OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 4 December 1991

The Council met at half-past Two o'clock

PRESENT

THE DEPUTY PRESIDENT
THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.

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

THE FINANCIAL SECRETARY
THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, 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 MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

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

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

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

THE HONOURABLE DAVID LI KWOK-PO, 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 SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, J.P.

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

DR THE HONOURABLE LEONG CHE-HUNG

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

PROF THE HONOURABLE EDWARD CHEN KWAN-YIU

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE MISS EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE GILBERT LEUNG KAM-HO

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

PROF THE HONOURABLE FELICE LIEH MAK, O.B.E., J.P.

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE NG MING-YUM

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG

ABSENT

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

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

IN ATTENDANCE

MR DAVID ALAN CHALLONER NENDICK, C.B.E., J.P.
SECRETARY FOR MONETARY AFFAIRS

THE HONOURABLE EDWARD BARRIE WIGGHAM, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

MR YEUNG KAI-YIN, J.P.
SECRETARY FOR THE TREASURY

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

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

MR MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject	
Subsidiary Legislation	*L.N. No.*
Commissioner for Administrative Complaints Ordinance (Amendment of Schedule 1) (No. 2) Order 1991	420/91
Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Amendment) Regulations 1991	421/91
Midwives (Registration and Disciplinary Procedure) (Amendment) Regulations 1991	422/91
Noise Control (Air Compressors) Regulations	423/91
Noise Control (Appeal Board) (Amendment) Regulations 1991	424/91
Noise Control (General) (Amendment) Regulations 1991	425/91
Noise Control (Hand Held Percussive Breakers) Regulations	426/91
Hospital Authority Ordinance 1990 (Amendment of Schedules) Order 1991	428/91
Hospital Authority Ordinance 1990 (Commencement) Notice 1991	429/91
Telecommunication (Hong Kong Telephone Company) (Exemption from Licensing) (Fees) (Amendment) (No. 2) Order 1991	430/91
Hawker (Permitted Place) Declaration 1991	431/91

Oral answers to questions

DEPUTY PRESIDENT: In view of the queries raised at last Friday's In-House meeting and the media reporting which resulted, I would like to read from my

letter to Mr Allen LEE as Senior Member on 18 October 1991 on the subject of supplementary questions. The text of my letter reads:

For the orderly and more equitable distribution of supplementary questions I propose to be guided by the members' interest (subject or constituency) in a particular question, and by the number of times a member has asked supplementary questions both at the sitting itself and cumulatively.

If members wish, they are free to indicate to the Clerk of Legislative Council whether they have a particular interest in any of the questions. I suggest this should be done by the close of business on the day preceding the sitting so that their views may be taken into account.

I should be grateful if you could bring these points to the attention of members."

That is the complete text of my letter. A copy of it was sent to all Members on 21 October 1991. Since then I have been guided by the principles set out in that letter, in my conduct of Question Time.

MR ALLEN LEE: Mr Deputy President, in view of what you have already said and of the fact that I was the Senior Member then, could I clarify how the matter was discussed at the In-House meeting; that is to say, with your permission could I clarify that we discussed your letter at the In-House and Members felt that supplementary questions should be free for all to ask, not to be restricted by the content of members' interests.

DEPUTY PRESIDENT: I do not think I can permit a discussion on this. I have read the text of my letter which sets out the principles by which I said I would be guided. I would be happy to discuss further arrangements with Members of the Legislative Council if they wish, but I don't think we can have a discussion in Legislative Council this afternoon.

Funding for the new airport

1. PROF FELICE LIEH MAK asked: *In view of the very high cost related to the construction of the new airport, and the public perception that this project is responsible for the proposed cuts in public expenditure which may deprive the community of adequate essential services, will the Government inform this Council of the precise nature of the funding of the new airport?*

FINANCIAL SECRETARY: Mr Deputy President, the estimated costs and the funding arrangements for the Airport Core Programme were given to Members of Finance Committee in July this year. These project estimates totalling $98.6

billion at March 1991 prices remain our best estimates at this stage, and for convenience I have annexed to my reply a table showing the breakdown. The funding split between Government and the private sector shown in the table is our best estimate of the attainable level of private sector funding.

Our general aim has been to attract private investment wherever this makes sense. Usually this means that a project would generate a sufficient return on investment. This means in essence the Western Harbour Crossing, which will be a build, operate and transfer (BOT) franchise arrangement. And the airport itself, and the airport railway, which will be implemented by statutory corporations. Thus the latter two will be funded partly with government equity and partly with funds from the private sector. The amounts of government equity required for the airport will be refined once the Airport Financial Advisor's recommendation and the Provisional Airport Authority's (PAA) Business Plan are finalized. The funding arrangement for the airport railway is still under discussion with the Mass Transit Railway Corporation. The remaining Airport Core Programme projects will be treated in the same way as other public works items, that is, they will be funded by way of government capital expenditure. However, it is intended at some later stage to wholly or partly privatize the Lantau Fixed Crossing through the award of an operating franchise.

We expect to be in a position to go back to Finance Committee with a more detailed picture in around March next year. By then much will have happened — a view taken on the airport railway project; the PAA's Airport Master Plan, the Airport Financial Advisor's recommended funding strategy and the PAA's own Business Plan will have been studied; tenders for some major Airport Core Programme projects will have been received; and design for the other projects will have further progressed.

That completes my answer to the main question, but I cannot let go without comment the reference in the preface to the question to a perception that the airport core projects are responsible for proposed cuts in public expenditure which may deprive the community of adequate essential services.

The reality is quite different. We are planning overall for real growth in public expenditure, not "cuts". The prime constraint on how much more can be spent on new services is in fact the relatively low economic growth we are currently experiencing. Where the confusion arises is that, given bids for new services always exceed available new money, we are requiring departments to find modest savings in what they spend on existing services, so that more can be spent on new services.

Whilst the cost of the airport projects is substantial, it needs to be kept in perspective. That part of it which will be funded as government capital expenditure will take up only about one quarter of our total capital expenditure in the six years of construction. And of this amount, over half is attributable to projects such as West Kowloon Reclamation and Route 3 which would have to

be implemented even without the new airport. Moreover, the airport projects are a vital engine of future economic growth.

Annex

Figures in $ million at March 1991 prices

Project	*Government*		*Private sector*		*Total*
(note 1)	Capital Works Reserve Fund	Equity	Borrowing by Airport Authority (note 2)	Private investment	
WKR	9,000				9,000
WKE	1,700				1,700
WHC				3,900	3,900
Rt 3	5,600				5,600
CLK	3,100	13,800	16,500	10,200	43,600
TCI	2,600				2,600
NLE	4,300				4,300
LFC	12,100				12,100
Utilities	1,500				1,500
Total	39,900	13,800	16,500	14,100	84,300
		53,700 (64%)		30,600 (36%)	84,300 (100%)

Plus

Figures in $ million at March 1991 prices

Project	*Government*		*Private sector*		*Total*
(note 1)	Capital Works Reserve Fund	Equity	Borrowing by Airport Authority (note 2)	Private investment	
CWR		1,800			1,800
AR		12,500			12,500 (Note 3)
Grand Total					98,600 (Note 4)

Note 1:
WKR:	West Kowloon Reclamation
WKE:	West Kowloon Expressway
WHC:	Western Harbour Crossing
Rt 3:	Route 3
CLK:	Chek Lap Kok Airport
TCI:	Tung Chung development, phase 1
NLE:	North Lantau Expressway
LFC:	Lantau Fixed Crossing
CWR:	Central and Wanchai Reclamation
AR:	Airport Railway

Note 2: The figure under this column excludes financing and interest charges.

Note 3: This figure excludes the cost of the rail reserve in the LFC and NLE which has been included in the rough order of cost of these two projects above. The cost of the rail reserve will be recovered from the operator of the Airport Railway in due course. The bulk of the cost of the Airport Railway will be met by the MTRC from borrowings.

Note 4: This figure excludes contingency provision for any acceleration of works that may become necessary to ensure the proper interfacing and integrity of programming of works under the Airport Core Programme.

Source: Note for the Finance Committee on the Financial Aspects of the Airport Core Programme (Ref: FCRI (91-92)6)

DEPUTY PRESIDENT: Before I proceed to supplementary questions, I would urge Members to make these as short and simple as possible. In particular, I would draw attention again to Standing Order 18(1)(d) which states that: A question shall not be so complex that it cannot reasonably be answered as a single question.

DR SAMUEL WONG: *Mr Deputy President, if the Lantau Fixed Crossing could be partly privatized through the award of an operating franchise, would it not then be possible to, say, construct it under the BOT system?*

FINANCIAL SECRETARY: Mr Deputy President, the two stages are entirely separate. At the time that we construct it our judgment is that it would not be an attractive project for BOT; it is quite a long time forward to forecast the likely revenue and there are a number of decisions to be taken which would affect that revenue. Hence, we get a much better result if we sell the franchise, wholly or partly, at a later stage, much nearer the actual revenue being forthcoming.

MR ALBERT CHAN (in Cantonese): *Mr Deputy President, by the end of this month, the financial assessment report on the infrastructural and airport projects will have been completed and the Provisional Airport Authority will have submitted its recommendations of financial arrangements to the Government. Will the Administration release the above information to this Council by the end of December or in early January next year?*

FINANCIAL SECRETARY: Mr Deputy President, I have already said in my main reply that we expect to come back to Finance Committee in around March next year with refinements of the costs of a number of these projects. Although it is true that we may receive some reports earlier than that, it will take time to assess them and we would rather come back with a more complete picture.

MR FREDERICK FUNG (in Cantonese): *Mr Deputy President, before I proceed with my question, I would like to cite a few examples....*

DEPUTY PRESIDENT: Would you please keep it simple, Mr FUNG?

MR FEDERICK FUNG (in Cantonese): The Secretary just now mentioned that there were no cuts in public expenditure. But I would like to draw his attention to the fact that housing projects at Rennie's Mill and Tung Chung, and the building of schools and community centres need to be funded by the Housing Department; the Kowloon Hospital project and part of the project of the Tuen Mun-Yuen Long Section of Route 3 are to be put off and current social welfare expenditure reduced. On the other hand, large-scale infrastructural projects are underway along the routes to the airport. How could the Secretary convince this Council and the public that large-scale airport-related projects are not related to cuts in public expenditure when what we see is corresponding cuts in other areas?

FINANCIAL SECRETARY: Mr Deputy President, I think I have already attempted in my main answer to explain the difference between the cuts, which are savings in our ongoing expenditure, and the position of our total expenditure. Our total expenditure will continue to increase in real terms. That is not to say, of course, that some particular projects may be delayed or whatever for whatever reason. The cuts are quite separate from the overall situation which is that we will be spending more in real terms.

DEPUTY PRESIDENT: I am sorry, Mr FUNG, please sit down.

MR LEE WING-TAT (in Cantonese): *Mr Deputy President, the Secretary mentioned in the fourth and fifth paragraphs of his answer that the airport project would not lead to cuts in public expenditure. But we know that expenditure on social welfare services will be cut by 0.5% next year. Does this cut differ in any way with what the Secretary mentioned in his reply?*

FINANCIAL SECRETARY: Mr Deputy President, it does not. Social welfare expenditure has been growing very rapidly in recent years and the intention is that it will continue to grow in real terms. Again I must distinguish savings on ongoing activities and services to fund, among other things, new services.

REV FUNG CHI-WOOD (in Cantonese): *Mr Deputy President, I am glad to hear the Secretary say in the fourth and fifth paragraphs of his reply that there are in fact no cuts in public expenditure. Can the Secretary inform us whether the Administration has ever given any instructions to some or even all departments that expenditure needs to be cut for certain reasons?*

FINANCIAL SECRETARY: Mr Deputy President, the aim has been — and this has been communicated to Policy Secretaries and departments — that they should find savings in their ongoing activities. The reason is that this year, as in every year, the bids for new expenditure exceed the resources available; so we are trying to better meet those bids by introducing economies, efficiency savings and so on in our ongoing programme. So the instruction has been that they must find some such savings; but I repeat that, overall, we will still be increasing our expenditure in real terms.

Supply of gas for medical use

2. MR MOSES CHENG asked: *Will the Administration inform this Council:*

(a) whether there are any measures imposed by the Government on the supplier of gas in the manufacture, storage and transportation of gas intended for medical use to ensure that the incidents of supplying the wrong gas in labelled containers would not occur again, and if so, what the measures are and how the Government monitors their compliance;

(b) whether such measures are based upon internationally accepted standards, and if so, what these standards are; and

(c) how many companies in Hong Kong are licensed to supply gas for medical use?

SECRETARY FOR SECURITY: Mr Deputy President, the Government does impose controls on the manufacture, storage and transportation of gas intended for medical use. The Director of Fire Services is the authority for compressed gases under the Dangerous Goods Ordinance. Through the powers granted under that Ordinance, he exercises control over such gases through the issue of licences to which conditions may be attached.

As a result of the incidents which occurred in 1989 and 1990 at the Canossa Hospital and Caritas Medical Centre respectively, working parties were appointed to investigate the incidents and to make recommendations on improvements aimed at preventing similar incidents from occurring in future. The report of the first working party has already been made public; the Fire Services Department will tomorrow make public the report of the second working party. The first report contained 12 recommendations, and the second a further 15. Nearly all of these recommendations, relating to improved working practices, safety and security measures and training have already been fully implemented by the Hong Kong Oxygen and Acetylene Company. The remainder are in the process of implementation, and should be fully implemented by the middle of next year.

In addition to these improvements, the Administration has decided to commission a consultant who will commence in the next few weeks a two-month study on other safety and quality measures, requiring expertise not available within the Government.

In order to ensure compliance with the various measures recommended in the reports, the Fire Services Department has since last year had an inspection team based permanently at the Hong Kong Oxygen production plant. In addition, spot checks are made on the distribution, delivery and storage of medical gases. The Fire Services Department has also imposed additional conditions in the licence granted to Hong Kong Oxygen under the Dangerous Goods Ordinance.

As regards the second part of the question, the improvement measures so far introduced have been based on accepted international standards such as the British Standards and Guide to Good Pharmaceutical Manufacturing Practice for medical gases. One of the tasks of our consultants will be to advise on whether and if so how our standards can and should be further improved.

