

1 HONG KONG LEGISLATIVE COUNCIL -- 26 June 1991

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 26 June 1991

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 SIR PIERS JACOBS, K.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, C.B.E., J.P.

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

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

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

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

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

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

THE HONOURABLE POON CHI-FAI, J.P.

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

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

THE HONOURABLE TAM YIU-CHUNG

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

THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., 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 MICHAEL CHENG TAK-KIN, J.P.

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

THE HONOURABLE RONALD CHOW MEI-TAK

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

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

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 MRS ANSON CHAN, J.P.

SECRETARY FOR ECONOMIC SERVICES

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

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

THE HONOURABLE JOHN CHAN CHO-CHAK, L.V.O., O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

THE HONOURABLE BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

ABSENT

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

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

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Oath

Mr John CHAN Cho-chak took the Oath of Allegiance.

Papers

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

Subject

Subsidiary Legislation L.N. No.

Prisons (Amendment) Order 1991.....	227/91
Copyright Ordinance (Amendment of Schedule) Notice 1991.....	228/91
Pleasure Grounds (Regional Council) (Amendment) 1991.....	Bylaws 229/91
Dutiable Commodities (Amendment) Regulations 1991.....	230/91
Immigration (Vietnamese Boat People) (Designation) (Amendment) (No. 2) Order 1991.....	(Detention Centres) 231/91
Immigration (Vietnamese Boat People) (Shek Centre) Rules 1991.....	Kwu Chau Detention 232/91
Public Health and Municipal Services	(Amendment of Fifth

Schedule)

(No. 2) Order 1991..... 233/91

Registration of Persons (Application for New
Identity Cards) (No. 9) Order 1991..... 234/91

Library (Regional Council) (Amendment)
By-Laws 1991..... 235/91

Administration of Justice (Felonies and
Misdemeanours) Ordinance 1991
(Commencement) Notice 1991..... 236/91

Road Traffic (Public Service Vehicles)
(Amendment) Regulations 1991
(Commencement) Notice 1991..... 237/91

Sessional Paper 1990-91

No. 78 -- Director of Social Welfare Incorporated Statement
of Accounts for the year ended 31 March 1990

Oral answers to questions

Use of powerful firearms in robberies

1. MR ANDREW WONG asked (in Cantonese): On 9 June 1991, five masked gunmen with an automatic rifle and some pistols held up five jewellery shops in Kwun Tong and exchanged more than 40 shots with police. In view of the seriousness of the case and deterioration of law and order situation generally in Hong Kong, will the Government inform this Council what measures will be taken to combat such crimes and whether there is any need to upgrade the police arms and ammunition in order to give more confidence to police officers?

SECRETARY FOR SECURITY: Sir, any use of firearms in the commission of crime is a very serious matter. The robbery which took place in Kwun Tong on 9 June 1991 in which an assault rifle was used is a crime of particular concern. That case is now under

investigation by the police. Extensive enquiries, including liaison with the Chinese authorities at a high level, are taking place. We are determined that those responsible should be apprehended speedily and brought to trial. We believe that certainty of arrest and prosecution is the most effective measure against crime.

At the same time, the Government is taking all possible steps to curtail the illegal importation and use of firearms. We have had several discussions to this end with the authorities in Guangdong Province, the most recent by the Commissioner of Police late last week and further discussions today.

The type and calibre of arms and ammunition carried by police officers are under regular review to ensure that they are appropriate to operational requirements. Any proposal to upgrade police arms and ammunition must take into account the potential danger to members of the public in the event of an exchange of fire involving more powerful weapons. The present view of the police is that the standard weapons carried by officers on patrol are adequate for the purpose. It is not proposed at present to upgrade the standard weapon package. However, other more powerful weapons are available to the police when intelligence, or the situation on the ground, indicates that they might be required.

MR ANDREW WONG (in Cantonese): Sir, could the Secretary inform this Council of the police formations deployed on 9 June and whether the Special Duties Unit had been called into action on that day? Would the Secretary also advise of the strength of the Special Duties Unit, the place where they station and whether, if and when necessary, they can be deployed to take part in operations against robberies on time?

SECRETARY FOR SECURITY: I do not have available the deployment of the Tactical Unit or indeed other police formations in this particular incident on 9 June. However, the Police Tactical Unit companies do regularly take part in anti-crime patrols and special operations and they are always available to be deployed at very short notice.

MR MCGREGOR: Sir, will the Government now examine urgently the need to ensure a much higher degree of security protection for high-risk premises against armed robbery by introducing statutory licensing for such premises and allowing better standards to be applied?

SECRETARY FOR SECURITY: Sir, the police regularly give advice to all high-risk premises including goldsmiths and jewellery shops. They hold regular meetings with the goldsmiths and jewellery shop operators association and all premises are visited and advised on precautions. Crime Prevention Officers in districts also visit premises to identify weaknesses in security systems and to advise on appropriate security precautions. We believe there is in general good co-operation between the police and the owners of shops and their associations. I believe also that there are well laid down and understood guidelines for shops to comply with insurance requirements. We do not at the moment have any intention of making such requirements statutory.

MR EDWARD HO: Sir, the Secretary for Security in his reply said that certainty of arrest and prosecution is the most effective measure against crime. Would he advise whether the Administration is satisfied that the level of penalty imposed by the courts on armed robbers and violent criminals is adequate as a deterrent?

SECRETARY FOR SECURITY: Sir, in general, I believe that that is the case. I do have some figures here for typical penalties awarded in the case of robberies with firearms. The maximum penalty is life imprisonment. I believe that in recent years, the typical penalty has been somewhere between 15 and 20 years' imprisonment.

MR NGAI (in Cantonese): Sir, the Firearms and Ammunition Ordinance was substantially amended in 1984. As a result, in the case of a conviction of unlawful possession of firearms, the maximum penalty under section 13(2) of the Ordinance was revised from 10 years to 14 years; and, in the case of serious offences of firearm possession, the maximum penalty was changed from 14 years to life imprisonment. The revision has been in place for more than seven years, could I ask how many persons convicted under this Ordinance have since then been given the maximum penalty of 14 years or life imprisonment?

SECRETARY FOR SECURITY: Sir, we do keep penalties under regular review. We do not have at the moment any intention of revising penalties but, as I have said, if there

is a need to do so, then we will certainly bring forward legislation to do so. I am afraid I am not able to say how many cases have received the penalties which Mr NGAI asked. I am not quite sure what sections of the Ordinance he was actually referring to but I will try to give a written reply. (Annex I)

MRS FAN: Sir, may I ask the Secretary whether he is satisfied with the strategy employed by the police in combatting crimes of such nature and whether the police are reviewing the appropriateness of their equipment as well as the deployment of policemen on patrol?

SECRETARY FOR SECURITY: Sir, to both questions the answer is yes. These are regularly kept under review.

MR POON CHI-FAI (in Cantonese): Sir, it is mentioned in paragraph 3 of the main reply that the standard weapons carried by police officers on duty are adequate for the purpose. But in the recent robberies, rifles or even grenades, the more powerful and destructive firearms, were employed. Could the Secretary advise of the type of weapons the robbers use which will prompt the Administration into giving consideration to upgrading the equipment of the police, thereby ensuring the safety of the public and the police officers on duty?

SECRETARY FOR SECURITY: Sir, as I said, the police have no intention at the moment of upgrading the weapons package though this is something that they do keep under regular review. Among the prime considerations that they have regard to are of course the safety of police officers on the street and also the safety of the public.

MR MCGREGOR: Sir, since I am advised by serving police officers for some time now that many of those high-risk premises ought to be brought under much stricter control and that the insurance industry is not co-operating fully as the Secretary has suggested, will the Secretary ask the Security Panel of this Council to re-examine this matter and allow police officers to attend for examination?

SECRETARY FOR SECURITY: Sir, I am sure that if the Security Panel wish to have a discussion of this then of course we would be glad to do so and to invite the police

to be represented.

MR ANDREW WONG (in Cantonese): Sir, could the Secretary inform this Council of the police formations, for example, the Special Duties Unit, which are equipped with automatic weapons more or less as powerful as AK47 or MR16? What is the strength of the Unit and when will they be called into action?

SECRETARY FOR SECURITY: Sir, as I have said in my answer, there are many more powerful and sophisticated weapons available to the police for use if and when required. I do not think I can be more specific than that.

MR NGAI (in Cantonese): The Secretary has failed to answer directly the two questions I raised a moment ago. Could I ask the Secretary to give a reply in writing?

SECRETARY FOR SECURITY: I would like to know what question I was asked by Mr NGAI to give a written reply to.

MR NGAI (in Cantonese): I mentioned a while ago that the Firearms and Ammunition Ordinance was substantially amended in 1984. The revised section 13(2) expressly provides that the maximum penalty is raised from 10 years to 14 years imprisonment. The heavier penalty is indeed good news to us. As for other serious crimes of firearm possession, the same Ordinance provides that the maximum penalty is life imprisonment instead of the previous 14 years, which is again a welcome step by the Government. But since the revision in 1984, more than seven years have passed and, as far as I know, there have been numerous cases in which people were convicted of unlawful possession of firearms and armed robberies, could I ask how many of these were given the maximum penalty under this Ordinance? The Secretary for Security has not given me an answer, could I ask him for a written reply?

SECRETARY FOR SECURITY: I think I have said that I would endeavour to provide a written reply to that question.

MR ANDREW WONG (in Cantonese): Sir, has the Secretary given consideration to improving the existing intelligence network with the aim of acquiring more accurate information on crime cases so that greater precautions or deployment of police can be effected to prevent serious crimes and to avoid shoot-outs in thoroughfares which may cause injury to passers-by? The Hong Kong Government has on many occasions contacted the Chinese authorities in a bid to stop the inflow of firearms into the territory. But as we all know, the firearms used in the recent robberies seem to have come from mainland China. Could the Secretary advise whether the availability of firearms coupled with the lack of reliable intelligence is the crux of the problem we are now facing?

SECRETARY FOR SECURITY: Sir, certainly intelligence is of very great importance in preventing crimes of this nature and it is something which the police will always endeavour to improve, and that includes intelligence through liaison with the authorities in China.

Alleged indirect commercial promotion by RTHK

2. MR SZETO asked (in Cantonese): In view of the growing concern of most educationists about the impact of widely circulated and highly commercialized youth magazines on the healthy development of the next generation, will Government inform this Council whether it is proper for Radio Television Hong Kong, a Government department which derives its revenue from taxpayers, to produce a specific programme which may indirectly create an opportunity for a particular widely circulated youth magazine to gain commercial publicity and reap commercial benefits?

SECRETARY FOR HOME AND AFFAIRS: Sir, the radio programme to which I believe the Honourable Member is referring was first broadcast in September 1989. A number of magazines using themes targetted at the 14-24 age group have since been published. The magazine in question was in fact published in November 1990, in other words, some 14 months after the radio programme was first aired.

Radio Television Hong Kong (RTHK) have clear guidelines to their producers to ensure that programmes do not give cause for concern along the lines suggested by

the Honourable Member.

Sir, I can confirm that it is neither the policy nor the practice of RTHK to produce programmes intended to promote outside commercial interests, either directly or indirectly.

MR SZETO (in Cantonese): Sir, the host of City Forum had been in the post for a long time -- well over 14 months. He later joined a political group and was subsequently replaced by RTHK on grounds of conflict of interest. Will Government inform this Council if RTHK had been adopting different standards in the treatment of the two programmes?

SECRETARY FOR HOME AFFAIRS: Sir, RTHK has very clear guidelines to their producers which apply generally to all the programmes. In the case of both programmes to which the Honourable Member referred, the same guidelines apply and there is no question of any difference in standard.

MRS TAM (in Cantonese): Sir, it was mentioned in the reply that RTHK had issued very clear guidelines to its producers to ensure there is no direct or indirect commercial promotion in their programme. Will Government inform this Council how this is ensured in actual practice?

SECRETARY FOR HOME AFFAIRS: RTHK has a monitoring system which means that senior staff of both the Chinese channel and the English channel monitor the programmes produced by their staff and they have regular meetings to go through programmes and to deal with public complaints.

Bail pending trial

3. MRS FAN asked: In view of the recent report that two alleged drug-traffickers have jumped bail, will Government inform this Council what measures could and will be taken to ensure that men facing charges for dangerous drugs offences are available for trial?

ATTORNEY GENERAL: A person charged with a criminal offence has a right to apply for bail pending trial. The question of whether bail is to be granted or refused is decided by the courts and by the courts alone.

Usually, an application for bail will be made to the magistrate before whom the accused person first appears. If he is not granted bail by the magistrate, he may apply for bail before a High Court Judge. In determining whether bail should be granted, courts recognize the presumption of innocence and that an accused person should be released on bail unless there are good reasons why bail should not be granted. Bail will not be granted where a court is satisfied that there is an unacceptable risk that the accused person, if released on bail, would fail to return to the court to answer the charges, or would commit further offences, or would interfere with witnesses or would otherwise obstruct the course of justice. In deciding whether to grant or refuse bail, courts consider the reasons advanced by the accused person for bail and any grounds the prosecution relies upon to oppose bail. Bail may be granted subject to conditions, such as regular reporting to the police or surrender of travel documents. These conditions are designed to secure the attendance of accused persons.

Where a magistrate or a District Court judge decides to grant bail to a defendant charged with any offence, I can apply to the High Court for a review of that decision.

It is usual for the prosecution vigorously to oppose bail in serious drugs cases because of the risk that persons charged with such serious offences might abscond. I understand that, indeed, it is unusual for the courts to grant bail to accused persons who are charged with a serious drugs offence.

MRS FAN: I thank the Attorney General for this very comprehensive answer. The two persons in question were actually arrested as a result of a joint operation between the Hong Kong police and the United States Drug Enforcement Administration. The fact that they have now jumped bail might well be seen as a lack of efficiency and effectiveness in our jurisdiction to cause such suspects to be available for trial. Is the Attorney General satisfied that the present avenues available to Government are adequate to ensure that drug traffickers, particularly those involved in serious offences of drug trafficking, will be brought to trial?

ATTORNEY GENERAL: Sir, I must reiterate two things, first, that an accused person has a right to apply for bail and, second, the decision to grant bail is for the courts and the courts alone. As I have already indicated in my main answer, the Crown vigorously oppose bail in serious drugs cases and, in the two particular cases to which Mrs FAN has referred, the Crown did indeed vigorously oppose bail. But at the end of the day it is for the court to decide, having heard what the accused person or persons have to say and having heard the reasons advanced by the prosecution. I cannot see how that system can be altered bearing in mind that underlying it all is the presumption of innocence.

VTC training courses

4. MR PANG asked (in Cantonese): As Hong Kong's industries are undergoing a process of transformation and labour-intensive production processes continue to relocate outside Hong Kong, forcing a lot of workers to find alternative employment because of under provision of work, will Government inform this Council:

(a) how many places have been provided by the Vocational Training Council during the past three years in respect of training courses that prepare workers to take up alternative employment and which of the training courses are more popular, and

(b) how much subsidy has the Vocational Training Council offered during the past three years to workers enrolled for those training courses and will the VTC consider making adjustments to such subsidy according to changes in the annual Consumer Price Index in future ?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Vocational Training Council (VTC) has provided more than 69 000 places during the past three years in courses conducted in its 18 training centres. These courses are designed both for prospective new entrants to the employment market and for in-service workers who wish either to upgrade or update their skills or be trained in another industry. Of these 69 000 places, about 22 000 are considered to be particularly suited to in-service workers. The more popular of these latter courses relate to training in the welding, plastics, printing and hotel industries.

I should mention in this connection that people are free to choose their

occupations. Workers seek alternative employment for a wide variety of reasons and the situation described by Mr PANG is not the only or necessarily the main reason. The strong demand for manpower in the services sectors, and the fact that earnings in those sectors are generally higher than in manufacturing, have also provided a stimulus for manufacturing workers to change jobs.

As regards the second part of Mr PANG's question, the current policy of the VTC is to pay an allowance of \$150 a week to trainees attending full-time courses in its industry training centres. The total amount of such allowances paid during the past three years was about \$30 million. It is not possible to tell what proportion of this amount was paid to trainees who were in-service workers. The rate of allowance is reviewed from time to time by the VTC but is not specifically linked to the Consumer Price Index.

MR PANG (in Cantonese): Sir, will the Government consider making special arrangements, like the provision of special vocational training, for workers affected by the relocation of production processes outside Hong Kong; and increasing the special allowances for them during the training period?

SECRETARY FOR EDUCATION AND MANPOWER: The training courses organized by the VTC are offered generally in response to demand as decided by the VTC's training boards most of which have union representatives. The allowances paid to certain trainees in these courses are meant to cover things such as lunch and travelling expenses and they are not meant to be a substitute for income. Unemployed workers or workers in under-employment who are seeking work with the assistance of the Local Employment Service of the Labour Department and who cannot meet their basic needs may apply for public assistance.

MR TIEN: Sir, because of difficulties in getting workers many employers have their own in-house training programmes. Would Government please inform this Council what the attendance rates for the past year were in respect of the 69 000 places mentioned and of which 22 000 are considered to be suited for in-service workers?

SECRETARY FOR EDUCATION AND MANPOWER: I do not have the full figures available. I

can give certain examples of the more popular courses that I have mentioned. Of the several courses, the attendance in the welding course was 849, plastics 1 372, electronics 1 943 and so forth. But I do not have the full attendance figures for all the courses which are organized by the VTC.

MR TIEN: I was just asking the question in general terms. Of the 69 000 places offered, has 70% or only 30% been taken up? A very general figure would do, please.

SECRETARY FOR EDUCATION AND MANPOWER: Quite often in these training courses, the number who join at the beginning and the number who finish at the end are not the same. There are quite often dropouts during a course for various reasons. I am afraid I do not have the full figures with me but I can check the figures and provide them to Mr TIEN in writing. (Annex II)

Prosecution of illegal immigrant workers

5. MRS TU asked: Will the Government inform this Council when the review on the prosecutions policy on illegal immigrant workers from China, as mentioned by the Attorney General at the Legislative Council sitting on 7 November 1990, will be completed and whether the policy has proved to be effective in deterring the Chinese illegal immigrants from coming to Hong Kong for employment?

SECRETARY FOR SECURITY: Sir, the review of the current prosecutions policy and the effectiveness of the Immigration (Amendment) Ordinance 1990 in countering the employment of illegal immigrant workers is now being carried out. The results should be available in about one month.

The preliminary indications are, however, that the new legislation, and the changes in prosecution policy introduced in November 1990, have been successful in controlling the level of illegal immigration by curtailing employment opportunities. This conclusion is supported by the following:

(a) in comparison with the first half of 1990, there has been a reduction this year of 20% in the number of arrests of illegal immigrants;

(b) the number of illegal immigrants arrested on construction sites has dropped from 1 000 in the first half of 1990 to 270 in the first half of 1991; and

(c) the illegal immigrant prison population has declined steadily from 4 600 in October 1990, to 3 400 today. As a result, overall prison overcrowding has been greatly reduced.

MRS TU: Sir, if, as suggested in the reply, the new policy of prosecuting employers is successful in controlling the level of illegal immigrant workers, may we presume that prosecution of these workers will soon be abolished and the prisons will be returned to their original purpose of incarcerating the type of criminals mentioned in Question One today?

SECRETARY FOR SECURITY: Sir, I do not think that would be at all a safe presumption for Mrs TU to make. I did not say in my answer, and I certainly did not mean to imply, that the prosecution of employers alone has been responsible for the success of the policy. That policy was built upon a prosecution of both employers and illegal immigrants found in employment in certain circumstances. I do not believe that we will be quick to change that. But, as I say, we cannot completely answer that question until we have completed that review.

MR ARCULLI: Sir, will the Secretary for Security inform this Council whether enquiries have been made of the construction industry as to what difficulties they may be experiencing, and if not, why not?

SECRETARY FOR SECURITY: Yes, Sir, we have had discussions with the construction industry.

MR MARTIN LEE: Sir, bearing in mind that the tariff of sentences imposed on illegal immigrants found on construction sites is 15 months of immediate custodial sentence, can the Administration inform this Council what the sort of sentences are that are meted out to employers of these illegal immigrants?

SECRETARY FOR SECURITY: Sir, I regret that I do not have details of sentences awarded under the amended Ordinance. I know that in two cases the employers on construction sites were fined, I think, a total of \$500,000. But I do not have any further details available on that.

ATTORNEY GENERAL: Sir, perhaps I can supplement the information given by the Secretary for Security. There have in fact been five prosecutions under section 38(A) which deals with the prosecution of construction site controllers. Four resulted in convictions. In two of those cases, the construction site controllers were each fined \$100,000 upon conviction after a plea of guilty; the third was sentenced to a fine of \$125,000 upon conviction after trial and was ordered to pay costs of \$2,500; the fourth was fined \$10,000 after a plea of guilty. I should add that that latter sentence is the subject of an application for a review to be heard by the magistrate tomorrow.

MRS TU: Sir, may I ask the Secretary what the age range is of the 3 400 now in prison and the number in each category?

SECRETARY FOR SECURITY: Sir, I do not have that information available. But certainly the majority of illegal immigrants in prison are young men of working age between 15 and 40 years of age.

MR MARTIN LEE: Sir, bearing in mind that the Attorney General has persistently applied for review of sentences meted out to illegal immigrant workers whenever the sentences fall substantially below the tariff and bearing in mind that the figures the Attorney General supplied to this Council indicated that none of the employers were actually imprisoned, does it mean that the Attorney General is happy with imprisonment for the workers and non-imprisonment for the employers?

ATTORNEY GENERAL: Sir, questions of sentence are, as Mr Martin LEE well knows, a matter for the courts. I think I am right in saying that this Council, when it enacted

section 38(A) last year, decided not to impose a sentence of imprisonment -- the only penalty is a fine, the maximum of which is \$250,000.

MRS FAN: Sir, I can confirm what the Attorney General has said. So it is in fact this Council's doing rather than the Attorney General's action. But may I ask whether the Attorney General intends to bring a case to the Court of Appeal in order to reduce the tariff sentence which is meted out to illegal immigrants found in the work place?

ATTORNEY GENERAL: Sir, I have no present intention to do so. The Court of Appeal has only very recently reviewed its own sentencing guidelines in such cases. The said court has confirmed that the normal sentence is one of 15 months imprisonment.

MR MARTIN LEE: Sir, in conducting this review, will the Administration undertake to the Council that they will certainly review with care the inequity of sentences which are so obvious to everyone?

ATTORNEY GENERAL: Sir, all factors are taken into account.

Peripheral poly-neuropathy

6. MR TAM asked (in Cantonese): In view of the incident reported some months ago that a worker was affected by a disease known as peripheral poly-neuropathy will Government inform this Council:

(a) of the number of reported cases of such disease up to now, the seriousness and the causes of the disease;

(b) of the reason for not introducing legislative control on the content of dangerous chemical substances in the air in accordance with internationally accepted standards; and

(c) whether the Administration will review the list of occupational diseases so that peripheral poly-neuropathy and other illnesses caused through contacts with dangerous substances during work may be entitled to compensation ?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of the question, so far there have been 11 confirmed cases of peripheral poly-neuropathy in Hong Kong. In addition, 41 cases of suspected peripheral poly-neuropathy have been reported to the Labour Department. The 11 workers in the confirmed cases have all been discharged after hospitalization or treatment and are capable of returning to work. In all the confirmed cases, the disease was caused by n-Hexane which is a neurotoxin contained in a common solvent known as "petroleum spirit".

As regards the second part of the question, there are in fact no internationally accepted standards relating to safe threshold limits of chemical substances in the air. There are, however, national standards in some countries. In the United Kingdom, for example, the Health and Safety Executive has published a guidance note on such standards which are revised from time to time in accordance with the latest research findings. These standards are not laid down in the law because it is much easier to update them if they are not on the statute books. Hong Kong follows closely the practice in the United Kingdom by providing advice on such standards with reference to the United Kingdom guidance note.

As regards the last part of the question, the fact that peripheral poly-neuropathy or any other occupational disease is not listed under the Employees' Compensation Ordinance does not affect an employee's entitlement to compensation if personal injury arises out of and in the course of employment. However, if a disease is discovered after a worker has left the employment which gave rise to that disease, there might be difficulties in obtaining compensation due to arguments as to whether the injury has occurred in the course of employment. In order to provide better protection to workers, the Commissioner for Labour has proposed to include peripheral poly-neuropathy as an occupational disease under the Employees' Compensation Ordinance. This would ensure that workers suffering from the disease are entitled to compensation, even if they have left the relevant employment. The Commissioner is consulting the Labour Advisory Board on this proposal.

MR TAM (in Cantonese): Given that peripheral poly-neuropathy, the occupational disease caused by n-Hexane, had been discovered in other countries a long time ago, and in fact a similar case in Taiwan was reported by the American Journal of Industrial Medicine in 1986, and that the United Kingdom classified it as an occupational disease

in 1988, why does the Government face the problem only after the occurrence of such tragedies? Will the Government conduct a comprehensive review on the classification of occupational diseases and avoid a piecemeal approach when handling the problem? Will all occupational diseases medically confirmed to be caused by organic chemicals be classified as occupational diseases under the law?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Occupational Health Division of the Labour Department is, I understand, constantly seeking to update themselves on developments around the world. The hazards of n-Hexane have indeed been recognized for some time. The only imperfection in the law which we are now considering correcting relates to the payment of compensation for diseases arising from n-Hexane.

Another point I would like to make is that technology is advancing all the time. I am advised, for example, that something like 50 000 new types of chemicals are put on the market every year. So it will not always be easy for the law to get entirely up-to-date with the latest developments.

The third point I would like to make is that the Administration is conducting a review of occupational health and safety following a recent debate in this Council and Mr TAM's suggestion will be closely borne in mind.

DR LEONG: Sir, can the Administration inform this Council whether workers involved in the handling of petroleum jelly are being made aware of the danger of the element n-Hexane and whether safety measures are being enforced to ensure minimum hazards for workers exposed to this dangerous element?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, under the Factories and Industrial Undertakings (Dangerous Substances) Regulations, detailed provisions are made for dangerous substances to be suitably labelled and for their risks and safety precautions to be clearly stipulated. In the case of n-Hexane, for example, the law requires the substance to be clearly marked as being flammable and as giving rise to risks of inflammability, risks upon inhalation and harm upon contact with the skin. Warnings of possible risk of irreversible effects and safety precautions such as keeping the container tightly closed and stored in well-ventilated places and so forth are also required by the law to be very clearly stated on the containers containing these substances.

MR PANG (in Cantonese): Sir, it could be said that the discovery of this new disease was incidental but this has shown that the Government has paid little regard to occupational diseases, in particular those caused by chemical substances? What remedial measures will the Government take?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Factories and Industrial Undertakings Ordinance and subsidiary regulations do provide for and impose certain general duties of care on the part of employers as well as employees in handling a wide range of potentially dangerous substances. These duties include, in the case of proprietors of industrial undertakings, the responsibility to ensure the health and safety at work of all persons employed by them and the provision of information, instruction, training and supervision as necessary to ensure the health and safety of all persons employed. The Labour Department, particularly the Occupational Health Unit, do conduct training courses from time to time and, through other means such as publicity, do draw attention to the potential risk of occupational diseases.

MR TAM (in Cantonese): Sir, in the first part of the answer, it is said that the Government believes the 11 workers who have been proven to suffer from peripheral poly-neuropathy have resumed their working abilities. But as reflected by the unions concerned, there are at least four workers whose limbs are numb and who have difficulty in walking and therefore cannot work. Is it necessary for me to provide the Government with the information and a list of the workers concerned?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the information that I have been given by the experts concerned is that all the 11 workers involved have been discharged and are able to return to work. If there is evidence that this is not the case, then obviously I will refer such information back to the experts for their consideration.

MR TAM (in Cantonese): In the second part of the answer, it is said that the Government believes it will be easier to update the standards if they are not on the statute books. However, if those standards are not on the statute books, will it be difficult for the proprietors to know what they have to follow and what legal responsibilities

they have to bear? Could the Government explain this?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I have said, the Factories and Industrial Undertakings Ordinance does include provisions which impose certain duties of care on factory proprietors. The kind of guidance notes and detailed standards which I referred to in the second paragraph of my answer relate to details of how to handle particular substances and they are intended to assist factory proprietors in meeting their statutory obligations.

MR TAM (in Cantonese): Will the Government consider taking prosecution action against those employers involved in recent accidents?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, prosecution action is taken from time to time when the circumstances so warrant.

Forward purchase of foreign currencies

7. MR BARROW asked: Will the Government inform this Council whether, in the light of decentralization and the setting up of trading agencies, consideration will be given to arrangements whereby government departments who require foreign currency for future payments can book forward rates, either directly or through the Finance Branch, with the Exchange Fund so as to cover exchange fluctuations?

FINANCIAL SECRETARY: Sir, Government's present policy is that the Treasury does not purchase foreign currencies forward. Exchange risk for the Government as a whole is managed by the Office of the Exchange Fund, taking into account the Government's requirements for foreign currency payments.

I agree that it is timely that we should take a fresh look at the whole question of how best to protect the General Revenue, as distinct from the Government's total reserves including the Exchange Fund, against foreign exchange exposure. I have asked Finance Branch to undertake a review, the outcome of which will be made known to the Finance Committee of this Council in due course.

MR BARROW: Sir, could the Financial Secretary elaborate on the background to this very welcome review and why it has been requested?

FINANCIAL SECRETARY: Sir, Mr BARROW has been raising this question very patiently over the years and I felt that it was timely that patience should be rewarded. In addition, as Members of this Council know, we are moving towards giving departments more autonomy in managing their own financial affairs and it seemed that in the context of that move it would be worthwhile having this review.

MR MARTIN LEE: Sir, can the Financial Secretary think of any managing director of a large international corporation trading in Hong Kong which has to pay even half of what the Government has to pay in foreign currencies and who has consistently refused to do the sort of thing set out in Mr BARROW's question and who has not already been sacked?

FINANCIAL SECRETARY: I do not know, Sir, how managing directors in various companies in Hong Kong conduct their affairs. My guess is that many of them do not have the outstanding success that the Government has. As I made clear in this Council on many occasions, we have not been losing money; foreign exchange risk is being handled by the Exchange Fund which is in a very healthy condition.

Written answers to questions

Domestic Violence Ordinance

8. MR PANG asked: As an injunction excluding a spouse from the matrimonial home granted under the Domestic Violence Ordinance will only be valid for up to six months, will Government inform this Council:

(a) how many cases of spouse abuse have been reported to the relevant departments during the past three years,

(b) how many applications for divorce in the past three years are connected with spouse abuse and among these cases, how many can have all the formalities completed within six months,

(c) does the Administration intend to review the maximum effective period of an injunction granted under the Domestic Violence Ordinance,

(d) how can the processing of divorce cases by the court involving victims of domestic violence be expedited, so that all formalities can be completed within the effective period of the injunction,

(e) what services are presently available to provide safe shelters for those abused spouses who have no place to go and seek refuge, and

(f) how many places do these services provide and what is the utilization rate?

SECRETARY FOR HEALTH AND WELFARE: The main purpose of the Domestic Violence Ordinance (Cap 189) is to protect both parties to a marriage and their children from domestic violence.

