

HONG KONG LEGISLATIVE COUNCIL -- 4 April 1990 1

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 4 April 1990

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

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

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE DAVID ALAN CHALLONER NENDICK, J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

THE HONOURABLE CHEUNG YAN-LUNG, 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.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

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

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

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

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

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

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

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

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

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

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

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE YEUNG KAI-YIN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS. ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE MRS. ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.  
SECRETARY FOR SECURITY

THE HONOURABLE ALBERT LAM CHI-CHIU, J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE ADOLF HSU HUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

ABSENT

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

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

IN ATTENDANCE

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

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation	L.N. No.	
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Kong Airport (Traffic) (Amendment)		
Regulations 1990.....		
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Waterworks Ordinance		
Waterworks (Amendment) Regulations 1990.....	84/90	
Public Health and Municipal Services Ordinance		
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(Public Pleasure Grounds) (Amendment of		
Fourth Schedule) (No. 2) Order 1990.....	89/90	
Registration of Persons Ordinance		
Registration of Persons (Application for		
New Identity Cards) (No. 5) Order 1990.....	90/90	
Public Health and Municipal Services Ordinance		
Public Swimming Pools (Urban Council)		
(Amendment) By-Laws 1990.....	91/90	
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(Amendment) Notice 1990.....		
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Shipping and Port Control Ordinance	Shipping
and Port Control (Amendment)	
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Shipping and Port Control Ordinance	Shipping
and Port Control (Hong Kong - China and	
Macau Ferry Terminals) (Amendment)	
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Marine Fish (Marketing) By-Laws	
Assumption of Responsibility for Markets	
Notification 1990.....	
104/90	
Tax Reserve Certificates (Fourth Series) Rules	
Tax Reserve Certificates (Rate of Interest)	
(No. 2) Notice 1990.....	
105/90	

Sessional Papers 1989-90

No. 64 -- Mass Transit Railway Corporation Annual Report 1989

No. 65 -- Revenue Estimates for the year ending 31 March 1991

Miscellaneous

Report of the Provisional Hospital Authority

Addresses by Members

Mass Transit Railway Corporation Annual Report 1989

FINANCIAL SECRETARY: Sir, in accordance with section 16(4) of the Mass Transit Railway Corporation Ordinance, the Annual Report and Accounts of the Mass Transit Railway Corporation for the year ending 31 December 1989 are tabled today.

The Corporation continued to enjoy a period of sustained growth in 1989. During the year, it carried some 688 million passengers, an increase of 9% over 1988. The opening of the rail section of the Eastern Harbour Crossing to passenger service in September 1989 both generated additional ridership and provided a much welcome relief to the congested Nathan Road Corridor.

Further increases in passenger traffic are expected and the Corporation will continue to adopt appropriate measures to spread peak hour demand as well as to encourage greater use of the Eastern Harbour Crossing.

The Corporation's fare revenue rose by 15% to \$2,381 million. Together with additional revenue from other sources such as property rentals and advertising, the total revenue for 1989 was \$2,734 million or 18.5% higher than the figure for 1988. Total costs were up by some 16%, mainly reflecting the continued upward pressure of staff costs. The Corporation's profit before interest and finance charges increased to \$1,049 million, some 25% over the previous year. Interest and finance charges of \$1,597 million were paid in 1989, giving a loss of \$548 million as against \$535 million in 1988. Income from property development of \$579 million enabled the Corporation to sustain a modest overall profit of \$56 million in 1989. However, in view of the non-recurrent nature of property development profits, it will be some time before railway operating revenue will regularly produce a net profit for the Corporation.

The Corporation's debt at the end of 1989 stood at \$17,390 million. It does not anticipate that there will be a need for any further calls on the partly paid shares.

Because the Corporation will continue to have a large burden of debt for quite some time, it is important that the Corporation continues to maintain respectable credit ratings to ensure that it is well regarded in the international financial markets. I am glad to say that the ratings awarded to the Corporation by the principal international rating agencies remain in the investment-grade for longer-term obligations, and in one of the highest categories for short-term instruments. I am happy to add that the Corporation, which is an active and innovative borrower, came

third in a recent poll on the most professional users of world capital markets.

Consequent upon the decision to build a new airport at Chek Lap Kok, the Corporation has been invited to give active assistance to a government appointed consultancy study on the feasibility of constructing, financing and operating an airport railway. I am in agreement with the Board of the Corporation that the new railway project must be carefully planned to ensure that the Corporation's reputation is maintained.

I am satisfied that the Corporation's capital structure is sound, that costs are contained and that its revenue growth is sufficient to meet its obligations.

Finally, I would like to thank the Chairman and the Board, as well as the management and staff of the Mass Transit Railway Corporation for the very responsible and efficient way in which they have managed the Corporation during the past year.

#### Report of the Provisional Hospital Authority

SECRETARY FOR HEALTH AND WELFARE: Sir, I table today the Report of the Provisional Hospital Authority on a proposed framework for the future Hospital Authority. The report is in Chinese and English and represents some 18 months of hard work, study and deliberations.

#### Introduction

Whilst Hong Kong can be justifiably proud of its many achievements in the delivery of health and medical care, and nobody in Hong Kong is denied adequate medical care simply because he cannot pay for it, Hong Kong's medical services have for the past two decades come under increasing pressure due to rapid population growth, rising community expectations and increasing cost of service delivery, resulting in long queues for treatment and overcrowding in some hospitals. With the dual system of government and subvented hospitals, the current system presents a problem of co-ordination and deployment of manpower and financial resources.

Against this brief background, Government decided in 1984 that changes to the public hospital system were necessary so as to cope better with the future needs of our society. A Provisional Hospital Authority was set up in 1988 to undertake the planning and preparation for the establishment of a new organization. The objectives

are to improve patient care by providing and managing public hospitals in a way which optimizes resources available; enhances efficiency; improves hospital management; motivates staff and promotes community involvement.

Here, I would like to express my thanks to the Provisional Hospital Authority, under the able chairmanship of Sir S.Y. CHUNG. I am indebted to all of them for their immeasurable support; for availing us of their wise counsel, and for the benefit of their perspective on numerous issues which point towards the way ahead.

#### The Provisional Hospital Authority's report

I shall present the main features of the Provisional Hospital Authority Report and the Government's response to them as appropriate.

First, it is proposed that the Hospital Authority should be set up by legislation as a body corporate, independent from Government. A Hospital Authority Bill, setting out the organization's legal status, composition and structure, functions and powers, and relationship with Government has been prepared, and will be gazetted this Friday and introduced into this Council for debate in early May.

Secondly, it is proposed that all government and subvented hospitals should be brought together within an integrated system under the management of the Hospital Authority. This proposal envisages that a formal agreement be signed between the board of directors of each subvented hospital and the Hospital Authority, setting out the arrangements regarding the future management, funding and operation of the hospital concerned. The traditions and characteristics of individual hospitals would be preserved as far as possible. The proposal would remove the present differences in remuneration between the government and subvented sectors. An integrated system would also allow greater flexibility in the deployment of hospital resources to meet various needs, particularly better patient care. I have no doubt that most subvented hospitals would wish to join the authority fairly soon. However, some may take a little more time to decide. We have provided for a grace period of three years; thereafter separate subvention outside the Hospital Authority will cease.

Thirdly, it is proposed that public participation in the management of the public hospital system should be enhanced. The governing body of the Hospital Authority will be a board consisting principally of members of the public appointed by the Governor. Regional advisory committees will be established with members drawn from

the local communities to advise the authority on various aspects of hospital services in the region. Each existing subvented hospital will have a governing committee with participation by its present governing body to oversee the management of the hospital. Such a committee will be set up in due course in all hospitals under the authority.

Fourthly, it is proposed that some major management reforms should be introduced through a greater delegation of authority from the central to the operational levels and more effective management structures. It is envisaged that each public hospital under its own chief executive would enjoy a high degree of autonomy, and flexibility in both financial and staffing matters. A new management structure has been devised to make for greater management accountability and new career opportunities for staff including doctors, nurses and allied health professionals. However, I am aware that certain aspect of this proposed structure has caused considerable concern to nurses and, perhaps, some other staff.

The broad principles proposed for the Hospital Authority are supported particularly as devolution of authority from the central to the operational levels and the introduction of effective management structures should help to produce a more efficient hospital system. However, the introduction of a new management culture, no matter how obvious the benefit, would require full understanding and acceptance of the roles and responsibilities of all concerned so as to develop an esprit de corps. The development of mutual trust and respect and the complementary, rather than conflicting, role of all ranks will help to attain the objectives of the future Hospital Authority. Those aspects of the proposed management structure which have caused concern should be re-examined. We must aim to achieve a common vision which will give credence to a new culture of the new organization.

The Provisional Hospital Authority has also proposed that the new hospital management should be introduced in phases over a three-year period, with phase one involving not less than three hospitals. The selection of appropriate hospitals for this purpose and the determination of suitable timing is best left to the future Hospital Authority. In view of the many important tasks for the authority upon inception, I recommend that the implementation of the new hospital management system need not commence immediately upon the Hospital Authority assuming responsibility for the public hospital system.

Fifthly, it is proposed that a new remuneration package should be made available to future authority employees as a means to attract, retain and motivate qualified

staff. Here I shall briefly mention the package proposed by the Provisional Hospital Authority:

- (a) First, there is the basic salary identical to that in the public service.
- (b) Second, there is a core benefit programme covering retirement, death and disability, housing, leave and medical protection.
- (c) Third, there is a Flexible Spending Account which individual employees could either take in cash, invest, or use to increase their retirement or death and disability cover.

I must stress that the cost of this remuneration package should remain comparable to that of the civil service package for comparable grades. The Government endorses the concept underlying the design of the package but we have proposed some modifications which have been put to the Provisional Hospital Authority.

Sixthly, the report recommends that senior doctors in hospitals would be allowed to do limited private practice and vice versa. The Hospital Authority, when formed, will be invited to address these issues with due care, having regard to the need to safeguard the interest of patients.

Seventhly, the Provisional Hospital Authority recommends that there is a case for increasing fees and charges in public hospitals, aiming at the recovery of between 15% and 20% of the cost phased over a number of years, in conjunction with improvements made to services. Whilst endorsing the principle as the ultimate aim, the Government will retain the power to give direction to the authority on the level of fees to be charged to ensure that nobody in Hong Kong is prevented, through lack of means, from obtaining adequate medical treatment. Thus, any substantial increase in the fee level will not be implemented until the existing waiver arrangements are thoroughly reviewed.

#### Bridging-over arrangements for civil servants

As regards the arrangements for civil servants, Government has assured them that they have the right to remain as civil servants with promotion prospects preserved. The Provisional Hospital Authority has affirmed in its report that all staff in the Hospital Authority, regardless of their terms of service, should have equal

opportunity for promotion. To cater for staff who wish to remain as civil servants and to maintain their promotion prospects, the Hospital Services Department will not be disbanded, though its functions will change. While it will no longer have operational responsibilities for the public hospitals, it will continue to exercise personnel management responsibilities for civil servants working in the authority.

To facilitate the transfer of those staff who opt to take up the Hospital Authority terms of employment, a bridging-over package has been devised. Since practically all the staff affected will have the option of remaining as civil servants with promotion prospects preserved intact and they will not be worse off, the question of abolition of office terms does not arise. To preserve the pensions earned in the Civil Service, staff who opt to receive the authority package would have the choice of either resigning from the Civil Service with a deferred pension under the Pension Benefits Ordinance and Regulations or transferring to the Hospital Authority with pension benefits frozen until their retirement from the authority. I should make it clear that an option to apply to work for the authority and to transfer to the authority terms will also be made available to staff in the Department of Health. However, the transfer of every successful applicant should have regard to the needs of the health services to our community. In the meantime, the Director of Health is examining ways and means of attracting, retaining and motivating staff in his department.

The staff working in the subvented hospitals can also choose either to transfer to the authority's remuneration package or to remain as employees of the subvented hospital board. A consultant will be engaged by the Provisional Hospital Authority shortly to advise on the conversion arrangements for the provident fund scheme of the subvented hospital staff who opt for the authority terms of employment.

#### Financial implications

The financial implications arising from the setting up of the Hospital Authority are significant. Additional expenditure estimated at \$1,000 million per annum includes some \$150 million for establishing Hospital Authority headquarters, some \$250 million for implementing management reforms; and \$600 million for bringing staff in subvented hospitals onto the Hospital Authority's remuneration package. The monetization of certain civil service fringe benefits could result in an additional cash outflow of a further billion dollars per year.

These additional cost implications do not include improvements to salaries and

conditions which may be recommended by the Standing Commission on Civil Service Salaries and Conditions of Service. As Government continues to have responsibility for the provision of resources, I would like to stress that, although the cost to the public purse is high, the significant improvements to Hong Kong's hospital system, which should follow after the setting up of the Hospital Authority, is money well invested.

## Conclusion

Thus, I reaffirm Government's commitment to raising the standard of patient care through effective use of resources, greater financial autonomy and flexibility, better management status and public participation. I recognize that the report, and the modifications thereof, may not totally please everyone. However, change presents new opportunities and envisions reforms which will serve us well into the next century. We must rise to the challenge.

Apart from the hospital reforms, two equally important tasks are underway: a review of our primary health care system and the preparation of the establishment of an Academy of Medicine. Together, I believe, they will form a package of reforms which will radically improve not only our hospitals but health services as a whole. This is our mission for the community, not only for now but for the years to come. Sir, I commend the Provisional Hospital Authority's Report to this Council.

## Oral answers to questions

### Lion Rock Tunnel toll

1. MRS. CHOW asked: Will Government inform this Council what the rationale for doubling the toll for the Lion Rock Tunnel is when the newly completed Shing Mun Tunnels are expected to ease congestion at the Lion Rock Tunnel?

SECRETARY FOR TRANSPORT: Sir, the reason for revising the toll for the Lion Rock Tunnel is to alleviate the problem of serious traffic congestion at that tunnel and its approach roads.

At present, the tunnel is used by about 104 000 vehicles per day, which is 30%

more than the optimum capacity of 80 000 vehicles a day for which the tunnel was originally designed. As a result, congestion occurs at all approach roads to the tunnel, resulting in long queues of vehicles during much of the day, and causing delays to both motorists and public transport passengers. The cost to the economy of these delays is considerable.

In recent years, the Government has tried various traffic management measures to relieve congestion at the Lion Rock Tunnel, such as the tidal flow experiment, the controlled merging of vehicles, and the lengthening of bus-only lanes. However, these measures have resulted in marginal improvements only.

Although the opening of the Shing Mun Tunnels will certainly improve the traffic flow between Sha Tin and Tsuen Wan, the new tunnel will bring about only a small reduction in the number of vehicles using Lion Rock Tunnel. Furthermore, we expect this reduction will soon be absorbed by the natural growth in traffic as a result of continuing housing developments and natural population growth in the northeast New Territories. Should the present \$3 toll remain unchanged, the traffic volume at the tunnel is expected to go up to 110 000 vehicles a day by early next year. A revision of the toll is therefore considered necessary now in order to regulate volume and to reduce the congestion at the Lion Rock Tunnel.

Sir, when the Shing Mun Tunnels open later this month, motorists will be able to make a choice between paying \$6 for using Lion Rock Tunnel, \$3 for using the Shing Mun Tunnels, or nothing for using Tai Po Road which has been recently widened. The Government expects that congestion at Lion Rock Tunnel will then be reduced to a more acceptable level, and that motorists and public transport passengers will all benefit from a faster and more comfortable journey through that tunnel, and in the approach roads.

MRS. CHOW: Sir, does the Secretary not agree that a need for, and effectiveness of, a toll increase can only be established in the light of actual experience of the new traffic flow pattern after the Shing Mun Tunnels open later this month, and that up to that point any figures would just be guesswork?

SECRETARY FOR TRANSPORT: Sir, the predictions for the Shing Mun Tunnels are that when they open later this month about 9 000 vehicles will be diverted to Shing Mun, and therefore Tai Po Road will be considerably relieved of congestion. In consequence

more people will use Tai Po Road and the Shing Mun Tunnels, instead of the Lion Rock Tunnel. That is the object of the present exercise.

MISS TAM: Sir, can the Secretary for Transport inform this Council to what degree journey time can be saved for commuters using the Lion Rock Tunnel as a result of the three-pronged approach of opening the Shing Mun Tunnels, widening Tai Po Road, and increasing the toll for Lion Rock Tunnel? Can such results be achieved without all three factors working as a package?

SECRETARY FOR TRANSPORT: Sir, Tai Po Road was widened recently. The widened Tai Po Road opened on 24 January this year. We did do a survey of the situation at Tai Po Road both before and after the widening and of the impact on Lion Rock Tunnel. For the rush hour morning traffic, the journey time from Prince of Wales Hospital to the north portal of the Lion Rock Tunnel took 24 minutes before Tai Po Road was widened, and it now takes 18 minutes after widening, in other words, a saving of six minutes. For the evening rush hour, the same journey took 23 minutes before Tai Po Road was widened, and now it takes only five minutes after the widening -- a saving of 18 minutes in journey time. As to the second part of Miss TAM's question, the answer is no; the three measures must be taken together in order to achieve the traffic management objective.