As regards the final part of the question, at present, the Hong Kong Oxygen is the only company licensed to supply medical gas to hospitals in Hong Kong. However, other gas suppliers may also apply for the grant of licences to manufacture, store and transport medical gases under the Dangerous Goods Ordinance and to supply such gases to hospitals, subject to their complying with the required standards.

MR MOSES CHENG: *Mr Deputy President, in view of the importance of maintaining a regular supply of correct gases for medical use in Hong Kong, would the Administration be prepared to provide incentives to other gas suppliers to encourage them to go into business?*

SECRETARY FOR SECURITY: Mr Deputy President, I think this is an area where we would certainly not wish to interfere with the normal market.

DR LAM KUI-CHUN: *Mr Deputy President, in the incident in Canossa Hospital as quoted in the answer by the Secretary for Security, there was a possible human element which was not covered in the answer supplied. Could the Secretary for Security inform this Council whether any clarification on this matter has been made so far?*

SECRETARY FOR SECURITY: Could I ask for clarification, Mr Deputy President. Is the question asking what the cause of the accident at the Canossa Hospital was?

DR LAM KUI-CHUN: *Yes.*

SECRETARY FOR SECURITY: Mr Deputy President, there was an inquest held into the incident at the Canossa Hospital but the cause was not conclusively determined. Clearly, human error was one possibility, as it was indeed in the case of the second incident at the Caritas Medical Centre.

DR LEONG CHE-HUNG: *Mr Deputy President, will the Administration continue to find out the cause of the incidents? If not, then how could the public and the medical profession be assured that such mix-ups would not happen again?*

SECRETARY FOR SECURITY: Mr Deputy President, the working party did investigate the causes of the incidents but I do not think it was able, in the end, to come to any certain conclusion. There was the possibility, in the case of the accident at the Caritas Medical Centre, of a malicious act, though the police investigation did not produce any evidence of this. There was also the possibility of negligence in a series of events involving the repainting of the cylinder, the use of improper filling equipment, and wrong operating procedures. Again, the cause could not be conclusively shown but this was certainly suggested as a possibility.

MR JIMMY McGREGOR: *Mr Deputy President, would the Secretary say whether there was any question of possible sabotage or malicious act in the first case, at the Canossa Hospital?*

SECRETARY FOR SECURITY: Mr Deputy President, as I said, this was investigated and there was no evidence of this.

DR LEONG CHE-HUNG: *Mr Deputy President, I am happy to see that the Administration is considering commissioning a consultant to look into the details of gas safety. But in order to have more stringent control of the use of medical gases, would the Administration consider exercising control of such gases under the Pharmacy and Poisons Ordinance?*

SECRETARY FOR SECURITY: Mr Deputy President, I think clearly the manufacture, storage, transportation and distribution of compressed gases have to be dealt with by the Director of Fire Services as the authority under the Dangerous Goods Ordinance because these gases are dangerous goods and he has to be the authority that guards against fire and explosion. I think that the question though is really asking whether they should also be licensed under the Pharmacy and Poisons Ordinance. I am afraid I cannot answer that question; I shall have to ask the Secretary for Health and Welfare to give Dr LEONG a written reply. (Annex I)

DR CONRAD LAM (in Cantonese): *Mr Deputy President, the Secretary mentioned in his reply that the Fire Services Department had an inspection team based at the Hong Kong Oxygen production plant. May I ask the Secretary of the strength and the scope of work of the team and whether the work they undertake should be the duties of Hong Kong Oxygen? If yes, should the cost of the services they provide be recovered from the company?*

SECRETARY FOR SECURITY: Mr Deputy President, there are two officers of the Fire Services Department deployed to monitor the operation of Hong Kong Oxygen. The cost of the services they provide is fully reimbursed by the company.

Incursions by Chinese armed uniformed personnel into Hong Kong waters

3. MR HENRY TANG asked: *With reference to the recent incident in which Hong Kong Marine Police Officers were threatened by armed uniformed mainland security officials in Hong Kong waters, will the Government inform this Council:*

(a) whether any guidelines will be given to Hong Kong Marine Police Officers to handle similar circumstances when their personal safety is threatened;

(b) whether it is aware of the frequency of patrol in our waters by the Royal Navy to ensure the integrity of the Hong Kong territorial boundaries; and

(c) what actions will be taken to ensure that such incidents will not happen again?

SECRETARY FOR SECURITY: Mr Deputy President, I should like to preface my reply with a statement on the incident to which Mr TANG refers, which took place on 19 November.

That evening three police vessels and a number of police on land were involved in an anti-smuggling operation at the ash lagoon at Nim Wan in Deep Bay. At about 10.30 pm a wooden vessel was seen to leave the ash lagoon. When the police went to intercept it, a sampan interposed itself between the police vessels and the wooden vessel. All three crew on the sampan were wearing green uniform, two with gold stripes on the sleeves. One pointed a Type 56 rifle at the police. Another pointed a pistol. The police observed that one of the two crew on the wooden vessel was also a man in uniform carrying a Type 56 rifle. The sampan and the wooden vessel headed in the direction of She Hau. The police followed. At this point a white speedboat with a red stripe appeared. It had four crew, all in uniform, three carrying Type 56 rifles which they pointed at the police. The three boats then passed into Chinese waters and were seen to dock at the She Hau hydrofoil pier at about 10.40 pm.

We have raised this incident with both the New China News Agency and the Guangdong Foreign Affairs Bureau, and also with the Chinese Ministry of Foreign Affairs through the British Embassy in Peking. We have expressed our concern that people who appeared to be Chinese security personnel had been operating well inside Hong Kong waters. The Chinese authorities have not yet replied, and we await the outcome of their investigations.

Turning now to the question, the Marine Police have comprehensive orders on how to handle such situations. All officers are trained in the use of force where personal safety is threatened. Operational commanders are fully aware of the potential dangers posed and take precautions to ensure that risks are minimized. The problem of incursions by armed intruders is not new to the Marine Police, and they are experienced in handling such incidents.

The Royal Navy conducts regular patrols of the 50 mile square boundary to demonstrate sovereignty and to ensure the integrity of Hong Kong's territorial boundaries.

It is impossible to ensure that incursions will not take place in future. But we have made our concerns known very clearly to the Chinese authorities. The Chinese have assured us that they do not seek to exercise jurisdiction in Hong Kong waters and that they are firmly opposed to all smuggling activity.

MR HENRY TANG: *Mr Deputy President, as the problem of incursion by armed intruders wearing uniform is not new to the Marine Police, would the Administration inform this Council how the Marine Police can, if their orders are to abandon their pursuit when their personal safety is threatened, be reasonably expected to carry out their duties; and whether the Royal Navy will step up their patrols to aid the Marine Police in carrying out their duties in view of the $1.7 billion that we will be paying to the British Forces for their services in the coming year?*

DEPUTY PRESIDENT: Secretary for Security, the last part of that question is one you need not address.

SECRETARY FOR SECURITY: Very well, Mr Deputy President. I think I should say first that I did not say, in my answer, that the orders or the practice of the Marine Police is to withdraw in the case of any such incident. That is not the case. But the Marine Police do have to be conscious of the need not to escalate a minor incident into a major incident which threatens lives. Where possible, if people are engaged in criminal activity in Hong Kong, they would attempt to make an arrest, but in some cases discretion is the better course of action, as it was in this case. I think I have indicated in my answer that the Royal Navy is indeed involved very closely in anti-smuggling activities; it has regular patrols. I think I can say that the Navy has of course taken note of the area in which this and a number of other recent incidents have occurred and its patrolling activity and its deployment have been adjusted accordingly.

MR HENRY TANG: *Mr Deputy President, if I may clarify one of the answers, please?*

DEPUTY PRESIDENT: Yes, Mr TANG.

MR HENRY TANG: *It appears to me that the Secretary for Security is happy with the services that we are getting from the Royal Navy. Is that what he is saying?*

SECRETARY FOR SECURITY: Yes, Mr Deputy President, we believe that the Royal Navy is doing a great deal to assist us in anti-smuggling operations.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr Deputy President, from a historical point of view, the sovereignty of Hong Kong belongs to China, not the United Kingdom which has only the right of administration over Hong Kong. The Secretary has mentioned in his answer to the Honourable Henry TANG that the Royal Navy conducts regular patrols in the territorial waters to demonstrate sovereignty over Hong Kong. But could I ask whether "sovereignty" is the appropriate word; if not, would the Secretary agree to change it to "the right of administration"?*

DEPUTY PRESIDENT: The question is out of order, Mr CHEUNG.

MRS RITA FAN: *Mr Deputy President, is the Secretary for Security aware that on 28 November 1991, the police officer responsible for briefing the OMELCO Security Panel on this incident said that it was too dark to identify the number of people on the boats involved, and that he could not confirm that guns were pointed at our Marine Police? Can the Secretary explain why in less than one week's time, the whole incident can be described in such clarity? In other words, Mr Deputy President, where has the light come from that things which were too dark to see then can now be seen?*

SECRETARY FOR SECURITY: Mr Deputy President, I regret that the police officer who attended OMELCO was actually attending for a different item and was not very familiar with this, as I think he explained at the time. He simply did not have the full facts with him. But on a point of clarification, what the officer told the panel — and where there may possibly be some misunderstanding — was that it was too dark for the officers to see whether there was a number painted on the side of the boat. That may have, perhaps, been expressed in a way that was ambigious and has given people to understand that he said it was too dark to identify the number of people on board; but that is not what he intended to say.

MISS EMILY LAU (in Cantonese): *Mr Deputy President, could the Secretary inform this Council of the number of incursions by mainland security officials into Hong Kong waters during the last three years? Has the Hong Kong or the United Kingdom Government ever complained about this with the Chinese Government and informed it of the grave concern of the people of Hong Kong with regard to these incursions? What explanations have been given by the Chinese Government as to these repeated incursions by their security officials?*

SECRETARY FOR SECURITY: Mr Deputy President, I cannot, I am afraid, give figures for the whole of the last three years but I can perhaps answer for a more recent period. Between June 1990 and October this year, we had six similar incidents of marine incursions; we raised them all with the Chinese.

Since October this year, that is, in the last six or seven weeks, we have had to raise seven incidents with the Chinese. In two of these incidents, one on 8 November and the other on 19 November which I gave an account of, guns were pointed at the police. But I am afraid I do not have with me further details of these incidents.

MR LAU CHIN-SHEK (in Cantonese): *Mr Deputy President, the Secretary told us in the fourth paragraph of his main reply that "the problem of incursions by armed intruders is not new to the Marine Police". Could I ask who these intruders are?*

SECRETARY FOR SECURITY: Mr Deputy President, I was simply referring to intrusions by Chinese security vessels on which there were armed personnel.

MR MAN SAI-CHEONG (in Cantonese): *Mr Deputy President, given that Hong Kong has entered the latter half of the transition period, would the Secretary inform this Council whether there are frequent communications and contacts between the Royal Navy or the Police Force and the Chinese security authorities; and if so, what levels of contacts are made with particular regard to those relating to Hong Kong territorial waters?*

SECRETARY FOR SECURITY: Yes, Mr Deputy President, there are well established channels for the police to liaise with their counterparts on the other side of the border. These cross-border liaison arrangements take place at various levels, from the Commissioner of Police downwards. These incidents have also been raised with the Chinese security authorities through the normal cross-border arrangements as well as, as I said, through the NCNA and through the British Embassy in Peking.

Written answers to questions

Secondary school places in Yuen Long

4. MR NG MING-YUM asked: *Will the Government inform this Council:*

(a) of the provision of and demand for secondary school places in Yuen Long in the past decade;

(b) of the number of government and subsidized secondary schools in Yuen Long at present; the number of schools with floating classes and the manner in which these floating classes are distributed;

(c) of the estimated demand for secondary school places in Yuen Long in the next decade;

(d) of the number of new secondary school premises to be built in Yuen Long in each of the next 10 years and the total number of school places to be provided by these schools;

(e) of the measures that will be taken to ensure that there will not be an imbalance in the provision of and demand for secondary school places in Yuen Long in the next decade;

(f) of the way in which surplus school places may be put to better use; and

(g) of the remedial measures that will be taken to ensure an adequate provision of school places?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers are as follows:

(a) The provision of secondary school places and the demand for Secondary I (S1) places in Yuen Long are given below. The demand figures are actual Secondary School Places Allocation figures.

Year	*Demand for S1 places*	*Provision of S1 places*	*Provision of sec sch places (S1-S7)*
1982	3 817	2 458	13 118
1983	3 726	2 540	12 986
1984	3 779	3 008	13 733
1985	3 668	3 248	14 947
1986	3 707	3 784	16 311
1987	3 644	3 976	17 076
1988	3 568	3 806	17 293
1989	3 497	4 043	17 555
1990	3 471	4 554	18 530
1991	3 557	4 565	20 174

(b) At present there are four government secondary schools and 13 aided secondary schools in Yuen Long. In spite of the apparent over-supply of places at S1 level, all of these schools have or will have floating classes. These help to make up for the shortfall of places in Tuen Mun. The existing practice is that an old standard-design secondary school (with 24 classrooms and 12 special rooms) can operate a maximum of 30 classes (including up to six floating classes) while a new standard-design secondary school (with 26

classrooms and 14 special rooms) can operate a maximum of 30 classes (including up to four floating classes), if the need arises.

(c) It is not possible to give the estimated demand for secondary school places in Yuen Long in the next decade, since demand figures are calculated for the territory as a whole and not for individual districts. The Government's policy is to provide secondary school places up to the approved targets on a territory-wide basis.