Upon the application by either party to a marriage, the District Court may grant an injunction against the other party to the marriage. The injunction may contain the following conditions:

(i) restraining the other party from molesting the applicant;

(ii) restraining the other party from molesting any child living with the applicant;

(iii) excluding the other party from the matrimonial home, or a part of the home; and

(iv) requiring the other party to permit the applicant to enter and remain in the matrimonial home, or a part of the home.

There is no maximum period for an injunction containing conditions (i) and (ii). The Court, after considering all the circumstances of the case, decides the

appropriate period for the injunction which best ensures the safety of the applicant and the children. In respect of injunctions containing conditions (iii) or (iv), they may be granted for a maximum period of six months.

In answer to the specific questions raised:

(a) The number of battered spouse cases reported to the Social Welfare Department over the last three years was 455 in 1988-89, 272 in 1989-90 and 236 in 1990-91. In both 1989 and 1990, the police handled 181 reported cases involving abuse of a spouse or cohabitant. The figure for the first quarter of 1991 is 47.

(b) The number of divorce petitions filed with the Judiciary over the last three years was 5 893 in 1988, 6 275 in 1989 and 6 767 in 1990. No record is maintained of the number of divorce petitions where domestic violence may have been a factor. This is because of difficulties in interpretation arising partly from the fact that abuse may be one of several complaints and partly because not all allegations made in divorce proceedings are proved.

(c) There is no intention by the Administration to review the maximum periods for injunctions at this time.

(d) The Registrar, Supreme Court is not aware of any noticeable difficulty in cases where an injunction has been granted in dealing with any problem of domestic violence within six months. In civil proceedings it is admittedly possible for either party to delay matters but the risk of continuing violence, once the matter is before the Court, is less likely.

(e) There are two residential centres providing emergency and temporary accommodation to abused women and their children. One centre is run by the Social Welfare Department and the other by a subvented non-government organization. Organized programmes including counselling and recreational activities are conducted in the centres.

(f) The two centres provide a total of 80 places with an utilization rate of 70% in 1990-91 (76% for the SWD centre and, 63% for the NGO centre).

Marine accident

9. MRS LAM asked: In view of the tragic accident on 16 February 1991 involving the collision of two vessels, will Government inform this Council:

(a) whether it has any plan to re-examine existing marine safety regulations with a view to ensuring traffic safety in local waters; and

(b) whether a marine accident victims assistance fund will be set up to provide financial assistance to the victims?

SECRETARY FOR ECONOMIC SERVICES: Sir, the investigation into the causes of the accident after the fireworks display on 16 February 1991 is continuing. There is no indication so far of any deficiency in the existing regulations governing marine traffic safety in local waters. If any such deficiency is uncovered, the Marine Department will review the position and take the necessary action. Meanwhile, the department is devising, in conjunction with the Marine Police, measures to ensure more effective control, and thus improved safety, of marine traffic at future fireworks displays.

It is not intended that a marine accident victims assistance fund should be set up. Victims of marine accidents have recourse to claims for common law damages and all owners of local launches, ferries and pleasure craft are required to have third party insurance. Relief from immediate hardship is available from charitable trust funds managed by the Social Welfare Department.

Shortage of court reporters

10. MR PETER WONG asked: Will the Administration inform this Council how the problem of shortage of Court Reporters is to be solved in order to relieve judges of hand taking notes when they are hearing cases?

ATTORNEY GENERAL: The shortage of Court Reporters is caused by the lack of supply of candidates who possess the necessary qualifications. A Court Reporter is required to have a minimum shorthand speed of 140 w.p.m., a minimum typing speed of 60 w.p.m., and five passes in the Hong Kong Certificate of Education Examination including grade

C or above in English Language.

The Judiciary is taking the following three measures to overcome the problem in order to relieve High Court Judges of the need to make notes in long hand while hearing cases.

First, efforts are being made to recruit Court Reporters from overseas. Six Court Reporters have been recruited from Australia since 1990.

Second, arrangements have been made for the less urgent proceedings, such as civil cases in the High Court, to be recorded. The recorded proceedings can be transcribed by temporary staff, so that the Court Reporters can be deployed to cases which require immediate transcription.

Third, Court Reporters are being trained to use the Computer Assisted Transcription System (CAT System), which helps improve productivity and reduce transcription time by up to 40%. Nine Court Reporters are now proficient in the CAT System and more are being trained. In addition, five selected officers from other government departments have been seconded to the Judiciary to undergo the CAT training. On completion of their training, they will be able to perform the functions of Court Reporters. Separately, as a long-term measure to provide a steady supply of specially trained staff, a new rank of CAT System Trainee is being created to encourage school leavers to take up positions as Court Reporters skilled in the CAT System.

Proposals by ratepayers to alter valuation list

11. MR POON CHI-FAI asked: Will Government inform this Council:

(a) whether there are any measures to ensure proposals by ratepayers for the alteration of the valuation list under section 37 of the Rating Ordinance (Cap. 116) will be fairly considered by the Commissioner of Rating and Valuation bearing in mind that the Commissioner will have prepared the list;

(b) whether consideration will be given to the establishment of an independent body to deal with the proposals;

(c) whether detailed written explanations are given by the Commissioner when he makes his decisions, if not, why not; and

(d) whether the number of such proposals received from ratepayers in the current revaluation exercise has outnumbered those in previous exercises and, if so, what the reasons are for the increase if they are known to the Administration?

FINANCIAL SECRETARY: Under the Rating Ordinance, the Commissioner of Rating and Valuation is required to consider any proposal for the alteration of the valuation list. All proposals are carefully considered by professional staff of the Rating and Valuation Department and senior staff will review all decisions before they are issued to ensure fairness. If a ratepayer is still not satisfied with the decision of the Commissioner, he may appeal to the Lands Tribunal for a hearing. The Tribunal is an independent judicial body, and the process is relatively inexpensive and informal. Ratepayers may represent themselves before the Tribunal and need not employ legal counsel. Given the inexpensive and easy access to the judicial process for final determination of appeals, we consider that there are sufficient safeguards in the existing procedure and that the establishment of a new independent body is not necessary.

As to whether written explanations are given, it is the Department's standard practice to enclose with the Commissioner's decision a leaflet of explanatory notes together with a more detailed pamphlet on rating in Hong Kong with particular reference to the general revaluation. It would not be practicable for the Commissioner to issue detailed explanations on a property by property basis. If, however, a ratepayer requires further explanation, he may enquire at the Department.

Lastly, the number of proposals received in response to the 1991 general revaluation is 34 261, representing 3% of the valuation list. In 1988, the number was 26 149, or 2.8% of the valuation list; and in 1984, the number was 99 588, or 13.4% of the valuation list. Thus, it appears that there is no significant increase in the number of proposals in relation to the current revaluation.

Vacant units in urban temporary housing areas

12. MR TAM asked: Will the Government inform this Council of the number of existing vacant units in the urban temporary housing areas, the average duration for which these units have been left vacant and the Government's plan on the future usage of these vacant units?

SECRETARY FOR HOME AFFAIRS: Sir, as at 15 June 1991, there were 1 579 new vacant units in the urban temporary housing areas (THAs), representing 8% of a stock of nearly 19 500. On average, these units have been vacant for about 27 months. In addition, there were 658 lettable casual vacancies.

Most of the vacant THA units are for rehousing families affected by clearances who are unable to meet the seven-year residence criterion for rehousing in public rental housing. The remainder are for the relief of overcrowding in THAs.

Vacancies in new THAs arise mainly because an increasing number of clearnees and existing THA tenants are now able to meet the eligibility criteria for public rental housing following the relaxation of residence requirements in 1990. To reduce the number of vacant units, the Housing Authority will use more of these vacancies to relieve overcrowding.

For operational reasons, the Authority will need to hold in reserve a number of vacant units to accommodate victims of natural disasters, and evacuees from unsafe buildings.

First Reading of Bills

DUTIABLE COMMODITIES (AMENDMENT) BILL 1991

STAMP DUTY (AMENDMENT) (NO. 3) BILL 1991

GRANTHAM SCHOLARSHIPS FUND (AMENDMENT) BILL 1991

BREWIN TRUST FUND (AMENDMENT) BILL 1991

SIR ROBERT BLACK TRUST FUND (AMENDMENT) BILL 1991

LI PO CHUN CHARITABLE TRUST FUND (AMENDMENT) BILL 1991

DENTISTS REGISTRATION (AMENDMENT) BILL 1991

MEDICAL REGISTRATION (AMENDMENT) BILL 1991

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) (NO. 2) BILL 1991

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

Second Reading of Bills

DUTIABLE COMMODITIES (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Dutiable Commodities Ordinance."

He said: Sir, I move that the Dutiable Commodities (Amendment) Bill 1991 be read the Second time.

In recent years the chemical composition of jet aircraft fuel has changed. The bulk of aircraft spirit, which is intended to be a dutiable commodity, is no longer appropriately classified under the Dutiable Commodities Ordinance.

In order to restore the originally intended position, this Bill seeks to replace the words "light oil" in section 69 of the Ordinance with "hydrocarbon oil", so as to embrace all types of hydrocarbon oil suitable and intended for use as aircraft fuel.

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

Question on the adjournment proposed, put and agreed to.

STAMP DUTY (AMENDMENT) (NO. 3) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Stamp Duty Ordinance."

He said: Sir, I move that the Stamp Duty (Amendment) (No. 3) Bill 1991 be read the

Second time.

This Bill seeks to facilitate the implementation of the international trend towards paperless trading in stock dealing in Hong Kong by ending the use of physical paper stamps. The amendment will enable the Collector of Stamp Duties to enter into a contract with the Stock Exchange for the central collection of duty payable. Under the new system, authorized officers of the Exchange will be able to endorse contract notes to signify that duty has or will be paid to the Collector at the Stock Exchange.

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

Question on the adjournment proposed, put and agreed to.

GRANTHAM SCHOLARSHIPS FUND (AMENDMENT) BILL 1991

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

He said: Sir, I move that the Grantham Scholarships Fund (Amendment) Bill 1991 be read a Second time.

This Bill provides for the appointment of professionals to manage the investment of moneys of the Grantham Scholarships Fund, and enables the Grantham Scholarships Fund Committee to transact some of its business by circulation of papers when necessary.

Furthermore, the opportunity is taken to change the Grantham Scholarships Fund Committee members' tenure of office from three years to such period as may be specified in their letter of appointment to allow for greater flexibility.

The amendments are intended to facilitate the administration of the Fund by the Secretary for Home Affairs Incorporated as Trustee, and have the full support of the Grantham Scholarships Fund Committee which I have consulted.

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

Question on the adjournment proposed, put and agreed to.

BREWIN TRUST FUND (AMENDMENT) BILL 1991

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

He said: Sir, I move that the Brewin Trust Fund (Amendment) Bill 1991 be read a Second time.

As in the case of the Grantham Scholarships Fund (Amendment) Bill 1991, this Bill provides for the appointment of professionals to manage the investments of the Brewin Trust Fund and the transaction of business by circulation of papers when necessary.

The opportunity is also taken to amend all references to "the Colony" wherever these appear in the Ordinance to "Hong Kong".

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

Question on the adjournment proposed, put and agreed to.

SIR ROBERT BLACK TRUST FUND (AMENDMENT) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Sir Robert Black Trust Fund Ordinance."

He said: Sir, I move that the Sir Robert Black Trust Fund (Amendment) Bill 1991 be read a Second time.

This Bill proposes similar amendments to those set out in the Brewin Trust Fund (Amendment) Bill 1991 for reasons which I have earlier described.

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

Question on the adjournment proposed, put and agreed to.

LI PO CHUN CHARITABLE TRUST FUND (AMENDMENT) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Li Po Chun Charitable Trust Fund Ordinance."

He said: Sir, I move that the Li Po Chun Charitable Trust Fund (Amendment) Bill 1991 be read a Second time.

Here again, similar amendments as those set out in the Brewin Trust Fund (Amendment) Bill 1991 and the Grantham Scholarships Fund (Amendment) Bill 1991 are proposed for reasons which I have explained earlier.

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

Question on the adjournment proposed, put and agreed to.

DENTISTS REGISTRATION (AMENDMENT) BILL 1991

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Dentists Registration Ordinance."

She said: Sir, I move that the Dentists Registration (Amendment) Bill 1991 be read the Second time.

This Bill, and the following two which stand in my name, seek to extend to Hospital Authority employees the same exemptions and concessions in professional registration and related requirements as those applicable to their civil service and university counterparts. The aim is to maintain comparability of treatment for medical and healthcare professionals employed in the Government, the universities and the Hospital Authority.

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

Question on the adjournment proposed, put and agreed to.

MEDICAL REGISTRATION (AMENDMENT) BILL 1991

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Medical Registration Ordinance."

She said: Sir, I move that the Medical Registration (Amendment) Bill 1991 be read the Second time.

For the same reason as I explained in moving the Second Reading of the Dentists Registration (Amendment) Bill 1991, this Bill seeks to amend the Medical Registration Ordinance.

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

Question on the adjournment proposed, put and agreed to.

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) (NO. 2) BILL 1991

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Supplementary Medical Professions Ordinance."

She said: Sir, I move that the Supplementary Medical Professions (Amendment) (No. 2) Bill 1991 be read the Second time.

My previous comments on the Dentists Registration (Amendment) Bill 1991 also apply to this Bill.

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

Question on the adjournment proposed, put and agreed to.

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

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).

OZONE LAYER PROTECTION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

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 AND FUTURES COMMISSION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

Question on Second Reading of the Bill proposed.

MR CHEONG: Sir, the Securities and Futures Commission (Amendment) Bill 1991 seeks to facilitate co-operation between the Securities and Futures Commission (the Commission) and other financial market regulators in Hong Kong or elsewhere through a relaxation of certain provisions relating to the disclosure of information by the Commission.

In the international sphere, one of the main concerns among financial regulatory authorities has been the scope for exchange of information and mutual assistance in order to enforce their respective securities legislations in a more effective manner. In the growing trend of globalized trading, it is not uncommon for companies to trade in one market and be regulated in another. As a result, international co-operation and assistance between financial regulatory authorities around the world becomes increasingly necessary. A recent development has been the signing of mutual assistance treaties and agreements among various countries, mainly in the form of memorandum of understanding. Such memorandum sets out the basis upon which the regulatory authorities of the countries concerned reciprocally propose to exchange information to facilitate the performance of their functions.

Contrary to this global trend, the disclosure of information by the Commission

to other local or overseas authorities or regulatory organizations is only possible in very restricted circumstances under the existing Securities and Futures Commission Ordinance. This inhibits the Commission from co-operating with or assisting overseas and domestic market regulators, and from entering into full memorandum of understanding with other authorities, thereby creating difficulties for Hong Kong securities companies conducting business overseas, and on occasions, hampering the effective regulation of financial institutions in Hong Kong.

In considering a relaxation of provisions for disclosure of information by the Commission, concern has been raised about the extent of power provided to the Commission. An ad hoc group was therefore formed to study the Bill.

The ad hoc group held two meetings, including one with the Administration and the Commission. The Administration has given us the assurance that the disclosure of information by the Commission is subject to adequate safeguards stated in the Bill, including the requirements that:

(a) the Commission must be satisfied that the recipient performs any function similar to a function of the Commission or the Registrar of Companies, or regulates, supervises, or investigates banking, insurance or other financial services or the affairs of the corporations, and is subject to adequate secrecy provisions;

(b) the Commission must be satisfied that (i) the disclosure is in the interest of the investing public or in the public interest; or (ii) the disclosure will enable the recipient to perform his/its functions and is not contrary to the interest of the investing public or the public interest.

The ad hoc group has also raised concern that the Bill may facilitate a release of information to both Hong Kong and overseas tax authorities. The Administration has confirmed that the Bill will not change the present arrangement for the disclosure of information to the Commissioner of Inland Revenue under the existing Inland Revenue Ordinance. As regards the overseas tax authorities, the Administration has clarified that it is not the intention at all to provide power for the Commission to disclose information to overseas tax authorities. As a better safeguard against this possibility, the Financial Secretary will move an amendment to the Bill at the Committee stage to replace the term "inspector" by "companies inspector" wherever reference to overseas inspectors is made. Furthermore, the Commission has also undertaken to stipulate in its internal administrative guidelines that the power

conferred by this Bill for disclosure of information should not apply to overseas tax authorities. The ad hoc group is satisfied with these arrangements.

We have also discussed the need for exclusion of the term "or expedient" from the Bill as proposed by one member of the group. The ad hoc group has noted that in any case, the interest of the investing public and the public interest would be the prime consideration in the disclosure of information. The Administration has also confirmed that the words "desirable or expedient" have for some time been part of similar provisions in other legislations both in the United Kingdom and in Hong Kong, notably the Banking Ordinance and Insurance Companies Ordinance. We are therefore satisfied and agreed that for the sake of consistency, no change is needed.

With these remarks, Sir, and subject to the proposed amendment to be moved by the Financial Secretary, 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 of and support for the Bill. As Mr CHEONG has indicated in the course of discussion with the ad hoc group, we became aware of Members' concern that the Securities and Futures Commission might disclose information to overseas tax authorities under the proposed clauses of the Bill.

There is no intention that the potential recipients of information should include overseas tax authorities. Indeed, the present wording of the Bill does not include overseas tax authorities as potential recipients. However, in order to allay any such fears, I shall move an amendment in the Committee stage to further define the potential recipients for information.

In addition, the Securities and Futures Commission has undertaken to issue an internal guideline to make it clear that the Ordinance is not to be interpreted as allowing disclosure of any information to overseas tax authorities.

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).

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 1 May 1991.

Question on Second Reading of the Bill proposed.

MR CHEONG: Sir, I think colleagues will be getting tired of me very soon. The Securities (Disclosure of Interests) (Amendment) Bill 1991 before us today serves three major purposes. They are, namely:

(a) to extend the Securities (Disclosure of Interests) Ordinance to overseas companies listed on the Stock Exchange of Hong Kong;

(b) to empower the Securities and Futures Commission (SFC) to publish guidelines for exemption, after consulting the Financial Secretary, and to exempt corporations from all or part of the provisions of the Ordinance having regard to the guidelines; and

(c) to reduce the scope of restriction to the transfer of shares only.

The ad hoc group set up to examine this Bill has held altogether three meetings and has considered representations received from the Stock Exchange of Hong Kong Limited (SEHK), the Hong Kong Stockbrokers Association Limited and the Hong Kong Society of Accountants. After careful consideration of the arguments in the representations and the explanations given by the Administration, the ad hoc group has recommended that the Bill be supported, subject to a few technical amendments to be moved by the Financial Secretary at the Committee stage. Sir, I shall now briefly highlight the major areas of the Bill in which the ad hoc group has given its considered views.

Extension to overseas companies listed on the Hong Kong Stock Exchange

The ad hoc group has an unanimous view that the disclosure obligations under the Ordinance should also apply to officers and substantial shareholders of overseas companies listed in Hong Kong, whether it is primary or secondary listing, in order

to give better protection to local investors. The ad hoc group therefore supports the relevant amendments proposed by the Bill.

Guidelines for exemption

The ad hoc group agrees that in certain circumstances, provided the principle of investor protection is not compromised, exemption from some or all of the provisions contained in the Ordinance may be justified so as to ease the burden of duplicate filing requirements. The ad hoc group agrees that the SFC is the most appropriate body to be empowered to grant such exemption. However, it is important that such enabling powers should not be abused by the SFC. In any case, as responsible legislators, I am sure colleagues will agree we should not confer general enabling powers onto the Administration or the SFC without first having the opportunity to examine the guidelines or regulations. I would like to take this opportunity to reiterate this important principle to the Administration on all other areas of legislation. Because when the Bill was first submitted to us, we were not given the opportunity to look at the guideline until we said that we would not be able to proceed with the Bill until the guidelines be given to us. I think that particular example needs to be examined carefully in the future. Given the concern expressed by the submissions and members of the ad hoc group on the guidelines for exemption published by the SFC, the ad hoc group took a position that this Bill could not be recommended for passage until the guidelines were ready for our examination. Subsequently, the Administration submitted those guidelines to us and after careful examination, we are happy to report we are satisfied.

Turning to the guidelines themselves, it should be noted that the guidelines have been subject to a statutory requirement under the proposed new section 2A (1) that there be consultation with the Financial Secretary who will be given a reasonably ample and sufficient opportunity to state his views or point to problems or difficulties. Although the Financial Secretary does not have the power to modify or disapprove the guidelines, the Governor does have the power, under section 11 of the Securities and Futures Commission Ordinance, to give the SFC such directions as regards the performance of its functions as he considers appropriate and that the SFC must comply. Nevertheless, despite all these, we felt that for any future changes, the SFC should publish its draft guidelines for public comment in advance of their submission to the Financial Secretary before any subsequent amendment to the guidelines is made in future. Naturally, the legislature ought to be given the opportunity to comment on those proposed changes as well. The Administration has

agreed to this arrangement and we look forward to the Financial Secretary's confirmation in his reply.

Having considered the Administration's advice and bearing in mind that any decision taken by the SFC would still be open to judicial review, members of the ad hoc group are satisfied that sufficient checks and balances are available to ensure that the SFC will exercise its new power properly and prudently.

The reduction of scope of restriction

The ad hoc group has noted the concern expressed by the SEHK that the current restrictions imposed by section 44(1)(b) to (d) to freeze respectively the exercise of voting rights, payment of dividends and bonus issues in respect of the shares of a defaulting shareholder will now be removed by the Bill. While accepting that these provisions may add to the overall effectiveness of the freezing order against local companies, the Administration sees little point in having tougher sanctions for local companies whilst re-domiciling remains possible and relatively inexpensive. Moreover, the Administration is advised by the SFC that a restriction on the transfer of shares registered on the Hong Kong register would be sufficient in most cases to achieve the purpose of the freezing order. Furthermore, in order to limit the opportunities for circumvention, in particular for overseas shareholders, the Bill introduces two further measures.

First, a freezing order will include new restrictions on the cancellation of share certificates and removal of shares from Hong Kong. These are intended to help the frozen shares to be traced in Hong Kong and to inhibit the registration of transfers overseas. Under proper accounting principles and subject to the company law of the place of incorporation, shares of an overseas company must first be removed from the branch register in Hong Kong before a transaction involving the same shares can be registered on the principal register overseas.

Secondly, a listed company and its officers who act in contravention of the proposed restrictions on registration, issue, cancellation and removal of shares commit an offence and are liable upon conviction to the same penalties as the defaulting shareholder who attempts to evade the restrictions.

The ad hoc group is generally satisfied with the explanations provided by the Administration and therefore agrees with the relevant amendments proposed by the

Bill.

The ad hoc group has also noted that the Administration will move three amendments to the Bill at the Committee stage. They are largely technical in nature and do not involve any change in policy. We have no objection to these amendments.

With these remarks, Sir, and subject to the Committee stage amendments mentioned above, and the spirit of the speech of the Financial Secretary, I support the Bill.

FINANCIAL SECRETARY: Sir, again I am grateful to Mr Stephen CHEONG and Members of the ad hoc group. As indicated by Mr CHEONG, I shall move several technical amendments at the Committee stage to clarify certain provisions of the Bill.

I am pleased that the ad hoc group supports the proposal to give the Securities and Futures Commission a broad discretion to exempt listed companies, having regard to the intention to publish guidelines after consultation with the Financial Secretary. We believe this is the right approach. It allows transparency of decision making without compromising the necessary flexibility to deal with the many and varied considerations that will arise. I can assure Members that the Commission, in exercising this discretion, will always have due regard to the interests of investors. The Commission has a statutory function to ensure adequate investor protection and this principle will be reflected in the guidelines.

For the reasons given by Mr CHEONG, I believe that the proposed arrangements for consultation are adequate. I can also assure Members that the Commission will issue for public comment any major revisions to the guidelines, in advance of their finalization and submission to the Financial Secretary.

The Commission has consulted the Stock Exchange, professional bodies and the public on the draft guidelines. Comments received indicate general support. A few minor amendments have been made for clarification and on procedural matters. Revised guidelines have now been submitted for my consideration. I do not envisage any substantive change in the approach which has been endorsed by the ad hoc group. Subject to the enactment of this Bill, I expect the Commission to be in a position to publish the guidelines in the Gazette in early July.

I am also pleased that the ad hoc group supports the proposal to modify the

restrictions that will apply upon imposition of a freezing order. The extension of the legislation to overseas companies listed in Hong Kong presents difficult problems of principle and of practical enforcement. We believe that the new restrictions represent the best solution in the circumstances of Hong Kong. We are convinced that a level playing field is necessary and believe that the new restrictions should prove an effective sanction. We will, of course, review their effectiveness in the light of experience of the legislation in operation.

Sir, when the Bill was introduced into this Council on 1 May, it was stated that our intention was to bring the principal Ordinance into operation on 1 August this year. For reasons which I shall explain later, it is now our intention to bring the Securities (Insider Dealing) Ordinance into force on 1 September. Since the two Ordinances are related, and a lead time of two months would be required to enable necessary preparations to be made, I propose that the Securities (Disclosure of Interests) Ordinance should also be brought into operation on 1 September this year.

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).

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 1 May 1991.

Question on Second Reading of the Bill proposed.

MR CHEONG: Sir, the main purpose of the Securities (Insider Dealing) (Amendment) Bill 1991 is to clarify the provisions intended to address the problem of negligent officers of an insider dealing corporation.

The ad hoc group set up to examine the Bill has held three meetings and has also received submissions from the Stock Exchange of Hong Kong Limited and the Hong Kong Stockbrokers Association Limited.

The main concern of the ad hoc group as well as the two organizations relates to clause 2 of the Bill. The intended purpose of clause 2 is to make it clear that the duty imposed on an officer of a corporation by section 13 is a duty to take reasonable measures to prevent the corporation from doing any act which might cause it to be identified by the Insider Dealing Tribunal as an insider dealer. The ad hoc group and the two organizations, while recognizing the good intention of the Administration to state the statutory duty of an officer in an unambiguous way, have doubts nevertheless as to whether the present proposal to use the term "might cause" would unintentionally impose a broader duty upon an officer of a corporation and therefore fails to achieve the original purpose of the Bill.

Having considered the ad hoc group's suggestion and view, the Administration has kindly consented to move an amendment at the Committee stage to amend the term "might cause" to "would cause". The Administration believes and we do, too, that the latter term provides for a narrower range of considerations to be taken into account by the officer in contemplating his duty than the former one and should therefore serve the intended purpose of the Bill. We support this amendment as we put it forward.

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

FINANCIAL SECRETARY: Sir, it seems that this afternoon my gratitude to Mr CHEONG and his ad hoc group knows no bounds.

I accept that the present wording in clause 2 of the Bill may give rise to uncertainty, and shall move an amendment at the Committee stage to address the concern.

When the Bill was introduced into this Council on 1 May, I stated that it was our intention to bring the principal Ordinance into operation on 1 August this year, subject to implementation of proposals to allow buyback of shares by listed companies, and stock borrowing and lending free of stamp duty.

Arrangements to regulate stock borrowing have now been agreed between the Securities and Futures Commission and the Stock Exchange, and will come into force by the end of August. The Companies (Amendment) Bill 1991, incorporating proposals

to permit local companies to purchase their own shares, is now before this Council. Subject to enactment, it will be brought into force on 1 September. I propose, therefore, that the Securities (Insider Dealing) Ordinance should also be brought into operation on 1 September this year.

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).

LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 22 May 1991.

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).

ROAD TRAFFIC (AMENDMENT) (NO. 3) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

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).

POLICE CHILDREN'S EDUCATION TRUST (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

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).

POLICE EDUCATION AND WELFARE TRUST (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 5 June 1991.

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).

SUMMARY OFFENCES (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991.

Question on Second Reading of the Bill proposed.

MRS TAM: Sir, in September of this year, the people of Hong Kong will be voting for the first time in the direct elections of the Legislative Council. To prepare for this election, a number of amendments to the existing electoral laws have been introduced and passed by this Council at its previous sittings. As part and parcel of the package of the legislative amendments and in recognition of the increasing need of political groups or organizations to solicit donations to organize election campaigns, the Administration has introduced a new system to deal with the collection of political donations through an amendment to section 4(17) of the Summary Offences Ordinance.

An ad hoc group was formed by this Council to study the Bill. The group met a total of five times including meeting twice with the Administration and once with

a political group before we arrived at our recommendations.

In essence, the Bill seeks to provide a new arrangement for the issue of permits for the collection of money for non-charitable purposes in "public places". Currently, the Director of Social Welfare is empowered to issue permits for the collection of donations in public places but the Director normally only gives permission for the collection of donations for charitable purposes. Under the proposed provisions of the Amendment Bill, the Secretary for Home Affairs is authorized to issue permits for the collection of money for non-charitable purposes in public places. In exercising this authority, the Secretary will restrict himself to giving permits for collection of money for political purposes by referring to a set of administrative guidelines thus drawn up.

During our discussion, Members expressed concern on the following aspects:

Scope of the legislation

Members were aware that the scope of the law was very wide. There were no restrictions in the law for the seeking of permission for collection of donations in public places. However, the proposed guidelines to implement the law and administer the scheme were very restrictive. Members felt that if the intention of the Bill was to provide for the seeking of permission for the collection of donations for political purposes only, it should be so specified in the Bill.

The Administration explained that there was no intention to reduce the existing scope of section 4(17) of the Summary Offences Ordinance. The legal meaning of "non-charitable" should be wide enough to cover all situations besides political pursuits. The Bill, as presently drafted, would allow the Administration to give consideration to any worthwhile cases which were not charitable or political in nature.

Members, whilst thinking that there might be a need for consistency in respect of the scope of the legislation and the provisions of the administrative guidelines, accepted the Administration's explanation albeit with some reluctance.

Status of the guidelines

Members expressed concern over the legal status of the guidelines and suggested

that the guidelines should become part of the law as subsidiary legislation. Whilst accepting that to implement the policy through a set of administrative guidelines had the advantage of providing the flexibility and allowing discretion to be exercised to meet the needs of changing circumstances, members were nevertheless worried that the guidelines might be subject to changes by the Administration without notice to the public and the parties concerned. In this regard, the Administration agreed that a public statement would be made by the Secretary for Home Affairs in the Legislative Council if there were any subsequent changes to the guidelines. The Administration also undertook to consider members' suggestion further in the light of operating experience of the new arrangements as well as the Administration's on-going review of policy and legislation on the political development of Hong Kong.

Confined public places

Noting that political fund-raising activities could only take place in confined public places, members considered that the venues permitted by the Administration (that is stadia, civic centres, community centres) were too limited. Although members had no objection to the proposal of restricting the holding of fund-raising activities for political purposes in certain enclosed places, other possible venues such as enclosed football or basketball pitches in housing estates and so on should be allowed to be used as long as the conditions laid down in the guidelines were met.

The Administration made it very clear that "confined public places" were meant to be very restrictive. The existence of other legitimate outlets for fund-raising activities such as the use of privately owned or managed premises and so on should be adequate to enable political groups to raise funds. The opportunity was also taken by the Administration to delete the term "confined public places" in the administrative guidelines so that applicants would be fully aware of the public places where such activities could be held, which would help to avoid disputes over the definition and scope of the term "confined public places". Members agreed not to pursue the proposal of relaxing the limited venues for the time being and the Administration was urged to review the need for changes in the policy in future.

