2) Laws or decrees to be applied in Hong Kong shall first be enacted or approved by the Legislative Council before taking effect. Under special circumstances, provisional decrees applied in Hong Kong shall be ratified by the Council within a reasonable period of time.
  - (3) Hong Kong shall not propose legislation in contravention of the Basic Law.
  - (4) The National People's Congress and its Standing Committee being the witnesses and supervisors of Hong Kong's legislation shall not repeal Hong Kong's legislation or laws but may, under the following two circumstances, return the same to Hong Kong for further discussion. And these are:
    - (a) When such laws contravene this law, or
    - (b) When legislative procedures are not followed.

Such laws shall not take effect during further discussions. During the discussions, therefore, these laws are not to take legal effect.

(II) On the independent judiciary and the power of final adjudication, let me say the following:

- (1) Articles 79 to 95 of the draft can be retained.
- (2) Cases relating to laws enacted in Hong Kong or applicable to Hong Kong, involving action in Hong Kong, shall come under the jurisdiction of the courts of Hong Kong.
- (3) Cases involving action in Hong Kong relating to other territories, including the Mainland, shall be dealt with in the courts of Hong Kong in accordance with Hong Kong's judicial procedures.
- (4) The Central People's Government is entitled to initiating litigation in Hong Kong in accordance with the legal and judicial procedures in Hong Kong, including litigation on issues of extradition.

(III) Let me move on to the power of interpretation and the power of amendment.

- (1) Since the judicial system previously practised in Hong Kong shall be retained, the power of interpretation of Hong Kong's laws, including the Basic Law, can be reasonably and satisfactorily resolved by the Standing Committee of the National People's Congress authorising the court of final appeal in Hong Kong to interpret according to the law.
- (2) The power of amendment may similarly be resolved by the Standing Committee of the National People's Congress authorising the Hong Kong Legislative Council to amend according to law. However, as a minimum requirement, the Legislative Council shall enjoy full powers of proposing amendments to the Basic Law.
- (3) The Standing Committee of the National People's Congress is entitled to approve or reject proposals for amendment to the Basic Law but the agreement of Hong Kong Legislative Council must first be sought.
- (4) Any changes to the interpretation of this law shall not have retrospective effect.

(IV) The Hong Kong Committee on the Legal System.

- (1) The Standing Committee of the National People's Congress may establish in Hong Kong a Hong Kong SAR Committee on the legal system.
- (2) The committee would be a statutory advisory body of the Standing Committee of the National People's Congress in Hong Kong, responsible for giving advice on resolving legal differences between central and local systems in legislative, judicial and adjudicatory matters. Such matters should include the Basic Law and Hong Kong's previous legal system and laws.
- (3) The committee should comprise members from the legal and judicial fields in the Mainland and Hong Kong, deputies to the National People's Congress, Legislative Councillors and representatives from commercial

and industrial sectors. Since questions to be resolved involve Hong Kong laws and legal system, at least half of the members should be representatives from Hong Kong.

- (4) The terms of reference of the committee should be established by legislation enacted by the Hong Kong Legislative Council and reported to the Standing Committee of the National People's Congress for information.

(V) Establishment of the first SAR Government and the Legislative Council.

As we all know, this is a major task that must be completed before the Basic Law takes effect on 1 July 1997 for the smooth transition from the previous to the future Governments and for the sake of peaceful transfer and continued development, I would like to suggest the following:

- (1) The Chief Executive of the first Government be elected through consultations for the committee of the proposed grand electoral college.
- (2) The Chief Executive is Chief Executive of the SAR Government and is to appoint the principal officials of the various departments of Government.
- (3) Incumbent Legislative Councillors shall continue to serve for two years as from 1 July 1997. If it were still necessary for officials to attend meetings, they may be replaced by newly appointed officials.
- (4) The Government and the Legislative Council should carry out reforms gradually and progressively.
- (5) The Sino-British Joint Liaison Group should provide positive non-intervening assistance for a stable transfer.
- (6) The political structure provided in the Basic Law should, as far as possible, converge with the political structure developed through representative government.
- (7) Localisation of the Civil Service should be carried out in phases.

I share the views of the public in accepting the resumption of China's sovereignty. Given this indisputable fact, the Basic Law should not unnecessarily emphasise the rights of sovereignty. The most important thing is the legal system, as provided by the Joint Declaration. More important than Hong Kong people governing Hong Kong is the principle of Hong Kong laws governing Hong Kong.

Sir, with these remarks, I support the motion.

MR. CLYDESDALE: Sir, enough has been written already about the draft Basic Law to fill several libraries and I do not propose today to add another book to the shelves. Nor do I propose to labour upon the points already so ably made by my colleagues both yesterday and today.

I am principally concerned with the views, some of these preliminary, expressed by the committees of my constituency, set up to consider this unique and important document. Before dealing with specifics however let me make a

few remarks on the intention and philosophy guiding the drafting of the Basic Law. Its importance is not in question but the extremely detailed consideration of every word in the draft, and the precise meaning variously ascribed to words, groups of words, paragraphs and provisions which has been enthusiastically applied by every legal, administration, human rights and political science expert in Hong Kong and elsewhere, may have two unfortunate results. The first is that the ubiquitous 'man in the street', that is the vast majority of the people of Hong Kong, will become totally confused as to the overall worth of the Basic Law and the degree to which it can be trusted to do what it is fundamentally required to do. That is of course to maintain the present economic and social life style of our people and, as far as possible, to prevent one political system from seriously influencing the system of administration which has been so successful here.

The second unfortunate result may be that the confusion over what is good and what is bad, or merely indifferent in the draft Basic Law will add to the already high level of uncertainty affecting our Chinese middle class who will continue to vote with their feet.

What is far more important, in my view, than legal precision in the Basic Law is the intention of the Chinese Government in agreeing to draft it. It must be fundamentally clear to anyone who has an open mind that China wants Hong Kong to continue to function as we have been functioning for a very long time, as an apolitical, executive-led, economically oriented and socially conscious entity, one which contributes substantially to China without stress or threat. This latter quality is obviously very important to China and, given the nature of that country's political system, inevitably results in reluctance to concede to Hong Kong privileges and rights now, which might cause problems later. In other words, I believe that China is doing its utmost to leave the second system intact but must have regard for China's own sovereignty and constitutional authority and rights. We shall argue out the legal interpretation and even the policy content of the Basic Law—and of course it is right that those who feel the draft gives too much weight to China's sovereign rights should speak up now—but it is unrealistic to expect China to provide Hong Kong with *de facto* independence.

I am in danger of delivering a chapter or two on constitutional philosophy so let me press on with some points which have been made by hard working committee members in my constituency.

Although the Chinese language will be the official language of the Special Administrative Region of Hong Kong, the Basic Law Drafting Committee has been asked to recognise English as a second official language. An amendment to article 9 of the draft Basic Law would be required and probably some other legal revision to give this proposal effect. Where there are differences of interpretation, the Chinese language would prevail.

It must be obvious to everyone that Hong Kong's international business status and performance owes a great deal to the use of the English language, not

only in our external business but also in local commerce and in Government. Recognition of this important matter in the Basic Law would provide both assurance of a continuation of English language training and development in Hong Kong and also an encouragement to local people to maintain a bilingual philosophy. In my view, the English language will continue to be more important to Hong Kong than Putonghua.

The draft Basic Law includes too many policy guidelines in legal language. These sit uneasily with factual legal definitions. Policy is flexible and must be capable of adjustment to meet changing circumstances. Mr. LI Hou and Mr. LU Ping, during their recent sojourn in Hong Kong, listened patiently to many voices representing varied Hong Kong interests but all with this message— separate law from policy. It was therefore suggested that policy guidelines should be lifted out of the Basic Law and placed into an annex which need not have precise legal effect. Before leaving this point, it should be emphasised that the obvious intent behind the inclusion of these policy guidelines is recognised and appreciated by all in this community.

It is necessary to ensure that there is no ambiguity about the right of the Hong Kong SAR to have, to modify, to operate, and to enjoy, the fruits of its own taxation system. For this purpose, it is suggested that articles 106 and 108 be amalgamated with article 108 taking precedence. Article 107 is in fact a policy guideline which cannot be given legal status in Hong Kong's circumstances, except by defining the boundaries and parameters of the actual tax rates, an impossible proposition. Once again however the meaning of article 107 is helpful and benign and will serve happily as a policy guideline.

The intention of articles 120 and 121 is to ensure that Hong Kong and PRC export quotas and preferences shall remain separate. This will require the agreement of the other parties involved and will involve negotiation with these parties. I am satisfied that the Hong Kong Government is well aware of this need and that adequate steps are being taken through the JLG.

However, I wish to draw attention to a mistake in the drafting of article 121. The authority given in the draft for the SAR to issue certificates of origin does not include certificates of foreign origin, including Chinese origin, which are needed for the huge and expanding re-export market. In fact, although the Hong Kong Government itself does not issue certificates of origin for re-exports from Hong Kong, the other organisations approved by the Hong Kong Government for the issue of certificates of origin do, in fact, issue many thousands of these documents every month. These are issued under the same legal and inspection procedures as all other certificates within Hong Kong's unique system of certification. I believe it is important to our economic future that the Hong Kong Government remains centrally responsible for the integrity of the entire system. Certificates of origin for Hong Kong products should refer to Hong Kong origin and not, as has been suggested by some, as Hong Kong, China origin—which could lead to confusion.

Other speakers have referred and will refer to the important issue of nationality so I will not duplicate their remarks. My constituency, however, beyond all others in Hong Kong, recognises the anomalies and problems with nationality which can limit the effective use of the brainpower and skills that we have in Hong Kong. We are an international city in most senses of the word and our continuing success must rely on the most liberal interpretation possible of the right of Hong Kong people to stay here, to take part in all aspects of business and social development and to contribute to good government. We have many minorities here and often they represent third or fourth generation commitment to Hong Kong. They have to continue to believe that their talents are needed and that their human rights are safeguarded. We are a multi-national society and our economic vitality has been founded on the common interests of our people. Nationality in the Basic Law should have regard to this undeniable situation.

Sir, these are the preliminary observations from my constituency but others will follow as the process of examination of the draft Basic Law continues. We shall be looking closely for example at the mainly political issues in Chapter IV as opposed to the economic ones which have been the first concern of a trade association.

I will complete my address by again drawing attention to the need to keep the legal argumentation in context in order to maintain a clear view of the Chinese philosophy and policy in seeking to assure Hong Kong and the rest of the world that the commitment of China to the one country two systems concept is firm and will be implemented.

Sir, with these remarks, I support the motion.

MR. HUI (in Cantonese): Sir, as we all know, the draft Basic Law for solicitation of opinions was drafted at a time when there was a serious lack of communication between China and Hong Kong and when there was a serious confidence problem. Inevitably some articles turned out to be ambiguous and there were difficulties in reconciling conflicting interests between China and Hong Kong and within Hong Kong itself. Therefore, we should not merely examine the letter of the articles in deciding whether Hong Kong should accept the draft or not but rather consider the spirit of the whole and the principle of compromise and assess whether it has already taken into consideration the overall interests of our society.

Looking at the draft as a whole, I feel that the drafting committee may have been over-concerned about the question of confidence between China and Hong Kong and the exercise of sovereignty by China. Consequently, articles in relationship between the central authorities in the Hong Kong SAR, political structure and interpretation and amendment of the Basic Law, tend obviously to protect the concept of 'one country' and fail to realise the importance of maintaining the differences in 'two systems' and 'non-subordination'. It must not be forgotten that 'one country, two systems', 'Hong Kong people governing

Hong Kong' and 'a high degree of autonomy' should be policies for the governing of Hong Kong by China after 1997. It is also a promise made to the people of Hong Kong by the Chinese Government. To destroy this supreme principle would not be of benefit to either party.

I feel that in order to make this main constituent of the future Hong Kong SAR acceptable both to the NPC and Hong Kong, the first task is to alleviate fear in the Chinese Government that the people of Hong Kong will resist the exercise of sovereignty by China. In fact, those who advocate independence for Hong Kong will find themselves with few supporters.

At the same time, the worries of the people of Hong Kong that China might not keep its promises must be eliminated, otherwise the drafters of the two areas will always be on guard when they perform their duties of drafting and amending the Basic Law. This will definitely not be to our advantage.

We know that in the formulation of the Basic Law, the people can play only a passive role. Therefore, the urgent task is for the Chinese Government to show its goodwill and to make amendments in the chapters on the relationship between the central authorities and the Hong Kong SAR and interpretation and amendment of the Basic Law. The aim is to promote the independent status of the SAR judicial organs in power of final adjudication and power of interpretation, which are outside the areas of defence and foreign affairs. Then in the enactment of law outside defence and foreign affairs, the power and status of the SAR legislature should be enhanced. The aim is to ensure that the SAR will not easily be subject to Chinese intervention. This will boost the confidence of the people of Hong Kong in a high degree of autonomy that will come in the future.

The articles as they are drafted now on the one hand undermine the status and power of the judiciary and the legislature and on the other increase the power of the Chief Executive even before we have decided how he will be selected. Such a lopsided treatment will not be able to convince people who have always fought to maintain principles of equality and legal principles. I think that even if we have a sound legal system, we need at the same time a democratic and liberal government. Consequently, the people of Hong Kong should insist on these and should not accept a compromise readily.

Another much criticised general point in the draft Basic Law is that in the articles of the different chapters, you find inconsistency and a lack of balance.

The most obvious contrast is in Chapter V and Chapter VI. If the details on the lack of them in an article can form an indicator of the degree of confidence the people of Hong Kong have in the Chinese Government and the amount of influence exerted, we can see that the commercial and industrial sectors and the professionals who form the majority in the drafting committee and the consultative committee are the ones who are lack of confidence, despite the economic activities conducted between the two areas which give them more opportunities to be in touch with the Government than the ordinary people.

It is a pity that the details inserted in the articles on the economy will, in fact, tie the hands of the future SAR in employing a financial policy which can make flexible use of our social resources.

That the industrial and commercial sectors are particularly sensitive to Hong Kong's future and are worried can be easily understood. However, the provisions in article 105 which has been written for fear that Hong Kong will become a welfare state has been a source of regret and uneasiness to me.

