

1 HONG KONG LEGISLATIVE COUNCIL -- 27 June 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 27 June 1990

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)

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, C.B.E., 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 STEPHEN CHEONG KAM-CHUEN, 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 MRS. RITA FAN HSU LAI-TAI, 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, O.B.E., J.P.

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

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

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

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

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, O.B.E., 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 MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

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 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 PETER WONG HONG-YUEN, J.P.

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

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

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

THE HONOURABLE RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE CLIVE WILLIAM BAKER OXLEY, E.D., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE NIGEL CHRISTOPHER LESLIE SHIPMAN, J.P.
SECRETARY FOR HEALTH AND WELFARE

ABSENT

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

THE HONOURABLE POON CHI-FAI, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

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.

Commodities Trading Ordinance

Commodities Trading (Offence and Penalty)

Regulations 1990.....

171/90

Commodities Trading Ordinance

Commodities Trading (Dealers, Commodity

Trading Advisers and Representatives)

Rules 1990.....

172/90

Securities Ordinance

Securities (Offence and Penalty)

Regulations 1990.....

173/90

Securities Ordinance

Securities (Dealers, Investment Advisers,

Partnerships and Representatives)

Rules 1990.....

174/90

Securities Ordinance

Securities (Miscellaneous) Rules 1990..... 175/90

Securities and Futures Commission Ordinance 1989

Securities and Futures Commission (Fees)

Rules 1990.....	
176/90	
Import and Export Ordinance	
Export (Television Sets and Video Cassette Recorders) Regulations 1990.....	177/90
Road Traffic Ordinance	
Road Traffic (Driving Licences) (Amendment) Regulations 1990.....	
178/90	
Road Traffic Ordinance	
Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulations 1990.....	179/90
Employees' Compensation Insurance Levies Ordinance 1990	
Employees' Compensation Insurance Levy (Rate of Levy) Order 1990.....	180/90
Registrar General (Establishment) Ordinance	
Registrar General (Establishment) (Amendment of Schedules) Order 1990.....	181/90
Interpretation and General Clauses Ordinance	
Specification of Public Office.....	182/90
Pharmacy and Poisons (Amendment) Regulations 1990	
Pharmacy and Poisons (Amendment) Regulations 1990 (Commencement) Notice 1990.....	183/90
Poisons List (Amendment) Regulations 1990	
Poisons List (Amendment) Regulations 1990 (Commencement) Notice 1990.....	184/90
Public Health and Municipal Services Ordinance	
Library (Regional Council) (Amendment) By-Laws 1990.....	

186/90

Public Health and Municipal Services Ordinance
Pleasure Grounds (Regional Council)
(Amendment) By-Laws 1990..... 187/90

Library (Regional Council) By-Laws
Library (Regional Council) (Listening Areas
and Viewing Areas) Fees (Repeal) Notice 1990..... 188/90

Director of Intellectual Property
(Establishment) Ordinance 1990
Director of Intellectual Property
(Establishment) Ordinance 1990 (Commencement)
Notice 1990.....
189/90

Dangerous Goods Ordinance
Dangerous Goods (Shipping) (Amendment)
Regulations 1990.....
190/90

Detention Centres Ordinance
Detention Centres (Amendment)
Regulations 1990.....
191/90

Training Centres Ordinance
Training Centres (Amendment)
Regulations 1990.....
192/90

Reformatory Schools Ordinance
Reformatory School (Amendment) Rules 1990..... 193/90

Road Traffic Ordinance
Road Traffic (Public Service Vehicles)
(Amendment) (No. 3) Regulations 1990..... 194/90

Road Traffic Ordinance	
Road Traffic (Driving Licences) (Amendment)	
(No. 2) Regulations 1990.....	195/90
Coroners Ordinance	
Places for Post-Mortem Examination	
(Amendment) Order 1990.....	196/90
Public Health and Municipal Services Ordinance	
Public Health and Municipal Services (Public	
Pleasure Grounds) (Amendment of Fourth	
Schedule) (No. 4) Order 1990.....	197/90
Registration of Persons Ordinance	
Registration of Persons (Application for	
New Identity Cards) (No. 10) Order 1990.....	198/90
Public Health and Municipal Services Ordinance	
Library (Urban Council) (Amendment)	
By-Laws 1990.....	
199/90	
Library (Urban Council) By-Laws	
Library (Listening Areas and Viewing Areas)	
(Urban Council) Fees (Repeal) Notice 1990.....	200/90

Oral answers to questions

Yau Ma Tei Fruit Market

1. MR. SIT asked (in Cantonese): Will Government inform this Council whether consideration has been given to taking practical measures to contain the environmental problems and nuisance caused by the Yau Ma Tei Market to the neighbouring areas and whether there are plans to relocate the market?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Sir, the Yau Ma Tei Fruit Market is

a privately operated wholesale market which has been in existence for over 60 years. At present, some 250 fruit traders are operating at that market.

In the longer term, the intention is to re-provision this facility on the West Kowloon Reclamation, along with other wholesale market now temporarily located at Cheung Sha Wan. The new permanent site for the market is expected to be available in 1993 and subject to the availability of funds, the project should be completed towards the end of 1996.

In the meantime, the District Office of Yau Tsim is co-ordinating efforts in controlling the environmental nuisance caused by the existing facility. I have been informed that refuse is collected four times daily and that, twice a month, a major clean-up exercise is conducted by staff of the Urban Services Department. Regular enforcement exercises are carried out by the police in order to contain illegal parking and complaints of noise and other nuisance are followed up by the police and the Environmental Protection Department.

MR. SIT (in Cantonese): Sir, will the Government inform this Council whether the lease of the Yau Ma Tei Fruit Market is a private lease? If so, are there any rules or regulations that the operators of the fruit market have to observe?

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): I have already explained that Yau Ma Tei Fruit Market is a privately operated market. As far as I know, some of the operators are with Crown Land Licences; others are on short term tenancies. The conditions of lease in regard to such licence and tenancy are similar to those of the Crown Land Licence and short term tenancy in general.

Records of land boundaries

2. MR. CHENG HON-KWAN asked: In answer to my question in this Council on 17 June 1987, the Administration indicated that a Boundary Rectification Bill and a Land Survey Bill were being drafted to remedy the situation in respect of land boundaries and the record system. Will Government inform this Council what progress has been made in addressing these problems so far; and what positive steps will be taken to expedite the introduction of these Bills?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, since June 1987, the Administration has re-examined the proposals for a Land Survey Bill and a separate Boundary Rectification Bill. We have come to the conclusion that a single piece of legislation incorporating the objectives of the two proposed Bills would ensure firstly, that all land surveying work is conducted according to prescribed standards and secondly, that defective plans could be rectified so that reliable records of land boundaries could be made available to the public.

Draft Drafting Instructions for a composite Land Survey Bill have now been prepared after thorough examination of relevant overseas legislation to ensure the introduction of a system which is most appropriate to Hong Kong's circumstances. We are carefully assessing the staffing and other resource implications. I expect to be able to pass the Drafting Instructions to the Law Draftsman shortly, with a view to introducing the Bill into this Council during the next Session.

MR. CHENG HON-KWAN: Sir, what will be the impact of the proposed legislation on land owners in the New Territories?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the proposed legislation would provide a mechanism through which the standard of official records of lot boundaries in the New Territories could be upgraded. This would also mean that possible disputes over the definition of lot boundaries arising from inconsistencies and errors in boundary plans could be more readily resolved, thus hopefully expediting the processing of land transactions.

MR. HO SAI-CHU (in Cantonese): In paragraph 2 of his reply, the Secretary mentions that relevant overseas legislation will be examined. Will the Secretary inform this Council which countries he is referring to and why they are selected and not others?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Yes, Sir. We have examined legislation from eight jurisdictions. I will very briefly mention these: they are Kenya, Singapore, Zambia, New Zealand and a number from the West Indies -- Trinidad and Tobago, Barbados, Jamaica and the Virgin Islands. These were picked because they had problems which were broadly similar to those that we experience here.

MR. CHENG HON-KWAN: Sir, is there any relationship between the proposed legislation and the proposed conversion to a system of title registration in Hong Kong?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Yes, Sir, and no, Sir. The advantage of the proposed conversion to a system of title registration is that it will provide a means whereby the title to real property may be easily ascertained. The proposed land surveying legislation will produce properly surveyed boundary plans to show the location and boundaries of these properties. So, in a sense, the two go hand in hand. However, I should emphasize that the proposed legislation regarding land surveying and boundary plans is not, I repeat, not a prerequisite for conversion to a system of title registration. They can proceed independently.

Parcel delivery service

3. MRS. LAM asked (in Cantonese): Will Government inform this Council whether there is any plan to contract out the parcel delivery service of the Post Office to private companies and whether consideration has been given to privatizing the other services of the Post Office?

SECRETARY FOR ECONOMIC SERVICES: Sir, in accordance with government policy to restrain the growth of the Civil Service, the Post Office, like other government departments, is seeking to maximize the utilization of staff resources through a variety of measures. The possibility of contracting out the parcel delivery service is one measure in this vein, which the Post Office is considering at the present time. In the first instance, the Department is exploring the possibility of introducing an experimental trial in two areas, Kowloon East and Hong Kong East. The Postmaster General is currently consulting with his staff before making a final decision on whether or not to proceed.

With regard to the second part of the question, as the Financial Secretary informed this Council on 25 October last year in response to a question from Mr. Martin BARROW on the general issue of the privatization of public services, controlling officers are encouraged as a general practice to review periodically the cost-

effectiveness of their existing methods of providing services to the public, including the possibility of contracting out some of the services where appropriate. In the case of the Post Office, however, apart from the parcel delivery service, there are no plans at present to contract out any other postal services.

MRS. LAM (in Cantonese): Sir, will the Secretary inform this Council of the present backlog situation of parcels in Kowloon East and Hong Kong East? If the parcel delivery service is contracted out to private companies, what will the manpower thus saved be redeployed to do?

SECRETARY FOR ECONOMIC SERVICES: Sir, I do not have the detailed figures with regard to these particular two areas that I have referred to in my principal reply. These figures, I suggest, can be furnished to Mrs. LAM in writing. (Annex I) One particular purpose for consideration of privatization of postal services is to redeploy staff for other activities undertaken by the Post Office. These activities include: additional delivery services required in the new towns as well as the general increase in postal traffic, locally and internationally.

MR. MICHAEL CHENG (in Cantonese): Can I ask the Government what impact it will have on the postal staff and the general public if the Post Office contracts out the parcel delivery service to private companies?

SECRETARY FOR ECONOMIC SERVICES: Sir, let me repeat once again that the Postmaster General is at the moment still exploring and examining the feasibility of whether to proceed. If it is to proceed, it will proceed on the basis of an experiment. The detailed balancing of advantages and trade-offs are still being examined and the factors mentioned by Members will be taken into account.

MR. MCGREGOR: Sir, in considering the issue of privatization, will the Secretary bear in mind that a privately controlled parcel delivery service could be very vulnerable to the activities of the triads? Security would in fact be very important indeed.

SECRETARY FOR ECONOMIC SERVICES: Yes, Sir.

Written answers to questions

Chlorine hazards associated with water treatment works

4. MR. POON CHI-FAI asked: According to a discussion paper recently prepared by the Government on "Improvement to chlorine facilities at Shatin and other treatment works", seven major water treatment works at Sha Tin, Tsuen Wan, Tuen Mun, Sheung Shui, Yau Kom Tau, Tai Po Tau and Silvermine Bay and one chlorination house at Tai Lam Chung have been identified as potentially hazardous installations, the societal risks associated with which have been considered unacceptable. Will the Government inform this Council:

(a) of the levels of risks relating to this "unacceptable" rating;

(b) of the districts and number of residents likely to be affected;

(c) of the details of the recommendations for improvements for each of the works as proposed by the consultants in their studies and the dates of completion of those improvement projects; and

(d) whether the findings of the studies will be disclosed so that members of the public may take precautionary measures?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I will answer the questions seriatim:

(a) the Government assesses the risks of potentially hazardous installations against a set of risk guidelines. These guidelines express the acceptable risk for an installation in terms which relate the probability of occurrence of accidents and other hazardous events to their consequences in terms of the number of fatalities. It should be emphasized that events which may cause these fatalities have an extremely low, but real, probability of occurring. In addition, the Government requires the elimination of unnecessary risks by taking all practicable measures to reduce risk. Risk levels of water treatment works located in densely populated areas (for example

Sha Tin, Tsuen Wan and Tuen Mun) are generally higher than for those located elsewhere;

(b) only people living and working within 1 km of the water treatment works in question will be subject to measurable risk. In the unlikely event of an incident, the number of people affected in each district is as set out below:

Treatment works	Number of people likely to be affected in the event of an incident
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Sha Tin	4 300.
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Tsuen Wan	2 000.
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Tuen Mun	300.
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Sheung Shui	100.
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Yau Kom Tau	300.
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Tai Po Tau	50.
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Silvermine Bay	50.
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Tai Lam Chung	500.
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(Chlorination house)

It should be emphasized that the risks associated with these water treatment works are extremely low, that is, the probability of an incident happening at any of the above water treatment works affecting the respective number of people as set out above is once in one million years. Even these small risks will be drastically reduced upon completion of the improvement works recommended by the consultants;

(c) certain recommendations for improvements proposed by the consultants apply to all the water treatment works; these include:

(i) improved staff training and safety management at water treatment works;

(ii) traffic management of chlorine vehicles whilst on-site to reduce the probability of accidents;

(iii) improved building integrity to contain chlorine in the unlikely event of a leakage; and

(iv) installation of chlorine absorbers to neutralize any chlorine that is

released.

Site specific improvements were also recommended for Sha Tin, Tsuen Wan and Tuen Mun because of the high population densities in these areas. The Sha Tin Water Treatment Works will decommission all bulk liquid chlorine tanks and convert to the use of one-tonne chlorine drums. Smaller chlorine containers were also recommended for Tsuen Wan and Tuen Mun Water Treatment Works because of the relatively high population densities of these areas.

The improvement package for all the eight water treatment works is scheduled to be completed in 1993. Priority will be given to implementing modifications at the Sha Tin, Tsuen Wan and Tuen Mun Water Treatment Works. Upon completion of the improvement measures, all water treatment works will comply with the risk guidelines stipulated for potentially hazardous installations; and

(d) the Sha Tin District Board has been informed of the recommendations for improving the Sha Tin Water Treatment Works. The findings of the hazard assessment studies for all the other water treatment works and Government's actions arising from each study will be disclosed to the public through the relevant district boards. Precautionary measures and contingency plans in the event of an incident are being drawn up and these will be announced as and when they are ready.

Bursting of water mains

5. MR. POON CHI-FAI asked: In view of the frequent occurrence of bursting of water mains which may, in acute situations, paralyse the traffic and affect the business of the shops nearby, and the fact that these incidents often occur at the same location such as at the junction of Lei Yue Mun Road and Tsui Ping Road, and at various spots along Ting On Street in the proximity of Kwun Tong Road and Ting Fu Street and so on, will Government inform this Council of the measures to be taken to prevent the frequent recurrence of similar incidents so that residents and shopowners in the vicinity will not be unduly affected?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the water mains used by Water Supplies Department are required to comply with British standards. They are tested at the manufacturers' works to twice the designed working pressure and are tested

after they are laid in position to 1.5 times the designed working pressure. Mainlaying works are carried out under close supervision and if undisturbed after they have been laid, water mains will have a long serviceable life, probably of several decades.

Most mains bursts, including those which recently occurred at Lei Yue Mun Road, are caused by a variety of external factors, including activities such as road construction or reconstruction where heavy plant may be used, trench works for other utilities and drainage services, and deep foundation excavations for building development and flyovers in the vicinity of the water mains. Some of these activities may damage the water mains directly or disturb their foundations. It would be prohibitively expensive to design water mains strong enough to resist such external effects. Sometimes instantaneous bursts may occur while in other cases the damage or disturbance may be less severe such that failure will take time to develop and will not show up until months after the completion of the construction activities. It is often impossible to establish the cause and liability after a water main burst as water gushing out under pressure removes all the evidence and naturally priority has to be given to repair work to restore the water supply and traffic flow.

Since the water mains are buried and their condition cannot be easily and thoroughly checked, it is very difficult in practice to prevent failures from occurring. To reduce the number of such failures the Water Supplies Department regularly carries out waste detection tests on water mains and these assist in locating leakages, so that they may be repaired before they develop into serious bursts. Damage or disturbance to water mains caused by other construction activities can be prevented or minimized by stepping up vigilance on works carried out by others. Where responsibility can be established, the offending contractor is charged with the cost of repairs. The matter is kept under review by the Water Supplies Department in conjunction with the Highways Department, the utility companies and relevant government departments with a view to alleviating the problem.

Autistic children

6. MR. HUI asked: Will Government inform this Council of the number of autistic children in Hong Kong, the services available to these children, and whether there are plans to enhance these services?

SECRETARY FOR HEALTH AND WELFARE: The total number of children diagnosed as suffering from childhood autism or having autistic features and known to the Education and Social Welfare Departments is 827.

This figure can be subdivided into three categories:

Children aged 0-5 years 11 months	238
Children aged 6 years and above with childhood autism	372
Children aged 6 years and above with autistic features	217

827

Identification, assessment and treatment

Autistic children are covered by the Comprehensive Observation Scheme. Should autism be suspected, they may be referred for assessment and training at:

(a) South Kwai Chung Psychiatric Centre

or (b) Hong Kong Psychiatric Centre

or (c) Tuen Mun Psychiatric Centre

The first two centres have child units with occupational therapists and nursing staff under the supervision of clinical psychologists and psychiatrists. The third centre does not have a child unit but children may attend similar sessions as out-patients. Speech therapy and training is provided.

Pre-school services

Since 1989-90, a three-year pilot project to meet the needs of autistic children or children with autistic features has been introduced in 11 special child care centres (SCCC). One additional special child care worker (SCCCW) has been allocated to a SCCC with six autistic children or children with autistic features, plus additional professional input from a clinical psychologist. It is anticipated that

most children in the programme should show enough improvement to be discharged after six months, thus enabling new cases to be admitted. As at the end of March 1990, out of the 86 autistic children/children with autistic features certified to be in need of SCCC special provision, 64 have been enrolled in SCCC's, and only 22 are on the waiting list.

Pre-school children with autism or autistic features who are assessed as not being in need of the special provision described above are admitted to early education and training centres, special child care centres or integrated child care centres in the usual way.

School services

As the majority of autistic children are mentally handicapped, they will be provided special schools places according to their diagnosed level of intellectual functioning at the age of six. These schools already have a reduced class size (20 for mildly mentally handicapped, 10 for moderately mentally handicapped and eight for severely mentally handicapped) and also have the support of additional specialist staff (such as educational psychologist, speech therapy personnel, and so on).

A special school for mentally handicapped children may appoint one additional resource teacher for every eight children with childhood autism who are assessed to have a need for more intensive remedial support in a resource teaching programme. An initial grant is also provided for the school to purchase additional furniture, equipment and resource materials for the programme. If necessary, children can be referred back to psychiatric centres for follow-up services.

Professional support is also given by the Special Education Section of the Education Department to special schools in developing programmes for autistic children. The section runs intensive pre-service and school-based workshops for teachers and specialist staff of the schools concerned.

Other support services

Casework and counselling services are available to autistic children and children with autistic features through Social Welfare Department's Medical Social Service Units and Family Service Centres. Other support services are available to them, and their families, in the same way as they are to other members of the community.

Plans to enhance these services

The Social Welfare Department is monitoring closely the special provision programme for autistic children and children with autistic features and the service demand for normal provision in pre-school centres. It would be possible to extend the special programme to planned special child care centres if this was justified by demand. (At the end of March 1990, 64 out of the 86 pre-school autistic children or children with autistic features certified to be in need of the special provision had been enrolled, and the remainder were on the waiting list). While the provision of special child care and early education and training centre places is generally satisfactory, there remains a shortfall in integrated child care centre places. The Social Welfare Department is planning to reduce the waiting time for these places by making use of surplus EETC and SCCC places for children on the ICCC waiting list.

To ensure that all school pupils with childhood autism will receive intensive remedial support, all schools for mentally handicapped children will be actively encouraged to operate resource teaching programmes for such pupils where a demand exists.

The existing shortage of school places for mentally handicapped children, which also affects the placement of autistic children, is being closely monitored. This shortfall should be met by 1992-93 when planned projects are completed. Until these projects are ready, interim measures will continue, for example, using temporary accommodation for schools and providing placement in home based classes.

Protection against passive smoking

7. MISS LEUNG asked: Will Government inform this Council whether consideration would be given to protecting the non-smoking population, particularly those who have a dislike of smoking, against exposure to passive smoking by taking measures, such as introducing legislation to prohibit smoking in public places, areas in buildings belonging to the Government and statutory bodies where the public have access and the conference rooms of government buildings and statutory bodies?

SECRETARY FOR HEALTH AND WELFARE: Under present provisions in the Smoking (Public Health) Ordinance, smoking is prohibited in not less than 50% of all seats in ferries, trains, theatres, concert halls and cinemas and is totally banned in all lifts and single decker public transport except taxis and hired vehicles, and on the lower decks of double decker buses and trams. Both the Mass Transit Railway Corporation and the Kowloon-Canton Railway have also taken action under their by-laws to prohibit smoking in all their trains.

In March this year, it was announced that the Government intended to extend no-smoking areas in public places by amending the Smoking (Public Health) Ordinance to ban smoking throughout all public transport, including taxis, and in cinemas, theatres, concert halls and video-game centres. An amendment Bill will be presented to this Council later this year.

In addition to legislative regulation, the Government has adopted administrative measures to prohibit smoking in schools, hospitals, clinics and public areas in government offices such as corridors, lift lobbies and pantries. Government will continue to play an exemplary role in banning smoking in public areas in its premises including conference rooms. In this regard, the Director of Administration has recently sought the co-operation of staff in the Central Government Offices to refrain from smoking whilst in the office. We encourage other statutory bodies and private corporations to take similar action.

Foreign exchange and gold margin dealings by fringe operators

8. MR. TAI asked: In view of the increased public complaints about the activities of fringe operators in foreign exchange and gold margin dealings, will Government inform this Council of the progress on Government's study of the feasibility of subjecting these activities to control by the relevant authorities?

FINANCIAL SECRETARY: Sir, while it is true that the number of public complaints relating to leveraged foreign exchange dealings by fringe investment companies has increased over the past few months, the number of complaints relating to leveraged gold dealings by such companies has been very small.

A working group has recently been set up under the Monetary Affairs Branch to consider whether there is any need to impose controls on leveraged dealings in foreign exchange by such companies. The working group is chaired by the Deputy Secretary for Monetary Affairs and includes representation from the Office of the Commissioner of Banking and the Securities and Futures Commission.

Although the working group is newly formed, the Monetary Affairs Branch has been looking at the subject for some time in consultation with the Commercial Crime Bureau and the Attorney General's Chambers. We think that the major problem arising from the activities of these fringe companies lies with non-professional investors. Many of them are unable to assess properly the risks involved in leveraged contracts in foreign exchange and so invest more than they can easily afford to lose. Many of them also give these companies more discretion to deal on their behalf than is perhaps prudent. In some cases, fraud may be involved but that is then a matter for the Commercial Crime Bureau.

The Monetary Affairs Branch issued a press release on 7 June inviting submissions in confidence on the subject from those who have an interest in it. The submissions are to be made by the end of next month. The working group will examine the submissions made and consider whether there is any need to impose controls on leveraged dealings in foreign currencies by these companies.

If we are to introduce new measures that go beyond our existing regulations in relation to trading in the financial sector, then we need to ensure that we do not impede the development of the reputable end of the market. In trying to swat the irritating fly in the kitchen we must be careful not to knock over the stove!

In the meantime, we will continue to issue "health warnings" through the media about the importance of taking great care when considering investing in leveraged foreign exchange contracts through unregulated companies.

As regards dealings in gold, a question on the subject was asked by Dr. the Honourable Daniel TSE in this Council on 25.3.87 and a copy of my reply is attached. It was the less reputable fringe operators and bucket shops that gave rise to concern and publicity has been played up to educate the public about the risks of trading through the bucket shops and the possibility of such dealings being caught by the provisions of the Gambling Ordinance in certain circumstances. I am glad to say that

the number of complaints against such operators has since subsided. We will continue to monitor the situation and remind the public from time to time of the risks of trading with the fringe operators.

Lastly, I would add that high returns are usually associated with high risks. If investors wish to trade in foreign currencies or gold, they are best advised to approach a large and reputable dealer such as a bank or deposit-taking company authorized under the Banking Ordinance which is subject to the supervision of the Office of the Commissioner of Banking. There is, I believe, also a need for investors to exercise prudence and caution and a degree of common sense before deciding whether they should participate in complex and often volatile markets, which tend to be more for the professionals.

Financial assistance to mutual aid committees

9. MR. CHAN asked: Will Government inform this Council when the next review of the financial assistance to mutual aid committees will take place and whether the review will consider raising the ceiling for expenditure on photocopying?

SECRETARY FOR HOME AFFAIRS: Sir, the City and New Territories Administration last completed a review of the Financial Assistance Scheme to Mutual Aid Committees in April this year and its findings have been forwarded to the Finance Branch for consideration. One of the recommendations is to raise the ceiling for expenditure on photocopying.

Unconditional stay for foreign residents

10. MR. BARROW asked: With the recent reduction of the residential requirement from nine years to seven years for a foreign resident in Hong Kong to apply for unconditional stay, will the Government inform this Council:

(a) what are the criteria for the grant of unconditional stay to foreign residents; and

(b) under what circumstances an extension of stay instead of an unconditional stay will be granted to foreign residents?

SECRETARY FOR SECURITY: Sir, a foreign resident will normally be granted unconditional stay after he has completed seven years' ordinary residence in Hong Kong, and provided that:

(a) he is not in breach of his conditions of stay;

(b) he does not have an adverse criminal record; and

(c) he is able to support himself, and is not likely to become a burden on the community.

These are normal immigration requirements. Where they are not met in full, a foreign resident may nevertheless be granted an extension of stay for a fixed period if he is not in serious breach of the requirements, and he otherwise meets the criteria for entry for employment and residence.

First Reading of Bills

LAWS (LOOSE-LEAF PUBLICATION) BILL 1990

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1990

BUILDINGS (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

LAWS (LOOSE-LEAF PUBLICATION) BILL 1990

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to provide for the publication of an edition in loose-leaf form of the Laws of Hong Kong."

He said: Sir, I move that the Laws (Loose-Leaf Publication) Bill 1990 be read a Second time.

The Ordinances of Hong Kong and their subsidiary legislation, when they are first enacted, are published in the Government Gazette. For the last 25 years or so they have also been published in consolidated form in what is known as the Revised Edition. The Revised Edition is the authoritative version of all laws included in it. It now runs to some 20 000 pages in 32 volumes and it is updated every year by an edition of new booklets and amendments.

There are approximately 1 800 sets of the Revised Edition in existence. Of those about two-thirds can be found in government departments, in the courts, in judges' chambers and in police stations throughout Hong Kong. Most of the remainder, of about 600 sets, are to be found in lawyers' offices.

A set of the Revised Edition is an indispensable tool for anyone practising the law of Hong Kong or for anyone else who is directly concerned with Hong Kong's legislation. It is imperative in our rapidly developing and changing society that the community in general, and the legal community in particular, have access to the most up-to-date, consolidated version of our legislation which practicality and economy permit.

The Revised Edition has served us well for the past 25 years, but new and proposed changes in enactment and publication mean that it cannot continue to do so.

New Ordinances are now enacted and published in both the English and Chinese languages. There is also a programme under way to translate existing laws into Chinese. Bilingual texts of new Ordinances are presented and published together. The Chinese text of the existing Ordinances will also be published in due course. These developments alone mean that there will be a doubling in size of the Revised Edition over the next few years.

Additionally, the amount of law enacted each year is steadily increasing. The Revised Edition began in 1965 with 14 volumes. There are now 32 volumes, and within the next few years there could well be 80 volumes of text in bilingual form. The present format of the Revised Edition does not readily lend itself to accommodating this vast expansion.

Sir, after extensive consultation with a great many interested parties, and after receiving many helpful suggestions including, I should add, many of a very practical nature from the Government Printer, we have concluded that there should be a complete change in the format of our consolidated laws and that it should be of a loose-leaf type.

With this new loose-leaf format, our present amendment system can be greatly improved. At present we publish a noter-up which is of some help in bringing the Revised Edition up to date during the year, but because the proper use of the noter-up involves a "cut and paste" system it is both tedious and time consuming for users. Because of the data storage and processing power of modern computers, we now believe that we can make substantial improvements to our updating practices. Experience in other jurisdictions has shown that, with the help of computer-assisted printing technology, it is possible to publish and maintain an edition of laws in loose-leaf form that is constantly (and not just annually) brought up to date by the insertion of new individual pages in place of the old.

One consequence of the change in format will be that anyone who uses a set of the laws will need to buy new binders. This is because the pages will be of a different size to accommodate both the English and Chinese texts side by side. It is however estimated that the new loose-leaf format will bring about considerable savings in production and maintenance costs.