Human rights

The ad hoc group received a representation from a political organization which

claimed that all non-profit making organizations, including charitable, non-charitable or political organizations, should be entitled, by right, to hold fund-raising activities and to receive donations in public places. The restrictions imposed by the guidelines would constitute in its view an infringement on the freedom of expression and assembly and the right to participate in public affairs enshrined in Articles 19, 21 and 25 respectively of the International Covenant on Civil and Political Rights and the corresponding provisions in the Hong Kong Bill of Rights Ordinance. The representation was referred to the Administration for comments.

The Administration responded in writing that it did not regard fund-raising in public places a fundamental human right and the act of restricting the holding of fund-raising activities for political purposes in venues as permitted by the Administration a contravention of the Bill of Rights. A few members expressed reservation on the Administration's view. However, having regard to the need of passing the Bill to enable the political organizations to solicit donations in public places, members generally agreed that the Bill should not be held up because of this point. The Administration has been alerted to some members' opinions on the possible infringement of human rights and the possibility of the law being challenged in courts because of the passage of the Bill of Rights.

Sir, to conclude, I believe Hong Kong is experiencing a significant historical turn in its development of representative government. Our electoral law should evolve to keep pace with political developments. It is of paramount importance that these laws should be kept under constant review and changes should be introduced to satisfy the mounting political aspirations of our community.

Sir, with these remarks, I support the motion.

MR MARTIN LEE: Sir, the Summary Offences (Amendment) Bill 1991 before us today is a disgrace -- a disgrace to the Administration, to this Council, and to Hong Kong. It is a piece of politically motivated legislation of the worst kind. The Bill as it now stands is legally unsound, contrary to the practice in Great Britain, the United States and other democratic countries, and quite likely to be in conflict with our own Bill of Rights. The Administration has offered no proof whatsoever of the need for this Bill, and it has refused to examine the consistency or otherwise of this Bill with the Bill of Rights. For this Council to pass this Bill would be an irresponsible act that I fear will do great discredit to us.

I think it is instructive to recount briefly the history behind this Bill. In January of this year in a case that attracted international attention, the Chief Justice of the Supreme Court overturned the convictions of five senior members of the United Democrats of Hong Kong (UDHK), including our two vice-chairmen. In addition to dismissing the charges of using a loud-hailer in a public place without the prior consent of the Commissioner of Police, the Chief Justice also quashed charges that the five UDHK leaders had been raising money in a public place without a permit. In a separate case, the Reverend FUNG Chi-wood, another leading member of the UDHK, was also convicted of collecting money in a public place without a permit. Though his appeal against conviction was not upheld, the judge in that case took heed of the decision of the Chief Justice in the UDHK five case and upheld Reverend FUNG's appeal against sentence. A landmark decision of the Chief Justice brought the antiquated provisions of the Summary Offences Ordinance into further disrepute and pushed the Government into making long-overdue amendments.

Around the same time as the Chief Justice was sharply criticizing the decision of the Government to prosecute the UDHK leaders, the UDHK decided to hold a major raffle as a fund-raiser. Selling the tickets in carefully chosen public places, the raffle was an enormous success, and the UDHK raised over \$200,000 through public sales. Though there was not a single complaint of nuisance or public disturbance during the raffle ticket sales, the success of this public fund-raising exercise clearly caused the Government great concern, for the Administration all of a sudden promulgated a new series of regulations forbidding the sale of raffle tickets in public places. That raffle tickets had been sold in public places for many years without any problems was immaterial to the Government; its political worries were strong enough to cause the Government to end the long practice.

Having banned the sale of raffle tickets in public places, the Government then introduced the present Bill in order to maintain the current ban on all forms of ordinary fund-raising in public. Though the Government claims the Bill was a progressive step, such a contention is fraudulent. For while with one hand the Government promises to allow public fund-raising by political organizations, with the other hand the Government takes it away through a series of highly restrictive regulations that ban political fund-raising in all public places except indoor civic and community centres. The net result is that the Government will be able to prevent organizations like the UDHK, which have been very successful in raising money in public, from raising the funds that will enable them to contest elections against their corporate-funded rivals.

The Government will no doubt vigorously deny that it is putting forward this Bill for political reasons, in much the same way as all but one government official had denied earlier that keeping the voting age at 21 was a political move aimed against pro-democracy parties. Unfortunately, the reasons put forward by the Government in favour of the Bill are so entirely devoid of any empirical evidence that it is difficult to reach any conclusion other than that the Government was motivated by political reasons. I call upon the Government today to present facts to show the necessity of the Bill; and if the Government should fail to do so, I then urge Honourable Members to vote against it.

During meetings with the ad hoc group, the Administration proffered several explanations as to why a total ban on public fund-raising by political organizations was necessary with the exception of civic and community centres. First, it stated that it feared competition with charitable fund-raising, yet it offered no evidence of harmful effects caused by the alleged "competition". Nor did the Government explain how such conflicts would occur given the fact that charitable flag days are held only once every two weeks, always on a Saturday morning. Next, the Administration stated there were problems with the crowded streets of Hong Kong. Yet, we already have laws preventing any activity that causes a public nuisance or obstruction, and the Administration produced no evidence of prior nuisances arising from fund-raising activities.

In explaining why it would not allow fund-raising on large, enclosed public areas like football pitches, the Administration stated it was worried about "crowd control". Sir, do you really mean to say that a single fund-raising table in the middle of Victoria Park will cause "crowd control" problems? If the Administration is worried about crowd control problems arising from a single table, I wonder what the fate of the Flower Market will be during the next Chinese New Year?

In any event, it is nonsensical to allow charitable fund-raising but ban political fund-raising out of reasons of crowd control.

After this series of lame excuses, the Government finally got closer to its real purpose during its final meeting with the ad hoc group. It stated that political fund-raising in public places should be banned while charitable fund-raising allowed because of "the need to give priority to worthwhile causes which the community as a whole recognizes and supports. Charity falls into this category." Despite its

oft-repeated pledges of support for democratization, the message could not be clearer: the Government believes that charitable fund-raising is a worthwhile cause while fund-raising for elections or for organizations committed to democracy is not.

It is not the place of the Government, surely, to make this decision on behalf of the people of Hong Kong. Such an attitude is colonial paternalism of the worst kind. This should be a decision for the people to make. If members of the public do not wish to give to pro-democracy organizations, they do not have to, and we will not waste our time chasing after dollars that are not forthcoming. Yet, the origins of this Bill make clear that the Administration is banning political fund-raising in public places not because it believes there is a lack of public support; rather the Government is frightened there is too much public support for certain political organizations like the UDHK.

I would now like to turn away from the motivations behind the Government's introduction and discuss the content of the Bill. The Bill represents the worst form of antiquated colonial legislation, in which the Government retains untrammelled discretion to allow or prohibit what ought to be a fundamental right. Under this Bill, there is no right to exercise in public fund-raising even in civic centres; rather, the Secretary for Home Affairs can deny any application that he wishes. In this way, the law represents no improvement on the former law, under which the Director of Social Welfare consistently abused his discretion by refusing to grant any permits for public fund-raising of a political nature.

Such unregulated discretion is directly contrary to the control on public fund-raising in the United Kingdom. In Britain, the House to House Collections Act states that, if an applicant meets minimum requirements as to genuineness, "the authority shall grant to him a license authorizing him to promote a collection". An analogous legislative framework was proposed by the UDHK under which the Secretary would have to grant a licence so long as certain conditions were met, but this proposal was rejected by the Administration. I submit, Sir, that it is high time our Government became one whose behaviour was regulated by law as in other modern societies rather than retain an executive branch with excessive discretionary powers that are subject to abuse.

A second point that should be kept in mind is that it is not the major political parties that will suffer most from this Bill, but rather the individual candidates and the small grassroots organizations. For many of these individuals and groups,

they have no fund-raising avenues other than simple, peaceful efforts to raise money in places like parks or public areas in housing estates. And it is for this reason of protecting individuals who have no other access to public funds that courts in countries like the United States have always struck down laws like the present one that cut off this vital public lifeline.

The third point is that the Administration, despite requests from the ad hoc group, has been unable to point to any other country with such restrictive laws against political fund-raising. After researching the issue, our OMELCO office in London informed us that public fund-raising by political parties and the public selling of raffle tickets are both fully legal in the United Kingdom. Such activities are also fully legal in the United States.

Fourth and most important is the likelihood that the Bill contravenes the Bill of Rights this Council passed into law only three weeks ago. It is the belief of every human rights expert with whom I have raised the matter, including a number of international experts who came last week to the Bill of Rights Conference, that this new Summary Offences Bill violates our Bill of Rights. Similar legislation by individual states in the the United States has been repeatedly struck down by the United States Supreme Court as an overly restrictive violation of the freedom of speech in the United States Bill of Rights.

I am afraid, however, that the Administration has made no effort to examine the conflict between this Bill and the Bill of Rights, nor did it even consult its own human rights experts. The response of the Government in toto was "fund-raising in public places is not a fundamental human right". With this contention, the Government totally misses the point. International jurisprudence is in agreement that the question at issue is not whether an activity, such as conducting a signature campaign, is a fundamental human right but whether the activity is a form of or is closely connected to a right protected under the Bill of Rights. In the present case, it is clear that political fund-raising is intimately and inextricably linked to the freedoms of expression, peaceful assembly and the right to participate in public affairs under the Bill of Rights. I will focus in particular on the freedom of speech and the right to participate in public affairs.

Freedom of expression

Political fund-raising necessarily involves advocacy and discussion, two of the

most basic elements of freedom of expression. A political party must be free to inform and persuade the people, which are the actions at the heart of public solicitation. As for members of the public, they have the right to inquire, to learn, and to decide. The right therefore of a political group to solicit and the right of the public to contribute are protected by Article 16, and they are rights that lie at the heart of democracy.

The right to solicit

The conduct associated with public fund-raising is virtually identical in purpose and expressive value to such practices as distributing leaflets or collecting signatures. All of these are actions that are fundamental acts of expression. Yet, signature campaigns and distribution of leaflets, both of which are likely to pose at least as much a threat of obstruction as fund-raising, are fully legal in Hong Kong, as they should be. Indeed, every reason the Administration has advanced against public fund-raising could be advanced just as easily against signature campaigns.

Let me give a concrete example. Surely I have the right under the Bill of Rights to stand on a street corner and to ask a passer-by, "Will you please make a small donation to my political organization"? The Government cannot prevent such a form of public speech. Now, suppose this passer-by happens to believe in my cause and decides to express this support concretely by offering a small donation. I have the right to ask for support, the passer-by has the right to express support, and yet the Government today legislates to prevent me, or any representative of any political party, from accepting a donation voluntarily offered. How absurd can this be!

By enacting this law, the Government will be taking the self-contradictory position that representatives of political organizations have the right to ask for money in public places, but not the right to receive it. By depriving the request of any possible success, the Government effectively denies the right of solicitation itself, which is protected under Article 16.

The right to donate

Just as the rights of expression of the political party are impeded under this Bill, so are those of the public. Article 16 specifically guarantees the right to receive information and ideas, such as are regularly communicated during public

political solicitations. If a passer-by wishes to express his support by making a donation, he clearly has a right to do so as a part of his freedom of expression. The Government cannot prohibit him from doing so, except for reasons of public safety, nuisance, fraud, and so on, none of which reasons has been advanced for the complete ban on public fund-raising in this Bill.

The Administration will no doubt contend that it is permitting fund-raising in indoor community and civic centres as well as in private places. But for the "person in the street", who is highly unlikely ever to attend such a political function and who wishes merely to donate a few dollars on the spur of the moment, his opportunities for this form of political expression are severely curtailed.

Precedents in other countries

In examining the conflicts between this Bill and the Bill of Rights, the courts in Hong Kong no doubt will look to precedents in other countries as they are instructed to under clause 2. It is unlikely the courts will find any direct precedents in Great Britain or Canada -- for that matter, we are pleased to have representatives from Canada in the public gallery -- because of the fact that public fund-raising is legal in those countries; hence, there has been no need to challenge the law in the courts there. In the United States, however, the Supreme Court has been called upon to examine the issue on numerous occasions and has always ruled that public fund-raising by political groups is a protected form of free expression. Given the fact that Article 16 of our Bill of Rights is wider in scope than the analogous Freedom of Speech clause in the United States Constitution, it is likely that our courts will find the precedents in the United States highly instructive.

The United States Supreme Court has consistently held that political fund-raising is necessarily linked with advocacy and discussion, two core elements of free speech. For this reason, the United States Supreme Court declared in 1977, "Our cases long have protected speech even though it is in the form of..... a solicitation to pay or contribute money". (Bates v. State Bar of Arizona 433 US 450, 363 (1977)) The Supreme Court addressed the question of public fund-raising three times during the 1980s; in all three cases it ruled that fund-raising was protected expression and any legal restrictions on the activity would have to meet the highest standards of necessity.

This Council would do well to listen closely to the decision of the Supreme Court

in the landmark case of *Schaumburg v Citizens for a Better Environment* 444 US 620, 632 (1980). In that case, which involved limitations on the ability of a local political organization to engage in door-to-door fund-raising, the Court declared, "Appeals for funds, on the street or door to door, involve a variety of speech interests -- communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes -- that are within the protection of the First Amendment. Soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political or social issues and for the reality that without solicitation the flow of such information would likely cease. Canvassers in such contexts are necessarily more than solicitors for money".

The right to participate in public life

The second aspect of the Bill of Rights that I wish to touch on is Article 21, which guarantees that "Every permanent resident shall have the right and the opportunity..... without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives". In presenting this legislation to this Council, the Government itself recognized "public fund-raising for these purposes (of election campaigns) are a legitimate and inevitable consequence of Hong Kong's political development, and acceptable outlets need to be provided for them".

The Government is correct in recognizing the importance of the political fund-raising to the democratic process. From the perspective of the citizen, a financial contribution is one of the most direct ways in which he or she can participate in public life, and under this legislation many citizens would be denied that opportunity. Similarly, this legislation impedes efforts by political parties to participate in public affairs by limiting their access to vital funding. The limitations in this Bill will severely impede the ability of individuals and political groups -- especially those who are poorest and least well established -- to raise money. These individuals and groups will thereby be less able to participate effectively in elections and other aspects of public life. In short, it is highly ironic that the Government on one hand admits the importance of public fund-raising, and on the other, specifically prohibits it except in very limited circumstances.

Reasonable limitations on expression

The final argument of the Government may be that it is allowing public fund-raising but placing reasonable restrictions on it. Yet, it is highly unlikely a court would find the severe restrictions in this Bill to be reasonable. We should be mindful that international jurisprudence on similar Bills of Rights has made clear that governmental restrictions on protected rights must meet high standards of necessity and reasonableness.

For example, the landmark Canadian case of *R. v. Oakes* (26 D.L.R (4th) 200 (1986)) states that restrictions on rights in the Canadian Charter must meet three conditions. First, the purpose of the restrictions must relate to state concerns that are "pressing and substantial". Second, the restrictions must be "carefully designed to achieve the objective" of the state. And, third, any limitations "should impair as little as possible the right or freedom in question." It is highly unlikely that the Government will be able to meet that standard, for there are many ways which the Government might accomplish its crowd control aims through far less restrictive and absolute means.

I thus call upon the Government today to make clear why it still believes that the restrictions on public fund-raising in this Bill are consistent with Articles 16, 17, and 21 of the Bill of Rights, rather than just blandly asserting that "fund-raising is not a fundamental human right".

I would like to conclude by reminding this Council of its legal responsibilities. In addition to our responsibility of making sure that a law represents good policy, we now must be sure that no law infringes upon the Bill of Rights. Following the lead of the Administration, however, the ad hoc group made no effort to study the issue nor to invite any human rights expert to offer their opinions.

Although the ad hoc group report states that certain Members warned that this Bill is incompatible with the Bill of Rights, the ad hoc group never reached a decision on this issue. Rather, the report states, "Members generally agreed that the Bill should not be held up because of the reservation on this point". In other words, even if the Bill conflicts with our current law and with our international obligations, we should not hold up the passage of the Bill to examine this possibility!

Three weeks ago, this Council passed the Bill of Rights into law. Today we are prepared to pass a law which is certain to be challenged in our courts and which could

quite well be found to be in contravention of that Bill. If the Bill is overturned by the courts after it becomes law, it would bring shame upon this Council for its willingness to approve a law that contravenes the Bill of Rights so soon after its passage. Sir, I ask the Members of this Council: is this the way we intend to legislate henceforth?

I hope Members will use this opportunity to reconsider the Bill and to vote against it.

DR LEONG: Sir, this Bill before us, in its present form, tends to confine itself to minor technical "touch-ups" on political fund-raising.

Putting additional tethers on political fund-raising on top of the already comprehensive set of police rules has raised doubts on the sincerity of Government to pursue a representative government for Hong Kong.

Having said that, Sir, it does not mean that I am in support of random fund-raising that may cause public nuisance, fraud and abuses. Fund-raising activities must be conducted in accordance with the law, but they must not be cobwebbed by administrative control.

Sir, this Amendment Bill aims to create a new authority other than the Director of Social Welfare to issue permits for the collection of money for non-charitable purposes in public places.

Non-charitable bodies, including political organizations will have to apply to the Secretary for Home Affairs for a permit to raise funds in public places, and they must satisfy the following stringent criteria for a successful application, namely:

(1) The fund raising activity must take place only in public places so confined by the Administration, such as stadia, civic and community centres;

(2) The applicant must satisfy the Secretary for Home Affairs that the funds so raised will be used in ways which contribute to the development of representative government in Hong Kong. And therefore, usage of the funds so raised will be strictly restricted by law that they will not be used to finance any profit-making ventures or activities.

By confining fund-raising venues to stadia, civic and community centres, it would suffocate political maturity of these groups.

In future, it would be illegal for groups to launch fund-raising activities outside the designated venues.

I really doubt whether the Bill is earmarked for making better arrangement for fund-raising by political organizations or simply putting tighter grip on them.

Sir, this Bill, if enacted, would enable the Secretary for Home Affairs to have unwieldy power over local group activities.

I find it unreasonable for the Administration, under the pretext of facilitating fund-raising for political bodies, to tie the hands of these groups behind their backs.

To raise political funding, the groups will have to go through a labyrinth of administrative hurdles before they can actually do so.

In the United Kingdom for example it is the relevant local authority which approved applications for fund raising events. It is handled exactly in the same manner as an application from an organization, be it political or non-political, wishing to hold any public event. This arrangement may be a good one for Government to follow.

Even though, Sir, I am a member of the ad hoc group to study this Bill, I did hold different views. I had reservation on the likely side-effects for rushing through the Bill, hastily accepting some of the arguments by the Administration, even reluctantly, and delaying improvements till a later stage.

The Administration has so far failed to explain why fund-raising in public places cannot be regarded as a fundamental human right.

Sir, restrictions on such activity will certainly violate the rights of freedom of expression and assembly. Every citizen should be entitled to the right to appeal for support, including monetary support for his political cause.

This Bill almost certainly breaches the Bill of Rights Ordinance enacted by this Council just three weeks ago. Article 18 of the Ordinance provides the right of peaceful assembly; Article 19 of the right of freedom of association; Article 22 the right to participate in public life. The restrictions on fund-raising by political groups in my mind conflict with each of these provisions.

No doubt, in future it will be up to the court to interpret and decide upon whether any breach of human rights would have surfaced. But I would like to remind my honourable colleagues that we are responsible for keeping this Council from the passage of a piece of high-risk law that may infringe on human rights. If it really happens, then it will be a setback which defeats all endeavours of this Council to put together the Bill of Rights.

To conclude, Sir, I would like to suggest that, in face of the many adverse side-effects of the Bill and given that the Administration is so reluctant to make concessionary amendment, this Bill should be shelved for the time being.

Further, an overall government study on political party development, with special attention to their funding mechanism, should be made. Piecemeal reviews promised by Government simply will not do and will only lead to unnecessary hindrances to healthy development of representative government.

Sir, I do not have the law book so that I could not quote case examples so eloquently expressed by my honourable friend Mr Martin LEE. But basing on just one simple commonsense on human right, I have to object to the Bill.

MR MCGREGOR: Sir, I wish to support the proposal by the Honourable Martin LEE that this Bill not be backed in its present form. It is much too restrictive on fund raising for political purposes. It is clear that politics and political groups and parties are here to stay, having already become a fundamental part of the process of the democratization of the Hong Kong government system. Increasingly these political groups will have an impact on the work of the Council and on the participation of Hong Kong people in their own destiny. Some political groups are lucky to be able to raise substantial funds without seeking them from the grassroots; others are not so fortunate and must seek funds directly from the public in as many public places as may be permitted.

This Bill, as I said, is too restrictive and should be modified as soon as possible. I feel that the Council will approve the Bill in due course and I accept therefore the probability that the restriction on fund raising in public places will be legalized. My plea is a pragmatic one. I ask the Government to maintain an open stand on the operation of the Bill in practice with the intention of easing the restriction on fund raising as soon as this can be done. I feel also that the Government should give this assurance to the people of Hong Kong.

Sir, I have no doubt that the restrictions on fund raising are basically incompatible with the recently passed Bill of Rights, for the reason so competently stated by the Honourable Martin LEE. For this reason and despite my request that the Government continually review this Bill if it is passed as law, about which I have no doubt, I will vote against the Bill.

Thank you, Sir.

MR CHOW: Sir, raffle tickets, as has been mentioned by Mr Martin LEE, have been sold in public places for many years without any problems. I do not agree with the Administration's claim that the Bill is a progressive step. In fact, the Bill will be bringing our society backwards.

Sir, people in Hong Kong will never know the real intention of the Government to control such activities. If the hidden intention of passing the Bill is due to political worries, what I can say is that now Hong Kong is really having window-dressing democracy.

Sir, I support Mr Martin LEE's argument; so I do not support the Bill.

SECRETARY FOR HOME AFFAIRS: Sir, I am grateful to Mrs Rosanna TAM and her ad hoc group colleagues for their positive and helpful comments on this Bill and the administrative guidelines which seek to implement its proposals.

Several points of principle have emerged during our recent discussion of this Bill with the ad hoc group and in the lively debate we have just heard. I wish to take this opportunity to explain the Administration's position on these matters and to answer, in particular, the points raised by Honourable Members who spoke against

the Bill just now.

In moving the Second Reading of the amendment Bill, the Administration had already made the objectives of the Bill and the administrative guidelines very clear indeed. Sir, it is not appropriate for me to comment on judicial decisions duly made in the courts of Hong Kong. It is simply my job to respect the law. The point I would wish to emphasize today, however, is that, contrary to what the Honourable Martin LEE has suggested, the present proposals aim at the liberalization of a current restriction, rather than to hinder the development of representative government in Hong Kong. The fact is that hitherto the collection of donations in public places other than for approved charities is not allowed. The Administration believes that the time has come for a relaxation of this restriction, particularly in the wake of elections which are coming up in September this year and which will have profound significance for the development of representative government in Hong Kong.

MR MARTIN LEE: Will the Honourable Member give way, please?

HIS HONOUR THE PRESIDENT: Do you have a point for clarification, Mr Martin LEE?

MR MARTIN LEE: Yes, Sir.

SECRETARY FOR HOME AFFAIRS: I will give way, Sir.

MR MARTIN LEE: Will the Honourable Member inform this Council whether he accepts that under the original law there is no distinction between charitable and non-charitable organizations so that anybody under the existing law could apply for a permit but it is through guidelines which the Director of Social Welfare has made for himself that somehow he is only granting permission to charity organization?

SECRETARY FOR HOME AFFAIRS: Sir, may I deal with that point right now. Under the existing provisions application of the law only allows for charity donations and not otherwise. May I please proceed, Sir?

HIS HONOUR THE PRESIDENT: Please do.

SECRETARY FOR HOME AFFAIRS: As Members are aware, there is keen competition for public donations of one type or another. The over subscription of applications for Saturday flag days is a good example. There is thus a need for the Government to give priority to promoting worthwhile causes which the community as a whole recognizes and supports. Charity is an obvious priority. The Government's policy so far has been to allow fund-raising in public places, including street-collection, for charitable purposes in an orderly and well regulated manner.

However, the development of representative government has led to the recent phenomenon of political groups and individuals promoting different viewpoints from different platforms. The Government recognizes the legitimate need by these groups or individuals for funds to conduct, for example, election campaigns in September and associated electioneering activities; hence the present liberalization. However, soliciting public donations for non-charitable purposes is a relatively new development in Hong Kong. There is therefore a need for us to adopt a gradualist and cautious approach, because it is the Government's responsibility to safeguard the wider public interest, and to ensure that fund-raising activities do not proliferate in our already overcrowded streets. I have in mind, for example, unscrupulous fund-raising for personal or organizational profit, for deception, for misrepresentation, and so on. I am concerned that fund-raising activities do not proliferate as this could provoke hostile public reaction against fund-raising in general and fund-raising for political purposes in particular. Sir, with due respect to the Honourable Martin LEE, a single fund-raising table placed strategically in the middle of Victoria Park could attract a crowd of up to 50 000 on-lookers on a fine Sunday afternoon as those of us who know that part of Hong Kong well will agree. I do not think the normal users of the park, the regular joggers, the tennis players, the young children and courting couples, for instance, will cherish the company of 50 000 on-lookers for purposes in which they are not interested at all.

Sir, we believe it is reasonable for these fund-raising activities to be held in "well defined public places", the access to which then becomes a conscious personal choice, so that funds could be raised from people who identify themselves with, and support a particular cause, political, charitable or otherwise, and to make donations

voluntarily. As the Honourable Mrs Rosanna TAM has observed, the present arrangements must not be seen in isolation. There are many other outlets for fund-raising such as the use of privately owned or managed premises, for example, hotels, shopping centres, appeals in the printed media, paid advertisements, donations to specified bank accounts, and so on. All these avenues are possible and legal.

Against this background, I hope that Members will agree that there are good physical, social and cultural reasons for the difference in treatment for different types of donations insofar as public collection is concerned. Comparisons with controls in other countries and other legal jurisdictions such as the ones cited by the Honourable Martin LEE, I suggest, are neither relevant nor appropriate in the Hong Kong context.

Sir, the suggestion has also been made that the Administration's proposals which fall short of allowing political groups to solicit and collect donations in streets may have breached a fundamental human right, that is the freedom of expression. I think this is simply a misconception. As regards the Bill of Rights to which several Members referred, the present amendment is intended to reflect the social evolution in Hong Kong and to provide additional means by which certain political rights can be exercised within the society in Hong Kong. Inherent in a democratic society is the right and the opportunity to hold political beliefs and to disseminate and promote those beliefs and views in order to canvass public support. That opportunity is available in Hong Kong. The proposed amendment now before Honourable Members supports these freedoms and indeed facilitates the expression of these freedoms.

The advantage of the present proposals is that while the legislative provision is broad enough to cover the general situation, the administrative arrangements are also flexible at the same time to enable me as the appropriate approving authority to deal with applications having regard to current public sentiments and public policy, which will need to be modified admittedly from time to time to reflect changing circumstances. We do not think therefore it advisable to reduce the scope of the law by making a direct but even more restrictive reference to collection for the purpose of the development of representative government only, because we do not wish to rule out other causes which, while not connected with the development of political development, are nonetheless worthy of public support. The protection of the environment is an obvious case in point.

Sir, I also note some Members' concern about the implementation of proposals through a set of administrative guidelines. The suggestion has been made to embody these guidelines into the Ordinance as subsidiary legislation. Sir, these guidelines merely assist me in the implementation of a law if enacted by this legislature.

For reasons I have already stated, the scheme must not be so rigid as to leave no room for sensible administrative discretion which I intend to exercise in the public interest whenever this is warranted.

The incorporation of the guidelines into the Ordinance will not actually address the concern of Members because, for a scheme of this kind to work, a certain degree of discretion will still need to be vested with the approving authority. Furthermore, in the context of the Summary Offences Ordinance, I am legally advised that it is inappropriate to isolate part of a subsection of the whole Ordinance for special treatment. Amendments to the Ordinance will still be required to introduce the empowering provision to make by-laws. Consideration would also be required to be given to the scope and content of such a provision.

Sir, to assist the public in gaining a better understanding of the Government's policy as reflected in the guidelines, appropriate publicity will be arranged. This Council will also be informed of any substantial amendments to the guidelines in future.

Sir, in winding up this debate, I wish to pay special tribute to the ad hoc group under the able leadership of Mrs Rosanna TAM for the time and efforts they have devoted to a detailed scrutiny of this Bill and of the administrative guidelines. In implementing the scheme I shall give due regard to the sentiments and views expressed by Honourable Members both within and outside this Chamber, and a review will be conducted in the light of actual operating experience accumulated over a reasonable period and in the context of the Administration's on-going review of the development of representative government in Hong Kong.

Sir, with these remarks, I commend the amendment Bill to Honourable Members for their favourable consideration and I support the motion.

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

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1991

Clauses 1 to 4 were agreed to.

OZONE LAYER PROTECTION (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1991

Clauses 1, 2 and 4 were agreed to.

Clause 3

FINANCIAL SECRETARY: Sir, I move the amendments set out in the paper circulated to Members. The purpose of the amendments is to define further the potential recipients of information under the proposed provisions.

As suggested by Mr Stephen CHEONG, the word "companies" is inserted before "inspector" in clause 3 sub-clauses (c) and (g) to make it clear that disclosure of information to an overseas inspector will only be contemplated if such an inspector has been appointed under legislative provisions similar to those in Hong Kong empowering the Financial Secretary to appoint an inspector to examine the affairs of a company under companies and securities legislation. The term "companies inspector" is internationally understood.

Sir, I beg to move.

Proposed amendment

Clause 3

That clause 3 be amended --

(a) in paragraph (c), adding "companies" before "inspector".

(b) in paragraph (g), by adding "companies" before "inspector" where it occurs twice.

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1991

Clauses 1, 2 and 7 to 10 were agreed to.

Clauses 3 to 6

FINANCIAL SECRETARY: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 3 introduces new section 2A to give the Securities and Futures Commission a general power of exemption. This clause is amended to make it clear that an exemption may only be granted upon application and shall apply to officers and substantial shareholders of a company as well as to the company itself. It is also intended to make clear that the Commission's power to exempt and in so doing, to impose conditions, includes the power to revoke, suspend or modify the exemption.

Clauses 4, 5 and 6 seek to amend sections 15, 24 and 41 respectively to limit any freezing order to shares registered on the Hong Kong register. These clauses are amended to make it clear that any such order applies to issued and unissued shares, consistent with both the existing and new section 44.

Sir, I beg to move.

Proposed amendments

Clause 3

That clause 3 be amended, by deleting the proposed section 2A(2) and substituting --

"(2) The Commission may, upon the application of a listed company, having regard to the guidelines published under subsection (1) and imposing such conditions as it thinks fit, exempt the applicant company and any other person in relation to that company from all or any of the provisions of this Ordinance.