Indeed, in the past year the social welfare sector has always asked the Government to increase allocation for social welfare services. However, the aim is only to satisfy the demands of those who are on the waiting list and to improve the quality of our services which has not been reviewed for years.

In fact, the social welfare sector has always been well aware of the fact that the welfare policy in Hong Kong is to help those who are least able to help themselves. For not only does it not ask the Government for financial commitment equivalent to the expenditure percentage of a welfare state, it has also taken into consideration the overall interests of our society and has long tolerated undesirable working conditions and quality of service.

Why is it necessary therefore for people in the industrial and commercial sectors who serve in the drafting committee to take such precautions against work that is, in fact, a reinvestment in our society.

I feel that paragraph 3 of article 105 should be deleted. It is because annual expenditure on social welfare services is to meet actual needs. Such expenditure cannot be cut down or deleted at random. Should we work to control the financial policies of the SAR and the constitution now, it would definitely undermine the flexibility of the SAR in deploying social resources for the solving of problems.

Besides, articles 152 and 154 are related. The former involves government subvention policy for voluntary agencies and the latter involves the autonomy of agencies that provide services. They appear to be quite opposite on the surface but in fact are not incompatible. I think the existing subvention policy should be retained because it is the responsibility of the Government. However, it should be stipulated in the Basic Law that the SAR Government should not seek to undermine the autonomy of the voluntary agencies through its subvention policy. The subvention policy should only work to enhance the effective allocation of resources, so that there will not be too much duplication.

On the other hand, the articles in Chapter VI are rather confused and not systematic enough. I feel that the articles on education, labour and social services should be grouped under social services and form an independent chapter. And another chapter should include articles on science, culture, sports and religion. The aim is to concentrate policy articles similar in nature in the same area. There will be better integration. I feel that some policy articles in Chapter VI are either redundant or repetitive. Article 152, for instance, says that

staff previously serving in the subvention organisations in Hong Kong may remain in their employment, but this can be deleted.

To sum up, Sir, the Basic Law involves the interests of China and Hong Kong and also the interests of the different strata in Hong Kong, so we should not seek merely to protect the interests of our own strata. As a representative of the social services sector in this Council, I hope the general public in studying and discussing the draft Basic Law should use as their basis the overall interests of Hong Kong and not lose the greater for the less.

Lastly, I would like to add the three social services and social worker organisations are consulting their members on the Basic Law. Views will be forwarded to the drafting committee through the consultative committee. Whatever their views, they will be fully respected by me.

Sir, with these remarks, I support the motion.

MR. MARTIN LEE: Sir, when the Joint Declaration was announced to the people of Hong Kong on 26 September 1984, it was generally very well received. We saw in it a possibility of a bright future for Hong Kong, based on the principles of 'one country, two systems', 'Hong Kong people administering Hong Kong' and 'with a high degree of autonomy'. At the same time the British Government promised to implement a democratic system of government in Hong Kong well before 1997 so as to enable the people of Hong Kong to practise self-administration.

Then followed a honeymoon year, during which the emigration figures dropped. This continued until 21 November 1985 when Mr. XU Jiatus gave his first ever press conference during which he impliedly accused the British Government of deviating from the Joint Declaration. And thereafter, there were a number of incidents which made the people of Hong Kong feel that the People's Republic of China (PRC) would interfere in the internal administration of Hong Kong if she thought it was in her interest to do so; and that the British Government would not implement the Joint Declaration to the full.

Thus, emigration figures began to soar again as more and more people in Hong Kong believed that they would not be left alone in their administration of Hong Kong after 1997. Many people no longer believe that the Basic Law would be adhered to by the Central People's Government (CPG) of the PRC after 1997.

After the publication of the draft Basic Law at the end of April this year, a number of adverse criticisms have been voiced by numerous organisations and individuals about quite a few articles contained in it. More people have decided to leave Hong Kong. But can anything be done about it? And can confidence be restored to the people of Hong Kong? I think so. But it will not be easy. And both the British and Chinese Government must co-operate and do something about it; and it must be done immediately. Enough damage has been done to the

confidence of our people by the leaders of China speaking out of turn when they repeatedly insisted that we must not introduce direct elections this year. This was in breach of the Joint Declaration, which gave to the British Government the responsibility of administering Hong Kong until 30 June 1997. But it was successful from China's point of view because the British Government was ultimately pressurised into reneging from its earlier promises of introducing direct elections this year. But at what price? The emigration tide has heightened; and if unchecked; it may soon turn into a tidal wave, which will ruin our economy and prosperity even before 1997. For Hong Kong cannot keep its vibrant economy going if a substantial percentage of its middle management of bankers, managers, professionals and experienced secretaries are gone.

The leaders of China and their agents in Hong Kong have tried hard to arouse interest among the people of Hong Kong in debating or discussing the provisions of the draft Basic Law. But all their attempts have so far failed, and failed miserably. According to a press report in the South China Morning Post yesterday: 'Only six people attended the "Central-Hongkong relationship" session held on 25 June, with only two of them speaking. And last weekend, only five out of 30 people voiced their opinions on "resident's basic rights and duties".' The report went on to say that the Executive Committee of the Basic Law Consultation Committee (BLCC) will hold a meeting on the coming Saturday with a view to finding 'ways to further intensify the consultation work'.

But they do not have to look far for reasons as to why the people of Hong Kong have shown so little interest. They have only to be reminded of what they themselves and their principal spokesmen in Hong Kong have said in the last few months, regarding this consultation process, and ask themselves whether they can really expect the people of Hong Kong to have any confidence in them or to entertain any hope that what they say will matter.

Further, many people in Hong Kong feel that public opinion was not listened to during last year's political review culminating in Hong Kong Government's decision in the White Paper not to introduce direct elections this year in spite of popular local support for them, and they simply do not believe that public opinion will now be listened to by the leaders of China who voiced such strong objections to the introduction of direct elections this year. I therefore feel that the first thing the Executive Committee of the BLCC should do is to try to restore its neutrality and credibility with the public. For unless the public can be persuaded that what they say will count, the general apathy towards the draft Basic Law will continue.

#### *General criticism*

Sir, I think many people will share my view that most of the articles contained in the draft Basic Law are good, and that they truly reflect the provisions of the Joint Declaration. But having said that, I must hasten to add that we are not marking an examination paper, in which case, 75 per cent will be a very good

mark indeed. For we are dealing with a mini-constitution for the future HKSAR, and one bad article will make the whole thing unworkable. And there are I am afraid some such articles in this draft.

My main criticism of the draft Basic Law is that it falls far short of the promises contained in the Joint Declaration; in particular, it does not give to the future HKSAR the high degree of autonomy promised. First, in relation to the constitutional links between the CPG and the HKSAR, it is clear that the CPG wants to retain very firm control over the HKSAR, and this is in breach of the Joint Declaration. Secondly, in relation to the political structure of the HKSAR, although some of the articles relating to this area still contain a number of options, I have every reason to believe that the majority of the members of the Basic Law Drafting Committee (BLDC) are not in favour of a democratic system of government. And here it is pertinent to remind Members of two sentences in Annex I of the Joint Declaration: 'The legislature of the HKSAR shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.' Sir, we have understood them to mean that the people of Hong Kong will be able to elect their own representatives into the legislature, and through that elected legislature, the people of Hong Kong will be able to hold their government accountable to them. In one word, democracy. But the draft Basic Law now gives us cause to fear that the people of Hong Kong will not be left alone to administer Hong Kong with a sufficiently high degree of autonomy, and that the future HKSAR Government will be no more than a puppet government.

#### *Constitutional links*

The Joint Declaration spells out very clearly what the high degree of autonomy is: 'The HKSAR will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibility of the CPG'.

It is therefore clear that apart from defence and foreign affairs and a few very specific provisions in the Joint Declaration relating to appointments by the CPG in relation to, for example, the Chief Executive and principal officials and the reporting of laws to the Standing Committee of the NPC for the record, and the like, the HKSAR will be given full autonomy in all other areas.

But this promise was broken in that a number of articles in the draft Basic Law seek to reserve more power to the CPG than contemplated in the Joint Declaration:

*Article 17:* deals with the application of nation-wide Chinese laws to the HKSAR, and it also includes 'laws which give expression to national unity and territorial integrity'.

*Article 18:* limits the jurisdiction of the courts of the HKSAR, and it also excludes 'cases relating to the executive acts of the CPG'; and

*Article 169*: in effect takes away the power of the courts of the HKSAR in their interpretation of certain provisions of the Basic Law, including ‘other affairs which are the responsibility of the CPG’.

Sir, all these articles, in my view, are in clear breach of the Joint Declaration, for they cover matters other than defence and foreign affairs.

*Articles 18 and 169*

Sir, I am therefore glad that members of the Constitutional Development Panel (the panel) have been able to reach consensus on a number of controversial articles including articles 18 and 169; and I have been given the task of presenting the views of the panel on these two articles.

But first, it may be helpful to Members if I were to give a short historical background.

For a considerable time, Mainland members of the first subject subgroup of the BLDC on the relationship between the Central Authorities and the Hong Kong Special Administrative Region wanted to limit the jurisdiction of the courts of the HKSAR in their interpretation of the Basic Law to only those articles dealing with matters within the autonomy of the HKSAR. This formulation met with strong objections from some Hong Kong members of the drafting committee. And ultimately it was decided to give the courts of the HKSAR unlimited jurisdiction to interpret the Basic Law but to define the jurisdiction of the courts of the HKSAR in another article in Chapter IV, whereby the present limits on the jurisdiction of the Hong Kong courts will continue to be effective after 1997. For this reason, article 169 deals with the interpretation of the Basic Law, while article 18 deals with the jurisdiction of the courts of the HKSAR.

*Article 18*

The first two paragraphs of this article are unobjectionable and they read:

‘The Hong Kong Special Administrative Region is vested with independent judicial power, including that of final adjudication.

Courts of the Hong Kong Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions of their jurisdiction imposed by Hong Kong’s previous legal system shall be maintained.’

As to be third paragraph, it provides that ‘Courts of the HKSAR shall have no jurisdiction over cases relating to defence and foreign affairs, which are the responsibility of the Central People’s Government, and cases relating to the executive acts of the Central People’s Government.’

This formulation is unacceptable. For although under the common law, certain cases are not justiciable in our courts today, this formulation casts a wider net of exclusion than under the present system. The following are some

examples of the matters which are excluded from the jurisdiction of the Hong Kong courts today:

- (a) *Prerogative powers*—The courts may not review on its merits the exercise of an admitted prerogative power, that is, a power which can be exercised by the sovereign and is theoretically subject to no restrictions. Examples are the dissolution of the legislature, the appointment of the Governor and other public officers, the control of the armed forces, the power to enter a *nolle prosequi* (which puts an end to the prosecution of a particular criminal case) and the power to pardon or remit sentences. But even in relation to these prerogative powers, the courts may still determine whether a prerogative power exists, or whether a particular public authority or official may exercise the prerogative power on behalf of the Crown; or whether the exercise of the prerogative power imposes a duty on the Crown to compensate the citizen.
- (b) *External affairs*—The conduct of foreign relations is an exercise of the prerogative power. And in the field of foreign affairs, certain prerogative acts of policy performed by the Crown in the cause of its relationship with other states or its subjects are called ‘acts of state’ and they cannot be challenged, controlled or interfered with by the courts. Some examples are: the making and performance of treaties and declarations of war. However, as with other acts of the prerogative, it is still open to the courts to decide whether a particular act is or is not an act of state, or whether a particular authority or official has power to exercise the prerogative power. And when an act of state has caused damage to the citizens of a state, compensation is payable; but not if the aggrieved party is an alien outside the jurisdiction of the state.

Then there are a number of matters which have been conveniently called ‘*facts of state*’, for example, whether a particular country was at war with another country on a particular date. And in relation to facts of state, there is a prescribed method of proving them, namely, by way of certificates issued by the executive which are binding on the courts.

Sir, the above is not intended to be exhaustive, for there are other prerogative powers and matters which are not justiciable in the Hong Kong courts today; and they are clearly prescribed by the common law. And the common law is constantly developing. It is therefore both difficult and undesirable to codify these common law rules.

From the above analysis, it is clear that although some of the matters which are not justiciable in the courts do fall within the description of defence and foreign affairs, not every case relating to defence or foreign affairs is outside the jurisdiction of the Hong Kong courts today. In other words, the limits of jurisdiction sought to be imposed on the courts of the HKSAR by the present article represent a departure from the present situation. And this is contrary to

the common objective of members of the BLDC which has always been that what the courts can try today, the courts of the HKSAR can also try after 1997.

This article also excludes from the jurisdiction of the courts of the HKSAR 'cases relating to the executive acts of the Central People's Government'. Therefore, after 1997 a resident of the future HKSAR may not bring proceedings in a court of the HKSAR for any civil wrong done to him by the CPG in the HKSAR. The rationale stems from the fact that under the Crown Proceedings Ordinance, Cap. 300 of the Laws of Hong Kong although any person who has suffered damage as a result of a civil wrong done by the Hong Kong Government may bring an action in Hong Kong against the Hong Kong Government, no such proceedings may be brought in Hong Kong against the British Government in respect of any act, neglect or default of any of its officers or agents. And in such cases, the aggrieved party will have to institute his action against the British Government in an English court. But the analogy is not apposite because the English legal system is almost the same as ours, and their legal procedures are also similar. So even if an aggrieved citizen in Hong Kong has to bring his action in an English court, he will not suffer any significant disadvantage apart from having to bring his action in the United Kingdom. But under article 18, if the CPG has done a civil wrong in the HKSAR and if such a wrong cannot be redressed in the court of the HKSAR under the laws which apply to the HKSAR, then the aggrieved party will suffer the following disadvantages:

- (a) it is not even clear whether a Hong Kong resident can bring proceedings against the CPG in the People's Supreme Court in Mainland China;
- (b) even if he can, it is doubtful whether he can enforce legal rights which are only recognised in the HKSAR and not in Mainland China;
- (c) the legal procedures in Mainland China are totally different from those in the HKSAR;
- (d) although it appears now that Chinese nationals may in theory bring certain types of proceedings against certain government departments in various courts in Mainland China, the legal remedies available and the procedure, to say the least, are unclear; and
- (e) it is common knowledge that in Mainland China, it is difficult for an aggrieved party to have effective redress against any state organ or quasi-state organ or party cadres, for all judges are under the influence of the Chinese Communist Party and will, if in doubt, take the advice of the Chinese Communist Party before pronouncing judgment.