Once the existing edition of laws has been reprinted in loose-leaf form, production costs are expected to be lower than those incurred under the current system. Maintenance costs for users will also be far lower under the loose-leaf system. It is estimated that the manpower required to maintain the new replacement system will be a fraction that needed to maintain the existing cut and paste noter-up service.

Sir, I now turn to the Bill. Clause 2 authorizes the Attorney General to publish the new loose-leaf edition. It will permit the Attorney General to exercise certain limited editing powers and to publish any Ordinance as a separate booklet.

Clause 3 of the Bill provides for the legal status of Ordinances published in the loose-leaf edition. Its effect is that Ordinances published in the loose-leaf edition will be deemed to be correct unless the contrary is proved.

The last annual edition of the laws published under the Revised Edition of the

Laws Ordinance 1965 will be the 1989 edition and will state the law as it was on 31 December 1989. Provision for this is to be found in clause 7 of the Bill.

It is proposed to publish the first volumes of the loose-leaf edition in the second half of 1991, and the remainder over the ensuing three years. In the meantime the noter-up service for the Revised Edition will be continued, but it will be phased out as the loose-leaf edition takes over.

The loose-leaf edition will be easier for users to maintain and update and, apart from some initial extra expense for new binders, it will be the most economical and efficient way to publish our bilingual laws and to keep them in up-to-date form.

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

Question on the adjournment proposed, put and agreed to.

EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1990

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Employment Ordinance."

He said: Sir, I move that the Employment (Amendment) (No. 2) Bill 1990 be read a Second time.

At the present time, under the Employment Ordinance an employee is entitled to seven days' paid annual leave following completion of 12 months' continuous employment. This benefit was first introduced 12 years ago in 1978, and there has been mounting criticism that it does not adequately reflect the substantial economic growth Hong Kong has enjoyed over the past decade or so. The current level of benefit also compares unfavourably with other countries in the Asia Pacific Region, many of which give their workers 14 days' paid annual leave.

Sir, the aim of the Government's labour policies is to achieve a level of statutory protection for our workforce broadly comparable to the best prevailing in the region. Given an 84% growth in real per capita GDP between 1978 and 1989, and having regard to the levels of paid annual leave prevailing in the region, the time has now come for us to improve this benefit. Accordingly, the Bill seeks to increase the number

of days of paid annual leave from seven to 14, over a period of five years.

On the Bill becoming law, an employee with up to two years' service would continue to enjoy only seven days' paid annual leave. Employees with three to five years of service, however, would have their paid annual leave increased to eight, nine and ten days respectively. Employees with over five years of service would have their paid annual leave fixed at 10 days. All these entitlements would be increased at the rate of one day for each additional year of service, until the maximum of 14 days is reached. Thus an employee with five or more years of service would see his entitlement reaching the maximum of 14 days in the fifth year of the Bill becoming law. I should like to emphasize that the proposal to phase in the maximum level of benefit over a period of five years was the outcome of careful deliberation by the Labour Advisory Board.

To provide flexibility for both employers and employees, the Bill further proposes that an employer may make a payment in lieu of annual leave foregone, but only where the employee's annual leave entitlement exceeds ten days and he elects to forego part or all of the entitlement in excess of 10 days. For example, if an employee is entitled to 13 days and elects to forego three days, the employer may make a payment to him in respect of those three days. As a safeguard against abuse, it would be necessary to make it an offence for an employer to include in a contract of employment any provision that would commit the employee to forego all or any of his annual leave entitlement. The proposed penalty for this offence is a maximum fine of \$10,000.

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

Question on the adjournment proposed, put and agreed to.

BUILDINGS (AMENDMENT) BILL 1990

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to amend the Buildings Ordinance."

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

Serious difficulties have been encountered in the design and construction of foundations for, and the development of, certain sites in an area of the north-western New Territories which is underlain by karstic marble bedrock, which is essentially marble rock containing dissolution cavities. The karst occurs in isolated patches beneath an approximately triangular area of land extending from Tai Tong and Ha Tsuen to the Mai Po Nature Reserve. In this area, the marble stratum contains significant cavities in some locations and the geology of the area is highly complex. In order to ensure that approved developments in this area proceed safely and expeditiously, it is important that adequate geotechnical control measures be implemented as soon as possible.

The Buildings (Amendment) Bill 1990 therefore empowers the Building Authority to tighten geotechnical control over building works in the karst area of the north-western New Territories. Clause 2 redefines the scheduled areas and refers to the revised Fifth Schedule at clause 9 of the Bill which sets out as "Area Number 2" the area of the north-western New Territories I have previously described.

To ensure safe development of a site in such a geologically complex area, a good understanding of the geological features underlying the site and how these affect the engineering behaviour of the foundations is essential. Properly designed, high quality and reliable ground investigation, followed by careful interpretation of the ground investigation results will help achieve these ends. It is also necessary to ensure that important geological features underlying the site are carefully considered at the design stage of the building foundations so as to avoid the choice of an inappropriate foundation layout or foundation type.

Clauses 2 and 10 of the Bill seek to amend the Buildings Ordinance and Building (Administration) Regulations to require submission of ground investigation plans for the approval of the Building Authority prior to commencement of ground investigation works in the area and to require that the submission of a foundation plan should be accompanied by a geotechnical report containing a detailed description of the geology of the site together with a discussion of the anticipated geological problems and geotechnical requirements for the design and construction of foundation works.

For foundations in karst areas, there is always a risk that despite conservative design, problems will arise during construction of the foundations. To ensure minimum risk to the completed foundations, it is necessary for the authorized person or the

registered structural engineer to maintain detailed construction records and to review these at close intervals during foundation construction. Clause 4 of the Bill seeks to empower the Building Authority to require the submission of performance reviews of foundation works within Area Number 2 prior to commencement of superstructural works.

This amendment Bill, if enacted, will strengthen the Building Authority's control over the geotechnical aspects of building works in the karst area of the north-western New Territories.

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

Question on the adjournment proposed, put and agreed to.

BANKING (AMENDMENT) (NO. 2) BILL 1990

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

Question on Second Reading proposed.

MR. ARCULLI: Sir, the Bill before us today seeks to relieve an auditor of an authorized institution of his duty of confidentiality to the client institution where he communicates in good faith to the Commissioner of Banking information or opinion on a matter which he becomes aware in his capacity as an auditor and which is relevant to the functions of the Commissioner. It provides protection to an auditor especially in situations where bilateral discussions on a client institution between him and the Commissioner is called for.

In the course of our work, the ad hoc group set up to look at the Bill has received representations from the Hong Kong Association of Banks (HKAB), the Hong Kong Deposit-taking Companies Association (DTCA) and the Hong Kong Society of Accountants (HKSA) respectively. We have also met representatives from each of the three organizations to hear their concerns on the Bill.

In short, the financial sector's major concern relates to the proposed extension of the scope of the existing section 61 of the Ordinance to allow bilateral discussions between the Commissioner and the auditor to take place in the absence of the authorized

institution. While the HKAB and the DTCA do not dispute the principle of direct communication between the auditors and the Commissioner in appropriate circumstances, they are concerned that unless such circumstances are spelt out clearly in the legislation there may be instances where such communications are unwarranted.

The two Associations also consider that the Bill should, in accordance with the 1987 United Kingdom Banking Act, provide the Commissioner with the reserve power to make guidelines as to circumstances under which it is permissible and proper that direct communication may take place should the Society of Accountants fail to produce satisfactory guidelines for the purpose.

After extensive discussion on the subject with various parties concerned, including the Administration, we have come to the conclusion that the non-statutory route as envisaged by the Bill should be supported, and that an explicit provision for a reserve power is not necessary.

Non-statutory guidelines will have a flexibility in its application and interpretation, and will allow more room for manoeuvring in case of unforeseen circumstances. Furthermore, certain concepts like "integrity" and "competence" of the director or senior management of an authorized institution would be difficult to define.

On the question of reserve power, the Administration has pointed out that the HKSA has since 1988 adopted a set of guidelines setting out the circumstances under which auditors may initiate discussion with the Commissioner direct. The guidelines are apparently working to the satisfaction of all parties concerned, including the Administration and the financial sector. The Administration is convinced that this kind of approach should continue: a reserve power is not necessary since it is always possible for the law to be amended to provide the Administration with appropriate power to rectify the situation should the HKSA fail to produce satisfactory guidelines.

The HKSA has also firmly stated that they could be relied upon and trusted as a responsible body to produce guidelines to the satisfaction of all parties concerned. Furthermore, they have given their undertaking to the Administration and the ad hoc group that they would consult the relevant bodies in the financial sector before finalizing their guidelines. To this effect, we note that they are in fact working on a set of draft guidelines and should be able to consult the relevant bodies soon

after the enactment of this Bill.

The Administration, like the financial sector and the accounting profession, believes that the bilateral discussions between the auditor and the Commissioner should take place only in exceptional circumstances. These circumstances would, apart from being provided for in the HKSA guidelines, be contained in a statement to be issued by the Commissioner of Banking upon the enactment of this Bill. The Financial Secretary may, perhaps, wish to confirm this point.

My colleague, the Honourable David LI, has asked me to reflect in this Council again the concern of the HKAB over the non-statutory nature of the HKSA's guidelines. May I take this opportunity to assure the Association that their view has been fully considered by the ad hoc group, and for the reasons I have stated earlier on, we believe that the Association may rest assured that their views would be considered by the HKSA in drawing up the guidelines, as they so closely affect them. It would be useful, however, if the Financial Secretary could confirm that consultation on the HKSA draft guidelines would proceed as soon as possible once the Bill has become law to allay the concern of the Association.

In conclusion, I would like to stress that a trusting working relationship between our financial sector and the professions has been, and will continue to be, an important ingredient for the success of Hong Kong. I have no doubt that the authorized institutions and the accounting profession would be prepared to work together to find a solution which is acceptable to all parties.

With these remarks, Sir, I support the motion.

FINANCIAL SECRETARY: Sir, I am grateful to Mr. ARCULLI and members of the ad hoc group for their careful consideration of the Bill.

As Mr. ARCULLI has indicated, both the Hong Kong Association of Banks and the Hong Kong Deposit-taking Companies Association made submissions to the ad hoc group expressing concern about the provision in clause 5. Whilst supporting the principle of direct communication between auditors of authorized institutions and the Commissioner of Banking, the two associations felt that auditors should only do so in exceptional circumstances so as not to undermine the frank and confidential relationship between auditors and management. They suggested that such

circumstances should be spelt out in legislation. Alternatively, the Government should, as in the United Kingdom, have the "reserve power" to make regulations specifying the particular circumstances for such dialogues, if no satisfactory professional guideline were to be issued. The associations also stressed the need for the Hong Kong Society of Accountants to consult interested parties before finalizing its guideline relating to the new section 61.

We fully accept that direct communication between auditors and the Commissioner of Banking should be confined to exceptional circumstances. Following the enactment of this Bill, the Commissioner of Banking will issue a statement setting out the circumstances where he would expect an auditor to seek a tripartite or a bipartite meeting with him. In essence, direct communication will only be expected to take place in exceptional cases, for instance where there are indications of serious fraudulent activity. This may result in the auditors no longer having confidence in either the integrity or the competence of the directors and senior management, and lead them to the view that direct reporting to the Commissioner would be in the best interests of depositors.

The Hong Kong Society of Accountants also agrees that direct reporting should be an exceptional occurrence. Its current guideline on tripartite meetings already sets out the very limited circumstances in which an auditor should feel compelled to report directly to the Commissioner. We understand that the new guideline, following on the Commissioner's statement, will be along similar lines.

The Hong Kong Society of Accountants has also undertaken to consult the interested parties, including the Hong Kong Association of Banks and the Deposit-taking Companies Association, on the new guideline as soon as possible after the enactment of this Bill. I can thus give the assurance sought by Mr. ARCULLI.

In the event, we see no need to specify the circumstances for direct communication in legislation, or to provide for the "reserve power" as suggested. I am glad that this view is shared by the ad hoc group and that no amendment is therefore required.

I shall be moving during the Committee stage a few technical amendments to the Bill. These amendments have been examined by the ad hoc group who have lent their support.

Sir, I beg to move.

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).

INSURANCE COMPANIES (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 6 June 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).

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 2 May 1990

Question on Second Reading proposed.

MR. CHEONG: Sir, two issues have been of particular concern to the ad hoc group set up to study the Bill.

The first one relates to the proposed immunity for the Stock Exchange.

Under the proposed new section 51A, no liability would be incurred by the Stock Exchange and its employees in respect of the performance of duties under the Securities (Disclosure of Interests) Ordinance if they have acted in good faith. The ad hoc group is concerned that under such circumstances a person suffering from damages because of incorrect information published by the Exchange or its employees would have no redress at all and has therefore asked the Administration to consider whether the immunity should be restricted to the employee of the Exchange only.

The Administration considers that the proposed immunity is justified for the following reasons. First, an equivalent immunity is enjoyed by the Securities and Futures Commission (SFC), the Commissioner of Banking and the Insurance Authority in the bona fide performance of their duties, and the duty to be undertaken by the Exchange is similar in nature to functions carried out by the regulatory authority. The Exchange would otherwise be exposed to a liability which could be enormous and quite beyond its resources.

Secondly, the underlying purpose of the system, which is to ensure the prompt release of price-sensitive information to the market, would be defeated if the Stock Exchange were not to be protected in the way proposed since the Exchange would have to put in place the most exhaustive checks to minimize the risk of being sued for damages. Such arrangements would be costly and time-consuming and would inevitably delay the publication of information received.

Apart from having to act in good faith to qualify for the protection under the new section, the Stock Exchange is also required under the Ordinance to publish the information in such manner as the SFC may approve. The ad hoc group has been assured that the SFC, having examined the arrangements for publication proposed by the Exchange, is satisfied that the necessary checks are in place; the Commission will also continue to monitor the operation of these arrangements.

In the case of false information notified to the Exchange, there is a possibility of seeking redress from the person who provides the false information.

Having considered the points made by the Administration, the ad hoc group agreed that the provision should be left as it is.

The second issue of concern to us relates to the timing of notification. We feel that with the advancement of modern communication technology, a period of five days for the disclosure of notifiable interests appear to be rather long. As a matter of fact, the Administration has initiated an amendment to clause 14 of the Bill to allow notification to be made by fax. Nonetheless, the Administration has, at the request of the ad hoc group, agreed to review the timing for notification in the light of practical application of the Bill in the future. I hope that the Financial Secretary will confirm this intention today.

Sir, the ad hoc group has also raised two other points with the Administration

which have resulted in further amendments to the Ordinance.

First, the age of a child under sections 8 and 31 of the principal Ordinance will be reduced from "21 years" to "18 years" having regard to the recent enactment of the Age of Majority (Related Provisions) Ordinance.

The second point relates to the definition of "child" under section 2 of the Ordinance. When the Ordinance was passed in July 1988, Members of this Council considered that it would be unreasonable to hold a person responsible for interests held by a step-child who might not even have close contacts with that person. The reference to the "child of his spouse" under sections 8 and 31 was therefore deleted. The definition of "child" in section 2, however, provides that "'child" includes a step-child" which appears to make the amendment superfluous. The Administration has now agreed to delete this definition to rectify the situation.

Sir, the Bill, if passed today, will enable the bringing into force of the main Ordinance which was enacted about two years ago. The provisions of the Ordinance will ensure the prompt release of certain price-sensitive information to the public and will therefore reduce the opportunity for insider information to be taken advantage of. The continuous effort of the Administration to safeguard a fair market is to be congratulated.

With these remarks, Sir, I support the motion.

FINANCIAL SECRETARY: Sir, I am grateful to Mr. Stephen CHEONG and members of the ad hoc group for their careful consideration and support of this Bill.

As Mr. CHEONG has identified in his speech, there were some issues of particular concern to the ad hoc group. One related to the time limit for notification of interests under sections 7, 28 and 31. The relevant period is currently five days next following the day on which the duty arises. This appeared to be rather long to the ad hoc group given the advancement of modern communications technology and relevant provisions elsewhere.

In the course of the debate during the passage of the Securities (Disclosure of Interests) Bill in July 1988, the Financial Secretary stated that the present provisions were considered an appropriate starting point for Hong Kong. I can,

however, assure Members that these provisions will be reviewed in the light of experience of the Ordinance in operation, and having regard to the practice of other jurisdictions.

Another issue of concern to the ad hoc group related to the proposed immunity for the Stock Exchange. We are proposing that no liability should be incurred by the Stock Exchange or its employees in their performance in good faith of duties under the Securities (Disclosure of Interests) Ordinance.

We consider that the proposed immunity is justified for the following reasons. First, as mentioned by Mr. CHEONG, an equivalent immunity is granted to the Securities and Futures Commission, the Commissioner of Banking and the Insurance Authority in the bona fide performance of their duties. The duty imposed upon the Stock Exchange is unremunerated and similar in nature to functions carried out by those regulatory bodies.

Secondly, the underlying purpose of the notification system is to ensure the prompt release of price-sensitive information to the market. Again Mr. CHEONG has identified the importance of this objective and that it would be defeated if the Stock Exchange were not protected in the way proposed. The Stock Exchange would be obliged to carry out the most careful checks to minimize the risk of being sued for damages. This would be very time-consuming and lead to delays in the publication of information received.

Under the terms of the proposed immunity, the Stock Exchange is, however, required to act in good faith. Accordingly, it must take all reasonable steps to verify the information received and to ensure that it is correctly published. The Stock Exchange is required under the Ordinance to publish the information in such manner as the Securities and Futures Commission may approve. The Commission is satisfied that necessary checks are in place and will be monitoring the operation of these arrangements.

I shall be moving amendments at the Committee stage in respect of the other points raised by Mr. CHEONG.

Sir, when this Bill was introduced into the Council on 2 May, it was stated that it was our intention to bring the principal Ordinance into force on 1 July 1990. Having further considered the issue, it is now our intention to delay bringing the

Ordinance into force until later in the year when appropriate measures are in place to ensure that the disclosure requirements will also be applicable to overseas incorporated companies listed on the Stock Exchange.

Sir, I beg to move.

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).

RADIATION (AMENDMENT) BILL 1990

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

Question on Second Reading proposed.

PROF. POON: Sir, the Radiation Ordinance (Cap. 303) and its subsidiary legislation imposes controls on the import, export, possession and use of radioactive substances and irradiating apparatuses. The Ordinance has been amended previously on several occasions. This Bill, which is based on the recommendations made by the Radiation Board established under the Ordinance, seeks to further amend the Ordinance to facilitate its enforcement and to rationalize certain provisions to meet current needs.

The more significant amendments proposed by the Bill are :

- (1) redefining the definition of "irradiating apparatus" to clarify that any apparatus intended to produce or emit ionizing radiation comes within the scope of the Ordinance;
- (2) providing that the Radiation Board may exempt from control radioactive substances or irradiating apparatuses which, though radioactive, are not harmful to health;
- (3) increasing the level of fines for various offences to maintain their deterrent values;

(4) making a licensee liable for an offence unless he proves lack of knowledge and that he has exercised all due diligence to prevent an offence; and

(5) extending to an aircraft the exemption from the requirement of obtaining a licence when carrying radioactive substances in transit through Hong Kong.

In view of the importance of radiation matters to the public, Members of this Council has formed an ad hoc group to study this Bill. Having carefully looked into all aspects of the Bill, the ad hoc group has recommended support for it. I am pleased to say that the recommendation of the ad hoc group has been endorsed by Members of this Council.

A number of amendments to the Bill have been agreed between Members and the Administration. First, clause 5 creates a new section 7(3) to exempt from licensing control radioactive substances or irradiating apparatuses in transit through Hong Kong in or on vessels or aircraft so long as they remain in or on such vessels or aircraft. However, no provision is made to enable a Radiation Board inspector to enter and inspect these vessels or aircraft even when such entry or inspection is highly essential to protect the public. The group therefore recommends that clause 8 should be amended so that under section 16(2) of the Ordinance, the Radiation Board inspectors are specifically empowered to enter and inspect aircraft and vessels in transit. This has been agreed by the Administration.

Second, new section 22(2) under clause 14 provides that a licensee should not be sentenced to imprisonment for an offence for which he is held to be liable. The group considers that if a licensee has had knowledge of the offence and has failed to exercise due diligence to prevent the offence, there should be provision for him to become liable to be sentenced to imprisonment where this is proved for in the offence. This point has also been agreed by the Administration.

Third, minor technical amendments have been proposed by the Administration to streamline the Bill.

Sir, I should also mention clause 7 which empowers the Radiation Board to exempt certain radioactive substances or irradiating apparatuses from licensing control. These are those not intended to produce ionizing radiation, for example, television sets, visual display units, luminous watches and smoke detectors which are considered to be not harmful to health. The group has been concerned about whether such items

stored in bulk during the manufacturing process are safe to human health and whether monitoring work should be undertaken to safeguard the public. On the assurance by the Administration that any exemption to be granted will have regard to the public interest to be served and the degree of risk which must be negligible, the group decided not to labour the point.

Sir, following enactment of this Bill, the Administration will also shortly introduce amendments to the Radiation (Control of Radioactive Substances) Regulations and the Radiation (Control of Irradiating Apparatus) Regulations to increase the level of fines for offences under these regulations, to update the terminology and definitions in accordance with the internationally accepted standards and to provide for more appropriate control on the conveyance of radioactive substances on vehicles and vessels.

With these remarks, Sir, and subject to the amendments mentioned above, I support the Bill.

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like to thank Prof. POON and his colleagues on the ad hoc group for their examination of this Bill.

I agree that we should take every reasonable measure to minimize health hazards arising from any inappropriate use of radioactive substances or irradiating apparatus. In this regard, the Radiation Board, being the licensing and control authority, will closely monitor the situation and through its inspectors, ensure that the provisions in the Radiation Ordinance are rigorously enforced.

The proposed amendments that Prof. POON will move at the Committee stage are improvements to the Bill and have my full support.

Sir, I beg to move.

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.

BANKING (AMENDMENT) (NO. 2) BILL 1990

Clauses 2, 3, 5 to 8 and 10 to 13 were agreed to.

Clauses 1, 4 and 9

FINANCIAL SECRETARY: Sir, I move the amendments as set out in the paper circulated to Members.

This Bill has to be re-numbered as the Banking (Amendment) (No. 3) Ordinance on enactment because the original Banking (Amendment) (No. 3) Bill, owing to its earlier enactment, has become the Banking (Amendment) (No. 2) Ordinance.

It is proposed to amend clause 4 by deleting the word "special" because "special notice" in the Companies Ordinance relates to notice by shareholders to the company, and not vice versa.

The amendment to clause 9 is necessary because section 120(5)(g) of the Ordinance refers to meetings under section 61. As section 61 is to be amended and the reference to meetings is removed, section 120(5)(g) has to be amended accordingly.

The other amendments are to repeal all remaining references to unincorporated banks because there are no longer any such banks.

Sir, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended, by deleting "(No. 2)" and substituting "(No. 3)".

Clause 4

That clause 4 be amended, in proposed section 59A(1)(a)(i) by deleting "special".

Clause 9

That clause 9 be amended --

(a) by re-numbering clause 9 as subclause (1);

(b) by adding after subclause (1) --

"(2) Section 120(5)(g) is repealed and the following substituted -

"(g) to the disclosure of information by the Commissioner to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Commissioner to discharge his functions under this Ordinance, and, any information disclosed under this paragraph shall not be further disclosed by the auditor or former auditor without the Commissioner's consent."."

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 4 and 9, as amended, proposed, put and agreed to.

New clause 11A Recovery of fees, expenses, etc.

New clause 11B Former licences, etc. deemed to be licences, etc.
under this Ordinance.

New clause 14 The Hong Kong Association of Banks Ordinance.

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

Question on the Second Reading of the new clauses proposed, put and agreed to.

Clauses read the Second time.

Proposed additions

New clauses 11A and 11B

That the Bill be amended, by adding after clause 11 --

"11A. Recovery of fees, expenses, etc.

Section 131(1) is amended by repealing ", or in the case of an unincorporated bank, from the directors jointly and severally thereof".

11B. Former licences, etc. deemed to be licences, etc.
under this Ordinance

Section 143(1) is amended -

(a) in paragraph (a), by repealing "and"; and

(b) by repealing paragraph (b).".

New clause 14

That the Bill be amended, by adding after clause 13 --

"Consequential Amendments

14. The Hong Kong Association of Banks Ordinance

The Hong Kong Association of Banks Ordinance (Cap. 364) and The Hong Kong Association of Banks By-laws (Cap. 364 sub. leg.) are amended as set out in the Schedule.

Question on the addition of the new clauses proposed, put and agreed to.

New schedule

New schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

Question on the Second Reading of the new schedule proposed, put and agreed to.

New schedule read the Second time.

Proposed addition

New schedule

SCHEDULE

[s. 14]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Amendment
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1.	The Hong Kong Association of Banks Ordinance (Cap. 364)	(a) In section 2, in the definition of "licensed bank", by repealing "or section 107";
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(b) in section 8(1)(b)(i) by repealing "or which are licensed under section 107 of the Banking Ordinance";

(c) in section 16(a)(ii) by repealing "or which is licensed under section 107 of the Banking Ordinance".

2.	The Hong Kong Association of Banks By-laws (Cap. 364)	(a) In by-law 2(2) by repealing "or which are licensed under section 107 of the Banking
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sub. leg.) Ordinance";

(b) in by-law 16(1)(a) by
repealing ", or, in the
case of an unincorporated
member, its principal
place of business";

(c) in by-law 16(3) by
repealing "or principal
place of business".

Question on the addition of the new schedule proposed, put and agreed to.

INSURANCE COMPANIES (AMENDMENT) BILL 1990

Clauses 1 to 11 were agreed to.

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1990

Clauses 1, 3, 4, 6 to 11, 13 and 16 were agreed to.

Clauses 2, 5, 12, 14 and 15

FINANCIAL SECRETARY: Sir, I move the amendments as set out in the paper circulated to Members.

The main purpose of the Bill is to improve the notification procedures under the principal Ordinance. To recognize modern information technology and to ease the burden of reporting upon persons, especially overseas residents, clause 14 is amended to add facsimile transmission as an accepted method of notification. At the same time, clause 15(b) is amended to give the necessary flexibility if, in future, practical experience of the operation of the Ordinance reveals that supplementary provisions in respect of the methods of notification are needed.

Clauses 5 and 12 are amended to reduce the maximum age of a child from 21 years to 18 years to bring the provisions of the Ordinance into line with the recently

enacted Law Reform (Legal Effects of Age) Ordinance 1990.

Clause 2 is amended to delete the definition of "child" in section 2 which provides that "child includes a step-child." We agree with the ad hoc group that it would be unreasonable to hold the person responsible for interests held by a child of his spouse's former marriages who may not have close contacts with him.

Sir, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting paragraph (a) and substituting --

"(a) in subsection (1) --

(i) by repealing the definition of "child"; and

(ii) by adding after the definition of "document" --

""Exchange Company" means the Exchange Company as defined in section 2(1) of the Stock Exchanges Unification Ordinance (Cap. 361);"; and".

Clause 5

That clause 5 be amended, by deleting "21" where it secondly occurs and substituting "18".

Clause 12

That clause 12 be amended, by adding before paragraph (a) --

"(aa) in subsections (1), (2) and (3) by repealing "21" wherever it occurs and substituting "18";".

Clause 14

That clause 14 be amended, in the proposed section 51(a) and (b) by adding "or facsimile transmission" after "by post".

Clause 15

That clause 15(b) be amended, by deleting the proposed subsection (2) and substituting --

"(2) Without limiting the generality of regulations which may be made under subsection (1), such regulations may --

(a) impose requirements in relation to any of the methods of giving notification to a listed company or the Exchange Company specified or referred to in section 51; and

(b) provide for such incidental, consequential, evidential and supplemental provisions as are necessary or expedient for the purpose of giving full effect to those requirements.".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5, 12, 14 and 15, as amended, proposed, put and agreed to.

RADIATION (AMENDMENT) BILL 1990

Clauses 1 to 7, 9 to 13 and 15 were agreed to.

Clauses 8 and 14

PROF. POON: Sir, I move that clauses 8 and 14 be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 8

That clause 8 be amended, by adding before paragraph (a) --

"(aa) in subsection (2) by adding "section 7(3) or" after "by virtue of";".

Clause 14

That clause 14 be amended, by deleting the proposed section 22(2).

Question on the amendments proposed, put and agreed to.

Question on clauses 8 and 14, as amended, proposed, put and agreed to.

New clause 6A Regulations

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

Question on the Second Reading of the new clause proposed, put and agreed to.

Clause read the Second time.

Proposed addition

New clause 6A

That the Bill be amended, by adding after clause 6 --

"6A. Regulations

Section 13(1)(r) and (u) is amended by repealing "or regulations made thereunder".