(3) The Commission may from time to time -

(a) suspend or withdraw an exemption granted under subsection (2) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such other ground as the Commission thinks fit; or

(b) vary any condition imposed under subsection (2)."

Clause 4

That clause 4 be amended, by adding "or which, in the case of unissued shares, on issue are to be" after "shares are".

Clause 5

That clause 5 be amended, by adding "or which, in the case of unissued shares, on issue are to be" after "which are".

Clause 6

That clause 6 be amended, by adding "or, in the case of unissued shares, to be registered on issue" after "registered".

Question on the amendments proposed, put and agreed to.

Question on clause 3 to 6, as amended, proposed, put and agreed to.

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1991

Clauses 1, 3 and 4 were agreed to.

Clause 2

FINANCIAL SECRETARY: Sir, I move that clause 2 of the Bill be amended as set out in the paper circulated to Members.

Clause 2 amends section 13 to acknowledge that conduct which is, by definition, insider dealing, may, in certain circumstances be excused by virtue of the defences available under the Ordinance. However, the new formulation may create doubts about the scope of the officer's duty to prevent insider dealing by the corporation. Clause 2 is amended by replacing the word 'might' by 'would' to provide greater certainty.

Sir, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting "might" and substituting "would".

Question on the amendments proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

Clauses 1 to 4 and 6 to 16 were agreed to.

Clause 5

ATTORNEY GENERAL: Sir, I move that clause 5(a)(iii) be amended as set out under my

name in the paper circulated to members.

Clause 5(a)(iii) permits persons who are admitted as solicitors in Hong Kong and who have practised here for at least three years to apply to be admitted to the Bar. This opportunity is not afforded to persons admitted as solicitors in Hong Kong and who are legal officers in government service, even though these legal officers perform work comparable to that of solicitors in private practice.

Under the amendment, a legal officer who for at least three years has been admitted as a solicitor in Hong Kong and has practised here either as a solicitor or in government service will be able to apply for admission to the Bar.

The amendment has the support of the Bar Association and Law Society.

Sir, I beg to move.

Proposed amendments

Clause 5

That clause 5(a)(iii) be amended, by deleting the proposed subparagraph (v) and substituting --

"(v) he has been admitted as a solicitor in Hong Kong for at least 3 years immediately or recently before the date of his application for admission and during that time he was in practice as a solicitor in Hong Kong or employed in the public service of the Government as a legal officer as defined in section 3(1AF);"; and".

Question on the amendments proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

Schedule was agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 3) BILL 1991

Clauses 1 to 9 were agreed to.

POLICE CHILDREN'S EDUCATION TRUST (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

SUMMARY OFFENCES (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

IMPORT AND EXPORT (AMENDMENT) (NO. 2) BILL 1991

OZONE LAYER PROTECTION (AMENDMENT) BILL 1991

ROAD TRAFFIC (AMENDMENT) (NO. 3) BILL 1991

POLICE CHILDREN'S EDUCATION TRUST (AMENDMENT) BILL 1991

POLICE EDUCATION AND WELFARE TRUST (AMENDMENT) BILL 1991 and the

SUMMARY OFFENCES (AMENDMENT) BILL 1991

has passed through Committee without amendment and the

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1991

SECURITIES (DISCLOSURE OF INTERESTS) (AMENDMENT) BILL 1991

SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1991 and the

LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

has passed through Committee with amendments. 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.

5.04 pm

HIS HONOUR THE PRESIDENT: Before we go on to Mr Kingsley SIT's motion, Members might appreciate a short break.

5.30 pm

HIS HONOUR THE PRESIDENT: Council will now resume.

Member's motion

DEATH PENALTY

MR KINGSLEY SIT moved the following motion:

"That, in view of the increasing concern caused by the present law and order situation, this Council urges the Government to resume immediately the carrying out of the death penalty.

MR SIT (in Cantonese): Sir, under the Legislative Council Standing Order 22(2), I hereby move a motion as follows:

"That in view of the increasing concern caused by the present law and order situation, this Council urges the government to resume immediately the carrying out of the death penalty."

Sir, society develops in stages. Primitive people who ate animals raw gradually progressed to living as tribal communities and then as societies where nations were built and civilizations grew. Through all these stages, each nation and each

community developed its own characteristics in that each had its own cultural background, moral standard, religious belief, and each formulated its own legal system, enacted laws and regulations having regard to its own law and order situation. The main purpose of all this is to protect the life and property of its own people within a healthy society under the rule of law. Any person, irrespective of whether he be of very high rank or powerful, whether he be a hawker or just an ordinary man in the street, whenever he acts in contravention of the law, he will be arrested and taken to court to face public trial. After a series of legal proceedings, he will be penalized pursuant to the law if found guilty. This is where social justice lies.

Sir, I move this motion because law and order these days has deteriorated. The people of Hong Kong fervently hope that the Government will resume capital punishment to punish those heinous convicts who have treated people's lives like dirt. We are not making use of the death penalty to remove dissidents as those pseudo-humanitarians say. It is widely known, in particular to legal practitioners who assist people in instituting legal proceedings, that it is clearly stated in the law that convicted murderers should be sentenced to death. People are not asking the Government to punish criminals with death if they are just convicted of minor offences such as stealing a car, robbery or traffic offences.

Sir, the Security Branch published an information paper this April. It was revealed that the majority of Hong Kong citizens agree to have capital punishment resumed. But owing to the constitutional position of Hong Kong vis-a-vis the United Kingdom, death penalty has not been carried out. Some people suggested that convicts and criminals should be re-educated. Here, I would like to cite an article published in the Times on 18 April 1991. It was disclosed that of the 1 045 convicted murderers on parole, 223 committed crimes again of whom 11 committed murder again and 27 committed serious offences. I would like to stress to Members that death penalty should be carried out on those heinous criminals who killed with malice aforethought. But according to the information disclosed, a total of 243 convicted murderers' death sentence has been commuted by the Governor in Council since 1966. Some 28% got a jail sentence of about 20 years or more. Is it fair to the victims who were killed? I therefore feel that in our society, we are not abusing the death penalty but rather the Governor in Council is in abuse by commuting the death sentence. I would like to pose a question. How many of these 243 persons convicted of murder were wrongly convicted? I would be pleased if an answer could be given to me by the Government or someone in this Council. Surely people in Hong Kong would like to know about this. There is a Chinese saying "to tolerate evil is to abet it". There is also another

old Chinese saying that when one meets King Wen (a good king), one shows courtesy and plays music to him. But when one meets King Zhou or Jie (bad kings) one should be up in arms. For a person with a kind heart like a woman, he would like to tolerate murderers and is always willing to give them a chance of re-education so that they can turn a new leaf. But has he ever given thought to those broken families whose members have been killed? How are they going to be compensated?

Some are afraid that a death sentence might be meted out to one wrongly convicted of murder. But of these 243 cases, how many were wrongly convicted? To those who bring up this question, may I say, firstly, I feel that they are not having any confidence in Hong Kong's legal system. They think that somebody might be wrongly convicted of murder and given a death sentence. But if one has no confidence in the legal system, then to punish somebody who spits or to put him in jail for two months would also be wrong because the principle itself is wrong, let alone to put somebody to death. In such circumstances, should the convicted all be released? Secondly, would it lead to the question of like requited for like if some heinous criminals were put to death? This will be a logical error. To requite like for like should be between individuals who have scores to settle. As for those heinous criminals convicted of murder, they have been indicted and convicted by due process of law; it is not the family members of victims taking it out on the murderers. The question of requiting like for like does not arise.

Lastly, there are some signatures here which I have collected recently during a signature campaign. I am not going to take public opinion and flaunt it as my own. I would submit these signatures to the Government in due course.

Incidentally, someone asked me why am I pinning to my lapel a flower of the Amnesty International today? Does not this look contradictory? I feel otherwise. I am a person in earnest love of my own life. I treasure the right to life. But in this community, some like to exploit other's kindness by killing and using this as a pretext to get away from the death penalty. One's life is valuable. But is it that other people's lives are not to be valued? Someone mentioned that there is no such thing as death penalty under the International Covenant on Civil and Political Rights. But please do not forget this. In Article 6(2) of Part III, it is stated that sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of commission of the crime and not contrary to the provisions of the Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide and that this penalty can only be carried out pursuant to a final

judgment rendered by a competent court. Unless one does not acknowledge that our present judicial system and courts are competent, and unless one does not believe that to kill others with malice aforethought is a serious crime, there is no need to discuss this issue. But everyone here in this Council knows that the Government does know about the wishes of the general public, as revealed in the Security Branch information paper this April. There is no need to repeat this point. But being a responsive government, it should take into account the wishes of the people and should not just follow the viewpoints of the British Government. The Government of Hong Kong is to serve the people in this territory and not the British Government.

Sir, society is always developing and legislation should always be amended to meet the development need and the wishes of the people. I am therefore moving a motion to urge the Government to carry out the death penalty. I have every reason to believe this is what public opinion wants. This would sound an alarm to murderers who kill with mens rea and who pay little regard to the safety of other people by firing guns in public places. I would urge Councillors here to support my motion. In doing so, Members will not be just supporting my motion; they will be supporting the views of the public. We should not cherish an effeminate sort of kindness. We are wasting our time talking moral and humanity to heinous criminals.

Sir, I beg to move.

HIS HONOUR THE PRESIDENT: I have received notice from Mr Martin LEE to move an amendment to the motion. His amendment has been printed on the Order Paper and circulated to Members. I will call upon him to move the amendment when it comes to his turn to speak.

Question on the motion proposed.

MR ALLEN LEE: Sir, before I put my views forward, I feel it is my duty, as a member of the Executive Council, to answer Mr Kingsley SIT as regards his statement that the Governor in Council abused his power of commuting the death sentences of prisoners convicted of a capital offence. I can assure Mr SIT and members of the public that I and my colleagues on the Executive Council, whenever we look at a case of a person convicted of a capital offence, would look at every word in the brief because we are dealing with the life of a person on whom the court has passed a death sentence. Very often when we tender our advice -- which is collective -- whereon the Governor commutes the death sentence to life imprisonment, it really hurts me very much because I know

the prisoner will spend the rest of his life in prison because of the crime that he has committed. Therefore, I think there has been no abuse of power by the Governor acting on the advice of the Executive Council. I would dispute any allegation of abuse.

Sir, carrying out the death penalty is a very emotive and controversial issue in any community. Mr SIT has cited the example that in Hong Kong the overwhelming majority of our people believe that the death sentence should be carried out. In the case of Canada -- I have just checked with the parliamentarians from Canada -- 80% of the people there are requesting for a reinstatement of the death penalty though the law has abolished it. This 80% is similar to the percentage we have in Hong Kong. In the case of the United Kingdom, I recall that something like 74% of the people there were asking for the death penalty to be reinstated. As legislators we must think and use our wisdom. We must make decision on this issue.

During the course of this debate, of course, we will find that Councillors' opinions are divided reflecting the different sentiments of our community. But it is a subject that this Council must address, particularly during a time when the public perception is that the crime rate is on the increase. The question we must ask ourselves is: Will the execution of the death penalty deter the criminals from committing serious crimes? I am, of course, not an expert in criminology but I have come to believe that when a person is about to commit a crime he would not give any thought to being caught in the first place. Needless to say, he would not think about the consequences of being caught. If he does, he would not commit a crime, particularly a serious crime. I do not believe carrying out the death penalty will deter criminals from committing serious crimes. In any event, a research undertaken by the United Nations in June last year has failed to produce any evidence that the death penalty has a greater deterrent effect than life imprisonment. The recent cases of armed robberies have stirred up the public into believing that if the death penalty is carried out, these cases will be reduced. To me, it seems that it is obviously an unfair reaction. But do we, as Members of this Council, really believe in this? I believe the most effective measure to deter serious crime is to improve the detection rate of our police force. So we, legislators, have a responsibility to tell our people and to clear any misconception which the general public may have. For the reasons stated above, I find I cannot support Mr Kingsley SIT's motion. I do believe, however, that as a very civilized and modern community, we should seriously consider abolition of capital punishment. According to our statute books, murder, treason, piracy with violence are offences for which that death penalty is mandatory. My view

is, as I said it before, that life imprisonment is a severe enough penalty; no criminal will be looking forward to it. Besides, Hong Kong being an international city and part of the international community, I genuinely do not believe that to carry out the death penalty is in the interest of Hong Kong. Therefore, I believe we should strike out from our statute books the death penalty. For these reasons, I will support Mr Martin LEE's amendment.

MR CHAN (in Cantonese): Sir, I agree that severe penalty should be imposed in troubled times. In 1987, there were only seven armed robbery cases, the lowest for the past five years. Yet, there has been an increase ever since. Last year, the number shot up to 66 and for this year, as at yesterday, there were already 23 cases. The robbers are like terrorists and the firearms of the police are no match for theirs. As a result, the innocent citizens will easily fall victim when the two parties exchange fire. In view of this, I think heavier punishment should be imposed upon these offenders.

As to whether death penalty should be imposed, I have consulted some of the members of the Eastern District Board and Wan Chai District Board as well as members of the area committees. They all agreed that armed robberies should be included in those crimes punishable with death penalty. At present, only convictions for three types of crimes are punishable by death penalty, including murder, piracy and treason. Since armed robbers have no intention to kill, they cannot be punished by death penalty. In the past five years, there were over 100 armed robbery cases and only four people who robbed jewellery and watch shops were convicted of murder. District board members supported the reinstatement of the execution of death penalty, but it should only be levelled at these offenders because it is unforgivable for them to rob and kill others blatantly by using firearms. In the United States, offenders of proven cases classified under first degree murder are punishable by death penalty while those who have committed cases which still have room for doubt will be classified under second degree murder and death penalty will not be imposed. But the laws of Hong Kong and the United States are different in that the latter classify murders into first or second degrees.

Nevertheless, given the objective circumstances of Hong Kong, offenders who have been sentenced to capital punishment can still appeal to the Governor and will definitely be granted amnesty. In fact, they may have their sentences commuted to anything shorter than life imprisonment. In this way, death penalty has already lost

its deterrent effect. Since we cannot reinstate the execution of death penalty realistically, I do not support its reinstatement. And I agree that life imprisonment becomes the most severe punishment. Though the court has been empowered to impose such a punishment, yet for most cases, the offenders are only sentenced to 25 years' imprisonment. Twenty five years may be a very long period of time, yet only life imprisonment can carry a deterrent effect and only in this way can we live up to the society's expectations that "severe penalty should be imposed in troubled times."

Therefore, I cannot agree with what the Chief Secretary told the press some days ago that the present 15 to 20 years' imprisonment for armed robbery was already enough to serve as a deterrent. I think unless the police are powerful enough to produce deterrent effect, the robbers will get away with their loot easily. Unfortunately, this is the truth. These robbers openly defy the law and the police simply cannot track them down. Therefore neither death penalty nor life imprisonment or even the electric chair, will mean anything to these robbers. Unless we launch an overall review of our security ability and spread a dragnet so that the criminals have no way to escape, as well as to improve the police detection rate, severe penalty will not be effective.

As Hong Kong is located next to China, it is very easy for firearms and criminals to be smuggled into Hong Kong. Therefore, there is a need to review our ability in preventing cross-border crimes, otherwise, Hong Kong people will feel more and more insecure and unprotected. Apart from those platitudes such as strengthening cooperation with China and stepping up our fight against triad gangs, we should work out better measures to cope with the worsening crime situation. For example, we can step up customs control within Hong Kong waters, set up restricted zones and designate navigational courses for large vessels and vessels of other sizes to facilitate inspection and interception of smuggling of criminals and firearms.

Some people may be opposed to any firearms capability race between police and criminals. Then should we review the reliability of the information gathered by the police as well as the deployment capability of the police? And should we deploy the Special Duties Unit to track down the robbers?

Finally, the jewellery and goldsmith shops should change their obsolete style of display and adopt the style of display and way of operation of bank counters to make it more difficult for the robbers to get what they want and to provide more

protection to the staff, customers and passers-by.

Sir, given that we cannot possibly have the execution of death penalty reinstated, we should rather have all convicted murderers sentenced to life imprisonment and the death penalty abolished. I therefore support Mr LEE's amendment.

MR CHUNG (in Cantonese): Sir, today we have a debate on the reinstatement of the execution of death penalty. We have to examine the prevailing situation of law and order in Hong Kong and the impact of death penalty to the future of our community.

It is most alarming that on one occasion some gangsters attempted to make a clean sweep of five goldsmith shops by using machine guns and drove away at high speed after the robberies. On other occasions, some criminals even killed people with their firearms arbitrarily. As for these sudden and unpredictable serious crimes, I have much doubt whether they are only rare special isolated cases or in fact an indication of rising serious crimes.

The crux of the problem is whether the capital punishment can serve as a deterrent to robberies, murders and other serious crimes.

Sir, as the saying goes "Gentlemen can get along despite of divergent views". In our previous debates, we have been practising the democratic principle of "complying with the decision of the majority while respecting the opinion of the minority". Although we might have different views in respect to capital punishment, however, I believe we are on the same starting point, that is to identify all means to maintain law and order of the territory during the transitional period with full effort.

The major purpose for the reinstatement of the execution of death penalty is to provide an effective safeguard to public order. However, as the circumstances have indicated that for those criminals who had caused disruptions to our public order, endangered the lives and property of the public or even risked their lives by opening fire and resisting arrests by the authorities, capital punishment would not serve as an effective deterrent. Capital punishment can only deter those people who are inclined to commit crimes which are not directly affecting the public order or do not warrant a death sentence under the law. However, these people are not the major targets of capital punishment. Therefore, I am of the view that there is no need

to reinstate the execution of death penalty at this stage.

We also have to give a thought to the rationale behind and the impact of the suspension of the execution of death penalty in the territory for such a long time. At this stage, the most important thing is whether we can make use of statistics on killings in robberies and homicides to prove that capital punishment is a correct measure. In the minds of those cross-border criminals who are not afraid of death, a life sentence or imprisonment for more than 30 years would be more frightening than the capital punishment. In other words, the present approach to deal with any death sentence which still exists in our statutes and is not yet abolished is not unreasonable. When the need arises, Hong Kong should take appropriate steps to remove the capital punishment all together from the criminal laws of Hong Kong.

I do not agree to the saying that "the life of a killer should be compensated for the life of a victim". This might contradict to the rule of law and the principle of equity. One who took the lives of other people deliberately or during an armed robbery, or the accused of a manslaughter case might be considered as a "killer". Should they all then be condemned to death? There can be different motives and reasons behind killings. It should of course be left to the open court to make a fair judgement in accordance with the details of individual cases.

If the execution of the death penalty is resumed in Hong Kong, it will give rise to a constitutional problem. Since capital punishment has already been abolished in the United Kingdom, if Hong Kong implements any judgement on a contrary basis, I wonder how the appeals to the Privy Council will be dealt with then.

In Europe recently, even the mandatory life imprisonment which is a penalty lighter than the capital punishment has already begun to attract opposition. The prevailing mainstream view is whether all killers should be subject to the same mandatory life sentence. The reason given is that the nature and extent of various condemnable offences differ from case to case, and their chances of rehabilitation might not be the same.

Apart from capital punishment, I firmly believe that there are other better alternatives to prevent and deter serious crimes. These alternatives will cope with our law and order situation which I expect might deteriorate in future. For this reason, I would like to put forth a few suggestions in brief:

Firstly, in order to improve the law and order situation, it is essential to

maintain prosperity by all means and emphasis has to be attached to the adoption of some progressive policies which are beneficial to the livelihood of the public. The more prosperous and progressive our society is, the lower the crime rate will be.

Secondly, on the basis of human rights protection according to law, we should further strengthen the capability of the police force to combat crimes. Planning should always be made ahead in respect of the establishment and equipment required by the police, and never let the public feel the police is always too late. In addition, the security authorities should also conduct investigation on and wipe out underground tradings of loots.

Thirdly, we have to maintain and develop a more effective security connection between Guangdong, Hong Kong and Macau. Co-operation and regular reviews should be made on improvement measures required against cross-border criminal activities.

Fourthly, importance should be attached to the rule of law in civic education to the public.

Fifthly, appropriate correctional measures should be taken so that prisoners condemned to death penalty and offenders of serious crimes who are inclined to violence will be transferred to a specific environment where they can temper themselves and undergo rehabilitation in harsh conditions. Apart from penalties, there should also be some incentives under the Prisons Ordinance whereby opportunities are provided for them to seek for reduction of sentence or early release.

God would like everything can maintain their lives. Therefore, the stoppage of the execution of the capital punishment is a special sign of our benevolent policy and also an advancement towards civilization. Unless being compelled by the then situation, any action taken by the police in the form of "violence for violence" will be inconsistent with the fundamental principles of the rule of law and government protection on public rights.

Sir, unless there is really such a need in future, I do not agree to the reinstatement of the execution of death penalty at this moment. But I hope the Government can adopt some measures more effective than the capital punishment with a view to prevent and deter serious crimes committed by criminals who are not afraid of the death penalty.

Sir, with these remarks, I do not support Mr SIT's motion.

HIS HONOUR THE PRESIDENT: Mr Martin LEE, you may now speak to the question and also move your amendment.

MR MARTIN LEE moved the following amendment to the motion:

That Mr Kingsley SIT's motion be amended by deleting all the words following the word "of" where it first appears and substituting the following:

"both the need to deter and prevent crime and the importance of Hong Kong maintaining the highest standards of a modern, humane community, this Council urges the Government to strengthen the capability of the police force to fight crime and calls for legislative measures to be introduced into this Council which would abolish the death penalty and replace it with life imprisonment."

MR MARTIN LEE: Sir, I move that the Honourable Kingsley SIT's motion be amended as set out on the Order Paper.

One day in December 1967, CHEUNG Sam (a fictitious name), a young construction worker of 19 reported for duty. But as it was raining, there was no work. So most of the construction workers spent their time chatting with one another or gambling. CHEUNG Sam sneaked away and rang the doorbell of the flat where his very good friend, a fellow construction site worker, lived with his aged mother.

His good friend was not in the flat, for he was still playing cards at the construction site. After being admitted into the flat, CHEUNG Sam strangled the old lady with a piece of string and took away her gold necklace, two rings and a small sum of money. He then went back to his work place.

Two weeks later, CHEUNG Sam repeated the same trick on the mother of another good friend, also a co-worker. He knocked her unconscious after being admitted into the flat, and also put a piece of string around her neck intending to kill her. After he thought he had strangled her, he took away a gold ring, a gold necklace, a lady's wrist-watch, a small silver chain as well as a sum of HK\$500. A few hours later the

old lady recovered her consciousness, and the matter was immediately reported to the police. During their investigation the police discovered that CHEUNG Sam had also committed the earlier crime.

After a trial before a jury, CHEUNG Sam was convicted of murder. The trial judge put on his black cap as he was required to do and solemnly pronounced sentence, namely, that CHEUNG Sam was to "suffer death in the manner authorized by law".

His subsequent appeal was dismissed and he was kept in the condemned men's cells in the Stanley Prison. His defence counsel then visited him.

6.00 pm

HIS HONOUR THE PRESIDENT: Mr LEE, I am sorry to interrupt you. It is now six o'clock and under Standing Order 8(2) the Council should 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.

HIS HONOUR THE PRESIDENT: Mr LEE, please continue.

MR MARTIN LEE: I hope the Honourable Stephen CHEONG will find what I am going to say interesting. CHEUNG Sam greeted his counsel with what he considered to be good news, namely, that the death sentences of four other men in the same cells had been commuted into various terms of imprisonment by the Governor in Council, and asked his counsel whether he could safely assume that his own sentence would likewise be commuted. He turned pale when his counsel asked him why he thought the Governor had not yet commuted his death sentence since he had received his sentence before the four other people.

After taking instructions from CHEUNG Sam for the purposes of drafting a petition for clemency on his behalf, the young barrister told his client that he was not sure whether the petition would be successful or not but that he would do his best to help

him. But he added that even if the petition were to be successful, CHEUNG Sam would still be given a long sentence of imprisonment. His counsel advised him that in that event he should try to repay his debt to the woman he had killed and to her family members and to society generally by doing something useful while he was in prison, for example, by studying during his long period of imprisonment.

Some time later, CHEUNG Sam was happy to hear that his sentence had been commuted to a sentence of imprisonment for 21 years.

Fourteen years later, CHEUNG Sam was released from prison, as his sentence of 21 years had been reduced by one-third because of good conduct; and he told his former counsel the good news that he had taken his advice seriously and studied in prison and had actually matriculated as a result of that. He also told his former counsel that he had found a good job and that he would not commit any more crime. Today, CHEUNG Sam is now married with two children, and is a productive member of our community.

Sir, I know all these, because I was that young barrister who acted successfully for CHEUNG Sam 24 years ago.

Sir, many people would have thought that CHEUNG Sam deserved to be hanged 24 years ago; and yet he was not. But on any view, our community is not worse off because of that.

Like other Members of this Council, I am deeply distressed by the recent rise in violent crime, and I am particularly disturbed by the callous disregard for public safety and human life displayed in the robbery in Kwun Tong two weeks ago, in Tai Po last Sunday, and in the attempted robbery in Sham Shui Po yesterday; and we clearly need to do more to deter and prevent those violent crimes. Yet, we must ask ourselves very carefully: how can we deter these criminals from carrying out such heinous acts? To that question, there is only one answer: increase the capability of the police force so that potential criminals know that they will be caught and prosecuted and convicted if they commit criminal acts.

The reason why Hong Kong has had such a low crime rate compared with other major cities internationally is that our police force has such a strong record of crime detection. It is worth emphasizing that we have maintained this low crime rate during the 25 years in which we have not carried out the death penalty. If violent crime

is now on the increase after these 25 years without a single execution, it is not because we lack the death penalty, but rather because our police force lacks sufficient manpower and sufficient ability to halt the easy importation of firearms into the territory by smugglers.

Study after study has demonstrated convincingly that the death penalty has no deterrent effect. I ask those who favour the resumption of the death penalty today to produce one piece of hard evidence that it would lead to a lower crime rate. For certainly, as the ones seeking the reinstatement of capital punishment, they have the duty to produce evidence to prove their case.

We need only look across the border to China and ask ourselves if the death penalty has led to a lower crime rate. In the People's Republic of China (PRC), 44 separate crimes can result in the death penalty, including such crimes as robbery and smuggling, yet we must ask if the death penalty for these crimes has effectively reduced the crime rate there. Since the problems of robbery and smuggling are far more severe in China than Hong Kong, the death penalty does not seem to serve much of a deterrent effect. Likewise, the situation in the PRC presents a frightening picture of the "slippery slope" of the death penalty. Once the state starts executing criminals, then there is a strong pressure to widen the number of crimes for which there is capital punishment -- all in the mistaken notion that there will be a deterrent effect. Hence, in the PRC, the death penalty can be meted for offences such as publication of pornography, corruption, engaging in superstitious practices, and, of course, counter-revolutionary activity.

Similarly, we should ask ourselves why the United States, despite the fact that many states have the death penalty, has a much higher murder rate than Great Britain. On a more specific level, the experience of several states in the United States is particularly illuminating. For example, in the state of Florida and the state of Georgia, which are two of the most active states in carrying out the death penalty, the number of murders committed increased significantly in the year after the death penalty was introduced. In particular, in Florida, the number of murders increased by over 60% in the first three years after the death penalty was reintroduced. Some kind of deterrence!

I am afraid that the value of the death penalty does not lie in deterrence of crime. Rather, its only value is political. It is a simple, convenient answer to a very difficult problem, and its beguiling simplicity makes it an answer that is sure to find favour with an electorate anywhere in the world, as indeed I have heard

a Member say.

Sir, I must pass one comment on the picture relied upon by the Honourable Kingsley SIT in getting people to sign up to support his motion. The much publicized picture showed a noose round the neck of a man holding an AK-47 rifle. That was clearly intended to refer to the robbery in Kwun Tong two weeks ago. That was no doubt a very sensational picture. But the Honourable Kingsley SIT overlooked a material fact and a point of law. For those robbers did not murder anyone. And that is a fact. And therefore as a matter of law, even if those criminals were arrested and convicted after trial, the death penalty will not come into the picture at all. So next time when the Honourable Kingsley SIT resorts to the same trick again, may I respectfully suggest that he consults the OMELCO legal unit on the relevant law before he draws his picture.

As to public opinion, we as legislators should no doubt pay heed to the wishes of the public, but it does not mean that we should simply follow public opinion polls on everything.

For example, if public opinion polls demonstrate a majority against the granting of legal aid to suspected murderers or robbers; or if a majority is in favour of racially discriminatory laws, would we simply abandon our duty to make a responsible decision and follow the polls? Likewise, I would hope on the present matter that we as legislators would search to find real answers to the problem rather than evading our responsibilities and pandering to the gallery.

And, as all studies on the subject indicate, the real answer to the increasing crime problem is to strengthen the capability of our police force. I spoke on this subject at length in the law and order debate we had on 6 February this year, and I will not reiterate all the points. Clearly, the most important point is to make certain that our police force is at least at full strength and that we have a greater number of policemen out on the beat every day. And if necessary, we should increase the force. I am very disappointed that the Government has done little to fill up all vacant places in the police force and to increase the numbers of police on the beat. Likewise, rather than work to address the morale problems in the force, the Government insists on denying that any problem exists in the first place.

The failure of the Government to take positive steps to address the problems in the force is all the more disturbing in light of the wave of violent crime we have

been facing. It is this subject -- the need to push the Government into strengthening the capability of the police -- that we in this Council should be focusing our efforts on, rather than asking the Government to execute convicted murders. And, the focus in my proposed amendment on real solutions to violent crime is one reason why I believe this Council ought to support it rather than the original motion put forward by the Honourable Kingsley SIT.

On a broader level, I hope that Honourable Members, in debating this issue, will pause for a moment and carefully consider what type of society they wish Hong Kong to be. What are the values that we hold most dear? Certainly a great many people in Hong Kong wish to have a society that upholds the highest standards of human rights and humane behaviour.

In this regard, the passage of the Bill of Rights three weeks ago marks a significant step, for the internationally accepted baseline of human rights has now been put into the law of Hong Kong. It is true the International Covenant on Civil and Political Rights (ICCPR) does not specifically prohibit capital punishment, yet the clear implication of the Covenant and the position of the United Nations Human Rights Committee is that signatories to the ICCPR should take steps to abolish the death penalty. My honourable colleagues would have read a copy of the letter urging the abolition of the capital punishment that was signed by the speakers at last week's conference on the Bill of Rights, and some of my colleagues would have read the cautiously argued case presented to us by the Amnesty International entitled "Against the Death Penalty".

It would be tragic if at a time where many countries throughout the world are moving towards a higher standard of human rights Hong Kong were to take the regressive step of bringing back the hangman's noose. And, I must say that I completely dismiss the narrow and self-demeaning notions that these questions of human rights are western and not applicable to a Chinese society, or as the Honourable Kingsley SIT repeated again and again that the milk of human kindness only flows from the female members of the community. Those who hold this view seem to imply that we Chinese are not as deserving of human rights as persons from other countries. It is this sort of argument which has led the Chinese leaders into making recent statements that the only human right the Chinese people have is the right to live. If we the people of Hong Kong reject that, then we must also say on the issue of capital punishment that we in Hong Kong have different values.