(d) At present, the government plans to build nine secondary schools and one prevocational school in Yuen Long, almost all in Tin Shui Wai, in the next decade. The total number of places provided by these schools will be 11 600. The details are as follows:

Public Works Programme Project No.	*Area*	*Expected year of completion*	*School places provided*
96 ES	Area 5, Tin Shui Wai	1992-93	1 160
96 ES	Area 5, Tin Shui Wai	1992-93	1 160
97 ES	Area 8, Tin Shui Wai	1992-93	1 160
124 ES	Area 16, Tin Shui Wai	1992-93	1 160
124 ES	Area 16, Tin Shui Wai	1992-93	1 160
(Priv Arch)	Area 6, Yuen Long	1992-93	1 160
(Priv Arch)*	Area 2, Tin Shui Wai	1993-94	1 160
NO8 ES	Area 11, Tin Shui Wai	1994-95	1 160
61 ES	Area 27, Tin Shui Wai	1995-96	1 160
111 ES	Area 24, Tin Shui Wai	1995-96	1 160

* Prevocational school

(e) The school building programme is closely monitored to ensure that the total number of school places in the territory as a whole is adequate to meet the demand of all districts at all times. Every effort is made to minimize district imbalances by siting new schools in areas where they are needed or by adjusting the school nets for the allocation of secondary school places. However, it is not possible to achieve a complete balance of supply and demand in each individual district due to frequent demographic changes.

(f) Floating classes will be reduced.

(g) In addition to the above, one of the measures being taken by the Education Department to cope with high demand is to advise schools to operate more lower form classes at the initial stage by adopting the 8-8-8-4-4 class structure. Other measures may include advanced opening of new schools in borrowed or shared premises.

Corruption in schools

5. MR TIK CHI-YUEN asked: *Will the Government inform this Council:*

(a) whether the Education Department has completed its study on the elimination of possible opportunities for corruption in schools;

(b) if so, what recommendations have been made; and when and how the concerned authorities will implement those recommendations; and

(c) if not, when the study will be completed?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I believe Mr TIK is referring to the review carried out by the Independent Commission Against Corruption (ICAC) on how schools select textbooks. The review has been completed. It also covers the acceptance of donations from publishers and other schools' suppliers.

The ICAC has made the following recommendations aimed at tightening control on the selection of textbooks and acceptance of donations:

(a) The Education Department (ED) should issue guidelines to schools, which should be promulgated to all teachers as well, to formalize the textbook selection procedures that involve subject teachers;

(b) ED should advise sponsoring bodies that they should discontinue the practice of using the same set of textbooks for all their schools, and that individual schools should adopt formal procedures for selecting

textbooks which best suit their pupils' interests, with the individual school management committees assuming a monitoring role;

(c) ED should advise school management committees that they should themselves decide whether or not to accept donations from publishers or school's suppliers, rather than delegate that authority to the school head;

(d) ED should take steps actively to enforce the requirement under the Codes of Aid for schools to report donations to the Department on a quarterly basis; and

(e) ED should actively encourage schools to lay down in writing their anti-corruption policy, setting out the types of advantages and the circumstances under which staff may or may not accept them.

The Director of Education has accepted these recommendations and a school circular will be issued in January to advise schools of their implementation.

Independent members on the Kowloon Walled City Clearance Assessment Review Board

6. MR ERIC LI asked: *In 1988, Hong Kong Society of Accountants nominated 14 senior members from its members, upon the invitation from Housing Authority, to assist the Assessment Review Board of the Special Committee on Clearance of Kowloon Walled City in the capacity of independent professionals by reviewing controversial cases relating to removal compensation. May the Government inform the Council:*

(1) Whether the Government has referred the controversial cases relating to compensation amount to these independent professionals for their assessment?

(2) If yes, how many referred cases and what is the outcome?

(3) How does the Government inform the residents of this fair review service?

(4) Is the Government prepared to give wider publicity to this service?

SECRETARY FOR HOME AFFAIRS: Mr Deputy President, before I answer the Honourable Member's question, I feel that I should explain the background to the Assessment Review Board.

The Assessment Review Board was set up by the Special Committee on Clearance of Kowloon Walled City in 1987 as an administrative body to consider matters relating to compensation offers. The Board may be convened at the request of either the Government Land Agent/Special Duties or a Kowloon Walled City resident, having regard to the Rules of Assessment. In particular the Review Board may consider:

(a) whether the offer made by the Government Land Agent/Special Duties to the resident is fair; and

(b) should the Board consider the offer not to be fair to determine the amount regarded as fair by the Board, and to give reasons for that decision.

The Hong Kong Society of Accountants, the Royal Institution of Chartered Surveyors (Hong Kong Branch) and the Hong Kong Institute of Surveyors were all invited to nominate members to sit on the Board. These professional organizations nominated a number of members; Hong Kong Society of Accountants 13, the Royal Institute of Chartered Surveyors (Hong Kong Branch) and the Hong Kong Institute of Surveyors together nominated 20. The Board comprises a non-official chairman who is also a member of the Special Committee and at least two members drawn from the list of people nominated by the organizations.

Compensation offers are made by the Government Land Agent/Special Duties. He has not so far applied for any outstanding compensation cases to be heard by the Board. All Walled City residents have been informed of the availability of the Board and they are aware that they can make an application to the Board if they wish.

Since the inception of the Assessment Review Board, one case of appeal against the adequacy of Government's compensation offer has been heard at the request of a Walled City resident. The Board decided that the compensation offered by the Government was reasonable. Two appeal cases have recently been submitted to the Board by residents. Arrangements for the Board to meet to consider the appeals are being finalized.

The establishment of the Assessment Review Board was widely publicized through the media in 1987. Its terms of reference were set out in a special pamphlet on compensation and rehousing arrangements distributed to Walled City residents. Residents were further reminded of the availability of this avenue of appeal in the compensation offer letters and during meetings with officers of the Buildings and Lands Department.

More recently, letters were issued to Phase I residents who had not accepted Government's compensation and/or rehousing offers to urge them to submit appeals to the Assessment Review Board and to advise them to do so by 28 January 1992.

The Special Duties Office will continue to take every opportunity in future, through direct contact and the media, to remind Walled City residents of the availability of the Assessment Review Board as an avenue of appeal.

Law Reform Commission reviews

7. MISS EMILY LAU asked: *Will the Government inform this Council:*

(a) how many topics in law the Law Reform Commission (LRC) has reviewed in the past five years and what the length of time the LRC took to review each topic was;

(b) how many topics are waiting to be reviewed by the LRC; and

(c) if the Administration has plans to speed up the work of the LRC or even adopt a different method of law reform?

ATTORNEY GENERAL: (a) Since 1986 the Law Reform Commission has completed the review of 11 topics. The average length of time taken to complete a review was three years eight months per topic.

(b) Eight topics are currently being reviewed by the Commission. The review of two further topics which have been referred to the Commission will receive attention as soon as manpower resources permit.

(c) The average length of time taken to review a topic of three years eight months is considered acceptable. The Commission, with the aim of producing reports in a shorter time, has recently initiated a fast track" procedure for shorter and less complex topics which do not require the assistance of an expert sub-committee. It is anticipated that this new procedure will further enhance the Commission's average review time.

Social welfare commitments

8. MR FRED LI asked: *Will the Government inform this Council:*

(a) What commitments have been made in the past 10 years to improve social welfare services and what the financial resources required for each are;

(b) what progress has been made in implementing each of those services; and

(c) what concrete plans and time-frames there are in the next five years to meet the commitments set out in the White Paper on Social Welfare into the 1990s and Beyond?

SECRETARY FOR HEALTH AND WELFARE: The development of social welfare services in the past 10 years was guided by the 1979 *White Paper on Social Welfare into the 1980s* which set out broad principles and priorities.

Annual provision targets during the past 10 years were set out in the Social Welfare Five-Year Development Plans which dealt with specific programmes of development.

The 1979 White Paper made certain financial projections for the period from 1981-82 to 1986-87. However, meaningful comparison of actual developments against these figures is not possible because of the considerable changes in the nature, scope and delivery of services during these years. Consequently, achievements over the last decade could only be measured by a comparison of actual expenditure for 1981-82 with the estimated expenditure for 1991-92.

The principal objectives for each broad service area, the progress achieved during the period from 1981-82 to 1991-92 in terms of places/clients/centres and the relevant financial comparisons are set out in the paragraphs below. The main service areas described below are:

(a) family and child care services;
(b) probation and correctional services;
(c) services for children and youth;
(d) services for the elderly;
(e) social security; and
(f) services for the disabled.

Family and child care services

The policy commitments for family and child care services as set out in the 1979 White Paper were:

(a) to provide a comprehensive Family Life Education programme;

(b) to formulate policy guidelines on home help;

(c) to review the Child Care Centres Ordinance (Cap 243) and Regulations;

(d) to review the overall relationship between child care centres and kindergartens;

(e) to review the adequacy of residential care for children; and

(f) to review the procedures for adoption cases.

The progress made during the period is summarized below:

(a) Family life education

The number of Family Life Education Officers have increased from 17 in 1981 to 59 in 1991.

(b) Home help service

In 1982, a unified home help policy was introduced, which included services for the elderly, the disabled, and social need cases. In order to improve management and co-ordination of service, home helpers have been deployed to districts and operated on a team basis since 1983. The number of home help teams have increased from 23 in 1983 to 60 in 1991. Following a review in 1988, a flexible caseload of 60-70 cases for each home help team was introduced in 1990. Home help service during holidays and a family aide service were implemented in 1991. A demand study was completed in 1989.

(c) Child Care Centres Ordinance and Regulations

A number of reviews of the legislation were made. The Child Care Centres Ordinance and Regulations were amended in 1980, 1982, 1983 and 1986 respectively to establish improved standards in respect of staff to children ratios, space requirements and minimum academic qualifications and experience of child care staff. Another major review of the Ordinance and Regulations has recently been completed by the Social Welfare Department in consultation with non-governmental organizations. Amendments to the legislation will be introduced to control child-minders, and to increase the level of penalties as a deterrent on the advice of the Social Welfare Advisory Committee.

(d) Child Care Centres and kindergartens

A Working Party was formed to study primary education and pre-primary services. A White Paper on Primary Education and Pre-primary Services was published in July 1981. Following the recommendations of the White Paper, a Fee Assistance Scheme has been implemented since September 1982 for low-income families who have a social need to place their children in day nurseries for whole-day care. An assessment of the demand for child care and kindergarten services was made. A Working Party on

Kindergarten Education has been formed and will advise Government on the practicability of unifying all pre-primary services.

(e) Residential care for children

Reviews on the adequacy of residential care services for children were carried in the past 10 years by three Working Groups. The principles of residential care, staffing standards for various residential facilities and the expansion of non-institutional facilities in the form of small group homes and foster care were confirmed. The Residential Child Care Services Development Committee, which was reconvened in July 1991, will review service provision and recommend ways to improve the service.

(f) Adoption

A review of the adoption service was carried out, and significant improvements were made. Improvements included amendments to the Adoption Ordinance (Cap. 290), the streamlining of adoption procedures, the establishment of a monitoring system, the centralization of pre-adoption services, increased publicity and the arrangement of foster care placements for special needs children awaiting overseas adoption. These measures have enhanced the efficiency of the services provided and reduced processing time significantly.

A comparison of the provisions in this service area between 1981-82 and 1991-92 is as follows:

Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
Family and child care				
I. Family services				
1. Caseworkers	Social worker	251	428	177
2. Family life Education workers	Social worker	19	59	42
3. Clinical psychologists	Clinical psychologist	7 (1984-85 figure)	13	6

	Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
4.	Home help teams	Worker	30	512	482
5.	Family aide services	Worker	0	4	4
6.	Temporary shelter/urban hostels/day relief facilities for street sleepers	Centre	0	2	2
7.	Medical social work units	Unit	*86 *This is the figure for 1983-84, the year in which units were taken over by SWD.	105	19
II.	Day Care Services				
1.	Aided day nursery places	Place	10 093	21 249	11 156
2.	Day creche places	Place	913	1 000	83
III.	Residential Care Services				
1.	Forster care	Place	70	240	170
2.	Small group homes	Home	3	17	14
3.	Children homes, homes/hostels for boys/girls and half-way houses	Place	1 516	1 608	92
	Financial provision		$123M	$571M	$448M (+364%)

Probation and correctional services

The policy commitments for probation and correctional services as set out in the 1979 White Paper were:

(a) to strengthen the probation service;

(b) to establish more institutional facilities; and

(c) to expand aftercare service, the Volunteer Scheme for Probationers, and probation reporting centres.

The following measures have been made to improve probation and correctional services:

(a) Probation service

(i) A new community-based probation service, the Community Service Order Scheme, was established in 1987. The Scheme has proved to be very effective.

(ii) The probation service was strengthened with 20 additional probation officers.

(iii) Services for the courts have been improved by the establishment of the High Court probation office, with an improved manning scale.

(iv) Two new probation offices were established at Shatin and Tuen Mun. Eight of the 11 probation offices are now located at district/regional social welfare offices or multi-service premises, which provide a stigma-free environment. One reporting centre and 11 sub-offices are available for easy access by clients.

(v) The Volunteer Scheme for Probationers was extended to serve residents in institutions.

(b) Institutional facilities

(i) Three new homes have been established after a study of the use of the institutions by an overseas consultant in 1981.

(ii) The residential training programme was improved by the introduction of qualified teachers into the homes to strengthen the quality of education.

(iii) Aftercare service has been streamlined for dischargees of reformatory schools. For ex-prisoners, two half-way houses for those with mental illness (one newly established and one converted

from an existing hostel) were established in the 1980s. The manning scale for counselling services for ex-prisoners was improved in the 1980s bringing the caseload per worker to 1:90.

(iv) To ensure that the most appropriate rehabilitation programme could be provided to young offenders, a Young Offender Assessment Panel was established in 1987 jointly by the Social Welfare Department and the Correctional Services Department to advise magistrates before sentencing.

A comparison of the provisions in this service area between 1981-82 and 1991-92 is as follows:

	Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
Offenders					
1.	Probation Officers	Social worker	80	100	20
2.	Residential institutions for juvenile delinquents	Homes	5	8	3
3.	Aftercare services for ex-prisoners	Social worker	19	23	4
4.	Support services for offenders	Hostels/ half-way Houses	12	15	3
	Financial provision		$26M	$108M	$82M (+315%)

Services for children and youth

The policy commitments for services for children and youth as set out in the 1979 White Paper were:

(a) to provide centres for children and young people at the rate of 11 children centres and 11 youth centres each year;

(b) to expand school social work to cover all secondary schools; and

(c) to expand outreaching social work to help youths at risk.