Question on the addition of the new clause proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

BANKING (AMENDMENT) (NO. 3) BILL 1990 the original short title of which was
BANKING (AMENDMENT) (NO. 2) BILL 1990

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1990 and

RADIATION (AMENDMENT) BILL 1990

had passed through Committee with amendments and that the

INSURANCE COMPANIES (AMENDMENT) BILL 1990

had passed through Committee without amendment. He 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

BILL OF RIGHTS

MRS. SELINA CHOW moved the following motion:

"That this Council supports the enactment of a Bill of Rights and urges the Government in drafting the blue bill to take into account the views expressed by this Council."

MRS. CHOW: Sir, I move the motion standing in my name on the Order Paper.

On behalf of the Legislative Council ad hoc group formed in October of last year in anticipation of the publication of the draft Bill of Rights, of which I am convenor, I would like to extend our appreciation to all those who have helped to make our job

easier. These include the officials responsible for the Bill who have kept us up-to-date with the thinking of the Administration, the experts, legal and academic, who have educated us and the public with their knowledge and insight into a rather complex and difficult issue, and all members of the public who have come forward with their views, or published them in the media, to facilitate our discussions. I would like also to thank the members of my ad hoc group, who have been most patient and industrious in the course of our work, and have never lost sight, even in the most heated moments of debate, of the common objective -- that is, to tender the best advice that we as a group can agree upon to the Administration. Such advice has taken into account as far as we could the wishes of the community, the political reality of our future, and the consequences and implications of the passage of the Bill: such as the extent to which existing powers of the executive could be preserved, the practical implementation of the Bill and its effect on our legal and judicial systems, the accommodation and resolution of conflicting rights, and the effect of its existence on our everyday life.

The task of the group was far from simple, for we were required to consider the issue over a wide span of perspectives. There is the general philosophical question of whether a Bill of Rights, at this point in time, is necessary or desirable, and if it is, whether it should be regarded as absolute safeguard of rights covered by the Bill, so that all other rights and powers which are incompatible with them should be abolished. Whereas the group found little difficulty in arriving at the consensus that a Bill of Rights justiciable in the courts would certainly be seen as desirable protection for the ordinary man, there was considerable argument throughout the many meetings of the group over the question of balance. This became such a contentious issue that it had to be finally resolved in the whole Legislative Council In-House Meeting. While some Members feel that the absolute status of rights protected under the Bill should override other rights and powers found to be in conflict, an overwhelming majority of Members share the concern voiced by many quarters of the community that ways should be found to accommodate both these rights and necessary powers within the law for the effective protection of the community, particularly in matters related to maintenance of law and order, effective immigration control, and anti-corruption measures.

Then there is the constitutional aspect to consider. How can this Bill of Rights be entrenched, and how can it achieve supremacy over other legislation? And how can we be sure that this Bill of Rights will continue to exist beyond 30 June 1997?

Given the supremacy of the Basic Law as Hong Kong's constitution at the change of sovereignty, a status which no one disputes and which China makes sure repeatedly that no one forgets, there does not seem to be any other option open to us except the one presently proposed, that is, a form of so-called indirect entrenchment by mirroring Article 39 of Chapter 3 of the Basic Law with an amendment in the Letters Patent.

The group therefore accepts this as a realistic way to proceed, but is unable to comment on the amendment itself, the wording of which has not been made known to us.

The group accepted that while the Bill does not technically enjoy supremacy, clauses 3 and 4 of the Bill together ensure a special status for the Bill over existing and all future legislation by requiring the courts to interpret all legislation consistently with the Bill. The declared policy to adopt the administrative practice to include a clause in every future Bill making it subject to the Bill of Rights will also help, although it must be recognized that there is no legal requirement to obligate any future administration or any future legislature to do so. With supremacy beyond reach, this so called "special status" of the Bill is the best we can achieve under present circumstances.

The technical aspect of the Bill presented considerable difficulty to Members, especially Members with no legal background. Apart from the assessment of the full legal implication of the Bill, complication resulted from the need to relate this Bill to the Basic Law, the Letters Patent, the International Covenant of Civil and Political Rights, and other existing laws which have been identified to be possibly in conflict with the Bill.

There has been certain criticism on the drafting of the Bill. Some have found the almost word for word adoption of the Covenant into domestic law, with reservation and all, leave a lot to be desired. Some regard statements of principles agreed to by states party in an international treaty too broad as legislation. Others want the International Covenant of Social, Economic and Cultural Rights to be included as well. In the interest of time, and given the need to relate the Bill as closely to Article 39 as possible, Members feel the present form is acceptable. The inclusion of the other Covenant would give rise to further debate, and delay the Bill.

The group did not conduct a clause by clause comparison between the Bill and the

Basic Law, although Mr. Andrew WONG's presence in the group helped to provide the necessary links and advice at the right moments, since Mr. WONG was the convenor of the OMELCO Panel that produced the comments on the Draft Basic Law.

In order that the Bill be given the most thorough legal scrutiny, a working group was formed under Mr. Ronald ARCULLI to conduct this task. They identified about 50 existing Ordinances which may be questionable should the Bill be passed, and also posed questions on drafting to the Administration, some with suggested alternatives for improvement. The ad hoc group vetted and endorsed the findings of the working group, and hoped the Administration would find them useful.

The relationship between the Bill and existing legislation is one of the most controversial areas to be examined by the group. This mainly concerns the question of what should be done if powers of the executive, in particular law enforcement agencies, are considered to be in conflict with the Bill. On the one hand there is genuine fear that the Bill would render law enforcement totally ineffective by repealing those powers that the relevant agencies require to fight crime. On the other hand, human rights supporters are concerned that such a line of argument would compromise the Bill to such an extent that it would be ineffective as a safeguard for human rights.

After intensive research, study and debate, Members are generally satisfied that the situation may not be as problematic as it first appeared. Eventually we were able to arrive at the common ground that powers which are considered reasonable in the context of a democratic society could probably be provided by law and accommodated under the Bill of Rights. For one thing, we have received different legal advice as to whether some key sections are in contravention to the Bill. Section 10 of the Prevention of Bribery Ordinance is one such example. However even in the face of such controversy, we have been given to understand that the problem may be resolved through an amendment to the section. On the other hand, Members cannot see why the Independent Commission Against Corruption should be given special powers of search and seizure without being subjected to judicial supervision as other law enforcement agencies. In view of the concern voiced by many on the maintenance of law and order, in particular on the fight against corruption, we are glad to learn of a special working group which has been formed to study how we can preserve the effectiveness of the ICAC, and we look forward to solution proposed by this working group.

But of course the problem of incompatibility involves quite a number of Ordinances

other than those in the ambit of law and order. Members see this as the most urgent task that the Administration must undertake so as to allow tradition and precedence to be established according to the Bill in the courts as soon as possible. So far all the representations regarding the length of the freeze period that we received have not supported two years but have ranged from no freeze period at all to a maximum of one year. Members however recognize that there may be a need for flexibility, and are prepared to accept one year with one renewal of a further year if necessary. Members would also request the Administration to adopt the approach of partial freeze of only those laws which, if not frozen before amendment or replacement, may create legislative vacuums causing instability or chaos to the system.

The question of conflicting rights needs also to be addressed. The best known example is Heung Yee Kuk's rights of the male heir safeguarded under customary law which is quite evidently in conflict with equality of the sexes. Another possible conflict exists between the right to privacy and the right to freedom of expression, both rights protected by the Bill. If the Administration's intention is to leave such conflicts to the courts, then this makes strong justification for partial freeze, allowing the courts to deal with these conflicts as soon as possible.

While the principle of the Covenant to be applicable between individuals as well as individuals and government is well supported, the group has received many representations against the immediate application of the Bill to disputes between individuals. Members are persuaded that a step-by-step approach, leaving inter-citizen rights to be incorporated at a later stage, is probably a more sensible and practical way to proceed.

Above, I have attempted to highlight the key points on the Bill in the group's report. Emerging from the discussion on the Bill is the clear call for the setting up of a Human Rights Commission. The group concludes that the proposal deserves detailed study, and hopes that Government will investigate its practicability. In our view the Commission, if formed, should:

- assume an educational role;
- assume the role of arbitrator in rights of action between individuals;
- review legislation and recommend changes to those laws that may conflict the Bill;
- receive and investigate complaints; and
- issue guidelines on definition of human rights.

Members feel the Commission should make its decision public. It should also maintain independence.

Sir, before I close, permit me to take off my convenor's hat, and state very briefly my own view on the Bill.

I am convinced a Bill of Rights, however imperfect, will boost the confidence of our people. It should be seen as an integral part of our democratic evolution. I cannot agree with the thinking that we should let well alone. Is that not a familiar tune that is re-sung from time to time whenever there is call for changes in our system? The fundamental flaw in the "Don't rock the boat" school of thought is a failure to recognize that the boat is rocking. We wish it to be clear of rough waters, but in order to do so we have to steer it, not to let go at the helm. We cannot ignore the fact that we are in a time of change, and it is our job to see to it that Hong Kong be given the right system of checks and balances to handle that change. At the same time, we must heed the calls from our community to progress cautiously, taking a step-by-step approach, and explaining our case to China, who has repeatedly assured us that she is prepared to respect our autonomy. But progress we must. This Bill is a component of that progress.

Sir, there is much to be done and we have lost much time. I appeal to Government to do all it can to promote the concept of human rights within a free and responsible society in anticipation of the Bill which clearly enjoys the support of our people. Sir, I so move.

Question on the motion proposed.

MR. ARCULLI: Sir, I am sure that a number of important aspects on the proposed Bill of Rights ("the White Bill") will be discussed during today's debate. I propose to deal with one aspect, and that is, inter-citizen or third party rights. By this I mean such rights as one person may have against another as is provided in the International Covenant on Civil and Political Rights ("the ICCPR" or "the Covenant"). The relevant clause in the white Bill, Sir, is clause 7 which provides and I quote:

"7(1) This Ordinance binds the Government and all authorities and persons whether acting in a private or public capacity.

(2) In this section, "person" includes any body of persons corporate or incorporate."

When referring to clause 7, paragraph 20 of the Commentary on the White Bill states and I quote:

"The Ordinance will apply to everyone, including the government. When the government has dealings with people in Hong Kong, or when one person in Hong Kong has dealings with another, they are prohibited by law from breaching the Bill of Rights."

Sir, the intention and scope of the White Bill is quite plain: if enacted it will bind everyone.

In the course of the ad hoc group receiving representations, I understand a minority has suggested that inter-citizen rights should either be excluded, deferred or perhaps frozen for a period. Let me say at once that I have not yet been persuaded to this view nor is it shared by the great majority of all the representations received by the ad hoc group. Indeed some have stressed the importance that no organization or person should be exempted from compliance with a Bill of Rights. Those advancing such views have also suggested that the Administration should give a commitment on the speedy introduction of legislation or other unspecified measures in order to give effect to the relevant articles of the Covenant. Another suggestion is that rights of action in respect of inter-citizen rights should be handled by a Human Rights Commission. Neither the scope nor mandate of such a Commission has been elaborated and if this were to be a viable option a detailed study and proposal will have to be put forward.

Sir, I believe we should examine the reasons put forward in support of the suggestion to exclude, defer, freeze for a period or provide in some other way inter-citizen rights which I understand to be as follows:

(a) That inter-citizen rights are not included in Bills of Rights in some other countries but are provided for in specific human rights legislation.

(b) That the language of the Covenant is that of a treaty which is not the same as the language used in domestic laws and that such language is generally loose with many terms undefined leading to uncertainty and confusion as well as encourage litigation between private citizens.

The examples referred to in point (a) are not entirely appropriate because in some instances the Bill of Rights referred to was in the form of draft legislation rather than enacted law. Secondly, reference was not made to the European Convention of Human Rights which contains inter-citizen rights and which incidentally binds the United Kingdom. Lastly, if some countries choose to implement the ICCPR in part and not the whole of it that is a matter for them. The concerns referred to in point (b) should be considered with the following three points in mind: Firstly, if the language of the ICCPR is too loose or uncertain for the protection or enforcement of inter-citizen rights can it be regarded as sufficiently clear and certain when it comes to the enforcement of rights by an individual against the Government? Secondly, we must not forget that international case law will undoubtedly help in the interpretation of the Bill of Rights in Hong Kong. Thirdly, if inter-citizen rights are to be the subject of separate legislation would we be creating human rights that have two different status? Will we use words in such separate legislation that will be materially different? If so, what will be the effect? How do we perform this surgery of separating rights against the Government as opposed to an individual? Surely it cannot be right that there should be a difference between the violation of a right whether by the Government or by an individual! Lastly, the concern of too much litigation is the wrong approach to take as well as being unsound. I say this because the suggestion is not to exclude inter-citizen rights altogether but simply to introduce such rights by separate legislation rather than in the proposed Bill of Rights. If someone is bent on litigation he is unlikely to be deterred simply because there is separate legislation.

Sir, if we were to limit the proposed Bill of Rights to a citizen/government relationship how is it proposed to distinguish the act of a civil servant as an act in such a capacity as opposed to such civil servant acting on a frolic of his own? In the former case the Government will be responsible for such action whilst in the latter it may not. I have myself witnessed the permit holder of a human rights exhibition being queried by no less than three police officers within half an hour as to who he was, whether there was a permit and so on. Was this a coincidence or were those officers acting on a frolic of their own?

Sir, so far those who have advocated that inter-citizen rights be excluded, deferred or frozen for a period have perhaps concentrated too much on the areas concerning privacy and discrimination. There are other human rights that are equally important and not necessarily less complicated. Some examples are as follows:

(a) Article 3 which refers to cruel, inhuman or degrading treatment. Surely, we are not saying that only governments are capable of handing out such treatment.

(b) Article 7 which provides that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. Can we be referring only to government contracts?

(c) Article 8 which includes the freedom to choose one's own residence.

(d) Article 13 which provides that everyone shall have the right to recognition everywhere as a person before the law. Does this mean that such recognition is only to come from the Government?

(e) Article 15 which deals with the right to freedom of thought, conscience and religion and includes the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions are respected. Is it suggested that these freedoms should only be observed by the Government and no one else or by no other organization?

Sir, in this context I would like to remind the Administration of what is said in paragraph 6 of the Commentary and I quote:

"For some time there has been growing support in the community for the idea of a single piece of legislation, a Bill of Rights, which would bring together in domestic law all the relevant rights included in the Covenants. This idea was raised in a number of contexts, notably during local discussion of the first draft Basic Law in 1987; and later, in 1988, at a meeting of the United Nation Human Rights Committee in Geneva. During 1989, public support for such Bill increased....."

Sir, may I emphasize that the purpose of a Bill of Rights was succinctly embraced by the words in paragraph 6 and again I quote: "the idea of a single piece of legislation, a Bill of Rights, which would bring together in domestic law all the relevant rights." Have we been given cogent reasons to depart from this objective? Clearly not! Sir, if the Administration is minded to consider excluding, deferring or freezing inter-citizen rights I believe we owe the community a duty to raise this issue in clear and unequivocal terms. This coupled with the prospect of the formation of a Human Rights Commission is good reason for there to be a further public

consultation so that we will all know where we stand.

Sir, in conclusion I re-iterate that inter-citizen rights is but an inseparable part of any effective human rights legislation and that clause 7 of the draft Bill of Rights should not be amended. With these remarks, Sir, I support the motion.

MR. CHEUNG YAN-LUNG (in Cantonese): I welcome the introduction of the Hong Kong Bill of Rights. This year Hong Kong will be joining some over 100 countries in the world to have a Bill of Rights as part of their laws. It is part of an emerging trend in the second half of the twentieth century. But more importantly it is what Hong Kong vitally needs at this time of its history.

Hong Kong has lately undergone a series of confidence crises. A substantial number of our population are making applications to emigrate to foreign countries, people packing and leaving Hong Kong every day in significant numbers. They have all contributed to Hong Kong's success in the past. The United Kingdom nationality package hopefully is a step in the right direction to halt this trend. But this package is only for the chosen few. What about the majority of people in Hong Kong who are not qualified under the nationality package and do not have the means and qualifications to leave Hong Kong for other countries?

To them, Hong Kong is their only home and for them, it is our duty to make this place livable and workable up till 30 June 1997 and beyond.

The Bill of Rights guarantees a framework within which a fair and egalitarian society works. Given the good tradition of a dependable legal system with justice being done, the Hong Kong people is assured of this protection up till 30 June 1997.

On 1 July 1997, the Basic Law will come into operation. In Article 39 of the Basic Law, it is provided that "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour covenants as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region". What we are gathered here today for is to build that bridge so that the Bill of Rights will as from the date of its enactment have a through road to 30 June 1997 and beyond.

Sir, as a member of the Heung Yee Kuk, I would like to draw Members' attention to the implications of this Bill on the indigenous population of the New Territories.

I would like to point out the implications of Article 23 of the Bill on the customary rights and tradition of land ownership in the New Territories. The Bill, once enacted, will undermine the traditional practice of land ownership in the New Territories, turning it into a complex and confusing problem which is difficult to be handled satisfactorily.

Annex III to the Sino-British Joint Declaration expressly recognizes the ownership of various types of rural holdings and properties of the indigenous villagers in the New Territories, but Article 23 of the Bill of Rights attempts to make such rights unlawful. This is in violation of the Sino-British Joint Declaration. Moreover, Article 40 of the Basic Law of the Hong Kong Special Administrative Region which was promulgated by the Chinese Government early this year also clearly states that the lawful traditional rights and interests of the indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region.

In view of the foregoing I therefore submit that the Bill must avoid any violation of or conflict with the Sino-British Joint Declaration and the Basic Law. In respect of the traditional practice of land ownership in the New Territories, the Government should work out as soon as possible a viable solution such as making the traditional practice an exemption, so that existing practice already recognized by the Sino-British Joint Declaration and the Basic Law may remain unchanged.

While supporting the passing of this Bill of Rights, I have my own reservations. One has to balance the rights of each individual against the collective rights of society as a whole. I mean the safety and security of its members. The special powers given to the Independent Commission Against Corruption have proved to be beneficial in combating corruption in Hong Kong in the past. I would like to see them retained. The right of the police to stop citizens to check their identity is an effective way to combat crimes and I would like to see this power retained but with a more formulated and publicized procedure to be worked out by the police without infringing the Bill of Rights.

For these, I agree with the freezing of the operation of the Bill of Rights for a period of two years so as to give people time to iron out the differences between

this Bill and other pieces of legislation.

It is good of us here to talk about the inauguration of the Bill of Rights. But it is an effective piece of legislation only if the Hong Kong people are aware of and make good use of it. I understand that in countries like Canada, New Zealand and Australia, there exist a Human Rights Commission with the following four main objectives:

(1) to educate the public about human rights;

(2) to devise codes on conducts as the set standards against which behaviour is to be judged;

(3) to identify any piece of legislation that conflicts with the Bill of Rights; and

(4) to conduct an ombudsman-like investigation and resolve the dispute of different parties.

I believe that the role and functions of the Human Rights Commissions are worth considering and I would urge the Government to look into the possibility of setting up such a commission in Hong Kong in the next two years.

A piece of good legislation like the Bill of Rights needs proper guidance and implementation to be effective.

Sir, with these remarks, I support the motion.

MR. CHUNG (in Cantonese): Sir, just like many members of the public, I am looking forward to an early enactment of the Hong Kong Bill of Rights Bill 1990 after it has undergone the process of consultation and debate.

At the present moment, Hong Kong is developing its own system of representative government with the target of establishing a democratic legislature. On the other hand, China has already promulgated the Basic Law which will provide a high degree of autonomy for the territory. Under such circumstances, it appears opportune at this time to enact a Bill of Rights which will serve as a legal safeguard of both

civil and political rights for the people of Hong Kong.

In essence, the Hong Kong Bill of Rights Bill, or in short "the Bill", seeks to implement the provisions contained in Paragraph 4 of Section XIII of Annex I to the Sino-British Joint Declaration by laying them down in clear and concrete terms in the domestic law. This Council should therefore help proceed with the enactment. It is certain that the passage of this Bill will boost the confidence of the local people as well as the international community in the future of the territory.

In my view, the problem of "overriding status" between the Bill and the Basic Law will not exist, because as far as the basic requirement of the protection of human rights is concerned, these two pieces of legislation have their roots in the Sino-British Joint Declaration and the public opinion of the Hong Kong people. Furthermore, if these two pieces of legislation go hand in hand on a common basis having regard to the practical situation and the legal aspect, they should be "complementary" and not "contradictory" to each other in terms of legal protection of human rights for the people of Hong Kong.

It is quite natural that the extent of human rights available in a society cannot be unlimited. Hence we have to make legislation to govern it. For the same reason, the more freedom we get, the greater the extent of check and balance by law is required. As Hong Kong is in midway of the transitional period, I believe "safety first" is the utmost concern of the general public. In order to ensure peace and order in the community as well as to protect the interest of the public, I am of the opinion that reservations should be made in the Bill regarding provisions in relation to the prevention or fighting of crimes.

The most important thing is we should not let the lawbreakers take advantage of the Bill under the pretext of protecting human rights. Take for instance, police power to stop any pedestrian for identity check and to question any suspected person loitering in the street should not be affected by the Bill at this particular time and under the present circumstances. If it is necessary, attempts can be made to step up measures to monitor the carrying out of police duties and the behaviour of police officers, and to conduct review at any time on issues involving the abuse of police power. All in all, it is not advisable to let the carrying out of police duties in maintaining law and order be hampered for the sake of protecting human rights.

It should be noted that the Bill of Rights should not impinge upon the law

enforcement work of the Independent Commission Against Corruption (ICAC) and its effective power in the prevention of bribes. Although privacy and private ownership have to be protected under the law, however, "human rights" should not be used as a kind of refuge for those engaged in corrupt and illegal activities. It is absolutely inappropriate to relax those legislations which are essential for anti-corruption, particularly in the run-up to 1997. A clean administration does not entail privilege but is itself the feature of a good government. Apart from preventing the resurrection of corrupt practices, it also sets a good example of natural justice in the community, thus providing fair protection for free competition under the basis of human rights.

As we all know, "equality between men and women" is a conceded basic human right. However, in enacting the Bill of Rights for Hong Kong, we should properly preserve the lawful traditional rights of the indigenous residents in the New Territories which have been mainly passed through the male line. There is one point that this Council has to take note of: if the Bill in its present form brings changes to the customary rights of the New Territories, it will not be consistent with Annex III to the Joint Declaration and the relevant provisions in the Basic Law. The question is whether there is a need for us to do that or can we do that unilaterally? In my view, the answer is: there is no need to do so and it is impossible to take such a step.

In 1976, when the United Kingdom became a signatory to the International Covenant on Civil and Political Rights, a statement concerning some "reservation clauses" in respect of Hong Kong was issued stating that rights such as national self-determination and universal franchise as set out in the covenant would not be applicable to Hong Kong. The Bill of Rights drawn up according to the provisions concerning the Covenants as related to in the Sino-British Joint Declaration may incorporate certain necessary reservations on some legal provisions on human rights to take account of the actual circumstances in the territory including security and traditional needs. These reservations should be subject to review in the future. In this way, it will not undermine the strength of law in the protection of human rights; on the other hand, it will step up the effect of the rule of law.

Under the present constitutional framework and according to the provisions in Paragraph 2 of Section XI of Annex I to the Joint Declaration, the Hong Kong Government should be able to join the International Human Rights Organization directly through the appropriate channel after the official passage of the Bill. If with public support the Bill of Rights is able to secure a three-fold safeguard, namely from local enactment, from the Sino-British agreement and from the international covenant, we

will have gone one step further in securing the well-being of our people.

Sir, with these remarks, I support the motion.

MISS TAM: Sir, the individual rights and freedoms of those of us who live in Hong Kong are safeguarded in the Joint Declaration on the future of Hong Kong as follows:

"The provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force".

Thereafter, the Chinese Government conducted a five-year exercise in the drafting of the Basic Law and after many sessions of argument, Article 39 of the Basic Law now reads:

"The provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region."

The Bill of Rights which we now seek to introduce in Hong Kong closely follows the wording of the ICCPR. In my own mind, I have no doubt whatsoever that this is a continuation of the work to protect our rights and freedoms which started on 19 December 1985 when we signed the Joint Declaration. The fact that the Basic Law saw fit to say that such rights shall be implemented through the laws of Hong Kong is, to me, an indication of support that we should, other than having the general common law, think of other ways to fully implement the provisions of that International Covenant. In fact, in Hong Kong our protection of the individual under the common law is insufficient or else we would not find such a gap between our local legislation and the requirements of the Covenant that the ad hoc group has pointed out and thoroughly analysed.

Sir, I am not very sure whether I am in the majority or minority of those who have participated in the drafting of the Basic Law to see things the way I have described. Searching through the provisions of the Basic Law and through some newspaper reporting, one of the points of argument that has been put forth concerns laws that are to be maintained in Hong Kong as provided in Article 8 of the Basic Law which does not include statute which enjoys a status of supremacy or entrenchment.

Article 8 of the Basic Law states: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained except for any that contravene this Law, and subject to any amendment by the legislature of the HKSAR." The common law that is to be maintained, I hope, is not in a frozen state, that is to say the common law is a body of law which evolves through the needs of society and we are always persuaded by authorities from other common law countries as to how it should develop. I think those who wrote Article 8 must have appreciated that the common law is always a developing body of law which actually could be applied even if we have a statutory Bill of Rights because the interpretation by the court will still be according to common law precedents available in other common law jurisdictions, which are relevant and could be taken into consideration by the courts in Hong Kong in reaching their decisions. So my reading of Article 8 of the Basic Law does not amount in any way to saying that if we should introduce a statutory Bill of Rights, the common law will be excluded from its application to Hong Kong. In fact, my thinking is that they should complement each other.

Having established that point, I would like further to point out that there has been worry expressed as to the method of entrenchment and the question of supremacy. The convener of the ad hoc group had already explained how the group dealt with the Administration's proposal of indirect entrenchment through amendment of the Letters Patent and the administrative measure that could be taken in later days to ensure that future legislation would not conflict with the Bill of Rights. This I regard as the best way to answer any worries that either the Bill of Rights will be superior to the Basic Law or override the interpretation of the Basic Law under Article 159.

Having established these two points, I think it is important that at this point of time the people of Hong Kong are assured of the fact that the Government cares enough about their rights and freedoms to take a positive step, albeit the implications may be far-reaching, albeit there may be controversies as to how exactly we should balance the rights of an individual against the rights of the community in terms of protection and of law and order. But it is still very timely that we should take a brave step to do so.

Sir, I have tried, through my private contacts, to put forth the Hong Kong case. But I am finding that at times it is difficult because there are forces pulling the other way. In the remaining period of time between the enactment of the Bill of Rights and the debate, Sir, I do not think it would be a bad idea for the Hong Kong Government

to continue to assure the Chinese Government that not only is the Bill of Rights not in contravention of the Basic Law, but it actually makes sure that there will be better compliance with the terms that are included in the ICCPR which is exactly what the Joint Declaration wanted and exactly what Article 39 aimed at.

There has been discussion, Sir, if I may so point out, in respect of the rights of the indigenous New Territories inhabitants in the Basic Law and there were in fact discussion papers being put forth by the Hong Kong members of the Basic Law Drafting Committee. This may lead to some arguments in the future as to the kind of understanding that has been reached in the discussion of Article 39 and as to the scope of the rights of those indigenous residents. And I do not know whether this will effectively create some more obstacles to the acceptance by the Chinese Government of the Bill of Rights.

But, Sir, I think it is very important that whereas there are conflicts between the Hong Kong law and the Covenant, such conflicts are to be resolved only by changing the Hong Kong law because the Covenant itself is already accepted as the yardstick for measurement. The second point of concern that has been expressed, as I looked through the press reports or from some third-hand or fourth-hand information, relates to the balance of individual rights and the rights of the community and to whether this Bill of Rights, if enacted, will substantially affect the power or effectiveness of the Independent Commission Against Corruption and the police force. Sir, I do not think this is a Chinese concern. This is a concern of the Hong Kong community. Whilst in principle I am in full support of the Bill of Rights, I would be reluctant to support any legislation that would unnecessarily erode the police power in the enforcement of law and order and the effective measures that could be taken against corruption.

With these reservations, I support the motion before Council.

MR. HO SAI-CHU (in Cantonese): Sir, the enactment of the Bill of Rights to enshrine the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong as a means to safeguard the basic rights of Hong Kong people should have been a good move by itself. It should be supported in principle.