For these reasons, we are not really comparing like with like here.

Sir, let me now give an illustration of how this article can work in practice. A person is arrested in the HKSAR on behalf of the CPG on the ground that he is suspected to be a spy. His wife goes to a lawyer who institutes an action in the High Court for a writ of habeas corpus so that he could be brought before the court and dealt with according to law. But under article 18, the court will have

no jurisdiction to enquire into the matter, as it is 'an executive act of the CPG'. This simple illustration shows that unless article 18 is amended, all the articles in Chapter III of the draft Basic Law pertaining to civil liberties may be rendered nugatory.

In the circumstances, I am glad that members of the panel have reached a consensus on this article. We are unanimous in accepting the first paragraph of this article. We also find the second paragraph acceptable on its own although we feel that this paragraph might be contradicted by the third and fourth paragraphs. We find the term 'the executive acts of the CPG' to be vague and would like it to be clearly defined; and we also agree that the present system whereby the citizens of Hong Kong can take the Hong Kong Government to the courts should be retained. And finally we are of the view that it should be up to the courts to decide whether a particular act is or is not an act of state; and that in relation to facts of state, the court should be given a discretion to ask for a certificate from the executive authorities only when in doubt, and not when the matter is clear.

I believe that these views will be taken care of by amending article 18 as follows:

'The Hong Kong Special Administrative Region is vested with independent judicial power, including that of final adjudication.

The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions of their jurisdiction imposed by Hong Kong's previous legal system and principles shall be maintained.

The courts of Hong Kong Special Administrative Region shall seek the advice of the Chief Executive in accordance with the principles and legal precedents of the common law when questions concerning foreign affairs and defence arise in any legal proceedings. A statement issued by the Chief Executive regarding such questions shall be binding on the courts.

Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the National People's Congress or the State Council.

Regulations regarding the handling by courts of the Hong Kong Special Administrative Region of cases relating to organisations, organs of state power of the People's Republic of China (including those mentioned in articles 13 and 21 of Chapter II) or their personnel, and regulations concerning compensations by organisations, organs of state power and the personnel concerned, shall be stipulated by the law of the Region'.

*Article 169*

Members of the panel accept the first two paragraphs of the article as well as the first sentence in the third paragraph, but do not agree with the rest of that

paragraph, for it provides in effect that whenever a case comes up before the HKSAR courts involving the interpretation of an article of the Basic Law regarding 'defence, foreign affairs [or] other affairs which are the responsibilities of the Central Government', the HKSAR courts must not construe the relevant article, but must adjourn the case and refer the question to the Standing Committee of the NPC for a determination. After that, the case will resume, but the judge is bound by the interpretation put on the relevant article by the Standing Committee of the NPC.

This totally unacceptable formula has come about because it is feared by the Mainland members that the HKSAR courts 'might get it wrong' while construing an article of the Basic Law pertaining to 'defence and foreign affairs [or] other affairs which are the responsibilities of the Central Government', so that embarrassment may be caused to the CPG, for example, on a matter involving foreign affairs which may affect the good relations with a friendly nation; and that this embarrassment may be irreversible because the right of final adjudication has been given to the HKSAR.

Sir, the problem is twofold. First, unlike our legislature which has no power to interpret laws, the Standing Committee of the NPC is entitled, and indeed enjoined, by the Chinese Constitution to interpret all the laws of China. Secondly, although the People's Supreme Court is also empowered to interpret all the laws of China, all the judges in the PRC are under the influence of the Chinese Communist Party and they often take the advice of the party. The result is that very few decisions handed down by the courts in China are ever likely to be unacceptable to the party or the CPG. The Mainland members are therefore reluctant to give unfettered power of interpretation of the Basic Law to the courts of the HKSAR, particularly when the right of final adjudication has been given to the HKSAR by the Joint Declaration. But this is due to their inability to accept or appreciate the importance of the independence of the judiciary. For even if the Court of Final Appeal were to be in Beijing instead of Hong Kong, so long as the judges of that court were truly independent, some of their judgments would still be thought to be unacceptable by the party or CPG. And since it is the avowed objective of the PRC to keep the judiciary of the HKSAR independent, the fact that the HKSAR has been given the right of final adjudication cannot be a valid reason for limiting the jurisdiction of the courts of the HKSAR in their interpretation of the Basic Law.

The provision requiring the courts of the HKSAR to refer the interpretation of any provision of the Basic Law 'concerning defence, foreign affairs [or] other affairs which are the responsibility of the CPG' to the Standing Committee of the NPC before 'making their final judgment on the case' represents an attempt to follow the practice in English courts relating to the interpretation of a treaty of the European Economic Community. For in the United Kingdom, before the House of Lords gives final judgment in a case involving the interpretation of such a treaty, it is required to refer the point to the Court of Justice of the European Communities for its interpretation. But in relation to lower courts,

the practice is wholly different, and it may assist Members if I set out some of the relevant legal principles relating to all English courts except the House of Lords, as they have not been taken into account:

- (a) the Court has a full discretion on deciding whether to refer the point of construction;
- (b) the Court will not refer the point unless it considers it necessary to enable it to give judgment;
- (c) in deciding whether to refer, the Court will take into consideration (among other things) the delay, the expense, and the effect on the trial;
- (d) for the point to be referred, it must be such that a decision on it would be conclusive of the very case before the Court in the United Kingdom;
- (e) if the same point has already been decided by the European Court in a previous case, it will not be necessary to refer it to the European Court again, and it will not be referred;
- (f) if the point is reasonably clear and free from doubt, there is again no need to refer, and it will not be referred; and
- (g) it is only when all the essential facts have been decided that the Court would consider whether it should refer the point to the European Court.

Sir, in addition, the Court of Justice of the European Communities is an independent judicial body composed of experienced and renowned judges from the various member states of the European Economic Community. The process of interpretation is regulated by judicial procedures which allow representations to be made to the European Court on behalf of the parties. Therefore, the referral procedure has not eroded into the judicial independence of the English courts. However, the Standing Committee of the NPC is part of a legislative body; and the composition and the manner of operation of the Basic Law Committee, which is to advise the standing committee before the latter interprets the Basic Law, is not well-defined. For these reasons, it is inapposite to compare our problem to the referral procedure to the European Court by the English courts.

I am therefore glad that members of the panel have reached consensus on this article. We feel that the courts of the HKSAR should have power to interpret all the articles of the Basic Law. And while recognising that the Standing Committee of the NPC has the constitutional power and duty to interpret the Basic Law, we feel that the Standing Committee of the NPC should irrevocably delegate its power to interpret those articles of the Basic Law within the scope of the HKSAR's autonomy to the HKSAR courts when adjudication cases. As to the other articles which fall outside the scope of the HKSAR's autonomy, we feel that the Standing Committee of the NPC can, if it thinks fit, interpret them, provided that its interpretation, if contrary to that put on the same article by the HKSAR courts, shall not affect the result of all cases previously decided.

Sir, I believe that Members' views on this article can be dealt with by amending it as follows:

‘That power of interpretation of this Law is vested in the Standing Committee of the National People’s Congress. The courts of the Hong Kong Special Administrative Region may interpret all the provisions of this Law.

Regarding the provisions which are within the limits of the autonomy of the Hong Kong Special Administrative Region, the Standing Committee of the National People’s Congress will irrevocably delegate its power to the courts of the Region to interpret them when adjudicating cases.

When the Standing Committee of the National People’s Congress makes an interpretation of a provision of this Law which is outside the limits of the autonomy of the Hong Kong Special Administrative Region, the courts of the Region, in applying such a provision, shall follow the interpretation of the Standing Committee. However, cases under adjudication and judgments previously rendered shall not be affected.

The Standing Committee of the National People’s Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.’

The provisions of Chapters III,IV,V,VI and X of this Law are or are deemed to be within the limits of the autonomy of the Hong Kong Special Administrative Region. The question as to whether the provisions of the other chapters of this Law are within the limits of the autonomy of the region may be decided by the courts of the region or by the Standing Committee of the National People’s Congress. The standing committee will consult the Committee for the Basic Law of the Hong Kong Special Administrative Region before making a decision. The decision of the Standing Committee of the National People’s Congress shall be final.

#### *Political structure*

Sir, I wish to deal briefly with some of the provisions in the draft Basic Law relating to the political structure of the HKSAR. My first comment is that the draft provides for a continuation of the present colonial system of government whereby the powers are centred on one man, the Governor. The executive authorities are also given many draconian powers. And yet there are insufficient powers given to the legislature to enable it to provide the necessary checks and balances on the executive.

Further, although a number of options are left open relating to the selection of the Chief Executive and the composition of the legislature, there are a number of proposals which advocate the setting up of what is called a ‘grand electoral college’ to select both the Chief Executive and a substantial percentage of the legislature.

This suggestion came from a coalition of certain conservative members of the BLCC commonly called ‘the group of 81’. It proposes the formation of an electoral college consisting of about 600 members coming from different sectors

of the community. It does not explain, however, *which* organisations are entitled to be represented in the grand electoral college. Nor does it say *who* is to decide which organisations will be included. All that is said is that different groups or organisations in the grand electoral college will select their representatives by a democratic process in accordance with their own internal procedures, which are not specified. Such a vague proposal must make people wonder whether its protagonists are serious about their proposal.

From the booklet published by the group of 81, one can see that the grand electoral college will consist of mainly people from the business and industrial sectors; and even the most conservative estimate suggests that at least the majority of its members will come from these sectors. Therefore, the person chosen by the grand electoral college to be the Chief Executive will certainly look after the interests of these business and industrial sectors, and yet he is not accountable to all the other people of the HKSAR. If such a Chief Executive wishes to seek another term, he will make sure that he has the continued support of the members from these sectors by making promises to them which may not be in the best interests of the HKSAR as a whole.

I therefore feel that such a system will bring about an undesirable coalition of economic and political interests and mutual trade-offs among a small group of people, thus corrupting our society. Moreover, if any one group among the business and industrial sectors were to dominate over the others, then the latter would be the first to bear the brunt, for the former may abuse their power to advance their own financial gains at the expense of others, particularly those in the same trade. We know from experience that when economic and political interests merge together, monopoly and special privileges often develop, thus upsetting our much treasured free and open market economy.

As to the legislature, it is proposed by the Group of 81 that 25 per cent of it shall be 'elected' by the grand electoral college. But this is really an appointment system, for the result can be very easily manipulated. The underlying object in employing such a method is to ensure that there will be a group of members in the legislature who will always say 'yes' to any government proposal or policy. And I have been told that another object is to enable principal officials to be 'elected' into the legislature, so as to preserve the present system of having Official Members in the Legislative Council. This clearly demonstrates that the grand electoral college is proposed in order to achieve a predetermined result.

But there is no reason to provide for such an elaborate and unsatisfactory system of election just to cater for these principal officials. Surely there are better alternatives. The first is to have a what is commonly called the ministerial system whereby the principal officials will be nominated from the elected members of the legislature who will then be appointed by the CPG as provided in the Joint Declaration. The second alternative is to provide in the Basic Law that principal officials will be allowed to take part in all meetings of the Legislative Council, but without a vote. So they will answer questions, and

move Bills on behalf of the executive. This is really following the present practice in the Finance Committee, where the ex officio government members are not given a vote.

Sir, I wish to say something about election by functional constituencies, as I have come from this route. This was introduced in September, 1985 as a first step towards democratisation. Since then, it has found favour with quite a lot of people in Hong Kong. But there are inherent drawbacks to this method of election. For it is likely that the members elected from the various functional constituencies will put the sectional interests of their constituencies above those of the community as a whole. And if a substantial number of the members of the legislature were to be elected by this method, then the legislature would become very loose or even fragmented. And it would also reduce the efficiency of the Government.

One ready indicator to show the unfairness of this method of election is that so many of our very able people in Hong Kong who are well-educated, intelligent, and who have contributed so much to our vibrant economy are still without a vote—bank managers, managers in large international as well as local incorporations, entrepreneurs, experienced secretaries and some professionals. Indeed, these are the very people who are leaving Hong Kong in great numbers. For if we do not allow them to vote with their hands, they vote with their feet.

I therefore disagree with the hon. Mrs. Selina CHOW that 75 per cent of the legislature of the HKSAR should come from this route. The more senior Members of this Council will remember how difficult and how utterly illogical it was for the Legislative Council to decide in 1985 on the nine functional constituencies that we have today. And Members of this Council will recall how very difficult it was for us to decide on the two additional functional constituency seats for elections in September this year. This was so because it is basically invidious for us to decide which particular functional constituency is more important to our community than the others; and comparisons are odious.

For these reasons, I do not believe that we should add to the number of seats via the functional constituency route at all. It was intended to be a first step forward, and the final destination has to be universal adult suffrage for all the seats of the legislature of the HKSAR.

### *Conclusion*

Sir, from my experience acquired during three years of meetings of the BLDC, I fear that the CPG and the people of Hong Kong may have a totally different understanding on some of the key provisions of the Joint Declaration. Now that these differences are manifested in the draft Basic Law, many people in Hong Kong, including Members of this Council, have expressed the view that some of the articles of the draft Basic Law contravene the Joint Declaration. In these circumstances, I hope the leaders of China will be sympathetic to the people of

Hong Kong, and make even further concessions to us like a considerate and loving parent. After all, what we are asking for are clearly within the Joint Declaration and do not impinge on Chinese sovereignty. Perhaps the leaders of China can forgo their paternalistic insistence on sovereignty or national pride or simply face. For we are all proud to be Chinese, and we fully support the return of sovereignty over Hong Kong to the PRC, but in accordance with the terms of the Joint Declaration.

I urge the Chinese Government to take full advantage of this period of consultation on the draft Basic Law by encouraging the people of Hong Kong to speak up on their own future, and by making all necessary amendments to what is, in my view, an imperfect first draft. For if the views of the people of Hong Kong are taken into account and if satisfactory amendments are made to this draft, then confidence may return, albeit gradually, to Hong Kong. But if no satisfactory amendments are made to the draft, then one thing is certain: many more people will leave Hong Kong long before the Basic Law takes effect in 1997.