These commitments have on the whole been achieved. A comparison of the provisions in this service area between 1981-82 to 1991-92 is as follows:

Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
Services for young people				
Single and combined Children and Youth Centres	Centre	247	416	169
School social work	Social worker	120	150	30
Outreaching social work	Team	20	24	4
Financial provision		$26M	$422M	$396M (+1523%)

Services for the elderly

The policy commitments for elderly services as set out in the 1979 White Paper were:

(a) to provide support services for elderly persons to enable them to remain in the community for as long as possible; and

(b) to the extent necessary, to provide residential care suited to their varying needs.

The specific areas of expansion in community support and residential services were:

(a) to provide 1 600 additional home for the aged places by 1982-83;

(b) to provide four care-and-attention home places for every 1 000 population aged 60 and over;

(c) to provide multi-service centres on a district basis with a view to providing a minimum of 17 such centres over the whole territory;

(d) to provide day care centres on an experimental basis with a view to further developing such facilities; and

(e) to provide an additional 117 social centres and to achieve a target of one centre for every 20 000 of the population.

Satisfactory progress has been made in the past 10 years in achieving these targets.

A comparison of the provisions in this service area between 1981-82 and 1991-92 is as follows:

Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
Elderly services				
Homes for the aged	Place	3 760	7 490	3 730
Care and attention Homes	Place	375	3 702	3 327
Bought Place Scheme	Place	-	500	500
Infirmary units in care and attention homes	Place	-	360	360
Multi-service centres	Centre	7	17	10
Day care centres	Centre	2	11	9
Social centres	Centre	68	165	97
Financial provision		$20M	$353M	$333M (+1665%)

Social security

In the 1979 White Paper, it was stated that help should be concentrated on those least able to help themselves. While the overall public assistance framework remained appropriate, it was considered that improvements should be made. Significant progress has been made in the past 10 years to improve the social security system. In addition to the old age supplement, a disability supplement was introduced in April 1980 under the Public Assistance Scheme.

The Special Needs Allowance Scheme (including Old Age Allowance and Disability Allowance) has continued to be based on need established by reference to the circumstances of the individual and not by reference to low income.

Accident compensation (Emergency Relief Fund and Criminal and Law Enforcement Injuries Compensation Scheme) has been developed to help those who suffer from natural disasters or accidents. It is designed to tide a family over a serious and unforeseen setback, and is not intended to provide long-term support. In May 1979, a Traffic Accident Victims Assistance Scheme was added to the Accident Compensation Schemes.

To improve the social security system, the following major items were introduced during this period:

	Item	*Implementation Date*
(a)	Public Assistance Scheme	
	(i) Revision of payment rates	seven times since 1981
	(ii) Meal allowance for full-day students	1 January 1988
	(iii) Special one-off grant for new born babies	August 1988
	(iv) Special one-off grant for young persons taking up a first job after leaving school	1 August 1989
(b)	Special Needs Allowance Scheme	
	(i) Revision of payment rates	seven times since 1981
	(ii) A higher rate of DA	1 April 1988 for those aged 60+ 1 April 1989 for those aged 16+ 1 April 1990 for all ages
	(iii) A higher rate of OAA for those aged 70+	1 April 1988
	(iv) Extension of OAA to the 65-69 age groups	1 September 1988 for those aged 68-69 1 April 1989 for those aged 67+ 1 April 1990 for those aged 66+ 1 April 1991 for those aged 65+

A comparison of the provisions in this service area between 1981-82 and 1991-92 is as follows:

Programme	*Unit*	*1981-82 Provision*	*1991-92 Provision*	*Increase*
Social security				
Public assistance	Case	46 600	70 400	23 800
Public Assistance (child supplement introduced in November 1991)	Person	-	22 700	22 700
Old Age Allowance	Case	159 300	416 100	256 800
Disability Allowance	Case	28 900	69 100	40 200
Criminal and Law Enforcment Injury Compensation	Case	450	830	380
Traffic Accident Victim Assistance	Case	4 720	5 900	1 180
Financial provision		$798M	$3,554M	$2,756M (+345%)

Services for the disabled

In respect of social welfare services for the disabled, the Social Welfare Department is guided by the *1977 White Paper on Rehabilitation, "Integrating the Disabled into the Community: A United Effort".*

The White Paper encourages the integration of children with minor disabilities in ordinary nurseries and the provision of special pre-school training facilities to disabled children. At the same time, both day and residential facilities for the disabled are to be expanded.

The objectives of the Rehabilitation White Paper include:

(a) to increase the number of sheltered workshop places to 2 600;

(b) to increase the number of half-way house places to 386 by 1984; and

(c) to increase the number of different types of residential facilities for disabled persons from 1 260 to 3 400 by 1985-86.

Satisfactory progress has been made in the past ten years in achieving these targets.

A comparison of the provisions in this service area between 1981-82 and 1991-92 is as follows:

Programme	*1981-82 Provision (Places)*	*1991-92 Provision (Places)*	*Increase (Places)*
(a) Intergrated programme in Child Care Centres	180	676	496
(b) Special Child Care Centres	291	987	696
(c) Early Education and Training Centres	60	845	785
(d) Day Activity Centres	248	1 773	1 525
(e) Sheltered Workshops	995	4 095	3 100
(f) Hostels for the moderately mentally handicapped	208	896	688
(g) Hostels for the severely mentally handicapped	120	796	676
(h) Hostels for the physically handicapped	84	257	173
(i) Half-way houses for discharged mentally ill persons	80	809	729
(j) Long stay care home	-	200	200
Financial provision for rehabilitation services	$43M	$398M	$355M (+826%)

Appendix F in the *1991 White Paper on Social Welfare into the 1990s and Beyond* sets out the target provision by 1995-96 of the various major commitments. Government has already introduced the Child Supplement under

the Public Assistance Scheme in 1991-92. Implementation of other items will be carried out as and when manpower and financial resources permit. The information is shown below:

Family and child care services

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
I. Family services		
1. Additional caseworkers to meet increase in demand (1:70 cases)	(428) social workers	+160 (588)
2. Creating the posts of senior practitioners	(0) social workers	+31 (31)
3. Additional family life education workers to meet an improved planning ratio of 1:50 000 target population	(59) social workers	+15 (74)
4. Additional clinical psychologists to meet increase in demand	(13) clinical psychologists	+16 (29)
5. Additional home help teams	(64) teams	+44 (108)
6. Expansion of family aide services	(4) workers	+31 (35)
7. Extending temporary shelter/urban hostels/day relief facilities for street sleepers	(2) centres	+4 (6)
8. Additional medical social workers to meet increase in demand	(235) social workers	+201 (436)

Note: Figures in brackets denote the total provision in that year.

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
II. Day care services		
1. Expansion of aided day nursery places	(21 249) aided places	+5 600 (26 849)
2. Expansion of day creche places	(1 000) subvented places	+1 000 (2 000)
III. Residential care services		
1. Expansion of foster care places	(220) places	+280 (500)
2. Additional small group homes	(17) homes	+42 (59)
3. Additional places in children's homes, homes/hostels for boys/girls and half-way houses	(1 608) places	+170 (1 778)

Probation and correctional services

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
1. Additional social workers for aftercare services for ex-prisoners to meet increase in demand	(23) social workers	+16 (39)
2. Additional probation officers to meet increase in demand	(100) social workers	+36 (136)

Services for children and youth

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
I. School Social Work		
Improvement of manning ratio (one school social worker to 2 000 student population)	(150) social workers	+78 (228)
II. Children and Youth Centres		
Additional children and youth centres (Note 1)		
(1) Children and youth centres	(154) centres	+36 (190)
(2) Children centres (Note 2)	(52) centres	-12 (40)
(3) Youth centres (Note 2)	(56) centres	-9 (47)
III. Outreaching Social Work		
Additional outreaching teams	(24) teams	+4 (30)

Note 1: A combined children and youth centre is counted as two centre units. The number of children and youth centre units in 1991-92 will be 416 (154x2+52+56).

Note 2: The number of single children centres and youth centres show a decrease as some of these centres have been and will continue to be reprovisioned and turned into combined children and youth centres which are a preferred mode of service delivery.

Services for the elderly

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
I. Residential services		
1. Additional places in homes for the aged (10 places per 1 000 elderly people)	(7 490) places	+968 (8 458)
2. Additional places in care and attention homes (revised planning ratio of 11 places per 1 000 elderly people)	(3 702) places	+4 095 (7 797)
3. Bought Place Scheme	(500) places	(500)
4. Additional infirmary units in care and attention homes (one unit=20 places)	(18) units	+12 (30)
II. Community support services		
1. Additional multi-service centres (revised planning ratio of one centre per 25 000 elderly people)	(17) centres	+12 (29)
2. Additional day care centres (revised planning ratio of one centre per 25 000 elderly people)	(11) centres	+19 (30)
3. Additional social centres (revised planning ratio of one centre per 3 000 elderly people)	(165)	+91 (256)

Remarks 1. The number of places required under items I1 and I2 may be reduced following the likely expansion of licensed private homes and self-financing homes.

2. There is correlation between items I2 and I3 — an increase in places under the Bought Place Scheme would mean a reduction in the demand for care and attention places.

Social security

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
I. Public assistance		
1. Projected increase in caseload	(70 400) cases	+7 800 (78 200)
2. Introduction of a Child Supplement	(22 700) persons	+2 300 (25 000)
II. Old Age Allowances		
1. Projected increase in caseload	(416 100) persons	+85 100 (501 200)
III. Disability Allowances		
1. Projected increase in caseload	(69 100) persons	+16 500 (85 600)
IV. Accident Compensation Schemes		
Meeting demand of new paid cases		
1. CLEIC (Note 1)	(830) cases	(830)
2. TAVA (Note 2)	(5 900) cases	(5 900)
3. ERF (Note 3)	-	-

Note 1: CLEIC (Criminal and Law Enforcement Injuries Compensation Scheme) — the average number of new paid cases per year was 830 from 1986-87 to 1989-90. It is assumed it will remain constant.

Note 2: TAVA (Traffic Accident Victims Assistance Scheme) — the number of new paid cases per year is estimated to be constant at the 1989-90 level.

Note 3: ERF (Emergency Relief Fund) — it is difficult to make an accurate estimate of the number of cases for emergency relief payments, as the frequency of disasters and the number of victims involved will vary from year to year.

Support services

Item	*Provision In 1991-92*	*Additional Provision by 1995-96*
Extension of standard cost subvention to services (excluding services under the community development and rehabilitation programmes)	(22) services	+6 (28)

Services for the disabled

A Working Party is reviewing rehabilitation policies and services and will produce a Green Paper shortly for public consultation. Plans for services for the disabled in the next five years are therefore not yet available.

Train noise assessment report

9. REV FUNG CHI-WOOD asked: *Since public consultation on the Consultancy Report of Train Noise Assessment has yet to take place though the Report was finalized by the Kowloon-Canton Railway Corporation (KCRC) in July 1991, will the Government inform this Council:*

(a) whether the KCRC will be asked to release the report; if not, what is the rationale; and

(b) what kind of consultation will be carried out to seek the views of the public towards the Report as well as the Corporation?

SECRETARY FOR TRANSPORT: Mr Deputy President, the first draft of the consultancy report was available in July 1991 but further studies of noise abatement measures are required. The final report is expected to be ready by the end of this year. When the report is available, the Administration will ask the Corporation to release it publicly.

As regards public consultation, after the Environmental Protection Department and the Corporation have worked out a programme to implement the noise mitigation measures, district boards will be consulted on their implementation.

CLP's Black Point project consultancy report

10. REV FUNG CHI-WOOD asked: *Since the consultancy report on China Light and Power Company's new power plant project at Black Point has been submitted to the Administration and yet the contents of the report have never been made known to the public, will the Government inform this Council:*

(a) why the report has not yet been released for public consultation; and

(b) when it will be available for public consultation and how the consultation will be conducted?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, in October this year, the Executive Council approved in principle reservation of a site of approximately 120 hectares (of which 86 hectares will be reclaimed from the sea) at Black Point, Tuen Mun for construction of a new large thermal power station. This decision was taken in the light of the recommendations in two studies.

The first study: a technical assessment of the proposals contained in China Light and Power's Generation Development Plan for the period 1990-1999 (undertaken with the assistance of overseas expert consultants) examined the Company's forecast of growth in demand for electricity during this period and the best development strategy for meeting this demand. On the basis of this study the Government is satisfied that in order to safeguard a reliable supply, it is necessary for CLP to construct a new large thermal power station some time in the latter half of this decade.

A second study was carried out to identify the most suitable site for the new power station. An initial list of 12 potential locations was short-listed based on the following considerations:

- engineering feasibility
- security of marine fuel supply

- security of the transmission system
- operational requirements
- environmental impact
- compatibility with Government planning; and
- costs.

Eventually, Black Point was chosen as the preferred site because it offers the lowest level of overall environmental impact, taking account of both the power station itself and the associated transmission links. The consultants recommended, however, that the cumulative air quality impact of the proposed station and the existing Castle Peak Power Station should be subject to further detailed assessment in a full environmental impact assessment.

As far as public consultation is concerned, it is not intended to publish the first study report as it contains commercially sensitive information supplied to Government by the Company on a confidential basis. Regarding the site search report, the Tuen Mun District Board and the Heung Yee Kuk have been consulted on the results of the study. Briefing documents on the principal findings of the site search study were also circulated to members of the New Territories district boards and Heung Yee Kuk for reference. These organizations will be consulted further in the course of the environmental impact assessment study which is currently in progress. A final decision on the construction of the power station will be taken when the environmental impact has been fully assessed.

Infrastructural facilities for Tseung Kwan O

11. MISS EMILY LAU asked: *In view of complaints from residents of Tseung Kwan O that the Government appears to have gone back on its undertaking to provide key infrastructural facilities for the area, will the Government inform this Council:*

(a) whether the plan to extend the Mass Transit Railway to Tseung Kwan O has been indefinitely shelved; if not, when construction will commence; and

(b) whether there are plans to build a regional hospital in the area and when construction will begin; in the meantime, what plans are in hand to upgrade existing medical services?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the plan to extend the Mass Transit Railway to Tseung Kwan O has not been shelved. Construction of the extension is likely to be justified on transport grounds when the population of the area reaches about 270 000, which will occur in 1999 according to the latest population projections. The timing and priority for the extension will be considered in the Railway Development

Study, along with other proposals for expanding the rail network. This study has just started and the results will be available by the end of 1992.