Let me now deal with some practical aspects of the matter if capital punishment were to be carried out in Hong Kong again as suggested by the Honourable Kingsley SIT. The primary reason given to support the original motion is the mythical notion that once the magic wand of capital punishment is waved, the number of serious crimes will drop, for it would deter would-be criminals from going ahead with their criminal activities. In brief, the argument is that once a man realizes that the consequence of a murder conviction is death by hanging, he would not commit murder, and I agree with everything from the Senior Member in this regard.

But experience in the courts has shown that Hong Kong juries are extremely reluctant to return a murder verdict when they know that such a verdict will or may result in the accused being hanged. Most juries would then choose to return either a verdict of manslaughter, or if such an option were not left to them by the trial judge, they would find the accused not guilty at all. This is because they do not want the death of the accused to be on their conscience, in case they get it wrong. But if the verdict is manslaughter, it will mean that the trial judge would be bound by that verdict and impose a sentence on the basis that the killing was not as a result of "malice aforethought", for example, that the accused had not intended to kill the deceased so as to rob him of his money in what is often called a cold blooded murder, but had only killed the victim after some provocation on the part of the deceased whether by word or conduct. In these circumstances, the proper sentence is just a few years of imprisonment. Of course if the verdict is "not guilty", then the accused is let completely free.

What deterrence would that be? A few years of imprisonment, or nothing at all? All because of the juries' reluctance or refusal to convict the accused of murder even though the evidence clearly warrants such a verdict.

This clearly shows that whereas people are more than prepared to support the Honourable Kingsley SIT's motion when approached in the streets, particularly after seeing that very descriptive picture, once they are called upon to serve as jurors inside a court room, they are not prepared to put their convictions into action.

I wonder how many signatures the Honourable Kingsley SIT would have got if he had drawn another picture -- a court room with seven jurors sitting opposite a man in the dock, with the question written on the side: "Are you prepared to put the accused to death by finding him guilty of murder? And can you sleep peacefully at night if you do?"

Sir, during the tea break a moment ago, I was informed by a member of the visiting Canadian parliamentary delegation that recently a man called Donald MARSHALL who had been given a life sentence in Nova Scotia was released after serving 11 years because it was discovered that he was in fact innocent of the offence. I was also told if Canada had not abolished the death penalty many years ago, he would have been executed some years back.

Examples of similar nature abound in countries like the United Kingdom, United States, Canada, Australia and other common law countries. It is not that we have no confidence in our court or our juries as suggested by the Honourable Kingsley SIT, but it is simply that our system of criminal justice does not guarantee or even claim to guarantee perfection. The court and our juries can be wrong. Nor can we guarantee that none of our policemen would concoct false evidence although the great majority are clearly free from suspicion.

For these reasons, the people who are actually concerned with murder trials, judges and barristers on both sides, are on the whole in support of the abolition of capital punishment. We should listen to them with great care, otherwise it would be unjust and unfair to them because we do not prosecute or defend people accused of murder, and we do not have the onerous burden of having to find an accused guilty of murder, and we do not pronounce the death sentence.

Sir, simply put, the point is this: whereas the Honourable Kingsley SIT's avowed intention is to hang the murderer, the likely result is that he will get off altogether or only a few years for the crime and he will heartily thank the Honourable Kingsley SIT for his good fortune.

First, as for barristers, Sir, the Bar Committee released a press statement yesterday which I propose to read in full, it is very short:

"The Bar Committee supports any move for the total abolition of the death penalty in Hong Kong. There is little justification for retention of the penalty as a mandatory sentence when in practice the sentence has been commuted on each occasion it was passed since November 1966. The current practice therefore already amounts to a de facto abolition. Whilst the Bar Committee recognizes the fact that there are mixed views on the death penalty, those favouring abolition point to the fact that there is little or no evidence to show that the death penalty is an effective deterrent to prevent the crimes for which such sentence is passed; on the other hand

miscarriages of justice can inevitably occur even in the most serious cases.

Article 6(6) of the International Covenant on Civil and Political Rights has been held by the European Court of Human Rights to impose a positive duty to take steps towards the abolition of the death penalty. In view of the fact that the Covenant is incorporated in the Bill of Rights which has just been adopted and will apply in future under the Basic Law, it would be inappropriate to take steps other than steps leading to the abolition of the death penalty."

As for judges, Sir, I am told recently by a High Court Judge who has a lot of experience in murder trials that he believes that almost all High Court Judges are in support of abolition of capital punishment.

Another important point which is in the minds of everyone, even if not all of us are willing to express it, is the post-1997 ramifications of this motion. The pro-communist press has made clear this week that the PRC favours the resumption of the death penalty in Hong Kong. So it is highly unlikely that after 1997 the PRC-appointed Chief Executive will maintain the current practice of commuting the death sentence. In addition, we must remember that Beijing has the power under Article 17 to apply nationwide laws relating to defence and foreign affairs to Hong Kong after 1997, and matters such as subversion or sedition certainly relate to foreign affairs. It is true that Hong Kong has the power to enact its own laws on subversion and sedition after 1997, but Beijing reserves the right to review these laws, and of course, it will have the power to interpret or amend the Basic Law in any way that it wishes. Under such circumstances, can we truly be confident that after 1997 the death penalty will not apply to crimes other than murder?

The final practical point to consider is what the effect will be on the international image of Hong Kong if we were to resume the death penalty. We should be quite clear that the resumption of capital punishment in Hong Kong would receive widespread international attention and the message would be: (1) Hong Kong is suffering from a terrible crime wave for which drastic measures are needed although we compare favourably with a lot of international cities and (2) the long-term human rights situation here is open to doubt. Such a message would cause grave harm to Hong Kong, and I ask those who would vote in favour of the resumption of death penalty to explain how they would minimize this negative international effect.

I hope that Members will consider all these arguments carefully when casting their votes on this extremely difficult issue. I realize that some Members may wish to

take the easy way out on this issue by voting against both my amendment and the Honourable Kingsley SIT's original motion, thereby allowing the status quo to continue. I strongly urge all Members -- including Official Members -- not to take such a course of action, for a vote for the status quo in reality is a vote for the death penalty being implemented six years hence, after Hong Kong becomes part of China. For although Article 48, paragraph 12 of the Basic Law gives to the future Chief Executive the power to commute penalty, there is no way to tell how he will exercise his discretion or indeed whether he will be directed to exercise this discretion in a particular way. Indeed, if the recent editorials in some pro-PRC papers in Hong Kong are any guide, then it is quite possible that the present PRC Government's thinking is the same as that expressed in these editorials, namely, the death penalty should be carried out today. And therefore the chances are high that after 1997 the future Chief Executive would be told not to commute any death penalty at all or not to commute those with any political flavour. If Honourable Members do not wish to see capital punishment resumed in Hong Kong, they should not allow the status quo to continue. In short, there is no compromise position: either you favour the death penalty being implemented in Hong Kong or you do not. If you do not, please support my amendment.

Sir, let me end by reminding Honourable Members of one of the most tragic killings ever recorded in human history, which took place some 2000 years ago on a hill called Calvary. Neither the Victim nor His mother asked for retribution, for towards the end of His life, He said of his killers, "Father, forgive them for they know not what they do."

Question on Mr Martin LEE's amendment proposed.

HIS HONOUR THE PRESIDENT: May I remind Members that a Member who has already spoken to the original question may speak again on Mr LEE's amendment but must confine his or her remarks to the amendment. However, a Member who has not spoken to the original question and who now speaks to Mr LEE's amendment is considered to be speaking to both the original question and the amendment. Therefore he or she cannot speak again to the original question after the amendment has been disposed of. Now I have the names of the following Members who would like to speak. Mr Stephen CHEONG, Mrs Selina CHOW, Mr CHENG Hon-kwan, Mr POON Chi-fai, Mrs Rita FAN, Prof. POON Chung-kwong, Mr TAI Chin-wah, Mrs Rosanna TAM, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Ronald ARCULLI, Mr Martin BORROW, Mr Michael CHENG, Mr David CHEUNG, Mr Ronald

CHOW, Mrs Peggy LAM, Mr Daniel LAM, Mrs Miriam LAU, Dr C. H. LEONG, Miss LEUNG Wai-tung, Mr Jimmy Mcgregor, Mr James TIEN, Mrs Elsie TU and the Secretary for Security. Does any other Member wish to speak?

MR CHEONG: I must congratulate Mr Martin LEE for speaking extremely eloquently on this particular subject and I also congratulate him for really coming of age because for once in this Council Chamber he has said "Let us not listen to the views of people". We, as responsible legislators, have got to make up our own mind as to what is good to guide the community. Because in the past years, all I have heard -- at least while I am here -- is that the Administration is not listening to the views of people, and so on. I think he has come of age.

Sir, I did not want to speak in this debate. I voted "no" to the motion to suspend Standing Order 8(2) because I realized right from the start that debating this particular issue would not serve any useful purpose whatsoever. Why is that? Because it is widely known that the death penalty is still on our statute books. The Administration plus the respective Executive Councillors, the respective Governors and Chief Secretaries and so on must have believed that it is right for that particular penalty to remain in the statute book; otherwise moves to abolish it would have been made, especially at the time when the Legislative Council, according to Mr LEE, was composed wholly of appointed members who would not block any legislative move to abolish the death penalty. Why was it not done? I think it was simply because -- as I was not part of it, I can only make a guess -- they believed that it was right to retain the death penalty, though never to carry it out, in the unique situation of Hong Kong. But why in practice we do not carry it out? This reflects our constitutional position and I am terribly sorry to have to remind colleagues that Hong Kong is in a very difficult constitutional position. We are not an independent country. We have our sovereign state to think about. Between now and 1997, the sovereign state is the United Kingdom. After 1997, the sovereign state is China. Whatever our views of China, whatever our views of the United Kingdom, we have to accept this fact. And as such, our laws, our practices and our legislature have to take into consideration the wishes and the whims of the sovereign state. Everybody knows that in the United Kingdom -- I cannot remember exactly when -- probably two decades ago, capital punishment was abolished. Hong Kong as a dependent territory is under the instruction or the influence of Her Majesty's Government. Even though the United Kingdom's abolition of capital punishment does not bind Hong Kong, even though there are cases where our courts judges and juries justly convict according

to evidence an accused person of murder and impose the mandatory sentence under the law which is the death penalty, we cannot carry it out because the Queen as the sovereign of this dependent territory can exercise the prerogative of mercy and commute the death sentence upon a prayer for clemency. The Queen traditionally follows the line of the United Kingdom Parliament. I will not say Parliament dictates but at least it influences the Queen's decision. It is because of this constitutional situation that we cannot carry out the death penalty.

Sir, with due respect to the Bar Committee -- and they are all very learned ladies and gentlemen -- who say, "Well, we have it on the statute book. Since we cannot in practice carry it out, let us abolish it", this is a fair assessment because between now and 1997 if the United Kingdom Parliament does not reinstate capital punishment then there is no way that capital punishment can be carried out here even if this Council and 100% of our community are for it. Constitutionally, it will put the Administration into an extremely difficult and impossible situation. So let us abolish it between now and 1997. In abolishing it, parallels could be drawn. Some people in the community have said, "Well, look at China". Even the Honourable Martin LEE has said, "Well, they have death penalty for so many different crimes, and so on." Is that practice going to come to Hong Kong after 1997? Sir, I do not know. It may, it may not. But I simply want to point out to Members and to our community that from 1997, whether we like it or not, we will have China as our sovereign state. Just as today we are influenced by the United Kingdom constitution and the United Kingdom Parliament over internal matters of Hong Kong, there is strong probability that in future, on such issues, we will have to take the Chinese attitude into consideration. I do not like it a bit. I do not think anybody would like it a bit but the definition of a high degree of autonomy has got to be thought through and thought through very clearly.

Sir, I will not vote yes to Mr Kingsley SIT's motion because in his motion he urges the Hong Kong Government to implement the death penalty immediately. I do not think the Hong Kong Government can do it simply because the United Kingdom Parliament, based on their existing law, will bring every pressure down on the Hong Kong Administration so that we will not be able to do it. To that extent, why put our Administration under that strain and stress?

I also do not support Mr Martin LEE's amendment because he calls for the abolition of death penalty. He made a very moving and convincing case insofar as the debate is concerned. But the fact of the matter is that we still have the death penalty on

our statute books after the United Kingdom Parliament has abolished it. Why? Because we feel it is the right thing to have, because successive Governors feel it is the right thing to have, because successive Executive Councillors feel it is the right thing to have. To abolish it now would need a much more detailed study and examination than just a hurriedly called for motion debate like the present one. In all my conscience, I cannot support it. Thank you. I will therefore abstain on both the motion and the amendment.

MRS CHOW: Sir, Mr SIT's motion misleads us into believing wrongly that the reinstatement of the death penalty will resolve our increasingly serious law and order problem. In my view, he prescribes the wrong solution for he cannot base his argument that increase in violent crimes can be arrested by the reinstatement of the death penalty on any factual proof or scientific evidence, but rather on his own personal presumption -- a presumption which will cause lives. But let me come back to that a little later. As for the question of law and order, I believe the Government should be pressed to come up with relevant urgent measures to tackle the problems such as to ask for the necessary resources or legislative support from this Council to combat crimes more effectively. In this, leadership, will and initiative must be more visible whether it is in the Fight Crime Committee, the police force or the Legal Department. Do we have enough protection for our witnesses? Do members of the public feel sick to come forward when their co-operation is required in an investigation? Is the police intelligence network as effective as it should be? Why is there no task force within the police to tackle the more specialized areas of activities such as by triads and imported elements? Is public prosecution quick and tight enough to deter criminals? The list of questions goes on in the community. Answers provided by the Administration through action or words will certainly boost public confidence. Likewise, the judiciary must be more responsive to the fears and concerns of the community and reflects such responsiveness in handing down sentences which the community considers to be appropriate to and commensurate with the seriousness of crimes committed.

I would like now to deal with the philosophical question at the core of the controversy of the death penalty, that is, should we have the right to kill even if it is well justified and popularly supported? Death is absolute, final and irreversible. The criteria to pronounce it varies from culture to culture, from state to state, from religion to religion. The criteria are man-made. Today our criteria in Hong Kong are murder, piracy with violence and treason. Already there

is a call for armed robbery to be included. Who can guarantee that lesser crimes will not be included in the list in the future in response to the persuasive and the powerful? Sir, I would like to think that in spite of the adversity and difficulties, Hong Kong has been and will remain a humane society that takes human life seriously. In our fight against inhuman, inhumane and violent behaviours, let us not ourselves sink to the same level of inhuman behaviour by advocating the cold-blooded deprivation of human lives. Is that not in itself a form of murder performed in the name of justice?

Before I conclude, Sir, I would like to answer briefly Mr Stephen CHEONG's point on what we should do now. Although our hands are tied -- we certainly have practical and constitutional constraints between now and 1997 and beyond 1997 -- yet as legislators, we have the responsibility to speak for the best interest of Hong Kong and even if our hands are tied, we have to tell Hong Kong and the world what in our view is the right thing to do. So for reasons given, I appeal to my colleagues to vote down Mr SIT's motion.

As for Mr LEE's amendment, I do not think it goes far enough in calling for all parties concerned to work together to tackle the law and order problem. However, I agree with the basic principle enshrined in his amendment. I shall therefore vote for his amendment and I call on my colleagues, official and unofficial, to do likewise.

MRS FAN: Sir, although we are having one motion debate with an amendment, in fact, we are having two motions because the amendment is so different from the original motion that in itself it is a motion.

Since we are discussing today the death penalty, I think we should understand, as some Members already pointed out, the constitutional position regarding the death penalty. If I may, Sir, I shall read out a paragraph from a book written by Norman MINERS entitled *The Government and Politics of Hong Kong*. I quote "Britain did intervene in 1973 to grant a reprieve to a convicted murderer overturning the decision of the Governor taken on the advice of the Executive Council that he should be hanged. This was an exceptional case where the Crown retained the right to exercise the royal prerogative of mercy directly without the need to ask the Governor to take action. This most unusual interference by the Crown in the judicial process in Hong Kong caused great offence locally. To avoid any repetition, the Governor now reprieves all convicted murderers since representation to London that local opinions strongly

favour the infliction of capital punishment have failed to alter the views of successive Secretaries of State. However, suggestion from London that the death penalty should be removed from the Hong Kong statute book has also been ineffectual since it is clear that the majority of the Unofficials will strongly oppose any such amending legislation."

With this background, Sir, I wish to comment on both the amendment and the original motion. Although I believe Mr Martin LEE's amendment to the motion does point out a very important point about the way to deter crime, the amendment however has not gone to the full extent of suggesting how to improve law and order. As Mrs Selina CHOW has already pointed out, I feel that in order to improve law and order in Hong Kong, it is also important, apart from strengthening the capacity of the police force to fight crime and improve the detection rate, that appropriate sentences with sufficient deterring effect should be passed by the courts of this territory. Otherwise it is simply, to some policemen, a waste of time for them to risk everything in order to catch the criminal. I also agree with Mrs CHOW that we need leadership and initiative. So I have to say that I was somewhat disappointed with the earlier answer given to my supplementary question by the Secretary for Security when he said that he was satisfied with the strategy and measures being used by the police force in combatting crimes.

Now, to return to Mr Martin LEE's amendment, I find myself unable to support it. In fact, I will vote against it because to take away death penalty from our statute book at this point of time will really be sending the wrong message at the wrong time. While in Hong Kong, we might see this as an illustration of understanding humanitarianism and leniency, it would probably be seen by the undesirable elements in our community as a sign of weakness. It would similarly be viewed by those undesirable elements in China who might well be trying to come to Hong Kong illegally with the sole purpose of committing crimes of robbing goldsmiths shops and banks. So I cannot agree with that sentiment in Mr LEE's amendment. The other reason, I think, at the back of the amendment motion to abolish death penalty is the fear that the death penalty may be used for political convenience particularly when treason is still on our statute book with the death penalty as the mandatory sentence. But why should we abolish the death penalty for murder? Why cannot we review our law as far as treason is concerned, and for that matter, why should piracy with violence be still on our statute book. So I do not feel that the political reason for removing the death penalty is sufficiently strong.

Turning now to the motion moved by the Honourable Kingsley SIT, I believe he has somehow misled the community and also in his motion there is this implication that with the immediate reinstatement of the execution of the death penalty, we will have a better law and order situation. I do not need to explain any further because many Members have already said what I want to say. But furthermore, Mr SIT has not at any time told us how this can be done under the present constitutional position. He must have known that by now from the arguments that have been so far advanced in today's debate. So unless Mr SIT can explain to me on how he sees his motion, if supported, can be actually put into effect, I think it is totally meaningless. I am also unable to support his motion because when he introduced it, he made the point that he wanted the death penalty to be carried out once the sentence is passed. I do not agree with that. I believe that after the judicial process has run its course, the Governor's prerogative of pardon should still be there and should still be exercised because there is always the need to see whether there is a possibility to let someone live. Yet on the other hand, I believe those crimes which are totally cold-blooded and are very very serious do deserve the death penalty. Therefore, Sir, I cannot lend my support to Mr SIT's motion either.

There are two points that I wish to make in this debate. Throughout the discussion of this matter -- there have been a number of public seminars and forums and the public has also made use of the phone-in programmes to express their views -- I feel that many of the people in Hong Kong actually do not really fully appreciate the legal and judicial process leading up to the death penalty and the Governor's pardon nor do they appreciate the constitutional position. They have also been misled by certain people into thinking that the death penalty in itself will improve law and order. Therefore I believe there is a need for public education on these things so that our people understand what is being discussed so that they are not so easily misled. In particular, in view of the coming elections, I think it is important that people will not simply vote for the candidates who are singing the song that they like to hear and turn their backs on the candidates who are really doing something for Hong Kong and who are prepared to stake their reputation on some principle even though it may be against popular sentiments and tell the public what it really is about. The second point I wish to make is this. I think neither the United Kingdom now, nor China after 1997 should, as a matter of principle, have the right of overturning the Governor's or the then Chief Executive's decision to grant pardon or not to grant pardon because this is a matter for the community of Hong Kong. I accept that there is a constitutional framework. I accept that this is the discretion of the Queen and Her Majesty's Government. But I would appeal to them, in view of

what would happen a few years from now, to consider the possibility of refraining from intervening in the exercise by the Governor of his discretion to grant pardon and allow Hong Kong's judiciary and at a later stage the Governor to make the decision of whether to grant pardon or not.

MR CHENG HON-KWAN: Sir, I have listened carefully to the views expressed by my honourable colleagues on resumption or abolition of death penalty. During the past weeks, I have myself given the matter of death penalty a great deal of thought and my own analysis has guided me to agree with those who are in favour of abolition of death penalty. It is true that the violent crime rate is on the increase but the number of cases that warrant a death penalty is minimal but this is not the reason for my argument. In my view, to deter crime effectively, the Government should step up all measures to maximize the rate of detection and to impose heavier punishment. I firmly believe in human rights and respect the right to life. I am not convinced that death penalty would be an effective deterrent to prevent crime. This morning, I called up one of my fellow engineers for some personal business. Before we talked about business, I asked for his view on the abolition of death penalty. He then told me that some years ago, his brother was murdered in the United States. His mother was deeply saddened. At the time of sentence in the court, his mother begged the judge not to impose the death penalty on the defendant. The reason being, she said "I do not like to see one more mother to suffer". So this is the true story which has strengthened my belief that death penalty should not be resumed. I therefore support Mr Martin LEE's amended motion.

MR POON CHI-FAI (in Cantonese): Sir, on June 9, a gang of robbers armed with automatic rifles and machine-guns held up five neighbouring goldsmiths in Mut Wah Street, Kwun Tong. The culprits took passers-by as hostage and exchanged fire with police. Armed robberies took place one after another in Tai Po and Sham Shui Po in which the police weapon was seized and double shooting was involved. Such violent crimes have posed a serious threat to the life and properties of citizens. Public concern and discontent over the deteriorating law and order has increased and their demand for severe penalties and reinstatement of capital punishment against violent criminals has become stronger. I conducted an opinion poll on public security in Kwun Tong a few days ago. 1 010 questionnaires were returned from 1 300 sent out. Among them, 49.9% considered the law and order situation in the district to be poor and 38.8% regarded it as appalling. Public dissatisfaction with the state of order has been

shown by the survey. As regards the reinstatement of capital punishment, an overwhelming 90.7% of the respondents considered it as an effective deterrent to serious crimes. Only 2.2% of them were of the opinion that death penalty could not deter crimes. According to the findings of the survey, 83.8% of the respondents were in favour of the death penalty and 4.7% against it. Among the three options of the most effective measures in curbing crimes, restoration of death penalty is the mostly welcomed one (75.4%), followed by the stepping up of co-operation between China and Hong Kong to curb smuggling of firearms into the territory (69.5%) and additional police coverage on the streets (67.3%).

Sir, since law and order of the territory has been worsening and robbers become more ruthless in committing crimes, life of citizens has been seriously threatened. Harsh penalties are necessary at a time of deteriorating law and order. The Government should impose more severe penalties and resume the execution of capital punishment so as to deter violent crimes. Some people may worry as life is irreversible when one has been executed even though he is found to be wronged in the court judgement and that the death penalty may be open to abuse after 1997. Given the sound legal system in Hong Kong at present, we may formulate safeguards and modify current legislation to prevent irreparable mistake to be made in court judgement. In addition, tighter restriction may be placed on the use of death sentence which has to be imposed on conviction for murder and aggravated assault on the basis of sufficient evidence all proved beyond doubt and should not be executed until procedures of reasonable appeals and retrials have been completed. It is overworrying to fear that capital punishment will be abused after 1997. In fact, a merciless government which shows no regard for law, whether or not there is statutory punishment of death sentence, may persecute any innocent people by use of strong-arm methods.

Sir, some people may denounce death penalty as brutal and inhumane. But have they ever thought that while they show kindness to culprits by indulging them in crimes, they are cruel to the law-abiding citizens? Everyone should be held responsible for what he has done. Those who have committed a crime should be punished. It was nothing to do with humanity.

Sir, I lastly wish to emphasis that it is the right time now to resume the execution of capital punishment which is condusive to maintaining stability and prosperity of the territory as well as protecting the fundamental interests of citizens. Apart from reinstating the death penalty, I would like to propose the following measures

to combat crimes for the Administration's consideration:

(1) Liaison and co-operation with China should be stepped up to curb the smuggling of firearms into the territory.

(2) Police manpower should be reviewed and improved. The Government should not contain the expansion of police staffing in disregard of the appalling state of law and order for the reason of its zero growth policy or deploy police officers to tackle cases concerning Vietnamese boat people and further aggravate the staffing problem of the force. As a matter of fact, adequate manpower is required for additional coverage on streets in order to prevent crimes.

(3) Police equipment should be improved so that police officers have sufficient teeth to deal with criminals and their personal safety is also ensured.

Sir, since the motion moved by the Honourable Kingsley SIT is in line with my view as well as the public opinions resulted from the survey conducted in Kwun Tong, I, with these remarks, support his motion rather than the amendment motion proposed by the Honourable Martin LEE.

PROF. POON (in Cantonese): Sir, whether the execution of death penalty should be reinstated or not is indeed a painful and difficult decision to make. As legislators debating on this issue today, we must ponder deeply over this subject and should refrain from acting indiscreetly. With this in mind, I have finally come to the conclusion that we do not have sufficient justification to support the proposed reinstatement of the execution of death penalty in Hong Kong.

First and foremost, I consider it necessary to take a long and hard look at the various types of crimes which have been aggravating the law and order situation in this territory. It should be very easy for us to notice that serious crimes such as armed robberies, car thefts and smuggling cases are no longer committed by unorganized mobsters. Instead, they are carried out with meticulous planning by crime syndicates which even go so far as to hire desperadoes from outside Hong Kong on piecemeal basis and equip them with powerful weapons. Since they also choose to strike at the least expected moment, our law enforcement officers are caught off guard from time to time. When these criminals are in the course of committing crimes, they simply do not care what the consequence will be. Hence, whether death penalty is enforced in Hong Kong will have neither bearing nor deterrent effect on them. What

is more, under the existing law, the crimes that we are most concerned about do not warrant the passing of death sentence on the offenders upon their conviction. I do not believe that it will be able to improve Hong Kong's law and order situation overnight even if all these criminals are sent to the gallow.

Moreover, though Hong Kong is blessed with a well established judicial system operated by a group of judicial administrators who are, beyond doubt, persons of respectable conduct, I still cannot rule out the possibility that human errors may find their way into the judgement making process. Experience everywhere shows that there were and there still are cases of people falling victims to misjudgment of the court. If we resume the execution of death penalty, can we ensure at the same time that there will be no margin for human errors in all the verdicts handed down in courts? Before we can give such an assurance, it would be undesirable to decide on reinstating the execution of death penalty in haste.

Of course, just like everybody else in Hong Kong, I am troubled and worried by the worsening law and order situation resulted from the recent rise in local crime rate. However, I think that apart from death penalty, consideration should also be given to other alternatives which may deal a blow at the crime syndicates. For instance, in order to bring about an early disintegration of local crime syndicates, the police should be more active in taking actions to eradicate triad members. In addition, close liaison and co-operation should be maintained with the mainland authorities to stem the smuggling of firearms and the inflow of illegal immigrants from China. I believe that mutual co-operation in this respect between Hong Kong and China has already begun to work. The recent control that is being gained gradually over car thefts clearly signifies the great success in combating crime syndicates through concerted efforts by both sides across the border. Furthermore, I would also like to suggest to the Commissioner of Police that police equipment should be constantly upgraded and updated through regular reviews. Finally, I would like to declare that I am all for the argument that "severe penalty should be enforced in trouble times". But, by severe penalty, I refer only to long term or life imprisonment instead of death penalty.

Sir, I object to the Honourable Kingsley SIT's motion which proposes to reinstate the execution of death penalty. My reason is simple. Death penalty is a dangerous punishment which, once administered, can be neither rectified nor revoked even if the verdict is later found to be a wrong one.

As regards whether death penalty is humane or not, it is merely a question of relativity. To be humane to the reckless killers is to be inhumane to the innocent victims. That is why I cannot support the Honourable Martin LEE's motion which suggests that the proposed abolition of death penalty is due to the importance of maintaining Hong Kong's highest standards of a modern and humane community.

Thank you, Sir.

MR TAI: Sir, with the rising incidence of serious crimes, the outcry for reinstatement of the death penalty to deter further deterioration in law and order is echoed by different walks of society.

We have capital punishment on our statute books for very serious offences. Judges in Hong Kong are still obliged to impose the death penalty whenever circumstances warrant it.

The death sentence has never been carried out for the last 20-odd years because of the unwritten constitutional right -- the right to petition the Queen for clemency. As a matter of practice, due to the abolition of the death penalty in the United Kingdom, commutation from death to life imprisonment is as of right.

If my memory does not fail me, Britain still has the death penalty for offences such as treason and cowardice on the battle field.

To me, the issue today is not whether Hong Kong should have the death penalty or not. Rather it is a constitutional issue involving the right of petitioning the Queen's representative for clemency and whether the Hong Kong Government must act in accordance with the direction from Her Majesty's Government.

This is a constitutional issue which we must address carefully.

To me, I do not think that we should rush into making a decision now on abolition of death penalty because there is still in existence a built in constitutional safeguard. Moreover, I urge that Her Majesty's Government should look at the merits of individual cases in granting clemency instead of commuting death sentences to life imprisonment as of right as is the situation today.

Say for example, there may be a case for clemency where a loan shark is murdered by a husband whose wife is pressed for repayment of money. But for a robber who killed mercilessly law enforcement officers and innocent people, the case for clemency certainly does not exist.

In summary, I submit that the issue in question does not lie in whether the death penalty should be executed, and I urge Her Majesty's Government's representatives in Hong Kong to seriously look at the merits of each case before granting clemency.

MRS TAM (in Cantonese): Sir, the death penalty is without any doubt the most extreme form of punishment for law offenders. Whether to the one who judges or the one to be judged, it means no chance for going back or redress. I do not subscribe to punishment by death. Like many others, I doubt very much the effectiveness of the death penalty as a crime deterrent. Below, I would like to give my personal views.

First, on the question of fairness.

Some think that "the killer is to forfeit his life for what he did" is a fair and reasonable theory. On the surface, indeed it is, but when we think about it carefully, we know it can hardly be established.

The purpose of punishment is not to seek revenge. From the point of view that each person has only one life and each life is a unique being, subscribing to "a life for a life by way of requital" is to a large extent based on sentimental reasons. With rational analysis, one should realize that taking the life of an offender cannot, either in substance or in quantity, satisfy the objective criterion of fairness.

If we say that not carrying out the death penalty on an offender convicted of a capital offence is unfair to the victim, how shall we explain that carrying out of the sentence on the offender is fair per se. If we cannot accept an act of intentional murder; yet to prove the act to be wrong we resort to the same intentional act in consciously taking the life of the murderer, I think this is not acceptable because this line of thinking is full of contradictions and logically unsound.

Second, on the function of punishment.