However, I think it is worth the while to note that the Bill should take into account the special circumstances of Hong Kong if it is to remain effective in days

to come. Unlike other countries and territories, Hong Kong will have its sovereignty reverted to China in 1997. The Basic Law of the Special Administrative Region will become the supreme law of Hong Kong. This is a fact generally conceded by the Chinese and British Governments as well as the local community. The Basic Law of the Hong Kong Special Administrative Region was approved by the National People's Congress and was promulgated in April this year. Article 8 of the Basic Law stipulates that the laws previously in force in Hong Kong shall be maintained. The phrase "the laws previously in force" of course refers to the laws in force in 1984 when the Sino-British Joint Declaration was signed. All these laws are already known to the Chinese Government. Any important legislation enacted by the Hong Kong Government at a later stage and intended to be effective after 1997 should be brought up for discussion by the Sino-British Joint Liaison Group in order to ensure that the contents of the legislation will be accepted by both Governments. Of course, Britain is responsible for the administration of Hong Kong and the legislative power is vested in the Hong Kong Government before 1997. Discussion is by no means intervention. Instead, it helps secure the continuity of our legislation after 1997. We often say that efforts should be made to maintain the stability and prosperity of Hong Kong. Undoubtedly it will be a heavy blow to confidence if an important piece of legislation having been implemented in Hong Kong for some years is struck down and replaced after 1997. To maintain the long-term stability of Hong Kong and in the interests of those who take Hong Kong as their home, I agree to the point mentioned from time to time by His Excellency the Governor, Sir David WILSON, that co-operation among China, Britain and Hong Kong should be strengthened and that consultation on important issues is necessary. Certainly, this approach should also apply to the introduction of the Hong Kong Bill of Rights Bill. Article 39 of the Basic Law recognizes the legal status of the International Covenant on Civil and Political Rights in Hong Kong. This provides a common basis for friendly consultation and discussion between China and Britain.

As regards the legal status of the Bill, it is provided in the Hong Kong Bill of Rights Bill 1990 that "this Ordinance will override existing law". Such formulation cannot precisely define the superior status of this Bill. It can even be taken to mean that the Bill will be the supreme law. To date, no country or territory in the world have ever adopted an international covenant as its highest law unless it is a trusted territory governed by the international community. As the Basic Law will have supremacy over all other legislation after 1997, the Bill should be consistent with the Basic Law or else it will definitely be amended after 1997. As an example, Article 40 of the existing provisions of the Basic Law

stipulates that "The lawful traditional rights and interests of the indigenous inhabitants of the 'New Territories' shall be protected by the Hong Kong Special Administrative Region." Hence, in implementing the entitlement to equal rights as provided in Article 1 of the Bill of Rights, consideration should be given to this kind of special circumstances. Given the principle of "one country, two systems" as stated in the Basic Law, the people of Hong Kong in exercising their rights and freedoms should not in effect create conflicts between Hong Kong and the mainland. Apart from this, we should have a comprehensive and thorough understanding of the trend of public opinion in Hong Kong. The strength of public clamour should not be taken as the prevailing opinion of our community. For instance, questions like whether the police and Independent Commission Against Corruption have been given too much power, whether death penalty should be abolished and whether homosexuality should be decriminalized and so on are issues relating to human rights and are highly controversial. Regarding the powers of the police, I have read a report on the findings of a survey conducted in a certain district, which revealed that most of the respondents did not think the present powers of the police are too extensive. On the issue of stop and check of identity by police officers, as it has been found that many crimes were detected in the course of such action, members of the public would normally co-operate if the manners of the policeman concerned were good. It should be noted that many members of the public are not ignorant of human rights but they are mature enough to accommodate such police action. Should some of the law enforcement powers which have been working well and accepted by the public be scrapped or severely restricted before there is any thorough understanding of the full extent of public opinion, the work of our law enforcement officers will be hampered. It will deal a blow to their morale, resulting in a further wastage of manpower. Lawbreakers will not be deterred in time and sentence will not be duly meted out. Law and order in our society will become a cause for concern if righteousness is overshadowed by evil deeds.

Sir, the Bill of Rights is a new and very important piece of legislation. The issue involved are wide-ranging and complicated. A careful study into many of the problems needs to be carried out to weigh the pros and cons before a decision can be made. The Bill should not be introduced hastily. All in all, I support the enactment of a piece of legislation to protect human rights in Hong Kong and endorse the view that it should be formulated in a fully adequate way to ensure the protection of human rights to the general public as well as to maintain peace and order in our society. I suggest that in formulating the legislation the Government should listen to the views of various sectors, including of course the views expressed in this debate

today! However, as the first part of today's motion reads "that this Council supports the enactment of a Bill of Rights" and according to the interpretation clause of the Hong Kong Bill of Rights Bill 1990, "Bill of Rights" is a proper term referring to the Hong Kong Bill of Rights set out in Part II of the Bill, and I have mentioned earlier that I cannot agree to quite a number of problematic provisions in Part II of the Bill which cannot be applied to Hong Kong and which cannot be resolved, I therefore object to the motion.

4.27 pm

HIS HONOUR THE PRESIDENT: Members might care to take a short break at this moment.

4.51 pm

HIS HONOUR THE PRESIDENT: Council will resume.

MR. MARTIN LEE: Sir, it gives me great pleasure to see so many of my honourable colleagues speaking on this motion and displaying such an interest in human rights issues. This debate and the large number of lengthy written submissions that the ad hoc group has received testify to the considerable interest in Hong Kong in the Bill of Rights. The fact that not a single one of the submissions argued against implementing a Bill of Rights demonstrates the overwhelming support in the community for the Bill, and I urge the Administration to come forward with a blue Bill within the shortest possible time.

But there still remains a number of misconceptions as to the nature of a Bill of Rights. First of all the Bill is not some novel device that conflicts with the Joint Declaration or the Basic Law. To the contrary, the Joint Declaration specifically decrees that the International Covenant on Civil and Political Rights (ICCPR), from which the Bill of Rights is copied almost word for word, shall remain in force after 1997.

The Basic Law goes even farther, for Article 39 requires that the ICCPR "shall be implemented through the laws of the Hong Kong Special Administrative Region." It is only if Hong Kong does not enact the provisions of the ICCPR into Hong

Kong law that the Hong Kong Special Administrative Region (HKSAR) will be in violation of the Basic Law, and certainly a Bill of Rights represents the most comprehensive and convenient way of fulfilling the obligations under Article 39. Given China's promises in the Joint Declaration and its insistence in the Basic Law that the ICCPR shall be implemented in the HKSAR, I am confident that any negative statements currently coming from China regarding the Bill of Rights are only the result of misunderstanding and misinformation. Once the Chinese Government fully understands that the Bill of Rights merely obeys its own imperative language in the Basic Law, they will cease objecting to Hong Kong being given a Bill of Rights.

The second misconception centres around the fear of some of my colleagues in the ad hoc group that "a Bill of Rights might severely hinder the effective enforcement of law and order, and, in particular, the anti-corruption activities of the Independent Commission Against Corruption." This fear, Sir, has no foundation in fact, and indeed the experience of the many countries with both a Bill of Rights and strong anti-crime and anti-corruption laws demonstrates that human rights protection is in no way incompatible with effective law enforcement. The position paper of the Hong Kong Bar Association says: "We have no reason to believe that the application of the ICCPR will undermine the efficacy of law enforcement agencies."

The people of Hong Kong must understand that the Bill of Rights is not a sword that threatens effective law enforcement; rather the Bill provides for a shield against violations of human rights that have been internationally accepted as fundamental by over 80 countries worldwide which are signatories to the Covenant. As the Hong Kong Bar Association stresses, "It must not be forgotten that the ICCPR standards are minimum standards." Hence, I applaud the recommendation of the ad hoc group that no government department or law enforcement agency be exempted from the Bill of Rights.

The third and most widespread misconception is that once the Bill of Rights is enacted, then all our rights will be effectively protected. For the Bill is merely a piece of paper. If the present or future Government of Hong Kong is not fully committed to upholding the Bill, or if the people of Hong Kong do not know or are not eager to protect their own rights, then the rights in the Bill will burn and float away like a traditional Chinese offering to a deceased relative.

Sir, the people of Hong Kong will suffer gravely if their Government chooses to treat the Bill of Rights as contemptuously as it has treated the ICCPR on which the

Bill of Rights is based. For, in 1976, 14 years ago, the British Government extended the ICCPR to Hong Kong, and for 14 years it has studiously maintained to the United Nations that all laws in Hong Kong are in conformity with the Covenant. Now, however, the Government demands a two-year freeze period on the operation of the Bill so that it can have time to amend all the laws that clearly contravene the ICCPR-derived Bill of Rights!

Included among such laws are the Film Censorship Ordinance and the Public Order Ordinance that the Government drafted and proposed long after it had pledged to abide by the provisions of the ICCPR. It is particularly ironic that the Government is now considering amending the Film Censorship Ordinance. For just two years ago, the Government rejected my proposed amendment, which would have forced the film censor to comply with Article 19 of the ICCPR, instead of merely taking it "into account". Then, the Attorney General strenuously protested that the Ordinance without my amendment would already accord with the ICCPR.

A critical test, Sir, of whether the Government is now willing to protect human rights is whether it will make the Bill of Rights effective by amending both the Letters Patent and the Crown Proceedings Ordinance. Over three months ago, when the draft Bill was released, the Government told the people of Hong Kong that the Letters Patent would be amended to provide the supremacy and entrenchment elements lacking in the draft Bill of Rights. Yet, we now find ourselves debating the draft Bill without knowing when and, more important, how the Letters Patent will actually be amended. The Government has also recognized that the availability of effective relief to citizens for violations of the Bill will be sharply limited if the present Crown Proceedings Ordinance shall remain unchanged, and yet the Government has been evasive as to when and how that Ordinance will be amended.

Sir, I cannot over-emphasize that the Bill of Rights, amendment to the Letters Patent, and changes in the Crown Proceedings Ordinance are an inseparable package. If the Government refuses to come forward with the entire package, it will effectively gut the purpose of the Bill of Rights and demonstrate that the Government is not genuinely committed to upholding human rights.

Though it is not particularly worthwhile to discuss supremacy and entrenchment of the Bill of Rights before we see the long-awaited amendment to the Letters Patent, I would like to correct any misconception that the Basic Law does not already have these two key attributes. There is no question that Article 39 of the Basic Law ought

to be improved upon. Nevertheless, the first paragraph of Article 39 does provide for entrenchment by requiring that the provisions of the ICCPR as applied to Hong Kong shall be implemented through the laws of the HKSAR. Hence, all the provisions of the ICCPR which were extended to Hong Kong in 1976 -- such as freedom of association or expression -- must be put into the domestic laws of HKSAR and the Bill of Rights will do just that. Any amendment to the Bill of Rights that is inconsistent with the ICCPR would be struck down by the courts.

While the first paragraph of Article 39 entrenches the Bill, the second paragraph provides for supremacy. Specifically, it says that no restrictions on the rights and freedoms of Hong Kong residents shall "contravene the provisions of the preceding paragraph of this Article" (that is, the provisions of the ICCPR that will have been implemented through the Bill of Rights). The whole point of the second paragraph of Article 39 is to give the provisions of the ICCPR supremacy over any laws that the HKSAR legislature should enact.

But we must bear in mind that the Bill of Rights is still subordinate to the constitutional documents, that is, the Letters Patent before 1997, and the Basic Law after 1997. Hence, the Bill of Rights will have no problem continuing beyond 1997 as a piece of Hong Kong legislation.

A final point about the relationship between the ICCPR, the Joint Declaration, and the Basic Law is the question of whether Hong Kong will become a signatory to the Covenant. Section XIII of Annex I of the Joint Declaration clearly states that the Covenant shall remain in force after 1997. Article 39 of the Basic Law repeats this promise. Yet, currently, there is no indication that after 1997 Hong Kong will be able to be a signatory to the Covenant either through China or on its own.

As Amnesty International in London and the International Human Rights Law Group in Washington, D.C. have pointed out, Hong Kong is fully entitled to sign the Covenant on its own because of its membership in certain specialized multi-lateral organizations of the United Nations. The HKSAR's participation in these international organizations after 1997 is explicitly permitted by both the Joint Declaration and the Basic Law. If the promise that the Covenant shall remain in force after 1997 is to be fulfilled, Great Britain should allow Hong Kong to become a signatory on its own to the ICCPR before 1997, and it should seek either to persuade China to sign the Covenant herself or to allow the HKSAR to sign the Covenant on its own.

Now, Sir, I would like to turn to five areas that have received extensive attention in the report of the ad hoc group: the freeze period, remedies available under the Bill, the extension of the Bill to inter-citizen rights, the Reservations contained in Part III of the Bill, and the traditional rights of the indigenous inhabitants of the New Territories.

1. The two-year freeze period:

The ad hoc group is correct in firmly rejecting the Administration's unprecedented proposal of a blanket two-year freeze on the Bill of Rights over all existing legislation. Many people do not seem to realize, Sir, that we have already been denied some of the rights guaranteed in the ICCPR for 14 years. It is totally wrong to allow statutes that infringe upon basic rights such as freedom of expression to remain in full force for another two years -- and to put people in jail for violation of those statutes.

The Government has responded to this concern of the ad hoc group by stating that during the two-year freeze period, "law enforcement agencies will have to operate within the limits established by the ICCPR as applied to Hong Kong." Given that the Government has itself recognized that dozens of its laws contravene the ICCPR ever so long -- and that such laws would continue in full force during the freeze period -- such a response is not credible, if not downright deceitful.

As the ad hoc group rightly points out, only the courts will be able to determine authoritatively which statutes contravene the Bill of Rights. That process must begin as soon as possible if the flesh of case law is to be put onto the skeleton of the Bill of Rights in the short time before 1997. A Bill of Rights, moreover, that proves effective in practice is critical to confidence before 1997. For to continue to enforce laws that infringe upon internationally accepted human rights standards will only damage the confidence of the people of Hong Kong and the image of Hong Kong in the international community.

The Government has already had one year since they proposed to enact a Bill of Rights, and it is likely that they will have at least several more months before the actual Bill is passed by this Council. Given such a lengthy period of time in which the Government could have amended offending legislation, I see absolutely no need for a further freeze period. It is imperative that the Bill of Rights operate as

soon as it is passed.

Nevertheless, if my honourable colleagues insist on accepting a freeze period, I would limit any such period to six months. And in such an event I would support the ad hoc group's recommendation that the freeze should only apply to a schedule of statutes. I emphasize that the Government must specify precisely which sections of statutes they intend to freeze and include that schedule in the blue Bill. Moreover, the Government must show this Council that a freeze on all these sections is absolutely necessary.

For example, section 10(2)(c) of the Film Censorship Ordinance, which gives the film censor the power to ban a film or excise a portion of it for political reasons, can easily be amended by adopting my proposed amendment to it of two years ago, that is, by requiring the censor "to comply with Article 19 of the ICCPR" rather than merely to take that article into account, and the Government does not need two years to do that.

Finally, the Attorney General must undertake not to prosecute anyone under a statute that is frozen, for such a prosecution would be a grievous violation of the Government's undoubted obligations under the Covenant, which have never been frozen.

2. Remedies available to those whose rights under the Bill are violated:

The question of legal remedies -- that is, what kinds of relief the courts can grant someone whose rights have been violated -- has not been sufficiently dealt with in the ad hoc group's report. Nevertheless, the question of remedies is of critical importance, for legal remedies often determine the actual effectiveness of the law in question. Remedies, in short, are the teeth of any law.

Yet, unfortunately, the remedial teeth in the draft Bill of Rights appear all too much like the dentures of an 80-year-old woman. As every submission from legal experts has emphasized, the reliance on the law of tort and the failure of the Government to amend the Crown Proceedings Ordinance mean that adequate relief will not be available to many of our citizens whose rights under the Bill have been infringed.

The law of tort often does not provide an adequate remedy for those whose rights are violated. For example, what kind of damages can a court award to a person who

is unable to see a film banned by a censor for political reasons or who is denied the right to march in a rally commemorating the democratic movement in China?

Sir, while one object of the Bill of Rights is to provide financial compensation for violations of human rights, the major purpose is to prevent those violations from occurring in the first place.

As all the legal experts have recommended, the Crown Proceedings Ordinance must be amended to allow for interim declarations to lie against the Crown. Such an amendment would be entirely consistent with Article 35 of the Basic Law, which guarantees that "Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel."

I thus support the Law Society's suggestion that clause 6 be amended to follow the wording of Article 24 of Canadian Charter of Rights and Freedoms: "Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

3. The protection of inter-citizen rights:

Article 23 of the ICCPR provides that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination" on several specified grounds. Yet, in the 14 years since the Covenant had been extended to Hong Kong, the Hong Kong Government has made absolutely no effort to fulfil its obligations under Article 23. If there is any "legislative vacuum" (borrowing expression from the Government) connected with the Bill of Rights, surely it stems from the utter failure of the Government to enact any anti-discrimination law.

Because of the importance of preventing discrimination and arbitrary invasions of privacy, I agree with the Honourable Ronald ARCULLI, the chairman of the working group of the ad hoc group, in his conclusion that the Government is correct in applying the Bill of Rights to individuals as well as public authorities. For Article 30 of the Basic Law specifically prevents individuals from interfering with other individuals' privacy of communication. Thus the inclusion of inter-citizen rights of action provides for consistency with the Basic Law.

In addition, Article 23 of the Bill does not on its own guarantee inter-citizen rights; rather it directs the Government to pass anti-discrimination legislation. Given all the above factors, I would advocate that inter-citizen rights under the Bill be frozen for one year in order to allow the Government enough time to draft legislation to protect citizens from unlawful discrimination and from invasions of their privacy. I also believe that a Human Rights Commission, which can play a very necessary educational, advisory, and investigatory role, might also assume primary responsibility for mediating inter-citizen disputes, though this point will need substantial further study.

4. The Reservations in Part III of the Bill of Rights:

Many submissions to the ad hoc group have been strongly critical of the Reservations contained in the Bill, yet the ad hoc group considers these reservations to be acceptable. When examining the Reservations, one must always bear in mind that they are exceptions to what the consensus of nations has accepted to be the very minimum of human rights protection. Any Reservation by its very nature therefore represents a denial of what the international community considers to be a fundamental human right. Since the present Reservations are not meant to be a permanent licence to allow for the violation of basic rights, I urge Britain and China to agree to remove all Reservations from the application of the ICCPR to Hong Kong as soon as possible.

The Reservation in clause 12 is an example of an unnecessary restriction on the basic rights of Hong Kong residents. Under this Reservation, the Government denies those Hong Kong residents who do not have the right of abode in Hong Kong the right to be represented by a lawyer even at their own expense in deportation proceedings or have a deportation order reviewed by the courts. Such a reservation directly conflicts with Article 35 of the Basic Law, which decrees that all Hong Kong residents -- irrespective of whether they have the right of abode in Hong Kong -- "shall have the right to...choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies." I see absolutely no point in the Government preserving a restrictive law that will be nullified in 1997 by the Basic Law.

5. Traditional rights in the New Territories:

In relation to the demands made by the Heung Yee Kuk, the ad hoc group has stated firmly that "the principle of equality between the sexes should be upheld." I fully

agree with this statement. No one in Hong Kong wishes to interfere with the lawful traditions of the indigenous people of the New Territories; yet I must emphasize again that the Bill of Rights establishes the baseline of human rights. Just as no law enforcement agency should be exempted from the Bill, neither should any particular group of people, no matter how eminent.

It is possible as a result of the Bill and subsequent anti-discriminatory legislation that certain discriminatory practices may have to end. Yet, just as it would have been untenable to support the continuation of concubinage on the basis of tradition, so too this Council must not support the continuation of other forms of discrimination against women. It is only those traditions that do not violate basic human rights that should be allowed to continue.

Before I close, I would also like to touch upon two matters briefly to which the ad hoc group report did not give adequate attention. The first is the problems resulting from the failure to adapt certain parts of the ICCPR in order to make them effective in the context of a domestic law. A clear example is Article 5 of the Bill of Rights, which states that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." This Article might be interpreted to mean that so long as the deprivations of liberty are in accordance with the law -- no matter how unjust it may be -- they would not constitute a breach of the Bill of Rights. In place of this sentence, as pointed out by Dr. JAYAWICKRAMA of the University of Hong Kong, the Bill of Rights should spell out the exact circumstances under which a person could be deprived of his liberty, just as in the Bills of Rights of Montserrat and the Falkland Islands.

The second matter relates to the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although I have concentrated exclusively in this debate on the ICCPR and its implementation through the Bill of Rights, some of the rights in the ICESCR should also be included in the Bill of Rights. The arguments as to why the rights in the ICCPR should be implemented through a comprehensive Bill of Rights apply with equal force to the rights in the ICESCR.

The Government has failed to support its contention that all the rights guaranteed by this second Covenant -- such as the right to form independent trade unions, the right to academic freedom, and the right to education -- "in general are not rights that can be easily enforced in the courts." Many of the rights in the ICESCR, however, are already found in the Basic Law -- for example, Articles 33 and 34. Since these

rights will become justiciable after 1997 under the Basic Law, the Government must give serious consideration to including these rights in the Bill so that a body of case law and experience can be developed around them just as in the case of the rights under the ICCPR.

In conclusion, I call upon all of us -- legislators, lawyers, judges and ordinary citizens -- to wake to the fact that the rights covered in this draft Bill have not been bestowed upon us by the Government; to the contrary, every human being is born with them. We must protect these rights jealously and not allow our Government to take away any right from anyone. For, if one right is taken away today, then tomorrow no right is safe. And if the least of my brethren loses his rights today, then tomorrow I will lose mine.

Sir, before I end my speech, I wish to say that I have read well in advance a copy of the draft speech of my honourable colleague, Mr. Martin BARROW, on capital punishment, and agree with the sentiment and logic. Sir, I support the motion.

MR. SZETO (in Cantonese): Sir, human rights are our inherent rights; give us back our rights. They are the rights which every creature is entitled to by birth, save and except animals like pigs, dogs or pandas and so on. The enactment of the Bill of Rights is only a means to restore our legitimate rights. It is not a kind of grant or largesse. Owing to restraints in historical development, the Bill of Rights proposed at present can only restore our rights in part, instead of in full. Nevertheless, it is better than none. I believe the people of Hong Kong, like people in other parts of the world, will certainly persist in their strife for the remaining part of our rights which have been withheld, be it a struggle for 50 or 100 years.

It has been said that the Bill of Rights tries to override the Basic Law. However, it should be noted that Article 39 of the Basic Law provides:

"The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

"The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. Such restrictions shall not contravene the provisions of the

preceding paragraph of this Article."

The enactment of the Bill is entirely in line with this article, that is, "the provisions" "as applied" "shall remain in force" and "shall be implemented through the laws". If the Bill is said to be overriding the Basic Law, it is just like alleging that Article 39 of the Basic Law is overriding the Basic Law itself, or is self-contradicting or undoing the Basic Law.

It has also been argued that Chapter 3 of the Basic Law on Fundamental Rights and Duties of the Residents covers an area larger than that of the Bill and for this reason, the Bill need not be introduced. In this case, enactment will not be allowed if the Bill covers more. Why then should it be disapproved of if the Bill covers less and offers less protection? If I am allowed to take three bowls of rice, why should I be prohibited from taking the first bowl? How can I proceed on with the second and the third bowl if there is not the first one? Maybe I am not even allowed to take any bowl of rice; or the promise of three bowls of rice is meant to be broken.

It has also been predicted that the Bill of Rights will enjoy only "a brief life" and will be ineffective after 1997. The point is the Bill of Rights to be enacted now is in line with the Basic Law. Article 8 of the Basic Law stipulates that "the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for those that are inconsistent with this Law (that is, the Basic Law) or have been amended by the Legislature of Hong Kong Special Administrative Region." What is the rationale for the Bill of Rights to become ineffective after 1997 if it does not contravene the Basic Law? Are those who predict "a brief life" of the Bill already in the knowledge that a plot has been set to "end the life" of the Bill?

I support the supremacy of the Bill. Such a status is in line with the provision of the Basic Law. It has already been laid down in Article 39 of the Basic Law quoted earlier that restrictions to be imposed by other laws on our rights and freedoms shall not contravene the provisions of the international covenants which will continue to be effective and applicable to Hong Kong. The phrase "shall not contravene" is an indication of the superior status of these rights. All countries which have enacted their Bill of Rights have given their Bill of Rights a superior status. A Bill of Rights stripped of such a status will soon or later be struck down by other laws to become a Bill of Rights in name only.

I support the entrenchment of the Bill. It is entrenched primarily by Article 39 of the Basic Law, because it is stipulated that any amendment to the Bill that contravenes the provisions of the international covenants continuing to be applicable to Hong Kong will be considered a breach of the Basic Law. For further entrenchment, I am in favour of adopting certain administrative measures and legislative practices that will require future enactments to include a clause subjecting the new legislation to the Bill.

I support the idea of allowing a freeze period for the Bill of Rights provided that it is a partial freeze not exceeding one year and the affected legislations should be specifically listed in a schedule to the Bill. I am opposed to a one-year freeze which at the same time may be extended to two years. From a teacher's point of view, this "half-hearted" approach encourages students to go lazy. Human rights education is an integral part of civil education, and in education, practice is most essential and effective in the learning process. As a matter of fact, Hong Kong is in an urgent need to introduce human rights education through practice.

I am in favour of the establishment of a Human Rights Commission. This institution should be vested with the powers to monitor, review, educate and mediate, and arbitrate on cases concerning inter-citizen rights. While functioning as an institution as effective as the judiciary in implementing the Bill of Rights, it should also serve the purpose of providing checks and balances against the judiciary.

I am against the idea that the Independent Commission Against Corruption or any other agencies, organizations or individuals should enjoy exemption under the Bill of Rights. It is wrong of some people to think that human rights and the elements of clean administration and stability are mutually exclusive. Please take a look at the real life tragic example all over the world: Countries where human rights are most relentlessly ignored are often the most corrupt and unstable; and countries where human rights have been given greater protection are always better in maintaining stability and a clean administration. Human rights, clean administration and stability are consistent with each other. Intrinsically, the spirit of human rights is to relieve people of corruption and turmoil. Stability achieved through repression is no real stability. To suppress human rights is actually to sow the seed of instability.

In our concerted efforts to create a bright future for Hong Kong, the enactment of the Bill of Rights is an extremely crucial move at the moment.

Sir, with these remarks, I support the motion.

MR. TAI: Sir, the Bill of Rights is an extremely complicated Bill which would have far-reaching effect on Hong Kong. Although I support the general principle and spirit underlying the Bill of Rights which, in general, carries the international covenants on economic, social and cultural rights as well as international covenants on civil and political rights, nevertheless I have some reservations regarding some of the clauses. Due to the complexity of the Bill, and the controversy it has aroused, I shall speak on only three areas:

- (1) The effect of the Bill on the rights of succession and the rippling consequences it would have on beneficial interests relating to the customary laws and practices of the Tso's and Tong's in the New Territories.
- (2) The effect that it would have on our legislation relating to our existing criminal laws and practices.
- (3) The political effect on the amendment of the Bill in view of the provisions of the Sino-British Joint Declaration and the Basic Law.

May I first refer you, Sir, to clause 3, sub-paragraph 5 of the Joint Declaration whereby Her Majesty's Government and the Government of the People's Republic of China both agree that: "The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by the laws in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law."

Furthermore, Article 40 of the Basic Law provides that: "The legitimate traditional rights and interests of the indigenous inhabitants of 'New Territories' shall be protected by the Hong Kong Special Administrative Region."

In the New Territories there exists a long traditional and customary law of succession, as well as a long-established association called Tso and Tong whereby,

in the former case, in the absence of a will it will provide that the estate of a deceased indigenous villager will generally devolve to the deceased's male descendant.

In the case of the Tso and Tong being an association of people belonging to a common ancestor, properties are being held by the Tso or Tong in question in trust for the male descendants of that particular Tso or Tong. This sort of settlement or trust is not recognized by British Law because it infringes the rule of perpetuity. However, due to the historical and traditional background, the customary practices involving the law of succession as to the rights of the inhabitants to inherit property for the beneficial interest of the Tso's and Tong's are recognized currently by the laws of Hong Kong.

These exceptions are enshrined in our New Territories Ordinance with positive administrative recognition of these traditional rights and practices by proclamation since the first Governor of Hong Kong, which stated clearly that the rights and traditions previously enjoyed by the inhabitants of Hong Kong would be respected.

Article 1 of the Bill of Rights provides that the rights recognized in this Bill are enjoyed without distinction of any kind, such as, race, colour, sex, language, religion, political or other opinions, property, birth or other status. Also that men and women have an equal right to the enjoyment of all civil and political rights as set forth in this Bill of Rights.

The rationale and the historical background of these traditional rights and practices in the New Territories ensure that there is a differential between males and females under the law of succession, as well as beneficial entitlement to an interest in properties held under Tso's and Tong's as follows:

- (a) Properties held under the Tso's and Tong's usually provide expenses for the descendants of the Tong's to defray the cost of ancestral worship, as well as for the upkeep of ancestral graves.
- (b) This traditional practice ensures the unity of landholding, whereby land is held by persons who descend from a common ancestor.
- (c) Provision is made for education needs.

The reason behind this traditional practice is that it is considered a duty for a male family member to maintain and provide for his family. Hence, traditionally, a female who marries and leaves the family home will have her livelihood provided for by her husband. If the accumulated income exceeds the needs for attaining the objective of that Tso or Tong, the benefit deriving from the properties held under the Tso's or Tong's will subsequently provide a widow and male descendants upon reaching their majority with a life interest and a share in the property.

There are restrictions in alienating any interest in the Tso's property, as well as for the sale of property held under the Tso's and Tong's. Sir, there exists several hundreds of Tso's and Tong's in the New Territories and almost every indigenous villager in the New Territories is a member of a Tong or Tso in one form or another.