MR. MICHAEL CHENG (in Cantonese): Sir, given the fact that the Tate's Cairn Tunnel will open next year, a lot of vehicles will be drawn to travel between the northeast New Territories and Kowloon Central, Kowloon East and Island East, that is, about 70% of vehicles currently using the Lion Rock Tunnel will be diverted to the Tate's Cairn Tunnel, thus reducing the traffic flow at the Lion Rock Tunnel considerably. Will the Government defer the present toll increase for the Lion Rock Tunnel until next year, pending a review?

SECRETARY FOR TRANSPORT: Sir, it is of course true that the Tate's Cairn Tunnel will open to motorists in the middle of next year and there will then be further relief to the Lion Rock Tunnel. However, we are trying to deal with a very serious congestion problem now at Lion Rock Tunnel. The Transport Advisory Committee has taken into account the effect of the opening of Tate's Cairn Tunnel, but concluded that they

must now recommend a revision of the Lion Rock Tunnel toll in order to improve the situation.

MR. HUI: Sir, my supplementary is in two parts; I hope you will allow it?

HIS EXCELLENCY THE PRESIDENT: If they are connected, Mr. HUI.

MR. HUI: Yes, Sir, quite connected. First, in order to attract more motorists to use the Shing Mun Tunnels, can the Administration inform this Council whether it would consider making the use of the Shing Mun Tunnels free of charge, since the toll for the Lion Rock Tunnel will be doubled? Secondly, if the desired result of doubling the toll for the Lion Rock Tunnel cannot be achieved -- in other words, no drop in the number of motorists using this tunnel -- can the Administration inform this Council whether the toll for the Lion Rock Tunnel will revert to the existing level of \$3? If not, why not?

SECRETARY FOR TRANSPORT: Sir, the strategy for tolls is that it should achieve traffic management objectives. To make the Shing Mun Tunnels free would mean that there would be a lot of cars using the Shing Mun Tunnels at the expense of the Sha Tin, Tuen Mun and Tsuen Wan residents. We believe that the roads outside the Shing Mun Tunnels would not be able to sustain an extra load of traffic arising if the Shing Mun Tunnels were free. Therefore it is necessary to charge a toll for the Shing Mun Tunnels, and also to recover part of the huge construction costs of the Shing Mun Tunnels. As regards the second part of the question, of course tolls are liable to be revised upwards or downwards depending on the utilization. The object of tolls is to ensure optimum usage and not under-utilization or excessive use, and therefore the Government will be prepared to review the tolls after the effects of Shing Mun and Tate's Cairn Tunnels have been more clearly established.

MR. CHEUNG YAN-LUNG (in Cantonese): Residents of North District, Tai Po and Sha Tin have shown great discontent with the Government's increase in toll for the Lion Rock Tunnel, which means they have to pay a heavier toll of \$6 or above per day on top of paying the increased fuel tax. Will Government consider deferring the toll issue

of the Sha Tin tunnel until after the opening of Route 5 of Shing Mun?

SECRETARY FOR TRANSPORT: Sir, as I said earlier, the problem at Lion Rock Tunnel is with us now. It is necessary to divert the traffic to Shing Mun and Tai Po Road. We believe that once the Shing Mun Tunnels open, there will be considerable relief to the general traffic circulation in the northwest New Territories as well as journeys to and from Kowloon. It is therefore necessary to revise the tolls when the Shing Mun Tunnels open to enable the motorist to have a choice and make up his mind which route he will use and what charge he will pay.

PROF. POON: Sir, will the Secretary inform this Council how much extra gasoline, on average, a motorist has to use for the additional mileage to be covered by using Tai Po Road instead of Lion Rock Tunnel? Does the Secretary believe that the extra \$3 will produce enough incentive by itself to attract motorists to choose a different route?

SECRETARY FOR TRANSPORT: Sir, on the question of motoring costs, it depends of course on the starting point and the destination. For the motorist starting, say, from Tai Po, he will have to make up his mind which route to use, and in reaching that decision the motorist will have taken into account his motoring costs, the toll at each point, and of course he will also have worked out the perceived cost of his journey, that is to say, the value he attaches to his own time. I regret therefore, Sir, I am not able to give a precise figure in response to Prof. POON's question.

MR. DAVID CHEUNG: Sir, despite the introduction of the traffic management measures listed by the Secretary, the improvements can only be termed "marginal". Then obviously there is a pressing need to reduce the Lion Rock Tunnel traffic. Will the Secretary inform this Council what logic there is for the Government to assume that the increase of toll will remove the need and thus reduce traffic?

SECRETARY FOR TRANSPORT: Sir, it will not remove the need totally, but it will certainly help to achieve a more even distribution of traffic between the three routes I have mentioned.

MR. SIT (in Cantonese): In his reply, the Secretary said that traffic volume at the Lion Rock Tunnel will go up to 110 000 vehicles a day by 1991, an increase of just about 5%, as compared with the current 104 000 vehicles a day. To deal with this 5% increase, the Secretary, however, recommends a 100% increase in toll, that is from \$3 to \$6. Will this 100% toll increase be effective in relation to the 5% increase in traffic? Secondly, what is the level of traffic flow in percentage terms the Secretary wants to attain? Thirdly, past experiences tell us that toll increase cannot be used to reduce traffic flow, and the Cross Harbour Tunnel toll increase is a good example.

SECRETARY FOR TRANSPORT: Sir, the \$6 toll for Lion Rock Tunnel was reached after a series of demand-sensitivity tests worked out by computer. At a toll of \$3, the traffic throughput for the Lion Rock Tunnel will reach 106 000 vehicles a day by the end of the year, rising up to 111 000 by the middle of next year. However, at a toll of \$6, it is estimated that there will only be 96 000 vehicles using Lion Rock Tunnel by the end of this month, and it will rise slightly to 101 000 vehicles before Tate's Cairn Tunnel opens in the middle of next year. Therefore the short answer to the question is: yes, it will achieve some effect in relieving congestion.

MISS LEUNG (in Cantonese): Has the Government done any estimate on the number of vehicles that will be diverted from the Lion Rock Tunnel to the Shing Mun Tunnels by reason of their starting point or destination and not by reason of toll at the Shing Mun Tunnels being half as much as at the Lion Rock Tunnel?

SECRETARY FOR TRANSPORT: Sir, the Government has not done a precise estimate of these figures. However, we estimate that about 9 000 vehicles will use the Shing Mun Tunnels at the end of this month, and therefore there will be considerable relief to both Lion Rock Tunnel and Tai Po Road. At \$6, that objective will be furthered because people who would otherwise pay \$6 to use Lion Rock Tunnel will think twice and probably they will prefer to use Tai Po Road, which is free.

MR. TAI: Sir, since the toll increment is based on traffic management grounds, would

traffic congestion itself be a deterrent and divert more traffic to the new Shing Mun Tunnels? If that is the transport policy that the Government is going to take up, would the tolls for the Cross Harbour Tunnel be revised?

SECRETARY FOR TRANSPORT: Sir, we do not think that it can be viewed in that perspective but rather it should be viewed as a balanced distribution of traffic between the three routes of Lion Rock, Tai Po Road, and Shing Mun.

MRS. CHOW: Sir, some time ago the Government proposed, and the Transport Advisory Committee accepted, that not only the Lion Rock Tunnel toll but also all the other government tunnel tolls should be raised from \$3 to \$5. Why then is the increase now not in line with that original proposal? And why is Government proposing a new toll of \$6 which will inevitably cause delay as a result of change given, while in comparison \$5 would speed up the whole toll paying process?

SECRETARY FOR TRANSPORT: Sir, the Transport Advisory Committee did consider a toll of \$5 at the beginning of December last year. However, in the meantime conditions at Lion Rock Tunnel have worsened. We have been monitoring the figures for the past few months, which indicate that consistently there has been a slow but gradual traffic increase at Lion Rock Tunnel. It is therefore necessary to review the tolls. The Transport Advisory Committee therefore did a review in March this year and came to the conclusion that to achieve a more even distribution of traffic \$3 for the old tunnels and the new Shing Mun Tunnels and \$6 for the Lion Rock Tunnel were the right tolls to recommend to the Executive Council.

MR. ANDREW WONG (in Cantonese): As the present toll increase may probably cause serious congestion at Tai Po Road, and the Government is not prepared to charge tolls for the use of Tai Po Road, would the Secretary disclose all the data in support of this decision?

SECRETARY FOR TRANSPORT: Sir, all the figures I have quoted in this Council are of course public, and if Mr. WONG is interested in any further details I would be very pleased to supply the figures to him. (Annex I)

Deaths as a direct result of loss of blood in accidents

2. DR. IP asked: Can Government inform this Council how many persons died as a direct result of loss of blood in accidents whilst the primary condition is salvagable? If no such information is available, will Government aim at producing such statistics within a reasonable time so that consideration can be made as to whether ambulanceman should be adequately trained to infuse blood substitutes to prevent such unnecessary loss of life?

SECRETARY FOR HEALTH AND WELFARE: Sir, it is not our normal practice to maintain statistics on the number of deaths as a direct result of loss of blood in accidents whilst the primary condition is salvable. As far as I am aware, we have some crude figures based on a special study conducted in 1984-85 on the cases of Dead On Arrival at major Accident and Emergency centres. During the study, of a total of 2 193 Dead On Arrival cases reported, three cases were suspected to have died primarily of massive external haemorrhage before arrival at the Accident and Emergency department.

Since the last study was conducted some five years ago, the Director of Hospital Services will conduct a similar exercise in the near future to collect more up-to-date information.

As regards training of ambulancemen, this is being looked at by an Advisory Group on Extended Training for Ambulancemen under the purview of the Secretary for Security. The study to be conducted by the Hospital Services Department will provide a useful input to the deliberations of this advisory group.

DR. IP: Sir, as regards the study in 1984-85, can Government inform this Council whether the statistics collected were for one full year, and how many additional Dead on Arrival cases died with haemorrhage contributing significantly to death rather than just being the primary cause of it?

SECRETARY FOR HEALTH AND WELFARE: The special survey which I referred to in my main reply covered a period of 13 months between April 1984 and April 1985. The statistics were taken from major government accident and emergency centres, and the result, of course, indicated that there had been some 700 000 attendances at the surveyed centres.

During that period, a very small percentage of cases could be classified as Dead on Arrival cases, and out of that, as I said, only 0.137% could be suspected to have died because of massive external haemorrhage. I do admit these figures are still very crude, and I hope to do better when we next do a survey in two months' time.

DR. IP: The second part of my question has not been answered. If I could repeat it, how many additional Dead On Arrival cases died with haemorrhage contributing significantly to death rather than just being the primary cause of it?

SECRETARY FOR HEALTH AND WELFARE: I do not have these figures, Sir, because the figures, as I said earlier, were taken from the 1984-85 study and they were very crude. I do not think I have these statistics.

MR. TAM (in Cantonese): Does the Government have any new programme for the training of ambulancemen in the near future; and will there be any additional facilities provided on board ambulances?

SECRETARY FOR HEALTH AND WELFARE: Sir, since ambulancemen, as a subject, comes under the policy purview of the Secretary for Security, may I defer to him for a reply?

HIS EXCELLENCY THE PRESIDENT: Secretary for Security, can you help?

SECRETARY FOR SECURITY: Yes, Sir. The Advisory Group on Further Training for Ambulancemen has advised that ideally paramedical care on board ambulances should cover the following:

- Maintaining an airway by intubation;
- Providing intravenous infusion;
- Cardiac care using monitors and defibrillators;
- Use of selected drugs.

The group advised that initially further training should be limited to the use of defibrillators, and we hope to start this very soon.

DR. IP: Sir, in the collation of more up-to-date information, would Government consider including in its study statistics on the number of patients who died before or after admission to hospital with haemorrhage being the primary, secondary, and/or the contributory cause?

SECRETARY FOR HEALTH AND WELFARE: I think it is well worth considering, Sir. I will include it in the next survey.

#### Detention of Hong Kong travellers in foreign countries

3. DR. LEONG asked: In view of recent incidents in which Hong Kong residents travelling overseas were detained in foreign countries, will Government inform this Council of the channels through which the persons concerned and their relatives can seek protection and assistance from the Hong Kong Government and Her Majesty's Government; and of the criteria by which protection and assistance is rendered to such persons?

SECRETARY FOR SECURITY: Sir, a Hong Kong resident who is detained overseas can request the local authorities to inform a British consular officer of his detention. The consular officer will inform the Hong Kong Immigration Department, which will in turn notify the next-of-kin if the detainee so requests. The consular officer will also give a detained person advice on his rights and the availability of legal aid.

Only British nationals are entitled to British consular protection. However, given the general responsibility of Her Majesty's Government for Hong Kong, British consular posts have been instructed to do as much as they can to provide assistance to Hong Kong Certificate of Identity holders who are in trouble.

DR. LEONG: Sir, in the incident concerned, four Hong Kong residents were detained somewhere in the heart of India. The relatives of these four detainees eventually had to fly in their own lawyers to deal with the situation. In his reply, the Secretary has said that the consular officer will also give a detained person advice on his rights and the availability of legal aid. What would happen if the detainees

or their relatives belong to that class of people who cannot afford to fly in their own lawyers?

SECRETARY FOR SECURITY: Sir, in the case to which Dr. LEONG refers, I believe that the detained persons themselves employed their own lawyers. Clearly, whether legal aid can be provided to persons in this position will depend very much upon the law of the country in which they find themselves. But the British consular official in this case did liaise between the next-of-kin, the lawyers and the Indian Government, and successfully obtained their release.

MR. ARCELLI: Sir, will the Secretary inform this Council whether there is any difference in the treatment by foreign countries of the holder of a BDTC passport as opposed to that of a BN(O) passport, and whether the assistance offered is different, particularly in respect of repatriation from foreign countries of such passport holders?

SECRETARY FOR SECURITY: No, Sir, there is no difference. Consular assistance will be provided to all British nationals, including BDTC passport holders and BN(O) passport holders.

DR. LEONG: Sir, it is evident from the main reply that protection is available to Hong Kong residents only in places where there are British consulates. What would happen if a Hong Kong resident was detained in a place where there was no consular reciprocity?

SECRETARY FOR SECURITY: Sir, I think that in those cases -- and one must always assume that Her Majesty's Government does have diplomatic and consular relations with the country concerned -- we would try to make arrangements for the nearest British consular post to assist.

Written answers to questions

Jordan Valley landfill

4. MRS. TU asked: In view of the serious environmental and health risks and serious physical discomfort suffered for many years by residents in the vicinity of the Jordan Valley landfill near Ngau Tau Kok and Shun Lee Estates, would the Government agree to delete this facility from the contingency plans for the Kowloon Bay refuse transfer station and allocate another more appropriate site or use barges to carry the waste to other existing waste disposal sites?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Kowloon Bay refuse transfer station (KBRTS) is currently undergoing commissioning trials and will shortly be fully operational. There should therefore be no difficulty in ensuring that the Jordan Valley landfill will close in April 1990 in accordance with public assurances given both in this Council and elsewhere.

It is our considered view that a major breakdown or stoppage of the KBRTS which would necessitate any form of emergency arrangements for refuse disposal is virtually inconceivable. Nevertheless, the continuing efficient operation of the Urban Council's refuse collection service is a vital part of the running of the city, and it is sensible to have a contingency plan that ensures the continuity of this operation in the extremely unlikely event that the KBRTS is completely disabled.

The contingency plan, which was devised by the Government and endorsed by the Urban Council, is in two parts. The first covers the period from April 1990 until the end of 1990, and the second from the end of 1990 until 1995, when a second refuse transfer station should be commissioned in west Kowloon.

The option of re-opening the Jordan Valley landfill is only included in the first period, that is, up to the end of 1990, when the Junk Bay tunnel is expected to open. By that time also we are working towards commissioning an emergency refuse barging point.

By its nature, the contingency plan has to include all the available options for waste disposal. It will require an extraordinary circumstance to necessitate its activation, and such a circumstance may well rule out the use of other options. It is for this reason that the re-opening of Jordan Valley landfill has been included, and why we do not intend to delete it from the plan. There is no other site we could use.

To summarize, I hope the following assurances are helpful:

- (a) the Jordan Valley landfill will close by 30 April 1990;
- (b) the period for which it remains in the contingency plan is only until the end of 1990;
- (c) all other contingency measures would be exhausted before we would consider re-opening the Jordan Valley landfill; and
- (d) for operational reasons, we would require eight days' notice before the landfill could be re-opened, during which period we would consult the Kwun Tong District Board on the necessary arrangements.

Edinburgh Place used as a skateboarding rink

5. MRS. TU asked: Would the Government inform this Council what measures can be taken to stop the increasing use of Edinburgh Place as a skateboarding rink, and thus endangering the life and limb of members of the public, especially of the many small children and elderly people who frequent the area?

SECRETARY FOR HOME AFFAIRS: Sir, Edinburgh Place is unallocated crown land and is managed by the District Land Office. The police can take action under the Summary Offences Ordinance against people who cause a nuisance to the public while using the area.

To date, the police have received no complaint nor report of any injuries caused to members of the public as a result of skateboarding activities in Edinburgh Place. However, the police are aware of the activities there and have taken action to prevent nuisances or danger from occurring. In the last month, warnings have been issued to 16 individuals.