As regards the provision of a regional hospital in the area, a site has been reserved for a 60-bed district hospital in Area 32, Tseung Kwan O. Actual provision will, however, depend on the population growth in the district and their changing needs. Meanwhile, plans are in hand to redevelop the Haven of Hope Hospital into a 316-bed hospital providing services in acute, rehabilitation, tuberculosis, chest, hospice and convalescent care. The project is scheduled to start in 1992-93.

Air pollutants in Kwai Chung

12. MR LEE WING-TAT asked: *In view of the high level of total suspended particulates and nitrogen dioxide among the air pollutants in Kwai Chung as indicated in the air pollution statistics for October recently published by the Administration, will the Government inform this Council of the following:*

(i) the monthly variations in the above two types of pollutants in Kwai Chung District during the past year;

(ii) the main sources of these pollutants; and

(iii) the short-term and long-term measures adopted by the Government to lower the density of these pollutants?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, with regard to question (i), the position is that, over the past two years, both Total Suspended Particulates (TSP) and Nitrogen Dioxide (NO2), as measured at the Kwai Chung Air Pollution Monitoring Station, have shown higher levels in the cooler winter months than in the hotter summer months, because of the higher capacity of the atmosphere in summer to disperse air pollutants. This is a territory-wide phenomenon, and the pattern found at Kwai Chung is entirely in line with what is seen elsewhere. Therefore, the increase in air pollutants noted in Kwai Chung in October is in line with past experience, and not a matter for grave concern.

A chart showing the monthly average concentrations of TSP and NO2 at Kwai Chung from January 1990 to October 1991 is on page 912.

Based on the results of monitoring so far this year, there is no danger that the annual average for NO2 will exceed the relevant Air Quality Objective (AQO). It is possible that the hourly AQO (300 (E017)g/m3 not to be exceeded more than three times in a year) may be exceeded, since the limit has already been exceeded twice this year (both occasions on 1 October, when it seems likely that some special factor was in operation). While we cannot be

complacent about this pollutant in Kwai Chung, the levels of NO2 in Kwai Chung are not a matter of grave concern. Proposals for improving controls over NO2 emissions discussed below should see the position with regard to NO2 emissions in Kwai Chung improve further over the next few years.

It is, however, likely that the AQO for TSP (80 (E017)g/m3) will be exceeded this year in Kwai Chung, by perhaps as much as 10%. This would reflect a pattern which has been common over the last four or five years, where the TSP rate has been steadily close to, or slightly above, the AQO. This is a problem which is common throughout the developed areas of Hong Kong. This TSP problem is a more serious concern than the NO2 rate.

The figures given in the table and in the published statistics are ambient figures, that is, they show the general background situation at an average down-town site. There are "blackspots" where levels of pollution are higher than those stated. A second table on page 911 shows the levels of NO2 and TSP at the worst of these blackspot areas in Kwai Chung. In these areas the incidence of TSP has dropped sharply, from far above the ambient levels, to levels similar to the general ambient figures during these last two years.

In response to question (ii), the predominant source of NO2 is the combustion of fuel-oils in industrial plants, and motor vehicles of all types. TSP are predominantly emitted by:

(1) diesel vehicles, especially large diesel vehicles such as buses, container trucks, and lorries;

(2) construction activities, earth-moving, demolition, and so on;

(3) some manufacturing processes, especially those involving textiles.

Kwai Chung is a district which has a very high concentration of TSP-producing polluters — a heavy concentration of textile factories, the heaviest concentration of container trucks within Hong Kong, and a great deal of construction, particularly, in recent years, earthworks, cutting, and reclamation. As a major industrial area, it also has a high concentration of industrial fuel-oil plant.

In response to question (iii), the basic policy on control of these and other air pollutants is set out in the Government's White Paper on Pollution in Hong Kong, issued in June 1989, and reviewed in May 1991. This lists out the AQOs which represent what the Government considers to be the minimum level of acceptable air quality. Basic policy on air pollution is to bring the quality of the air within these parameters: where the air is within them, it is, by definition, acceptable.

Detailed policies on how to bring those areas of Hong Kong where the AQOs are not currently being met to an acceptable level, and to improve the situation elsewhere to ensure that those areas do not subsequently slip into an unacceptable state include:

(1) Implementation of the Air Pollution Control (Fuel Restrictions) Regulations in July 1990. These regulations not only restrict the permitted levels of sulphur in fuel, but also the viscosity of the fuel, resulting in a drop in emissions, not only of SO2, but also of NO2 and TSP. The improvements these Regulations have made are predominantly to blackspots. Following the implementation of the regulations, the quality of the air at the blackspots has improved very sharply, until, at present, there is little difference between the ambient and blackspot levels of these pollutants.

(2) Implementation of the smoky vehicle control programme. This allows smoky vehicles to be checked and action taken against. You will be aware that the Administration has already announced a significant improvement to this programme, with more testing centres operational, and a more stringent licence cancellation system for persistent offenders. This improved programme should start to show effects from early 1992.

(3) Implementation of the new Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (from 1 January 1992). These will prohibit the licensing in Hong Kong of motor vehicles which do not meet the most advanced international standards of emission design. Newly licensed vehicles after 1 January 1992 will be built to designs which permit far fewer pollutants to be emitted than were possible with the less restrictive regulations previously in force.

(4) Consideration is being given to further statutory controls on motor vehicles, to improve yet further control on the maintenance and use of motor vehicles.

(5) Consideration is also being given to the development of measures to control dust from construction sites.

(6) Arising from experience over recent years, and partly in the context of the re-writing of the Town Planning Ordinance, currently in hand, steps are being taken to ensure that, in the future, significant polluters (for example, factory buildings, or heavy generators of movements by heavy diesel vehicles such as bus depots or container parks) are not permitted to be built close to

sensitive receivers such as residential blocks, and that sensitive uses are not permitted to be built close to existing polluters. Many of our problems in Kwai Chung are due to relaxed procedures in the past allowing polluters and sensitive receivers to be built closer together than is desirable.

Kwai Chung is not dissimilar in its pollution characteristics from other developed areas such as Kwun Tong, Sham Shui Po or Cheung Sha Wan. The position with regard to NO2 and TSP in Kwai Chung is not considered to be any more — or any less — a matter for concern than the closely similar position in other major industrialized areas of Hong Kong. It will continue to be a matter of concern to the Administration, but it is not, and should not be, regarded as a problem of crisis proportions.

Po Sing Centre A Q Data

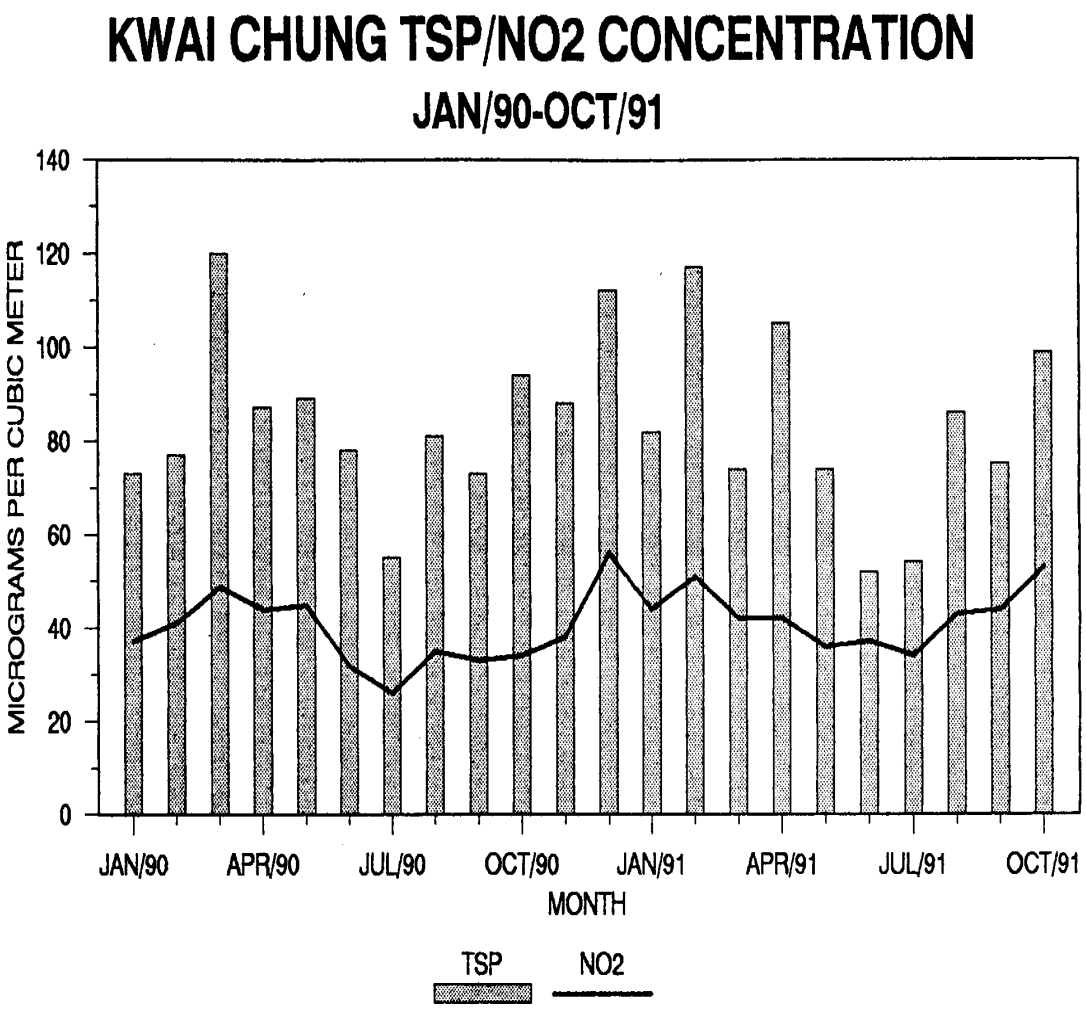
Pollutant	*Ave. before (1) implementation of LSF regulations*	*Ave. after (2) implementation LSF regulations*	*Improvement %*
TSP	180	96	46
NO	118	93	21
NO2(3)	39	44	(13)

Notes:

(1) Available monthly data of Oct 89 - June 90

(2) Available monthly data of Oct 90 - June 91

(3) The NO2 level fluctuates. There was marginal increase.


KWAI CHUNG TSP/NO2 CONCENTRATION
JAN/90-OCT/91
MICROGRAMS PER CUBIC METER
140
120
100
80
60
40
20
0
JAN/90
APR/90
JUL/90
OCT/90
JAN/91
APR/91
JUL/91
OCT/91
MONTH
TSP
NO2

Deportation rule for foreign domestic helpers

13. MRS ELSIE TU asked: *Will the Government inform this Council:*

(a) whether the two-week rule for deportation of foreign domestic helpers is departmental policy or law; and

(b) whether the rule has been challenged in court for contravening Article 9 of the Bill of Rights; and if so, on how many occasions and what was the outcome of the cases?

SECRETARY FOR SECURITY: A foreign domestic helper is allowed to work in Hong Kong for a specific employer under an approved contract of employment. On arrival, she is permitted to stay in Hong Kong for 12 months or for two weeks after her contract is terminated, whichever is the earlier. At the end of the first year, she may apply for and be granted an extension of stay for another 12 months on the same conditions. The "two-week rule" is a condition of stay limiting the period during which a person may remain in Hong Kong after termination of her contract of employment. It was introduced in 1987 to control the movement of foreign domestic helpers between employers.

In practice, if a foreign domestic helper has a genuine reason for needing to remain in Hong Kong beyond the two weeks permitted, for example, if she is unfairly treated and her contract terminated prematurely, she may apply for an extension of stay in order to pursue a claim against her former employer. In such cases extensions of stay will normally be granted. The present rule has not been challenged in court for contravening the Bill of Rights. The rule was challenged in court in 1987 on the grounds that it was *ultra vires* the Immigration Ordinance; but the challenge was dismissed.

Crimes in Tuen Mun and Yuen Long

14. MR NG MING-YUM asked: *Will the Government inform this Council of:*

(1) the population of Tuen Mun and Yuen Long in the past nine years with a breakdown showing the age distribution;

(2) the annual figures of each category of crime for these two districts for the same period, and how do these figures compare with other districts in the territory;

(3) the measures that have been taken and the amount of manpower, support and financial resources that have been deployed to combat crime in Tuen Mun and Yuen Long in the past nine years; and

(4) the measures that will be introduced and the amount of manpower, support and financial resources that will be deployed in the foreseeable future to further improve the law and order situation in Tuen Mun and Yuen Long; and, if possible, what the details are?

SECRETARY FOR SECURITY: Mr Deputy President, the populations of Tuen Mun and Yuen Long Districts in 1981, 1986 and 1991, based on the census conducted by the Census and Statistics Department in each of those years are shown at Annex A. Accurate estimates for the intervening years are not available.

Crime statistics for the Tuen Mun and Yuen Long Districts, and for the territory as a whole, from 1982 to 1990 are shown at Annex B.

It is not possible to provide detailed costings of resources committed to combating crime in Tuen Mun and Yuen Long Districts in the past nine years. However, the numbers of police deployed in these two districts each year since 1983 are shown at Annex C.

The police are deploying as many police officers as possible in all districts to combat crime and maintain law and order. Since September this year, an additional Police Tactical Unit company of 160 men has been deployed to the New Territories to increase police presence on the streets. The police will continue to make every effort to ensure that adequate resources are provided in all districts, including Tuen Mun and Yuen Long, to maintain law and order.