Article 1 on equal civil rights would, in the strictest sense, disturb the equilibrium of the traditions and practices that have been observed for hundreds of years in the New Territories. The landholdings of the Tso's and Tong's are very substantial.

This Council should reflect very carefully over the application of equal rights for males and females, as stated in Article 1, as action is needed to create special provisions to safeguard against the novel rights as between private individuals when incorporating an international covenant into our statute book, because non-discrimination does not imply identical treatment as compared with absolute equality in the case of these traditional rights as practised so many years in the New Territories.

In my opinion, the international covenant on sexual equality is too general in character. In applying this covenant to our legislation we must consider carefully the adverse impact it could have on the different circumstances and the special and unique characteristics of our social structure.

The preservation of the existing traditional and customary rights and practices are enshrined in the Sino-British Joint Declaration under clause 5 which states that private property, enterprises, legitimate rights and inheritances will be protected by law. Furthermore, Article 40 of the Basic Law has reiterated that the legitimate rights and interests of the indigenous inhabitants of the New Territories will be protected.

The present proposal to introduce absolute sexual equality under the Bill of Rights will undoubtedly upset the social structure of the indigenous villagers in the New Territories. Furthermore, none of these persons who are directly or indirectly affected by these customary rights or practices has ever complained or requested such a change.

I would say that the existing customary practices are not discriminatory but it is a form of devolution of property under an equitable trust accepted.

Even today, in our society we see a difference in applying sexual equality; for instance, the convenor of the ad hoc group on this Bill takes on the surname of her husband. Moreover, tradition and practices exist in the United Kingdom relating to succession to the Throne. If King George VI had a son surviving him, we would have today "His" Majesty's Government.

Furthermore Article 1 of the Bill of Rights recognizes rights of religion and, also in the Bill, rights of marriage. If, for a classic example, my company laid down a company rule that if an employee married, he or she would get "the sack", this would infringe the Bill of Rights. However, there exists a long tradition and practice in the Catholic Church that if a Catholic priest marries he will be excommunicated. Are these the traditions and practices of the Diocese that we are going to change?

To apply the provisions of this Bill inflexibly in Hong Kong would create so many anomalies between individuals, and so many uncertainties, that provisions would have to be made to cater for the resulting adverse situations.

The next area I would speak on is Article 11 on the rights of persons charged with criminal offences; in particular, clause 1 of Article 11, which states that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Now, that provision is a general principle of our criminal law. However, not too infrequently in our criminal legislation we have passed the burden of proof onto the defendant, and there is a presumption of guilt cast upon the defendant when certain facts exist, although the standard of proof is different, in the sense that if a presumption against the defendant exists, then he has only to prove on the balance of probability that certain facts do not exist in order to negate the case against

him.

Therefore, to apply clause 1 of Article 11 strictly without taking into account the balance of efficacy of law enforcement, fairness and fundamental human rights could upset the maintenance of law and order in our society. We have many pieces of legislation in our statute book having a presumption of guilt, ranging from the Summary Offences Ordinance, Drug Trafficking Offence, Theft Ordinance, Prevention of Bribery Ordinance, and so on as well as other Bills now on their way to the statute book, such as the Crimes (Amendment) Bill.

To apply, without seriously considering the impact of change, Article 11 of the Bill of Rights as an over-riding provision to govern our criminal law would have a formidable effect on law and order enforcement. A balance must be struck. Caution must be exercised that we are not changing something for the sake of changing it. The wording in the international covenant provides only a general spirit undertaken by the signatories to abide by.

To apply the exact wording in our Statute Book and change all inconsistent legislation would lead us into uncharted waters. There should be different considerations for different kinds of criminal offences depending on our changing social needs.

Lastly, Sir, China's reaction to and her recognition of this Bill to enable it survive after 1997 and beyond is vital.

Paragraph 4 of Annex II to the Joint Declaration states that matters for consideration during the first half of the period between the establishment of the Joint Liaison Group shall include action to be taken by the two governments to ensure the continued application of international rights and obligations affecting Hong Kong. Moreover, it also provides that matters on which there is disagreement in the Joint Liaison Group shall be referred to the two governments for solution through consultation.

Article 38 of the Basic Law also provides that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region.

Parliament is supreme, but Hong Kong's Legislative Council is and will suffer from its inherent limitations. Matters and issues arising out of this Bill will sometimes be best handled and dealt with at the right time with the right approach.

MRS. TAM (in Cantonese): Sir, when delivering the Policy Address in this Council last October, the Governor mentioned that one of the tasks of building for Hong Kong's future would be the enactment of a Bill of Rights. As a matter of fact, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have been applied to Hong Kong since 1976. The Sino-British Joint Declaration further stipulates that the two international covenants shall remain in force in the territory after 1997. The Basic Law of the Hong Kong Special Administrative Region promulgated in April 1990 has also confirmed the applicability of the two international covenants to Hong Kong. From a logical point of view, the enactment of the 1990 Hong Kong Bill of Rights Bill which entrenches the various human rights and freedoms enshrined in the two international covenants by incorporating them into the domestic law of Hong Kong is a reasonable move which should be welcomed.

The drafting of a separate set of enforceable human rights legislation not only represents an advancement in the development of our civilized and progressing society, but also signifies our community's acceptance and recognition of the values of freedom and human rights, and this will have far-reaching effects on the long-term interests of Hong Kong. The Legislative Council Ad Hoc Group on the Bill of Rights Bill 1990 had, during the thorough deliberations over the Bill, expressed support for its enactment and put forward a number of recommendations. As the convener of the ad hoc group has just elaborated on these recommendations, I have no intention to harp on the details of the clauses again.

I note that the publication of the Hong Kong Bill of Rights Bill has drawn mixed reactions from the community. But one single message has emerged most clearly in the public response: Hong Kong people all cherish the free lifestyle they now enjoy and hope that these rights will continue to be protected in the future. However, the views expressed by various sectors on the Bill are also indicative of some issues worthy of our attention. These views can broadly be classified into two extremes. At one end there are people unduly concerned about the threats posed by the Bill to the law and order situation in Hong Kong. For instance, some people may be worried that the power currently enjoyed by certain government executive departments will

be restricted with the passage of the Bill of Rights. As a result, misgivings and even resistance towards the enactment of the Bill may develop among these people. At the other end, there are people who, due to their yearning for the safeguarding of human rights, have become almost too impatient to wait and may thus underestimate the price we have to pay for introducing such legislation. They just want to implement the Bill of Rights Bill as soon as possible, even if it means that they have to accord a lower priority to resolving conflicting social problems that may arise.

Sir, although the views mentioned above tend to go to extremes, the Administration should consider and weigh the merits and demerits of the arguments put forward by the two parties. We must admit that to a certain extent our community has to pay a considerable price in enacting legislation to protect human rights and freedom. That price includes possible restriction on the existing power enjoyed by certain government executive departments and the manpower and financial resources required to amend existing Ordinances which will be inconsistent with the Bill of Rights.

We must strike an appropriate balance between the protection of human rights and freedom and the maintenance of social order and public security. Apart from carefully ensuring that all provisions of the Bill of Rights will be in keeping with the spirit of engendering respect for human rights, we also need time to help the public to become aware of the protection afforded to them by the law so that they are able to exercise their rights.

I am particularly concerned about the part of the Bill of Rights Bill which states that the Bill will be binding on the Government as well as various authorities and individuals, whether acting in a private or official capacity. This means that legal action may be taken against violation of legally recognized rights among individuals and private bodies. I am of the view that before the general introduction of education on human rights, and before the administration can allocate sufficient resources to handle the substantial number of civil cases that may arise, it is advisable to defer actions on litigations concerning infringement upon legally protected rights among individuals for a certain period. I do not quite accept the Honourable Ronald ARCULLI's argument that any attempt to put on hold litigation concerning infringement upon legally protected inter-citizen rights would mean an incomplete implementation of the ICCPR. I think this is a specious argument. Given the accepted principle that the Bill of Rights Bill should be binding on both individuals and all government authorities, a brief hold on litigation concerning

infringement upon legally protected inter-citizen rights would be a progressive stride forward in keeping with the practical circumstances of society. In this regard, the Hong Kong Bar Association and the Law Society had expressed their concern at their meeting with the ad hoc group.

In the meantime, it is of utmost importance that education on human rights should be enhanced. With the introduction of the Bill of Rights, Hong Kong will enter a new era in the history of human rights development. To a large extent, the publication of the White Paper on the Bill of Rights has served as the starting point in the development of our human rights culture, and the Bill has subsequently given rise to widespread concern and discussions. We must lay a sound foundation for our human rights culture. Only then can we achieve the aims of protecting human rights and freedom and monitoring the Government, and prevent the term "human rights" from being abused.

Regarding the introduction and promotion of education on human rights, I think at least three aspects of work must not be neglected. Firstly, the judiciary, government enforcement departments and the disciplined forces should be briefed and given guidelines on the implementation of the Bill of Rights. Secondly, non-government voluntary agencies should be encouraged to provide advisory and educational counselling services to members of the public, so as to establish a channel through which the general public can obtain information on how to seek help and acquire relevant assistance should their lawful rights be infringed upon. Moreover, the mass media, while promoting human rights awareness among Hong Kong people, should fulfill their functions of monitoring the Government and educating the public so as to keep abreast of the development trend as Hong Kong enters the age of human rights.

Lastly, I would like to point out that education on human rights among young people should be promoted as soon as possible. Building up our young people's respect for human rights and freedom is not something that can be achieved overnight. Nor can we rely on independent subjects to directly impart the proper concept of human rights into the minds of our youngsters. It is therefore of vital importance that efforts should be made to help young people recognize the value of human rights through personality cultivation, to enhance their knowledge of human rights and the rule of law through civic education, and to make our young people understand that in community life, it is important that we should strike a balance between freedom and restraint and that the legal system must be respected.

Sir, with these remarks, I support the motion.

MR. TAM (in Cantonese): Sir, I presume that no one will deny the value of human rights and neither will I. As I think highly of the value of human rights and hope that Hong Kong residents' rights and freedoms will be properly protected, I paid special attention to the drafting of Chapter III of the Basic Law -- Fundamental Rights and Duties of the Residents -- during my participation in the drafting of the document in the hope that the provisions of this chapter would be formulated as satisfactorily as possible. It behoves me to give a clear account of the effects of Chapter III of the Basic Law on the protection of basic human rights in this Council today.

Chapter III of the Basic Law stipulates the fundamental rights and duties of the residents. Although its provisions are not as detailed and comprehensive as those contained in the International Covenant on Civil and Political Rights, the most important and basic provisions for freedom of speech, of religion, of procession, of assembly, of association and of communication as stipulated in that international covenant, have been included in Chapter III of the Basic Law. Therefore, we may even claim that Chapter III serves as a Bill of Rights within the Basic Law. Furthermore, Article 39 of Chapter III also stipulates that "the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region."

In order to ensure the proper implementation of the provisions for the protection of human rights covered in the Basic Law without its being subject to arbitrary restrictions, paragraph 2 of Article 39 stipulates that "the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article." I wish to point out that in this manner the Basic Law has set up three safeguards against restrictions of the rights and freedoms of the residents. The first safeguard requires that these restrictions must be according to law. As the laws are enacted by the legislature elected by the people, this serves as a prevention against abuse of power by the executive authorities; on the other hand, this is also a check on the legislature by the public opinion so that it will not pass certain laws in violation of human rights. The second safeguard provides that restrictions,

if any, must not contravene the provisions of paragraph 1 of Article 39, that is the provisions of the three international conventions as applied to Hong Kong. If the legislature still passes laws contravening paragraph 1 of Article 39 of Chapter III despite such restrictions, such acts will be in violation of the constitution and will be nullified by the courts of Hong Kong when giving the verdicts, or will be declared null and void by the Standing Committee of the National People's Congress. In this manner, the power of monitoring any enactments of laws which may contravene the constitution serves as the third safeguard.

Although the provisions of Chapter III for safeguarding the rights and freedoms of the residents are not perfect, they are, relatively speaking, still satisfactory. It is understood that even in the absence of the Bill of Rights, some of the existing laws of Hong Kong may contravene the provisions of Chapter III of the Basic Law and require amendments to bring them in line with the Basic Law after 1997.

Sir, in addition to my participation in the drafting of the Basic Law, I am also a member of the Legislative Council Ad Hoc Group on the Bill of Rights Bill. It is commonly known that with the transfer of sovereignty to China only seven years away from now, the importance of the Bill of Rights, therefore, hinges entirely on the Special Administrative Region after 1997 instead of the existing colonial government. Nonetheless, upon close scrutiny of the existing draft Hong Kong Bill of Rights Bill 1990 at a number of meetings in my role as the Legislative Council ad hoc group member, I do not see any need for the Bill of Rights Bill to be enacted from the legal point of view. As I have mentioned earlier, the most important provisions of the International Covenant on Civil and Political Rights are already covered in Chapter III of the Basic Law. Moreover, as a constitutional document for the future Special Administrative Region, Chapter III also carries the kind of supremacy and entrenchment which the Bill of Rights Bill lacks, and these two features have all along been regarded as the two prerequisites for any legislation that purports to protect human rights. Thus, from the point of law, Chapter III of the Basic Law is superior and more authoritative than the Bill of Rights in safeguarding human rights. If we view from this angle, there is basically no need for the Bill of Rights Bill to be enacted.

On the one hand, there is legal need for the enactment of the Bill of Rights Bill; on the other hand, such piece of legislation may have some adverse effects on Hong Kong.

Of these adverse effects, the major concern lies probably in the effect the Bill of Rights will have on the efficiency of the Government in its administration.

In the report prepared by a working party of the ad hoc group, a total of 58 existing Ordinances which may contravene the Bill of Rights have been listed. In other words, upon the future passage of the Bill of Rights, 58 existing Ordinances may require immediate amendments. Of course, it gives no cause for criticism to amend legislation that are unreasonable, or legislation that may give the executive or law-enforcement departments the chance to abuse their powers. However, the problem is that this legislation cover very wide areas, some of which even involve the day-to-day operations of some major departments in Hong Kong, such as the Police Force Ordinance, the Immigration Ordinance and the Independent Commission Against Corruption Ordinance and so on. If all these Ordinances are to be amended in one go, it will no doubt bring severe effect on the operation of government departments, thus affecting the efficiency of the departments concerned and the morale of the civil servants.

As Hong Kong is now in its crucial period of transition, stability is really a very important factor for consideration. To maintain stability, there must be a relatively stable and efficient government. I wonder whether the Government can bear the impact of the Bill of Rights in maintaining its efficient administration. In particular, within the transition period and under the influence of the "short-term" mentality, there may be an increase in serious crimes and Hong Kong people have all along been perplexed and disturbed by the problem of illegal immigrants. Under such circumstances, the impact brought about by the Bill of Rights is all the more worrying.

Moreover, the Chinese authorities have repeatedly denied the status of the Bill of Rights. If the Government unilaterally passes it, the Bill of Rights will inevitably have a life span of only seven years as a result of this born deficiency. This will defeat the purpose of the Bill of Rights. The kind of political impact that may arise will be something that Hong Kong people do not want to see.

Sir, the British Government became a signatory to the two international covenants in 1976 and the application of these covenants has been extended to Hong Kong. But the Government has not implemented them conscientiously. It is not until this inopportune time that the Government admits that there are so many existing legislation that contravene human rights and intends to enact a Bill of Rights. I deplore the negligence of the Government that has led to the current political agitation and deadlock.

In conclusion, I wish to point out that it is legally unnecessary and untimely to enact a Bill of Rights at this time. In order that human rights in Hong Kong can be truly protected, we should monitor the Government of the Special Administrative Region to ensure that the letter and spirit of Chapter III of the Basic Law will be implemented fully and faithfully in Hong Kong. I believe this is the right approach to protect human rights in Hong Kong.

Sir, in view of the above reasons, I will vote against this motion.

6.00 pm

HIS HONOUR THE PRESIDENT: It is now six o'clock and under Standing Order 8(2) Council should now adjourn.

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

Question proposed, put and agreed to.

DR. TSE: Sir, as a member of the ad hoc group studying the government White Bill on the proposed Bill of Rights, I would like to speak in support of the majority recommendations of the ad hoc group which have also been endorsed by the In-House meeting of this Council.

The recommendations were arrived at by the ad hoc group after a period of careful consultation, and for the most part, these recommendations have taken into consideration the views expressed by the public. I would like to register my personal satisfaction with the quality of the submissions to the ad hoc group during the consultation period. It is encouraging to note the seriousness and the thoroughness of these submissions, some of which are from professional groups, others from interested community organizations.

Although on a personal basis, I was unable to agree with every point and suggestion put forward, I am encouraged to see signs of a community banding together for the

development of a democratic way of life. I am impressed by the sense of realism displayed in many of the submissions in their search for attainable goals. As a person involved in the promotion of civic education in the past three years, I am indeed gratified to see the level of civic awareness and the sign of maturity of our community through the conduct of discussion of this important issue.

It is interesting to note that many people do take a balanced view regarding the need for the protection of individual rights on the one hand, and for the protection of the community through the enforcement of law and order on the other. The result of the recent public consultation of the Independent Commission Against Corruption (ICAC) has shown that the average citizen of Hong Kong does recognize the importance of law enforcement and corruption prevention, and is keen to see that sufficient powers and authorities be given to the law enforcement agencies to safeguard public security. As a member involved in the work of the ICAC and the Police Complaints Committee, I am glad to see that both the ICAC and the Police Force realize that while they need the proper authorities and powers to carry out their duties, they must do so within the confine of international norms for the protection of individual rights. Their acceptance of the fact that laws might have to be modified in the light of the Bill to provide proper checks and balances to their powers is indeed a welcome one. With this happy state of consensus in the community on this issue, I am hopeful that the Bill of Rights will receive strong support when it is introduced to this Council for consideration.

So far as the so-called "freeze period" is concerned, many of the submissions do recognize the need to protect the community from facing the risk of a legal vacuum after the Bill of Rights is introduced. While the suggested periods and scopes of the freeze vary, the need for the freeze is by and large accepted. If there was a sense of urgency for the enforcement of the Bill, it was not because people felt that human rights had been so badly violated in Hong Kong that the situation must be rectified as soon as possible. Rather, people only wanted to see their basic rights more clearly and comprehensively guaranteed through a single and dedicated legislation. I am therefore glad to support the sensible compromise of a one-year freeze with the provision of maximum one-year extension.

Regarding the concept of entrenchment and supremacy, I am satisfied with the legal experts' opinion that these can only be achieved by a sovereign nation through constitutional type of arrangements. Hong Kong being what it is now and will be after 1997, the legislature would have no way of achieving the objectives unless the two sovereign states would agree to jointly take that formal step. Therefore, as things

stand, I am prepared to accept the proposed amendment of the Letters Patent and Article 39 of the Basic Law as the second best guarantees of the special status of the Hong Kong Bill of Rights.

Personally I am convinced that the Bill of Rights will, if enacted, have a stabilizing effect in our community. As I recall, throughout the consultation period, there was never a suggestion that the Hong Kong Bill of Rights should pre-empt the Basic Law of the future Hong Kong Special Administrative Region. On the contrary, almost every submission urged that the Bill of Rights be made totally consistent with the Basic Law so that it would be valid beyond 1997. In that sense, the Bill would bring forward the promise of the Basic Law in guaranteeing individual rights and freedoms according to the standard of the international covenant. In my view, such an early start on what has already been provided by the Basic Law in Article 39 will strengthen the confidence of the people. It will give us the good feeling that what we have been promised in the Basic Law after 1997 will be the same as what we can enjoy now. Such an arrangement of continuity through legal means will go a long way towards rebuilding the confidence of our people in the future: a confidence which has been shaken by events of last year. I therefore fully support the recommendations of the ad hoc group and urge Government to do whatever is necessary to ensure that once passed, the Bill of Rights will remain in force before and after 1997.

With these remarks, Sir, I support the motion.

MR. ANDREW WONG (in Cantonese): Sir, I rise to speak in support of the Honourable Mrs. Selina CHOW's motion, that is to say, I am in favour of speedy enactment of a Bill of Rights Ordinance to further protect the basic human rights of the people of Hong Kong. I shall not be taking the frontal approach by systematically advancing arguments in support of a Bill of Rights. I shall instead be taking this opportunity to respond to some of the views -- which I consider to be fallacious -- currently being put forth by commentators (including Honourable Members of this Council).

The first of these views is to this effect: "Why do we still need a Bill of Rights this late?" or "Why can't we go about it at a slower pace now that it's going to be late anyway?" or "Why didn't we have it over and done with earlier but instead choose a particularly sensitive moment as now to get started?"

Yes, the International Covenant on Civil and Political Rights came into effect

14 years ago in 1976 and indeed it is now somewhat late to set about enacting a Bill of Rights. But it is better late than never. Now that it is already late, isn't it all the more reason that the Bill should be enacted as soon as possible?

Sensitive moment? Has there been a single moment in which Hong Kong finds itself which is not a sensitive moment? Was not the close of the 1970s and the start of the 1980s, when the people of Hong Kong speculated and surmised about their future and the Sino-British negotiations, sensitive moments for Hong Kong? Yet the most sensitive of moments was 1984 when the Sino-British Joint Declaration was signed and then 1990 when the Basic Law was promulgated. To enact a Bill of Rights at either of those two critical moments would have invited censure of "stealing chips" or "stealing a march", thus causing adverse effects on Hong Kong from which it might not be possible to recover.

To put it simply, now is the time to enact a Bill of Rights. Hesitate no more! The Chinese and British sides should directly address whatever sensitive points that might arise, frankly exchange views thereon and remove misunderstanding.

Sir, the second of these fallacious views is to this effect: "The human rights concept Chinese people hold is radically different from that of the west. The people of Hong Kong basically do not identify themselves with the western concept of human rights. Western criteria on human rights should not therefore be imported, or, if ever, they should at least be imported in a gradual manner."

This argument could be said to be wholly devoid of merit. Since 1841, Hong Kong has been receiving western concepts of human rights, of freedom, of the rule of law, of equality and of the absence of cruel and degrading punishment. All these have borne fruit. Now is the time for full implementation. How could we take a retrogressive route? How could we balk at moving forward?

Sir, the third of these fallacious views is to this effect: "The common law already affords adequate protection for human rights; why should a Bill of Rights be enacted?" or "The United Kingdom does not have a Bill of Rights; why should Hong Kong have one?"

This argument wholly neglects to have regard to facts. The common law, when administered by an independent judiciary, can indeed provide safeguards for human rights but such are inadequate safeguards. It is because the legislature is competent to enact laws that infringe on human rights, and, unless such laws fall

foul of the constitution, the judiciary will be powerless to question their validity. Therefore, a few common law countries, such as Canada, have felt the need to enact a Bill of Rights.

Some in the United Kingdom have also felt the need to enact a Bill of Rights. However, given that the United Kingdom has no written constitution, there are difficulties to overcome in any attempt to enact an entrenched and over-riding Bill of Rights. But let us not forget that the United Kingdom is a signatory to the European Convention on Human Rights which came into effect in 1953. Since 1966 cases of alleged violation of human rights in the United Kingdom can be brought before the European Commission on Human Rights and the European Court of Human Rights for adjudication. This arrangement is, in effect, similar to what would have been available if a domestic Bill of Rights had been enacted. In sharp contrast to this, the international covenant has no legal effect under Hong Kong's domestic law.

The pressing job before us now is to incorporate the human rights standards contained in the International Covenant on Civil and Political Rights as part of Hong Kong's domestic law so that these standards will be endowed with legal efficacy and be applied by the courts in the adjudication of disputes to further safeguard human rights.

Sir, the fourth of these fallacious views is to this effect: "The Bill of Rights will be superior to the Basic Law" or "It will reduce the Basic Law to nonentity" or "It will conflict with the Basic Law" or "The Basic Law already provides adequate safeguards for human rights; why should a Bill of Rights be enacted?"

Anyone with a modicum of legal knowledge will know that the Bill of Rights cannot possibly be superior to the Basic Law just as it is impossible now for the Bill of Rights to be superior to such constitutional documents as the Letters Patent and the Royal Instructions. Therefore in the case of a conflict, the Bill of Rights will be subject to the Basic Law or the Letters Patent which is in the nature of a constitution.

The argument that the Bill of Rights will reduce to nonentity the Basic Law might have been based on Article 2(3) of the Bill of Rights Bill which provides for the application of international law in certain situations. However, Article 39 of the Basic Law, in like manner, also enshrines therein certain international commitments and obligations in international law. This has not reduced the Basic Law to nonentity;

it is only an instance of international obligations, case law of other jurisdictions and international covenants being incorporated by the Basic Law into Hong Kong's domestic law. So does the Bill of Rights; but if it should conflict with the Basic Law, it is the latter that shall prevail.

As to whether the Basic Law provides adequate human rights safeguards, my answer is in the negative. Article 39 of the Basic Law only provides that "the provisions of" the covenant "as applied to Hong Kong shall remain in force" and "the rights and freedoms enjoyed shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article". The Article fails to set out in explicit terms the so-called rights and freedoms. Other Articles in Chapter III of the Basic Law do set out certain rights and freedoms which, however, would appear to be both imperfect and incomplete when compared with what has been set out in the international covenant.

Since Article 39 of the Basic Law provides that "..... shall be implemented through the laws of the Hong Kong Special Administrative Region", there will be no better way to implement the International Covenant on Civil and Political Rights than through the enactment of a Bill of Rights.

Sir, the fifth of these fallacious views is to this effect: "The measures to safeguard human rights as provided in the Bill of Rights Bill being neither entrenched nor accorded an over-riding status, they will not be the best means to achieve the intended purpose; why should such lame measures be adopted?"

There is little doubt that the measures as provided in the Bill of Rights Bill are not the best. But the question should be: "Are the measures feasible?" If yes, why should they be objected to unless, of course, there exist better alternatives. So let us see whether better alternatives can be found.

To incorporate international human rights standards into the constitution -- that is to say the Basic Law after 1997 and the Letters Patent before 1997 -- would be the best way to entrench such standards and to accord them an over-riding status. But this way of going about it would seem now to be untenable. As mentioned earlier, the rights and freedoms as set out in Chapter III of the Basic Law are not comprehensive enough. In studying the first draft of the Basic Law in 1988, OMELCO's Standing Panel on Constitutional Development tended to favour the enshrinement-in-the-constitution approach. However, it found that many important and internationally recognized

human rights have not been adopted in Chapter III of the Basic Law, such as freedom from torture or from cruel, inhumane or degrading treatment, right to life, right to a fair trial and so on.

As the Basic Law Drafting Committee had no intention of specifying these international human rights standards, OMELCO's Standing Panel on Constitutional Development fell back on a different tack. In studying the Basic Law Draft in 1989, the panel proposed that "before 1997, a Bill of Rights for Hong Kong should be enacted and that the inadequacies in existing legislation should be remedied as soon as possible. In this connection, Members are of the view that the Basic Law should (be amended to) make it possible for Hong Kong's legislature (to be vested with the power) to enact a Bill of Rights which enjoys a status superior to other Ordinances to implement Article 39 (of the Basic Law)".

If the Bill of Rights enjoys a status subordinate to the Basic Law but superior to other Ordinances, its entrenched and over-riding status will be assured. This indeed will be a better alternative. It is unfortunate, however, that the Basic Law Drafting Committee was not prepared to allow this. The Basic Law in its promulgated form contains no express provision to authorize the Hong Kong legislature to enact this sort of superior legislation.

To put it in a nutshell, I think the measures set out in the Bill of Rights Bill are not the best; but if they are feasible and can further protect human rights, why should the Bill be opposed? Let us not forget that "a bird in hand is better than two in the bush".

Sir, the sixth of these fallacious views is to this effect: "Many of the existing Ordinances are inconsistent with the Bill of Rights and if the Bill is passed into law enormous social repercussions will ensue. Therefore it will not be advisable to enact a Bill of Rights, or, at least, not to have it enacted in haste".

This argument might have been due to the exaggerated manner in which some of the provisions of the Bill of Rights are being interpreted. For example, on a charge of controlling assets incommensurate with his official income, the requirement that the onus be on the civil servant to prove his innocence may not necessarily contravene the Bill of Rights. By the same token, the practice observed by New Territories indigenous residents of passing ancestral T'so or Tong property down the male line to the exclusion of female descendants, or the rights to small house enjoyed by a

male indigenous resident may not necessarily contravene the Bill of Rights. Though I am not a lawyer, I believe that three lawyers could have four different opinions. All this should be left to the courts to decide.

Sir, the people of the State of Qi described by Lie Zi to have been worried lest the heavens might fall on them could be likened not to the supporters of the Bill of Rights but to its opponents. We should not just sit tight and hope for a better tomorrow but should join hands to create a better tomorrow.

Sir, I support the motion.

MR. LAU WONG-FAT (in Cantonese): Sir, the enactment of a Bill of Rights is not only a matter of great importance but also a highly controversial issue. In view of the profound and far-reaching effect this piece of legislation will have on the entire society of Hong Kong, the Government should feel obliged to listen to the views of various sectors by way of an extensive consultation exercise and should be extremely careful in handling the complications that may arise from the introduction of the Bill so as to minimize their impacts on the community.