Advertising signboards

6. MR. CHAN asked: Will Government inform this Council whether consideration will

be given to requiring all advertising signboards to include the names and business registration numbers of their owners so as to facilitate the tracing of ownership in the event of complaints?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, Government does not have or aim to have any comprehensive control on advertising signs. Its primary concern in respect of them is to reduce the risk of death and injury by taking action against potentially dangerous signs. With the introduction of the Public Health and Municipal Services Ordinance (Amendment) (No. 2) Ordinance in March 1989, the Director of Buildings and Lands is empowered to take immediate action to render safe or remove dangerous advertisement signs, without having first to serve a notice on the owner, in emergency situations where there is a real and immediate threat to public safety.

For these purposes it is unnecessary to require all advertising signboards to include the names and business registration numbers of their owners. Such a requirement would moreover be impracticable in many cases, particularly where lighting was involved.

#### Stolen vehicles

7. MR. CHAN asked: Will Government inform this Council of the number of motor vehicles stolen in the past five years; whether there are statistics on the number of stolen cars which have been transported out of Hong Kong; and what action will be taken to combat the problem?

SECRETARY FOR SECURITY: Sir, the numbers of motor vehicles reported stolen in the past five years are as follows:

Year	Number of vehicles reported stolen
1985	3 149
1986	2 967
1987	2 954

1988	3 535
1989	4 401

Statistics on the number of stolen vehicles subsequently transported out of Hong Kong are not available. However, police records show that over the past five years more than 14 000 vehicles, representing over 80% of the vehicles reported stolen during the same period, have been recovered in Hong Kong.

Police action to combat the problem includes advising vehicle owners to take precautions against theft, monitoring of vehicles on the street and investigation of all reported cases of vehicle theft.

A number of investigations have been concluded successfully in recent years, especially against those involved in transporting stolen vehicles out of Hong Kong. During 1988, investigations resulted in the arrest of 354 persons, including several groups responsible for sending stolen vehicles to China. 411 persons were arrested in 1989, including some charged with stealing motor vehicles and shipping them to Thailand and Malaysia.

The police have developed a system of regular liaison with the Customs and Excise Department, police forces overseas, and vehicle retailers and insurers to exchange information and to enlist their assistance in combatting this form of crime.  
Kindergarten fee remission scheme

8. MRS. FAN asked: Is the Government aware that families of five to seven persons with income between \$2,900 to \$3,800 per month may receive less assistance under the new fee remission scheme for kindergarten pupils announced by the Education Department recently than they would under the existing fee assistance scheme? Has the Government given any consideration to assisting and alleviating the additional financial burden on these families?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, with the amount of funds available in 1990-91, the application of the proposed points system under the new Kindergarten Fee Remission Scheme to be introduced in September 1990, may result in a small number of applicants qualifying for a level of fee remission which is lower than the amount of assistance under the existing Fee Assistance Scheme. The approval of the Finance Committee will be sought for the Director of Education to be given the discretion

in such cases to award a level of remission not less than the amount under the existing Fee Assistance Scheme. The impact of the new Fee Remission Scheme will be monitored closely during the 1990-91 school year with a view to introducing any necessary modifications in the following school year.

#### Services and facilities for Tin Shui Wai

9. MR. TAI asked: Will Government inform this Council the steps that are being taken to ensure that adequate essential social, medical and educational services and communal facilities will be in place when the first residents of Tin Shui Wai move in?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Tin Shui Wai Development has been planned with the full range of government, institutional and community (G/IC) facilities to cater for the needs of the residents. The entire development, as with other new towns, is phased in a number of packages which will ensure a balanced development of housing and G/IC facilities. Overall progress of construction projects for housing and community facilities is closely monitored by the North West New Territories Works Progress Committee. As in the case of other new towns, working groups will be set up to ensure the basic community services are available on time to serve the initial population intake.

The first public housing estate is expected to be completed in May 1992 and essential social, medical and educational services and communal facilities will be in place when the public housing take in their first tenants. However, as the programme of population intake for the private sector housing has yet to be confirmed by the developer, a firm programme of provision of facilities can only be finalized at a later date.

#### Central Policy Unit

10. MR. DAVID CHEUNG asked: Will Government inform this Council what complex policy issues have been assigned to the Central Policy Unit for examination since it was set up; whether the effectiveness of the unit has been reviewed; and whether or not there are plans to expand the unit in the near future?

CHIEF SECRETARY: Sir, since the establishment of the Central Policy Unit in April 1989, it has produced 36 in-depth analyses on issues of a long-term and strategic nature: 13 of these concerned projects of an economic nature, two were social projects, 14 concerned political issues and seven were external issues. In addition, it has produced, in response to urgent requests, a total of 108 papers on a wide range of matters of more immediate concern. These reports are provided on a personal basis to the Governor, the Financial Secretary and myself. As such, they must remain confidential.

The effectiveness of the Central Policy Unit is kept constantly under review through the monthly meetings and other regular contacts that the Governor, the Financial Secretary and myself have with it. We assign projects to the Central Policy Unit. As I informed Members of the Legislative Council in November 1989, the Central Policy Unit has made a significant contribution to our decision-making process at the highest level.

The operational experience of almost one year has shown that the Central Policy Unit needs some slight strengthening to enable it to cope with the growing demands that have been made on it. Provision has been included in this year's estimates for an additional four posts in the Central Policy Unit and the upgrading of one other. Authority for the creation of these will be sought in the near future.

#### Triad activities in schools

11. MR. DAVID CHEUNG asked: Will Government inform this Council whether it has been monitoring the incidence of triad activities in schools; if so, whether such activities have been on the increase, and what measures have been and will be taken to tackle the problem?

SECRETARY FOR SECURITY: Sir, both the police and the Education Department monitor closely the incidence of triad activities in schools. An inter-departmental Standing Committee on Unruly and Delinquent Behaviour in Schools was formed in 1981 to monitor such behaviour, which includes suspected involvement in triad activities.

The indications are that such activities have decreased in recent years.

According to territory-wide surveys conducted by the Standing Committee on Unruly and Delinquent Behaviour in Schools, the number of incidents reported of suspected involvement in triad activities in secondary schools dropped by over 50% in the last five years. The number of students involved in unlawful society offences has also dropped over the same period.

The measures which have been taken by the police and the Education Department to counter triad activities in schools include the following:

- (a) regular school visits and lectures by the 19 District Police School Liaison Officers to explain to students the nature of triad involvement in schools and to advise them how to respond to any such activities;
- (b) seminars have been organized for school principals and teachers on various aspects of unruly and delinquent behaviour, including triad activities;
- (c) material on triad activities has been produced for schools to enhance the awareness of both teachers and students about triad activities in schools;
- (d) the Junior Police Call programme has been developed to involve students in worthwhile activities; and
- (e) warnings against involvement in triad activities have been publicized through educational films, Announcements of Public Interest and pamphlets.

These measures will be regularly reviewed to assess their effectiveness and modified as necessary.

#### Diamond Hill Squatter Area

12. MR. MICHAEL CHENG asked: In view of the fact that no specific date has yet been fixed for the clearance of part of the Diamond Hill Squatter Area in the vicinity of the Tate's Cairn Tunnel and that more than 14 000 squatters concerned are seriously disturbed by the noise and environmental pollution generated from the construction site, will Government consider:

- (a) advancing the clearance of New Village South, Ha Yuen Leng Village and Sheung

Yuen Leng Village in Diamond Hill;

- (b) using the land thus vacated as supplementary urban sites to build public housing estates in the implementation of the "Long Term Housing Strategy"; and
- (c) rehousing the affected residents in-situ?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Tate's Cairn Tunnel clearance in 1989 reduced the Diamond Hill squatter population from about 34 000 to about 19 000. A further clearance is currently being done to free land for the construction of the Fung Tak Road Extension. This and one other clearance nearby, which is under active planning and which will be completed in mid-1991, will further reduce the squatter population in Diamond Hill Squatter Area to about 13 000.

The Government is also now considering the possibility of advancing the clearance of New Village South, Ha Yuen Leng Village and Sheung Yuen Leng Village. However, no decisions have yet been made.

The possibility of developing these areas when vacated, as supplementary housing sites is also being examined. One such site, at Tai Koon New Village near Hammer Hill Road, has already been found suitable, in principle, for Home Ownership Scheme / Private Sector Participation Scheme (HOS/PSPS) development. The remaining sites are still under consideration.

Residents affected by clearance in the urban area are offered rehousing in the urban area in accordance with established Housing Authority policies and each household's eligibility.

#### Laundry drying in public housing estates

13. MISS LEUNG asked: Sir, in view of the great concern expressed by the public over the recent three mishaps in less than two months involving residents in public rental housing estates who accidentally fell while they were using metal drying rod holders (which are generally referred to as the "three joss sticks") to dry their laundry, resulting in two deaths and one injury, will Government inform this Council whether the authority will review the safety aspects of laundry drying in the public housing estates, including making improvements to laundry drying facilities and advising the

residents of the proper way to use them?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Housing Authority does not consider the "three joss sticks" to be inherently unsafe, but accidents may occur if users do not exercise due care when using them. Housing Authority tenants are permitted to install a number of approved designs of drying rod holders and corded drying racks, and the choice of design is made by the individual tenant concerned. Estate management staff are always available to advise tenants on the use and purchase of suitable racks, and carry out enforcement action against the use of unauthorized designs.

However, as a result of the recent accidents, the Housing Department is carrying out further publicity work to ensure that tenants are aware of the need to use approved designs and to exercise caution when using the laundry equipment. The Department is also examining the design of the Harmony range of blocks, to ascertain whether there are any possible alternative drying arrangements which might meet the tenants' wishes to dry their laundry in the direct sun and wind.

#### First Reading of Bills

PRIVILEGES AND IMMUNITIES (JOINT LIAISON GROUP AND LAND COMMISSION) (AMENDMENT) BILL 1990

CRIMINAL PROCEDURE (AMENDMENT) BILL 1990

ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) (AMENDMENT) BILL 1990

GRANTHAM SCHOLARSHIP FUND (AMENDMENT ) BILL 1990

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

#### Second Reading of Bills

PRIVILEGES AND IMMUNITIES (JOINT LIAISON GROUP AND LAND COMMISSION) (AMENDMENT) BILL

1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Privileges and Immunities (Joint Liaison Group and Land Commission) Ordinance."

He said: Sir, I move that the Privileges and Immunities (Joint Liaison Group and Land Commission) (Amendment) Bill 1990 be read a Second time.

The purpose of this Bill is to grant privileges and immunities to the dependants of certain categories of Chinese officials of the Joint Liaison Group and the Land Commission.

It is stated in Annex II to the Joint Declaration that members of the Joint Liaison Group shall enjoy diplomatic privileges as appropriate while in Peking, London and Hong Kong. As a result, the Privileges and Immunities (Joint Liaison Group) Ordinance was enacted in May 1985 to grant diplomatic privileges and immunities in Hong Kong to Chinese members of the Joint Liaison Group. Following an Exchange of Notes between the British and Chinese Governments in July of the same year, the Ordinance was amended and retitled so as to extend similar privileges and immunities to experts and supporting staff of the Joint Liaison Group as well as to Chinese members and supporting staff of the Land Commission. At present, dependants of these officials are not covered by the Ordinance and are therefore not entitled to any privileges and immunities while in Hong Kong.

It is normal diplomatic practice for dependants of diplomats and of administrative and technical staff in a diplomatic mission to receive the same privileges and immunities as the officials concerned. The British Government already extends appropriate privileges and immunities to dependants of officials of the Joint Liaison Group while they are in the United Kingdom; and the Chinese Government does the same while the British team are in China.

The granting of privileges and immunities to the dependants of Chinese officials of the Joint Liaison Group and the Land Commission would therefore be consistent with international diplomatic practice; it would also bring the arrangements in Hong Kong into line with those in the United Kingdom and the People's Republic of China.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

## CRIMINAL PROCEDURE (AMENDMENT) BILL 1990

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Criminal Procedure Ordinance."

He said: Sir, I move that the Criminal Procedure (Amendment) Bill 1990 be read a Second time.

The object of the Bill is to amend the law governing the competence and compellability of spouses to give evidence in criminal proceedings. The Bill implements recommendations made by the Law Reform Commission in its recent Report on the Competence and Compellability of Spouses.

A witness is competent to give evidence if the law permits him to do so. Such a witness can only be compelled to give evidence if the law requires him to do so.

In Hong Kong the present law governing the competence and compellability of spouses to testify in criminal proceedings is governed by a mixture of common law rules and statute. At common law a person is not competent to give evidence for or against his or her spouse except in very limited circumstances, such as where that spouse is accused of inflicting violence on that person. Various statutory provisions have extended these exceptions to the common law rules to make a person competent to give evidence against his or her spouse, for example where such spouse is charged with certain sexual offences or certain offences against a person under the age of 16. The Criminal Procedure Ordinance provides that a person is competent to testify for his or her spouse where that spouse is a defendant in a criminal trial. A person cannot, under the present law, be compelled to give evidence against his or her spouse under any circumstances.

The present law can produce unjust and arbitrary results. For example, if a person witnessed his or her spouse murdering somebody over the age of 16, he or she would not be competent to testify against that spouse. In the absence of other evidence, no criminal proceedings could be brought and the murderer would evade justice. Further, even though competent to do so, a witness may refuse to testify on behalf of his or her spouse where that spouse is a defendant in a criminal trial. It matters not whether that refusal is for good or for wholly arbitrary reasons; the

rule applies regardless of how important that testimony might be to the defence of the accused spouse. An injustice to the accused might result.

The Law Reform Commission recommended a series of improvements to the law of competence and compellability of spouse to achieve a balance between, on the one hand, the interests of justice, and, on the other, the aim of interfering as little as possible with relations between married couples and the family.

The Commission made three main recommendations:

- First, that a person should, in limited types of criminal proceedings, be compellable to give evidence for the prosecution.
- Secondly, that a person should be compellable to give evidence for the defence of his or her spouse in all criminal proceedings.
- Thirdly, that a person should be competent to give evidence for the prosecution in all criminal cases against his or her spouse.

The Commission considered the question of whether a person should become a compellable witness for the prosecution against his or her spouse in all cases. The Commission saw serious objections to such a dramatic change to the law because of concerns about the sanctity of marriage and undue interference with the family. The Commission therefore decided to recommend that a person should be compellable to testify against his or her spouse only in exceptional cases where the family itself was threatened by the accused spouse. Accordingly clause 3 of the Bill provides that a person who is competent to give evidence against his or her accused spouse may also be compelled to do so where that spouse is charged with assaulting, injuring or threatening injury to that person or a child of the family under 16 years of age. The same rule applies to sexual offences against such a child. Such a witness would also be compellable if the accused was charged with attempting, conspiring to commit, aiding, abetting, counselling or procuring or inciting the commission of any of the offences that I have just mentioned. Clause 3 of the Bill also implements the other main recommendations of the Commission.

The Bill provides that changes concerning the competence or compellability of spouses will not affect the right of an accused to give evidence, or his or her privilege against self incrimination, when such a person is jointly charged for an

offence with his or her spouse. The Bill preserves the statutory privilege against incrimination by one spouse of another except where the witness is compellable to give evidence for the prosecution.

The Bill also substantially preserves the common law right of a person to resist disclosure of any communication made by his or her spouse during the marriage, although an exception to that right is made where the person is lawfully compelled to testify against his or her spouse.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) (AMENDMENT) BILL 1990

THE SECRETARY FOR ECONOMIC SERVICES moved the Second Reading of: "A Bill to amend the Animals and Plants (Protection of Endangered Species) Ordinance."

She said: Sir, I move that the Animals and Plants (Protection of Endangered Species) (Amendment) Bill 1990 be read a Second time.

The Bill before this Council provides for the strict control of commercial trade in highly endangered species of wild fauna and flora by imposing a requirement on the Director of Agriculture and Fisheries not to issue a licence for their import or export. It demonstrates Hong Kong's commitment to the protection of endangered species.

Following widespread concern internationally over the continued decline of the African Elephant, parties to the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES) have declared that species to be highly endangered. A ban on international trade in ivory came into effect in January this year. This ban did not immediately apply to Hong Kong because the United Kingdom Government had, at our request, entered a reservation with CITES the effect of which was to delay implementation of the ban until 17 July 1990.

This "breathing" space has given Hong Kong traders an opportunity to dispose of some of their ivory in a more orderly way. It has also allowed workers in the trade

to find alternative jobs, and for the Government to make available retraining courses to those workers needing to acquire new skills. Controls to implement the ban on international trade in ivory must, however, be in place by mid-July.

Hitherto, controls over trade in highly endangered species have been effected by the Director of Agriculture and Fisheries considering, and rejecting on an individual basis each and every application for the licence required to import or export. This has proved unsatisfactory. The Bill introduces, in clause 3, a provision requiring the Director not to issue import or export licences in respect of highly endangered species save in specified circumstances. The species concerned are listed in a new sixth schedule, introduced under clause 4 of the Bill. Of these species, the African Elephant is the one which will attract most attention. The introduction of this legislation will ensure that, from 17 July 1990, no commercial import or export of raw or worked ivory will be permitted. However, in line with CITES rules, the import and export of personal possessions, of preconvention stock, of scientific specimens, exhibits and for other non-commercial purposes in the public interest will be allowed to continue.

Sir, Hong Kong is part of the international community and must be seen to be playing its role in international affairs. We take our CITES obligations seriously and we already have tighter controls over the ivory trade than anywhere else. We are committed to strict enforcement of the ban once it comes into force.