As was pointed out by some of my hon. Colleagues yesterday, the leaders of China are doing a very remarkable and commendable thing by conducting an extensive consultation on the first draft of the Basic Law. And it would be a great pity if, inspite of such open-mindedness, the final product were to be one which was not generally acceptable to the great majority of our people.

Sir, although I am a member of the BLDC, I cannot guarantee to the people of Hong Kong that the provisions of the Basic Law will be adhered to in full after 1997, and in the way that we have understood them. For we will have to wait and see. But one thing I know, and that is, if we do not even get it right on paper now, then we know for sure that the policies of 'one country, two systems', 'Hong Kong people administering Hong Kong' and 'with a high degree of autonomy' are doomed to fail. I therefore fully support the motion and urge all the people of Hong Kong to speak up on their behalf, and that of their children.

Sir, this may be the most important time for the future of Hong Kong. And historians will look back to this period and say:

'It was the best of times,  
it was the worst of times,  
it was the age of wisdom,  
it was the age of foolishness,  
it was the epoch of belief,  
it was the epoch of incredulity,  
it was the season of Light,  
it was the season of Darkness,  
it was the spring of hope,  
it was the winter of despair,  
we had everything before us,

we had nothing before us,  
we were all going direct to Heaven,  
we were all going direct the other way.'

(From 'A Tale of Two Cities' by Charles DICKENS)

Which is it going to be? Well, the choice is ours.

MR. DESMOND LEE (in Cantonese): Sir, the present Basic Law draft is for solicitation of opinions. Instead of being open-minded, some consultative committee members and even Chinese officials have been so narrow minded as to say that Hong Kong British authorities should not discuss the Basic Law. Everyone's view should be welcome. Whether they accept the views should be a matter for them to decide. If I went disciplining my own son, for instance, and my neighbour offered some practical advice. Why not give it some thought, rather than accuse him of interfering with your domestic affairs? Since the publication of the draft Basic Law, Hong Kong and British officials have not publicly commented on it. On the other hand, during last year's Green Paper review, certain Chinese leaders and Hong Kong representatives have spoken and acted in a way that the public regarded as intervention, influencing the objectivity of the review. Now that Mainland drafters are in Hong Kong, they have invited Legislative Councillors and district board members to express their views, but only in their personal capacities. Why have they not invited our over 5 million people to comment in their personal capacities?

During the negotiations on Hong Kong's future, certain Chinese leaders have asserted that what the British could do, the Chinese could do also. Over a century of British rule has indeed laid down a very good foundation. By agreeing to maintaining the status quo for 50 years, China has accepted to some degree the achievements of British rule. But really has it been any extraordinary ability on the part of the British that has brought about today's achievement? I think not. Not that the British have any extraordinary ability, but that the good British systems applied in Hong Kong have been successful, and such systems do not exist in Britain alone, but have been adopted in many other places. Having lived here for almost 40 years, I have seen six Governors in my day. No change in governorship has made much difference to the running of Hong Kong, which goes to show that the system has been successful, there has not been rule by personality. Turning to China, Government personality has existed through the ages to the present, every change in leadership has sent shock waves through the country. Those in Hong Kong who are worried about the territory's future, even frightened of China, are such because they appreciate the difference between rule by personality and rule by system. Some of the most successful of Hong Kong's existing systems are the rule of law, the relationship among the executive, legislative and judiciary, and freedom. I join the debate today on these three themes.

The Joint Declaration provides that the SAR be vested with the powers of the administration and legislation on an independent judiciary with the power of final adjudication. The reason why it is worrying is that the NPC retains the power of interpretation of the Basic Law, and it is, even now, the Legislative Council, which enjoys legislative power, does not have the power of interpretation of laws. This is certainly a case of the executive intervening in the judiciary. Where, I ask, goes the principle of an independent judiciary? Moreover, the power of final adjudication would lose its integrity under Central Government intervention. The Joint Declaration clearly provides that certain common law would continue to apply after 1997, and according to the common law system, all laws enacted by the legislature are to be interpreted in the courts. Neither the executive nor the legislature have this power. In China, however, the situation differs completely. The National People's Congress, as the legislature, and its standing committee, holds the power of interpretation of all laws in China, including the constitution, thus the powers conferred on the Standing Committee of the NPC are alien to the common law system. Confusing the two systems will bring about a crisis in the SAR's legal system of serious proportions. I, therefore, recommend that we follow the system in which the US Supreme Court interprets the American Constitution, and let the Court of Final Appeal of the SAR decide whether laws enacted by the legislature are constitutional.

Of the relationship among the three governmental powers, the most important element, I believe, is the monitoring function of the legislature. The Joint Declaration states that legislative power is vested with the SAR legislature, and that the executive authorities should be accountable to the legislature. However, the legislative and monitoring powers of the legislature envisaged in the draft Basic Law are inadequate, and in many ways restrictive.

Bills involving government policy and public expenditure cannot be proposed by members of the legislature and laws passed do not take effect until endorsed by the Chief Executive, who may not sign a Bill that has been passed. The legislature would be dissolved if it insisted, or for that matter, if it refused, to approve the Budget or any other important Bills. Then if the Standing Committee of the NPC is not happy with a piece of legislature, though passed, and regards it as a breach of the Basic Law, it would be repealed or returned for reconsideration. On matters of defence, foreign affairs, and for the sake of national unity and territorial integrity, the Standing Committee of the NPC may direct the legislature to enact laws, or simply promulgate laws directly. The legislature would not have the power to investigate the actions of the executive authority nor could it impeach principal officials. The power to impeach the Chief Executive is far too narrow. Article 64 interprets the accountability of the executive to the legislature in an excessively narrow way, confining it to enforcement of law, reports, answering questions, and approving public expenditure. I am, therefore, in favour of genuine and full legislative and monitoring powers for the legislature, including the powers of investigation and

impeachment of the executive authorities to ensure the accountability of the executive to the legislature.

On freedoms and civil rights, article 25 of the draft provides that permanent residents of the territory enjoy the right to vote and the right to stand for elections. And yet in the selection of the Chief Executive and of the legislature, some options such as the one involving the grand electoral college deny Hong Kong people those very rights. This should be borne in mind when the final decision is made on the options. As far as freedoms are concerned, speech and conscience or religious beliefs are the most sensitive. The Basic Law provides for the religious schools, courses, welfare agencies and social services, local and mainland religious bodies have to conform to non-subordination and non-interference. But this is not good enough. Provision should be made for the authority of foreign churches in ordaining ministers or bishops in Hong Kong. Article 22 of the Basic Law provides that the Hong Kong SAR shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government. Religious bodies are worried since similar clauses were cited in the Mainland when ministers were imprisoned. My view is that since article 1 already states that Hong Kong is an inalienable part of China, article 22 is really superfluous, and should be dropped in order to allay fears.

Freedom and equality are two important elements of human rights. The provisions in the Basic Law on freedom abound. These include articles 26,27, 144 and 151. However, there is less than specific protection of the equal rights of our more than 100 000 non-Chinese minority groups. The Basic Law emphasises national sovereignty, these people may not be able to identify with the Chinese race and culture, but many of them have resided in Hong Kong for generations, and have contributed to our community through their enterprise. In the wake of the 1981 British Nationality Act, and the 1986 British Nationality Order, these people run the danger of being stateless, and have to suffer the pain of having a family and home but no country. The Basic Law focuses on Chinese nationals resident in Hong Kong, but does not provide for the equitable treatment of ethnic minorities. That should be borne in mind during further consideration of the draft Basic Law.

Sir, with these remarks, I support the motion.

MR. LUI (in Cantonese): Sir, the draft Basic Law for solicitation of opinion affects the political future, economic prosperity, and social stability of Hong Kong after 1997, and it is a historical document. It should be understood by everyone in Hong Kong. They should discuss the document and give their views. The fact that the draft is debated in this Council goes to show that Legislative Councillors are very concerned about the future of Hong Kong. In fact, ever since the signing of the Sino-British Joint Declaration, Legislative Councillors have tried, through different means, to achieve what is best for the people of Hong Kong. Sometimes the course to the goal is checkered. For

instance, the view of this Council on the Basic Law needs to be collated and then presented to the Chinese Government through diplomatic channels. That is rather indirect. However, the Council still decides to go ahead with the debate. On the one hand, in speaking up we are performing our duty as Legislative Councillors, and on the other hand we hope that by so doing we will be able to appeal to the people of Hong Kong so that they too will pay more attention to this question of our future, which concerns them personally. And they will participate actively in discussions. In this way everyone in Hong Kong will share in our future development and aspirations.

The draft Basic Law is divided into 10 chapters and 172 articles. The scope is wide, and I will concentrate my comments on a number of more important issues.

On the whole, the Basic Law can be described as complying with the basic spirit of the Joint Declaration. That is to ensure Hong Kong's political stability, social prosperity and to keep it unchanged for 50 years. These are the basic aims and basic principles, and at the same time the Basic Law will work to realise the unprecedented concept of 'one country, two systems'. Consequently in the formulation of the Basic Law, we have to balance the exercise of Chinese sovereignty and to allow a high degree of autonomy in Hong Kong. In other words, the balance of 'one country, two systems' is the key to the Basic Law. Reading through the draft, we can see that much emphasis has been laid on Chinese sovereignty, so much so that by comparison details of some articles give one the feeling that not enough consideration has been given to the people of Hong Kong. Consequently the confidence of Hong Kong in the Basic Law has been affected.

In considering the relation between the central authorities in the region, for instance, I believe most will agree that the basic principle should be that, apart from foreign affairs and defence, the HKSAR should enjoy a high degree of autonomy. Therefore the central authorities should devolve its power and the region should respect the sovereignty of the Central Government. Such mutual respect and mutual trust will form the real basis for a good relationship between the central authorities and the region. Otherwise, even if we make the Basic Law much more detailed, it will not help the situation. Articles which have led to serious worries, such as the very controversial article 22 should either be amended or deleted. The people of Hong Kong do not really understand charges such as 'undermining national unity' or 'subverting the Central People's Government'. To insert such articles into the Basic Law without any explanation or definition will only add to the uneasiness of the people of Hong Kong.

Besides, it is stressed in the Joint Declaration that the Hong Kong SAR will enjoy a high degree of autonomy. The emphasis is lost in the draft. This adds to our worries, and we begin to doubt whether apart from the defence and foreign affairs, the central authorities will interfere in other affairs of the region. At the same time, the question of final adjudication is also most controversial. It is now

being discussed by the legal profession and I have no intention of repeating the arguments here. I only hope that when the final draft is worked out, consideration will be given to balancing the relationship between the central authorities and the region, so as to alleviate the worries and the uneasiness of the people of Hong Kong.

As to the rights and duties of residents, many people are worried about the definition of 'permanent resident of the HKSAR'. According to the existing draft, only permanent residents of Hong Kong have the right to vote or be elected, and only Chinese nationals among the permanent residents can take up senior posts in the Civil Service, according to article 100. Hong Kong has achieved great success, apart from the industry of its residents who depend on our international links and resources which enable Hong Kong to compete with other regions economically. In recent years, many people have emigrated, resulting in some Hong Kong people possessing dual nationality. Whether this group of Hong Kong people holding foreign passports can contribute their expertise to our society will be a question of great significance. If foreign nationals and the many residents holding dual nationality feel that their development will be hampered in the future SAR, they will leave Hong Kong and look for development opportunities elsewhere. This will be Hong Kong's great loss and will affect its prosperity and stability. Consequently, in defining Hong Kong residents in the Basic Law, I hope that adequate consideration will be given to the special circumstances in Hong Kong, and expedient and appropriate arrangements will be made. Perhaps by so doing, we will be able, once again, to attract back the professionals who have left, so that they will be able to contribute their expertise once again to Hong Kong.

On our political structure—in the annexes, alternatives are listed for the selection of the Chief Executive, the constitution of the legislature, and the formation of the first Government. A lot of different alternatives and proposals are listed, leading to heated debate among people with different stands. However, such debates are limited to newspapers and other forms of media. Very seldom do they extend to the ordinary people. Each alternative involves principles and methods of its selection and are very technical. It is beyond the man in the street. To look into the future, I hope that the common people can be given more chances to fully understand the pros and cons of each alternative so that through cool-headed and rational discussions we can together come up with an election system that is most suited to Hong Kong's future. In fact, the alternatives listed in the draft Basic Law are by no means exhaustive, and they are not mutually exclusive either. I believe the alternative that will be accepted by the majority will be one that achieves a compromise, taking the best in each so that the interests of all parties will be taken care of.

Finally, there are articles on the economy and culture. Many have pointed out that specific policy provisions should not be made part of the Basic Law, otherwise the flexibility of the future SAR development will be restricted. There

are other articles stipulating maintenance of existing systems, yet they should not rule out the possibility of further development building upon the existing system. In short, if the Basic Law can impose as few restrictions as possible and allow maximum room for development, it will be the best guarantee and encouragement for the future of Hong Kong.

Above are my views on the draft Basic Law for solicitation of opinion. I hope that the people of Hong Kong will study this important document in depth and conduct discussions so that an exchange of ideas will work towards our future.

Sir, with these remarks, I support the motion.

MR. NGAI (in Cantonese): Sir, the Basic Law is a constitution for the future Hong Kong SAR drafted on the basis of the Sino-British Joint Declaration. I think that while we analyse and discuss the draft Basic Law, the following criteria should be borne in mind.

First of all, the draft Basic Law should abide by the letter and spirit of the Joint Declaration. This will include principles such as a high degree of self-autonomy, no change for 50 years, maintenance of the capitalist system and lifestyle, and maintenance of executive, legislative and independent judicial power, and also the power of final adjudication, and also the maintenance of the spirit of rule of law.

Secondly, these articles must be simple, clear and direct, we should avoid vague wordings that are open to different interpretation.

Thirdly, we must emphasise fundamental principles and avoid dogmatic and inflexible articles.

Fourthly, we should follow our existing legal spirit and the terms and legal provisions at present, in order to avoid difficulties in interpretation.

Fifthly, since the Basic Law is to protect the interests of society as a whole, we do not need to emphasise the interests of any particular sector.