We acknowledge and cherish human rights as dearly as we do freedom and democracy. However, when it comes to enacting a Bill of Rights, we do not have too much relevant experience to draw on. Besides, owing to its unique political and historical background, Hong Kong has simply no precedent to go by in performing a job of this kind.

Among the many identified problems, the most worrying one is what and how remedies can be made if the Bill of Rights comes into conflict with the Sino-British Joint Declaration and the Basic Law. Furthermore, is it necessary to take into account the actual situation in Hong Kong when we determine the scope or, in other words, the applicability of the Bill of Rights?

As a matter of fact, it has been argued that the entitlement to rights without distinction of race as provided for in the Bill of Rights may possibly contravene the Sino-British Joint Declaration and the Basic Law which, by their own terms, confine the eligibility for posts at Secretary level in the Hong Kong Special Administrative Region to Chinese nationals alone. Moreover, the localization policy in the Civil Service currently implemented by the Government may also be contradictory

to the spirit of "rights without distinction of race."

Heung Yee Kuk is a statutory advisory body officially recognized by the Government. It is deeply concerned about the possible implications of the Bill of Rights on the traditional and customary practices and the way of living of the indigenous residents in the New Territories. The long standing position of the Kuk on this matter is: As the Sino-British Joint Declaration assures that the current social and economic systems and the style of life in Hong Kong will remain unchanged, the traditional and customary practices of the indigenous New Territories residents, which form an integral part of the systems and life style in Hong Kong, should therefore be safeguarded.

Heung Yee Kuk has commissioned a legal expert to make an in-depth study of the issue. The study concludes that the preservation of Chinese customs and traditional arrangements for succession to landholdings in the New Territories have all along been enshrined in the New Territories Ordinance enacted by the Government. Hence, Annex III to the Joint Declaration recognizes, in the case of old schedule lots, village lots, small houses and similar rural holdings, the succession rights of male indigenous villagers descended from a paternal ancestor who was a resident of an established village in the New Territories in 1898. In addition, Article 8 of the Basic Law ensures that customary law shall be maintained in the HKSAR after 1997. Article 40 provides that the lawful traditional rights of the indigenous N.T. residents shall be protected, while Article 122 of the Basic Law which is derived from Annex III to the Joint Declaration reaffirms the succession right of the indigenous N.T. residents through the male line.

The study holds that Articles 1 and 23 of the Bill of Rights, which provide for entitlement to rights without distinction of sex, seem to be aimed at the destruction of the traditional system in relation to collective possession of land in the N.T. and are thus in violation of the Joint Declaration and the Basic Law.

In what way should such conflicts be settled and what consequences will they lead to? This is a very crucial point which has a direct bearing on the smooth implementation of the Bill of Rights after or even before 1997. We all know that while the Basic Law is amendable in theory, the Joint Declaration is in no way subject to amendments. The authorities concerned should therefore give a clear explanation in regard to this point to allay the worry of the general public. Until this issue is satisfactorily addressed, the Kuk and myself will find it impossible to accept

the relevant recommendation of the Legislative Council ad hoc group to study the Bill of Rights, which proposes that the customary law and the New Territories Ordinance should be amended if they are, in the opinion of the Government, inconsistent with the Bill of Rights. And if such amendment were to be made, what explanation would it give on the spirit of the Joint Declaration's provision that Hong Kong will remain unchanged for 50 years?

Sir, I would like to take this opportunity to elaborate on the issue of indigenous N.T. residents' right of succession to property. Some people, owing to their half-baked knowledge of the background, have formed a wrong conception of the customary arrangements for male and female indigenous N.T. residents in respect of succession right. As a result, this issue has become a focus of attack in discussions on the Bill of Rights. What needs to be pointed out is that as far as ownership of property by individuals in private capacity is concerned, the N.T. residents are just like other residents in Hong Kong. They are free to bequeath their property to any family members at their own will, including their daughters. As regards the right to build small houses which, under the existing policy, is given to male indigenous N.T. residents upon their attaining full age, I believe this is only an administrative measure devised by Government to resolve the interests of the different strata of our society in a different approach. I am convinced that N.T. inhabitants would not rise in objection should Government extend the same right to female indigenous villagers of the N.T. or even all residents of Hong Kong for want of absolute equality, without taking into consideration the realistic circumstances.

As for landholdings through "t'sos and tongs", the succession right is indeed an exclusive privilege of the male indigenous residents. Such as it is, the arrangements are, in fact, intended for meeting practical needs rather than discriminating against the fair sex. Property of "t'sos and tongs" is assets left behind by the common ancestor of a clan. They are reckoned among fellow clansmen as common assets which should not be allowed to change hands casually. According to traditional practice, these assets should be passed down to descendants of the clan through the male line from generation to generation. The purpose of such a practice is to reinforce unity among clansmen of a common ancestor and to provide the village concerned with finance resources for development and welfare projects.

The practice of withholding the right of succession to property of this kind from the female descendants has been developed out of the wish to prevent this common ancestral property from passing onto someone with a different family. It is a

necessary measure because a female descendant will leave her village to join the family of her husband after marriage. The idea of taking measures to prevent landholdings of "t'sos and tongs" from falling into the hand of an outsider did not pop out from narrow-minded clannish affiliation but rather stemmed from the practical concern that it might give rise to great confusion and numerous disputes if the holdings of "t'sos and tongs" fell into the hand of an outsider with a different family name. What is more, apart from conflict of interest, there is the question of legitimacy. Should the ancestral hall of the CHEUNGs' clan be passed onto a descendant of the LEEs' ancestor or is it desirable to leave the management of the TANGs' ancestral hall to the care of a member of the LIUs' clan?

Judging from another point of view, the traditional arrangement for succession to holdings of "t'sos and tongs" is in fact the will of the ancestors of the various clans of indigenous N.T. residents. It should enjoy equal legal status as that of any will or trust fund. I wonder whether it would go against the spirit of the law in Hong Kong to propose amendments to this arrangement.

Sir, it is very stupid to think of a typical village in the N.T. as an extremely feudal and unjust community. Given the high education level of the average man in the street, the advanced communication facilities and the high status enjoyed by the fair sex in Hong Kong, would the female indigenous N.T. residents not have started a revolution if they had found themselves to be suppressed and unfairly treated? Some social activists have recently criticized the Kuk for banning woman candidates from joining the Kuk. This accusation is not justified and is contrary to the fact for not only are women found sitting on the Kuk, but they are found playing the role of village representatives and District Board members as well. At present, women and men are virtually equal as far as their political right is concerned. The only factor which makes the difference between the two sexes in this respect is that the majority of female indigenous N.T. residents are inclined to observe the traditional Chinese virtues. They are content to look after their husbands and children at home and have not much interest in seeking fame and wealth. Are they not exercising their human rights in making their own choice of assuming a housewife's role?

Evidently, the arguments over this issue were initiated by a group of over-enthusiastic and ill-informed people who want to push the concept of equality between men and women to the extreme without paying due regard to the practical difficulties. I think their dogmatic approach to expand the concept of equality to cover almost all areas is undesirable. By their yardstick, many established traditional

practices and customs are deemed to be in violation of the principle of equality between men and women. For instance, it has been a time honoured practice in China as well as in the western countries that a married woman should adopt her husband's family name and that her children should use their father's family name as well. This is probably an obvious case of inequality between sexes. What then if absolute equality between sexes is to be achieved? Should a husband be under the obligation to adopt the surname of his better half? Should half of his children be given their mother's surname while the remaining ones be made to use their father's? Among my honourable colleagues in this Chamber, there is no lack of learned and educated members of the fair sex who observe the traditional practice of this society. I would be very glad to hear their opinions on this issue.

Furthermore, if the principle of absolute equality is to be upheld, the United Kingdom Government should be obliged to grant the right of abode to all British Dependent Territories citizens in Hong Kong or, more rightly, to every local resident instead of setting a quota of 50 000 families. There are apparently some practical constraints which do not permit the British Government to lift this limit.

Back to the question of succession by indigenous villagers, if they are forced to scrap the traditional arrangement, the result will be innumerable disputes and law suits with damaging effect on the clan system and the harmonious relations among the fellow clansmen. This will in turn send shock waves throughout the entire rural community and may eventually shatter the social structure of the villages. This will not be favourable to the stability of Hong Kong, nor will it be in line with the intention of the Bill of Rights. Hence, I propose that reservations should be incorporated in the Bill to forestall future amendments to the New Territories Ordinance. This is to avoid introduction of any revision to the arrangements for handling landholdings in the New Territories and property and estate of "t'sos and tongs" so that there will be no conflict with the Joint Declaration and the Basic Law and instability in the rural community will not be triggered off.

Sir, with these remarks, I support the spirit of the Bill of Rights Bill but at the same time express my reservation on some of its provisions.

MR. EDWARD HO: Sir, the first question that must be asked of the draft Bill of Rights Bill 1990 must be that why it is required, and at this time. After all, though there has not been a democratic government in Hong Kong, the people of Hong Kong have

generally been content with the freedoms they have enjoyed, and there has not been gross violation of human rights by the Government.

Yet, as the sovereignty over Hong Kong, a blatantly capitalist society, will be transferred back to China, a steadfast communist society, there is a natural and deep concern amongst the people of Hong Kong that the values attached to fundamental freedoms and rights of the individual, as we know them, will be different. Few would disagree with me that our worst fear of the future is not so much a lowering of our standard of living; but the diminution of our freedoms, and the rule of law. Thus, it is natural that the people of Hong Kong desire that their civil liberties be codified and enshrined in the legal system, so that, as far as possible, such liberties would be protected against the abuse of public powers.

Even with a Bill of Rights, we must rely on a good government, for a Bill of Rights does not enforce itself, nor does it in itself guard against the tyranny of those in power. And after 1997, we must rely on a central government that is determined to abide by the Joint Declaration, and who would not arbitrarily amend the Basic Law. But, a Bill of Rights does provide the confidence that a legal framework exists under which fundamental freedoms and rights will be protected by law.

Sir, I am surprised at allegations from some quarters that the introduction of a Bill of Rights would contravene the Sino-British Joint Declaration, and the Basic Law. Article 3(5) of the Joint Declaration clearly provides that certain fundamental rights and freedoms will be ensured by law, and Section XIII of Annex I to the Joint Declaration elaborated these provisions, and mentioned that "the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force".

Similarly, in the Basic Law, Article 4 provides for the safeguard of the "rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law." Chapter III of the Basic Law lists a number of these rights and freedoms, and Article 39, echoing the provisions of the Joint Declaration, stipulated that the ICCPR and ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong SAR.

Those provisions not only remove any doubt that a Bill of Rights along the line

of the ICCPR as applied to Hong Kong would be in strict accordance with the Joint Declaration and the Basic Law; but also, by such words as "in accordance with law" and "shall be implemented through the laws", a Bill of Rights is positively required.

It is to be accepted that a Bill of Rights cannot have supremacy over the Basic Law. It is, however, of paramount importance that it should be sufficiently entrenched so that it is not easily repealed and that it would enjoy supremacy over other Ordinances. Before 30 June 1997, the entrenchment of the Bill of Rights should be implemented through an amendment to the Letters Patent.

From 1 July 1997, the Basic Law will have to provide entrenchment of the Bill of Rights. In reading the wording of Article 39 of the Basic Law, I believe that, since the provisions of the ICCPR as applied to Hong Kong is entrenched, a Bill of Rights based on that Covenant should also have the effect of being entrenched. In the same Article, since any restriction of the rights and freedoms by law shall not contravene the provisions of the Covenant, the Bill of Rights should enjoy supremacy over other Ordinances.

Sir, in the draft Bill of Rights, a number of issues attracted wide discussions in the community. Most of these issues have been covered in a report prepared by the ad hoc group on the Bill of Rights Bill 1990 resulting in a number of recommendations to be submitted to the Administration. As I endorse these recommendations, I shall not repeat them today.

Many people have commented on the possible impact of a Bill of Rights on the effectiveness of the law enforcement agencies to keep law and order. They considered that both before and after 1997, law and order and the prevention and elimination of corruption is of vital importance to the continuing viability of Hong Kong.

In fact, recent crime rates, especially involving the use of firearms, and blatant triad activities, have given rise to concerns that there be more positive handling of criminal elements in our society. In the next few years, our Police Force will be taking a larger role in law enforcement, as they will be taking over the role of border security from the British Army. In the process, they will also have to cope with possible recruitment problems to cater for the expansion of the force.

In the area of anti-corruption, the Independent Commission Against Corruption (ICAC) has done an excellent job since its inception in 1974. Compared with other neighbouring countries in the region, corruption problem in Hong Kong can be said

to be largely under control, although in recent years, we have been plagued with some very complex and protracted cases in commercial crime. Incidentally, corruption seems to occur in both democratic and autocratic societies, and in capitalist and communist countries.

Given the above factors, it is natural that there is a strong feeling that the police and the ICAC should be able to perform their functions effectively.

On the other hand, others in our community maintained that the powers of these two agencies are too great and wide-ranging, and that their powers should be curbed in the interest of the rights of the individual.

There is thus a necessity to balance the two views: one which regards rights of the individual as absolute values and sacred, and the other which regards rights of the individual in the context of the interest of the community.

I hold the latter view. In examining the draft Bill of Rights, I do not find any difficulty in the reconciliation of the rights of the individual and the interest of the community. In nearly every article of the Bill, and the corresponding sections of the ICCPR, rights are not unfettered. For example, in Articles 8, 9, 10, 15, 16, 17, 18 and 19, rights can be restricted as for the protection of national security or of public order (*ordre public*) or of public health or morals.

Therefore, in drafting the Bill of Rights for Hong Kong, we must recognize that, whilst the ideals of human rights protection in the ICCPR were derived from the rather abstract principles of the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, the actual manifestation of those principles in the Covenant was meant to account for the rule of law and the common good.

With these remarks, Sir, I support the motion.

MR. BARROW: Sir, I only want to speak on one issue related to the Bill of Rights and that is the question of capital punishment. This has been raised by some petitioners and there has been press comment. I appreciate that under the International Covenant, whilst the inherent right to life is covered in Article 6, signatories are not required to have abolished capital punishment. Nevertheless, the standards that have been

adopted prohibit all forms of "cruel, inhuman, or degrading treatment or punishment" and I believe there is a case to argue that the death penalty is incompatible with these standards.

The Honourable Mrs. Selina CHOW and her colleagues on the ad hoc group have put in much time and effort in reviewing the proposals, and I endorse their overall position. The possibility of abolition of the death penalty was discussed with representatives who met the group on 16 May when there were suggestions that this could be done by amending section 3 of the Offences Against the Person Ordinance.

There is no convincing evidence in any country that the use of the death penalty has a special deterrent effect. Comparisons of crime rates in countries that have retained or abolished the death penalty do not indicate that the threat of execution has been effective in preventing crimes. There is much more evidence to show that the greatest deterrent is a high detection rate irrespective of the punishment imposed. In passing, all of us here can be proud that the detection rate of the Royal Hong Kong Police is amongst the best in the world.

This issue of deterrence is something that governments around the world have debated for many generations. As far back as the early nineteenth century, Sir Thomas Fowell BUXTON, the prison reformer who was active in the campaign to abolish slavery, spoke in the House of Commons in 1821, and I quote "we have gone on long enough taking for granted that capital punishment does restrain crime, and the time has now arrived in which we may fairly ask, does it do so?....". No doubt, Sir, the debate will continue for generations to come.

As Members are aware, since 1966, death penalties in Hong Kong have been routinely commuted to life imprisonment and in answer to a question in this Council last year, the Chief Secretary stated the Government's belief that the majority of Hong Kong people wanted to retain the death penalty. This may, however, be an occasion when the Administration and this Council could consider showing leadership, rather than following what is believed to be the popular view. The process will not be easy; there are cultural issues and different customs. Clearly there are many who have strong views and who advocate a policy of retribution, "an eye for an eye".

Whilst future governments would have the right to reconsider the issue, abolition at this time would make it less easy to re-impose the death penalty in the future. Furthermore, it would make it more difficult to extend the death penalty to crimes

beyond murder and treason.

We should also consider the nature of Hong Kong itself. We are a very special international city, unique now and in the future as a special administrative region of China. The standards that we impose on ourselves must reflect the open and international character of Hong Kong, and we need to monitor trends around the world.

All I am suggesting at this stage, Sir, is that Members of this Council and the Administration might like to ponder on the issue and possibly there should be a separate opportunity for a debate in the future.

With these words, Sir, I support the motion.

6.42 pm

HIS HONOUR THE PRESIDENT: I think we have several more hours to go in this debate and Members may feel in need of sustenance before we enter into the last lap. I hope we can keep the break short otherwise we are in danger of infringing our human right -- sleep. (laughter) We will take a short break.

7.09 pm

HIS HONOUR THE PRESIDENT: Council will resume.

DR. LEONG: Sir, may I start by expressing my gratitude to you and Members of this Council for letting me jump the queue.

It is time for Hong Kong to have a Bill of Rights.

Allowing such a Bill is also the best and the simplest thing China can do for Hong Kong people and to maintain Hong Kong people's confidence.

This Bill should in no way be regarded as some ideological fore-play for academic discourse but is the best we can do to fashion human rights guarantees in law, before and after 1997.

Up to this point in time, human rights have been protected in Hong Kong by common law and provisions in a number of statutes without an overall Bill of Rights.

Furthermore, there will be further safeguard of provisions in the Basic Law to ensure that the protection of human rights in the present system will continue after 1997. So, then what is the fuss? What are people asking for?

Why should Hong Kong need a Bill of Rights now which is so different a piece of legislation from everything else we are used to?

But let us face a hard fact of life and, that is, things are not going to be the same after 1997 unless something is done to ensure that they will.

For after 1997, Hong Kong cannot continue to rely on the common law as the Hong Kong system of law is going to be on its own.

Precedents established in British courts do not necessarily bind Hong Kong courts by that time. At best, these cases could only be used for reference and as a persuasive force.

The enactment of a Bill of Rights may therefore be seen as a means to fulfil this legal vacuum. But it must be started sooner rather than later.

Chapter III of the Basic Law has spelt out a list of rights to be enjoyed by Hong Kong people. The Bill of Rights should be viewed as an elaboration of these articles.

The legal safeguards contained in the Bill and the constitutional provisions in the Basic Law are really two sides of the same coin.

The Bill, which follows closely the International Covenant on Civil and Political Rights, serves as an additional function to ensure continuity of human rights provisions before and after 1997.

There is fear that when sovereignty is handed over to China, sections of the covenant which are applicable to Hong Kong may become obsolete simply because China is not a signatory to the covenant.

Provisions in the form of a Bill of Rights under the auspices of the Basic Law will surely remedy this situation.

Of course, it will be ideal if China becomes a signatory, or permits Hong Kong

to become an individual signatory to the covenant, as in the case of the General Agreement on Tariffs and Trade and International Labour Organization.

People may notice that the language of the Bill is different from that of the common domestic laws we are now having. The difference lies in the language of principle rather than the prohibition of particular acts or classes of acts.

Sir, we cannot make bricks out of straw. We cannot have a set of principles with their application and effect not well tested in courts. The sooner Hong Kong kicks off the dust, the better the chance of these principles being established here by practical examples well before 1997.

I support section 6(2) of the Bill that permits all levels of courts to be able to interpret and apply the Bill of Rights.

It will help build a system of precedents that is the necessary experience and the tradition required.

Having the constitutional issues arising from the vague concepts of an international covenant to be determined by tribunals, magistrates and courts at every level is the appropriate way in the right direction.

Since time is running short, I think it is totally uncalled for to further delay the Bill. A two-year grace period before the Bill actually comes into effect is also an unwanted hurdle.

Meanwhile, Hong Kong courts should take note of, and consider for reference, the decision of the European Court of Human Rights, and other common law jurisdictions dealing with human rights, as well as the view of the United Nations' Human Rights Commission to ensure that the implementation of the Bill is meaningful.

I do not agree to arguments that there is a conflict between the maintenance of law and order and the enactment of this Bill.

Some people tended to suggest that the present power of the police or the ICAC will be greatly eroded by the Bill, with the result that law and order will become difficult to maintain.

Indeed, the language of the covenant, which is adopted in the present Bill, clearly reflects the attitude that the rights recognized therein are not to be given effect in such a way as to undermine law and order.

The covenant only requires that no unnecessary restrictions on the human rights recognized in it be allowed and not that no restrictions whatsoever be allowed.

I am of the view that provisions should also be made to allow members of the public access to legal aid in human rights cases.

I am also of the view that Hong Kong needs a good human rights education programme through, firstly, human rights courses to be introduced to primary and secondary schools and, secondly, regular territory-wide programme to be brought in to boost awareness among local residents.

Young people here grow up with little idea of their civic rights and obligations and are ignorant of many of the legal consequences until they are being caught by the law.

Lack of knowledge about their human rights keeps them in ignorance of the remedies they can pursue if those rights were infringed.

To co-ordinate education efforts and monitor the implementation of human rights in Hong Kong, a special human rights committee or commission should be set up in Hong Kong.

This committee or commission should also deal with public complaints on human rights problems.

It should be independent of the Government and made up of mostly members of the public. It should also compile and submit regular work reports to the Government.

I would like to add here that this Bill will still remain under the umbrella of the Basic Law, which is a constitutional document.

In the Joint Declaration and the Basic Law, China has committed herself to allowing implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as already applied in Hong Kong to remain in force after 1997.

The notion of a Bill of Rights is fully in line with this commitment. It is also consistent with the well-recognized "through-train" concept of transition and it will enhance the success of the "one country, two systems" policy.

With these remarks, Sir, I support the motion.

MR. PAUL CHENG: Sir, let me add my voice to the many others who acknowledge with thanks the impressive efforts put forth by the ad hoc group. We all recognize the enormity of the task to provide thoughtful scrutiny and wise counsel on Hong Kong's first piece of comprehensive human rights legislation; and we appreciate the capable leadership of both the Honourable Mrs. Selina CHOW, convener, and the Honourable Ronald ARCULLI, deputy convener.

Despite the complexity of the undertaking and genuine concerns over compatibility with various legislation that is already in place, it is only right that a Bill of Rights is put into place at a time when the Hong Kong community begins its evolution towards a self-government under "one country, two systems". Given the responsibility of contributing to a successful transfer of sovereignty, we Legislative Council Members are enabled through this draft Bill of Rights to strengthen the foundations of the existing legal system by giving due recognition to the civil and political rights of our citizenry.

As already noted by those honourable colleagues speaking before me, the enactment of this Bill is problematical in that -- given the enormity of the task -- it is not possible to undertake an exhaustive or conclusive assessment of the implications of the Bill of Rights on existing legislation. However, it is incumbent upon us as legislators preparing for the effective running of Hong Kong as a special administrative region to ensure that we will entrench essential freedoms in line with the International Covenant on Civil and Political Rights. A Bill of Rights will allow for this in the most expedient manner.

To facilitate judicial experience of the Bill, I support the ad hoc group's recommendation for a selective freeze for one year -- dependent on scheduling important existing Ordinances likely to be affected by the Bill of Rights. Although this will no doubt be a formidable task, such a freeze, in my view, is essential for smooth implementation. On the question of capital punishment, I would simply note

that I agree with the Honourable Martin BARROW that the subject should be reviewed.

Finally, I concur with an important observation of Dr. Nihal JAYAWICKRAMA of the University of Hong Kong who was one of four experts providing representation to the ad hoc group. He noted that this Bill will also help to educate our government officials and the public. This is an extremely important aspect of the Bill. Civic education must be one of our priorities as we look forward towards 1997 and beyond: The enactment of this Bill is a major step in addressing this priority. It is most timely in view of the challenges we face in shifting ourselves from the security of a colonial government running things for us to the responsibility of running things for ourselves.

With these remarks, Sir, I support the motion.

MR. MICHAEL CHENG (in Cantonese): Sir, human rights are the basic rights of freedom and equality that should be enjoyed by all. They are fundamental to a world of freedom, justice and peace. The people of Hong Kong should also enjoy these rights and engage in the promotion of democracy, freedom, equality, justice and peace. However, it is equally important that while we identify what measures and institutions are to be adopted to effectively protect human rights, we have to study the possible negative effects of these measures as well.

The Hong Kong Bill of Rights Bill 1990 has been introduced with a view to safeguarding our rights to freedom and equality. I, of course, support this basic principle. However, to allow the Bill to enjoy supremacy over all existing legislation will threaten social security and effective implementation of the law. I am worried and puzzled if it may impair the effective governance of Hong Kong during the transitional period and put our stability and prosperity in jeopardy.

Realistically speaking, can a Bill of Rights resolve the confidence crisis of the people of Hong Kong? Our confidence is being affected by political, social and economic factors. A Bill of Rights alone cannot fully restore our confidence in the future of Hong Kong. Even if the Bill of Rights introduced by the Government is passed into law, all it does is merely to provide certain additional safeguards for human rights before 1997. But what will it be after 1997? Moreover, Hong Kong is now in a very sensitive transitional period. Any changes that may upset social harmony and arouse public anxiety should be avoided as far as possible. To illustrate the point,

it is just like the fire risk signal is now red. A single spark can start a prairie fire. Therefore, we have to be careful about each and every spark. It will be irresponsible of us to create at this time political factors that may cause social anxiety and jeopardize Hong Kong's stability and prosperity, because this is against the long-term interest of the people of Hong Kong. The introduction by the Government of a Bill of Rights to be superior to all local legislation in existence will cause changes to certain time-tested administrative and legal procedures and undermine the authority of law-enforcing agencies in maintaining law and order. Consequently, it will jeopardize certain safeguards for our security, give shape to disruptive forces in society, rouse public anxiety and adversely affect the stability of Hong Kong in the transitional period. It is essential for Hong Kong to create a stable investment environment, especially in the time of economic recession, so as not to scare away investors and hamper the territory's economic development. Otherwise, the plan to carry out massive infrastructural development programmes, such as the port and airport projects which require heavy financing, will only be our wishful thinking.

As a matter of fact, the two important international covenants on human rights -- the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights -- have been applicable to Hong Kong as early as in 1976. Why does the Government have to wait till today to hurriedly prepare a Bill of Rights to enshrine the provisions of the Covenants? In the past 14 years, the Government has never taken any action to repeal or amend any legislation that is in obvious conflict with the Covenants. What is the intention to rush through a Bill of Rights now? To give full expression to human rights, we need to undergo a sophisticated social evolution, the process of which is gradual and progressive. If the Government had been far-sighted enough, it should have enacted the Bill of Rights 14 years ago. Had a Bill of Rights been in place for more than 10 years, it would certainly have been entrenched to a great extent. And there would not have come a belated spring in which human rights could only blossom before the approach of 1997.

There is also another question that puzzles me. From the very beginning, Article 1(1) of the Bill of Rights clearly states that "the rights recognized in this Bill of Rights are enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". And yet the points system used in the nationality package aims at selecting candidates on the basis of wealth, age, professional status and so forth. Does this violate human rights? Does this harbour any element of

discrimination? In accordance with the principle of human rights, Britain has the responsibility to grant the right of abode to the 3 million-odd British subjects in Hong Kong. Then it is up to the people of Hong Kong to decide whether they will apply for the right of abode in Britain. However, reality has proved that our sovereign state, Britain, has violated human rights and her sincerity is called into question.

There is no doubt that the Bill of Rights will protect our rights to freedom and equality and we share the aspiration that human rights should be safeguarded. However, we cannot ignore the possible side effect of enacting a Bill of Rights which is superior to other laws during this transitional period. We have to consider the actual circumstances to ensure that law and order will continue to be effectively maintained. Any indiscriminate measures to handle issues of human rights in an inflexible manner should be avoided. The majority of the residents, I believe, will stay on in Hong Kong after 1997. As legislators, we have the responsibility to look after the interests of the several million people here. The Government has tried to introduce the Bill of Rights in such haste that many questions remain unsettled. It will be irresponsible of us if we pass the Bill carelessly without giving due consideration to the concerns and wishes of the general masses.

I believe that most people in Hong Kong will not wish to see the Bill of Rights becoming a protective shield for criminals who pose threats to peace and order. Once the Bill is passed, it will be difficult for law enforcement officers to carry out their work. In the future, even if a man suspected of attempted burglary is found sneaking around the door of someone's house with tools for breaking in, the police can do nothing. They cannot deter the man of his intended action by charging him for loitering. Besides, the police may be stripped of their power to check for identity cards in a bid to identify the illegal immigrants. Who shall be responsible for such kind of potential crisis? For this reason, it is most important that we should strike a balance between protecting human rights and maintaining public order. There is another development we may foretell: there will be endless disputes and lawsuits. The Government may have to pay out large amounts of compensation and allocate considerable manpower to cope with the never-ending problems.

It is imperative that public order in Hong Kong should be maintained properly during the transitional period lest people should be panic-stricken. Any harmful effects on the confidence of the local population will aggravate the brain drain and drive away investors. The Royal Hong Kong Police Force is already suffering from manpower shortage. Every officer in the force is saddled with a heavy workload.

Coupled with a rising crime rate, the morale of the police force will be dampened if they are not given some sort of encouragement. Should there be any social disorder, and consequently the effectiveness of law enforcement will be affected, the public will suffer.