Sir, I move that debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### GRANTHAM SCHOLARSHIP FUND (AMENDMENT) BILL 1990

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Grantham Scholarship Fund Ordinance."

He said: Sir, I move that the Grantham Scholarships Fund (Amendment) Bill 1990 be read the Second time.

The Grantham Scholarships Fund was established in 1955 for the promotion and encouragement of education in Hong Kong. To this end, the income of the fund is

applied for the provision of scholarships and maintenance grants for Hong Kong residents and financial need has been the main criterion for making such awards. In recent years while the recurrent income of the fund arising from investments has increased substantially, the number of applications has been declining steadily, apparently because of a more affluent community, thus resulting in a growing annual surplus.

In order to make full use of the fund and thereby further the objective of promoting and encouraging local education, it is proposed that scholarships may be granted on the basis of academic and other relevant achievement, in addition to those granted on the basis of financial need. This proposal has been endorsed by the Grantham Scholarships Fund Committee.

Clause 2 of the Bill amends section 5 of the Ordinance by removing a provision which limits the recipients of scholarships to those in need of financial assistance, thus widening the eligibility for scholarships granted under the fund. This amendment will enable the fund to be applied more flexibly for its declared purposes.

The opportunity is also taken, in clause 3 of the Bill, to change references to "the Colony" in the Ordinance to "Hong Kong".

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### COMPANIES (AMENDMENT) (NO. 2) BILL 1990

Resumption of debate on Second Reading which was moved on 21 March 1990

Question on the Second Reading of the Bill 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).

#### HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 14 March 1990

Question on Second Reading proposed.

MR. TIEN: Sir, the proposed amendment serves two purposes.

The amendments to section 5 of the Hong Kong Productivity Council Ordinance is to empower Hong Kong Productivity Council to play its role of a government agent more effectively, and to exploit more readily opportunities for commercial enterprises. With this amendment, Hong Kong Productivity Council is expected to form three companies within this financial year:

- (1) The takeover of the Hong Kong Design Innovation Company Limited in June 1990. It will be changed to a company limited by shares and run on a more commercial basis.
- (2) A new venture -- the Clothing Technology Demonstration Centre -- whose aim is to promote, through training and demonstration, the use of new clothing manufacturing systems for the clothing industry. This is a joint venture with the Clothing Industry Training Authority.
- (3) The Heat Treatment Unit which is a mature service will be hived-off as a private company. This is a way to spin-off mature services which do not warrant further government subvention.

The amendments to section 9 of the Bill is to increase the maximum membership of the council from 21 to 23. The new members will be drawn from persons who represent management, labour and professional or academic interests.

Sir, I support the Bill.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

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

## PROVISIONAL AIRPORT AUTHORITY BILL 1990

Resumption of debate on Second Reading which was moved on 14 March 1990

Question on Second Reading proposed.

MR. CHENG HON-KWAN: Sir, the Bill before us is a relatively simple one but it serves a big purpose -- the establishment of a corporate body, the Provisional Airport Authority (PAA), to spearhead the preparatory work for the new airport at Chek Lap Kok. The PAA, when established, will have power to enter into contracts; to engage staff; to acquire and dispose of land; as well as to receive and expend moneys.

As it is the Administration's intention to replace the PAA with a permanent body by 1992, the present Bill has a very short life span. Therefore, details relating to the day-to-day management of the airport which are of no concern to the PAA are not covered in the Bill.

The Legislative Council ad hoc group set up to study the Bill has met three times. The Administration has also been invited to attend one of the meetings to clarify a few points which members of the group had raised. The group is satisfied with the provisions in the Bill and welcomes its early enactment to ensure that implementation of the airport project will not be delayed.

Sir, with these remarks, I support the Bill.

Question on the Second Reading of the Bill 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 Bills

Council went into Committee.

## COMPANIES (AMENDMENT) (NO. 2) BILL 1990

Clauses 1 to 5 were agreed to.

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1990

Clauses 1 to 3 were agreed to.

PROVISIONAL AIRPORT AUTHORITY BILL 1990

Clauses 1 to 16 were agreed to.

Schedule was agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

COMPANIES (AMENDMENT) (NO. 2) BILL 1990

HONG KONG PRODUCTIVITY COUNCIL (AMENDMENT) BILL 1990 and

PROVISIONAL AIRPORT AUTHORITY BILL 1990

had passed through Committee without amendment and moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Member's Motion

BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

MR. MARTIN LEE moved the following motion:

"In light of the promulgation of the HKSAR Basic Law by the National People's Congress, this Council urges the Chinese and British Governments to take into account the interests of the people of Hong Kong; to help Hong Kong, through mutual and sincere co-operation, to surmount its problems both before and after 1997; and to amend, at a suitable time, the relevant clauses of the Basic Law according to the recommendations in the OMELOCO "Comments on the Basic Law (Draft)" so as to further maintain Hong Kong's prosperity and stability."

MR. MARTIN LEE: Sir, this is the first time I move a substantive motion in this Council. And I do so because a few hours ago, the Basic Law was formally promulgated by the National People's Congress in Beijing; and in seven years' time, the Basic Law will take effect as our constitution. I therefore submit that we in this Council have the duty to tell the people of Hong Kong what we think of the Basic Law and whether amendments are necessary.

Sir, in our debate in February on the political system of the final draft of the Basic Law, I said that at some point in the near future there should be a debate on the entirety of the Basic Law; and few have disagreed. For while the political system has captured the lion's share of the attention of the public and the media, it represents only one aspect of the Basic Law. In its report published in October 1989 entitled: "Comments on the Basic Law (Draft)," OMELOCO painstakingly studied every clause in the document and made valuable recommendations. It is fitting therefore that we have a debate on the whole of the Basic Law today.

But before we begin, it is worthwhile to recall the careful and thorough effort that went into the preparation of the OMELOCO report. The OMELOCO Constitutional Development Panel met 26 times, while OMELOCO itself held seven special In-house meetings. In addition, an Expert Group held five meetings during which many legal issues were studied. Throughout the whole process, Members were especially grateful to the Convenor of the Panel, the Honourable Andrew WONG, for his insight and devotion. At the end of that long process, although a few Members had some reservations on certain proposals, OMELOCO as a whole felt confident that the recommendations in that report were the best means of ensuring prosperity and stability for Hong Kong. I would be surprised if Members no longer share this conviction today.

Sir, my aim in proposing this motion is the same as that of OMELOCO in preparing

and publishing its report. The aim is not to criticize for the sake of criticism or to be confrontational, but to discuss in a calm and constructive spirit the final Basic Law, by making positive suggestions as to what changes are necessary in order to ensure that the policy of "one country, two systems" can be fully put into practice and that Hong Kong will enjoy a bright future.

Some people believe that after the promulgation of the Basic Law, we should not waste time in talking about amendments. I do not agree. For like any other constitution, the Basic Law itself contemplates amendments after 1997 by expressly providing a mechanism to effect amendments in Article 159. But even before the Basic Law takes effect on 1 July 1997, there is nothing to prevent the National People's Congress from amending it so as to bring it closer to the Joint Declaration and the aspirations of the people of Hong Kong.

It is, however, important to stress, Sir, that with or without amendment, when the Basic Law becomes the law of the land in 1997, we all will be bound by it, and we will all have a duty to work within its parameters. At the same time, though, we have a duty as legislators to work within the constitutional framework and seek changes to some of its provisions if we believe that such changes will better provide for the future of Hong Kong which can only be in the interest of China.

The necessity in seeking constructively to amend the Basic Law becomes all the more clear when we consider the atmosphere in which the final draft was decided. The OMELOCO report and its recommendations were made on the second draft of the Basic Law, which represented a considerable improvement on the first draft. The hope of OMELOCO in making that report was that more improvements would be made to the final draft by further taking into account the opinions of the people of Hong Kong. Yet, because the Basic Law was finalized in a time of mistrust and strained relations that followed the crushing of the democracy movement in China last spring, the document marks not an improvement from the second draft but a regression. One ready example concerns Article 23 of the Basic Law which requires the Hong Kong Special Administrative Region to enact laws to prohibit, among other things, "subversion against the Central People's Government."

Over the next seven years trust will no doubt increase between China and Hong Kong. We need first to strive to rescind the ill-considered post-June 4 amendments, and then move forward to enact the recommendations contained in the OMELOCO report. We must remember that the Basic Law will serve as the constitution of Hong Kong for

the next 50 years. To be swayed by the passions of the moment in drafting such a permanent document surely will not be beneficial to the long-term future of Hong Kong or China.

In debating the Basic Law, we must constantly bear in mind what all agree are the three paramount objectives of the Basic Law. First, the Basic Law must represent the views of and be fully acceptable to the people of Hong Kong. Secondly, it must accord with the letter and spirit of the Joint Declaration. And thirdly, it must provide Hong Kong with an effective and workable system of government. These three objectives are obviously closely interlinked, but it is helpful to look at them separately.

1) Representing the views of the people of Hong Kong: Over the last five years, the people of Hong Kong have witnessed a unique drafting process that has featured two drafts, each followed by a lengthy consultation period.

Not only is the drafting process critical for inspiring confidence in the people of Hong Kong as to their future, but it also indicates to them what their future relationship with China would be like. Beijing has stated this fact explicitly. When I attended the first meeting of the Drafting Committee of the Basic Law in Beijing in July 1985, practically every Mainland drafter I met told me enthusiastically that if the final Basic Law were not to be acceptable to the people of Hong Kong -- nay, more acceptable than the Joint Declaration had been -- then it would be a failure. Indeed, this view was subsequently made known repeatedly to the people of Hong Kong through the mass media.

Unfortunately, despite the attention that the Basic Law Drafting Committee displayed towards Hong Kong opinions in amending the first draft, it chose to ignore the strong opposition among people here to the very recent changes made to the second draft. The drafters refused to consider, for example, the nearly unanimous opposition of the people of Hong Kong to the divisive split-voting system, the subversion clause in Article 23, and the vesting in the central government of the power to declare a state of emergency in the Hong Kong Special Administrative Region. And, as for the pace of democratization, the drafters did not even discuss either the 4-4-2 or OMECO models, though both had received wide support in Hong Kong.

It is imperative for the future of Hong Kong that the people here have confidence in the Basic Law. If the constitution is not acceptable to people here, then, as is already happening now, great numbers of our people will leave. And, even those

who cannot leave will feel frustrated in having to work within a system which they do not like. Hence, the Basic Law must be made acceptable to the great majority of our people. And it is my belief that until the Basic Law is amended substantially along the lines suggested in the OMELOCO report, it will not be fully acceptable to the people of Hong Kong.

2) In full accordance with the letter and spirit of the Joint Declaration: Just as the Basic Law drafters have stressed the importance of listening to the people here, so they have also emphasized that the Basic Law must strictly conform to the Joint Declaration which is its blueprint. It follows that if the Basic Law is not in full accordance with the Joint Declaration, then neither the people of Hong Kong nor the international community will have confidence that Hong Kong will continue as the thriving international centre that it is today.

And since it is the intangible question of confidence that is at issue, any perceived deviation from the Joint Declaration -- whether in letter or spirit -- will do grave damage to Hong Kong. And there are a number of such deviations.

First, the imposition of a new restriction that holders of certain high positions in the HKSAR cannot have a right of abode in any foreign country, and the putting of a ceiling of 20% on Legislative Councillors who are non-Chinese nationals or with a right of abode in foreign countries are new provisions which are not consistent with the Joint Declaration.

Secondly, the provision in Article 106, which sets out binding guidelines as to the HKSAR's future revenue and expenditure policies. Again, there is nothing in the Joint Declaration which provides for such a limit on the HKSAR Government. And further, the specific, policy-oriented language of this clause has no place in a constitutional document.

Thirdly, I wonder how many people in Hong Kong, when they read the promises in the Joint Declaration that the HKSAR shall have an elected legislature to which the executive is accountable, would have envisioned the present scheme in the Basic Law providing for a legislature which is only one third democratically elected, whose members cannot introduce any bill without the Chief Executive's written consent, and which can be unilaterally dissolved by the Chief Executive for failure to pass any "important bill". Finally, it is difficult to see how it can be said that the Hong Kong judiciary truly has the final power of adjudication promised in the Joint

Declaration when the Standing Committee of the NPC, and not the courts of the HKSAR, is the supreme arbiter on the interpretation of every article in the Basic Law. No doubt, sophists will contend that these as well as other articles in the Basic Law which have been criticized in the OMELOCO report do not out-and-out violate the letter of the Joint Declaration. But I need not say that these sophistries can hardly restore to our community a commodity as elusive, yet as essential, as confidence.

3) Establishing a workable HKSAR: The last of the three objectives in debating the Basic Law is whether it provides for an efficient and workable framework for Hong Kong's future. The centrepiece of the Joint Declaration is China's own basic policy that the best way to provide for Hong Kong's future is: "one country, two systems" in which "Hong Kong people will rule Hong Kong" with a "high degree of autonomy".

Now, China's basic policy is not "one country, two economic systems" or "a high degree of trade autonomy". For the Joint Declaration clearly recognizes that, in order to keep the currently thriving system in Hong Kong going beyond 1997, the political, economic, and legal systems are an inseparable whole. That system has to have an internal consistency and integrity in order to survive. For Hong Kong cannot hope to maintain a successful capitalist system unless the territory maintains the rule of law -- a rule of law that is sustained by a representative legislature, carried out by an accountable executive, and enforced by an independent judiciary. As China herself must recognize, her own values, policies, and indeed her world perspective are very different from ours in Hong Kong. It follows that if Hong Kong's laws are decreed by the Chinese Government or interpreted by the Standing Committee of the NPC, then Hong Kong's independent capitalist system may not survive, with the result that it may lose its important place in the trading world of capitalist nations.

Thus, in reserving full powers of interpretation and amendment to the NPC and its Standing Committee, the Basic Law has dealt a grave blow to the integrity and indeed the very viability of post-1997 Hong Kong. As the OMELOCO report explains so clearly, Hong Kong courts must have the final and exclusive power of interpreting the Basic Law, and the people of Hong Kong must be involved through their legislature in any amendments to the Basic Law.

Sir, consistency is of vital importance to the interpretation and application of our laws. And given the great differences between the legal systems of China and Hong Kong, our courts would not be able to function effectively if the Standing Committee of the NPC and our courts were to interpret our laws simultaneously. For in deciding whether a law in Hong Kong does or does not contravene the Basic Law,

the Standing Committee of the NPC would have to interpret not only the relevant article of the Basic Law, but also the relevant provisions of a Hong Kong law.

As for amendments to the Basic Law, after taking so much time and trouble to consult the people of Hong Kong while drafting it, it is difficult to find any justification for not having to consult them through their properly constituted Legislative Council on any changes to the Basic Law in future.

For these reasons, our suggestions on the power of amendment and interpretation must not be viewed as attempts to restrict China's sovereignty. Rather, they should be viewed as our very sincere effort in drawing attention to the fact that if Beijing were to interpret or change our constitution in the way presently prescribed in the Basic Law, it would undermine confidence in Hong Kong as well as international confidence in the reliability and predictability of our legal system in future.

Sir, allow me to give three examples to illustrate my point: the first two of which I will touch on briefly as I know some of my honourable colleagues will deal with them in depth, though it will be necessary for me to spend more time on the third example.

The first concerns human rights. China has long contended that a bill of rights is a western concept that is not appropriate to China. Yet Article 39 of the Basic Law states that the provisions of two international covenants on human rights will continue to apply to the HKSAR. If the Standing Committee of the NPC is to interpret Article 39, then it will find it necessary also to interpret the Bill of Rights to be enacted in Hong Kong, and its interpretation may be totally different from that of the courts in Hong Kong.

A second example is the insertion into Article 23 of the clause relating to subversion against the Central People's Government as mentioned above. Subversion is a term foreign to the common law system which shall continue to apply to Hong Kong, and this particular crime can neither be reconciled with the values nor the precedents of the common law system. Such an effort to take a communist law concept and impose it upon a common law system undermines the non-political nature of the Hong Kong courts and raises doubt as to whether the common law system will be able to maintain its integrity after 1997.

The third example relates to the restrictions on the jurisdiction of the Hong

Kong courts in Article 19, and I am afraid that will take some time.

Article 19 provides as follows:

"The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication.

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

Courts of the HKSAR shall have no jurisdiction over acts of state such as defence and foreign affairs. Courts of the Region shall obtain a statement from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts."

Now the expressions "acts of state" and "facts of state" are taken from the common law.

An act of state is defined in 18 Halsbury (4 ed.) para. 1413 as "a prerogative act of policy in the field of foreign affairs performed by the Crown in the course of a relationship with another state or its subjects." Examples are the making and performance of treaties and the declaration of war. Although the courts have no jurisdiction over acts of state, the courts have power to determine whether an act is or is not an act of state.

"Facts of state" are defined in the same volume as "a class of facts ... which consists in matters the determination of which is solely in the hands of the executive." Examples are whether a state of war exists between two countries, or the status of a person claiming immunity from the jurisdiction of the court on the ground of his diplomatic status. In relation to these "facts", the courts will take notice of them, and in case of uncertainty, will seek information from the executive, and the information received is conclusive.

The last paragraph is new, and it is this paragraph that causes difficulties. In order to understand the problem, it is necessary to set out the third paragraph of the same article in the second draft, which read as follows:

"Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to the acts of state. Courts of the Region shall obtain a statement from the Chief Executive on questions concerning the facts of state whenever such questions arise in any legal proceedings. This statement shall be binding on the courts."