Sir, the first impression that the draft Basic Law (solicitation for opinion) gives me is that it is too wordy and repetitive. We have many policy articles which are inflexible. In some chapters we are given a wide spectrum of different views expressed by different sectors of the community; it is almost as if all views expressed were recorded. This might be because the drafters would like to take care of all views expressed and they would not like to give the impression that they were unable to maintain the present system, that is why even existing policies were written into the draft Basic Law. I think that a lot of these articles could have been saved or simplified. On the other hand, I think that the draft Basic Law has put too much emphasis on exercise of sovereignty, resulting in a conflict with the fundamental principle of a high degree of self-autonomy. Actually, the fact that China would resume her sovereignty over Hong Kong after 1997 is already known to the world; that is why we really do not need to

emphasise this too much. Hong Kong people are used to a liberal lifestyle, but they are also used to a high degree of self-discipline and a strict rule of law. That is why I think the Chinese Government can be less worried and more trusting. It should let the Hong Kong people have a free hand in running Hong Kong so that we will be able to implement successfully the concept of 'one country, two systems'.

Sir, if we are to implement the unprecedented political concept of 'one country, two systems', the Hong Kong SAR must have a high degree of self autonomy. This is clearly spelt out in section 3 paragraph 2 in the Joint Declaration: 'The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibility of the Central People's Government'.

I think this is very important because it clearly defines the jurisdiction of the Hong Kong SAR Government. That is why I think we should include the original wording of this article in the Basic Law.

Now I will talk about the question of nationality. Sir, in the draft Basic Law we are not given a clear definition of the term 'Chinese national'. We should be given an explanation as to whether this means all people holding a Chinese passport, or people of the Chinese race. I think that in order to maintain stability and prosperity in Hong Kong we must pay attention to this problem, and to emigration of our professionals. So I think we should enhance the confidence of people who intend to emigrate, and also encourage people who have emigrated to come back to Hong Kong and work. One of the feasible methods is to acknowledge and respect the foreign nationality of people of Chinese race who are holding passports but who would like to come back to Hong Kong to stay, or for work. These Chinese emigrants are really like married daughters, and China is like their parents. If these daughters are willing, they should be welcome to their maternal home to stay on for a while, or stay permanently to help with the family and contribute their assets. On the other hand, they should be free to go always, back to their husbands and families. So I think that under the principle of 'one country, two systems', we should allow Hong Kong people with more than one passport to keep their foreign nationality and freely travel in and out of Hong Kong. This will be helpful to our prosperity, so I hope that our drafters will consider this seriously.

Sir, the Constitutional Development Panel of OMELCO has already studied all the articles in detail. Yesterday, Mr. Andrew WONG spoke on the articles on which we have reached consensus. I am a member of the panel; I shall say no more on these articles other than that I fully support what Mr. WONG said, but as a member coming from the industrial and commercial sector I would like to say something about the articles in Chapter V, that is the chapter on economy.

Sir, I think everybody will agree that all economic systems change and evolve with time, and so we must take this into account in drafting law. If we are too inflexible, regulations will stifle economic developments.

Article IV of the draft Basic Law says that socialist systems and policies shall not be practised in the HKSAR and the existing capitalist system and way of life shall not be changed for 50 years. I think that this is most appropriate as an article expounding our economic principles. The reason is simple. Only if the capitalist system in Hong Kong is to be continued can we speak of any economic future.

On public finance and taxation, Sir, I think we have too many policy articles in this chapter. Miss DUNN spoke most eloquently yesterday on this, and Mr. WONG Po-yun has also given us some very valid remarks on this. But today I would also like to go into the details.

We have a lot of articles concerning principles, such as determining expenditure according to revenue and maintaining a basic balance or maintaining a low tax policy. I do not think we should have these policy articles included in the Basic Law. I think we can consider Miss Maria TAM's suggestion, that is, that we can have all these articles contained in an annex and treat them as instructive articles.

Sir, Hong Kong is a very small economic entity. For many years the Hong Kong Government has run the finances of Hong Kong according to the principle of a low tax system, a balanced Budget, the avoidance of a deficit, and avoidance of debt. But the most important thing is that the Legislative Council should understand clearly what the fiscal target and criteria are, since it has the right to reject a Budget and it has the power to monitor the Budget. So as long as we have an established and sound system we really need not be too worried about losing control over our Budget. If we use inflexible or dogmatic promotion in the Basic Law to control our fiscal policies, that will be sacrificing our flexibility and adaptability. In fact, under certain economic circumstances, the Government may have to revise our taxation system or even to adopt a deficit Budget. We have no reason to rule out such possibilities.

I think all we have to do is to retain articles 104, 106 and 108, and we will be able to abide by the Joint Declaration and this is clear and direct. As for articles 105 and 107, I think these will be imposing an invisible bondage on the political system of the Hong Kong SAR, so I think we should consider scrapping these two articles.

Sir, as for maintaining the position of an international monetary centre in Hong Kong, the draft Basic Law suggests in article 109 that the Hong Kong SAR shall create conditions and take measures for the maintenance of such a status. I think these are administrative suggestions. It is simply impossible for us to predict what would happen in our monitoring environment in the coming 50 years, and if we are to request the Hong Kong SAR to use administrative means to maintain such a policy even if we have changes in the objective

environment—this will be imposing a heavy burden and this is not practicable at all, and so I think we should reword article 109.

As for article 111, it says that no exchange control policies shall be applied in the HKSAR. Again, this is an administrative article. It is simply impossible for us to predict what would happen in future. Under certain emergency circumstances, we may need exchange control, so if we have such articles written down in the Basic Law the Government will lost the authority to adapt to new changes, and this is indeed very dangerous.

As for articles 112 to 114 concerning monetary policies, we should again consider whether these should be written down.

On article 115 concerning issuance of currency, Hong Kong will not have a central bank, and according to the experience of the central banking systems in foreign countries, it is not desirable to let the Government directly control the issuance of currency, so I think we need to preserve the system of having more than one bank issuing currency. That is why I think it is very appropriate to have such an article. This will maintain the independence of issuance of currency.

Sir, as for the Exchange Fund, I think we should reword this article. The issue of Hong Kong currency should be backed by an exchange fund with no less than 100 per cent freely convertible foreign currency, and we have agreed on this in our panel.

On external trade and economic relations, articles 117 to 121 are detailed articles but I think this is necessary because Hong Kong's economy is chiefly export-led, and I think we should accept such an article if we want to maintain our status as a trade centre in the region.

And then, on articles concerning industry, commerce and other trade, article 122 speaks about practising free and open policies regarding industry, commerce and other trades, but what does it mean by free and open policy? Again, these are policy articles, and we do not have a very good definition of the term 'other trades'. It is not so that the Government has no control over all trades now, one obvious example is that the Government does have a price control over rice, so I think we must seriously consider rewriting this article or it will lead to disputes.

Article 123 stipulates that the Government of the HKSAR shall create the necessary environment and conditions for encouraging industrial investment, technological progress, and the development of new industries. Again, this is a policy article. The intention is good, but this is vague and unclear. It is open to dispute, and a lot of people can use this article to allege that the Government is violating the constitution, and people may also suspect the Government would like to use administrative means to interfere with industrial and commercial activities, and the result may not be good for investment. So I think we should consider amending this.

Article 124 makes the same mistake, so again we should consider amending that.

As for articles concerning land leases, shipping, and civil aviation, since all articles are borrowed directly from the Joint Declaration, I accept them all.

Sir, in summary, I think that the draft Basic Law has paid too much attention to the maintenance of the existing policy, when economy is concerned. And it has neglected the importance of changing according to circumstances and the fact that our economic system evolves with time. The best means to maintain confidence in investment and enterprise, is to maintain existing capitalist system. We do not really need to write this down in the law. The most important thing is to emphasise major principles in capitalist systems. For example we should say that the Central Government should not interfere with free enterprise, the SAR would not interfere with the operation of free markets, or the Central Government would not exercise planned economy in Hong Kong SAR. As to how this should be codified, this is really the task for legal experts.

Sir, with such remarks, I support the motion.

4.31 pm

HIS EXCELLENCY THE PRESIDENT: Members might take a short break at this point.

4.55 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

MR. PANG (in Cantonese): Sir, to apply the one country, two systems policy in Hong Kong after its sovereignty is resumed by China, is of historical significance.

Ever since the Basic Law draft (for solicitation of opinions) was published, the Basic Law Consultative Committee has been putting in all it has got to publicise the document and meanwhile Mainland drafters have arrived in the territory in great numbers. What should have happened was that the Basic Law draft that could determine the future of 5.5 million people commanded wide public attention in Hong Kong and even in China and that everybody was enthusiastically giving their views. But, what actually happened was that most of our citizens simply adopted a resigned and indifferent attitude towards the draft. This is enough for the drafters to ponder why the draft that took more than two years of hard work and solid study to produce got such a frosty response.

Before the release of the Basic Law draft, I have reiterated on a number of occasions that the draft should succinctly provide for a high degree of autonomy

for the SAR so as to live up to the spirit of the Joint Declaration which stipulates that the Hong Kong SAR would be highly autonomous and that apart from defence and foreign affairs. Other policy guidelines should not be included in the Basic Law.

Sir, the Basic Law draft contains 172 articles. If China is serious about the Joint Declaration and the granting of a high degree of autonomy to the SAR, she should, apart from defence and foreign affairs, give a free hand to the SAR in governing itself. And, China should also consider coming up with a brand new system to replace the century old colonial administrative structure. But, far from it, the draft to a large extent merely takes after the colonial legal framework. This explains why China has agreed to Hong Kong's remaining unchanged for 50 years under the Joint Declaration. That was because the colonial system conferred upon a sovereign state paramount authority. What China does not understand is that Britain has ceased exercising its authority as a sovereign state over Hong Kong a long time ago. No wonder in mid-November 1985 the Chinese Government complained that somebody was not going by the books.

Sir, the Joint Declaration can be used for reference in the drafting of the Basic Law. Colonial provisions should as far as possible be avoided. The Chinese Government should be firmly committed to implementing the 'one country, two systems' policy as promised. And, she should believe in Hong Kong people's ability and intelligence to govern themselves. The Chinese Government should not be suspicious and try to hold onto her authority over the SAR through colonial legislation. The people of Hong Kong hope that the Chinese Government would grant a complete free hand to the SAR in order to realise the concept of a high degree of autonomy. If the Hong Kong SAR would be ruled by Hong Kong people and be highly autonomous, our freedoms would be safeguarded and our democratic legal systems would remain intact. To show her sincerity, the Chinese Government must break away from the concept of colonial administration and put her trust in Hong Kong people who have accumulated decades of experience in building a thriving economy and stable society. If, given a free hand, Hong Kong people can be counted on for being highly intelligent and productive. Consequently, Hong Kong can realise its full potentials and cater to the needs of a China that is reforming and opening up. Together the two can create a prosperous and stable future for themselves.

Sir, the people of Hong Kong have witnessed the unforgettable disasters and ordeals that China went through. They are still in shock; all they can do is to hope that China would honor the Joint Declaration and tune in seriously to worries and constructive comments from Hong Kong people. It should be ensured that the Basic Law is acceptable to Hong Kong people in order to restore their confidence in the future. Only when this happens could Hong Kong continue to thrive and progress after its sovereignty is returned to China in 1997, and consequently to act as a fine example of a free and democratic society that is ruled by law for the benefit of modernising and reforming China.

Sir, time is changing, the world is changing, and fashion is changing, but I believe that democracy, freedom and rule of law will forever be the goals pursued by mankind. I earnestly urge that democracy, freedom and rule of law be made the goals of the Basic Law as well. Only in so doing could Hong Kong people feel reassured that China has a future and the 'one country, two systems' concept stand any chance of success.

Sir, I feel that if I were to describe the Basic Law draft, I would say that it is like a dish prepared by many chefs and many ingredients have been added to this dish, and the Hong Kong people will have to swallow it.

Sir, I support the motion.

MR. POON CHI-FAI (in Cantonese): Sir, the drafting of the Basic Law is no easy task. This is a job that is totally unprecedented—there are not any samples to follow. Not only must the Basic Law look after the principle for a highly autonomous SAR in order to preserve Hong Kong people's confidence, it must also give expression to the sovereignty of China over Hong Kong. Moreover, different people have different interpretations of and amendments on the Basic Law, so it is indeed very difficult to come up with a draft that is faultless and acceptable to all. However, in considering the Basic Law, I think the most important point is whether it is in keeping with the spirit of the Joint Declaration and whether it would give Hong Kong a high degree of autonomy.

Article 169 of the draft says that the power to interpret the Basic Law is vested in the Standing Committee of the National People's Congress. This is not objectionable in principle—it is because the drafting and interpretation of law is normally the business of the Central Government and indeed Hong Kong SAR comes under the sovereignty of the People's Republic of China. Moreover, since the Basic Law is passed by the Standing Committee of the National People's Congress, the National People's Congress can of course interpret it, but judicial power and power of interpreting law are inseparable. The Central People's Government has already granted legislative, judicial power as well as the power of final adjudication to the Hong Kong SAR ensuring it has a high degree of autonomy. Therefore, to avoid undercutting Hong Kong SAR's legislative power and power of adjudication, and to maintain the smooth functioning and effectiveness of our legal system, the Central People's Government should consider devolving the power to interpret the Basic Law to the Hong Kong SAR, apart from defence and foreign affairs. Articles 169 and 16 stipulate that National People's Congress has the power to vet whether legislation drafted by the SAR is in line with the Basic Law and legal procedures, and that the National People's Congress can return the law in question for reconsideration or revocation, without any provisions for appeal by the SAR. Moreover, the NPC holds the definitive power to interpret Basic Law. I think these two articles should be amended. This is because the first article of the draft already says that the Hong Kong SAR is an inalienable part of the People's Republic of China. To devolve the power to interpret to a local

Government that is most familiar with the local situation should not undermine China's sovereignty over Hong Kong. Actually, the Central People's Government has already formulated the 'one country, two systems' policy to render the Hong Kong SAR highly autonomous—and many matters relating to sovereignty that are normally handled by the Central Government are now placed under the ambit of Hong Kong SAR. For example, legislative power, power of final adjudication, the issuing of banknotes and control over immigration and emigration. If even the power to interpret the Basic Law is granted to Hong Kong SAR, it only shows the trust that the Central People's Government has in the SAR—this would boost Hong Kong people's confidence.