Ever since the Independent Commission Against Corruption (ICAC) was established in 1974, it has made remarkable achievement in combating corruption and promoting a clean administration. Many corrupt officials have been eradicated. It has established such a prestigious authority for itself that not only local residents generally support it but foreign countries like Australia also came to learn from it. Most people in Hong Kong hope that the ICAC will carry on with its work and take action against corruption to safeguard public interests. Thus, the powers of ICAC in combating corruption should not be unduly trimmed or circumscribed by the Bill of Rights, lest the effectiveness of the ICAC on the elimination of corrupt practices should be undermined.

Sir, only a democracy developed through gradual process is one suitable to the political situation in Hong Kong and instrumental to maintaining our stability and prosperity. Human rights should be upheld through mutual respect and a system of checks and balance to ward off confrontation in order to bring about a reasonable and harmonious living environment. The Government should step up its publicity on civic education, and educate the public towards a positive perception of human rights so that the people may learn to examine and accommodate different opinions instead of mounting fierce or vicious attack on other with different views. Otherwise, it will be another example of infringement on human rights.

There are only seven years in the run-up to 1997. During this sensitive and critical period, to enact a piece of legislation which the future Special Administrative Region Government is required to observe after 1997 should, by common sense, entail prior consultation and agreement of the Chinese Government. No matter how flawless an ordinance is drafted, it remains ineffective if the authorities concerned do not take corresponding measure to implement it. In view of the different social systems in China and Hong Kong, there will definitely be divergence in the understanding of the concept and the interpretation of human rights. If the Bill of Rights is to be faithfully implemented, the Hong Kong Government should step up its dialogue and consultation with the Chinese authorities in order to reach a more concrete consensus and agreement. This is the bulwark for the human rights provisions to remain effective after 1997. Any action that may trigger off distrust

between China and Hong Kong would undermine people's confidence and jeopardize the future of Hong Kong. Should the Hong Kong Government act unilaterally and introduce a Bill of Rights with a status superior to all other legislation, the people of Hong Kong may become so used to it during the next few years that the repeal of the Bill by China after 1997, as she has all along opposed it, will deal such a severe blow to the people that the many repercussions which follow will be unthinkable.

Sir, I support the international covenants on human rights and maintain that the protection of fundamental human rights regarding freedom and equality of the people be reinforced. Nonetheless, should we place undue emphasis on human rights and confer on the related legislation a status superior to that of all existing legislation in Hong Kong, to the extent that social security and the effectiveness of law enforcement would be affected adversely, it would be detrimental to the stability and prosperity of Hong Kong. This is most unwise. Under these circumstances, I can hardly be convinced that I should render my support to the Hong Kong Bill of Rights Bill proposed by the Government. However, I respect the spirit of human rights and I support the advocacy and protection of human rights. But before the Government is able to introduce a Bill of Rights that can ensure the effectiveness of law enforcement, the maintenance of law and order, as well as the protection of the interests of the people, I shall abstain from voting.

Sir, these are my remarks.

MR. DAVID CHEUNG: Sir, while this Bill is being debated in this Council, there are still doubts shared by some quarters of the community as to whether the enactment of such a Bill here and now is necessary in view of the fact that the Bill is nothing more than a repetition of the International Covenant on Civil and Political Rights.

I feel that the successful passage of such a Bill, be that as it may, is strategic in enhancing the confidence of the people of Hong Kong. Not only that, with the anticipated changes of political atmosphere overshadowing this tiny land of ours, the Bill will, on the one hand, allay the fears people have in their hearts and, on the other, elevate the morale of the people.

No one will disagree that individual rights must be respected for such rights are inalienable. To the people of Hong Kong who have long enjoyed freedom, such rights are precious and cherished by all.

Having said that, I must now caution against the possible abuse of human rights.

Abuse can be looked at from two different angles. First, the angle of denial. That is to say, it is the government's responsibility to see that no one is denied such rights. Government must be satisfied that such rights are protected and enjoyed by all of us here in Hong Kong. After the passage of the Bill, the Government should, all the more, uphold and enhance the spirit of the law so that no one will have to live under unnecessary fear.

Viewed from another angle, abuse can also take the form of excessive freedom under the spirit of the Bill.

It is in this respect that the Bill worries me to some extent. Many people may be eagerly waiting for the passage of the Bill in order that they may have an insurance to do anything and everything under the sun. I dread to see the day when people can do as they wish claiming immunity behind the Bill of Rights. Such abuse will upset the value system, break up the moral fibre of society and destroy social order.

Imagine law enforcement being hampered. If criminals' rights are upheld to the detriment of police work, it will be a heavy blow to police morale. While I do not support any abuse of power on the part of the police, I certainly do not like to see them being abused either. The police force is the stalwart of law and order and they must be given authority to do their job properly.

The controversial power of the Independent Commission Against Corruption (ICAC) has been a bone of contention during our deliberations. Again, I do not support excessive power of the ICAC, but a toothless ICAC may lead to a revival of corruption which has so far been wonderfully kept in check under the operation of the ICAC. Surely, a resurgence of corruption is deadly for Hong Kong viewed from whatever angle.

If other people's rights and freedom are not respected in the exercise of one's freedom, it is a form of selfishness which can get carried away too easily. It must not be allowed.

If teachers and parents cannot decently discipline pupils and children for fear of violating human rights, order at home and in school may gradually disintegrate, thus affecting social order. In fact, this is happening among many households and schools now.

If consenting adults can, in the name of individual rights, secretly do whatever they please, even though such acts are socially and morally unacceptable, to the

extent that they cannot be stopped or reprimanded, where is the line to be drawn? I fully agree with Mrs. Rosanna TAM that we must start educating our young people about human rights so that clear concepts can be inculcated into their minds from an early age. In the long run this is the only effective way to guarantee a balanced view thus minimizing the possibility of abuse. In the mean time massive publicity campaign must also be mounted to educate members of the general public.

Sir, while I support the Bill, I cannot accept condoning or accommodating wrong doings in the name of human rights; what is right is right, wrong is wrong; it cannot be blurred, neither should it be disguised. During our deliberations, the Bill has been jokingly called the Bill of Wrong. I certainly do not want to see this happen.

With these words, Sir, I support the motion.

MRS. FONG: Sir, today, I stand in this Council to speak for the ordinary citizens of Hong Kong. There has been so much in-depth discussion by experts on the Bill of Rights regarding entrenchment, supremacy, freeze period and inter-citizen rights and so on, that I feel I must seek clear answers to some basic questions and I must urge that they be given in terms that can be understood by ordinary citizens.

The Bill of Rights is a very important piece of legislation. This is not only because of what it purports to do but also it comes at a time when Hong Kong is replete with uncertainty. This means that it must be handled in a way that does not create, or add to, any mistrust that may exist. It also means that it must be handled in a way to ensure that it does not directly or indirectly provoke any loss of confidence.

The Bill is said to have many facets and implications and provide human rights safeguards to all. Sir, my QUESTION NUMBER ONE must be: what is the Administration really trying to do? The public must assume that the Administration is looking after its interests. We must also assume that legislators are also looking after our interests. But why is it so necessary for them to look after our interests in this way at this time? Who has suffered in the past 20 years during which Hong Kong did not have a Bill of Rights? Who is suffering today? Has there been much injustice? Was there any serious outcry for this Bill in the past 20 years? Furthermore, is it not true that the very same rights which are incorporated in the Bill were assured to all Hong Kong people when the United Kingdom ratified the international covenants in 1976? For all of these reasons I do not understand why we need the Bill of Rights

in a rush and at this specific moment?

Some of my deepest concerns about this Bill of Rights are the possibilities of the Independent Commission Against Corruption powers being trimmed, the powers of our police force being reduced and the duties of our Correctional Services Department being affected, with the consequence that we could no longer maintain effectively the existing level of law and order in our territory. I am also concerned that certain aspects of our traditional Chinese culture and customs would need to be modified because of this Bill of Rights. What is this Bill anyway? I treasure Hong Kong's existing living environment. I am proud of its law and order and of its reputation of being free of corruption. I am also proud that Hong Kong is Hong Kong and that it has a Chinese heritage which is deeply ingrained in a more recent one that has become its own. We have our own laws and legislation, our own customs and culture, which may be unusual or unique, but are part of our way of life and we value them highly. Sir, my QUESTION NUMBER TWO is thus: should we not think very deeply before we take steps that would upset this balance? Should we not think twice about the negative implications that we may no longer be able to maintain the existing law enforcement and anti-corruption duties which will be of vital importance to us in the run-up to 1997 and beyond?

The standard of living of the people of Hong Kong has improved substantially for the past 10 to 20 years. Hong Kong is one of the four newly industrialized territories in Asia. In Asia, we rank second only to Japan in per capita GDP, marginally ahead of Singapore, well ahead of Taiwan and Korea and very substantially ahead of countries like Malaysia, Thailand, the Philippines and Indonesia. Sir, my QUESTION NUMBER THREE is: why do we stand out in Asia as being the country so seriously in need of a Bill of Rights? It is my understanding that few, if any, of them have such legislation today. Reference has been made to many western countries, including the United States and Canada. But Hong Kong is not the United States and it is not Canada. I am not sure that the United States and Canada are doing so much better than Hong Kong on the whole. Are their citizens freer than ours? Are their crime rates lower than ours? I, for one, do not wish Hong Kong to become another United States or Canada.

I have also been told that this Bill of Rights will not be in conflict with the Basic Law because these same rights have been provided for in its Article 39. Sir, my QUESTION NUMBER FOUR is thus: if that is the case, does it not follow that if anyone wishes to seek protection under their rights beyond July 1997, they could already

do so under Article 39 of the Basic Law? Which country has a Bill of Rights with a separate piece of legislation when such rights are already in its constitution? Alternatively, if the Bill of Rights is already incorporated in the Basic Law, which is the future Special Administrative Region Constitution, but we still wish to segregate it into a separate piece of legislation, then, if this legislation is as important as is being said and its continuation beyond 1997 is so important, surely we should seek China's support in its introduction. I trust that the Administration will do this before enacting the Bill. In view of the negative comments from the Chinese authorities, should I assume that a decision has been made that China should not even be consulted, or should I assume that China had been consulted and for some reason objects. I am concerned about this, as I believe it would be exceptionally damaging if a major piece of legislation like this was introduced now on an unilateral basis in a climate of mistrust, and was reversed in 1997. Has enough thought been given to this?

Of course I want my rights, but the fact is, I have never felt that I do not have them. I feel that we must be very cautious in handling this Bill. I do not understand why we need to rush into major legislation before our people fully understand it and in a manner that appears to be confrontational with China, when a more appropriate way might still be found. I am totally in favour of Hong Kong people having our rights and of those rights being up to date. I do however need to be convinced that this piece of legislation is appropriate, is necessary, and can be implemented in a way that is in the best interests of the people of Hong Kong in the long term. In those circumstances, I hope that the Administration will consider all of the implications very seriously before they move further.

Sir, before my questions are answered in a loud and clear voice that can be understood by the people of Hong Kong, I cannot support the motion.

MRS. LAM (in Cantonese): Sir, since the Universal Declaration of Human Rights was adopted by the United Nations General Assembly in December 1948, the world has begun to take an interest in human rights. As the term suggests, human rights are the inherent rights of human beings. In other words, all people should be equal and free before the law. These rights should in no way be illegally infringed upon by any individuals or organizations. For this reason, I support the institution of a Bill of Rights for Hong Kong.

In December 1966, the United Nations General Assembly adopted another two international covenants, that is, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and stipulated that all state parties to the covenants had the obligation to take all appropriate measures to safeguard the various rights. As Britain has become a signatory state to the international covenants since 1976, the provisions in the above-mentioned covenants are in fact applicable to Hong Kong. Hence, it is stipulated in the Sino-British Joint Declaration 1984 and in Article 39 of the recently-endorsed Basic Law that "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region". Thus, to enable these international covenants to be effective in Hong Kong, it is indeed necessary for Hong Kong to enact a separate Bill of Rights Ordinance to incorporate the human rights enunciated in the two international covenants into the domestic law.

Human rights are the basic requirements for the civilization and advancement of any modern society. Hong Kong is a progressive metropolitan city. Our concepts, culture, finance and developments are all internationalized. It is therefore natural and indisputable that the people of Hong Kong should enjoy the human rights upheld in a modern city.

Moreover, from a practical point of view in Hong Kong today, the enactment and promulgation of a Bill of Rights Ordinance are not necessarily related to the 1997 issue. With its present-day progress, Hong Kong has a genuine need to introduce legislation to safeguard human rights instead of relying solely on international covenants. In my view, the promulgation of a Bill of Rights Ordinance should be regarded as a factor conducive to the maintenance of stability and prosperity in Hong Kong, and a step forward in promoting Hong Kong's rule of law system. It is, moreover, an indispensable part of the journey towards civilized social developments.

Hong Kong will revert to China in 1997. By then the Basic Law will become the mini-constitution of Hong Kong. Article 8 in Chapter I of the Basic Law states that "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." Article II also states that "No

law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law." It is apparent therefore that the Bill of Rights Ordinance, once enacted, will not claim superiority over the Basic Law. I think that the enactment and promulgation of the Bill of Rights Ordinance will be conducive to perfecting Hong Kong's laws and promoting Hong Kong people's consciousness of human rights.

However, I hope that the Government can bear the following points in mind while promulgating the Bill of Rights.

(1) Details of the Bill of Rights Bill should be explained to China as quickly as possible in order to eliminate misunderstanding, and to make the Chinese Government understand through diplomatic channels that the Bill properly reflects the provisions in the International Covenant on Civil and Political Rights. It is hoped that the Chinese Government will support the Bill which will continue to be enforced after 1997.

(2) The Government should review as quickly as possible the relationship between the Basic Law and the Bill of Rights to ensure that they are compatible.

(3) Amendments should be made as soon as possible to any Ordinances that are inconsistent with Bill of Rights. For instance, there are still ordinances that reflect inequality between the sexes. Among the traditional rights enjoyed by the New Territories indigenous villagers, the right of succession and small house entitlement are still enjoyed by the male heirs. This not only deprives the female indigenous villagers of their rights, but also contradicts the principle that all people should be equal and free before the law. Although our Legislative Council colleagues from the New Territories do not agree with this principle, it is understandable because they are male indigenous villagers of the New Territories.

(4) Although the Bill of Rights is important, law and order must be maintained in Hong Kong. For instance, it is necessary to check identity cards in order to intercept illegal immigrants, to enact the Public Order Ordinance in order to prevent crime, and to empower the Independent Commission Against Corruption to carry out its operations in order to curb corruption. All these are also important. Therefore, while complying with the principle of protecting human rights, the provisions in the Bill must also ensure that law and order are properly maintained in Hong Kong. The Government should work out in detail the way of enabling the law enforcement agencies

to discharge their duties in accordance with the human rights provisions.

(5) The Government should consider setting up a human rights commission to handle human rights proceedings between individuals. The commission should be an open and independent body. Apart from educating the public on the concept of human rights it should also be responsible for investigating complaints and, if necessary, recommending to the Government amendments of laws which are inconsistent with the Bill of Rights Ordinance. It should also function as an arbitration forum on human rights disputes between individuals.

Finally, many people in Hong Kong still cannot fully understand the concept of human rights. Therefore the Government has the responsibility to educate the public so that they will understand the contents and spirit of the Bill. The mass media and educationists should also be called upon to help promoting and imparting the concept of "human rights" to members of the public.

Sir, with these remarks, I support the motion.

MR. LAM (in Cantonese): Sir, during this debate on the Bill of Rights today, conflicting ideas swarmed into my mind before I spoke. In principle, I support the spirit of the Bill, but after careful consideration, I feel that the standards set by the Bill are universal. More than 2 000 years ago, Mencius, a great philosopher of China, said, "laws alone will not work". To interpret his saying, from a present-day point of view, it means that legislation must be integrated with the actual social situation before it can be truly effective. Otherwise, the institution of one law will only bring about another loophole, which is counter-productive.

The Bill of Rights comprises three parts. In Part III which deals with immigration law, it is stipulated that the Government reserves the right to continue to apply such immigration legislation governing entry into, staying in, and departure from Hong Kong as it may deem necessary from time to time. Accordingly, in the case of those who do not have the right to enter and stay in the territory under the prevailing laws of Hong Kong, the application of the Bill of Rights is subject to the provisions of the immigration legislation concerned. Moreover, for those who do not have the right of abode in Hong Kong, Article 9 does not provide for the right to seek a review of the decision to deport them nor the right to have representation before a competent authority.

In the Bill of Rights, there is a total of six reservations, which are drawn up from the world standards of human rights and in the light of the actual situation in Hong Kong. They suit local conditions and the needs of the times. Therefore, I support such reservations.

Sir, regarding the New Territories, as it involves leased land, the New Territories Ordinance (Cap. 97) enacted in 1910 expressly recognizes and safeguards the New Territories villagers' customs and traditions, to the effect that land, houses, "Tso" and "Tong" property, are inherited and enjoyed by the male descendants. In the Sino-British Joint Declaration, it is stipulated that in the case of old schedule lots, village house lots, small house lots and similar rural holdings, the right of succession is also enjoyed by the lawful male descendants. Article 40 in Chapter III of the Basic Law also explicitly states that "The lawful traditional rights and interests of the indigenous inhabitants of the 'New Territories' shall be protected by the Hong Kong Special Administrative Region".

Male line succession is a long-standing tradition in the New Territories. The aim is to pass on to descendants ancestral property and maintain solidarity among fellow villagers. In response to the introduction of the Bill of Rights in Hong Kong, some members of the community are at present striving for the amendment of the New Territories Ordinance. If this Ordinance, which has been enforced in the New Territories for 90 years, is consequently amended, resulting in the repudiation of measures adopted in the past under lawful policies, the masses of our fellow villagers will be at a loss as to what to follow. It may also lead to numerous disputes and lawsuits, dealing a blow to the system of our rural community. Apart from having an adverse effect on social stability, this situation may also contravene the Joint Declaration and the Basic Law.

The legal community in Hong Kong has already issued a warning that after the implementation of the Bill, there will be a vast number of lawsuits in respect of constitutional issues filed for ambiguous reasons relating to the international covenant, giving rise to conflicting rulings. In the transitional period, the relaxation of the original legal system would be detrimental to the maintenance of social stability and economic prosperity.

Sir, although I am from the New Territories, I speak not only for the interest of one district, but also for the whole society. I have done my duty in voicing my

opinions to the best of my ability.

Sir, with these remarks, I support the motion.

MRS. LAU (in Cantonese): Sir, strengthening the confidence of the Hong Kong people in their future is an essential effort in maintaining prosperity and stability of the territory. Under this major premise, the Bill of Rights is introduced with the hope that Hong Kong people will have greater confidence that their individual rights will be well protected. Only when they have confidence in the future of Hong Kong will they remain and work for the future prosperity and stability of the territory.

A review of the practical situation in Hong Kong will show that the introduction of the Bill of Rights may have nothing to do with the 1997 issue. As the British Government has already recognized the application of the two international covenants on human rights in Hong Kong since 1976, the concern and demand among the public over human rights in the past decade have been on the increase. Even in the absence of the 1997 issue, the Government will find it necessary to introduce a Bill of Rights at the present stage to give effect to these two international covenants in domestic law so that it will ensure individual freedoms and other rights of our citizens, make our legal system better and promote public awareness of human rights among the citizens.

The enactment of the Bill of Rights should be considered a major step forward towards a better legal system and a more enlightened society in social development. It is most unfortunate that after the announcement of the introduction of the Bill of Rights in Hong Kong, the Chinese Government expressed its suspicion and raised objection against it, thus casting unnecessary shadows on its prospect.

Sir, in order to allow the Bill of Rights to remain in force after 1997, it is of great importance to seek the support of the Chinese Government for the Bill. I therefore hope that the British Government and the Hong Kong Government will make greater effort to explain to the Chinese Government thoroughly the value and purpose of the Bill, so that the Chinese authorities will understand that the Bill is not only a means to improve our legal system, but, most importantly, to restore the already shattered confidence of the Hong Kong people in the future.

I strongly believe that the Chinese Government is committed to the maintenance

of prosperity and stability of Hong Kong. Once it acquires a better understanding of the Bill of Rights, it will definitely attach the greatest importance to restoring the confidence of the Hong Kong people and strongly support the Bill.

Doubts over the Bill of Rights mainly centre around certain provisions of the Bill which some consider may contravene the Basic Law. Article 39 of the Basic Law in fact states that the provisions of the two international covenants on human rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. In order to give effect to the relevant provisions of the two covenants as applied to Hong Kong and to implement them through local laws, the enactment of the Bill of Rights is a logical development. It is necessary to implement the relevant provisions of the covenants applicable to Hong Kong through the domestic law, so that if the human rights of our people are violated, the parties concerned may have a means of redress and can litigate in local courts.

I personally believe that since the Bill of Rights stems from Article 39 of the Basic Law, the Bill is basically fully in line with the spirit of the Basic Law. On the question of whether individual provisions of the Bill are inconsistent with the Basic Law, it should be left to the scrutiny of the Government. If it is necessary, appropriate amendments may be made so that the Bill will be in total harmony with the Basic Law.

Sir, some Members have earlier mentioned the traditional rights of the New Territories indigenous inhabitants referred to in the Basic Law, which may be in conflict with the Bill of Rights. The problem mainly arises from the inequality between men and women. The female descendants of a clan cannot enjoy the same status as their male counterparts. Sir, with the changes of the times, I feel that it is necessary to amend such unequal customary laws. Hong Kong is an ever progressing society. The old customs including the system of trading girl slaves commonly known as "mui chai", the foot-binding tradition among girls and the tradition that girls were not supposed to leave their chambers, which were in conflict with human rights, had already been removed as the wheel of times rolled forward. Today, both sexes can enjoy equal status in Hong Kong. It is unreasonable that we should allow some out-dated customary rules to remain in force in the same society.

Even if the Bill of Rights is not enacted, such customary laws which encourage discrimination between men and women among the New Territories indigenous inhabitants

should be reformed in accordance with the times. Article 40 of the Basic Law states that only the lawful traditional rights and interests of the indigenous inhabitants of the New Territories shall be protected by the Hong Kong Special Administrative Region. The "lawful" aspect of the traditional rights and interests has been emphasized. With the progress in society, men and women are able to enjoy equal rights in all aspects. Whether these retrogressive traditional privileges can fulfil the legal principles should be a matter for the courts after the implementation of the Bill of Rights. If certain traditional rights and interests are judged by the courts as unlawful, they will not enjoy protection granted by the future Special Administrative Region. Therefore, inconsistencies between the Bill of Rights and the Basic Law simply do not exist.

Sir, another controversial issue concerning the Bill of Rights is the restriction of powers of the law enforcement agencies. In the policy debate, I expressed my views that there could not be unrestricted protection for individual freedoms and rights under the Bill of Rights and that there had to be a balance between human rights and law enforcement. Undoubtedly, the purpose of the Bill of Rights is to protect the equal entitlement to basic human rights by every individual. However, in such a sophisticated society as Hong Kong, different situations should be taken into account and regard should be given to the interests of society as a whole in the protection of individual human rights and freedoms. The International Covenant on Civil and Political Rights also states that certain individual freedoms and rights may be subject to certain restrictions for the protection of national security or of public order or of public health or morals or of the legitimate freedoms and rights of other people. Therefore, law enforcement agencies must be granted certain power in order to maintain law and order. Nevertheless, the Administration must ensure that the powers given to these agencies will not infringe human rights.

Sir, human rights and law and order should be compatible and complementary to each other. We cannot highlight human rights and ignore the rule of law. On the other hand, the enforcement of law should not be in violation of human rights. Under the rule of law, when individual freedoms and rights have to be restricted, we must ensure that the law enforcing officers have adequate justification to impose such restrictions. Moreover, individual rights and freedoms exercised by citizens should also be consistent with the standards of a free democratic society and subject to these standards.

The Independent Commission Against Corruption (ICAC) has expressed worries that

the enactment of the Bill of Rights will reduce its investigatory powers against corruption. I believe that if the existing investigatory powers of the ICAC have been found to be in violation of human rights, adjustments may be made to its operational procedures accordingly to ensure that such investigatory powers are to be exercised under proper supervision and with sufficient reasons. In so doing, human rights will be protected and the efficiency of the ICAC in fighting corruption will not be affected. Similarly, other law enforcement agencies may also modify those powers which may infringe human rights on the same principle so that the purpose of upholding human rights along with the maintenance of law and order can be achieved.

Sir, in view of the importance of the Bill of Rights in restoring the confidence of Hong Kong people, I personally feel that the Bill should be implemented as soon as possible. The freeze period for existing laws which are inconsistent with the Bill of Rights should be the shorter the better. If the Bill of Rights can be implemented at an earlier date, the courts of Hong Kong will have more time to accumulate judicial experience of the Bill and establish case law for guidance and the public will have better knowledge of the Bill through practical experience and will in turn show greater support for the Bill. If the introduction of the Bill of Rights is strongly supported by Hong Kong people and its process of implementation is satisfactory after 1997, I believe, the Chinese authorities, having regard to the public support for the Bill and its great effectiveness, will be more positive about the value of the Bill of Rights in Hong Kong.

As regards the view that there should not be any freeze period for the Bill of Rights or that the period should be kept at the shortest, I hold the view that this will bring adverse effects. If there is no freeze period or the period being too short to be realistic, the laws that have been decided by the courts to be in conflict with human rights will be nullified at once and there will be a risk of legal vacuum after the Bill of Rights has come into effect. If too many pieces of legislation are affected, the powers of law enforcement agencies in maintaining law and order will be greatly eroded and this may lead to social disturbance. The consequence will be very serious.

On basis of the above reasons, I personally support that there should be a one-year freeze period for existing legislation in conflict with the Bill of Rights so that the Administration will have time to amend such laws and make them compatible with the Bill. After the one-year review on the existing laws, if the Administration can provide this Council with good reasons, the freeze period may extend for another year.

The purpose of this arrangement is to ensure that the Administration will amend the laws as soon as possible and this Council will monitor the progress of the work of the Administration in amending the legislation.

I also propose that the Administration should give us the guarantee that during the freeze period, the administrative practices of the law enforcement agencies will be consistent with the Bill of Rights and they will adopt a flexible and cautious approach in exercising powers which may infringe human rights.

Sir, in view of the 1997 issue, it is of paramount importance to maintain the Hong Kong people's confidence in the future. In order to strengthen their confidence, the Bill of Rights should be implemented as soon as possible. In retrospect, the response throughout the whole consultation period reflects that Hong Kong citizens are generally in support of the Bill. In my understanding, the Bill of Rights is welcomed by the public mainly because they want greater protection for their individual freedoms and rights under the Bill and they hope that their basic human rights will not be easily violated after 1997. I believe that if this guarantee is given, Hong Kong citizens will have greater confidence in the future and will be willing to stay and work for the prosperity and stability of the territory.

Sir, with these remarks, I support the motion.

MISS LEUNG (in Cantonese): Sir, on 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights as "a common standard of achievement for all peoples and all nations", declaring that all peoples in the world should be entitled to basic human rights and fundamental freedoms. Since then, the concept that everyone possesses the same human rights has been gaining increasing significance and acceptance from people all over the world. The prevailing trend is that people's power is gaining momentum and the prospect for human rights development becomes more and more optimistic. Any obstinate resistance to human rights is bound to dwindle as time goes by.

Sir, on the issue of Hong Kong's reversion to China on 1 July 1997, both the Chinese and British Governments has taken special care to safeguard human rights in Hong Kong when they signed the Sino-British Joint Declaration in 1984. Annex I to the Joint Declaration stipulates that "the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and

Cultural Rights as applied to Hong Kong shall remain in force". It follows that the Basic Law of the Hong Kong Special Administrative Region recently approved by the National People's Congress in Beijing also carries a similar provision to that effect. Article 39 of the Basic Law stipulates inter alia that "(the two International Covenants) shall be implemented through the laws of the Hong Kong Special Administrative Region. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article". In view of this, we believe that to enact a Bill of Rights as a comprehensive and independent piece of explicitly worded legislation of easy reference and to incorporate the same into the laws of Hong Kong should be considered as in line with the spirit and provisions of the Joint Declaration and the Basic Law. There is little contradiction in this. It is only due to over-worrying or misunderstanding that certain arguments have arisen which cast doubt on the consistency of the future Bill of Rights Ordinance with the Basic Law.

Sir, being an enthusiastic humanitarian who fully respects and accepts human rights, I strongly support the enactment of a Bill of Rights Ordinance as soon as possible.

We realize, and indeed commend, the fact that the future Bill of Rights Ordinance will be given a degree of entrenchment and thus an over-riding status over all the existing laws of Hong Kong. Provisions in existing laws which contravene the basic civil and political rights as applied to Hong Kong, such as the provisions which grant excessive power to the police and ICAC officers and those which provide privileges for indigenous New Territories inhabitants who constitute only a small fraction of the entire population of Hong Kong, must be amended or repealed. It should be noted that Article 40 of the Basic Law only provides for the protection of the lawful traditional rights and interests of the indigenous inhabitants of the New Territories after 1 July 1997. No protection is offered to any privilege which contravenes the Bill of Rights. Furthermore, after the enactment of the Bill of Rights, all new legislation will be subject to it.