Now it will be seen that acts of state cover only a very small area of defence or foreign affairs. But the new paragraph in the final version, effectively defines all defence and foreign affairs to be acts of state. Indeed, the definition of acts of states is not even exhaustive, although it is difficult to see what else could possibly constitute acts of state.

Further, the second sentence of this new paragraph refers to "questions of fact concerning acts of state such as defence and foreign affairs", but has omitted any reference to "facts of state" which was in the second draft. The most likely explanation is that the Basic Law Drafting Committee has confused a "fact of state" with an "act of state", thinking that a "fact of state" is a fact which concerns an act of state. The Chinese text is ( ).

One practical effect of this sentence is that the courts are deprived of their power to decide whether an act is or is not an act of state, and are obliged to obtain a certificate from the Chief Executive which shall be binding on the courts. This clearly reduced the present jurisdiction of the courts.

Another practical effect is that there is now, unlike the second draft, no provision as to how the Courts should deal with "facts of state". For these reasons, this article must be amended to give it efficacy either by repealing the third paragraph entirely, or by amending it to read as follows:

"Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state. Courts of the Region shall obtain a statement from the Chief Executive on questions concerning facts of state whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts."

Sir, I am well aware that if I do not wrap up this debate presently, you may exercise your prerogative power in the form of an act of state to command me to do so.

In conclusion, then let me say that we all expect Hong Kong to go through a number of difficulties and uncertainties both before and after 1997. In order to be able to preserve our prosperity and stability, we need the sincere co-operation and mutual understanding of both the British and Chinese Governments. One obvious example is that of the nationality package, which cannot work unless there is full co-operation between both governments. But above all, we must seek to ensure that the basic policies of China, as set out in the Joint Declaration, will be faithfully translated into the Basic Law.

With these remarks, Sir, I look forward to hearing the views of my honourable colleagues on this motion and I beg to move.

Question on the motion proposed.

MR. HO SAI-CHU (in Cantonese): Sir, the Basic Law of the Hong Kong Special Administrative Region will be formally promulgated after being approved by the National People's Congress and it will become the supreme law to be applied in the Hong Kong Special Administrative Region after 1997.

We may recall that the whole drafting process has been the main concern of the entire community since the work began four years and eight months ago. My honourable colleagues in this Chamber have all given their views and suggestions on the formulation of the Basic Law. Some of them were even directly involved in the drafting and one may well say that they have a greater in-depth understanding of the Basic Law than the general public.

After lengthy discussions, consultations and repeated revisions, a final decision has been made. Upon the endorsement of the final draft of the Basic Law by the plenary session of the Basic Law Drafting Committee, I have remarked that the draft Basic Law is a product of accommodation and compromise among all parties concerned under the main guiding principles of "one country, two systems" and "Hong Kong people administering Hong Kong". Though it may not please everyone, yet it is acceptable to the majority of the people. After all, such an outcome is better than one that only pleases certain sectors of our community yet arouses strong objections from others resulting in intense contradictions and social unrest. Perfection is a matter of relativity. Under the constraints of the prevailing political and economic conditions, the final version of the Basic Law may be described as a piece of fine work.

Upon its promulgation, the Basic Law will take effect for a long time after 1997. Amendments, if any, will have to be made in accordance with procedures provided in the Basic Law on the basis of the development of circumstances and the outcome of practice. Article 159 of chapter VIII of the Basic Law provides clearly the power and the procedures of making amendments and it also stipulates that no amendment to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. As far as I understand the most fundamental principle is the "one country, two systems" policy. Throughout the entire drafting process, the Chinese Government has laid stress on the realization of "two systems" within "one country". While accepting that the people of Hong Kong should be given a high degree of autonomy, China has taken care to eliminate any tendency to deviate from the principle of "one country". It has received and considered the views of all sectors as well as noted the content of the "Comments on the Basic Law (Draft)" -- the OMECO paper which I did not agree to and had reservations about. Nonetheless, the final decision has been made on the basis of the fundamental principle mentioned above. When the Basic Law was tabled at the current session of the National People's Congress, it was discussed in the most solemn and serious manner. Once approved and promulgated, the possibility of amendment in the near future is very slim. If amendment is necessary in the future, it must go through strict and cautious procedures. Given the fact that one cannot make the best of both worlds, I think there is an edge in following the strict procedures, without which one cannot say for sure whether in the future people in mainland China may propose for some reason the deletion of provisions in the Basic Law which have been agreed by the people of Hong Kong in the same way as some of us may wish to amend the Basic Law now. In the final analysis it is not in the well-being of the people of Hong Kong.

I always maintain that mutual and sincere co-operation between China and Britain is the best guarantee for the maintenance of prosperity and stability during the transitional period. With the formal promulgation of the Basic Law, we are more certain about the future of Hong Kong after 1997. Such certainty is conducive to a further strengthening of co-operation between the Chinese and British Governments as well as restoring the confidence of the Hong Kong people. As an individual one can also have a better idea in making decisions about one's personal affairs and future arrangements.

Sir, I do not intend to spend time on discussing Mr. LEE's views on the matter but would like to express briefly my views on the motion. I support a mutual and

sincere co-operation between the Chinese and British Governments so as to ensure a stable and smooth transition which is consistent with the interests of China, Britain and Hong Kong. However, I think that the chance of making amendments to the Basic Law in accordance with the OMELOCO "Comments on the Basic Law (Draft)" is very slim and any attempt to push the amendment proposals through will be futile. Hence I vote against the motion.

MR. HUI (in Cantonese): Sir, today the National People's Congress of China will endorse and promulgate the Basic Law of the Hong Kong Special Administrative Region. In a way, the promulgation not only marks the end of the four-and-a-half years debate on the drafting of the Basic Law, but also signifies that Hong Kong has entered another stage of the transitional period before 1997. However, it would be a gross deception if we think that nothing else can be done about the Basic Law and that Hong Kong people would have no further role to play. As a matter of fact, under the policy of "one country, two systems", although Hong Kong has no control over sovereignty, there is still plenty of room for manoeuvring in other areas. At least we should try our best to manage the local affairs successfully so as to forestall unwarranted interventions from the central government at Beijing in future which may undermine the confidence of Hong Kong people. Of course, this will depend on whether the Chinese and British Governments will attach importance to the interests of Hong Kong people and fully understand and respect their wishes.

I am of the opinion that the promulgation of the Basic Law cannot immediately defuse the confidence crisis or resolve the brain drain problem confronting Hong Kong, for the pragmatic and efficient Hong Kong people, the professional and management personnel in the middle and upper strata and the investors in particular simply cannot afford to wait until the actual implementation of the Basic Law in 1997 before making up their minds on whether to leave or not. In fact, the attitudes and policies of the Chinese and British Governments towards Hong Kong during the transitional period are the most crucial and decisive factors.

In this connection, Sir, I think China and Britain, through sincere co-operation, can at least do something in the following areas to help Hong Kong surmount the problems confronting her before and after 1997:

(1) The nationality package scheduled to be announced and submitted today to the British Parliament for consideration is certainly the first test of the sincerity

of China and Britain to co-operate with each other. As I believe that my honourable colleagues and members of the public are well aware of the arguments and stances of the two governments over the right of abode issue, I am not going to repeat them. But I would like to stress my hope that China will make a rational analysis as to who proposes to restore the right of abode in Britain to British passport holders in Hong Kong. What Hong Kong people want is just personal safety and freedom after 1997. If China had not ostensibly tightened her control over Hong Kong after the June 4 incident, who would have wanted to become a second class citizen in a foreign country? I certainly appreciate the concerns of China over the nationality of the people who will govern Hong Kong in the future, but I think that through administrative measures, China can make proper and reasonable arrangements to resolve this problem, and there is no need for her to decline to recognize the status of the proposed passports, depriving the holders of consular protection and the right of using that document to leave and enter Hong Kong. This kind of attitude can serve no useful purpose, but will only make more people feel frustrated about the future of Hong Kong and China and, as a result, they will vote with their feet.

Thus, I hope that China will change its hostile attitude towards the right of abode scheme so that Hong Kong people can make an appropriate decision with peace of mind. The British Government should also race against time to win the trust of the Chinese Government by adopting a frank and sincere attitude, so as to enable the nationality scheme to promptly achieve the objective of stabilizing the confidence of Hong Kong people and stem the brain drain.

(2) Efforts should be made to groom local talents to run Hong Kong. We understand that after 1997 local people will be given full authority to rule and manage Hong Kong. However, we are worried that as tens of thousands of professionals and middle managers are leaving the territory every year, there may be few talented people left in Hong Kong in the future. As a matter of fact, the present situation has already dealt a severe blow to the growth of the industrial and business sector. According to a recent survey, most of the foreign companies interviewed admitted that apart from the political climate in Beijing, the question of whether Hong Kong has sufficient professional and management personnel has become a major factor of consideration in deciding whether they should continue to invest in Hong Kong.

It is regrettable that China does not even believe that there is a brain drain problem in Hong Kong. Instead, she thinks that the whole thing is a political gadget devised by the Hong Kong and British Governments. China has not only failed to scale

down her overbearing attitude and behaviour, but also tried to hamper our plan of stemming the exodus of talents. I really do not know what these Hong Kong people had said to the Chinese leaders when groups after groups went to Beijing to present petitions.

Recently there is a proposal that China and Hong Kong should co-operate to conduct a training programme in the Mainland with a view to sending the trained personnel back to Hong Kong to fill vacancies arisen from wastage. It is said that this arrangement should be satisfactory to both parties. But I strongly object to this proposal because Hong Kong people are already extremely fearful of Chinese interventions and the proposed arrangement is suggestive of "Beijing people ruling Hong Kong". Thus, in order to resolve the brain drain problem and provide reinforcement for various professions in different management levels, the most important thing is that China should face the problem squarely with a broad mind, and that China and Britain should secure mutual trust while rebuilding a cordial relationship. The two governments should refrain from viewing any manpower retention and training programme as a conspiracy to produce pro-Chinese or pro-British elements for the post-1997 era. An appropriate and workable plan is that the Hong Kong Government should encourage private organizations to set up funds to train their own staff by granting them tax exemption. The training of political talents is the third point which I am going to dwell on in the following paragraph.

(3) We should continue to fight for democratization of our political system through peaceful means in order to groom political talents. Under the British colonial rule, Hong Kong people have all along had very few chances to take part in politics. Although the Hong Kong Government has gradually adopted an open policy of decentralization during the past 10 years, most people still have no opportunity to participate in politics. Moreover, in terms of political awareness and ability, the private bodies set up to monitor the Government and the politicians are still immature. That is why political leaders respected by people from various quarters have not yet emerged.

Nevertheless, we should do our best to support those political talents who are devoted to Hong Kong, for they are the mainstay of our community and play a pivotal role in helping Hong Kong maintain prosperity and stability. Thus, the Government should adopt an open policy of decentralization in our political system, so that people interested in politics may have more chances to discuss public affairs and participate in politics. Apart from that, Hong Kong people from all walks of life

should unite together and continue to fight for further development of the political system through peaceful means. It should be noted that prior to 1997 only one third of the seats of the legislature would be returned by direct elections and most representatives of functional constituencies would not be elected by a one-man-one-vote system. Moreover, details of procedures for selecting representatives through the grand electoral college system have not yet been finalized. Undoubtedly, Hong Kong people should try to get more room to manoeuvre in that respect, in order to increase the chances of participating in political activities.

Sir, I believe that only when creditable rules have been set to ensure that the political game would be played in a fair and orderly manner could political leaders of a high quality be nurtured. Apart from having lofty political ideals, mature political wisdom and an unbiased standpoint, these leaders should more importantly be ready to open up channels of communication with the people and let themselves be monitored by the public. I earnestly hope that the Chinese authorities will not discourage Hong Kong people from participating in politics by frequently resorting to the accusation that "a handful of people are trying to turn Hong Kong into a subversive base against the central government". It is only under a mature and democratic political climate that the concepts of "one country, two systems" and "a high degree of autonomy" can be realized. To achieve these objectives, I think the fourth point elaborated below is of the utmost importance.

(4) The Basic Law stipulates that courts of the HKSAR shall have no jurisdiction over cases relating to the acts of state, and that the HKSAR shall enact laws on its own to prohibit any act of subversion against the central government, sedition or theft of state secrets. It also forbids local political parties to establish any links with overseas political organizations. In my opinion, these two provisions will stifle political activities in Hong Kong after 1997. Due to the disparity in ideology, Hong Kong and China may have different interpretations of certain words and phrases of the above provisions. In the absence of a clear guideline, it is likely that Hong Kong people will refrain from or dare not rashly resort to the staging of rallies or protest marches to press for their demands for something which cannot be acquired through negotiations. In fact, Hong Kong people still have misgivings about many provisions of the Basic Law because some of them were formulated without a thorough understanding of the situation in Hong Kong, and after the tightening up of China's control over the territory subsequent to the June 4 incident. I, therefore, maintain that China should amend at a suitable time those clauses in the Basic Law which are not beneficial to the development of Hong Kong, in accordance with the recommendations of the OMECO Report on the draft Basic Law. The British Government

should also do its best to reflect the wishes of the Hong Kong people.

Lastly, I think I need to pinpoint the status of the OMECO in the context of Sino-British relations. On the one hand, China has refused to accept the views of the OMECO which is regarded as a part of the British political structure. On the other hand, in our fight for a quicker pace of political development and the right of abode in Britain, we realized that the British Government had not taken the views of the OMECO seriously. Nor did the Hong Kong Government attach much importance to the views of the OMECO Constitutional Development Panel in formulating the details of the 1991 election for the legislature. I think both China and Britain should change their attitudes towards the OMECO. In fact, Members of the OMECO are all working for the interests of the Hong Kong community. Their views represent the wishes of the vast majority of Hong Kong people and should be respected by the Chinese and British Governments. It is also imperative that the Hong Kong Government should improve the relationship between the policy branches and the OMECO, otherwise, the acceptability of the Administration's policies and the degree of support they will get from the public will surely be adversely affected.

Sir, with these remarks, I support the motion moved by the Honourable Martin LEE.

MR. NGAI (in Cantonese): Sir, as an important blueprint for the future development of Hong Kong, the Basic Law must be formulated to give effect to the spirit of the Sino-British Joint Declaration and the concept of "one country, two systems". It is of paramount importance that the Basic Law should confer upon the Hong Kong Special Administrative Region a high degree of autonomy and ensure in essence the continuous efficient operation of the existing free economic and legal systems; anything other than these are only side issues. As a matter of fact, long-term stability is essential for Hong Kong to thrive in its economic activities, whereby overall employment opportunities may continue to improve and our people may live and work happily. I am sure that this is the wish of most people in Hong Kong as well as the wish of the people in mainland China.

Sir, in order that a flexible capitalist economic system may survive in the straitjacket of a socialist state which is politically highly-established, the spirit of mutual understanding and accommodation is a necessary prerequisite. A high degree of autonomy for Hong Kong and the perpetuation of the essential factors of success will provide the very foundation for ensuring such a necessary condition. They will also serve as the essential footholds for maintaining stability and prosperity in

Hong Kong.

It is most unfortunate that the development of mutual trust and co-operation has taken a tragic step backwards because of the June 4 incident and its aftermaths, thus casting a shadow over our relationship with China. The Chinese side has failed to win the understanding of the Hong Kong people on its introduction of certain new provisions and restrictions to the draft Basic Law. Some people in Hong Kong have set upon these new provisions and restrictions. They have taken a less than objective approach in their analysis and interpretation by simply denouncing all the provisions in the Basic Law categorically and subjectively, disregarding that the final version of the Basic Law has in practice preserved the specific features of the capitalistic economy in Hong Kong and ensured employment opportunities for the population in Hong Kong. Their viewpoints are far from being realistic and pragmatic, and are not acceptable to the general public either.

Although the drafting of the Basic Law has become a highly political issue because of the regrettable incident, yet it is heartening to witness the spirit of give and take and of mutual accommodation throughout the drafting process. Though the new political model may not be described as all perfect, it has nevertheless demonstrated that due effort has been made to reach out for a compromise. As compared with the provisions in the first draft, much improvement has been made in the proportion of elected seats. This would be particularly helpful to the political convergence in 1997 and beyond in ensuring a smooth transition. Moreover, it would also be conducive to the well-being of the several millions of people who choose to stay behind.

The provisions of the Basic Law as approved by the National People's Congress are, on the whole, in line with the true principle of the "one country, two systems" concept and will not affect our free economic development and our way of life. Primarily, the Basic Law is able to meet the wishes of the majority of the Hong Kong people and is therefore acceptable. Similarly, democratic development will continue in the form of a gradual evolution without any sudden change and is therefore also acceptable.

Sir, it is imperative that we should maintain dialogue and mutual understanding with the Chinese Government. It is not time for endless bickering. Instead, it is time for every sector of the community to look forward and make concerted efforts in the making of a new future. We should teach our posterity that they should develop a new civic awareness in the next 50 years or more which can be summed up in this motto: "Love Hong Kong, belong to Hong Kong and strive for Hong Kong", that is Hong

Kong is our home; we belong to Hong Kong and we work hard for the overall interests of Hong Kong.