Article 16, paragraph 3 provides for the Committee of the Basic Law. It is responsible for deciding whether or not laws enacted in the Hong Kong Special Administrative Region are compatible with the Basic Law. It is also to decide on the interpretation and amendment of the Basic Law and the applicability of national laws on Hong Kong. It is therefore evident that this committee has far-reaching influence on the future of Hong Kong. For this reason, the composition, establishment, and the terms of office, as well as the terms of reference of this committee should be outlined in detail in the Basic Law for public discussion. And, it is hoped that most members of this committee will be people who have a deep understanding of Hong Kong.

Sir, article 9 of Chapter I, provides for the use of language. Some members of the public are worried that English will be neglected. However, it is my opinion that the provision in article 9 is already sufficiently clear that in addition to Chinese, English may also be used. We must remember that Hong Kong is a cosmopolitan city and English is used more than ever in international associations, and although English has been used very widely under British rule, 98 per cent of the people in Hong Kong are Chinese ethnically. And, therefore, when sovereignty reverts to China after 1997, it is but natural that Chinese be the official language. Although English is a *lingua franca* in international interaction, there are many economic giants in the world such as Japan, Germany, France and Italy that use their own language in communication among government departments as well as citizens. In Hong Kong, however, most of the government communications, minutes and other documents are written in English. I am afraid that perhaps after 1997, Chinese will not be used to a sufficiently wide extent, and the manpower and time resources needed for translation will cut down on government efficiency.

Sir, our society is changing constantly. Provisions on policy not only cannot suit Hong Kong in 40 to 50 years from now, but they cannot possibly be suitable for the Hong Kong five years to 10 years from now. Such inflexible policy provisions, such as articles 105, 107 and 142 should be deleted from the Basic Law text.

Apart from these points, there are other inadequacies and places for amendment in the content and drafting of the Basic Law.

For instance, article 21 paragraph 4 ‘People from other parts of China must apply for approval for entry into the Hong Kong Special Administrative Region.’

Article 17, paragraph 3 mentions ‘laws which give expression to national unity and territorial subintegrity’.

Article 18, paragraph 2—the executive acts of the Central People’s Government.

Article 22—any act designed to undermine national unity or subvert the Central People’s Government.

Such phrases mean different things to different people and should therefore be clearly defined, lest there be misunderstanding.

Sir, before I close, I must stress the fact that to have a perfect Basic Law is of course important, but what is more important is whether it is possible to implement the Basic Law and to ensure that the promises made in the Basic Law be realised. From this unprecedented open way in which views are collected for the Basic law draft, we can see the sincerity and the importance attached by the Chinese authorities to the drafting of the Basic Law. There are still issues to be resolved, but this is a good start, and I sincerely hope that with the good start we will also have a good final outcome so that Hong Kong will enjoy permanent stability and prosperity to make this a better home.

Sir, with these remarks, I support the motion.

PROF. POON (in Cantonese): Sir, on the draft Basic Law of the Hong Kong SAR issued by the Basic Law Drafting Committee, I would like to focus on Chapter IV concerning the Legislative Council and Chapter VI concerning education and science and to express my opinions.

First, concerning the forming of Hong Kong SAR’s Legislative Council, I feel that the major objective of maintaining Hong Kong’s stability and prosperity should be stuck to in order to prevent Hong Kong from irreparable crashes and not to hinder the present smooth functioning. That should be built on the broadly based representative foundation. In the evolution of our political system we must select those reformed measures that are most beneficial to the whole community in order to gradually and orderly implement and develop a democratic system. To start with, we realise that democracy has various phases.

Policy implementation must tie in with the overall social situation—elections can include the one man, one vote general elections, inter alia, elections by electoral college or elections by functional constituencies through one man or one organisation, one vote. Each method of election only represents the ideal of its supporters about the political system.

In the past few years Hong Kong’s political changes can be considered as gradual and orderly so as to avoid sudden changes and political instability. The

introduction of 10 directly elected seats in 1991 is to prevent any sudden change. On the issue of the political system in the future our community has not yet come to a consensus. The alternatives listed in the Basic Law also reflect this situation. Apparently our community still needs more time to come to a consensus in our political system. Nevertheless, judging from the various alternatives in the draft Basic Law, the people seem to confirm that elections may differ not only in forms, but also in degrees. The major difference lies between preference for direct elections and preference for indirect elections as well as the initial pace of conducting such elections.

Hong Kong has practised the appointment system for more than 140 years. This system has really enabled Hong Kong to become a renowned successful cosmopolitan city. People recognise that most of those who receive appointments have made contributions to the community, or have outstanding achievements through their professions. Our future political participants should be representatives of various walks of life. The system of functional constituencies will achieve this result and these representatives are elected through one man, one vote in their respective constituencies. The representativeness of these functional groups is beyond doubt. The experience of the past three years has also proven that the system of functional constituencies is most suitable to Hong Kong's special situation. Therefore, I agree that in the future the legislature should consist of a greater proportion of Members elected from the functional constituencies. In order to gradually promote democratic reforms and to make up for the district elements which the functional groups lack, direct elections at the district level are necessary.

But the implementation of every policy must be in line with the situation and needs of society as Hong Kong's stability and prosperity must be maintained. So we must be even more cautious. So, I tend to agree to alternatives 1 and 3 of Annex II. Personally, I prefer the idea of the electoral college, even though the electoral college must be broadly inclusive of representatives from various sectors, the allocation and distribution of seats among various groups and sectors must be carefully considered to prevent an over-inflated structure which will hinder the efficient functioning of the whole system, and to ensure that individual groups will not be too unwieldy and thus attain predominance over other sectors, or even control the whole electoral college. Moreover, methods of election for representatives of the functional groups should be left to the individual groups to decide, for such methods should not go against the democratic spirit today.

Although I have only mentioned alternatives 1 and 3, undoubtedly, each of the 4 alternatives has its own merits and supporters. I hope that residents should not insist on their own opinions and should put Hong Kong's overall interests in the first place, so that we can come to a consensus on the alternative which has the strengths of all other alternatives and is acceptable to most residents. This should be Hong Kong people's objective.

On the other hand, I would also like to comment on Chapter VI on topics such as education, science, culture and so on. I have discussed with many professionals, educators and people from the cultural fields about these articles. Generally speaking they feel that these articles are acceptable, though the details should be further scrutinised.

First of all, article 142 stipulates that the Hong Kong SAR shall maintain the education system previously practised in Hong Kong, but article 143 says that Hong Kong SAR shall, on its own, formulate policies on education—these seem to be contradictory. Hong Kong's present educational system is not static; it requires changes. But the spirit of our Western style of education system should not be changed. To resolve this contradiction I suggest to delete article 142 and to slightly amend the first part of article 143, which reads:

‘The Government of the Hong Kong SAR shall, on its own formulate policies on education’

and emphasise on the fundamental elements of Hong Kong's existing education system.

Regarding paragraph 2 of article 150, which says:

‘Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications’.

If a professional contravenes professional ethics after 1997, according to the present provision, he may be disqualified.

But if article 150 is followed, then he may still keep his qualifications. Therefore, I propose to add to paragraph 3 of article 150 to the effect that professional organisations recognised by Hong Kong SAR Government may assess and accredit as well as cancel professional qualifications.

Finally, article 152 reads that Hong Kong SAR Government's subvention policy for organisations in fields such as education, medicine, culture, arts, recreation, sports, social welfare and so on. At present Hong Kong Government has also subvented technological organisations such as the Hong Kong Plastic Centre. Therefore, I suggest that this provision should include scientific and technological organisations.

Sir, with these remarks, I support the motion.

MR. SZETO (in Cantonese): Sir, everybody in town says ‘no change for 50 years.’ However, how many people are clear-headed enough to realise that after 1997 certain things cannot remain unchanged. Changes are inevitable.

The relationship between Hong Kong and Britain becomes the relationship between Hong Kong and China—‘one country, one system’ becomes ‘one country, two systems’. The colony of Hong Kong will become a Special Administrative Region with a high degree of autonomy.

These are things that cannot remain unchanged—change they must.

There is a very subtle relationship between changing and not changing. Things that cannot remain unchanged and must be changed in the way they turn out to be will affect other things and determine whether they can remain unchanged for 50 years. If the changes are for the better, then remaining unchanged for 50 years will become a reality. Otherwise, the hope of no change for 50 years will merely be a mirage. Therefore, people who are concerned about the future of Hong Kong and who are committed to Hong Kong's future should not merely concentrate on what should remain unchanged, but have to pay attention to those that cannot remain unchanged and must be changed. How things will turn out to be: whether the changes are for the better, and whether the changes can help to ensure that other matters can remain unchanged.

Things that cannot remain unchanged and must be changed can be specifically reflected in the Basic Law provisions on central authorities, the SAR and the political structure. These are two key areas.

Regarding central authorities and SAR, articles 16,17,18 and 109 and Note 2 in the draft Basic Law are the key articles in the key area. These articles provide for the ultimate power to enact legislation for the Hong Kong SAR by the Standing Committee of the NPC, through the requirement to submit legislation for record, application of national laws, by way of promulgation on directives, judicial powers of the SAR, the power of interpretation of the Basic Law, the formulation of the Basic Law Committee and other matters. The constitution in front of us will have a very great impact on the legislative power of the Hong Kong SAR—it is dependent judicial power, it is a legal system and the rule of law. That is to say, things that cannot remain unchanged and must change have changed for the worse and consequently, even things that should remain unchanged will have to change. These articles must be amended, but today I do not intend to go into details.

As for the political system, I shall confine myself to principles and methods for the formation of the first Government and the first legislature of the Hong Kong SAR in Annex III.

The political structure has to be changed, but how can we change it in such a way that Hong Kong's previous capitalist system and lifestyle shall remain unchanged for 50 years? I feel that the following three principles must be adhered to. Firstly, the concept of Hong Kong people governing Hong Kong in a high degree of autonomy. The idea of 'Hong Kong people governing Hong Kong' unfortunately has been described as unscientific and little mention has been made of it. Now, however, the phrase is one that has been most deeply imprinted on the minds of the 6 million people of Hong Kong. I think that 'Hong Kong people' is a collective noun; it refers to people who are truly representatives of the public interests in Hong Kong. They represent the interests of all sectors of our society. They are true representative Hong Kong people—it does not mean, one or a few or a dozen or a couple of tens or a

couple of hundreds of people who only represent certain sectors, who are Chinese nationals and who qualify as permanent residents. Real representatives must be chosen through election and not appointed by an invisible hand. Even if we are given a high degree of autonomy, if the power does not fall into the hands of real representatives, but rather into the hands of those appointed, then we do not have a high degree of autonomy—it is merely a high degree of being an agent.

Second, public participation and democratic participation. Absolute power corrupts absolutely. Power without checks and balances will turn into absolute power. In the first place, checks and balances should come from the people. Everyone should enjoy equal and democratic political rights, so that they can, according to their own wishes, confer or withdraw power from people and the power in the first place should belong to the people in general. Therefore there should be checks and balances between all sectors. No one sector should be given supreme power; participation by all sectors will lead to checks and balances. By so doing conflicts will be resolved, leading to co-operation. Only in this way will we be able to prevent the east wind prevailing over the west, or the west wind prevailing over the east, which will lead to acute conflict and deadly struggles.

Third, the separation of power and checks and balances. The separation of executive, legislative and judicial powers is another form of checks and balances. At the same time it is checks and balances from the people and between the different sectors that will ensure a concrete political system. It does not matter when the separation of powers means three governments. It is in fact the crystallisation of the development experience of a capitalistic political system in the past few hundred years. In order to keep the capitalist system and lifestyle unchanged, it is essential that we have a capitalist political system. Otherwise, a known capitalistic system at the top will definitely shake and destroy the existing capitalist, economic foundation and once that is destroyed, the days of the capitalistic system under the 'one country, two system' concept will be numbered.

Annex III on the formation of the first government and the formation of the legislature. In short, the Standing Committee of the NPC will appoint more than half of the members of the preparatory committee from Hong Kong people. The preparatory committee, according to a certain proportion, will then form an election committee. The election committee will through consultation nominate and elect the Chief Executive and all members of the legislature.

The organisations involved are the Standing Committee of the NPC, preparatory committee, election committee and the procedures are appointment, preparation, consultation or election after consultation. The axe hits the hammer and the hammer hits the nail; such is the link and one step affects the next. The appointed preparatory committee decides on the information of the election committee and the election committee will decide on the selection of

the Chief Executive and members of the legislature. After the double filtering process of appointment and preparation, the last step is election—but, can that still be called election? Even behind the double veils of preparation and consultational election, we can still clearly see the visible hand that has a decisive influence and this of course does not comply with the concepts of ‘Hong Kong people governing Hong Kong’ or ‘a high degree of autonomy’.

To base election on appointment and preparation is worse than indirect election. It is only indirect appointment and the legislature so produced will contravene the Joint Declaration.

Through such an organisation procedure, how much democracy will we be able to achieve? Only the Standing Committee of the NPC and a small number of Hong Kong people who are appointed or indirectly appointed will be able to participate. Over half of the members of the preparatory committee are Hong Kong people. The proportion by which the election committee is formed becomes therefore meaningless—they are only there for show. This does not comply with the principle of joint and democratic participation.

The election committee is manipulated by the visible hand. From it comes the Chief Executive and all members of the legislature. In this way the legislature and the executive authorities in fact will breathe through the same nostril. On top of that, judges of the Court of Final Appeal and Chief Justice of the Supreme Court may be appointed or removed by the Chief Executive with the consent of the Legislative Council. And therefore, we have a Chief Executive and a legislature that breathes through the same nostril, and that definitely will influence the independence of the Judiciary—and that of course does not comply with the principle of separation of powers and checks and balances.

The first Chief Executive and the first legislature: the former is for five years, and the latter for two years. One long, one short; one normal, one abnormal— and this is indeed very puzzling. If we really want to solve the mystery, then perhaps we can deduce in this way. Since incumbent Legislative Councillors can become candidates for the first legislature, so even though the visible hand can control everything, if every incumbent Legislative Councillor must go, then it does not look too good, and that is why some must remain for show. Yet they cannot be allowed to stay for too long, and that is the reason why they have had to be changed after two short years. How else can we explain the proposal?