Personally, I think the major significance of punishment is to give the offender

a chance to make a fresh start and prepare him for reintegration into society. Punishment naturally has the important function of maintaining justice in society and punishing offenders for their crime. Nevertheless, it does not mean that we have to implement the death penalty and to see to it that offenders are put to death.

Capital punishment is not only going opposite ways to the original objective of punishment, but it also brushes aside the possibility of repentance of the offender. I do not think it is a sound method of punishment.

Third, on the deterrent effect.

Some people think the death penalty is an effective deterrent. They believe that resuming the implementation of the death penalty can help prevent the incidence of crime. However, it is obvious that no society can offer real proof that the death penalty can effectively deter capital crimes. On the contrary, more and more countries are revising their laws to abolish the death penalty. We can see that resuming the implementation of the death penalty is a mockery and a regression for an international society which is civilized, progressive and holds respect for human rights.

Sir, causes of crime are manifold. The key to curbing crime is in improving police detection rate, stamping out the chances for bad elements to obtain arms and ammunition, strengthening police manpower and training, and in our judicial officers giving more consideration to the law and order situation and passing sentences which would adequately reflect it. The extreme measure of the death penalty should not be resorted to as a solution.

Finally, I wish to discuss support for the abolition of the death penalty and confidence in our judicial system.

No matter how sound the judicial system of a society is, there is still the chance for man-made errors. Indeed, this is an objective truth. As such, whether we support the death penalty is not an index of our confidence in the judicial system.

The recent Birmingham Six case in the United Kingdom involving an explosion in a bar aptly proves that no matter how well run the system is and how long its history, there is still a possibility for error. When it is found that the death penalty has been wrongly carried out, there is no recourse whatsoever, no mechanism for redress.

Who is to be responsible when there is an error in the returning of a verdict? If we subscribe to the theory of "a life for a life" are we supposed to take the lives by way of requital of those who judged?

I do fully understand that our recent law and order situation has given rise to great concern and uneasiness among members of the public. The modus operandi of the crimes and the weapons used by the criminals are seriously threatening the lives and properties of our citizens. The authorities must be determined to fight such serious crimes. We must co-operate with the mainland to stop arms and ammunition from being smuggled into Hong Kong. We must also face squarely the need to improve our police efficiency and intelligence in connection with crimes as the way to improve our law and order situation.

I have to stress that opposition to the death penalty as a form of punishment absolutely does not mean tolerance of or indulgence to offenders. Life imprisonment is the uppermost limit of severe punishment that can be accepted. In fact, to retain the death penalty on the statute books of Hong Kong is of nominal significance only. To allow a provision to exist but not to implement it in practice gives the impression of fooling both oneself and others. It shows lack of determination and decisiveness. An equivocal message to society is a shifting of responsibilities. Since the authorities do not intend to carry out the death penalty, legislation to abolish the death penalty and replace it with life imprisonment should be enacted.

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

MR TAM (in Cantonese): Sir, the law and order in Hong Kong has turned from bad to worse indeed in the last year or so and the lives and property of citizens are under threat. Yet, it is questionable to think that the immediate reinstatement of the execution of the death penalty is effective in deterring crimes.

There are arguments that with the execution of the death penalty serious crimes like armed robberies can be curbed. The problem, however, is that the robbers are desperate criminals who reckon not of the matter of life and death. The deterrent effect of the death penalty will probably not work on them. Up to this day, there is no evidence which supports that the execution of the death penalty can deter serious crimes.

On the contrary, I am of the view that in order to effectively deter serious crimes the capability of the police force to fight crime should be strengthened. I believe that an efficient police force and a high crime detection rate will have more deterrent effect on criminal elements than the execution of the death penalty.

Nevertheless, though the execution of the death penalty may not be effective in combating serious crimes, I am worried that the abolition of the death penalty at this moment when the law and order is deteriorating may give criminal elements a free hand to act wantonly. In this regard, the abolition of the death penalty now may give connivance to some criminals and incite them to commit crime.

Sir, whether the death penalty should be reinstated is a very complicated and controversial issue which involves value judgement as well as assessment on the present law and order situation. I therefore believe that the issue must not be decided hastily. Instead, a decision should not be made until there are extensive consultation across the community and in-depth study and deliberation. In view of these, I do not agree to Mr Kingsley SIT's motion and Mr Martin LEE's amended motion.

MR ANDREW WONG (in Cantonese): Sir, I rise to speak in support of the Honourable Martin LEE's amendment to the motion. For the purpose of argument, what the supporters of Mr LEE and he himself said just now is already quite sufficient. I may be repeating some of the points made by them, but basically, the points I am going to make are broadly the same and there are three. The first point concerns the Honourable Kingsley SIT's argument for resuming the carrying out of the death penalty which, if it is to be resumed, can only go ahead with the approval of the United Kingdom. In this respect, a constitutional problem may arise as pointed out by the Honourable CHUNG Pui-lum, the Honourable Stephen CHEONG, the Honourable Mrs Rita FAN and the Honourable TAI Chin-wah who thought the United Kingdom would not agree. I am slightly more optimistic. I think if we are convinced the death penalty must be enforced in Hong Kong, we can fight for it. What is involved is not a constitutional problem, but rather a political one. Let me be more specific. Why did the Governor in Council decide in 1966 not to remove the death penalty from our statute books and instead commute the death sentences? Why was it that in 1973 after the Governor, acting on the advice of the Executive Council, had turned down an appeal for mercy, the Queen exercised her prerogative of mercy and commuted the death sentence? There is political wisdom in this episode. We assume that if the death penalty can be enforced in Hong Kong, each time a criminal convicted of a capital offence pleads for mercy, he will get his sentence commuted in normal circumstances (except for special cases).

If it is a case that does not merit a commutation of sentence, the convicted will appeal to the Queen. The Queen will take reference from the decision of the Hong Kong Governor and in the normal course of events Her Majesty will refuse mercy unless special circumstances exist which will tip the scale in favour of the supplicant. Let us assume that a criminal convicted of a capital offence is refused mercy because his case comes within the generality of cases. If he is an ethnic Chinese, then when the next supplicant who happens to be an ethnic Briton appeals to the Queen for mercy and is likewise turned down, there will be a storm over this in the United Kingdom. But if his appeal for mercy is granted, there will likewise be a storm in Hong Kong. So basically the problem defies solution.

Let me make two points in support of Mr Martin LEE's motion. On the negative side, as pointed out by Mrs Rosanna TAM just now, the death penalty exists on our statute books but is not carried out so that the people of Hong Kong lose confidence in the law. Every time after the judge dons a black cap and declares "I have to sentence you to death" and in the end that death sentence is not carried out, it adds to Hong Kong people's doubts as to the efficacy of the law. The positive way is therefore to abolish and remove the death penalty from the statute books of Hong Kong.

My second point is relatively more positive. Mr Martin LEE pointed out just now that the Bill of Rights had been passed and the Bill of Rights represents no more than the lowest international standard in this respect. I hope Members will read an old article published in the September 1981 issue of Ming Pao Monthly. In that issue there was a column called Hong Kong Forum jointly edited by Mr KWAN Shun-kei and myself. Let me just quote a few lines of the text of that article, "The legal culture of Hong Kong has not reached the stage of the absolutism of life. The worth of human beings is a relative matter, it can be added on, subtracted from and calculated. The life of a collective entity of human beings is more important than that of an individual, and some people's lives are more sacred than those of others. The people of Hong Kong detest offenders much more than the crimes they committed. Our people have more doubts as to the innocence of the suspect than as to whether the law enforcers are fair in handling the case. More importance is attached to revenge, punishment and so on than to rehabilitation and forgiveness." In the 1980s, 70s and 60s, although the death penalty was not carried out, there was a lot of controversy about it. In those days, the cultural and legal standards of our society did not go farther than there. I believe we have now reached the stage where we should insist on the least and lowest international standards of human rights. We have to take life seriously. In the Bill of Rights, the right to life as laid down in the

International Covenant for Civil and Political Rights is clearly spelt out. Although the existence of the death penalty is tolerated, we have a duty to abolish it as far as possible. Now is the time for abolition.

Finally, to sum up, I would like to quote the last few lines -- long lines at that -- of the same article. I hope these lines will help Members understand more about the joke told by Mr Stephen CHEONG about Mr Martin LEE a whole ago. "The practical deterrent effect of the death penalty is limited and morally it is deficient. We have analyzed the weakness of the principle of the killer to forfeit his own life. The conclusion we should draw is that we should not have over faith in the death penalty. Resuming the carrying out of the death penalty seems to be the unanimous or at least majority will of the people of Hong Kong. Should Government respect public opinion? Should the United Kingdom Government interfere? If we think democracy is an absolute value, then the answer should be in the affirmative. However, we should attach more importance to the life of the humankind and the value of their freedom. We should be aware of the seed of self destruction sown behind democracy. We should also grasp the foundation of knowledge and reason on which the democratic spirit depends. Those in the position to decide, including government officials and Legislative Councillors, should have the duty and courage not to balk in face of worked-up public emotions and not to do anything against their conscience. Administrators should not think they can transfer the responsibility on to the masses. They should analyze and explain to the people as soon as possible. They should exercise leadership. To our regret, neither our administrators nor our intelligentsia ever shouldered their responsibilities. Here, let us hope that the past be bygone, and we will take on the future."

Sir, with these remarks, I support Mr Martin LEE's amendment to the motion.

MR LAU WONG-FAT (in Cantonese): Sir, "law should change with the time" is a Chinese maxim which means that policies as well as specific measures and legislation cannot remain unchanged forever. Rather, they are to be changed in accordance with changing times and circumstances so as to meet the needs of the society. Over years, this Council has scrutinized and passed various amendment Bills and this well illustrates the importance of the saying: "Law should change with the time".

Death penalty has not been carried out in Hong Kong for more than two decades. The law and order then and the situation now are simply not comparable. Nowadays,

the occurrence of serious armed robberies is a daily routine. Robbers commit crimes in a more and more shocking manner. They use powerful automatic rifles and bombs. In broad daylight, they open fire and throw bombs indiscriminately, robbing goldsmith's and jewellery shops on busy streets and giving no regard to human lives. The fact before us is that the lives and property of the general public are under serious threat and the law and order situation has already deteriorated to an intolerable stage.

To cope with this critical situation, a number of measures have to be taken in concert. In addition to strengthening the capability of the police and joining hand with the Chinese side to intercept the incoming firearms and to track down culprits, reinstating the execution of the death penalty to ruthless murderers is also a timely move. I believe this is also the wish of the majority of the people of Hong Kong. The failure to resort to severe law in times of chaos will encourage lawless people to double their efforts in committing crimes. The reinstatement of the execution of the death penalty not only has deterrent effect, but also gives a heavy blow to the arrogance of criminals. Besides, it shows the determination to maintain law and order.

As we all know, the death penalty is a punishment existing in Hong Kong statutes. Since the late 1960s, however, murderers who were sentenced to death by judges in accordance with the law have all been commuted. The existence of the death penalty has therefore become nominal. This in itself is already a great mockery of the law. The commutation granted to criminals irrespective of the number of people they killed and the seriousness of their offences makes one wonder what kind of world he is living in.

Sir, it is purely a matter of legal sanction to convict and sentence a law breaker in accordance with the law after going through a fair and reasonable judicial procedure. When innocent lives are taken, it is imperative for the Government to take all effective measures to protect the right to life of law-abiding citizens.

There are also views that the reinstatement of the execution of the death penalty may lead to false passing of the death penalty to innocent people. As we all know, Hong Kong has followed the comprehensive judicial system of the United Kingdom. The availability of ample evidence is the most important thing in a trial and the benefit of doubt for the defendant always prevails. It is therefore over worried and exaggerated to put forward the arguments of misjudgment. Hong Kong is now facing

the crisis of a rapidly aggravating law and order situation. If the trend cannot be effectively curbed, it will strike a heavy blow to Hong Kong in the transitional period. The stress on the specious and high-sounding human rights argument is tantamount to making up to criminals. But this certainly will not help tackle the problem.

The suspension of the execution of the death penalty in Hong Kong is attributed to the pressure of the United Kingdom Government. While Hong Kong is actively implementing a representative government and democracy, the United Kingdom must change its intervention policy on this issue, respect the views of the Hong Kong people and let Hong Kong decide on its own whether the execution of the death penalty should be reinstated. As a matter of fact, the execution of the death penalty is an internal issue of Hong Kong. It does not fall in the scope of foreign affairs. Since Hong Kong is predominantly a Chinese society, the United Kingdom has no reason to impose its own moral value on Hong Kong. In the United States, different states are allowed to decide on whether there should be death penalty. Yet, its image of respecting human rights has not been affected. Thus the United Kingdom can simply adopt a more open attitude towards the reinstatement of the execution of the death penalty in Hong Kong. Sir, in view of the extremely bad law and order situation presently, with these remarks, I support Mr Kingsley SIT's motion.

MR ARCULLI: Sir, the motion moved by the Honourable Kingsley SIT and the amendment moved by the Honourable Martin LEE have enabled us here today to look into our own conscience. However, no amount of argument will persuade those who favour the death penalty to vote for the Honourable Martin LEE's amendment. Likewise, no amount of argument will persuade those who are against the death penalty to vote in favour of the Honourable Kingsley SIT's motion. There may be some who favour maintaining what they call the status quo. Let me ask them what is the status quo? The position is effectively this, as I see it: anyone who is sentenced to death today will not be executed; therefore, if they wish to maintain this, they should really vote in favour of the Honourable Martin LEE's amendment because this effectively brings about the same result. They may disagree with this line of reasoning in which case they should at least abstain on the Honourable Martin LEE's amendment but vote against the Honourable Kingsley SIT's motion.

Sir, for myself, I have chosen a simple approach. I cannot and will not tailor my conscience to what may be today's fashion. I shall vote in favour of the Honourable

Martin LEE's amendment and am necessarily against the Honourable Kingsley SIT's motion and I urge my honourable colleagues to do likewise. Thank you.

MR BARROW: Sir, the community is right to be concerned about law and order. But as Mr Allen LEE has said we legislators have a wider responsibility; a responsibility to explain wider issues to the Hong Kong community and to ensure that the debate is not clouded by emotion. Transparently, calls for the death penalty appeal to popular sentiment. However this is a classic example of where we as legislators have a duty to lead.

Lack of evidence of deterrent effect

Many of the arguments have been put already this afternoon by Mr Martin LEE and others. Let me repeat that there is no evidence that the death penalty deters in any society, including the Mainland or in Taiwan. In the latter, for example, murder rates have continued to rise despite its increased use. The onus should be on the proponents to prove that it really does work as a deterrent.

Some have deduced from the lower crime rates in earlier years that the deterrent effect is proven. However, such a correlation is fallacious.

Crime rates in every society have increased with or without the death penalty. Look at the changes here in Hong Kong. Our society was a smaller, simpler one in 1960s. Today, we have a population of 6 million against only 3 million 30 years ago.

Incidentally, Members might like to know that the number of murders so far this year has declined by 43% from 56 to 32 in the first five months compared with the same period last year.

The Liberal Democratic Federation's (LDF) recent letter to OMELCO Members argued that the solution lies in deterrence: "we must send a strong signal to criminals in Hong Kong and in Southern China that they will not be allowed to get off lightly". I agree with that sentiment. But that does not explain why the LDF advocates resuming executions without evidence of a deterrent effect. Such an argument is fraught with danger. It can lead to the "execute one or two in order to set an example to others" philosophy.

Leaders of organized crime rarely get caught. It is the under-privileged, the underdog, who would suffer the ultimate punishment.

A high rate of detection

The key deterrent, Sir, is a high rate of detection, regardless of punishment. We must continue to increase support for our excellent police force, in manpower as well as in equipment and in fostering stronger links with Guangdong province. The recent success in curtailing smuggling activity is a perfect example of the measures which reduce crime. The key measures were new strategies, deployment of more appropriate resources, and co-operation between various authorities in both Hong Kong and Guangdong.

The attempted robbery on Sunday at Tai Po was an excellent example of the effective and rapid action by the police and of the high level of co-operation between them and the public.

Sir, our object must be to protect potential victims by making it clear to criminals that they will be caught. Protection of the innocent, rather than revenge against the perpetrators, must be our objective.

Cultural differences

I turn now to the so-called "cultural differences". This is highlighted by the LDF's letter to OMELCO, which states "that it is intolerable that the right to life sentiments prevalent in Britain should be imposed on Hong Kong people who disagree entirely with such a view". On the contrary, the response to events in June 1989 shows that a great many Hong Kong people do indeed share the right to life sentiments of other people around the world. To suggest that such sentiments are being imposed is nonsense and to suggest that Hong Kong people do not have them is insulting.

In addition, recent public opinion polls in Hong Kong and the United Kingdom do not support this cultural difference point. They show that marginally more people in the United Kingdom supported re-introduction than the number in Hong Kong who support the status quo. Even if there had been a far higher level of support in Hong Kong than in the United Kingdom for the death penalty, the argument would at best be doubtful.

A call for a simple "yes" or "no" response in an opinion poll does not allow people

to think through the implications. When United Kingdom respondents who at first voted in favour were probed further, the percentage of supporters dropped to below 50%. Although no formal survey has been done in Hong Kong, informal research suggests the same conclusion.

I am saddened that those campaigning for signatures last Sunday in support of the death penalty used an effigy of someone being hanged to raise public emotion. Such crude publicity is surely unacceptable in a civilized society.

Potential of the innocent to suffer

A point made by other Members this afternoon is that, like it or not, errors can and do take place at trials. The fundamental lesson is that capital punishment leaves no room for mistake. A 1987 study in the United States found that there were 349 wrongful convictions for capital crimes. In 139 of the cases, an innocent person was sentenced to death. In 116 of those cases, the mistake was revealed though only after years of waiting. That left 23 innocent people who were executed before the mistake was discovered. However that occurred, is this a form of murder, or do we just say tough luck?

Also let us not forget that in our own environment in Hong Kong there is the possibility of juror misunderstanding due to language problems.

The aim of rehabilitation

The first aim of punishment is to reform the criminal. Sir, one cannot reform a corpse. We should look at increasing our efforts towards rehabilitation. Let me quote a letter which I have recently received from a prison visitor in Hong Kong. "I have visited at least eleven people who were originally given the death sentence. I know how much they can change, I know how good they can become if society would give them a chance and what contribution they can make. Once a person who committed a very serious crime really changes, they have much to contribute to society".

It should also be noted that in Chinese criminal law, there is a very major emphasis on rehabilitation and reform of criminals. This has long been a tradition in Chinese culture.

The death penalty: a false solution

The use of this extreme punishment is a false solution to problems caused by a variety of factors. It may deflect our intention or our energy from the real issues of how to check or reverse the rising crime.

While the death penalty offers no real benefits, it unfortunately creates the impression that measures have been taken to reduce violent crime when in fact it is having no such effect; but this contradiction is infrequently voiced. The appeal of the death penalty lies only in its emotive influence and not in its alleged, but false, effectiveness.

Those genuinely concerned with reducing the crime rate should address the real factors which can achieve this, specifically an increase in the rate of detection. Thus, one should look at such things as motivating increased public co-operation, fostering public attitudes against criminal activity, and providing additional support for police recruitment, training and facilities.

Human rights of victims

As other Members have said, it is, of course, right to have concern for the victims. But concern for victims must surely not be used to justify the deliberate taking of someone's life. The Government should be concerning itself with caring for the family of the victim and protecting potential future victims, rather than offering to take another life in return. The execution of a murderer will not replace the life of a loved one who has been lost. Retribution is no argument in favour of the death penalty.

The brutalization of society

There is evidence that the death penalty may result in the brutalization of society. What happens, in practice, is that rather than decrease the incidence of violent crimes, implementation of the death penalty may actually increase the predisposition of society toward violence -- the effect is negative.

In some states in the United States, for example, there is evidence of increases in crime in the month after an execution. The moment the government gets involved in killing, the government itself establishes that killing is right and sets a

precedent for individual action.

Sir, there can be no respect for the moral authority of a government which on the one hand says murder is a crime and which on the other puts people to death, particularly, when it is done in the pre-meditated manner of the legal process of execution.

Effect on the disadvantaged

The death penalty tends to be inflicted on the most vulnerable members of the community -- the under-privileged and the mentally weak are two groups that come to mind. Many brutal crimes are committed by the mentally ill. Surely no one is suggesting that they should be executed, in lieu of custodial care and attention.

Research in various jurisdictions has shown that people from the lower end of the socio-economic strata receive the death penalty much more frequently than people from other sectors of society. They are usually poorly educated and often do not present themselves in the best possible light.

Opinions of Hong Kong participants in the process

On the surface, public opinion may want the death penalty restored. But, as Mr Martin LEE has said, the signs are that Hong Kong jurors would be unwilling to convict a person when they know that the punishment will be death. Apparently, they do not want that to be on their conscience. The result could be that a guilty person might go free. Inevitably, there will be more murderers walking in the streets of Hong Kong.

The future of Hong Kong

Sir, Hong Kong is a unique international city, both now and when it becomes a Special Administrative Region of China. A high standard of human rights will be as important to Hong Kong in the future as it is today. Let us not set off down a slippery slope that could lead to the death penalty being extended to other crimes in future.

Arguably the death penalty is incompatible with the provisions in the International Human Rights Covenant, which only recognizes the death penalty as a transient phenomenon. Members should be aware that the Second Optional Protocol

which was adopted by the United Nations General Assembly in December 1989 prohibits the execution of any convicted person and calls for the abolition of the death penalty.

Conclusion

In conclusion, Sir, it would be a massive backward step for Hong Kong to re-introduce the death penalty. In 1990, more countries abolished the death penalty than ever before -- seven abolished the penalty for all crimes, and in an eighth, it was abolished for everything apart from treason. Three more countries are drafting legislation for abolition for 1991 or 1992.

Crimes of violence are not new to Hong Kong and despite a recent increase in the incidence of armed robberies, Hong Kong is still a safe city and by international standards compares favourably with others. We owe this to an effective and modern police force and an independent judiciary, both of which have matured and adapted to meet the challenges of our increasingly sophisticated society. It would be a great tragedy and an extremely poor reflection on Hong Kong if we were to abandon reason and resort to ancient and brutal methods to deal with criminals, especially when history has proven that state brutality neither deters nor reduces crime.

For many people it is tempting, in the heat of the moment, to resort to drastic or excessive measures to deal with a criminal problem which quite naturally causes concern and a public cry for action. Under trying conditions, our police force and judiciary are dealing well with these difficult problems. They cannot, however, deal directly with the incentive to commit crime, and neither does the death penalty. This problem has its roots elsewhere in society. Violent crime must be seen as a long-term problem which requires a more thoughtful and sophisticated approach than the hangman's noose or a bullet in the neck.

The role of a mature and responsible government under such circumstances is not to resort instantly to primitive solutions in a climate of anger and frustration, but its role is to show wisdom and leadership. At this crucial time in the development of Hong Kong, we cannot afford to take shortcuts and we cannot afford to step backwards. It is our responsibility to distinguish emotion from rationalism, and to uphold principles and ideals which will serve the long-term interests of the people of Hong Kong.

As Mr Martin LEE has said, some Members may wish to take the easy way out and

vote against both his amendment and Mr SIT's original motion, thus preferring the so-called status quo. Sir, that would have no logic. Either you believe in the death penalty or you do not.

With these words, Sir, I support Mr Martin LEE's amended motion and I urge all Members to do likewise.

MR MICHAEL CHENG (in Cantonese): Sir, the deteriorating law and order situation in Hong Kong was the subject of a debate in this council in February this year. Now with the lapse of some four months, the situation has become even worse. The way how some ruthless criminals rob is really shocking. They are now equipped with highly destructive weapons such as automatic rifles and grenades instead of knives or pistol-like objects which they used to employ in the past. Their open defiance of the law and their lack of the slightest regard for human lives make them intolerable. In order to maintain law and order in Hong Kong during the transitional period, the Government should, in face of these serious crimes, make resolute decisions to combat crimes by way of introducing severe penalty and draconian law. These ruthless criminals should no longer be allowed to continue threatening the lives and property of the general public without fear.

Most of these ruthless armed robbers have come from mainland China. They are extremely violent and desperate during the course of robbery because they are prepared to risk everything on a single throw in the belief that if they succeed, they will be able to live in affluence for the rest of their lives. Thus, in case they are in any way delayed or hindered by the shop assistants or drivers, and so on, they will open fire. However, they would not be killing indiscriminately had they known they would have to receive death penalty for killing. As a result, the execution of death penalty will surely be able to deter and dissuade criminals from taking chances and will make them consider seriously the high price they will have to pay in making such reckless moves. Inevitably, the number of serious crimes will drop as a result.

I understand that capital punishment was abolished in Britain a long time ago and Hong Kong has all along been following British law. However, in view of the worsening law and order situation in Hong Kong and the enormous fear created by those cold-blooded killers who are posing a great threat to the safety of the people in the street, it is the general hope of the public that the execution of death penalty

be reinstated to ensure that these criminals are to be severely punished. As the purpose of the law is to protect the interest of the people, the government should not adhere to conventional practices too rigidly. It should take into account the actual social needs and make necessary changes. It is now the right time for the reinstatement of the execution of death penalty.

Hong Kong is a Chinese society where Chinese traditional culture and thinking have been deeply rooted in the minds of the people. The Government should therefore respect the culture and thoughts prevailing in this predominantly Chinese society of Hong Kong and should not keep the aspirations of the people at large in disregard just because a small minority of its population are inclined to follow the British practices blindly. In order to ascertain the views of the public on death penalty, I suggest that the Government should conduct a sample survey of public opinion which I believe will not cost too much. The Government must not evade its responsibilities, but rather face reality and make appropriate changes basing on the findings of the opinion survey.

Some people who oppose the reinstatement of the execution of death penalty feel that this kind of penalty is a violation of human rights. In fact, human rights in Hong Kong are sufficiently guaranteed by a well established judicial system with tightly-knit procedures of trial and available channel for appeal. Moreover, the judge will convict a defendant only when his guilt can be proved beyond all reasonable doubts. Besides, the passing of a death sentence on the deserved ruthless murderers is a means to further protect the right to life of the public. Since, death penalty only exists in name at present, the lives of the criminals are well protected in Hong Kong. But what about the lives of the innocent people and the police? Are they not justified to be given the same protection? While we respect and defend human rights, we should under no circumstances let the murderers use these rights as their guardian angel, nor should we mislead the public into believing that the reinstatement of the execution of death penalty is a violation of human rights.

Sir, when I was on duty at the OMELCO's Complaints Division yesterday, a lady who frequently goes on business trips overseas requested legislative councillors to reflect her views. She pointed out that in the impressions of a lot of foreigners the law and order situation in Hong Kong was bad and the social order here was chaotic and that, as a result, many foreigners who had intended to visit Hong Kong became hesitant. She requested me to support the reinstatement of the execution of death penalty in today's motion debate. Hong Kong is an international city where tourism generates a considerable amount of revenue every year. We do not wish to see Hong

Kong's good image as "the Pearl of the Orient" to be badly blemished. Thus, the reinstatement of the execution of death penalty is still the most fundamental and effective way to improve the current deteriorating law and order situation in Hong Kong.

Moreover, the reinstatement of the execution of death penalty would help boost police morale psychologically. If this is accompanied by an enhancement of police equipment, then the police force will be more confident and effective in discharging its duty of maintaining law and order.

Sir, I support the reinstatement of death penalty in Hong Kong so that those ruthless criminals who have no qualms about killing would receive just punishment which, in their case, is death penalty. For murder cases that are committed under extenuating circumstances or as a result of family tragedies, they can be referred to the Governor in Council for a final decision on whether the death sentence should be commuted to life imprisonment.

Sir, I support the motion moved by the Honourable SIT Ho-yin.

As regards the Honourable Martin LEE's amended motion, I have the following points to make. First of all, the Honourable Martin LEE thinks that if Hong Kong is to be a civilized society, then legislation must be made to abolish death penalty and to replace it with life imprisonment. I like to point out that in the United States, which is commonly recognized as the most civilized country in the world, up to 37 states of all the 50 states there, that is more than half of the states do enforce death penalties. Hence, it will be too far-fetched and unjustifiable to insist that the abolition of death penalty is a civilized gesture.

Secondly, as far as humanism is concerned, every one should have his right to life. While the lives of the criminals have to be protected, is it not right that the lives of the innocent people as well as the police officers have to be protected, too? It is pointed out in section (2) of Article 2 "Right to life" of the Hong Kong Bill of Rights that sentence of death may be imposed for the most serious crimes. After a detailed study made by the OMELCO legal advisers and the Legislative Council ad hoc group to study the Bill of Rights Bill, it has been ascertained that the death penalty is not a violation of human rights and there is no need to give unprincipled protection to the brutal murderers. Though a respecter and upholder of human rights, I still want to reiterate that we should not allow murderers to take advantage of

human rights and use them as their guardian angel. The Honourable Martin LEE thinks that death penalty should be abolished in a humane society. This will indeed mislead people into believing that the reinstatement of the execution of death penalty is a violation of human rights.

Thirdly, the abolition of death penalty and its replacement by life imprisonment will only make gangsters more blatant and weaken any deterrent effect that may exist, thus making the work of crime prevention more unlikely to achieve. The Honourable Martin LEE pointed out that the Government should strengthen the crime fighting capacity of the police force. I would like to ask how we can achieve it. Should we just enhance the protective effect of their bullet resistant vests? However, what is the use of doing so as we all know that the firearms used by the reckless criminals can even shoot through steel plates. In fact, the police have spared no effort in carrying out their work of combating crime. If the Government is to abolish death penalty which is the most fundamental means to deter crime, how are we going to discourage or prevent crime? I think the Honourable Martin LEE's suggestions is both impractical and unrealistic.

Sir, I therefore object to the Honourable Martin LEE's amended motion.

MR DAVID CHEUNG: Sir, the topic we are debating today is a very controversial subject. Both sides have valid arguments. Neither can we simply use right or wrong to determine. I shall speak what my conscience dictates me.

Sir, the death penalty has always been on our statute books. If it is not acceptable, why is it still there? Are we waiting for Her Majority's Government to change its mind so that we can follow suit? Regretably, however, this recognized form of punishment has been shelved in practice for many years simply because of political reasons.

With soaring crimes of a violent nature and with the easy availability of destructive firepower, people in Hong Kong are subject to the possibility of being killed even walking down the streets or patronizing a goldsmith shop. What is the Government going to do to protect innocent lives other than saying that the police will do everything they possibly can? In real terms, such rhetoric means nothing, absolutely nothing.

It is the duty of the police to do what they can. But what about the penal code and our courts? It is high time that the Government seriously and soberly considered reinstating the execution of the death penalty. Britain, in my view, should not interfere.

Those who argue against the execution of the death penalty always put forth some of the following arguments:

- (a) it is inhuman;
- (b) it has no deterrent effect;
- (c) a person sentenced to death may have been wronged;
- (d) life imprisonment is more inhuman than death; and
- (e) come 1997, the death penalty may be abused.