Sir, in addition to having a properly formulated Basic Law, it is equally important that we should play our part faithfully in performing our own duties to maintain stability and prosperity in Hong Kong. In his motion, the Honourable Martin LEE urges "to amend ..... the relevant clauses of the Basic Law ..... so as to further maintain Hong Kong's prosperity and stability". This is tantamount to pointing to the people of Hong Kong that Hong Kong's prosperity and stability may not be further maintained if the Basic Law is not amended. I beg to differ from such an arbitrary presumption. In view of the foregoing, while I accept part of the Honourable Mr. LEE's motion, I still have to vote against it.

4.29 pm

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

4.51 pm

HIS EXCELLENCY THE PRESIDENT: Council resumes.

MR. SZETO (in Cantonese): Sir, CHAI Ling and her husband are out at last. They are now safe and free.

So long as it is the wish of hundreds of thousands of people, and so long as this wish is deeply rooted in people's hearts, nothing is impossible. This wish will finally come true one day.

No matter how rugged and lengthy is the way to our target and even if we are almost at the end of our strength when we come to the last step, we will make it and reach our destination.

It is the common wish of all the people of Hong Kong to urge for a Basic Law which is in line with the Sino-British Joint Declaration in letter and in spirit as well as after the wishes of the absolute majority of Hong Kong people, whereby our confidence will be boosted, the prosperity and stability of the territory will be maintained, and furthermore, democracy, freedom, human rights and the rule of the law will be ensured. We have to uphold this wish in the depth of our heart.

In the discussion on the draft Basic Law, OMECO Members have already expressed our views reflecting the wishes of the absolute majority of Hong Kong people. All these views are on the record which will serve as a historical evidence. We have to be accountable to history at all time. No matter whether it is today or tomorrow, we will be held responsible. The record of history will last forever because they cannot be revoked or wiped out.

"Through those deep, deep bullet wounds.  
Bleeds the dawn of red blood."

So long as our blood has not changed its colour or cooled down; so long as the blood of the masses has not dried up or clotted, a bright and sunny future is all ours.

Today is the Children's Day, let us give blessing to our next generation, including the new-born and their posterity. Tomorrow is the Ching Ming Festival, let us pay respect to those who have led a meaningful life and sacrificed for this meaningful cause.

Sir, with these remarks, I support the motion.

MR. TAM (in Cantonese): Sir, I am glad to learn that the Basic Law will be endorsed by the National People's Congress. The Basic Law is the basis on which the future Special Administrative Region will be founded. Should it fail to be endorsed as scheduled, it would not only hinder the smooth transition but also deal a blow to local confidence. Though the Basic Law may not meet the full expectations and needs of each and every individual of Hong Kong -- and reality tells us that indeed it cannot -- I still believe that the Basic Law can give effect to the spirit of "one country, two systems" in line with the Joint Declaration. As regards the motion moved today by Mr. Martin LEE, I would agree that sincere and unreserved co-operation should be maintained between the British and Chinese Governments. It is because officials of both sides last year kept lashing out against each other and evading their responsibilities. This was a most undesirable situation. I do hope that in the transitional period the Chinese and British Governments will give full play to the utility and function of the Sino-British Joint Liaison Group (JLG) and that, in view of the difficulties Hong Kong faces, both governments will, in the JLG forum, solve

problems in the attitude of mutual respect, mutual trust and sincere co-operation. I would not, however, agree to the other propositions in Mr. Martin LEE's motion and one of them is about the content of "Comments on the Basic Law (Draft)". Much of its content, I find, is unacceptable to me. I would find it likewise unacceptable if the Basic Law should be amended in the light of this OMELOCO paper. With these remarks, I oppose Mr. Martin LEE's motion.

MR. ANDREW WONG (in Cantonese): Sir, after almost five years of hard and painstaking work involving people of diverse political views, the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) is now set. It will be adopted and promulgated by the National People's Congress (NPC) as the constitution of the future HKSAR.

Of course, we cannot say that the Basic Law is wholly without merit. At least it provides a basic framework for the future structure of the SAR. Its promulgation has dispersed the cloud of uncertainty which hitherto affected the stability and prosperity of the territory. But on the other hand, we cannot say that the Basic Law is without flaw or deficiency which might manifest itself either as an imperfection or perhaps as a disability; the latter might lead to the failure of policies of state, such as "one country, two systems," "high degree of autonomy," "Hong Kong people ruling Hong Kong," "maintenance of stability and prosperity" and so on.

I would try to outline here four areas in the Basic Law -- political structure and human rights aside -- where deficiencies of a rather serious kind are apparent. In canvassing these areas, I will be putting forth my views rationally and calmly in the hope that the Law may be brought closer to perfection through further amendments before and after 1997.

First, the relationship between the Basic Law and the Sino-British Joint Declaration: The Basic Law is legislation enacted by the PRC while the Sino-British Joint Declaration is an international agreement between the Chinese and the British Governments. Their relationship should be obvious to all. The Basic Law is a measure introduced and enacted by the Chinese Government to give effect to the Joint Declaration. The present Basic Law, however, fails to expressly define this relationship. The failure will give rise to serious doubt as to whether the Joint Declaration could be used as an aid in the interpretation of the Basic Law and if

yes, how it could be so used.

I hold the view that this function of giving effect to the Joint Declaration should be expressly stated in the Basic Law so that emotive and explosive political questions may be reduced to rational and detached legal questions. The statement should best be placed in the Preamble to the Basic Law irrespective of the Preamble's legal effect.

This arrangement will have nothing to do with sovereignty. What China will be fulfilling and implementing is its state policies expressed and enshrined as a commitment in the Joint Declaration. This will not mean the extinguishment of sovereignty. Quite the contrary, this will be an exercise of sovereignty. The ratification of the Joint Declaration is itself an exercise of sovereignty. An express statement to implement the Joint Declaration will also be an exercise of sovereignty.

Even if the Preamble itself is to have legal effect this will not result in transforming the Joint Declaration into a superior law above the Basic Law. The Joint Declaration will remain an international agreement. The only distinguishing effect will be that the relevant clauses of the Joint Declaration will become part of the Basic Law -- in other words, the enacted legislation of China -- by dint of an express statement in the Basic Law that it is to give effect to the Joint Declaration. If the Preamble is not to have legal effect, the relevant clauses in the Joint Declaration may be referred to whenever ambiguity arises in the interpretation of the Law.

Second, the relationship between the Constitution of the PRC and the Basic Law: The Constitution is basic law on a national scale. The Basic Law, on the other hand, is enacted by China within the limits of the Chinese Constitution to serve as what might be called the mini-constitution of the HKSAR. Legally speaking, there is a difference in status between the two. The Basic Law, subordinate in nature, should in no way over-ride the superior Constitution. In this connection, if articles in the Constitution regarding "socialism," "democratic centralism," "leadership of the central", "socialist legal system", "birth control", "military service" and so on were to apply in the future SAR by virtue of the superior status of the Constitution despite being in conflict with the Basic Law, then the Basic Law would be no more than a mere scrap of paper.

Article 18 of the Basic Law provides that "national laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III...." Annex III, however, fails to set out the requisite arrangement to be

prescribed by the Constitution; hence a solution to the problem is yet to be found.

I consider the best way to solve the problem would be to introduce the Basic Law as an amendment to the Constitution. In accordance with Article 64 of the Constitution, the amendment will be passed into law with the endorsement of a two-thirds majority of the NPC. The Basic Law will then become part of the Constitution of the People's Republic of China.

Another way to go about it would be to amend Article 31 to give full and undiminished legal efficacy to the Basic Law even if its provisions should conflict with any of the other clauses of the Constitution.

In any case, the hollow wording of "in accordance with the Constitution of the People's Republic of China...." employed in paragraph 3 of the Preamble to the Basic Law should be amended to read: "In accordance with Articles 31 and 62(13) of the Constitution of the People's Republic of China, the Hong Kong Special Administrative Region shall hereby be established and the system instituted there shall be prescribed by the Basic Law."

Third, the definition of a high degree of autonomy: Article 2 of the Basic Law provides that the HKSAR shall be authorized "to exercise a high degree of autonomy." The article fails to provide a clear and explicit definition of a "high degree of autonomy." It says in terse and bare terms that exercise of autonomy shall be "in accordance with the provisions of this Law"; this recurs in scattered instances throughout the rest of text of the Basic Law. But the way the clause is worded fails to convey in full the original intent of Article 3(2) of the Sino-British Joint Declaration, which states that "the Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs....." This may cause some difficulty in the future interpretation of the Basic Law when questions will arise as to whether a particular matter should fall within the jurisdiction of the Central People's Government or the autonomous government of the HKSAR. I therefore propose that Article 2 of the Basic Law be amended to include the phrase "except in foreign and defence affairs".

This will involve neither the question of sovereignty nor of independence. Hong Kong, as a special administrative region, will derive all its powers from China. Articles granting powers can be worded in either one of the following two ways. One is to state explicitly that certain powers (A, B, C, D, E, F, G and so on) shall be

granted. The other, which is also an unequivocal grant of powers, is to have articles worded thus: "That all powers shall be granted save and except A, B, C and D." The latter will be more in line with the concept of a high degree of autonomy.

Fourth, the interpretation of the Basic Law: Article 158 authorizes the courts of the HKSAR to interpret the Basic Law. Despite the authorization, the article provides that "if the courts....., in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, ..... the courts ..... shall, before making their final judgements which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal....."

This arrangement will lead to a very serious problem. The legal system of the future SAR will be confronted with the question of judicial independence. The NPC and its Standing Committee are law-making bodies. Their composition and the way they function are political in nature. Interpretation of laws by the legislature ("legislative interpretation") may well be a system commonly adopted in the socialist countries. But the system is completely at variance with that of Hong Kong and other capitalist countries where interpretation of laws by the courts is the common and well-established practice. (Apart from introducing amendments, the legislature can in no way interfere.) Article 158 therefore may lead to the failure of the "one country, two systems" policy.

For this reason, I propose that Article 158 be amended to grant the Court of Final Appeal of the HKSAR full authority to interpret the Basic Law. On acceptance of the proposal, the provision made under Articles 17 and 160 of the Basic Law that the Standing Committee of the NPC may return the law which it considers to be in contravention of the Basic Law to the Region for amendment or invalidation can then be deleted. Since the courts of the SAR will have the authority to interpret whether a particular law goes against the Basic Law, such contravention can be avoided.

Sir, in supporting the Honourable Martin LEE's motion, I would like to point out what would appear to be a flaw in the wording of the motion. The motion consists of three parts. The first part "In light of ...." refers to the adoption and promulgation of the Basic Law. The second part "urges the Chinese and British Governments to co-operate and to take into account the interest of the people of Hong Kong." The last part urges the two governments "to amend, at a suitable time, the

relevant clauses of the Basic Law." In fact, not even the Chinese Government has the authority to amend the Law. Only the NPC has this authority. For this reason, I hope that you, Sir, will allow me to move an amendment to Mr. LEE's motion. With your permission, Sir, I shall propose my amendment.

HIS EXCELLENCY THE PRESIDENT: Thank you, Mr. WONG. I understand that the amendment you want to move is in the nature of a technical amendment to the text. And that being so, I am prepared to give my agreement to waive the normal notice. Please continue.

MR. ANDREW WONG (in Cantonese): Sir, I propose to insert between the words "and" and "to" in line 4 of the Honourable Martin LEE's motion set out under "Member's Motion"-- item 4 of today's Order Paper -- the following words: "further urges the National People's Congress". Sir, I beg to move.

HIS EXCELLENCY THE PRESIDENT: Thank you. Mr. WONG has proposed an amendment to the motion. The amendment is to include in the sixth line of the English version of the motion on the Order Paper, and the fourth line of the Chinese version, between "and" and "to" the words "further urges the National People's Congress". Does any Member wish to speak to that amendment?

Question on the amendment proposed.

MR. MARTIN LEE: Sir, this motion was drafted at a Legislative Council In-house meeting and hence, Sir, it is a mouthful. But I accept the amendment. In fact, it makes the motion much clearer and I support it.

MR. McGREGOR: Sir, is not the National People's Congress part of the Chinese Government? Would it not be still correct to say "Chinese Government"?

HIS EXCELLENCY THE PRESIDENT: The question has to be put not to the Chair (laughter) but to the person who moved the motion. I will ask if any other Member wishes to

speak to the amendment. I will then ask Mr. WONG to clarify before putting the amendment to the Council. Does any other Member wish to speak to the amendment? Mr. WONG, you may clarify the amendment if you wish.

MR. ANDREW WONG: Sir, I simply wish to clarify that according to the Chinese Constitution, Central People's Government stands for the State Council and not the National People's Congress. It is only the National People's Congress that has the power to promulgate and to amend the Basic Law.

Question on the amendment put.

Voice votes taken.

HIS EXCELLENCY THE PRESIDENT: I am going to ask for voices again because it was not clear. I will ask both the Ayes and the Nos again.

Voice votes taken again.

HIS EXCELLENCY THE PRESIDENT: The voices are still not clear. I will therefore call for a division. The Clerk will read out the names of each Member. You should say "Aye" if you support the amendment. Let us be clear this is a vote on the amendment. You should say "No" if you are against the amendment; or you may abstain.

Mr. Allen LEE, Mr. CHEUNG Yan-lung, Mr. CHAN, Mr. CHENG Hon-kwan, Mr. HUI, Mr. Martin LEE, Mr. PANG, Prof. POON, Mr. SZETO, Mrs. TAM, Dr. TSE, Mr. Andrew WONG, Mr. Edward HO, Mr. ARCELLI, Mr. CHOW, Mrs. LAU, Dr. LEONG and Mrs. TU voted for the amendment.

Mr. HO Sai-chu, Mr. TAM, Mrs. FONG, Mr. McGREGOR and Mr. TIEN voted against the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, the Secretary for Home Affairs, the Secretary for Planning, Environment and Lands, Mr. NGAI, the Secretary for Transport, the Secretary for Security, the Secretary for Economic Services, Mr. LAU Wong-fat, Mr. Michael CHENG, the Secretary for Health and Welfare, Mrs. LAM, the Secretary for Education and Manpower, Mr. LAU Wah-sum, Miss LEUNG and Mrs. SO abstained.

The President announced that 18 Members voted for the amendment proposed by Mr. Andrew WONG, five voted against it and 17 abstained. He declared that the amendment to the

motion was carried.

HIS EXCELLENCY THE PRESIDENT: This means the motion has been amended. We will continue the debate on the motion as amended. To remind Members of where we have got to, I will read out the text of the motion as amended. It is as follows:

"In light of the promulgation of the Hong Kong Special Administrative Region Basic Law by the National People's Congress, this Council urges the Chinese and British Governments to take into account the interests of the people of Hong Kong; to help Hong Kong, through mutual and sincere co-operation, to surmount its problems both before and after 1997; and further urges the National People's Congress to amend, at a suitable time, the relevant clauses of the Basic Law according to the recommendations in the OMELOCO "Comments on the Basic Law (Draft)" so as to further maintain Hong Kong's prosperity and stability."

Question on the motion, as amended, proposed.

MR. ARCULLI: Sir, the subject matter of today's debate reflects our deep concern for our future. Indeed, one might say that given the history of the negotiations leading up to the Joint Declaration and all the events thereafter it may not be inappropriate for us to ask this question: have we misunderstood the Joint Declaration and its effect and if so, how? For instance, were we wrong to believe, when the Joint Declaration was first presented in the White Paper dated 26 September 1984, that the future Hong Kong Special Administrative Region (HKSAR) will be vested with independent judicial power including that of final adjudication and that the laws will remain basically unchanged? In the Basic Law we see that the laws of Hong Kong cannot be inconsistent with the Basic Law. We also see that the Court of Final Appeal of the HKSAR is neither as final nor as independent as it appears. I say this because if the courts of the HKSAR need to interpret the Basic Law concerning affairs which are the responsibility of the Central People's Government or the vague concept of the relationship between the central authorities and the HKSAR, an interpretation of the relevant provision from the Standing Committee of the National People's Congress (NPC) becomes necessary and the courts are bound by such interpretation. Is this the basis of an independent judiciary with powers of final adjudication?

We were also told that the Joint Declaration is a formal international agreement

legally binding in all its parts. Can or should we expect a linkage between the Joint Declaration and the Basic law? What happens to inconsistencies or outright conflicts between the Joint Declaration and the Basic Law? How are they to be resolved? Where does one find in the Joint Declaration a requirement that the Chief Justice and the Chief Judge of the Court of Final Appeal have to be Chinese nationals? Sir, I would be the last one to suggest that we should pass over Chinese nationals who are suitable for these high judicial office. My point is really quite simple: if a non-Chinese national is the better candidate why should he be disqualified and where in the Joint Declaration is it so provided? Perhaps the articles in the Basic Law that introduces the greatest concern and uncertainty as to the law applicable to the HKSAR are Articles 159 and 160. Article 159 blandly states that the power to amend the Basic Law vests in the NPC. Article 160 attempts to adopt all the laws previously in force in Hong Kong except those declared by the Standing Committee of the NPC to be inconsistent to the Basic Law. The second paragraph of Article 160 speaks to the continued validity of contracts, rights, obligations and so on provided they are not inconsistent with the Basic Law. What does this mean? With the power of interpretation and the power of amendment vested in the Standing Committee of the NPC can we say without a reasonable doubt that the laws previously in force in Hong Kong will continue to apply after 1997? Did the Joint Declaration envisage this to be the situation?