Annex A

Population in Tuen Mun

Age	*1981*	*1986*	*1991*
0-4	16 732	33 642	29 749
5-9	15 958	43 519	40 635
10-14	9 501	27 146	44 540
15-19	10 285	15 624	28 903
20-24	10 279	18 452	20 194
25-29	12 641	30 534	34 253
30-34	12 275	36 519	45 205

Population in Tuen Mun (continued)

Age	*1981*	*1986*	*1991*
35-39	6 034	26 782	41 912
40-44	5 105	11 774	29 390
45-49	4 339	9 100	13 340
50-54	4 041	7 217	10 518
55-59	3 350	6 454	8 955
60-64	2 928	5 768	8 078
65-69	2 303	4 480	6 607
70-74	1 592	3 710	4 974
75+	1 765	3 808	6 113
Total	119 128	284 529	373 366

Population in Yuen Long

Age	*1981*	*1986*	*1991*
0-4	18 290	20 013	18 736
5-9	17 365	17 437	21 607
10-14	19 561	17 577	17 290
15-19	24 360	18 949	16 574
20-24	21 614	23 464	17 596
25-29	15 990	23 296	24 937
30-34	11 603	16 800	25 201
35-39	6 901	11 627	17 892
40-44	7 470	7 539	12 260
45-49	8 279	8 484	7 681
50-54	8 996	9 534	8 101
55-59	7 683	9 569	8 811
60-64	6 166	8 232	8 713
65-69	4 968	6 069	7 261
70-74	3 463	4 543	5 114
75+	3 902	6 258	7 504
Total	186 611	209 391	225 278

Annex B

Crimes for Tuen Mun District for 1982-1990

Selected Crimes	*1982*	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Wounding and Serious Assault	129	173	194	220	279	297	314	334	362
Robbery	160	250	166	135	115	129	256	365	484
Burglary	302	472	544	465	389	503	534	633	655
Snatching	28	48	38	48	29	32	41	104	182
Pickpocketing	5	8	16	17	6	16	14	7	21
Shop Theft	73	115	117	230	232	396	399	410	436
Theft from Vehicle	332	350	304	230	242	307	319	348	343
Taking Conveyance without Authority	264	296	275	174	154	183	221	238	298
Miscellaneous Theft	440	525	403	453	412	414	418	551	655
Drug Trafficking Offence	11	11	24	44	57	53	66	73	106
Unlawful Society Offence	43	56	45	87	26	35	27	41	96
Possession of Offensive Weapon and Arms	5	14	17	15	9	20	22	24	91
Others	334	622	643	580	684	824	812	1069	1430
Total Crimes	2126	2940	2786	2698	2634	3209	3443	4197	5159

Crimes for Yuen Long District for 1982-1990

Selected Crimes	*1982*	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Wounding and Serious Assault	257	270	336	253	202	276	342	426	371
Robbery	238	303	212	109	145	153	255	337	273
Burglary	503	538	627	527	445	615	686	681	769
Snatching	54	104	67	48	45	28	62	58	65
Pickpocketing	9	22	20	9	10	12	21	6	10
Shop Theft	56	150	151	249	188	314	215	159	203
Theft from Vehicle	400	416	387	285	289	335	402	400	323
Taking Conveyance without Authority	301	351	260	141	149	225	305	333	398
Miscellaneous Theft	437	461	505	533	505	512	560	618	601
Drug Trafficking Offence	126	108	112	201	168	236	206	298	161
Unlawful Society Offence	48	24	50	123	32	50	60	218	129
Possession of Offensive Weapon and Arms	29	31	39	36	24	28	34	67	60
Others	818	1312	869	1161	712	876	1180	1227	1235
Total Crimes	3276	3605	3635	3675	2914	3660	4328	4828	4598

Crimes for Whole Hong Kong for 1982-1990

Selected Crimes	*1982*	*1983*	*1984*	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Wounding and Serious Assault	5762	5910	6112	5759	5678	6302	6206	6986	6695
Robbery	8548	8308	7245	6745	5372	5461	5705	6452	8029
Burglary	11526	11308	12663	13922	11942	10601	10749	10913	12701
Snatching	2177	2844	2447	2357	1843	1644	1364	1478	2024
Pickpocketing	2692	2902	2880	3036	3073	3329	1595	972	932
Shop Theft	2800	3985	3897	6382	6170	7077	5611	5140	5847
Theft from Vehicle	6426	6339	5048	4988	5028	5392	5216	5151	4607
Taking Conveyance without Authority	6013	5542	4121	3149	2967	2980	3605	4476	6434
Miscellaneous Theft	14395	13841	13560	13612	13140	12326	12255	12397	12164
Drug Trafficking Offence	2238	2790	2531	3549	4118	4143	5527	5040	3604
Unlawful Society Offence	940	695	1058	1392	1055	963	908	1041	1084
Possession of Offensive Weapon and Arms	449	706	596	569	580	588	638	857	1146
Others	20271	20830	21374	21384	20445	21122	19805	20905	23033
Total Crimes	84237	86000	83532	86944	81411	81928	79184	81808	88300

Annex C

Establishment and Strength of Disciplined Staff
in the Tuen Mun Police District since 1983

Rank	1983		1984		1985		1986		1987		1988		1989		1990		1991	
	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S
Chief Superintendent of Police	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Senior Superintendent of Police	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Superintendent of Police	3	2	3	3	3	3	3	3	3	4	4	4	4	5	4	5	5	5
Chief Inspector of Police	6	3	6	6	6	6	6	6	7	7	7	7	8	8	9	10	11	11
Senior Inspector/ Inspector of Police	15	15	14	15	16	20	20	20	20	26	23	25	24	24	25	27	30	37
Station Sergeant	14	12	15	12	16	14	23	18	28	19	25	21	28	22	27	25	38	28
Sergeant	63	51	63	53	61	53	64	67	75	71	70	66	77	80	81	77	84	84
Police Constable	297	282	314	329	316	337	316	322	385	380	363	385	382	403	388	362	381	394
Total	400	367	417	420	420	435	434	438	520	509	494	510	525	544	536	508	551	561

Legend
E : Establishment
S : Strength

Establishment and Strength of Disciplined Staff
in the Yuen Long Police District since 1983

Rank	1983		1984		1985		1986		1987		1988		1989		1990		1991	
	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S
Chief Superintendent of Police	1	0	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Senior Superintendent of Police	1	2	1	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1
Superintendent of Police	3	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
Chief Inspector of Police	7	3	7	6	7	7	7	7	7	7	7	7	9	9	9	11	9	9
Senior Inspector/ Inspector of Police	18	20	17	18	20	19	26	24	26	26	26	30	25	26	25	26	25	27
Station Sergeant	15	13	16	14	17	16	22	17	22	15	21	17	21	17	21	22	21	21
Sergeant	87	74	87	75	83	78	84	78	84	83	82	81	82	81	83	79	83	69
Police Constable	407	419	408	395	404	420	404	423	404	429	402	416	406	421	396	383	396	357
Total	539	532	540	512	536	545	548	554	548	565	543	555	548	559	539	526	539	498

Legend
E : Establishment
S : Strength

First Reading of Bills

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1991

COMMODITIES TRADING (AMENDMENT) (NO. 2) BILL 1991

SECURITIES (AMENDMENT) (NO. 3) BILL 1991

PENSIONS (SPECIAL PROVISIONS) (HOSPITAL AUTHORITY) BILL

STAMP DUTY (AMENDMENT) (NO. 4) BILL 1991

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) 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

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1991

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Securities and Futures Commission Ordinance."

He said: Mr Deputy President, I move that the Securities and Futures Commission (Amendment) (No. 2) Bill 1991 be read the Second time. The purpose of this Bill together with the Commodities Trading (Amendment) (No. 2) Bill 1991 and the Securities (Amendment) (No. 3) Bill 1991 is to facilitate the reporting of fraud detected by auditors.

At present, under the Securities and Commodities Trading Ordinances, the scope of the reporting requirements of auditors is very limited and does not cover, for instance, circumstances where fraud or illegal dealings have been detected.

The Administration believes that auditors should be able to report to the Securities and Futures Commission (SFC) matters of material concern so as to protect the interests of investors and preserve the integrity of the markets. In return, auditors should be afforded statutory protection against any possible liability they may incur in respect of breach of duty of confidentiality to clients when communicating in good faith to the SFC. Similar protection is already available under the Banking Ordinance.

Given that a change or prospective change of an auditor may signify possible irregularities in the operation of a dealer's affairs which could give rise to prudential concerns, I am also proposing that dealers should be required to notify the SFC of any such change. For similar reasons, the SFC ought also be informed by auditors of their intention to resign or to qualify accounts.

The proposed amendments to the Securities and Futures Commission Ordinance will also enable SFC to disclose information relating to an auditor to the Hong Kong Society of Accountants for the purpose of any disciplinary proceedings.

Under the existing provisions, the Securities and Futures Commission can routinely suspend or revoke registration on grounds of cessation of business. But because of the wordings of the existing provision, while the Commission can revoke licence of dealers who have ceased business, it is unable to revoke licence of dealers who have never commenced business. The Bills seek to redress this shortcoming by extending the grounds for revocation to cover any individual or corporation which does not carry on the business for which they were registered. This will make it immaterial whether the person concerned has ceased to carry on business or has never started.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

COMMODITIES TRADING (AMENDMENT) (NO. 2) BILL 1991

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Commodities Trading Ordinance."

He said: Mr Deputy President, I move that the Commodities Trading (Amendment) (No. 2) Bill 1991 be read the Second time. I have already identified the purpose of this Bill and the amendments proposed in my speech moving the Second Reading of the Securities and Futures Commission (Amendment) (No. 2) Bill 1991.

As regards the question of revoking the licences of dealers who have never traded, under the existing provisions, the Securities and Futures Commission can routinely suspend or revoke registration on grounds of cessation of business. But because of the wordings of the existing provision, while the Commission can revoke licences of dealers who have ceased business, it is unable to revoke licences of dealers who have never commenced business. This Bill seeks to redress this shortcoming in the Commodities Trading Ordinance by extending the grounds for revocation to cover any individual or corporation which does not carry on the business for which they were registered. This will make it immaterial whether the person concerned has

ceased to carry on business or has never started. Similar amendments are necessary to the Securities Ordinance and I shall be moving the Second Reading of the Securities (Amendment) (No. 3) Bill 1991 shortly.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

SECURITIES (AMENDMENT) (NO. 3) BILL 1991

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Securities Ordinance."

He said: Mr Deputy President, I move that the Securities (Amendment) (No. 3) Bill 1991 be read the Second time. I have already outlined the purpose of this Bill and the amendments proposed in my speech moving the Second Reading of the Securities and Futures Commission (Amendment) (No. 2) Bill and the Commodities Trading (Amendment) (No. 2) Bill.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

PENSIONS (SPECIAL PROVISIONS) (HOSPITAL AUTHORITY) BILL

THE SECRETARY FOR THE CIVIL SERVICE moved the Second Reading of: A Bill to make provision as regards the pensions, allowances, gratuities and pension benefits of certain officers transferred from service under the Government to service under the Hospital Authority".

He said: Mr Deputy President, I move that the Pensions (Special Provisions) (Hospital Authority) Bill 1991 be read the Second time.

The purpose of this Bill is to provide for two pension arrangements for civil servants transferred to the employment of the Hospital Authority. One is the "mixed service pension" arrangement which would enable civil servants to preserve their pension rights after transferring to the Authority. Their total length of service for the purpose of pension calculation would be the sum of their service with the Government and the Authority.

The other is the "frozen pension" arrangement which would give civil servants the alternative of joining the Authority's provident fund after transfer.

The pension earned during their service with the Government would be frozen and would be payable when they retire from the Authority.

The Hospital Authority took over the management and control of all public hospital services on 1 December 1991. By clause 1, the provisions of this Bill are deemed to have come into operation on that date to cover those officers who transferred to the Authority before enactment of the Bill.

Clause 6 provides for retirement benefits under the frozen pension arrangement to be based on the last substantive salary point, except in circumstances of resignation and death, and for the counting of service with the Authority as qualifying service for pension purposes.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

STAMP DUTY (AMENDMENT) (NO. 4) BILL 1991

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

He said: Mr Deputy President, I move that the Stamp Duty (Amendment) (No. 4) Bill 1991 be read the second time.

At present, stamp duty is payable only on the assignment of property, that is, on the document by which title is legally transferred. It is not payable on a sale and purchase agreement entered into before the assignment takes place. Stamp duty therefore does not act as a disincentive against speculators buying and selling a property several times before assignment. This type of speculation has been the target of much public criticism. It has contributed to a sharp increase in the price of residential flats. The principal aim of the Bill before Members is to curb speculative activity in the residential property market, by making stamp duty payable on sale and purchase agreements.

With some exceptions, vendors and purchasers would be required to pay stamp duty, on an *ad valorem* sliding scale, on all sale and purchase agreements in respect of residential property. This means that, in the case of a series of agreements in respect of the same property, the amount of duty payable would multiply. This would provide a substantial disincentive for speculators. The Commissioner of Inland Revenue may refuse to stamp an agreement that has not been properly executed.

We considered the possibility of extending the requirement to pay stamp duty to commercial and industrial property. Speculative activity and public concern over the effect of speculation on inflation have been largely confined,

however, to the residential property market. Non-residential property is therefore exempted from the new provisions. But to the extent that there are indications of speculative activity in the commercial office sector, we will need to keep this situation under review.

We have also given considerable thought to an effective and practical definition of "non-residential property". Evidence which would be accepted as establishing non-residential status include the conditions of a Crown Lease, a deed of mutual covenant, or an occupation permit issued under the Buildings Ordinance. In other cases, the Commissioner of Inland Revenue would exercise his discretion. For example, he would take into account a certificate issued by an Authorized Person or by the solicitors of the parties to a sale and purchase agreement.

The Bill would require both the vendor and the purchaser of any land or buildings to execute a written agreement for sale and purchase. The agreement would have to include a statement as to whether the property was residential or non-residential. Only where the property was stated to be entirely for non-residential use, and the Commissioner of Inland Revenue had no doubts, would the parties to the agreement not have to pay stamp duty.

As the intention of the new measures is to reduce the number of speculative transactions, and not to discourage genuine home-buyers, the Bill would limit the stamp duty payable on the actual conveyance of a property to a nominal $100, provided that the full amount of stamp duty had been paid on the agreement for sale and purchase.

It has been suggested that the scope of the Bill could be further limited, so that the new measures would apply only to uncompleted residential flats. To try to do so could give further scope for avoidance. More important, speculation is not confined to the uncompleted flat market. So far this year, about 70% of residential flat transactions have been in respect of completed properties. We are therefore strongly of the view that the Bill should cover the entire residential property market.

To make the intention and effect of these measures more readily understandable, the Bill groups them together in a new Part of the Ordinance, and in a new head of stamp duty to the First Schedule. The measures would lapse on 31 December 1993, unless renewed by resolution of this Council. We would review the efficiency and the continued need or otherwise for the measures about six months before the expiry date, taking into account developments in the economy in general and the property market in particular.