I cannot agree that the execution of the death penalty on a heinous criminal is inhuman when the criminal shows no respect whatsoever for other people's lives and property. Why favour such people? In what way is it inhuman to apply the death penalty to one who uses an AK47 or a grenade to rob a series of goldsmith shops resulting in the loss of lives of innocent people? It is ludicrously absurd to suggest that death penalty for such murderers is inhuman. Are we being human or inhuman to the victims and their dependent loved ones? Are innocent lives born to be killed because someone just feels like killing? In terms of fairness and justice, are we simply going to say to the victim, "I am deeply sorry, you have my full sympathy and condolence but sorry, tough luck?" Let me ask again those who are opposed to the death penalty, "Will you feel the same way when the one killed or seriously injured is your father or mother, wife or husband, son or daughter?" The death penalty is not retributive, but rather it is to do justice. It does not mean that we have to carry it out all the time. But in case of need, we can.

Regarding deterrent effect, I am not an expert. But I am not convinced that it does not have deterrent effect; for based on human nature, who is not afraid of death except the maniacs? There are always those who are always ready to risk because of huge profit or gain. The fact that people are willing to participate in car racing does not eliminate the element of danger in car racing. Why do we not give it time

to see if it will work?

If in the course of justice a death sentence is wrongly passed, there can be a safety valve by putting a period between the sentencing and the actual execution during which wrong can be thoroughly investigated and remedied if need be. How many criminals have been wrongly executed as compared to the number of innocent lives being lost as a result of heinous crimes? Furthermore, the fact that mistakes might be made does not nullify a system; otherwise, under the notion to err is human, no system can exist and no action carried out. Pilot errors resulting in plane crash never mean we should stop flying. Doctors make mistakes, sometimes fatal ones. It does not mean all medical practices should be stopped. Police makes mistakes; should they carry gun? Teachers make mistakes; should teaching be stopped? The question is whether we have faith in our own penal system. If we do not, are we slapping our own face or contradicting ourselves?

On the argument that life imprisonment is more inhuman than death penalty, then should the humanists support life imprisonment, because it is inhuman? Life imprisonment not only cannot compensate the victims and the dead, it is a continuous drain on resources. The Government has to look after the criminal all his life. Besides, the hope of pardon or parole is always there.

Is 1997 a deterrent? Come 1997 if the future SAR Government is autonomous, I do not see why we should have no confidence in the penal system. If, as many of my friends fear, the future SAR Government is under the grip of PRC, then who can stop the Government from changing things at will? The fact that we keep it out before 1997 does not guarantee that it will not happen after 1997. We must not be so naive.

In view of the bloodiness and senselessness of heinous crimes committed, the Government should seriously consider reinstating the execution of the death penalty to protect innocent lives and property. Are we to tell the public only criminals have human rights? If we are not sure, should we not ask the people? If the people so decide to reinstate the execution of the death penalty, then people crying out for democracy have no option but to support, for a democratic government always loves what the people love and hates what its people hate, " ".

In the United States, as my honourable friend Mr Michael CHENG has mentioned, a country which is the champion on human rights, 37 states have death penalty. What does that reflect or imply?

If innocent lives are not born to be killed, if innocent victims and those who are gunned down also have human rights, if Government is a democratically responsible government, the Government must urge Her Majesty's Government not to interfere so that we can do what the people want, that is, to reinstate the execution of the death penalty.

I do not agree with the Honourable Martin LEE's example of Jesus Christ's death on Calvary on the cross as an argument against the death penalty, for Jesus Christ came with a mission -- to save the world -- and therefore a forgiving heart. But in the Bible, there are clear passages supporting the death penalty. Sir, personally I strongly support the reinstatement of the death penalty. But I am saddened by the fact that the Government cannot carry out the death penalty, and therefore, in real terms, it makes the support of Mr SIT's motion meaningless. Neither am I willing to support Mr Martin LEE's motion. I shall abstain. But I do not accept that this is the easy way out.

MR CHOW (in Cantonese): Sir, what motivates proponents of the death penalty to press their case for its reinstatement is that they would not want to see a disorderly society where law and order has gone awry. They hope that capital punishment can be an effective deterrent and can achieve the objective enunciated in the maxim "To apply draconian laws in time of grave social disorder". Nevertheless, if law and order becomes hard to maintain, what should be done is to tackle the problem at its root. Will the death penalty be no more than a superficial remedy? If the death penalty were to be treated as a vehicle of retribution in that a criminal would have to pay an eye for an eye for his act, our society would become an avenging agent wielding a blood-dripping sword of vengeance. The idea of an eye for an eye can in no way deter a criminal from committing crimes. It will only deepen his belief in an awful cycle of retribution -- death for death and blood for blood. I had worked in the custodial ward for quite a number of years and had the chance of talking with many of the convicts there. It was not uncommon to hear them say, "We've got to take a chance on it. If we make it, it will be all beer and skittles. If we don't, then at most it's death. What we fear most is to get nicked and locked up for life." What they refer to as "nicked" is, in our language, prison. From their words, we can see that these criminals would rather die than lose freedom. So the death penalty in fact cannot be a radical cure for the problem of serious crime. On the contrary heavier penalty in terms of imprisonment, for example, a life sentence, may perhaps

be more horrible than the hangman's noose.

Sir, every civilized and developed society is progressing towards the abolition of the death penalty. The death penalty, if abused by those in power, could be an instrument of political persecution by means of which dissidents were eliminated. Perhaps we may be spared the experience in ancient China where political involvement led to death by beheading. Yet would anyone disagree that the death penalty is the most powerful tool to exterminate unwelcome elements? Did Yue Fei in ancient China and Jesus in the Bible deserve the capital punishment? It is an eternal truth that every state or head of state and every organization would not hesitate to claim itself to be democratic and to say that they are for the protection of human rights and justice under the law. But could I ask Members here today whether anyone can guarantee against any miscarriage of justice and be so sure that justice always prevails?

Sir, what we need is an advanced and civilized society. We would never want a society so backward and savage that death can only be repaid by shedding of blood. For this reason, I support the Honourable Martin LEE's amended motion.

MRS LAM (in Cantonese): Sir, the number of armed robberies in Hong Kong has been on the rise in the last two years. This intolerable situation is getting even worse recently with criminals becoming more and more daring. They committed crimes in broad daylight, opened fire just at will, and used very powerful weapons such as machine guns and grenades. They have totally no regard for the law and the police force of Hong Kong.

Whilst citizens can derive consolation from the determination of our dauntless police officers in maintaining law and order, they cannot help but be alarmed and worried by the ever deteriorating state of public order. Robbers held up jewellery shops in broad daylight, took hostages and opened fire in blatant defiance of the law. Many people are concerned that if the situation does not improve, there will be no safeguard for their personal safety.

These criminals are extremely brutal and savage desperadoes, most of them coming from places outside Hong Kong. They are equipped with superior weapons, some have even received military training and have experience in warfare. They will leave the territory after committing the crime, rendering police efforts to track down these culprits nothing but vain attempts. To allow most of these criminals to get away with their vicious deeds is doing an injustice to the Hong Kong community, the police force and the victims in particular.

Numerous internal and external factors could have contributed to our deteriorating law and order, but lenient punishment is certainly one of the major elements. I do not think the timing is right to ask for the abolition of death penalty under the present situation. "To use severe punishments in turbulent times" has all along been regarded as a precious precept. Although not every one accepts this philosophy, it is in my opinion the necessary measure to take when law and order has deteriorated to such an intolerable state. However, punishment alone cannot solve the problem, I would therefore like to make the following suggestions:

(1) Every effort should be made to curtail the import of illegal firearms. Hong Kong do not possess the physical and technical conditions for manufacturing firearms. It follows that most of the firearms used by criminals are smuggled in from other places, which include China, Southeast Asian countries and Vietnam. If Hong Kong can strengthen its co-operation with these countries to combat the smuggling of firearms, it will help to improve the situation.

(2) As many armed robberies are triad linked, or committed by criminals recruited from outside Hong Kong by triad societies, it is imperative that police anti-triad forces should be upgraded to combat and eliminate triad activities.

(3) Priority should also be given to strengthening police training as well as police manpower and equipment. More police vehicles and police officers should be deployed to carry out patrol duties. According to the Chairman of the RHKPF Local Inspectors Association, the police force is currently faced with an acute manpower shortage. On average, police officers on duty in every shift only represent 40% of the required strength, and the situation is even worse with new towns like Tai Po. I am aware that the recruitment of police officers has met with considerable difficulties. Where necessary, Government should consider ways of making the policeman job more attractive, such as improving the entry salary and conditions of service, introducing additional benefits such as a shoot-out allowance, and increasing the gratuity for police officers injured or killed on duty, and so on. Apart from these, it is also important that shooting drills for police officers should be strengthened.

(4) The informers network should be widened with informers extensively spread to help track down the criminals.

(5) Citizens should be encouraged to report crime. This will help boost the detection capability of the Police. It is reported that the swift arrest of the culprits in the Tai Po jewellery robbery had been made possible by information provided by a citizen who chanced to have overheard the criminals' conversation about their robbery plan. The police had stepped up patrol and precautionary measures which resulted in the successful arrest of the robbers. However, only when the police can ensure the personal safety of these citizens will they be willing to come forward to report crime.

(6) On the other hand, we should formulate legislation to require or advise local goldsmith's shops or high-risk trades to strengthen their security measures. A goldsmith's shop, for example, succeeded yesterday in foiling a robbery attempt with the installation of unbreakable glass.

(7) More severe punishments should be imposed. At present, for cases of armed robbery and possession of weapon with no wounding involved, the punishments meted out are usually on the lenient side. Coupled with the fact that the actual term of imprisonment is only 2/3 of the term of sentence handed out by the court, many lawless bandits consider Hong Kong a "criminals' haven". Even if he is arrested, he would only need to stay in prison for a few years before he walks out a free man again. Such a psychological make-up of the convicts has much to do with the lenient sentences meted out by the courts. Moreover, I think that too lenient a sentence will dampen the morale of police officers who have worked extremely hard and risked their lives in busting the criminals. I therefore feel that these atrocious criminals, including those found guilty of possession of weapons and inflicting bodily harm with weapons, should be handed the heaviest sentences under the relevant statute, in order to deter others from following.

Finally, I should like to comment on the death penalty. At present we still have death penalty on the statute books of Hong Kong. I think that this statute should be retained, but not abused nor executed immediately. It should however only be reserved for cases of cold-blooded or premeditated murders or armed robberies in which innocent citizens are killed mercilessly, that is, the so called first-degree murder. Nonetheless, we should give the convicts opportunities of appeal or recourse to mercy. This is what Hong Kong is doing now. We know very well that here in Hong Kong we cannot practically enforce the death penalty now as Britain is still the territory's sovereign state. Two Members have just now mentioned that a number of states in the United States, which is a democratic country, are still enforcing death penalty.

Therefore, if we were to abolish death penalty right away now, we would only be giving the mobsters a free hand, which will not in any way help improve the law and order situation.

Sir, although death penalty may not solve the serious crime problem, it will, to a certain extent, serve a powerful deterrent effect. This point was agreed to by a criminologist at last Sunday's City Forum.

With these remarks, I support the existing statute and the opportunity for reprieve or commutation of sentence. I therefore do not support Mr SIT's motion nor the amended motion moved by Mr Martin LEE.

MR LAM (in Cantonese): Sir, today's motion debate on the reinstatement of the execution of death penalty precisely reflects the seriousness of the law and order problem in our society. In fact, I join with my colleagues to speak today out of my concern about the situation.

Sir, public opinion about the issue of death penalty in the United Kingdom is also worthy of our reference. The United Kingdom suspended death penalty in 1964 and officially abolished it in 1969.

In April 1973, the motion on the reinstatement of death penalty was defeated by 324 votes to 178 in the House of Commons. In December 1974, a similar motion was again voted down by 369 to 217. Public opinion as shown in these two cases demonstrates well that there is still considerable resistance to the reinstatement of death penalty in the United Kingdom. Hong Kong follows the United Kingdom in most of its policies. Although law and order is a major subject of public concern, there may be divergent views on the reinstatement of the execution of death penalty. Should the situation similar to that in the House of Commons appear in the Council, gangsters and culprits will be encouraged. A conclusion should be reached on the motion today. We must refrain from "deliberation without conclusion and inaction upon conclusion reached".

Sir, I think a territory-wide opinion poll should be conducted on the issue of the reinstatement of the execution of death penalty, or at least initially, debates on the subject should be held in all district boards in order to gauge public opinion. Moreover, it will bring about another effect. When public sentiment demanding the

reinstatement of the execution of death penalty is high, it will also pose a threat to gangsters in hiding and criminal activities. In principle, I support that "Draconian laws should be applied during troubled times". Capital punishment is abolished or retained in different countries of the world. In either case, the question of civilization and humanitarianism is not involved. The decisions are mostly made in the light of the actual situation of the respective countries. In Hong Kong, we have a sound judicial system. Criminals sentenced to death can have the chance to appeal. We do not have to worry about possible miscarriage of justice, nor should be over-concerned about any potential abuse of the death penalty after 1997.

Sir, when the problem of social order is serious and cannot be solved by political, economic, educational, religious or moral approach, it should be dealt with by the law. In other words, when the problem cannot be solved by ethics, penalties should be the answer. Hong Kong is ruled by the law, not by ethics. I support the reinstatement of the execution of death penalty. We do not have to follow the United Kingdom's practice.

Sir, with these remarks, I support the motion of reinstating the execution of death penalty.

MRS LAU: Sir, there is no doubt that we are all very concerned about the law and order situation in Hong Kong but this is no excuse for allowing our emotions to overwhelm our good senses. The Honourable Kingsley SIT and several of our honourable colleagues have advocated reinstatement of the death penalty as if that would be the magic formula for restoration of peace and good order in this society. But we are only too conscious of the fact that in many jurisdictions where capital punishment is carried out almost indiscriminately even for offences which are considered not serious by our standards the commission of crime is not deterred. However can we possibly arrive at the conclusion that if we were to counter violence with violence we will end up having a more peaceful and crime-free society?

To restore law and order in our society I firmly believe that the only solution lies in the strengthening of our internal security system. There is no short cut; there is no magic formula. To deter the commission of crime we must have a better equipped, stronger and more efficient police force. We must have a better intelligence network and we must have the backing of the community which is prepared to fully

support the police in the prevention and detection of crime.

Sir, I am not convinced that any useful purpose can be served by carrying out the death sentence. We cannot bring back to life those who have fallen victim to crime. We cannot lessen the sorrow of those whose loved ones have gone as a result of criminal activities. All we stand to gain is perhaps some psychological consolation for the family members of the victim but that would be at the expense of the bereavement of family members of executed criminals. Do we honestly believe that doing two wrongs will make one right?

Furthermore we will expose our territory to being branded by the international community as being inhumane and regressive. More and more countries in the world are doing away with the imposition of the death penalty. Can Hong Kong which claims to be an advanced international city afford to adopt policy which runs directly opposite to world trends?

Sir, as much as I believe in the fairness and righteousness of our judicial system, it remains a fact that decisions on the guilt or otherwise of an individual are based on human judgements relying on the evidence available. As human beings we are not infallible. We know of cases where judicial errors have been made. We know of cases where convictions have been found to be unsafe and unsatisfactory many years after the original decision was made. If death penalties were carried out in those cases, the miscarriage of justice is perpetuated and the damage done irreversible. One may argue that such cases are rare. But are any of us entitled to say that since the vast majority of condemned criminals are really guilty the occasional innocent man must also suffer the same fate even if that fate is death? When we talk about the need for retribution against murderers in order that justice may be done to victims, have we ever considered that there is no recompense for the convicted murderer subsequently proved innocent whose life has already been wrongfully deprived of by our own system of justice?

For these reasons, I cannot support the Honourable Kingsley SIT's motion. But neither can I support the Honourable Martin LEE's proposed amendment for although I entirely agree with the principle and spirit behind this proposal I do not believe that the timing is right. At a time when we are already having a deteriorating law and order situation, such a move as suggested by the Honourable Martin LEE would certainly send a wrong message that our society is increasingly tolerant of violent crimes when in fact that would be contrary to the true public sentiment. However,

having said that, I do believe that, in due course, hopefully, in the not too distant future when our law and order situation is more settled, we must seriously look into the possibility of removing capital punishment from our statute books altogether. At this stage, I shall abstain from voting on the Honourable Martin LEE's proposed amendment.

DR LEONG: Sir, I think we all share the rising concern of the public and Government over the alarming trends of triad and gang crimes, and serious and violent crimes increasing in Hong Kong.

The widespread use of firearms, and even automatic rifles, in crimes must be deplored, and deplored with urgency. Yet as legislators we must act in a rational way and not with a knee-jerk response. We should think of means to curb crime in the long-term future without possible side effects and not react with emotion on a crisis-solving basis.

As a start, Sir, I am reluctant to share some of my colleagues' views that a restoration of death penalty would bring down the level of serious crimes in Hong Kong.

People who want to see the return of the death penalty tend to argue for its deterrent effect. The validity of this argument is questionable. In different places and at different times, crime statistics have surged or dropped following the abolition of capital punishment. There may be no correlation whatsoever.

More, previous studies had indicated that criminals were preoccupied with their emotions at the moment of committing a crime like murder that they would not think about its possible consequences.

Premeditated murder, on the other hand, made up only a small percentage of homicide cases. Yes such should be heavily punished. But should the punishment of a few justify the general re-imposition of death penalty?

Reviving death penalty is therefore no panacea to quell crimes. It simply will not do.

Sir, all courts are chaired by people and they are bound to make mistakes sometimes.

You cannot ask a man to rise from his grave and say to him that he can now live again because the court had earlier imposed a wrong sentence on him.

All human beings, including the most vicious criminals, are entitled to the right to life, declared as the most fundamental human right by the United Nations in the Universal Declaration of Human Rights.

Without the right to life, other human rights are meaningless. And so a Bill of Rights for Hong Kong will be pointless unless capital punishment is removed from the laws of Hong Kong.

I strongly object, Sir, to the present wishy-washy attitude of Government on death penalty.

Whilst capital punishment still remains on the statute books, it has, in actual fact, been abolished for a long time.

The last victim of the noose was hanged in Hong Kong back in 1966, the year after Britain put the gallows in cold store.

In 1969, Britain abolished capital punishment completely, but in Hong Kong it is still on the statute books as the mandatory sentence for those convicted of murder.

Judges here send convicted killers to the gallows in the full knowledge that their sentences will automatically be commuted to life imprisonment.

Keeping death penalty on the statute books is therefore but a gesture, a charade.

Government argues that if it is to enforce death penalty, it would risk a constitutional conflict. If a Governor of Hong Kong refused to commute a death sentence, the condemned prisoner would still have the right to appeal to the Queen directly.

As Britain has abolished capital punishment, the Foreign Secretary would have no choice but to advise the monarch to accept the appeal. Let us therefore come clear and abolish death penalty completely.

But there is another factor to consider and that is our future. Here, we have

to seriously ponder, in the advent of 1997, the implication of abolishing or keeping death penalty to the future Special Administrative Region in Hong Kong.

Sir, as a member of the profession whose main training and duty is to sustain and maintain life, I favour the abolition of the death penalty. It is my view that such move would act as a safeguard to civil liberties after 1997.

China has capital punishment on its statute books and uses it. And with 1997 approaching, the question must inevitably come up for urgent scrutiny.

The Chinese Government has the propensity to execute "criminals" for a wide range of crimes.

Chinese regulations on punishment of counter-revolutionaries, for example, have it that persons colluding with imperialists and betraying their motherland shall be sentenced to death or life imprisonment.

Meanwhile, in China, capital punishment is also approved for offenders committing crimes which seriously endanger society, including murder, rape, robbery and arson. There are more than 30 crimes which bear the supreme penalty of death.

I have no question, Sir, of China imposing tough criminal regulations for a good cause. But different places have different sets of laws to deal with different situations. But are these stiff measures suitable for Hong Kong's future?

In 1997, when Hong Kong is to become part of China, although it can formulate its own criminal law, under the hat of "one country, two systems", Hong Kong is bound to be influenced by the Chinese regulations.

Therefore, in order to avoid Hong Kong being influenced by the "stiff-penalty" rationale behind the Chinese regulations, abolishing the death penalty before 1997 is a meaningful step in the right direction.

Two months ago, Sir, the United Nations' Human Rights Committee meeting in New York expressed reservations about capital punishment being brought back by the future Special Administrative Region Government. And the London-based Amnesty International has recently asked for its abolition in a petition to this Council. Any move for its return would be seen around the world as a backtrack and condemned as turning

the clock back to a police state.

Sir, we do not want our humble law-abiding citizens fall prey to cold-blooded predators in their merciless and brutal pillages. But averting our eyes and zeroing in on the death penalty is simply barking up the wrong tree. It is time we gather our heads together and think of more effective and efficient ways to curb crime.

Sir, fighting crime is a responsibility for all of us, Government and people alike. It is only through a joint force of the people and Government, police in particular, would a successful foray be launched into the criminal underworld and the law and order situation be on the cards again.

With these remarks, Sir, I cannot support Mr Kingsley SIT's motion. I call on the abolition of death penalty and I support Mr Martin LEE's amendment.

MISS LEUNG (in Cantonese): Sir, I hope that whether we shall support the motion moved by the Honourable Kingsley SIT or the amendment to the motion moved by the Honourable Martin LEE, we should be addressing the meaning of the motion and the amendment, not the constructions put on them by the two learned gentlemen in their delivered speeches. Those constructions obviously should not and cannot be looked at as a part of the motion or the amendment. I call on my colleagues to study the motion and the amendment with a calm and detached mind before deciding on supporting one or the other.

Sir, whatever Mr SIT and others who support his views say when giving their speeches, Mr SIT's words cannot but give us the impression that any criminal upsetting law and order and making people worry about law and order must be given capital punishment, and as there is provision in the law for the death penalty, Government should immediately resume its implementation.

I think the meaning, either expressed or implied, in Mr SIT's motion is not quite in order. Capital punishment only applies to persons convicted of murder treason or piracy with violence. It does not apply to offenders convicted of homicide other than murder or of serious crimes. As such, even if Mr SIT's motion is passed in this Council, his views are definitely not a good base on which to call on Government to resume implementation of capital punishment. Even if Government is willing or forced to resume it, it would basically not prevent cases similar to the armed robberies in recent years. Neither will it deter cases similar to the one in Kwun Tong in which

military rifles were used in the crossfire between police and robbers and 50 rounds of ammunition fired during the chain robberies of five goldsmith shops.

As for the wording of Mr Martin LEE's amendment, he included two requests. (1) To deter and prevent crime, Government must strengthen the capability of the police force to fight crime, and (2) to maintain the highest standards of a modern, humane community, Government must introduce to this Council legislative measures to abolish the death penalty and replace it with life imprisonment.

In fact, the first request is parallel to part of the contents of the motion on criminal activities raised by the Honourable HUI Yin-fat on 6 February this year. Since this Council passed that motion on 6 February, this Council should automatically support the request made in the amendment. There is no need for me to repeat what I said on 6 February which is still valid today. As for the second request, I think it is acceptable. I have just pointed out that even if Government is willing or forced to resume implementation of the death penalty, it would basically not prevent cases similar to the armed robberies in recent years. As Minister Liu Zongyuan who served under two emperors of the Tang Dynasty point out, "I hear that the basic function of etiquettes is to prevent disorder the basic function of punishment is also to prevent disorder", when certain punishment is no longer effective in deterring criminal activities, it should be changed.

Sir, without a doubt, murder is the worst crime and one in which the criminal has a premeditated intent to take the life of another. To stop such criminal activities from spreading and to do onto the murderer what he has done unto his victim, many people are calling for the resumption of implementation of the death penalty; their plea is understandable.

Sir, many people who object to resuming implementation of the death penalty, especially the most authoritative legal experts, believe that the death penalty has no real deterrent effect and cannot stop the spate of murders. In general, the experience of countries and regions that have been implementing the death penalty for many years can stand proof to this point.

They also think that in the trial of cases, including murder, there is the possibility of wrong convictions. If the death penalty is carried out in Hong Kong, even if a wrong conviction is later on discovered and proved so, there will be no recourse for remedy or compensation in favour of the dead.

History tells us that implementation of penalties that are too severe for too long gives opposite effects. They tend to increase the thrust of protest and the incidence of crimes. Penalties that are too heavy will be disadvantageous to the steady development and good order of society. The most lauded emperor of the Tang Dynasty said to his judicial minister during the Zhenguan years, "The dead cannot rise again, the law must be simple to follow." In another well governed period of the Tang Dynasty, Kaiyuan years, under another emperor, minister Zhang Jiulin also pointed out, "Punishment is to be used only when there is no other alternative."

Sir, many people who support the implementation of the death penalty in Hong Kong often quote "the killer is to die" in support of the maxim of "heavy penalties in a chaotic society". It seems to me an abuse of the quote which in fact twists the special meaning of it.

In ancient times, when the founder of Western Han, another period most lauded by the Chinese people, took Hanyang, he immediately abolished all draconian penalties. To keep the situation under control, he made an agreement with the people that "the killer should be executed and those who wound others and rob should suffer punishment accordingly".

We should note that even in those chaotic times, the founder of Western Han adopted as a temporary measure only that "the killer should be executed" and "those who wound others and rob should suffer punishment accordingly". Compared to Mr SIT who called on "Government to resume immediately the carrying out of the death penalty" merely because of "the increasing concern caused by the present law and order situation", penalties in Western Han were far from draconian.

Sir, since it is out of the question for the United Kingdom, our sovereign state, to allow Hong Kong to resume implementation of the death penalty and the international climate is moving towards abolition of the death penalty which itself contravenes the fundamental spirit of our Bill of Rights, it seems to me there is no longer need for us to keep the death penalty which is not to be implemented. It is illogical to keep certain laws for extensive periods and yet not implement them.

Sir, with these remarks, I support Mr Martin LEE's amendment to the motion.

MR MCGREGOR: Sir, I will not waste the time of this Council. Other Councillors have described the moral issue very well and I have nothing to add to it. I have to say however that I do not believe that the death penalty and the Bill of Rights are incompatible. To take a human life is a matter of deep personal and community concern. We have criminals in our midst who are perfectly prepared to use lethal weapons in their unlawful activities and to take human lives thereby. They appear to be more daring and more dangerous now than at any time in our post-war history. They are organized and they strike with precision. Any person standing in their way is at risk. Hostages are often taken and their lives, too, are at risk. Some of these criminals have come here from China. Many of the weapons used are of Chinese origin. If such criminal acts were to be carried out in China and the culprits caught and found guilty of the capital crime of murder they would lose their lives. Many other vicious and cruel murders are committed in Hong Kong. Some of these have been premeditated and extremely cruel in their planning and execution. Some such murders have been committed against defenceless children and old people. I believe in my heart that those who deliberately take a human life should forfeit their own. It is not a question of deterrence; it is a question of punishment. The argument that vicious and cruel murderers should not be executed because there is a possibility of a judicial mistake is in my view no argument against the application of the death penalty. I have more regard for the families of the victims who presently see callous murderers sentenced to death and later have their sentences commuted. I am therefore personally in favour of the death penalty. However, I have not the slightest doubt that the British Government will never allow the death penalty to be applied in Hong Kong. It is simply not possible. Therefore Mr Kingsley SIT's motion is meaningless.

In this situation we have a strange position. We have the death penalty as a punishment for a capital crime. We probably have majority support for its use in appropriate cases but because of the moral position taken by the British Parliament it will not be applied while the British are in control of Hong Kong. I am doubtful of the position after 1997. The Chinese Government will no doubt agree that the death penalty should be applied. But in China the death penalty is applied for crimes other than murder. Rape, serious theft, destruction of government property, corruption and serious economic crimes appear to attract the death penalty. The possibility that such penalty could be introduced into Hong Kong after 1997 is worrying. I therefore believe that the balance of advantage for Hong Kong lies in abolition of the death penalty altogether -- if you have it, use it; if you cannot use it, get rid of it. In reaching this conclusion, I also feel that the Government must seek to ensure by all reasonable means that violent criminals are caught and prosecuted to the full

extent of the law. The police must be given the support and the equipment they need. That would certainly include the most modern and effective weapons available. I do not accept the argument that better weapons for the police will encourage criminals to improve their own weapons. That is in my view nonsense. Criminals have initiative in matters of this kind at all times.

I must also say that it is now time that high risk premises were brought under statutory security control. Such premises should be licensed and subject to appropriate security conditions which will protect the staff, the high cost products, the security guards, the police, the clients and bystanders who are put at risk in the event of an armed robbery. Many high risk premises have totally inadequate security arrangements, preferring commercial advantage to high security. I am sympathetic to the shop owners but in many cases their premises are an open invitation to violent crimes. I have mentioned this matter before and earlier on today. I urge the Secretary for Security to look at it again with the police and the Association of Insurance Companies. I therefore appeal to my colleagues to agree to abolish the death penalty altogether from our statutes. In saying so, I accept that I seek abolition for the wrong reason.

Sir, I support Mr Martin LEE's amendment motion.

MR SIT (in Cantonese): Thank you, Sir. Mr McGREGOR just said that my motion was meaningless. I disagree. Many Members rose to speak on this motion. If it was meaningless I do not believe that so many Members would have gone to the trouble of speaking on it. This demonstrates that to carry out the death penalty is a matter of utmost social significance.

In accordance with Standing Orders, I shall restrict my speech to the amendment moved by Mr Martin LEE. As chairman of a democratic party, namely, the United Democrats, and a Queen's Counsel, Mr LEE's speech carries stunning effect and is very touching into the bargain. He said that he spoke from personal experience. A CHEUNG Sam (a fictitious name) killed someone. He was represented by a very eloquent barrister. Or it could be said that because the barrister was able to make use of some legal loophole or because of commutation of sentence, CHEUNG Sam need not meet his death and after 14 years, he was able to go free and make his contribution to society. Mr LEE is of course very pleased. But had Mr LEE paid any attention to whether the victim's family had been taken good care of? Did Mr LEE visit the bereaved

family or help them? The family members of the victim might not be able to pay the very high legal costs or the Legal Aid Department might not be able to render any assistance. The matter should be viewed from different angles. If a murderer could become a good citizen after 13 or 14 years and hence he should be pardoned today, what kind of society would our society become? Say, if I do not like somebody, I might as well kill him first without saying a word. Some 10 years or so later, I would be out on parole and I could then be reintegrated into society. Should this be so, society would virtually be a society whereby violence is exchanged for violence. What we are debating today is that the death penalty should be enforced and we are not asking for violence in exchange for violence; blood be repaid in blood or like be requited for like. Death penalty should be carried out after going through due process of law.

Mr Martin LEE just said that to carry out death penalty is a simple matter. Though I am not a legal practitioner, I know that a meticulous legal process has to be gone through before a murderer is convicted. A suspect would not be promptly shot dead without public trial. If the suspect cannot afford the money, he can always apply for legal aid. If there are no capable lawyers, the Legal Aid Department would even instruct a London silk to defend him. The Government could always use the taxpayer's money to help him. Would a death sentence be meted out without mature consideration? If we are partial to the heinous murderers, what society would our society become?