Sir, there may well be no satisfactory answers to the questions but if the concept of "one country, two systems" is to succeed let the British and the Chinese Governments be as bold and as imaginative as that concept in finding appropriate solutions.

Sir, my brief remarks are not intended to be exhaustive. For this reason and declaring my interest as a member of the expert group that contributed to the OMELOCO commentary on the draft Basic Law I support the motion as amended.

MR. CHOW (in Cantonese): Sir, in view of the wording of today's motion, I cannot help but rise to say something in its support. The motion, on the one hand, urges the Chinese and British Governments to take into account the interests of the people of Hong Kong, and to assist Hong Kong through mutual and sincere co-operation in surmounting the problems it will face during the transitional period. On the other hand, it calls on the Chinese authorities to amend at a suitable time the less satisfactory clauses of the Basic Law according to the recommendations of OMELOCO. Both of these steps are absolutely necessary.

Following the June 4 incident, we have, with a certain degree of support from the British Government, proposed three measures to set the Hong Kong people's minds at ease. These measures are: to speed up the pace of democratization, to enact a Bill of Rights, and to draw up a nationality package. Regrettably, all these measures were rejected by the Chinese Government on the following grounds: First, China had never admitted that the suppression on 4 June was a mistake nor did she accept that the incident brought about a confidence crisis in Hong Kong. Second, and the more regrettable, the Chinese authorities applied the usual "conspiracy theory" to interpret any move by Britain and Hong Kong after the June 4 incident. As a result, whether these measures which are aimed at restoring Hong Kong people's confidence will be adopted is unpredictable because they are construed as "conspiracies". As far as the general public are concerned, it is irrelevant what "conspiracies" or "open plots" China and Britain are contemplating. What is important is whether their moves are in the interests of the Hong Kong society and its people. As far as I am concerned, the Chinese authorities' worries about conspiracies in the last few months are groundless. I believe that any difficulties emerging during the transitional period will be resolved if and only if the Chinese and British Governments can set aside their confrontational attitude and avoid politicizing issues for no valid reason. For instance, had the Hong Kong Government been more willing to discuss with the Chinese side in the first place, the Bill of Rights might have had a better reception. Of course, China needs to cast aside the "conspiracy theory" which aggravates matters. As long as both sides are willing to sit down and talk things over, I believe a lot of problems can be solved. To live constantly under the shadow of the conspiracy theory will not do us any good, no matter how stable and prosperous Hong Kong may be.

Another issue I would like to talk about is the future development of political parties. With the introduction of direct elections, political parties are bound to emerge. There is no need to stop such a development. Even some political scientists who are renowned for advocating political stability are of the opinion that political parties are absolutely necessary in order to reduce the impact of increased political awareness and participation on political stability in the course of modernization. Studies conducted by a developing country reveals that the countries where coups occur most often are those without effective political parties. In other words, the stability of a modern political system hinges on the strength of its political parties.

The basic purpose of forming a political party is to get in power. Unfortunately,

according to the future political model stipulated in the Basic Law, it is very difficult for political parties to develop in Hong Kong. The future political system in Hong Kong will be even more executive-led than the presidential system in the United States. The checks and balances exercised by the legislature on the executive will be even weaker than that in the United States. The distribution of power between the executive and the legislature will be even more unbalanced. As far as financial authority is concerned, at present, the Legislative Council cannot propose to increase expenditure or reduce taxation. In future, any Bills involving public expenditure will have to secure the prior written consent of the Chief Executive. On checks and balances, the legislature's power to impeach the executive is confined to only one target -- the Chief Executive, and only when there is a serious breach of law or dereliction of duty can the Chief Executive be impeached. As to major political blunders, nothing can be done to censure him. As a result, it is almost impossible for those elected members of the legislature to implement their political platforms, and even a political party with a majority of seats can at most act as an opposition party.

From this it would appear that the strategic ground to go after is the executive authority. Unfortunately, before 2007, the Chief Executive will be returned only by an election committee formed by several hundred members. It is not necessary and indeed impossible to mobilize the masses to contend for the post and the role of political parties will thus become dispensable. Even in the event of the candidate from a party being elected Chief Executive, what would the situation be? It seems that the party's platform can be implemented by the Executive Council appointed by the Chief Executive and the principal officials in the Executive Authorities, but are the above members selected at the Chief Executive's discretion? Although members of the Executive Council are chosen by the Chief Executive, the Executive Council is no more than an advisory body and its members surely are not as familiar in policy matters as branch officials. Moreover, there is no superior-subordinate relationship between them. Therefore, it seems that the Chief Executive may not necessarily be able to implement his party's platform through the Executive Council. What about the appointment of principal officials? According to the provisions of the Basic Law, there is no indication that the posts will be filled by political appointments. Instead, it has always been the wish of China to carry on with the existing system, that is, Administrative Officers will continue to be officials of policy branches. There is evidence of this in Article 101 of the Basic Law in which there are restrictions on the nationalities of a series of officials, including various Secretaries, and which is subsumed under Section 6 on Public Servants. In

other words, it is likely that principal officials will continue to be public servants. Under the existing provisions, public servants are prohibited from taking part in political activities. We can therefore imagine that if the above-mentioned principal officials are to be public servants and not politically appointed, then they can never become members of political parties!

My arguments end at this point. In fact, political parties in Hong Kong can never become the ruling party as in the western countries. The future ruling party will still be the "government party". No matter how much resources are spent, how much popular support is mustered and how many Legislative Council seats are secured, a political party can at most act as an opposition party. Even democratization may not necessarily remove any power at all from the "government party". This structural constraint will definitely strangle the development of political parties. Even if powerful political parties can be formed, it will certainly lead to many problems between the executive and the legislature. Just imagine, if the political elites and the masses who have been mobilized discover that they can do nothing apart from discussing official business in the legislature, what will be the final outcome? This is just like taking a little girl to "Toys R Us" and buying her nothing but a doll, will she be contented with that?

Hong Kong will be more difficult to govern in the 1990s. On the one hand, Government's activities are expanding. The annual government expenditure in the next few years will take up about 20% of the local GDP. People are expecting more and more from the Government. With the advent of 1997, the Government has to boost confidence by undertaking mammoth infrastructural projects. However, in the next few years, Hong Kong may experience an economic downturn, and then the "end of an era" sentiment may lead to serious strike movements by civil servants. All these phenomena are likely to cause budget deficits and, as a result, the trend of spiralling inflation. On the other hand, Government's credibility is on the wane. According to a government sponsored telephone survey, the percentage of people who consider the overall performance of the Government to be very good dropped by one third between late 1986 and late 1989. This situation of Government expanding its activities at a time when credibility declines is somewhat similar to the situation in the United States in the early seventies -- a situation described by academics as "overloading". It seems originally that through democratization, there may be an opportunity to tip the scale, as the Government's credibility and acceptability can be enhanced. Nevertheless, an open legislature without an equally open government will further intensify the contradictory situation of expanding activities and undermining

credibility.

This contradiction can be resolved by having political parties as a medium to open up the higher echelons of the government machinery, with the principal officials being politically appointed. By then, even if the Chief Executive is controlled by a handful of people, based on political reality, it is believed that the majority party will be respected and given a share of political power.

Political parties are not entirely unavoidable in Hong Kong. At present, the various provisions in the Basic Law are aimed at restraining as far as possible their development. However, the result may be greater instability and uncertainty. On the contrary, if we are to follow the course of political development which works satisfactorily in the western countries, Hong Kong's stability and prosperity will be more effectively guaranteed.

Sir, with these remarks, I support the motion.

MRS. FONG: Sir, I stand here today to oppose the motion and I call on all Members of this Council to do the same. If my colleagues do not wish to oppose it, then I ask them to abstain from voting. I ask this because it is my view that the motion has a fundamental flaw. The flaw probably reflects the thinking of the proposer. The flaw is that it does not recognize a fundamental responsibility which is to ourselves abstain from doing things which will upset the very stability and prosperity that we propose to preserve. I believe that the proposal of this motion by a person who is vice chairman of an organization that is planning a series of demonstrations in Hong Kong in the coming months is cynical and that if we let him get by with such a one-sided motion we are condoning his other actions and are ourselves being irresponsible.

The crux of today's motion is to further maintain Hong Kong's prosperity and stability. The question must be asked -- "Will stability and prosperity be brought about by amending the Basic Law?" One can even ask, "Will stability and prosperity be maintained through co-operation between Britain and China?"

My answer to both questions is "No". At best the co-operation between Britain and China will create conditions in which stability and prosperity can prevail. We, the people of Hong Kong, are the only ones who can make Hong Kong prosper, and who

can make Hong Kong stable. Britain and China can only assist and can only do so much. The Basic Law can only provide the framework. We must do the work and we, the people in this Council, must provide leadership to ensure that it happens.

Stability and prosperity will not happen by encouraging bank runs and boycotts of goods.

It will not be achieved by calling for territory-wide strikes.

It will also not be achieved by asking America, or by supporting other voices who ask America, to sanction China, a country that our future prosperity depends on for its economic success.

The responsibility for maintaining prosperity and stability in Hong Kong lies, more than we realize, with each and every one of us. We must take this into account in our actions. In my view, if we are taking actions that are having negative effects on our own prosperity and stability, we should be the last ones to call on others for help.

Stability will not be reached by arousing public emotions, organizing demonstrations, marches and sit-ins.

We also cannot achieve prosperity and stability by constantly accusing Britain of having sold out Hong Kong. This only leads people to lose confidence in the Administration. And then what? What can we hope to achieve from this? Will it help us build a better future? My belief is that the future is built by looking forward rather than by looking back.

I do not believe that the Basic Law is perfect. I also do not condone everything that has been done by China over the last 12 months. However, we must keep things in perspective and we must focus on building and improving rather than upon being the most visible critics. We must find ways to achieve a better life for ourselves and to help our neighbouring and ultimately our sovereign state to do the same. This will not be achieved by taking petty actions that achieve only visibility and, possibly hero worship -- among a small group of followers -- to their proponents, but which cause our entire community to be seen as subversive and intensely irritating to our neighbour.

It is time for us to recognize that many of the condemnations issued and actions

taken by Members of this Council are counterproductive. They do not generate enthusiasm in people, nor do they help to forge a bright future. They just help to foment a feeling of discontent, a feeling of being cheated and build up a sense of reject. Is this what we should do at the same time as we ask for reconsideration of proposals that were made and were considered? Is this what we should do as leaders? I suggest we need to be more consistent and less one- sided if we are sincere in our wishes to achieve progress on the matters in question.

Sir, with these remarks, I oppose the motion.

DR. LEONG: Sir, the possible promulgation of the Basic Law today, to many people, may be an end of their reverie for democracy for a long time to come in Hong Kong.

The Basic Law has strait-jacketed future political development in Hong Kong.

If the Basic Law is allowed to go by in its present format, I really cannot be optimistic about its acceptance by Hong Kong people.

The present taboos laid down in the Basic Law had merely lengthened the fuse that will still lead to the inevitable bang and explosion.

Let us believe that the final restrictions imposed on the future political systems in the Basic Law were but inferior building materials randomly and hastily mounded and cannot survive the test of time.

But for Beijing mandarins, the Basic Law is a historical masterpiece which will be acceptable to Hong Kong people and help build confidence in the territory.

And so be it.

After all, the bulk of Hong Kong people will not speak up, either for or against it.

The Chinese authorities can claim whatever they like. For in any case opinion here in this part of the world is widely open to manipulation, and it is not something to be respected upon.

But let me sound a word of warning: the apathy among local population is a dangerous sign. It may be that people are giving up. We cannot let this happen. The situation must be aborted.

We must turn the Basic Law from a glossy deceit to something that we can genuinely shape Hong Kong well into the next century.

This, Sir, we need the understanding of the Chinese authorities.

The Joint Declaration paved our way to final integration with the motherland. And a strong sense of common destiny is rapidly growing among Hong Kong people.

The strong and vocal support by local people last year for China's pro-democracy campaigns was a classic example.

The local outcries pointed to an undeniable fact: and that is the Hong Kong people have tied their fate to those of the Chinese people.

This sentiment was buried deep into hearts but then it grew and exploded, and it shook the world. The same, Sir, can be applied to their indifferent attitude to the Basic Law.

It is a time bomb. We have no means to know when it would explode.

I am of the view that a bond between China and Hong Kong is developing and will finally cement two places together, under different systems, at the onset.

But the last, Sir, there stands a wall between them.

The June 4 incident as a political cause celebre has triggered off worries of likely heavy-handedness of China on Hong Kong.

The eleventh-hour restrictions imposed by the Chinese authorities is a clear case in point.

We expect the Basic Law -- although my honourable colleague, Mrs. Nellie FONG, would disagree -- would arrest the flagging confidence of Hong Kong people. But with a veneer of fair play, the Basic Law failed in its mission to pull wool over our eyes.

Local people have continued to snap up applications for right of abode overseas.

For those who looked up to the OMELOCO consensus we now find that we are clutching at straws. They hoped that the OMELOCO model could eventually come about.

It is in fact a rejuvenating fact that OMELOCO Members could set aside their differences, clear all hurdles and reach a consensus on how the future political system is to be moulded.

But it is too bad that the model was contemplated by a group of "Britain-inspired plotters" in the eyes of the Chinese mandarins.

So, Sir, it is the pianist, not the music itself, it is the singer, not the song that should be blamed and be shot!

The high-sounding principles of "Hong Kong people ruling Hong Kong" and a "high degree of autonomy" as promised in the Joint Declaration are nothing but hogwash under the present Basic Law package.

Hong Kong people, Sir, are stricken.

To succor them, we need China's faith in Hong Kong people and her faith that Hong Kong people have no intention to make wanton forays into her sovereignty over the territory by demanding a quicker pace of democratization.

China must believe that what we are asking for is but to build solid pedestals for a sound system that could fulfil China's propagated "one country, two systems" principle.

I sincerely hope that China would rescind unreasonable clauses and reconsider the OMELOCO recommendations.

May I briefly talk on three controversial areas in the Basic Law. They are: the relationship between the legislature and the executive, the nationality and the Bill of Rights.

The to-be-approved Basic Law will definitely foster an executive-led type of government.

It will turn the legislature into a mere consultative body.

Moreover, it will create clashes between the legislature and the executive authorities. Furthermore legislators will find that their hands are tied to their backs because they are so powerless to confront the formidable Chief Executive.

They would feel dejected and defeated as their expectations for being "a representative for the people" would be subdued.

The Joint Declaration stipulates that the legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature to which the executive authorities shall be accountable.

But the Basic Law has confined the power of the legislature making it impossible to check and balance the executive authorities or hold them accountable.

Legislators will not have the right to introduce Bills on public expenditure, the structure and the operation of the government.

Furthermore, prior written consent by the Chief Executive is needed before a Bill on government policies can be introduced.

Moreover, the legislature has virtually no power to investigate the acts of the executive or impeach the principal officials.

The Chief Executive, himself not elected through universal suffrage, also has the power to dissolve the legislature that does not pass any important Bills introduced by the Government.

On nationality, the Basic Law has successfully cast a net of restrictions over foreign passport holders and those with a right of abode.

Apart from the 80% of the future legislature, the Chief Executive, the Basic Law Committee members, the Executive Council members, the president of the legislature, the Chief Justice and the heads of several departments like immigration, auditing and Independent Commission Against Corruption, should all be Chinese nationals, holding no foreign passport nor the right of abode elsewhere.

This wide net of nationality restriction is obviously contradicting the Joint Declaration as the latter only imposes restriction on the Chief Executive and a handful of principal officials.

Chinese authorities are apparently worried over a "legislature" with eyes and ears for foreign powers.

This misconception is based on China's lack of understanding of the mechanism of local politics.

The existing system in Hong Kong does not forbid anybody, be he Chinese or otherwise or whether he holds a foreign passport or right of abode overseas, from taking part in the administration and legislature so long as he is qualified as a permanent resident here.

On the Bill of Rights, Sir, China thumbed down on its likely supremacy over all local laws, including the Basic Law.

And the insertion of a "subversion clause" into the Basic Law is contradictory to the common law concept, we have already in the common law the concept of treason; adding another clause of subversion, which virtually covers all anti-government actions, is not advisable.

My personal view is that the Bill of Rights should have overriding power over all of Hong Kong laws, though not necessarily over the Basic Law.

Sir, it is a bad year for the promulgation of the Basic Law.

The to-be-approved Basic Law package unequivocally showed Beijing's suspicions and fears on the part of China on Hong Kong people, resulting in a hastily tightening up of political control on the territory.

The onslaught of the June 4 incident had also led to a plummet of the Sino-British relationship to an all-time low, jeopardizing mutual co-operation for a smooth transition.

The tethers and yokes created in the Basic Law has marred a more open government aiming at achieving the principles of a "high degree of autonomy" and "Hong Kong people

ruling Hong Kong".

It will break Hong Kong into a patchwork of further unhappiness and jitters.

Sir, as members of the lawmaking body in Hong Kong, we should not be afraid of carping from China or from our adversaries, we should not jib at malicious labelling and scathing attacks, we should continue our efforts to lobby for a more representative government and to convince China of our good-will intention.

Lastly, Sir, I sincerely hope Her Majesty's Government will honour her promises to Hong Kong by making it thrive and prosper in the last years of her rule and that Hong Kong people would not be sold down the river in the light of mounting pressure from the north and this I mean China and not Scotland.