So, when we talk about exercise of sovereignty with such an alternative it means nothing but the manifestation of a decision for power and when we talk about smooth transition it is nothing but the mentality that when one runs the show and is in control, then one’s mind will be at ease.

When we discussed the Green Paper on Representative Government, and then the White Paper, we heard much about the theory of convergence. It was definitely loud. Now, we have people who agreed with that theory. They are now looking at this alternative in Annex III—why are they now suddenly so

deadly silent?—where are they now? Does this alternative comply with the theory of convergence? It is neither here nor there. It does not take care of the political development in Hong Kong before 1997, and neither does it take care of the formation of the second Government and second legislature. It is not a bridge, it is a rapid and a dangerous one at the point of transition and it poses extreme difficulties for people who wish to row across or swim across. We should ask those people who do not object to this alternative and who have subscribed to the convergent theory what will be in their minds when they wake up in the deep of the night and reflect upon events?

The first government and the first legislature are extremely important. According to article 45 and article 67, even though the selection of the future Chief Executive is stated in Annex I and the formation of the legislature is stated in Annex II, yet when the first Chief Executive and the first legislature breathe through the same nostril, they can drastically change a system and affect the political system for the next 48 years.

In a discussion with the Standing Panel on Constitutional Development, nobody accepted this alternative, and they accepted another alternative, and this alternative actually was proposed by myself and Mr. Martin LEE but it had not been accepted by the drafting committee. Good things always take some digging. This alternative is on the last page of the draft Basic Law. It does not say that it had been proposed by myself and Mr. LEE, but people who are really concerned will be able to find it. Here it goes:

- (1) Within the year of 1986, the Standing Committee of the National People's Congress shall establish a "Preparatory Committee for the First Government of Hong Kong Special Administrative Region". Members of the preparatory committee shall all be Chinese nationals among the permanent residents of Hong Kong, and the chairman shall be elected from among the members.
- (2) In the middle or at the end of 1996, the preparatory committee shall hold a general and direct election in Hong Kong in accordance with this law to elect the Chief Executive designate. Only 1 July 1997, the Chief Executive designate shall be appointed by the Central People's Government be officially sworn into office.
- (3) Before 1 July 1997, the Chief Executive designate shall nominate the principle officials for the Hong Kong Special Administrative Region for appointment by the Central People's Government. All the principal officials shall be sworn in to office of 1 July 1997.
- (4) Persons who are members of the Hong Kong Legislative Council in June 1997 shall automatically become members of the first legislature of the Hong Kong Special Administrative Region of 1 July 1997 and serve to the end of their term. Except for the ceremony of pledging their loyalty to the Hong Kong Special Administrative Region, there shall be no particular arrangement.'

Regarding this alternative, I have a number of points to supplement.

First, since the Basic Law has not stipulated the method of producing the Chief Executive and the legislature, members have a lot of reservation regarding general and direct elections.

Second, should the Basic Law accept the alternative proposed by a group of 190, and that means that the second Chief Executive will have to be nominated by one third of the legislature, and that is the reason why the first Chief Executive—his term should expire half a year after the expiration of the term of the first legislature.

Thirdly, in 1990, after the promulgation of the Basic Law, the selection of the Chief Executive and formation of the legislature should be quite definite and Hong Kong's legislature therefore should gradually develop. If it is stipulated that the legislature should have a term of four years, then in 1991 and before 1997 all legislature should have a term of four years; therefore, those who take office in 1991 will have their office expire in 1995 and those who take office in 1995 will have their term expire in 1999, straddling 1997, and that would be the smoothest way of transition.

Fourth, sovereignty can be exercised through appointing the preparatory committee by the Standing Committee of the NPC and at the same time the swearing-in ceremony can be presided over by a representative from the Central People's Government.

A good beginning is half success; however, there is a contrary saying in Cantonese: 'The first stroke beats the third watch.' The third watch occurs in the dead of the night. We all hope that the first Government and the first legislature will be born in the first twilight.

Sir, with these remarks, I support the motion.

MRS. TAM (in Cantonese): Sir, every section of the draft Basic Law is important to Hong Kong's future and her development, but there are two important issues that Hong Kong people must pay particular attention to. Firstly, one of the most important targets of drafting the Basic Law is to stipulate the 14 points of policy regarding China's treatment of Hong Kong contained in the Joint Declaration, and the Hong Kong people attach the highest degree of importance to the promise of a high degree of autonomy. Can the draft Basic Law implement and reaffirm this promise? Secondly, the Joint Declaration did not provide any concrete arrangements for some very major issues. The task is left to the Basic Law. So is the draft Basic Law providing a reasonable and sound political system? My speech today will concentrate on these two fundamental questions. In addition, I will also speak on the execution of political rights by our youth, a subject that has long been my personal concern.

Firstly, on the idea of a high degree of autonomy, the Joint Declaration specifies that the Hong Kong Special Administrative Region will exercise a high degree of autonomy in accordance with the provisions of the Basic Law and

enjoy executive, legislative and independent judicial powers, including that of final adjudication. This is contained in the preamble of the draft Basic Law. But judging from other articles in the Basic Law, it is doubtful whether the Hong Kong SAR will really enjoy these four important powers in their entirety.

Firstly, on executive power. Article 15 of the draft Basic Law stipulates that the HKSAR, in accordance with relevant provisions of the Basic Law, shall on its own manage public finance, monetary matters, economy and other matters. And if we read other articles we will discover that we have very detailed provisions concerning these other executive powers. Take the example of public finance. Chapter V gives us some principles. For example, we shall follow the principle of determining expenditure according to revenues when drawing up a budget and that the rate of increase of the budgetary revenues and expenditure of the Hong Kong SAR shall not exceed that of the gross domestic product over a number of fiscal years. In other words, the Hong Kong SAR in forming certain policies will be subject to some degree of limitations imposed by these detailed policy articles. This seems to contradict Annex I of the Joint Declaration, which mentions that the Special Administrative Region has the power to enact its own laws.

Secondly, on legislative power. Article 16 says that the National People's Congress Standing Committee has the power of vetting the legislation passed in Hong Kong. At least it has the power to examine laws enacted by the Hong Kong SAR to see whether it violates the constitution. And the NPC also has the power to return for reconsideration and revoke laws enacted by Hong Kong. Although Britain also enjoys the power of vetoing the laws enacted by Hong Kong present, we must not forget that Hong Kong and the United Kingdom belong to the same legal entity and the relationship between the two is one between a sovereign state and a colony. Hong Kong and China, on the other hand, belong to two totally different legal systems. Since the Hong Kong SAR will enjoy a high degree of autonomy, logically the Central Government should not enjoy legislative vetting power.

In addition, article 17 says that there are also laws which will be enacted by the National People's Congress that will apply to Hong Kong. These will be outside the scope of defence and foreign affairs. Actually, these are laws which give expression to national unity and territorial integrity. Such arrangements will certainly weaken the integrity of Hong Kong SAR's legislative powers.

Thirdly, on judicial power article 18 stipulates that courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to defence and foreign affairs, which are the responsibility of the Central People's Government, and cases relating to executive acts of the Central People's Government. It is also said in article 18 that the courts of the Hong Kong SAR shall seek the advice of the Chief Executive whenever questions concerning defence, foreign affairs of the executive acts of the Central People's Government arise in any legal proceedings. A statement issued by the Chief Executive regarding these questions shall be binding on the courts. So this has certainly

destroyed the system and tradition of independent adjudication exercised by the courts of Hong Kong.

Fourthly, on the power of final adjudication, article 169 says that the HKSAR cannot interpret provisions of the Basic Law concerning defence, foreign affairs and other affairs, so a problem arises. If we have a prosecution, who will decide which cases involve interpretation of the provisions of the Basic Law and who will decide whether it is necessary to ask the Central People's Government to provide us with an interpretation? In the end we will ask the NPC to be responsible for these cases and so the NPC will have to examine each and every case in different courts in Hong Kong. Even if such a situation does not arise, the defence and prosecution can always make use of this article and wrongly allege that the case involves interpretation of the Basic Law to delay the litigation process; so in the end we will again have to ask the NPCSC to have a judgment over the case, so the result will be seriously undermining the power of final adjudication.

In summary, although China has promised Hong Kong a high degree of autonomy, according to the draft Basic Law this promise is subject to many limitations, so if we do not properly amend these articles, the prospects of Hong Kong are really worrying.

Now I would like to turn to the question of political structure. Firstly, we must understand that the design of political structure concerns not only the formation of certain organs; it is also something concerning the division of power and the inter-relationship among different organs. Unfortunately, Chapter IV of the draft Basic Law does not deal with the relationship between the Chief Executive and the executive authorities. Neither does it deal with the relationship between the Chief Executive and the Legislative Council. Instead, the selection of the Chief Executive and the formation of the Legislative Council are treated in different chapters. There are lots of alternatives concerning these two items but whichever alternative you opt for we will still be unable to guarantee that the Chief Executive will get the support of over half of the Legislative Councillors for his policies.

In order to ensure smooth operation of our Government in future, we must make sure that the Chief Executive must have the support of the legislature. So I think one of the feasible methods is to elect the Chief Executive among the Legislative Councillors. If we follow such a method, the Chief Executive will get the approval of over half of the legislature and he will be sure that his policies will get the support of most of the councillors. I believe that only with sincere co-operation between the Executive and the Legislative Councils can we have stability and prosperity.

Sir, now I will talk about the execution of political power by our youth. Article 25 says that only people reaching the age of 21 have the right to vote and the right to stand for election. Although this is our existing practice, this has been a subject of heated debate. A lot of people argue for maintaining the legal

age for voting at 21 by saying that the political sense of our young people is still immature; but we know that our political system will become increasingly open and our civic education will become increasingly common. It is difficult, therefore, to imagine that the political sense of our young people will not be improved in the coming nine years, and I am sure that the insistence of maintaining the legal voting age at 21 will face more and more pressure. So I think it is totally inappropriate to specify in the draft Basic Law the voting age. After all, the Basic Law will only come into effect nine years from now; we do not have to specify anything on this subject at all; we can leave this to the Hong Kong SAR Government to decide according to the circumstances after 1997.

Sir, the draft Basic Law is a document offering a wide scope and one that has far-reaching results. There are a lot of points worthy of discussion. I have just spoken on specific problems. I hope that the citizens, in particular our young people, who will be our future masters, will express more views on the draft Basic Law.

Sir, with such remarks, I support the motion.

MR. LAU (in Cantonese): Sir, the Sino-British Joint Declaration signed in 1984 has been widely accepted by the people of Hong Kong. According to the Joint Declaration, the framework of the future Hong Kong SAR Government will be determined by the Basic Law. Therefore, whether the Joint Declaration can be implemented faithfully and whether the Hong Kong SAR can attain a high degree of autonomy will to a great extent depend upon the soundness and effectiveness of the Basic Law. Obviously, only when the Basic Law is in keeping with the spirit of the Joint Declaration and capable of looking after the interests of the various strata of Hong Kong will the confidence of Hong Kong people be maintained and the stability and prosperity of Hong Kong be safeguarded. The draft has taken three years to produce and it was finally released in April. Subsequently the draft was put to the public for consultation. Undeniably the draft for solicitation of opinions leaves quite a lot to be desired. Some of the articles are still highly controversial. But then a situation like this should have been expected. Actually, the Basic Law Drafting Committee is counting on the consultation exercise to collate public opinions for reference to facilitate amendments. Since the drafting of the Basic Law has much to do with the long-term interests of Hong Kong people, I would like to urge that public to seize this opportunity to try their best to give their views.

Here and now I would like to bring up a subject that is rarely touched on. That is, whether overseas indigenous villagers could continue to enjoy the traditional rights they enjoy at present in the future Hong Kong Special Administrative Region.

Back in the '60s, in order to solve the problem of water supply the Government built a number of reservoirs, resulting in many agricultural lands being cut off from their water supply. Consequently, agricultural development

in the New Territories was hard hit. Coupled with the fact that Hong Kong's economy was not doing well, many indigenous villagers had to leave their homes for employment opportunities in far-away western Europe, mainly Britain and Holland, to make a living. These people got foreign passports to facilitate their work and daily living, but I must point out that these people still retain ownership of their lands and properties in the New Territories in Hong Kong. These people and Hong Kong go back a long way. They have been in Hong Kong for generations. Hong Kong is where their roots are. One day they may come back to the New Territories. The existing system recognises and safeguards the indigenous villagers and their children in that those holding foreign passports would still be entitled to their traditional rights when they come back to settle in their villages of origin. But what is going to happen after 1997, that is, after the sovereignty of Hong Kong is resumed by China. Will their traditional rights continue to be safeguarded? This is a very real problem because many representatives of overseas indigenous villagers expressed their worries about this matter when they were talking to me, and so for this reason I feel that the Government must look into this problem and come up with a solution to it so as to remove the anxiety of the many overseas indigenous villagers.

Sir, with these remarks, I support the motion.

MR. EDWARD HO: Sir, the draft Basic Law is entitled 'for solicitation of opinions'. Therefore, whether it will be regarded as a 'good' draft will depend on how much response it can generate; and subsequently, what important opinions will be taken into account by the drafting committee when it works on the revision of the draft.

That the draft Basic Law will have achieved its objectives of soliciting opinions is to be expected. In this I do not agree with Mr. Martin LEE. The consultative period has been divided into five phases in accordance with the contents of the draft, and although it is now just the beginning of the third phase, a vast amount of opinions from all sectors of our community covering all aspects of the draft have already been expressed.

Amongst these opinions, some major problems perceived by the Hong Kong people have been more prominently and universally discussed and expressed. There are, for instance, doubts as to whether the promised high degree of autonomy will indeed be given, and whether civil liberties will be effectively entrenched in the Basic Law. All these problems have been adequately enumerated by Mr. Andrew WONG when he presented the preliminary consensual views of the Constitutional Development Panel which studied the Basic Law. In addition, articles 18 and 169 have also been dealt with in some detail and ably by Mr. Martin LEE in his speech. These views have my full support and I shall therefore not be devoting further time to them during this debate.