Of course, we also realize that even if the future Bill of Rights Ordinance can be entrenched to override all existing laws, it must be subordinate to the Basic Law after 1 July 1997 since the Basic Law is the mini-constitution of the future Hong Kong Special Administrative Region.

Sir, in any case, some are of the view that the future Bill of Rights Ordinance would, to a considerable extent, affect the operational efficiency of the relevant law enforcement agencies, which may in turn erode our effective control over illegal immigration, corruption and other criminal activities. Such worries are understandable. Therefore, the Government should examine the relevant legislation in detail with the object of ensuring that such legislation would, after amendment, comply with the requirements of the Bill of Rights Ordinance and, at the same time, remain sufficiently effective in protecting public safety.

Sir, to us all in Hong Kong today, the enactment of the Bill of Rights Ordinance will not only in substance take the development of human rights a big step forward, but will also have long-term significance in human rights education. As all of us are aware, the majority of Hong Kong people have never had reasonable and adequate chance of receiving fundamental civic and legal education. They have but scant knowledge of their own and other people's basic rights and fundamental freedoms. We believe that coupled with an increasingly opportune situation for further development of representative government in Hong Kong, the future Bill of Rights Ordinance will definitely become the best teaching aid for lessons on various basic rights and fundamental freedoms. The Government should therefore probe into ways for further promotion of human rights education.

Finally, I hope the Government can give due consideration to the various recommendations put forth by the ad hoc group in its report on the Bill of Rights Bill. I should also like to pay tribute to the Honourable Mrs. Selina Chow, convener of the Legislative Council Ad Hoc Group to Study the Bill of Rights Bill, for her dynamic leadership which has contributed vastly to this fair and objective report.

Sir, with these remarks, I support the motion.

MR. MCGREGOR: Sir, I must begin with an assurance that anything remotely political in character in my speech must not be assumed to be the view of the General Chamber of Commerce.

Following publication of the report to the British House of Commons by the Foreign Affairs Committee which examined the situation of Hong Kong after the Tiananmen tragedy in June last year, I personally began to study the proposal in that report that Hong Kong should have a Bill of Rights as part of its defence against any change in its system and lifestyle after 1997. Like most Hong Kong residents I knew little

about the significance of a Bill of Rights within a community which seemed to me to enjoy most of the rights and freedoms provided in such legislation. In fact my earliest thought was that the proposal to establish a Bill of Rights was a British attempt to offset Her Majesty's Government's failure to accept full responsibility for the British nationality of 3.25 million Hong Kong citizens who seemed entitled to that status. I thought that the proposal was also a poor substitute for a faster rate of democracy which, in my ignorance at that time, I thought Britain might be able to persuade China to accept. These were unworthy thoughts, I readily concede.

Subsequently, and even to some extent at present, I found difficulty in understanding why a Bill of Rights had to be dealt with so quickly and apparently without full consultation with China. I realized of course that China was in no mood to discuss such esoteric matters as human rights at that particular time and that it would be difficult to enter into meaningful dialogue. However, I felt that not to do so might result in the rejection by China of important elements in a Bill of Rights for Hong Kong. How useful would a Bill of Rights be before 1997 if essential elements in it might not be retained after 1997, despite the promise in the Joint Declaration and the Basic Law that laws in force at 1997 shall continue to apply. In such circumstances, would a Hong Kong Bill of Rights provide adequate legal protection for treasured freedoms and also bolster the confidence of the people enjoying these freedoms.

When the draft Bill of Rights was published and detailed consultation and discussion began, I was already aware of many anomalies and problems which set this Bill of Rights in a very different framework to that applying to all other Bills of Rights drawn to our attention. This would be the first time in history that the freedoms held dear and protected by law in independent and democratic countries, whose destiny was in their own hands, would be provided in a Bill of Rights that would not apply to the constitution of the mother country. It might also be the case that the Bill of Rights would not be guaranteed by the mother country. We would be in a unique, strange and rather uneasy situation.

I was also greatly concerned at the stated necessity to ensure that Hong Kong legislation should conform fully with the Bill of Rights without exception and that powers which had proved completely necessary to protect the Hong Kong public against the criminal element would have to go. As the very detailed analysis of the draft Bill of Rights got under way, I tried hard to assess the balance of advantage in having an imperfect or incomplete Bill of Rights, one which would not seem to me to be greatly

necessary before 1997 and which might not do what it was supposed to do after 1997. I came to an early tentative conclusion that it might not be in Hong Kong's overall interest to have a Bill of Rights at all.

Since that time and with other Members of the Legislative Council ad hoc group I have studied what seems like a mountain of paper and I have listened to the earnest and expert views of a wide variety of interested people and organizations. Gradually, it became clear to me that all those sincere people were urging the adoption of the Bill of Rights no matter how many problems there might be and no matter what the initial balance of advantage in favour or against might be. I have come to accept that view and I have tried in my own contribution to the work of the ad hoc group to reflect the interests of the Hong Kong community as a whole. I therefore agree with the views expressed in the report by the ad hoc group which is now under consideration, subject to only a few observations.

The first and most important to me is that the powers given to the Independent Commission Against Corruption (ICAC) to combat the extremely serious problem of corruption and which have been used extensively and successfully to reduce the scale of this pernicious evil, be retained as far as this can be done. Sections 10 and 30 in particular of the Prevention of Bribery Ordinance seem to me to be essential provisions. I am told that there is some possibility that sections 10 and 30 can be modified and retained. I hope so because I believe that without them the ICAC may well be unable to prevent a return to the endemic corruption of 1950s and 1960s. We have seen in recent years, and even in recent weeks, how the organization and very fabric of our society can be shaken by corrupt practices. As we move towards 1997 there will be greater and greater danger of serious and debilitating corruption. We must try to ensure we can deal with it.

We have legislation in the statute books which discriminates in one way or another against sectors of our community. This includes sexual discrimination. I believe a woman in Sheung Shui is identical to a woman in Yau Ma Tei. Both should enjoy the same rights. I am pleased that most of my female colleagues, at least, on this Council agree with this view. I have the feeling, however, that the Government will not agree with it and that the Heung Yee Kuk has nothing to worry about. This matter aside, I do regard it as important that sexual discrimination be removed as far as possible and I would remind this Council that it is the case that those discriminated against quite often do not have the means to protest effectively.

My constituency has argued against provision for inter-citizen human rights action. I agree with this view not because such legal provision is wrong but because the more important rights involving private sector protection against official abuse seem likely to keep Hong Kong busy for quite some time and because we do have other means by which inter-citizen actions can be taken. We can perhaps consider the inclusion of inter-citizen protection at a later stage.

It seems essential to me that in this untried field of legislation in Hong Kong we must try to provide an effective mechanism by which complaints can be considered quickly and effectively and high quality monitoring and supervision can be maintained. This can be done by a Human Rights Commission and I fully endorse the views of the ad hoc group on this score.

It is clearly very important that the Bill of Rights be entrenched and given paramountcy over all other Hong Kong laws. These issues have been debated at great length in view of their significance and I support any and all measures which can be taken to achieve the necessary protection against subsequent modification.

I wish also to support the remarks on the death penalty made by my colleague Mr. Martin BARROW. Although this is not strictly within the ambit of a Bill of Rights I feel that it also involves consideration of the humane application of the law, in particular when convicted persons can be sentenced to death and wait for long periods of time before the sentence is commuted. I have personally nothing against the death penalty being applied in appropriate cases but I do not agree with judicial torture. Either carry out the sentence or remove the death penalty altogether from existing legislation. I favour the latter.

Sir, I have taken part fully in the long hours of consideration by the ad hoc group of this draft Bill of Rights. I do not take the view that it has been poorly received by the public. Members of the public already enjoy most of the freedoms provided in the draft Bill and have little knowledge of the finer points and implications inherent in the Bill. What is more important is that virtually all the organizations which collectively represent the public interest have examined the draft Bill very closely and commented on it, often at length. Experts have also submitted their individual views. I believe we have received all that we could have expected in the way of advice and comment. We have fully considered these views in our report.

I conclude by asking the Government to seek discussion as early as possible with the Chinese Government on the inclusion of the Bill of Rights in Hong Kong legislation and obtain agreement if possible on entrenchment and even some form of paramountcy. Chinese agreement would go a long way to establishing public confidence that Hong Kong's human rights and freedoms will be maintained long after 1997.

Sir, with these remarks, I support the motion.

MR. SIT (in Cantonese): Sir, before I proceed to my speech proper, I should like to make a supposition. Supposing I should always be one of those last speakers in every debate and had each time to wait until after eight to deliver my speech, could it not be regarded that I was somehow deprived of my human rights? But on the other hand, if I were to speak first every time, who was going to be the last one in the queue? Theory and practice often contradict each other. We have to face reality; and the fact is that there are many speakers in this Council. We must have discipline. If Members fall over one another to speak, none will end up being able to deliver his speech. If everyone insists on his right and will not yield to another in the order of speaking, then there will be no right left to exercise.

My views on enactment of a Bill of Rights are as follows:

1 The Universal Declaration of Human Rights is concerned with some internationally recognized principles or codes of human conduct. Examples of these are Chinese traditional values such as filial piety and loyalty to the sovereign as well as western values like the Ten Commandments, one of which is "thou shalt not kill". But all these are only principles -- pieces of advice for people to follow as closely as possible. As to how to put them into practice and the penalty or punishment upon violation, it is difficult to give a criterion.

2 There are over 80 signatories to the international covenant which gives effect to the Declaration of Human Rights. Yet only Canada has those human rights principles incorporated into domestic law. Even in the United States, the nation which considers the protection of human rights as its foremost obligation, there is not yet a piece of human rights legislation in its statute book. The reason is obvious. In order to attain some sort of equilibrium, special treatment has to be given under various policies to certain groups of people in the United States. For example, the ethnic minorities and the female will have priority to professorship in case vacancies

arise in the universities. In a narrow sense, this is a violation of the principle of equal rights for all. Another example is the classification of Malaysian citizens into natives and non-natives according to the constitution of the nation. Malaysian policies provide that special aid or support should be given to the natives, which in essence is against the principle of human rights. As regards the United Kingdom, which is the sovereign state of Hong Kong, the deprivation of its dependent territories citizens of the rights to enter freely or to choose to reside in the country is also an infringement of human rights. Perhaps this is one of the reasons why a Bill of Rights still fails to become part of the English law. To put it more precisely, these nations on the whole agree in principle to a Bill of Rights; but because of different circumstances a great majority of them would rather adopt it in the form of an unwritten code than make it a superior law with over-riding authority.

3 Nevertheless the principles embodied in the Declaration of Human Rights can serve as guidance in the course of legislation. According to social needs in various stages of political development and the change in concept of members of the public, these principles can be given effect to by way of amendments to different Ordinances. Special legislation on human rights should be avoided. Such legislation would be like codifying the Ten Commandments or, as in the case of some countries, incorporating some works of classic authority into law -- an act which not only fails to be in line with the actual development of the community, but also impedes its political advancement and social evolution.

As I said a few moments ago, "thou shalt not kill" -- one of the Ten Commandments -- cannot be taken literally. Soldiers do kill in wars for the protection of their country. The more they kill, the greater glory they will have and the more medals they will obtain. And under Hong Kong laws, killing in self-defence is justifiable. These are concrete examples which illustrate that principles like "thou shalt not kill" can only serve as guidelines in the formulation and enactment of legislation but should in no way be adopted lock, stock and barrel into the law.

Therefore, when drafting the Bill of Rights Bill, the Government should bear one important basic principle in mind, that is, how to integrate the Bill of Rights into the corpus of domestic law in such a way as to fit the needs of the Hong Kong community. This will involve consideration of the issue from the perspectives of politics, economy, race, law and order and religion, so that our community will take a further step towards greater political stability and economic prosperity. Hong Kong will

therefore become a better place to live and work in and the proven model on which Hong Kong has been operating should not be changed for the mere sake of the Bill of Rights.

Internationally, the Declaration of Human Rights is very important and has great reference value. But it would be very dangerous if the Declaration of Human Rights was accepted and adopted as part of domestic law without any modification and made to over-ride other laws at the expense of the unique background and historical factors of each individual country such as race, religion and culture. In other words, what we need to consider is: whether we should "cut the toes to fit the shoes" or vice versa. Sir, I believe we all in this Chamber will not be stupid enough to cut our own toes just for wearing a pair of beautiful-looking or expensive shoes.

Sir, given that the Bill of Rights Bill is still at the white Bill stage, I believe we, as legislators, after several months' consultation, still do not know what concrete provisions and details the Government intends to have in the draft Bill and how the Bill will be implemented and how the disputes therefrom arising will be settled, for example, whether the courts will be able to handle the probable large increase of cases and whether there will be sufficient human rights experts and judges to deal with them. Therefore, we can only give comments from the conceptual and social perspectives. Not until the Executive Council has finished scrutinizing the blue Bill and sent it to this Council for consideration can we be sure about what to be deleted or whether the Bill should be passed by this Council.

Sir, I believe the Government when drafting any Bill will consult different sectors of the community, including Legislative Councillors. Only when this Council reasonably suspects that for unknown reasons the Government is not taking Members' opinions into consideration will Mrs. CHOW's motion be meaningful. Otherwise, her motion will be pointless. But even if the Government does not take this Council's comments into account when drafting the blue Bill, let us not forget that Bills will still have to be considered, formulated and passed in this Council. This illustrates the authority of the Legislative Council and fully explains the advantage of separation of legislative, judicial and executive powers in any society upholding the rule of law.

Finally, Sir, with these remarks, I have reservations in regard to Mrs. CHOW's motion.

MRS. TU: Sir, because of the short consultation period our ad hoc group's deliberations were limited almost entirely to the wording of the Bill and the main laws that would need to be amended if the Bill were to be adopted. We did not have time to make any in-depth analysis of the Bill vis-a-vis the Joint Declaration and the Basic Law. I therefore feel that it is too early to support the enactment of a Bill of Rights before every aspect of the issue and its consequences have been analysed.

Several issues remain unresolved. Without going into great detail, I will mention a few of them.

One major concern is the conflict between the Bill of Rights and law and order in Hong Kong. The issue as to how far the law enforcement bodies can carry out their duties without infringing on some civil rights is still under discussion by the departments concerned. This issue must be resolved within the limits set out in Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in essence recommends a balance between human rights and the general welfare of the community. The thin line between implementing human rights and putting the public at risk from crime, corruption and triad activity is not an easy line to draw, but it must be done; otherwise corrupt and criminal elements will deprive us all of our rights.

The Council's report considers the Reservations listed in Part III of the Hong Kong Bill of Rights to be acceptable, subject to periodic reviews to withdraw them if justifiable. I cannot agree with this recommendation. I believe that the reservation on Article 6 is not justifiable because it is based on the grounds that suitable prison facilities may be lacking to segregate juvenile accused from adult. The danger to young accused is obvious. It is not justifiable in our affluent society to seek umbrage from human rights on the excuse that facilities are insufficient.

Nor do I agree with the reservation in clause 14 of Part III of the Bill, but I will enlarge on that later.

I would now like to concentrate on those recommendations by the Council which refer to the Hong Kong Bill of Rights vis-a-vis China. It is suggested that we should ask China to allow the Bill of Rights to have superior status over other Ordinances in order to implement Article 39 of the Basic Law, since Article 39 promises that

the international covenants and labour conventions as applied to Hong Kong shall remain in force after 1997.

In the first place, I think that it is most unlikely that the Chinese Government would give superior status to anything outside the constitution, which it has tailored especially for Hong Kong and has already passed into law in Beijing. But even if the Chinese Government were to consider such an unprecedented step, would we achieve anything superior to the Basic Law by adopting this half-hearted Hong Kong Bill of Rights? I think not.

Perhaps we have all recently been too overwhelmed with disappointment that the Basic Law offers too slow a pace of democratic progress and we may have neglected to notice that Article 68 in the Basic Law makes a firm commitment to democracy, albeit less quickly than we could wish. This Article 68 reads: "The ultimate aim is the election of all members of the Legislative Council by universal suffrage." In contrast, the Hong Kong Bill of Rights in Article 22 deviously states: "Every citizen shall have the right and the opportunity... and without unreasonable restriction, to vote and to be elected at genuine periodic elections which shall be held by secret ballot..." That statement is closely followed by the Reservations and Explanatory Memorandum, clause 14, which clarifies "that Article 22 does not require the establishment of an elected Executive or Legislative Council." This coyness towards democracy is a sentiment we have seen throughout Hong Kong's 150 years of colonial history, and now it reappears in the Hong Kong Bill of Rights. Do we really want China to entrench such a reservation in our future constitution? Article 68 of the Basic Law gives us a better choice.

There are other areas in which, surprisingly, the Basic Law has more to offer than the Hong Kong Bill of Rights. Nowhere does this Bill include any of the most essential articles of the International Covenant on Economic Social and Cultural Rights (ICESCR), and no acceptable explanation has been given for this omission. The Basic Law, on the other hand, includes many rights taken from both covenants, and actually includes the ICESCR in its Article 39, adding that the two covenants "as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR". I find nothing in the Basic Law that would prevent us from amending our present laws to get them in line with human rights. Article 39 would then be the guarantee that those laws would remain in force after 1997.

I am aware that we were all shaken up by events in China last year and our fears

will not go away. However, if we do not trust the Chinese Government to implement the Joint Declaration and the Basic Law, can we have any greater hope that they will implement a Hong Kong-made Bill of Rights? In fact the Chinese Government has already declared that they will not do so. We therefore have to find a viable solution.

One final point I wish to mention is the proposal by many commentators, and supported by this Council, to set up a Human Rights Commission. This is in fact long overdue in Hong Kong. None of our present appeals channels work well for those who cannot afford to engage good lawyers. I do not care what name we give to such a commission, but I would insist that it should not be just another expensive ornament that enlarges the bureaucracy but does little to alleviate injustices. Beautiful theories achieve nothing unless they are faithfully implemented.

Sir, ironically I am told that, as we debate this Bill of Rights, two tiny Chinese babies are languishing in the Victoria Detention Centre in prison conditions where they and their illegal immigrant mother have been detained for 10 days. I think we need a Human Rights Commission now to restore the babies to their father who is a Hong Kong resident.

Turning back to the motion, I feel unable to say at this time that I support the enactment of a Bill of Rights. Certainly I would not support this present deformed Bill that leaves out the whole of one international covenant and decapitates the other. Why let this half-baked creature pose a threat to the validity of the Joint Declaration? I believe that we should leave no stone unturned to implement the Basic Law legally by making immediate amendments to our present laws where they fall short of human rights, as permitted by Article 39 of the Basic Law, which, like it or not, is our future constitution.

It is necessary to remind ourselves that the Basic Law is based on an international declaration made before the whole world, and as such it may be our best hope for the future.

Sir, I therefore intend to abstain from voting on the motion.

MR. PETER WONG: Sir, before I begin I would like to thank Mrs. Selina CHOW, as convener, and Mr. Ronald ARCULLI, the deputy convener, on behalf of all Members of this legislature for doing such a sterling job in steering the ad hoc group through some of our difficult and heated arguments. And certainly the human rights of some of

the Members were contested during the meetings.

I am pleased to say that Hong Kong accountants welcome the introduction of a Bill of Rights setting out in one piece of legislation the basic human rights that we have often taken for granted. The need for such legislation is apparent once we realize that those rights are inherent in us and not something that can be taken away.

The recent debate over the White Bill published in March has been illuminating for those of us who have taken the trouble to study and argued about it. I hope that the introduction of the Blue Bill will draw more Hong Kong people to keenly study it and bring out more candid debate. It must be the most important safeguard we have to protect the people of Hong Kong against the excesses of its government. All around the world, many things have been done in the cause for the common good which trample over all the rights of the individual without his or her knowledge. I doubt if Hong Kong will be any different. The Bill of Rights should go some way to redress that balance and must be seen as the minimum standard to measure all future laws.

It can be argued that most of those rights have been included in the recently promulgated Basic Law. But the problem remains that the Basic Law was promulgated by the National People's Congress in Beijing and can be altered or cancelled without our leave. Since we have been denied a Bill of Rights that is enshrined above all other legislation, we have to settle for something that is at least of our own free choice.

Clause (6) of Article 2 of the draft Hong Kong Bill of Rights states: "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong."

Although capital punishment is still on our statute books, neither you, Sir, nor your predecessors have deemed it right to carry out such a sentence, whatever the severity of the crime, since 1966. It may be presumptuous of me, but I do not see British Parliament in the few years up to 1997 permitting us to remove the sentenced Hong Kong criminal from this earth and thereby admit that we have absolutely given up all hopes of redeeming him.

I am also afraid that the successor to this legislature, with its new found high degree of autonomy, will be incapable of exercising the due care and will permit the use of this ultimate deterrent to remove unwelcomed opponents.

There are some heinous crimes that I would under normal circumstances consider as justifying the death sentence, such as drug trafficking. However, after due consideration, I am convinced that capital punishment should be abolished forthwith.

Sir, with these words, I support the motion.

ATTORNEY GENERAL: Sir, I have listened with great interest to the many speeches of Members on the motion proposed by Mrs. Selina CHOW on the draft Bill of Rights. I would like to take this opportunity to thank Members of the ad hoc group for all their very hard work. I would wish with others to pay particular tribute to Mrs. CHOW and to Mr. ARCULLI who, as convener and deputy convener respectively of the group, guided the discussions of the group so helpfully and so effectively. Their report to the Secretary for Constitutional Affairs is a careful and thorough analysis of the many complex and disparate legal and political issues which the Bill of Rights throws into such sharp relief. I know that Members who were in the ad hoc group have availed themselves of every opportunity to learn about the problems of drafting a Bill of Rights from a variety of sources. I also know that when they have met members of the Administration to discuss the draft Bill they have worked them very hard indeed in seeking explanations for various aspects of the Bill. That is how it should be. The end result has been a very full and a very helpful report which concludes by expressing support for the draft Bill in the terms of the motion.

The draft Bill of Rights has attracted great interest both within Hong Kong and overseas. This is a document of enormous significance and arguably will be the single most important piece of legislation ever to come before this Council for it demonstrates Hong Kong's determination to maintain internationally recognized basic standards regarding human rights and freedoms.

Drafting the Bill of Rights has presented unusual challenges. In particular, the Administration has had to meet the requirements of the Joint Declaration and has had to accommodate the Basic Law. We have also had to take into account the international obligations of the United Kingdom under the International Covenant on Civil and Political Rights and to make sure that they were fully reflected in the draft Bill. Given these various considerations, it is indeed gratifying therefore to have a draft Bill which is broadly acceptable to most Members of this Council and to very many other people in Hong Kong and which, importantly, is consistent with

the constitutional requirements.

I would like to acknowledge the contributions made by members of the public and by various groups and associations who have made formal submissions to the Secretary for Constitutional Affairs in the consultation exercise. Since the draft Bill was published in March, over 800 submissions have been received in response to the Secretary's request for comments on it. Many of these were from professional or community organizations, the business sector and interest groups. There was a substantial number of returns from individuals.

What emerges from the submissions is something which is very heartening and bodes well for the future of civil rights and the rule of law in Hong Kong. Nearly all of the submissions supported the principle of a Bill of Rights for Hong Kong and the direct incorporation into our legal system of internationally recognized minimum standards of human rights. Many of the submissions demonstrated that the authors had spent much time analysing the draft Bill and its underlying principles in order to make helpful comments about its content and structure. Those submissions, which have dealt with what I might call the legal-technical side of the draft Bill, have been very useful indeed in provoking further thought. For example, submissions suggesting that Part I of the draft Bill might be revised so as to make it a more effective piece of legislation. These submissions include in particular contributions from the legal profession and from many academics.

In addition to the submissions from members of the public and interested groups and associations, it is also right to acknowledge the contribution which the media has made to a better understanding of the draft Bill.

Newspapers and magazines have devoted many column inches to news and views about the draft Bill. Radio and television, too, have played their part in stimulating debate. It has been most interesting to follow this day by day, and to note the gradual growth of a better understanding of what the draft Bill attempts to do. Debates of this kind which are carried on in the media can only have a positive effect overall in promoting public awareness of the importance of a Bill of Rights in Hong Kong.

The proposals contained in the report of the ad hoc group and the many useful and penetrating comments in submissions are now being studied by us with the utmost care. Subject to the further advice of the Executive Council, we propose introducing

formally the Hong Kong Bill of Rights Bill into this Council on 25 July. Members of this Council and members of the public will of course have further opportunities to study and to comment in the usual way on the Bill after its introduction.

Some of the proposals and comments do not relate so much to the content of the draft Bill as to its anticipated effect. An example is the proposal that we should have a Human Rights Commission or some similar body for Hong Kong. We shall consider that idea carefully, recognizing that such a commission can have a role in educating individuals as to their rights and could also be an informal and inexpensive dispute resolution body. But we must give careful thought as to whether such a commission is really necessary, having regard to our existing legal and judicial system.

Concern has also been expressed that if it proves necessary for certain law enforcement bodies to adjust their enabling legislation so as to accommodate the legal demands of the Bill of Rights then this should not be at the expense of maintaining law and order. I can assure Members that the Administration attaches the utmost importance to the operational effectiveness of the police and the Independent Commission Against Corruption and the other law enforcement bodies. Every effort will be made to ensure that any necessary amendment to laws which regulate law and order in Hong Kong will not prejudice that effectiveness.

The ad hoc group has suggested that the proposed "freeze period" be reduced from two years to one year with a schedule identifying Ordinances and particular provisions in them to be frozen; this period may be extended for a further year if justified. The Administration's proposal was wider in that we suggested a two-year freeze on all existing legislation. The motive behind the ad hoc group's proposal is clearly that we should get the Bill of Rights working as soon as possible and let the courts decide issues of compatibility. We sympathize with that feeling but I should remind Members that the purpose of the two-year freeze as proposed in the draft Bill is not only to identify laws at risk, but also to give Members adequate opportunity to consider what changes to such laws may be desirable. We believe that this is a prudent course. It is not a novel concept for there is precedent for it elsewhere. Nevertheless Members can be assured that we will give their proposal the most careful consideration.

Moving on from these matters, it is appropriate at this stage for me to re-state the Administration's position on two major points.

First, we are committed to the principle of ensuring that the Bill of Rights will endure beyond 1997. There has never been any intention on our part to make the Bill of Rights some kind of rival to the Basic Law and, in particular, its Chapter III. We are satisfied that there will be no inconsistency between the Basic Law and the Bill of Rights after 1997. The Bill of Rights will then give effect to Article 39 of the Basic Law which provides that the International Covenant on Civil and Political Rights as applied to Hong Kong will be implemented through law.

Secondly, it has been of particular concern to us to ensure that the rights and freedoms contained in the Bill of Rights are adequately safeguarded by legal and constitutional measures. This has led to the proposal that the Letters Patent be amended to incorporate a constitutional requirement that no law which restricts the rights and freedoms of persons in Hong Kong can be enacted by this Council if it is inconsistent with the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong. This proposal achieves what is so widely desired, namely, a guarantee of human rights in Hong Kong.

Sir, I conclude by thanking all Members again for their contributions in this most important motion debate.

MRS. CHOW: Sir, the sitting has been long and the hour is late. So I really would not like to keep Members behind too much longer. I would just like to respond to two points. First, there has been a suggestion that perhaps the Bill is not needed because we have the Covenant to fall back on. When the ad hoc group started its deliberations, it was never presumed at the beginning that there must be a Bill of Rights. In fact, we did look very hard at the necessity and desirability of such a Bill and we came to the conclusion that if we did not have the Bill of Rights and if a party feels that his rights protected under the Covenant have been infringed upon there is at present no avenue open to him to seek any remedy. With the Bill as domestic law he can take his grievance to the courts. Justiciability is a major value to the Bill.

Secondly, to those of my colleagues who advocate that we must not do anything to upset China, I submit that this is a passive and unhelpful attitude which does not meet with too much approval or identification with our people, not to mention that it is quite difficult to predict what would or would not upset China nowadays. Who can disagree with the view that we should try to avoid confrontation? But what if no matter how hard we try, confrontation stands in our face? How many principles

can we bend? And how many voices can we turn a deaf ear to just so we can avoid paying a small and temporary price for rightful dissension? Surely, as legislators, we are expected by our people to fight rationally for what is rightly theirs. Such is an act of courage, not recklessness, founded on righteousness, not defiance.

I appeal to all my colleagues to face the difficult task of explaining the Bill to China and persuading China to see it from Hong Kong's point of view and to accept that the Bill is in line with the well-being of Hong Kong and the interest of China.

Question on the motion put and agreed to.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: I would like to compliment Members on their stamina in maintaining the quorum of this Council to the end of this long debate. And now in accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 4 July 1990.

Adjourned accordingly at four minutes past Nine o'clock.

Note: The short titles of the Bill/motion listed in the Hansard, with the exception of the Laws (Loose-Leaf Publication) Bill 1990, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.