With these remarks, Sir, I support the amended motion.

MISS LEUNG (in Cantonese): Sir, the many debates hitherto in this Council on the draft Basic Law of the future Hong Kong Special Administrative Region (HKSAR) were mainly concerned with the proposals of the Basic Law Drafting Committee which is an organ of a rather low level that does not have any statutory power of decision on the provisions of the Basic Law.

Sir, the National People's Congress, which in terms of law has the highest power of state, has just adopted and promulgated the Basic Law in Beijing. In the 50 years from 1 July 1997 the Basic Law will serve as a guide to the version of capitalist society that will be practised in Hong Kong in the mind of those who formulate the Basic Law.

The political structure of the SAR and the distribution of power between the central government and the Region prescribed by the Basic Law obviously cannot reflect adequately the wishes of the great majority of people in Hong Kong. Nor will it allow Hong Kong to go on with the model of capitalist society of modern times on becoming a special administrative region. If it is to be insisted that the Basic Law is a reflection of views, it can only be described as a major reflection of the conservative and regressive views of a minority of capitalists in Hong Kong. The Basic Law will, therefore, only allow Hong Kong to develop a system of absolute dictatorship of the capitalists akin to the one practised by the capitalists of the west in the 18th and

19th centuries.

Sir, perhaps members of the Drafting Committee, particularly the Mainland drafters and the deputies to the National People's Congress have been so engrossed in their support of Marxist-Leninism that they have confined themselves only to the study of the works of Marx, Engels and Lenin. Consequently, it is highly probable that they envisage the capitalist society of modern times as something similar to the system during the times of Marx and Lenin. Should this be the case, it is only natural for them to identify the capitalist class nowadays with that of the west in the 18th and 19th centuries and believe that this class can be allowed a dictatorial rule in roughly the same way. Thus, maybe for these reasons, in their effort to put into effect the spirit of "one country, two systems" and to ensure the status quo of their own version of the capitalist society in the 50 years after 1 July 1997 when the sovereignty of Hong Kong is due to return to China, they have held on to their own views in the course of drafting and have gone even further to enact a Basic Law that will inevitably produce a direct effect on encouraging and facilitating absolute dictatorship of the capitalist class.

We have every reason to believe that since the two special devices, that is the so-called functional constituencies and the grand electoral college, are instituted the political model stipulated in the Basic Law will definitely be adequate in safeguarding the absolute position of the capitalists in the legislature, not to mention the Executive Council of the future SAR. Such a political model will also ensure that the elected Chief Executive will become the central core of power and run the government to the best advantage of the capitalists. All in all, with the presence of such an utterly non-democratic mechanism, it will be impossible that the development of absolute dictatorship of the capitalists will not be given a good chance.

Sir, the capitalist system of the western world in the 18th and 19th centuries which Marxism brands as evil and abominable is a system of absolute dictatorship of the bourgeoisie under which the capitalists monopolize the means of production and the means of exploitation of the labour force and secure the residual value of production. Naturally, politics was practically dominated by the capitalist class in those days. However, the law of social development which is independent of man's will has its own way and the old system was finally found to be no longer suitable for the needs of today. It has served its function in history and has now been replaced by the present model of capitalist system which has evolved from the relics of the old. The present model of capitalist system is the mainstream social system

of the capitalist world today. The typical feature of its political aspect is true democracy. Democracy mainly finds expression in a government that practises popular elections on the basis of universal suffrage and absolute equality and a parliamentary system that truly represents all the people.

Sir, it is very likely that there may be other reasons why the Basic Law drafters and the deputies to the National People's Congress have drafted and formulated such a disheartening Basic law for the future SAR. As I pointed out in the debate on the political model proposed in the draft Basic Law on 1 March: "The powerful Chinese Government has all along shown too much apprehension about the democratization of Hong Kong's political system". In their view, a true model of the modern day capitalist political system is not suitable for use as reference when formulating the political model in the Basic Law. Consequently, in deciding on and adopting the political model, their main consideration is not based on the wishes of the great majority of the people or the principle of democracy. "Their greatest concern is how to ensure that the future political model and the SAR will not have any adverse impact on the Chinese Government and the Chinese Communist Party."

Sir, whether we like it or not, we have to accept the Basic Law for the future HKSAR as it has been just promulgated by the National People's Congress, provisions of which will become the constitution for the ruling of Hong Kong in the 50 years to come after 1 July 1997. After the sovereignty of Hong Kong is returned to China, everyone being the citizens of the HKSAR has an obligation to observe all provisions in the Basic Law.

Even after the promulgation of the Basic Law, it is still essential for us to show our concern towards the problems we may experience before and after the transfer of sovereignty. In the face of these problems, we certainly need the mutual and sincere co-operation between the Chinese and British Governments to help us through.

As for making improvements to the Basic Law, since the future development of Hong Kong is bound to experience changes, We hope that when suitable opportunities arise, the authorities concerned will take into account the actual situation and revise the inadequate provisions of the Basic Law in the light of the wishes of the majority and the principles of democracy.

Sir, in preparing the speech for the debate today, I have read through some speeches delivered in this Council for a number of debates on the Basic Law last year.

I could not help, so to speak, being overwhelmed with emotions as I went through these speeches. Time has changed and so do the situations. Could we keep our conscience clear now and then?

Sir, I abstained from the vote on the amendment a few moments ago. It was not my original intention to end my speech with an indication of support for the amended motion or otherwise. But since Mrs. FONG has urged us to do so, I cannot but give my response. Sir, with these remarks, I support the motion as amended.

MR. McGREGOR: Sir, to begin, I must say I disagree quite strongly with most of the points made by the Honourable Mrs. Nellie FONG. Beijing, I think, will be well pleased with her speech.

In speaking on this motion, I must make it clear that I am speaking from personal conviction and not for the membership of the Hong Kong General Chamber of Commerce. The need for me to make such a statement is itself indicative of a confused political situation in Hong Kong which will have to be resolved as we slowly progress towards a more representative system of government.

Today, I would speak only on the political system which will govern Hong Kong and which is now set out in the Basic Law. It is the political system which will determine the success or otherwise of the daring experiment of "one country, two systems", and whether Hong Kong people can really run Hong Kong with a high degree of autonomy. Some Members have mentioned confidence. What confidence? Where is the evidence of confidence? This is a matter which should be causing great alarm in Beijing. There is no sign of that either. The apparent lack of concern in Beijing is perhaps a very clear indication of the very great differences between the two systems. At times Hong Kong and China appear to be on different planets. At the debate on the Basic Law on 1 March 1990 in this Council, I made my position plain as to the question of political development in Hong Kong. I felt sad to see the so-called OMECO consensus model prove to be anything but a consensus. Twenty-seven Councillors voted against their own strongly stated and up to then vigorously supported political model which, unfortunately, had also been strongly supported by the people of Hong Kong.

China disapproved of the OMECO model and, when the chips were down, so did OMECO. What leadership, what dedication, what an example to our confused and anxious people,

what encouragement to China's leaders who clearly believe that they know best how Hong Kong should be run, what vindication of the value of bullying and intimidation, what a blow to democracy and democratic values and, ultimately, Sir, what lack of courage.

So what am I to say today to Mr. Martin LEE's motion -- such a watered-down version of his own deep convictions and his often stated belief in democracy. How many Councillors have chosen to speak up in support of what I regard to be rather an anaemic call for recognition of the fundamental right of Hong Kong people to participate in their own government. Mr. LEE, whom I greatly respect, has chosen a strangely untypical approach, a quiet, reserved and almost despairing appeal to the British and Chinese Governments to listen to the fragmented voice of this Council. Why should they, Mr. LEE? They have not listened before or, if they have, they have not heard what we were saying.

We spoke of the aspiration of people to be free, to enjoy their freedom, expressed in so many different ways. In particular, we spoke of our feeling that Hong Kong people, if they are to run Hong Kong, must do so in the only way that will guarantee long-term success. We did not really press for true democracy, at least not all at once. But we did say that the route to democratic government should not be too long and should not be strewn with deliberate and impossible obstacles. Our voices were not heard and we did not succeed. Neither did we maintain our own solidarity.

Councillors may have heard of a Scottish king, Robert the Bruce, who, when defeated in battle and with the freedom of his country apparently lost, learnt the wisdom of the motto "Try, try and try again". He did so and was victorious in the long run. With respect, I think it is a pity that this Council did not choose to adopt such a philosophy with the former OMECO consensus.

We are now in a situation where China, with Britain apparently in agreement, has determined the pace of further constitutional reform in Hong Kong and set this out in considerable detail in the Basic Law. I cannot imagine that the British Government will do anything more to bring about meaningful changes in the Basic Law nor will Britain modify its own position in the years until 1997 unless there are significant changes in the policies of the Chinese Government between now and then.

It so happens that I believe strongly that such changes will come about and that we shall see a more liberal Chinese Government in the years ahead, less sensitive

and much less worried about Hong Kong. Sir, China holds the key to Hong Kong's future. The door of the future is close at present, and China must be persuaded to open it, and open it wide. We must continue, therefore, to knock on the door. Sir, I support Mr. LEE's motion.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: It is now six 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) be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

MR. TIEN: Sir, at its meeting of February 28, this Council registered its disappointment with the future political model of the draft Basic Law. Some Members expressed strong disapproval, and some were even moved emotionally. Since that debate we have the near certainty that the Basic Law is in its final form. Hong Kong people must be united to make the best of it.

Unfortunately, for many the central idea -- perhaps the only idea -- is that of the demand for "one man one vote". I believe that although the debate on "one man one vote" is an important part of our future political and constitutional development, the Basic Law is also concerned with many other equally, if not more, vital matters. I think the obsession with the simple question of direct elections is misplaced.

The motion before us today has led to a re-run of the debate of last February 28. We are still being treated to further expressions of disappointment and even pious hopes about "mutual and sincere co-operation" between the Chinese and British Governments.

Public opinion, I believe, is getting tired of repetition about the well-worn themes of the merits of democracy. "Democracy fatigue" may be setting in, as evidenced by the low turn-out of only several hundred people during recent liberal gatherings. Public opinion expects this Council to debate issues honestly and fairly. Public opinion has also a right to expect the issues to be debated in this Council

to be set out succinctly and clearly.

Sir, the motion before us today is not only obscure, but also somewhat unrealistic. It begins by asking the Chinese and British Governments "to take account of the interests of the people of Hong Kong". Liberals interpret the interests of the people of Hong Kong as an issue of demanding more direct elections. This motion then perambulates through hopes for "mutual and sincere co-operation". It further then calls upon both Britain, which has no responsibility for formulation of the Basic Law, and China which has, "to amend at a suitable time, whenever and whatever that might mean, the relevant clauses of the Basic Law".

All that initially led me, and, no doubt many observant members of the public, to wonder what this motion actually meant. When I lived in the United States, I heard about "motherhood issues" -- that is, safe election-winning issues, like the dignity of motherhood or perhaps apple pie or the flag. This motion is full of such vaguely-put issues.

Sir, I am prepared to argue for amendment of the Basic Law, but on different subjects, from that of some other honourable Members who have spoken so far. I do not believe that a radical overturning of the political structure which disturbs the balance of power between functional constituencies and direct elections will serve any useful purpose. On that score, I have little sympathy with the motion.

I do however see a point in advocating a more fundamental change. My view is that we should press China to make a greater reality of our much vaunted "high degree of autonomy". We should press China to keep religiously to their promise as set out in the Joint Declaration and allow Hong Kong an even higher degree of autonomy. China's rights over Hong Kong are explicit in regard only to foreign affairs and defence. That is in the agreement of 1984.

Almost all other matters must be so constructed to allow Hong Kong this admittedly imprecise "high degree of autonomy". I advocate persuading China to extend such a "high degree of autonomy" to its furthest limits. If we can persuade China to cede yet more under the guise of the solemnly promised "high degree of autonomy" -- then I can see the point of this motion.

Liberal Councillors, in talking so excessively about direct elections, have in fact missed the key point. We should stop squabbling about indirect or direct

elections. We should rather call for a more effective distribution of power between China and Hong Kong. We should persuade China to keep steadfastly to their commitment to protect and extend Kong Kong's "high degree of autonomy".

Sir, I contend that my liberal colleagues have got the problem upside down. I contend that our first priority is to draw more power from China. Thus, our wish to amend the Basic Law should derive from a desire to enhance our autonomy. That is the first requirement.

The second step, then, would be to attend to the distribution of power, involved in this high degree of autonomy, and to discuss, for example, the composition of this Council.

I submit that my liberal colleagues, in their anxiety to peddle their favourite representational theories, have put the cart in front of the horse.

Sir, we were promised that Hong Kong people would rule Hong Kong. Let us ensure that this promise is at least kept, and further fully met. Without the Hong Kong Special Administrative Region enjoying complete executive, legislative and independent judicial power, including that of final adjudication, I would argue that we cannot make a reality of our future.

In that respect there is still good room for amendment. Members will recall that OMELO made a number of comments on the second draft published in October 1989. I would not elaborate again as certain honourable Members who spoke earlier have quoted a lot of them. We should be especially concerned with the relationship between the Central People's Government and the Special Administrative Region. Above all, we were worried about the validity and interpretation of the laws of the Hong Kong Special Administrative Region. If any amendments should be made, those should refer to the power of our courts.

After all, we should not let drop our objections to those parts of the Basic Law which detract from our high degree of autonomy. To put it in a nutshell since the events of June 4 last year, our high degree of autonomy should be made even higher. That is the nature of the amendment which I have in mind.

At the end of the day the composition of this Council is a much smaller matter than the powers of the Hong Kong Special Administrative Region. And at the end of

the day what really matters is that all Hong Kong people should be encouraged to participate in the ruling of Hong Kong.

Sir, with these qualifications in mind, I support the motion on the understanding that we see it in the broad context of Hong Kong's need for a high degree of autonomy as promised in the Joint Declaration, and not for amendments for more direct election to this Council.

MR. MARTIN LEE: Sir, I wish to thank Honourable Members for their carefully considered speeches. My honourable colleagues have addressed many different points, and I applaud them for their calm and constructive tone including those who have criticized me, and in particular my charming and honourable relative. Sir, some people have said that the people of Hong Kong are all indifferent to the Basic Law, but the conscientious efforts of my colleagues today must have demonstrated how deeply we, Members of this Council, care about the Basic Law and how important we realize the Basic Law to be for our future.

In deciding how to cast our votes on this motion, I urge Honourable Members to keep in mind that Hong Kong and China have convergent interests. It has been said by some that those who seek to amend the Basic Law are too confrontational with China. Yet, I want to stress for myself, and I am sure for the majority of my honourable colleagues, that our actions here are solely motivated by a deep desire to see China, including Hong Kong, prosper and succeed.

We are very proud of the contribution that Hong Kong has made in recent years to the economic growth in China, and we firmly believe that the "one country, two systems" policy established by the Joint Declaration is the most effective way for Hong Kong to continue as an engine of China's economic modernization.

Sir, it is in this spirit of constructively providing for Hong Kong and China's future that we seek to amend the Basic Law. If the Basic Law remains unamended, then I am afraid the current emigration of both people and capital from Hong Kong will only intensify. The Mainland drafters, in deleting many of the important changes to the second draft and in not allowing Hong Kong the full range of autonomy promised in the Joint Declaration, will have won all the battles but lost the war.

Hong Kong, with only six million people and no army, is not a threat to China,

nor will it ever be. We must convince China that the amendments we seek to the Basic Law are not threats to her sovereignty. Rather, they are the only means we have of ensuring that Hong Kong in the future will prosper and will continue to contribute to China's own prosperity.

Hence, a vote for this motion is in no way a vote against China. Rather, it is a vote for the future of Hong Kong, and indeed, the future of China.

Sir, I so move.

Question on the motion, as amended, put and the President stated that he thought that the motion, as amended, had been agreed to.

Mrs. Nellie FONG claimed a division. The President then ordered the Council to divide under Standing Order 36(4).

Mr. Allen LEE, Mr. CHEUNG Yan-lung, Mrs. CHOW, Dr. IP, Mr. CHAN, Mr. CHENG Hon-kwan, Mr. HUI, Mr. Martin LEE, Mr. PANG, Mr. SZETO, Mrs. TAM, Mr. Andrew WONG, Mr. Edward HO, Mr. ARCELLI, Mr. CHOW, Dr. LEONG, Miss LEUNG, Mr. McGREGOR, Mr. TIEN and Mrs. TU voted for the motion, as amended.

Mr. HO Sai-chu, Mr. NGAI, Mr. POON Chi-fai, Mr. TAM, Mrs. FONG and Mr. LAU Wah-sum voted against the motion, as amended.

The Chief Secretary, the Attorney General, the Financial Secretary, the Secretary for Home Affairs, Mr. CHUNG, the Secretary for Transport, Prof. POON, Dr. TSE, the Secretary for Economic Services, Mr. LAU Wong-fat, Mr. Michael CHENG, the Secretary for Health and Welfare, Mrs. LAM, the Secretary for Education and Manpower, Mr. SIT and Mrs. SO abstained.

The President announced that 20 Members voted for the motion, as amended, six voted against it and 16 abstained. He declared that the motion, as amended, was carried.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 25 April 1990.

Adjourned accordingly at sixteen minutes past Six o'clock.

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