There is a group advocating environmental protection called The Friends of the Earth. If Mr Martin LEE is so kind, I believe that very soon there will be a group called Friends of the Murderers. Of course we should always be kind to people but we should know whom we should be kind to. Some do request that he who kills should be killed but the purpose is not to take the life of a murderer so that he atones for the victim's death. There are cases where the convicted should not be put to death. Take for instance, if one kills another because of self-defence or manslaughter, he is not going to get a death sentence for that. A soldier who kills as many enemies as he can on the battle field would be commended and would earn many medals. We cannot simply say that the saying "he who kills should be killed" is wrong. Nonetheless, what we are debating today is that when a heinous murderer is convicted by due process of law and given the death sentence, the sentence should be carried out. Moreover, prior to the carrying out of death penalty, there is the avenue of commuting it. At present, the people of Hong Kong are worried that we are abusing the avenue of commutation. Mr Martin LEE said that he had private talks with judges and some judges do say that they are not in favour of the death penalty or that it is impossible to

have it carried out. Should this be true, I am really worried; for a judge is the arbiter of society who administers justice according to the law and not according to his own likes or dislikes. Any administrator of justice holding such views should not sit on the judicial bench.

Sir, Mr Martin LEE also spoke about the juries. He was of the opinion that if death penalty was to be carried out, most juries would return a verdict of manslaughter rather than murder because of misgivings. I feel that this is an insult to the jury system and the moral stamina and integrity of the individual members of the jury. The juror has no relationship with the accused whatsoever. He votes according to his conscience based on the facts and evidence put before him. I believe that it is clearer to Mr LEE than anybody else in this Council that the death sentence is meted out by the court. The jury return a verdict according to the evidence, the de facto aspect of the case, and it is the judge who pronounces sentence. Judge and jury perform their duties complementary to each other. If an unanimous verdict cannot be reached by the jury, the judge cannot pass the death sentence. Mr Martin LEE's viewpoints would arouse doubts from the people over the whole jury system, and the fairness and the credibility of the judicial process. If so, why should Mr Martin LEE pursue his legal career? If this system is of doubtful reliability, is it that the ulterior motive in pursuing a legal career is that one can earn money easily? I do not believe Mr Martin LEE is that kind of person. He is a man of integrity, a man with faith, purpose and principles.

On reaching his conclusion, Mr Martin LEE mentioned a story. If I have not misunderstood him, it is a biblical story. I would like to add one more point. One of the Ten Commandments in the Bible is that "Thou shalt not kill." It is clearly stated in the Bible that the cost of sin is death, that is, the result of committing a crime is death. Mr Martin LEE quotes Jesus Christ when he was on the cross. There were two other convicts nailed on the cross beside Jesus. One did not repent and the other said, "Before I die, I believe in God, in Jesus Christ and I repent". Jesus Christ then said, "You may go to Heaven." But Jesus Christ did not tell him to come down from the cross and that he need not die. He had to be nailed to his death for the crime he had committed in this world. What we are requesting today is that the death penalty be carried out on those heinous criminals who had been convicted of murder and not on those who have committed other crimes. This is most important. I would therefore urge those Members who support Mr Martin LEE's amendment to reconsider this more carefully. Legislative Councillors have their responsibilities. We can of course disregard the wishes of the people and we can do whatever we like.

Since those who have killed others need not suffer the death penalty, so it would not be death for us if we pay little heed to the bulk of the population. But as a Legislative Councillor, we have to speak for the people. Our duty is done even if the Government does not act according to the popular will as reflected through us Councillors. That would be a matter for the Government to consider. We are not having dual capacities; we are only representatives of the people.

Sir, with these remarks, I oppose Mr Martin LEE's amendment.

MR MARTIN LEE: Sir, I do ask for leave to correct a number of factual errors or misunderstanding of my speech by the Honourable Kingsley SIT. First I did not get an acquittal for Mr CHEUNG Sam. I thought I said quite clearly that I failed in that trial and I failed in the Court of Appeal. Second, the accused in that particular case did not pay high fees at all. I was assigned counsel on legal aid. Third, judges have no discretion on a sentence when it comes to a conviction of murder. The law requires the judge to pass the death penalty. Fourth, I do not have any lack of confidence in the jury system but what I said was that with the best system in the world it is open to mistakes. I am obliged to you, Sir.

MR TIEN (in Cantonese): Sir, ever since 1983, "stability and prosperity" have been regarded as the cornerstones of the future of Hong Kong. Stability and prosperity must come together and we must have a "stable" society before we can talk about economic "prosperity".

It can be said that Hong Kong has been very fortunate in that we are not threatened with wars and natural disasters are infrequent. However, that does not imply that Hong Kong is a stable society. In fact, the law and order situation has deteriorated in the past few years, affecting the lives and property of every citizen.

We are all aware that the crime rate has run rampant in recent years. Many of us have even become victims of crimes. These points have just been discussed in detail by various Councillors, I do not intend to repeat now.

However, I would like to elaborate on several points.

Firstly, the problem of law and order in Hong Kong has been a matter of grave concern for investors. As I have stated earlier, "stability" always comes before

"prosperity". An unstable society attracts no investors to set up factories, develop trade and implement infrastructural development programmes. Not long ago, many people regard inflation as the number one enemy of Hong Kong. Yet, I regard the growing number of serious crimes the genuine number one enemy of the investors.

In face of the deteriorating public order, many people, especially those who live for the day without seeing any hope for the future, will resort to the easiest means to reap "the biggest profit" within the shortest span of time. Robbery is naturally one of the easiest way out. The number of robbery involving genuine pistol or pistol-like objects, which stood at only a hundred odd cases five years ago, soared to 425 cases last year. For the first five months this year, 234 cases have been reported. Worse still, 58 innocent citizens were killed or injured in the past three years by gunshots of robbers, seven of whom were police officers.

Sir, Hong Kong is a world renowned commercial and trading centre. What local businessmen and foreign investors concern most is to have a stable environment for investment. However, in face of a high inflation rate, an acute shortage of labour and deteriorating law and order situation, many local businessmen are forced to emigrate elsewhere and foreign investors will also invest in other places.

While most well off people can live in districts with better living environment, the working class, however, have no choice but to live in whatever public housing estates they are allocated and wherever they can afford. Statistics shows that Yau Tsim and Mong Kok are the two districts with the highest crime rate, standing at 1 300 and 700 cases per 100 000 people respectively. In some densely populated new towns, such as Yuen Long, Tsuen Wan and Tuen Mun, the crime rate has risen significantly in recent years. Coming back to Island West which has a better living environment, only 200-odd crimes are committed per 100 000 people. I believe the crime rate is much lower in Mid-levels or Peak area. Comparatively speaking, most of us, ordinary citizens and voters, have to live in terror and perplexity.

In February this year, this Council held a motion debate on law and order in Hong Kong. At that time, the Honourable Martin LEE, chairman of the United Democrats of Hong Kong, came forward with a number of recommendations to combat serious crimes which included: promoting the co-operation between the police and the community, encouraging the public to report crime, according those who report crime with courtesy and protection, increasing the number of police on the beat and boosting the morale of police officers. In today's debate, the Honourable Martin LEE moved an amended

motion to abolish the death penalty. His recommendations on improving the state of law and order are similar to the ones previously raised. I regard such recommendations vague and impractical. They will only increase the burden of taxpayers without achieving the effect of combatting crimes.

In the example cited by Mr Martin LEE just now, he mentioned that he was acting as defending counsel for a certain CHEUNG Sam 24 years ago when he first joined the Bar. I wonder if he had thought then about the innocent mother of CHEUNG Sam's friend. She was killed in the case. What about her right to life? Had he ever thought that all mothers should close the door to friends of their sons, lest they should be skilled? One more hypothesis. CHEUNG Sam is married now. If one of his laid-off co-workers at the construction site should call at his place -- CHEUNG Sam is out incidentally -- snatched his wife's gold necklace and killed her, would CHEUNG Sam recall that 24 years ago he was granted mercy with the help of a young and handsome barrister? Would CHEUNG Sam ask this barrister to defend his friend, disregarding the right to life of his dead wife?

Sir, I believe that the most effective way of containing the growing number of serious crimes is to impose severe punishments.

I am convinced that the reinstatement of the death penalty would have a deterrent effect. I am further convinced that before the actual execution of the death penalty after its reinstatement, the crime rate will have already dropped by a great percentage.

Opposition to the execution of the death penalty, as expressed in Members' speeches today, falls on the following grounds:

(1) The death penalty violates human rights and runs contrary to the democratic spirit.

(2) The death penalty does not have any deterrent effect.

(3) There is always the possibility of unjustly sentencing the innocent person to death.

(4) Britain will not allow Hong Kong to reinstate the death penalty.

(5) The death penalty may be abused after 1997.

Sir, I would like to briefly refute these arguments point by point.

Firstly, the execution of the death penalty is, in no way, inconsistent with the Bill of Rights Bill, recently enacted by this Council. Although the Bill provides that every one has the right to life, it does not prohibit the execution of the death penalty.

It seems to me that the human rights advocates pay undue concern on protecting the human rights of criminals and neglect the right to life of the general public.

Secondly, according to an opinion poll conducted by an English newspaper in Hong Kong in November last year on whether the death penalty should be reinstated (This is on a territory-wide basis which probably enjoys better representation than that conducted by the Honourable POON Chi-fai in Kwun Tong), 71% of the respondents were in favour of the death penalty. A similar survey conducted by the Fight Crime Committee early last year also showed that 70% of the public voted for the death penalty.

What else can these findings represent if not public opinions? Since several opinion polls show that 70% of the public are in favour of the death penalty, why do the United Democrats of Hong Kong, who always pose as an upholder of democracy and represent public opinion, not follow the pack? Is it that only those opinions which are in accord with the stand of the United Democrats be identified as public opinions?

If 70% of the public hold an opinion different from that of Mr Martin LEE's amendment and he then asserts that legislators can disregard public opinion and make a sensible decision, I must be caught off-guard by this remark. During all these years since I joined this Council, I have been an admirer of Mr LEE for his respect for public opinion whose speeches were guided by the same. I thought that maybe one day I could act like him and listen to public opinion. But all of a sudden, he made an about turn.

Mr Stephen CHEONG commended Mr Martin LEE for having matured in that the latter had called on Councillors to debate without listening to public opinion. I disagree to this notion for if it were correct, would I be naive to start listening to public

opinion?

Secondly, I do not understand why some people would consider that the death penalty serves no deterrent effect.

According to a survey conducted by the Society for the Rehabilitation of Offenders a year ago, 75% of the 1 000 discharged prisoners interviewed thought that the death penalty had a deterrent effect. I believe no other people would understand the psychology of the criminals better than those discharged prisoners who once defied the law. If the death penalty is administered in Hong Kong, people may not even dare to commit crimes in fear of being sentenced to death.

More powerful evidence comes from the United States, a country which has always been recognized as most democratic and the most ardent supporter of human rights. Of the 51 states, 36 enforce the death penalty. In cities with the highest serious crime rate, such as New York, Washington DC and Detroit where the death penalty is not enforced, the violent crime rate per 100 000 people is as high as 2 000 cases. Whereas in states where the death penalty is enforced, the average crime rate ranges only from several hundred to one thousand cases per 100 000 people. This is by no means pure coincidence.

Thirdly, many people oppose the death penalty because they want to avoid sending innocent people to the gallows due to miscarriage of justice.

However, I believe that under the existing impartial legal system, unjust verdicts have been reduced to the minimum. A murder case must firstly undergo the primary investigation stage. With the help of modern technology, the police can use scientific methods for identification. Even human cells can be used to identify the relationship between the suspect and the evidence. The reliability of the investigation result and the evidence solicited has been highly raised. The suspect will only be brought up for trial in the Supreme Court if there is enough evidence to charge against him. If the convicted criminal feels aggrieved, he can appeal to the Appeal Court and if rejected, to the Privy Council in Britain for a final verdict. I believe that the verdict made under four different levels and by three different judges or juries can most unlikely be unjust.

In fact, I think we should not disregard the practical needs of the public and victimize the general public due to some hypothetical possibilities, such as the jury

may make a wrong verdict due to negligence. Let's look at the records of 1990. There are 30 cases of armed robberies in which eight innocent citizens were killed by gunshots and 22 injured.

Dear colleagues who oppose the execution of death penalty, are the lives of thugs more valuable than the lives of those innocent citizens?

Fourthly, the death penalty is still on the statute books in Hong Kong even though it has never been carried out since its last execution on 16 November 1966, an act to tie in with the abolition of the death penalty in Britain in 1965.

It can however be noted that, as 1997 draws nearer, the British Government has in effect gradually delegated its power to the Government of Hong Kong. The PADS issue is one of the examples in which the greater part of discussions were held amongst people of Hong Kong. Hence, the question on the reinstatement of the death penalty is purely a local issue. I hope the Hong Kong Government would act on behalf of the community to vigorously demand the British Government to allow the people of Hong Kong to decide for themselves whether or not the death penalty should be reinstated.

Lastly, some people worry that the death penalty can be abused after 1997.

The 1997 issue is undoubtedly very sensitive and arouses grave concern. However, it has already been stated in the Sino-British Joint Declaration that the Hong Kong Special Administrative Region can enjoy a high degree of self autonomy. The executive, legislative and especially the judiciary bodies have the right of self-determination. If we still worry that the Chinese Government would interfere with the judiciary, even though we do not enforce the death penalty now, the SAR Government may, under the influence of the Chinese Central Government, reinstate the death penalty after 1997. Therefore, such worry is untenable.

Sir, I think that the reinstatement of the death penalty has a deterrent effect. In order to deter armed robbery and other forms of serious crimes, to protect the life and property of the public, to protect the right to life of those people killed and to ensure a bright future for Hong Kong, I support Mr SIT's motion and oppose the amended motion of the Honourable Martin LEE.

MRS TU: Sir, in a debate on this subject one is likely to be judged either a hawk

or a softie according to whether one agrees or disagrees with the death penalty. I claim to be neither a hawk nor a softie. I do not feel sympathy with those who commit brutal murder in cold blood, and believe that some of them have psychiatric problems. Even less do I sympathize with those who use firearms to kidnap, rob or kill innocent victims: such people have no place in our society and the public must be protected against them.

My question is whether or not the death penalty is a preventive measure against such crimes. It could be just an easy way of trying to convince the public that we can protect them. The United States sometimes carries out the death penalty, yet it appears to have the highest known murder rate. Obviously the death penalty has not worked there, and I have reason to doubt whether it would work here either. We could even be leading ourselves into a worse situation. Let me give an example.

Some years ago, while I was visiting a prison in Hong Kong, a man condemned to life imprisonment for murder begged me to try to have the death penalty reinstated. I asked him if he wanted to die. He said, "No, but when we had the death penalty, the jury usually returned a verdict of manslaughter which carries a shorter term of imprisonment." That is a fact in spite of what Mr SIT has just said. Many juries in the past escaped the responsibility of sending a man to his death for murder by finding him guilty of the lesser charge of manslaughter, which might bring a prison sentence of 10 years instead of life. The death penalty was therefore no deterrent at that time, and I have reason to believe that the reverse was the case among gang murderers. Before 1966, when a gang murder was committed, the gang would conspire to force the younger members of the gang to confess to the crime, promising them that they would take care of their families. Because the death penalty was not carried out on persons under the age of 18, the conspiracy worked well for the criminals. I met a few persons who had been the scapegoats of their gangs in those days, and I have no reason to think that if the death penalty were restored, the same would not happen again; gangsters are all quick to find the loopholes in the law to their own advantage.

There are some killers who do not care about the death penalty. A person who values life so little that he will kill another in cold blood is not likely to care if his own life were to come to a sudden end. I believe that a lifelong sentence would have a more deterrent effect -- that is, if anything at all would deter a brutal person.

I will not repeat in detail the usual arguments that sometimes the wrong person

has been hanged for murder, or that the principle of "a life for a life" requires the hangman to become a killer as his means of livelihood. My main doubt is whether or not the death penalty is likely to succeed in its objective, and I think the answer is that it will not.

Perhaps we could try other ways, such as a mandatory sentence of 20 years for carrying a firearm with intent to commit a crime, and a life sentence for using it even if the victim is injured but not killed. I believe some courts are too lenient on big crimes and too harsh on lesser crimes, while loopholes in the law often defeat the course of justice and fail to protect the public. I also wonder whether the police could make violent crime and triad syndicated crime of higher priority than some of the petty crimes they spend time on. Be that as it may, I cannot convince myself that the key to the crime problem is the death penalty. It is an easy answer, but not necessarily a good solution.

Sir, although I consider it unfortunate that Mr SIT has raised this question at this time because the result may carry a wrong message to criminals, nevertheless I have to support the amended motion of Mr Martin LEE.

MR SZETO (in Cantonese): Sir, some of MAO Zedong's sayings are correct but some might be not. But even if they were correct, he and his disciples might not be able to carry them out. He once remarked, "unlike leek, a man's head, once chopped off, will never grow again." This is true because this is a fact. Many of my colleagues have made a similar point before this Council today though not in as figurative and simple language as that. Today, Members have spoken much against the death penalty. I shall not repeat those views here. The above quotation was cited only as an illustration.

In fact, Mr SIT is not a legal expert and most of his arguments were illogical. He quoted the Ten Commandments: "Thou shalt not kill." But is carrying out the death penalty a killing? In fact, it is also a killing but Mr SIT has emphasized that severe penalty is needed to punish criminals. But is the death penalty the only draconian means to punish criminals? Is life imprisonment not severe enough? He has pointed out that if we do not carry out the death penalty, it will only show that we are unsympathetic with the victims' families. If the chopped-off head of the murderer could be grafted onto the body of the victim, so that the latter could be brought back to life, the death penalty was worthy of consideration. But this is impossible.

We are against the reinstatement of the death penalty not because we do not feel sympathy for the bereaved families. The Honourable James TIEN has mentioned the United Democrats of Hong Kong's manner of responding to public opinion. I believe true respect for public opinion does not mean suffering the public to be misled and we obligingly following in tow. Instead, we should take the higher ground and give them a correct sense of direction. This is our responsibility. If not, it will be no more than a claptrap.

Sir, with these remarks, I oppose Mr SIT's motion.

MRS FONG (in Cantonese): Sir, Honourable Members, we shall be voting for or against the reinstatement of the death penalty from conscience. We are now talking about criminals who have committed murder, not manslaughter. Is it because we are not involved and do not feel how bad it hurts that we can talk about humanitarianism? In Hong Kong, law and order is deteriorating and crime is proliferating. If the victim was your husband, your wife or your child, how would you vote today? I do hope that my honourable colleagues will think about this more carefully before they vote. I am in support of Mr SIT's motion.

SECRETARY FOR SECURITY: Sir, I propose to speak on the amendment only. If the amendment is defeated and we proceed to debate the original motion, the Attorney General will speak on behalf of the Administration, since that motion raises important constitutional issues.

Sir, I believe that public opinion on the subject of the death penalty is not in doubt. As you said in reply to a question in this Council from Mr MCGREGOR two years ago, we are aware through our extensive community liaison network of the wish of the majority of the community to retain the death sentence as the penalty for murder. This has been confirmed by more recent surveys of public opinion.

Nevertheless, as the Senior Member, Mr Allen LEE, has said, it is appropriate that this Council should debate this important subject. Members have clearly shown their wish to exercise leadership on this issue; and we have heard reasoned and cogent arguments in favour of abolition. These arguments must be balanced against the instinctive reaction of the community, particularly in response to recent serious crimes of violence which have shocked us all, that the death penalty should be imposed.

In the event that the majority of Members of this Council vote in favour of abolition of the death penalty, the Administration will consider bringing forward legislation to achieve this.

I should like to take the opportunity to thank those Members who have spoken in support of the police in the difficult job they have to perform. We have an excellent police force, whose dedication and professionalism have made Hong Kong a safe city. Despite a significant increase in a few specific types of violent crimes in recent years, our overall crime rate and the incidence of serious and violent crime are still low by almost any standard.

We undoubtedly have a serious problem with the rising incidence of crimes, particularly robberies, involving the use of firearms. As I said earlier this afternoon, we are determined to curb such crimes, and to take all possible steps to curtail the illegal importation and use of firearms. But we are not experiencing a general and continuing deterioration in the overall law and order situation. So far this year, the overall crime rate is over 4% down on the equivalent period last year. We must not be complacent but equally we should have regard to the true picture.

The police force is well equipped, well trained and well motivated. We are committed to maintaining it as such. Equipment is regularly reviewed to ensure that it is appropriate to operational requirements. The protection of the public and of the policemen on the street are prime considerations. We have invested substantially in recent years in sophisticated, modern equipment to enable the police to discharge their duties more effectively. I can assure Members that we shall continue to do so.

Question on Mr Martin LEE's amendment to Mr Kingsley SIT's motion put.

Voice votes taken.

HIS HONOUR THE PRESIDENT: The voice vote is not decisive. I will call a division. The Council will divide. The Clerk will call out one by one the names of the Members who may say "Aye" if in favour of the amendment and "No" if against the amendment; or the Member may abstain from voting.

The Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Dr Henrietta Ip, Mr CHAN Ying-lun, the Secretary for Home Affairs, the Secretary for Planning, Environment and Lands, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, the Secretary for Secretary, Mrs Rosanna TAM, Mr Andrew WONG, the Secretary for Economic Services, Mr Ronald ARCULLI, Mr Martin BARROW, the Secretary for Health and Welfare, Mr Ronald CHOW, the Secretary for Education and Manpower, Dr C. H. LEONG, Miss LEUNG Wai-tung, Mr Jimmy MCGREGOR and Mrs Elsie TU voted for the amendment.

Mrs Rita FAN, Mr CHUNG Pui-lam, Mr HO Sai-chu, Mr NGAI Shiu-kit, Mr POON Chi-fai, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Michael CHENG, Mrs Nellie FONG, Mr Daniel LAM, Mr Kingsley SIT and Mr James TIEN voted against the amendment.

The Secretary for Transport, Dr Daniel TSE, Mr David CHEUNG, Mrs Peggy LAM and Mrs Miriam LAU abstained.

The President announced that there were 24 votes for the amendment, 12 votes against it and five abstentions. He declared that the amendment to the motion was carried.

HIS HONOUR THE PRESIDENT: As Mr Martin LEE's amendment has been agreed, we will now debate the motion as amended, that is, Mr Kingsley SIT's motion as amended by Mr Martin LEE's amendment.

Does any Member who has spoken neither to Mr Kingsley SIT's original motion nor to Mr Martin LEE's amendment wish to speak?

MR SIT (in Cantonese): First of all, I would like to thank Members for spending so much of their time this evening to debate on whether the death penalty should be resumed. I must say that the people of Hong Kong should not regard the time so spent as meaningless or wasted.

We all know that people learn through various processes. To day, my motion has been voted down but this does not mean that this matter has ended. I believe that the citizens of Hong Kong are inclined towards resumption of the death sentence.

Their wishes would not waver because of the subjective opinion expressed by Members of this Council here. This is the trend of the times and it is the popular feeling. Although the motion today has been voted down, I believe that there are many supporters in Hong Kong, though not necessarily 100% support.

During the debate, some Members suggested that I was proposing the motion to curry favour from the public. Some others said that I was doing a warm-up exercise for the coming election. Mr SZETO Wah quoted a saying from MAO Zedong. There is another saying frequently used by the Communist Party which is also to be found in a book written by LENIN. It is said that during the development of communism, there would be a "left-wing infantile syndrome". I believe that some of us here do have political infantile illness. My ability to convince, take for instance, if I should move a motion that the people of Hong Kong should each have one more bowl of rice, lead a better life and earn more money, are Members going to vote saying that people should starve, eat less and spend to deplete all their money? The question of whether a motion is correct or not is to be considered and decided by the public. Of course, being a Legislative Councillor, I have no other alternatives but to abide by the rules of game as laid down under Standing Orders. But I would like to put forth some of my personal opinion in response to what Members have said. These are also the views of my constituents and supporters.

Firstly, I would like to respond to the Senior Member, Mr Allen LEE. He said (would Mr LEE correct me if I got it wrong) that according to the so-called Point of Order if we abolish the death penalty, we can replace this with life imprisonment and the criminals convicted of a capital offence spend the rest of their lives in person. This is one-sided and do not represent the truth. I do not need to elaborate why a convicted murderer need not stay in jail for life. Mr Martin LEE has just given us a good illustration. CHEUNG Sam, the murderer whom Mr LEE represented years ago, stayed in prison for only about 13 to 14 years. He needed not wait too long, at least not for 18 years before he could re-emerge as a man, as a Chinese saying goes. But as for the victim who was killed, it is not known whether he could have the chance to be reborn. Those who have religious beliefs might believe that there is samsara (transmigration), or that the departed can go to Heaven, but alas, we have not met anyone who has gone to Heaven coming to tell us that he is already there. Yet we believe this.

In a paper prepared by the Security Branch in April 1991, it was reported that from November 1966 up to the current date, 243 people who had committed murder -

- and some had committed very heinous murders -- all had their death sentences commuted. About 28% of the murderers served their term of 20 or more years of imprisonment. CHEUNG Sam might be a lucky one for he was released after 13 to 14 years. But is this fair and reasonable? Some convicts who had not committed crimes as serious as murder had to serve a sentence longer than 13 years. What has the concept of values in our society come to?

Sir, and Honourable Members, how many of us would meet our death through being murdered? Has Mrs Nellie FONG not just posed the rhetorical question of whether some of us were indulging in empty talk and not feeling how badly it hurts because we are not personally affected? We are talking about humanitarianism. But have we considered what rights we are upholding or praising in this society? Are we praising human rights or criminals' rights? Or police power? To my way of thinking -- and I hope I am wrong -- in this society of ours, criminals' rights seem to surpass human rights and police power. When a murderer is caught, he should not be hurt because he is well protected by human rights. If he has no money, he can instruct a Queen's Counsel, or the best counsel, and use the taxpayer's money to conduct his defence. A criminal can do anything brazenly, but for an innocent person he might get killed whilst shopping on the street or on his way to the market. A policeman who stands in the front line to enforce law and order has to brave hails of bullets whilst on duty. If he opens fire, he will have to be very careful because he will have to account for every shot he fired. He will have to write a report which he must prepare with care or he would face severe consequences. If he has shot the criminal, he will have to pray to the Almighty that that criminal will not die or else he would be dismissed or even be put in prison. We always urge that we should enhance the efficiency of the police but what are the police getting? What kind of difficulties are they facing?

Here we extol human rights. We engage in empty talk about humanitarianism. We are only helping the criminals. What the public is asking is not to haul before a firing squad an offender who has exceeded the speed limit while driving, or one who has killed another in self-defence. Rather, they are asking that those heinous criminals who have been convicted of a capital offence by the court should be executed. In the present age of scientific and technological development, scientific evidence is now available to the court in addition to witness's testimony and other forms of evidence. Of course, no one dare say that the court would never err. But there is a Chinese saying that one's general good should not be totally disregarded just because of committing one minor fault. When we are looking at the issue of the death

penalty, we will have to look at it from the point of view of the whole community, from the angle of social significance and social justice. We should not look at it just from individual cases. If so, I would like to ask Members a question. In this world, there are different social systems. In China, socialism is practised and so is in the U.S.S.R. In the United States, democracy and capitalism is upheld. CASTRO once said that his communism is the best. Which system is the best? We have no way of knowing but we have to take into account the majority's views and opinions. Being a legislator, Sir, I would of course try to take into consideration every person's views in this community. But in reality, Sir, it is impossible. Although it is impossible to do so, we should try to take into account the majority's views. Have we represented the majority's views?

According to the rules of the game, my motion has been voted down. Could I say "Why did you not respect my opinion? Why did you vote down my motion?" I could not say so because that is the rule of the game. Somebody is to win and somebody is to lose. Losing the game does not mean that it is meaningless. This is how society works. Now we have people indulging in democratic pep talk. It is dangerous to speak for those heinous criminals.

Mr Stephen CHEONG has just said that resumption of the death penalty might lead to a constitutional problem because if the United Kingdom Government refuses to give its consent, we will have difficulties in putting this motion into effect. I agree with what he said. But please do consider this carefully. If we are afraid of this, that and the other, if we are afraid that this would not please the United Kingdom Government, and if we are afraid that it would involve some constitutional problem, we, I believe, might be unduly worried. If the United Kingdom Government could be so easily piqued, British territories would not have so vastly diminished as to consist of just the three Islands and a small handful of other places. That is due to its constitution. Colonies became independent and thus caused British territories to diminish. This shows that our sovereign state -- Britannica -- is a nation that would heed the will of the people, that would follow the trend of social development. Why should we not tell our sovereign state our views? Why should we not express our opinion to her but instead divorce ourselves from the views of the people and act blindly? Perhaps the United Kingdom Government might listen to us? This is our responsibility. I feel that being Legislative Councillors, we should support government policy if it is reasonable (Sir, I can vouch for that), but we should oppose it if it is totally unreasonable. Further, being Legislative Councillors, we should reflect public opinion. This is our primary obligation.

Have we done this?

A Member said a moment ago that to resume the death penalty would mean blood to atone for blood and like to requite like. I do not agree. It is unfortunate that the Honourable CHOW Mei-tak has left this Chamber. Some have pushed this issue of death penalty for heinous criminals convicted of a capital offence to yet a higher realm of argument. Whether the death penalty would be used to eliminate dissidents is something irrelevant to the central issue. As Councillors, and responsive leaders of society, our immediate task is to take into account the law and order situation during the transition period. We should not at the present stage try to devise checks and balances against China or confront her outright. This would be a dangerous inclination. Hong Kong and China should peacefully co-exist under the "one country, two systems" concept. As we progress towards 1997 and in the next 50 years, we should not use this issue of the death penalty as a means of confrontation at this stage. Of course, Hong Kong is a democratic society. One can do whatever one likes. But I would like to remind those who have foreign passports or those who have opportunities to emigrate to other parts of the world that there are at least 4 million people who cannot leave Hong Kong. They will have to stay here, live here, bring up their young ones here, and continue to work here. Being responsible leaders, we should provide a stable and secure working environment so that those who cannot leave Hong Kong can rear their children and lead a stable life. For those who can leave Hong Kong, we need not worry about them. This is our responsibility.

To resume the carrying out of the death penalty is but one of the factors in the equation that would keep Hong Kong stable and prosperous. There are many other factors to make up the equation, for example, the building of the airport. But today, though this motion has been voted down, I would like also to quote MAO Zedong, as the Honourable SZETO Wah before me has done. MAO said, "Our future is bright though our road is long and tortuous. We have confidence in our future and we can achieve our aim." So we will fulfil our aim. The aim of the Hong Kong people is to have prosperity and stability, to have smooth transfer in 1997. They also hope that all Legislative Councillors will work as one to overcome all hardship and that under the guidance of a good government, there will be a smooth transfer in 1997. Good night to you all and thank you.

Question on Mr Kingsley SIT's motion as amended by Mr Martin LEE's amendment put and agreed to.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 3 July.

Adjourned accordingly at nine minutes to Ten o'clock.

Note: The short titles of the motion/Bills listed in the Hansard, with the exception of the Ozone Layer Protection (Amendment) Bill 1991, Securities and Futures Commission (Amendment) Bill 1991 and Securities (Insider Dealing) (Amendment) Bill 1991, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.