Finally, we have taken the opportunity to close an existing tax avoidance loophole. The loophole is exploited where a person sets up a company, the main or only asset of which is immovable property, and then transfers part or all of his interest in that property by selling his company's shares. These transactions now attract stamp duty at the contract note rate, which is much lower than that

payable on property conveyance. The imposition of stamp duty on agreements for sale and purchase may encourage even greater exploitation of this loophole. To discourage this form of tax avoidance, the Bill would fix the stamp duty to be paid on the sale or purchase of such shares at the higher conveyancing rate. This means that parties using this "land-holding company" device would be liable to pay $27.50 for every $1,000 of the consideration involved in the transaction, as opposed to the present contract note level of $5 per thousand.

It has been suggested to me that speculators would be able to set up off-shore companies to circumvent this new rule. But this is a fairly complex device beyond the aspirations of most individual speculators. It has also been suggested that *bona fide* unlisted property companies could be penalized. But there is no reason why the sale of shares in a property company should be subject to less tax than the sale of the property itself, any more than there is reason to believe that speculative activity is confined to individuals. Without this provision, the scope for avoidance of the new measures would seriously weaken the Bill's ability to combat speculative activities.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1991

THE SECRETARY FOR RECREATION AND CULTURE moved the Second Reading of: "A Bill to amend the Control of Obscene and Indecent Articles Ordinance."

He said: Mr Deputy President, I move that the Control of Obscene and Indecent Articles (Amendment) Bill 1991 be read the Second time. This Bill has two purposes. Firstly, it seeks to plug an existing loophole in the law where films which have been dealt with under the Film Censorship Ordinance, Chapter 392, are not subject to the provisions of the Control of Obscene and Indecent Articles Ordinance, when they are being distributed in the form of videotapes or laser discs. Secondly it seeks to amend the wording of the warning notice displayed on an indecent article or on a wrapper enclosing that article to ensure that in addition to sale, the distribution, circulation or hire of that article to a person under the age of 18 is also prohibited.

The Control of Obscene and Indecent Articles Ordinance enacted in 1987 controls the publication of articles which consist of or contain material that is obscene or indecent. According to the Ordinance, "articles" include films, videotapes and laser discs. It is stipulated in section 3 that the Ordinance will not apply to films which have been dealt with under the Film Censorship Ordinance. As a result, some films which have been approved by the Film

Censorship Authority for exhibition only to persons over the age of 18 years become available to young people in the form of videotapes or laser discs. This defeats the purpose of the existing legislation which aims to protect young people against the corrupting influence of indecent articles whilst still allowing adults the right to obtain them.

The rationale behind the exemption of films that have been classified under the Film Censorship Ordinance from the controls under this legislation is that the Film Censorship Authority, in making decisions regarding the suitability of a film for exhibition, has already taken into account the entry restrictions imposed on cinemas. There is thus no need to subject the film to controls under another piece of legislation. However, it is obvious that the decision of the Film Censorship Authority is only good for as long as the film is intended for public showing in cinemas. The different circumstances in which videotapes or laser discs are viewed justify their being separately considered and classified. This practice is common in many countries including the United Kingdom.

The Administration proposes that section 3 of the Ordinance be amended so that films which have been dealt with under the Film Censorship Ordinance will be subject to the provisions of the Control of Obscene and Indecent Articles Ordinance if they are published other than by way of public exhibition in a cinema. This means that in future, a film being published in the form of a videotape or a laser disc, once classified by the Obscene Articles Tribunal as indecent can only be sold or hired to a person over the age of 18 years and a warning notice to that effect must be displayed on the article in question. The Obscene Articles Tribunal may also impose conditions such as removing certain scenes from the film. A film classified as obscene will be prohibited from publication.

The second amendment proposes to amend the wording of the warning notice as stipulated in section 24(1) of the Ordinance.

The present wording of the notice reads,

> "Warning: This article contains material which may offend and may not be sold to a person under the age of 18 years."
>
> “警告：本物品內容可能有不良成份；本物品不可售給年齡未滿十八歲人士。”

The purpose of the warning notice is to inform and remind both the vendors and the buyers not to "publish" indecent articles to persons under the age of 18 years. The Ordinance itself makes it clear that the work "publish" includes "distribute, circulate, rent, hire, give, lend, show, play or project". The present wording of the warning notice, however, gives the misleading impression that only the sale of indecent articles to persons under the age of 18 is prohibited, but not the distribution, circulation, renting, hiring, giving, lending, showing, playing or projecting of that article.

It is therefore proposed that the wording of the warning notice be amended to read as follows:

> "Warning: This article contains material which may offend and may not be distributed, circulated, sold, hired, given, lent, shown, played or projected to a person under the age of 18 years."
>
> “警告：本物品內容可能令人反感；不可將本物品派發，傳閱，出售，出租，交給或出借予年齡未滿十八歲的人士，或將本物品向該等人士出示，播放或放映。”

The Chinese translation is also amended in order to make the meaning clearer.

Finally I would like to say a few words on the timing of implementing this Bill. It is estimated that there are around 400 films which have been classified by the Film Censorship Authority as Category III and are in circulation in the form of videotapes or laser discs on the market at present. We would urge the publishers or distributors of these tapes or discs to submit them to the Obscene Articles Tribunal for classification. Since the Tribunal is under a statutory requirement to make a classification within a maximum of 10 days from the day of submission, it is necessary to provide a grace period for submissions to be made and for the Tribunal to clear the backlog. We consider that a grace period of three months would be sufficient and reasonable. I therefore recommend that this particular amendment does not come into effect until three months after its enactment.

As regards the proposed amendment to the warning notice, I suggest that this should come into effect immediately upon enactment.

Mr Deputy President, I move that the debate on this Bill be adjourned.

Question on the adjournment proposed, put and agreed to.

Member's motion

Court of Final Appeal

DEPUTY PRESIDENT: Mr Simon IP has given notice of a motion as set out on the Order Paper. After Mr IP has spoken I will call on the Secretary for Constitutional Affairs. This will enable the Government to put its points early in the debate and it will also enable Members to deal with those points, if they wish, in their speeches.

MR SIMON IP moved the following motion:

> "That when the Court of Final Appeal in Hong Kong is set up, it should have more flexibility to invite overseas judges to sit on it than has been agreed by the British and Chinese Governments, and such flexibility should be in accordance with the Joint Declaration and the Basic Law."

MR SIMON IP: Mr Deputy President, in his address to the opening session of the Legislative Council on 9 Ocotber, the Governor pointed out that this Council and the Administration should "share the responsibility of ensuring that the Government's policies and programmes reflect the public's best interests and enjoy the community's support." It is to reflect the public's best interests that I rise to move the motion standing in my name.

The legal profession, supported by other professions, has voiced strong opposition to the Joint Liaison Group (JLG) agreement on the Court of Final Appeal, and I, as its representative, would be failing in my duty if I did not raise the issue in this Council.

Some have questioned the timing and purpose of this debate, saying that it may be regarded as confrontational. If expressing disagreement with the JLG agreement amounts to confrontation, then there will never be a good time for a debate. The other option would be for us to say nothing and to do nothing, but that would be wrong. The Joint Declaration and the Basic Law were meant to instill confidence in the future. How, may I ask, can those documents instill confidence if they cannot be invoked? And if they are invoked, how can that be confrontational?

The Administration will, I am sure, argue that it would be better to keep this agreement because it would continue after 1997. However, I consider the composition of the Court of Final Appeal and the Court's unrestricted power to invite overseas judges to sit on it more important than setting up the Court early. Hong Kong should not pay the price of restricted flexibility for setting up the Court in 1993. Of course, if the Court can be established with a proper and acceptable composition in 1993, all the better. If not, we should not be coerced into accepting the agreement. Until such time as the Court is set up properly, we can continue to enjoy the right of appeal to the Privy Council.

The Administration will also argue that if we do not accept this agreement, there will be uncertainty in 1997. But what is that uncertainty? The situation now is different from 1984, when Britain told us that our choice was either to accept the Joint Declaration or to have no agreement. This time, we know that we will have a Court of Final Appeal, come 1997 because the Basic Law provides for it. It is difficult to imagine a court structure that is consistent with the Basic Law that is less flexible than what we are faced with today.

The Governor has told us that the Administration wanted "a co-operative partnership" with this Council. That partnership must be one in which

Legislative Councillors have a voice. It cannot be a partnership where the Administration makes decisions and then expects us to endorse them automatically.

Even more so, Legislative Council cannot be a rubber stamp when the decision is not made by the Hong Kong Administration but by the JLG without consultation with this Council. The issue of the Court of Final Appeal is a case in point. The issue is important not only as a legal and commercial issue; it also has far-reaching implications for Hong Kong's present and future autonomy.

Unfortunately, these implications have not been fully appreciated by the British and Hong Kong Governments, resulting in a highly unsatisfactory agreement. They dealt with the issue as a numbers game. They proposed a composition of three Hong Kong judges and two overseas judges and contented themselves with a ratio of 4:1. This approach was fundamentally flawed. They failed to see the significance of the clear and unambiguous language of the Joint Declaration and the Basic Law. When you start off in the wrong direction, it is not surprising that you end up at the wrong destination.

The Joint Declaration provided that one of the features of a largely autonomous Hong Kong was an independent judiciary. It provided that "judges may be recruited from other common law jurisdictions" and that "the Court of Final Appeal..... may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal." The Chinese Government repeated those exact words of the Joint Declaration in the Basic Law promulgated last year. However, the agreement reached by the JLG now seeks to limit the Court's power to invite at most one overseas judge, a limitation not found anywhere in the Joint Declaration or the Basic Law. The agreement has altered the clear wording of those documents. This cannot be done without amending the treaty itself and without ratification of the amended treaty by Parliament.

The integrity of the judiciary is one of the pillars that underpins our economic success. It is true that countries such as China, Vietnam or Thailand, can also attract overseas investors. But what they offer is cheap labour. Hong Kong on the other hand no longer offers cheap labour. Instead, what attracts investors are our high-quality legal, banking, insurance, securities and other services, none of which can thrive without a sophisticated legal system. If we lower the quality of our judiciary, if our judiciary is no longer considered independent, if our judiciary's powers can no longer be exercised without interference then we will be putting at risk our own economic well-being.

Moreover, if the JLG can curtail one right given to Hong Kong by the Joint Declaration, what can prevent it from making similar decisions in future? Once we agree that Britain and China can limit what was agreed in the Joint Declaration, we will have created a most dangerous precedent for ourselves.

The suggestion has been made by Mr WU Jianfan, a mainland member of the Basic Law Drafting Committee, that if we do not endorse the JLG formula, then after 1997 China could enact a law to set up a Court of Final Appeal for Hong Kong.

Mr WU referred to Article 83 of the Basic Law which says, and I read it out "The structure, powers and functions of the courts of the Hong Kong Special Administrative Region (HKSAR) at all levels shall be prescribed by law." Mr WU said that the word "law" there refers not only to the laws of the HKSAR but also to law enacted by the National People Congress (NPC) and applied to Hong Kong through Annex III of the Basic Law.

If Mr WU's reasoning is right, China could enact legislation regarding many other spheres of activity in which Hong Kong has been granted autonomy. For example, this would mean that the NPC could enact legislation regarding Hong Kong's status as a free port and decide what tariffs may be imposed and then apply that law to Hong Kong; it would mean that the NPC could enact legislation regarding our monetary and financial systems and apply that law to Hong Kong; it would mean that the NPC could enact legislation regarding the issuing of currency in Hong Kong and apply that law to Hong Kong.

If you think I am exaggerating, let me refer you to other articles of the Basic Law where the words "prescribed by law" appear. Article 110 says "The monetary and financial systems of the Hong Kong Special Administrative Region shall be prescribed by law." Article 111 says "The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law." Article 114 says "The Hong Kong Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law." These few examples, and there are more, show how dangerous it would be for Hong Kong and its autonomy to accept Mr WU's line of reasoning. If we give way on the Court of Final Appeal, many other aspects of Hong Kong's autonomy will be in jeopardy.

It has also been suggested that allowing the Court greater flexibility to invite judges from other common law jurisdictions is contrary to the principle of "Hong Kong people ruling Hong Kong." With respect, I cannot agree. Such flexibility is, in fact, a clear manifestation of that very principle because the decision whether to invite, when to invite and whom to invite will lie in the hands of the Court alone. Nor do I believe greater flexibility is an infringement of China's sovereignty. The Joint Declaration was signed having regard to Hong Kong's unique situation and in recognition of "one country, two systems." Having overseas judges on our courts at all levels was clearly provided for in the Joint Declaration and the Basic Law and has unreservedly been accepted by China.

Mr Deputy President, the importance of a high quality Court of Final Appeal to the business community is very clear. Figures made available by the Administration for the years 1985 to 1989 show that when Hong Kong Court of

Appeal decisions were appealed to the Privy Council, more than 46% succeeded. In other words, more than 46% of the judgments of the Court of Appeal were overturned. Of the 41 cases heard by the Privy Council during that period, 23 were civil cases while only 16 were criminal cases. Thus, the business community has benefitted greatly from the right of appeal to the Privy Council. Termination of that right should, therefore, be of the gravest concern to them. Updated figures for the years 1990 and 1991 show that 18 cases from Hong Kong were heard by the Privy Council and six were overturned. In other words, one appeal out of three was successful.

After the link to the Privy Council is severed, where will these businessmen go for final adjudication? To secure investors' confidence, I believe there must be a body of distinguished jurists of a comparable stature to replace the Privy Council. We need the flexibility to invite judges of international renown to sit on our Court. Otherwise, the replacement for the Privy Council is likely to be the Hong Kong Court of Appeal in a different guise. This makes the whole exercise almost meaningless.

Let us look at the situation in other countries. Singapore has preserved a right of appeal to the Privy Council despite having been independent since 1957 although the scope of appeals has been gradually reduced. Malaysia only abolished appeals to the Privy Council in 1984. Australia, which won independence in 1901, continued to have a right of appeal to the Privy Council until 1986. Canada became independent in 1931 but continued to have appeals to the Privy Council until 1949. New Zealand, which became independent in 1931, continues to have unrestricted right of appeal to the Privy Council to this very day.