However perfect the Basic Law will be when it is finally promulgated (which we certainly hope to be the case), it will only be as good as the government that we shall end up with. Unfortunately, how the Chief Executive will be chosen, and how the Legislative Council will be formed, both crucial to the shaping of our future government, remain unresolved in the draft. The chief reason for this was that even amongst the Hong Kong members of the drafting committee, no consensus could be reached. Furthermore, the Hong Kong community remains fragmented and even polarised in its views on the issues.

This is, Sir, in my view, a highly unsatisfactory and regrettable state of affairs. For if Hong Kong people do not agree and cannot put forward a mainstream concept, these important issues will be decided by others on their behalf.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: Mr. HO, I am afraid I must interrupt you at this point because it is now 6 o'clock and under Standing Order 8(2) the Council ought now to adjourn.

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

*Question proposed, put and agreed to.*

MR. EDWARD HO: Sir, I am hoping that our community can at least agree that the main objective when formulating the model of our future government should be that it will ensure the maintenance and furtherance of prosperity and stability for Hong Kong.

Prosperity and stability are interactive: without stability, there will be no prosperity; without prosperity, there cannot be stability. Prosperity requires an effective and efficient government; and stability requires a government that is responsible and responsive to the needs of the community.

In order that the government shall be a responsible and responsive one, it is necessary to gradually move towards a more and more democratic form of government.

Democratisation of our government should be welcomed by all as a natural progressive step towards a better society though there is divided opinion as to how quickly these steps should be taken.

On the other hand, it would be a fatal misconception that democracy should be used as a means to avoid intervention by the Chinese Central Government.

If Hong Kong remains prosperous and stable, the Chinese Central Government will have no reason to intervene in the affairs of the Hong Kong

Special Administrative Region. But let us be realistic about it: if Hong Kong should suffer severe economic depression and civil disorder from which it cannot extricate itself, China will have to intervene, democracy or not.

Eighty-one members of the Basic Law Consultative Committee, coming from the commercial, industrial, financial and professional sectors of our community, came up with a model of political structure which is contained in alternative 1 of Annexes I and II.

This business and professional community believed that in order to provide a sound foundation for the continuation of Hong Kong's stability and prosperity, any change in our political structure should be a gradual one, and should retain those good aspects of the existing political systems taking objective account of Hong Kong's realistic requirements. In this, their viewpoint is amazingly similar to Mr. SZETO Wah's point in his speech: 'a change must be a good change'—(要變要變得好).

The 'grand electoral college' concept is a body of 600 representatives from various walks of life in Hong Kong, including members of the legislature, representatives of the municipal councils, district boards, statutory bodies and permanent non-statutory bodies, social and charitable organisations, professionals and labour, the industrial community, the commercial community, the financial community, the religious and educational communities and the Civil Service.

Members of the grand electoral college are elected from their own organisations by a democratic process, and they in turn elect to the legislature 25 per cent of its members. Mr. Martin LEE criticised that the grand electoral college is controlled by a majority of members from the business and industrial sectors. He claimed that this was suggested in a booklet published by the group of 81. The booklet clearly stated that 80 seats be allocated to the industrial sector, 50 to the commercial sector and 50 to the financial, making it a total of 180 out of 600. In my simple arithmetic this is far from being a majority. Sir, I also wonder how, even as astute a politician as Mr. LEE, can he think a group of 600 from all walks of life can be manipulated. Further, Mr. LEE must have read from the wrong booklet as the group of 81 did not want Official Members to be elected to the Legislative Council. They only say that officials should attend, present Bills and answer questions, but will have no rights to vote. I am delighted indeed that Mr. LEE has endorsed this idea.

Those who criticised the model put forward by the business and professional community charged that it was undemocratic and that it was designed to protect the vested interests of the rich. (Though I must add that this is not the word used by Mr. Martin LEE today: he used the words 'business and industrial sectors'.) The truth is that the grand electoral college is composed of representatives from all walks of life, all duly elected democratically. The critics themselves draw a line separating our community into the 'rich' and the 'poor', the concept of which is

repugnant and I would have thought totally out of place in a society in which upward mobility is a real possibility to those who have the ambition and the will.

The business and professional community is frankly concerned that the other alternatives will lead to confrontational party politics which will undermine the social order and traditional harmony of our society, and even incite the entry of external political influence.

If one takes an objective look at the alternatives set out in Annex II, one would find that the proportion of members selected through direct elections to the legislature, the only form of democracy recognised by some, ranges from 25 per cent in alternatives 1 and 4, to 30 per cent in alternative 3, to 50 per cent in alternative 2. Thus, all alternatives are a mixed form of election and they differ only in proportion, not in the basic principle of democracy.

Whilst I do not agree with Mrs. Selina CHOW on her criticism of the grand electoral college being 'unwieldy and difficult to understand,' and her observation that Hong Kong has progressed past the age of unorganised political personnel and activities, I do find that she has provided some very useful comments that the business and professional community should do well to consider. I am sure that the business and professional community will not disagree with her that effective and efficient administration is what we should aim for, and that Hong Kong's political system should operate on the principle of balance of interests on economic contribution rather than on simple head count. There are certainly a lot of common grounds.

Perhaps it would be easier to reach a consensus amongst different groups if the Basic Law is written in such a way that, over time, the political structure can be allowed to evolve gradually in keeping with the aspiration of the community.

Finally, I would touch briefly on Chapter VI, the chapter given to education, science, culture, sports, religion, labour and social services. This chapter deals with those aspects of our society that the Hong Kong Special Administrative Region will be given autonomy. In a recent meeting with the drafting committee members from Mainland, one senior Chinese official and drafting member stated that this is the chapter that Hong Kong people should be able to write themselves.

One can safely say at this stage that Chapter VI does not present any real problem that is constitutionally unacceptable, though it contains many problems textually. Articles were written in such a way to give assurance to the Hong Kong people that the present system will be maintained. This does pose the problem that it would impair further development to suit a dynamic society if the Basic Law were to be interpreted literally, which is certainly not the intention in the first place.

Members of the professional community are studying, in particular, article 150 with great interest. Their concerns have been that, firstly, the power to deal

with matters concerning the professions should be vested with the Hong Kong Special Administrative Region rather than the Central Government. Secondly, the Special Administrative Region Government should only be concerned with the statutory function of licensing, whilst professional qualifications should be assessed and conferred by the recognised professional organisations who shall retain their autonomy. New professions and professional organisations may be recognised after consultation with the concerned parties. It is believed that these basic principles have been met in the draft, but that further refinements in the text are necessary to give absolute clarity.

Representatives of nine professional institutions comprising the legal, medical, dental, accountancy, architecture, engineering, surveying and planning professions have formed a working group to meet regularly to study this particular clause as well as the Basic Law generally. It is hoped that a joint submission will be made to the Basic Law Drafting Committee. As the convener of that working group, I am most encouraged by the fact that it will be, I believe, the first time that the nine professions will have worked together for a common objective.

Despite some major disagreements over the selection of the Chief Executive and the future political structure, our community also found consensus in almost all other aspects of the draft.

I urge that each and everyone in Hong Kong should study the draft; that they should render their opinions, irrespective of whether similar opinions have already been expressed or not; and that where differences exist, they should recognise that there is a common objective: for the good of the future of Hong Kong and, having recognised that, strive to reach for a consensus.

In the years to come, let us not look back and say that we had the opportunity to do our part in pushing for a better Basic Law, but we had chosen to keep quiet.

Sir, I support the motion.

MR. MARTIN LEE: May I have your leave to clarify a statement which was wrongly ascribed to me by the hon. Edward HO?

HIS EXCELLENCY THE PRESIDENT: If you could briefly clarify it, please.

MR. MARTIN LEE: Sir, Mr. HO believes that I have said that I have got it from the book published by the group of 81 that another object to have the grand electoral college is to enable the principal officials to be elected into the legislature. I said no such thing. In my speech I said: 'I have been told that another object is to enable principal officials to be elected into the legislature so as to preserve the present system of having Official Members in the Legislative Council.'

I am obliged to you.

CHIEF SECRETARY: Sir, I have listened to the two days' debates with great attention. Members who have spoken on this motion have displayed a deep sense of responsibility towards the people of Hong Kong in their study and close analysis of the draft Basic Law, which will lay down the constitutional framework for the future Hong Kong Special Administrative Region. I pay tribute to their hard work.

The Sino-British Joint Declaration provides that the Basic Law of the Hong Kong Special Administrative Region shall stipulate China's basic policies regarding Hong Kong as set out in the Joint Declaration and elaborated in its Annex I. Responsibility for the drafting and the promulgation of the Basic Law of course rests with the Chinese Government. But as the Secretary of State said in Parliament on 20 January this year, the British Government, as a co-signatory to the Joint Declaration, have the right to satisfy themselves that the eventual provisions of the Basic Law fully and accurately reflect the Joint Declaration. To this end, we shall pay close attention to the views expressed, both locally and overseas, on the draft Basic Law, and take them into account in our future exchanges with the Chinese authorities.

In this debate, Members have spoken on a wide range of issues relating to the draft Basic Law, for example, the importance of the Basic Law fully reflecting the 'one country, two systems' concept; the high degree of autonomy promised to the Hong Kong Special Administrative Region by the Joint Declaration, a firm guarantee in the Basic Law of the independence of the Judiciary; and the protection of basic rights and obligations, the need for the Basic Law to give the Special Administrative Region Government the necessary flexibility to respond to changing circumstances. These are just some of the more important points over which Members have expressed concern. I have taken careful note of them. If Members so wish, we shall, of course, forward their views to the Chinese authorities.

The drafting of the Basic Law has been a very open process and the Chinese Government have made great efforts to involve the Hong Kong people. Opportunities have been made available in the consultation exercise now underway for the general public to comment on the draft and to express their views through a variety of channels. Chinese officials have acknowledged that this first draft is far from perfect and will require improvement to take account of the comments made on it and to meet Hong Kong circumstances. In this spirit, they have said they will take account of the views expressed in revising the present draft. Sir, it is therefore vital that, in accordance with the wording of the motion before Members, the people of Hong Kong should take full advantage of the opportunity presented by the consultation exercise to make known their views on the draft as it now stands.

I have noted over the last two days, and indeed in recent weeks, that on some aspects of the Basic Law, there is a clear consensus of view within the community. In other areas, there are still divergent views. I hope that all

concerned will come together to discuss outstanding issues in a flexible and positive way in order to find the maximum amount of common ground. From the point of view of the community, and I am sure from the Basic Law drafters' point of view as well, a measure of consensus will help ensure that the Basic Law in its final form will be a widely acceptable, and effectively workable, document.

Sir, with these remarks, I support the motion.

*Question put and agreed to.*

### **Private Bill**

#### **Second Reading of Bill**

#### **UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1988**

#### **Resumption of debate on Second Reading (29 June 1988)**

*Question proposed, put and agreed to.*

Bill read the Second time.

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

#### **Committee stage of Bill**

Council went into Committee.

#### **UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1988**

Clauses 1 to 3 were agreed to.

Council then resumed.

#### **Third Reading of Bill**

MR. PETER C. WONG reported that the

#### **UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1988**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

*Question on the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

### **Concluding speech by the President**

HIS EXCELLENCY THE PRESIDENT: Hon. Members, I hope Members will allow me to delay them for a few moments before adjourning. Since I shall be in London next week, this is the last sitting of this Council at which I will preside before the end of the session and before the Council itself is dissolved on 25 August. I should like therefore to take this opportunity to pay tribute to the work of Members not only during this session but in the three years since October 1985.

Those who are statistically minded will like to note that each of the last three sessions has broken new records. In 1985-86, a record number of question were answered. In 1986-87, the Council held an unprecedented number of debates and sat for more hours than in any other session in its history. By the time that this session is completed, it is likely that we shall have established a record for the number of Bills passed into law.

But these statistics tell only a fraction of the real story. They do not reveal the very substantial amount of time and work Members have put into scrutinising legislation in ad hoc groups; in monitoring government policies in OMELCO panels; and in the deliberations of the Finance Committee and the Public Accounts Committee.

Both the statistics and the underlying reality demonstrate the immense efforts Members of this Council make on behalf of the people of Hong Kong. As a result of these efforts, draft legislation passed down to the Council for enactment is often substantially improved. And furthermore, constructive monitoring of the Administration's policies can, and does, contribute to maintaining a high standard of performance by the Administration and to the development of policies which reflect the aspirations of this community.

At the end of the life of this Council, I believe that all Members should rightly feel proud of the way in which they have helped to make our system of government work to the benefit of our community.

In addition to thus thanking Members generally I should like to make a special mention of those Appointed Members who will soon have completed their terms. I shall not name them individually. All have served Hong Kong and this Council with distinction, energy and dedication. Some have served the community in this Council for up to 12 years. The community has reason to be grateful to them for all that they have done. They have served us well. I thank them all most warmly.

There may also be some elected Members who, through the inevitable vagaries of the electoral system, will not return in October. Should there be any such Members, they will take with them the good wishes of us all and the thanks of the community for their contribution to this Council during the past three years.

We should not forget those who have worked so tirelessly behind the scenes to service this Council. These include the Clerk to the Legislative Council and his staff; the Secretary General, OMELCO and her staff; the interpreters and Chinese Language Officers; the technicians; and the many representatives of the media who have covered our proceedings. On behalf of the Council I thank them all for their dedication and their professionalism.

Lastly and by no means least, no words about the achievement of this Council would be complete without a particular reference to the Senior Member, Miss Lydia DUNN. She has performed her difficult and demanding role with a skill, humour, grace and patience which have won her the admiration and affection of everybody. As Senior Member for the past three years she has helped guide the Council which has a changed composition, and a new working style, but the same unswerving commitment to work for the best interests of Hong Kong. I am sure that Members, and indeed the public, will wish to join me in thanking her most warmly for a job which has been superbly well done.

### **Adjournment and next sitting**

HIS EXCELLENCY THE PRESIDENT: I now wish all Members a productive sitting next week and after that an enjoyable vacation. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 20 July 1988.

*Adjourned accordingly at twenty-six minutes past Six o'clock.*

(*Note: The short titles of the Bills/motion listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.*)