If, therefore, Hong Kong is to establish a court to replace the Privy Council in or before 1997, there must be flexibility to invite the most respected and reputable overseas judges here. As time goes on and our Court of Final Appeal gains recognition and stature, the need for overseas judges will diminish. Until we can produce sufficient jurists of a comparable stature, we should not tie the hands of the Court by curtailing its power to invite overseas judges to sit on it.

My purpose today is not to criticize, embarrass or to assign blame. I wish only to make an appeal.

I appeal to the Hong Kong Administration to do everything possible to impress upon officials in London and in Beijing the need for confidence in our system of justice, and the important role that jurists of the highest calibre with an international reputation must play in maintaining that confidence.

I appeal to the British and Chinese Governments to do what is best for Hong Kong. In the long run, what is good for Hong Kong will also be good for Britain and for China.

Most of all, I appeal to the Members of this Council, as sincere and honourable men and women who bear special responsibility for safeguarding the rights and intersts of the Hong Kong people to support this motion. There is no difference between this motion and the one passed at our In-House meeting on 25 October except that, in this motion, I leave open the date for setting up the Court. As I said earlier, we should not sacrifice composition and flexibility for speed. Whenever it is set up, in or before 1997, it must be in accordance with the letter and spirit of the Joint Declaration and the Basic Law.

I appeal to my fellow Legislative Councillors to ensure that the Court of Final Appeal is given the flexibility that it needs, a flexibility promised by both the Joint Declaration and the Basic Law.

With these words, Mr Deputy President, I move the motion.

Question on the motion proposed.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, I should first like to set out the Government's case for the agreement reached in the Joint Liaison Group on the establishment of a court of final appeal in Hong Kong before 1997. I should then explain the considerations which the Administration takes into account in opposing the motion moved by Mr Simon IP.

Let me begin by making one thing clear, that the Hong Kong Government was fully consulted on the agreement reached between the British and Chinese Governments on the court of final appeal. It has sometimes been alleged that somehow the British Government has reached this agreement with the Chinese Government behind our backs, that we have been sold down the river. This cannot be further from the truth. Specifically, the Hong Kong Government, and the Executive Council and the Judiciary, were fully consulted on the so-called four-one" composition of the court. We have concluded that such a composition, though not ideal, was workable and consistent with the Joint Declaration and the Basic Law. It was certainly not something imposed on us by the United Kingdom Government, least of all without our consent.

I believe it is no secret that our starting point in these negotiations was somewhat different from the eventually agreed formula. So why did we think it right to settle for the terms we did?

It is because we firmly believe that the overall interest of Hong Kong is best served by establishing, well before 1997, a court of final appeal capable of continuing unaltered beyond 1997. The agreement reached in the JLG secured for us the key objective of preserving the continuity of our judicial system. We must remember that the vesting of the power of final judgment in the courts of a non-sovereign territory is, to say the least, untried. The Joint Declaration and the Basic Law promise the vesting of that power in the Hong Kong Special

Administrative Region after 1997, not before. But we believe that it will do an immense amount of good to the confidence of the community, and in particular to the confidence of the business community, for such a power to be exercised successfully, and seen to be so, by a court in Hong Kong before the change of sovereignty takes place. Establishing a court of final appeal in good time before 1997 would enable that court to gain the experience, and build up its reputation over a number of years. It will above all be highly important that there should not be a break in the judicial system in 1997, either because the power of final judgment is then and only then exercised by a court in Hong Kong, or because such a court established in Hong Kong before 1 July 1997 has to be reconstituted on that date. In either case, there would be no certainty as regards its structure, its personnel, its mode of operation, and no means of satisfying anyone beforehand that such a court would operate successfully and independently. This cannot be in the interest of a smooth transition.

Thus, it is for the sake of certainty and continuity that some moderation of our aspirations for "greater flexibility" becomes necessary. To those who accuse us of knuckling under Chinese pressure, let them reflect carefully on the prospect of a court of final appeal of unknown quality, established only on 1 July 1997. Will that be better for Hong Kong? It is in the nature of negotiations, and I have been a negotiator for some years, that more often than not you will not achieve everything that you desire. We must be clear in our own minds what our overriding objective is, and on what issue it makes sense to compromise. I believe the agreement on the court of final appeal struck the right balance.

The so-called "four-one" composition of the court of final appeal is an entirely workable formula. It would in no way prejudice the independence of the court in the exercise of its judicial powers. Indeed any suggestion that judges in Hong Kong, some of whom have and will no doubt continue to come from other common law jurisdictions, are any less independent in the discharge of their judicial functions than judges anywhere else is a totally unsupportable and invidious assertion. Furthermore, I do not believe that we have compromised on any matter of fundamental principle. It was very clear to us, even at the start, that a court of final appeal in Hong Kong being composed of a majority of visiting judges would not be a viable proposition. The provisions of the Joint Declaration, which is a binding international treaty, cannot and should not be interpreted as giving the court of final appeal an unlimited power to invite as many visiting judges to sit on it as it wishes. To argue otherwise is to put a gloss on the Joint Declaration which cannot be supported by a proper interpretation of the relevant provisions of the Joint Declaration in accordance with the canons of international law. My colleague the Attorney General will elaborate on this point later. So we are really down to a difference between two visiting judges and one visiting judge. That cannot be a matter of fundamental principle.

I now turn to the considerations which we have regard to, and which I urge Members to bear in mind also in this debate. The wording of Mr IP's

motion is deceptively mild: it expresses a desire for the court of final appeal to have more flexibility, and such flexibility should be in accordance with the Joint Declaration and the Basic Law.

But let us not fool ourselves. The motion calls for a greater degree of flexibility when it is eminently clear that such an objective is unachievable without sacrificing the even greater, and indeed in my view paramount, objective of continuity and certainty. We have not come lightly to that conclusion. We reached that view after three years of hard-slogging negotiation. The motion in effect amounts to a call for renegotiation of the agreement when it has been made absolutely clear to us by the Chinese Government, both privately and publicly, formally as well as informally, that such a course of action will not be contemplated. Indeed I have just come from a meeting of the Joint Liaison Group, at which the Chinese side have made it absolutely clear that there would be no question of re-negotiation. So we must face the question squarely: do we wish to have an agreement which enables us to have a court of final appeal capable of continuing unaltered beyound 1997? Or no agreement, in which case maximum continuity of a judicial system across 1997 cannot be achieved?

I believe that it is right for us to stand firm on matters of fundamental principle. But the issue of "more flexibility" is not an issue of fundamental principle. Would it really be right to sacrifice the key objective of maximum continuity of our judicial system for something which is merely desirable, but not essential? Would it really be in the overall interest of Hong Kong to put at risk our efforts in the Joint Liaison Group to seek agreements with the Chinese Government in many other areas which are vital to the continued stability and prosperity of Hong Kong and a smooth transition? I do not believe that we should let the best be the enemy of the good.

The motion also focusses narrowly, and to my mind regrettably, on the number of judges from other common law jurisdictions who may be invited to sit on the court of final appeal. But that is only one aspect of a comprehensive set of measures which we intend to propose to this Council. These measures will include provisions to safeguard the independence and integrity of the court, so that judges of final appeal will be able to exercise their judicial functions free from executive interference. They will be set out very clearly in the Bill providing for the court which we are now drafting. As I have mentioned in an earlier debate in this Council, we will be sharing our ideas with Members, and the legal profession. When we introduce the Bill into this Council, that would be the right moment to pass your judgment on whether or not the arrangements which we propose are satisfactory.

Mr Deputy President, many Members will no doubt speak in this debate and express their preference for more flexibility for the court of final appeal. But I do hope Members will consider very carefully what they think is right in the light of the real situation. It is not just a question of more, or less, flexibility. Members should ask themselves whether it is right to put at risk the

key objective, secured by the JLG agreement, of setting up a court of final appeal well before 1997 which is guaranteed to continue unaltered beyond that date; or whether Members are willing to suspend their judgment for the time being until they have a chance to examine thoroughly the whole package of arrangements for the establishment of that court. I believe the latter course is the prudent course to take.

Thank you, Mr Deputy President.

MR ALLEN LEE (in Cantonese): Mr Deputy President, the replacement of the British Privy Council by a Court of Final Appeal in Hong Kong after 1997 is an issue of great importance. At the In-House meeting on 25 October, this Council has discussed the composition of judges in the future Court of Final Appeal and commented on the Sino-British agreement. The meeting requested me, as Senior Member of this Council at that time, to reflect to the authorities the majority views of this Council that the arrangement for inviting overseas judges to sit on the Court lacked flexibility and they hoped that a Court of Final Appeal would be set up by 1993. I have conveyed these two points to the authorities.

Today, I take part in this debate on Mr Simon IP's motion because I want to explain to this Council and the people of Hong Kong why I support the Sino-British agreement. Negotiations over the Court of Final Appeal issue went on for as long as three years before an agreement was reached. It was not reached within a short spell. As a matter of fact, the setting up of a Court of Final Appeal in Hong Kong is a matter of fact, the setting up of a Court of Final believed that the Court of Final Appeal was of paramount importance in maintaining Hong Kong's judicial independence. It, therefore, hoped that an agreement could be made with China so that a Court of Final Appeal would be set up before 1997 which would operate smoothly beyond 1997.

Also, the composition of overseas judges is finally agreed after repeated negotiations. The Hong Kong Government also intends to abide by the agreement to set up a Court of Final Appeal by the end of 1993 through legislation to be enacted by this Council. It is understandable that presently the majority of our Members share the view that the composition of overseas judges lacks flexibility. However, 1 hope that Members of this Council would think clearly whether there are really any problems in the operation of a Court in this form. Do we want to see that a Court of Final Appeal be set up in Hong Kong by 1993? Are Mr Simon IP, who moves the motion, the legal profession and some Members of this Council saying that if the composition is unsatisfactory, they would rather wait until 1997 and let China decide on the arrangement than accept the setting up of a Court of Final Appeal by 1993? We should not forget that China will be in the position to do that. I hope that Members of this Council will give careful consideration to this matter. This debate, I believe, will not be the final one. In the near future, when the Bill is presented to this Council, we will have to decide whether we would like to see a Hong Kong Court of Final Appeal being set up by 1993, which tallies with the agreed

composition of overseas judges, or to choose not to have a Court of Final Appeal and to make a decision until 1997. I personally believe that the earlier the Court of Final Appeal is established, the better for Hong Kong. I therefore support the existing Sino-British agreement and object to Mr Simon IP's motion.

MR STEPHEN CHEONG (in Cantonese): Mr Deputy President, I have a lot of doubts about the content and background of what is being debated today.

It is true that the motion does not say explicitly that the Sino-British Joint Liaison Group should reopen talks on the issue of the composition of the Court of Final Appeal. But to carry this motion would as good as put forth such a request. Representatives of the Chinese and British Governments sitting on the Joint Liaison Group have indicated that they would not reopen talks to amend the agreement and that the agreement does not conflict with the Sino-British Joint Declaration and the Basic Law. I am bewildered that today's motion should have been raised in the face of these two facts. I suppose all my colleagues understand what would happen if the Council should pass the motion today, which was proposed when the Chinese and British Governments had made known their stands and which would as good as reject the original agreement. Just think what would happen if one of our colleagues were to move that the Government should act according to today's motion during next week's regular meeting or when the draft legislation on the Court of Final Appeal is submitted to the Council for passage. Does the Hong Kong Government have any authority to overrule an agreement reached between two sovereign states? I really dare not imagine what would happen.

However, what would the main purpose of today's motion be if it were not to be adhered to when passed? If the motion had been intended to allow us to voice our opinions, would it have been so worded?

A high-ranking official of the Hong Kong Government is reported by the press to have said in late October that the Hong Kong Government wanted more flexibility regarding the ratio of local judges to overseas judges making up the Court of Final Appeal. Was such a remark the major driving force that triggered off this debate? I do not know the answer either. I only know that the Hong Kong Government and the Secretary for Constitutional Affairs, Mr Michael SZE, have stressed again and again for more than two months, even as recently as this Monday, that the agreement is acceptable and is not to be changed and that draft legislation will be submitted to the Council for examination shortly.

So what would happen if we should pass the motion today and also reject the Bill submitted by the Government later? Or let us imagine another scenario: Suppose we pass the motion today. Though China and Britain cannot reopen talks on the Court of Final Appeal, the Hong Kong Government amends its Bill according to our motion so that Hong Kong will immediately have a Court of

Final Appeal inconsistent with what has been agreed by the Chinese and British Governments. What a shock it would be to Hong Kong if after 1997 China were to insist on the validity of the agreement and thus change the composition of the Court of Final Appeal! What is more, problems will not wait until 1997 before they crop up, for the moment we pass this motion, China and Hong Kong will fall foul of each other and a period of mutual distrust and confrontation will begin. Smooth transition, which we have envisaged, will become an empty talk.

We have to weigh whether the decision made by Legislative Councillors today may sacrifice a smooth transition and a stable society which Hong Kong is otherwise able to enjoy during the transfer of sovereignty in 1997. I may be worrying too much, but we cannot simply ignore the consequences which may be brought about by the passing of today's motion. I absolutely believe that most of my colleagues are sincere since they have sworn to serve the people of Hong Kong. We shall definitely work for the future of the people of Hong Kong and minimize any shocks they may encounter in the future. I think whether they can enjoy a stable life should be our prime concern, since those who will not leave Hong Kong do not count their lives in spans of four years as do the terms of service at the Legislative Council. They want to live in a secure and stable environment for the rest of their lives.

Since its signing, the Sino-British Joint Declaration has often been quoted and mentioned. As a matter of fact, the Joint Declaration was the result of closed-door negotiations between the Chinese and British Governments. Since then, however, for reasons unknown, almost every agreement reached by the Chinese and British Governments has drawn criticisms from some people who invariably put up a negative attitude. The United Kingdom is the present sovereign state of Hong Kong and China is the future sovereign state of Hong Kong. The arrangements made by these two governments in a bid to maintain the stability and prosperity of Hong Kong during the transitional period, however, have been under constant attack. I do not know what it will lead to, but we can see that this trend of arguing has generated an atmosphere of uneasiness in society. Whether this atmosphere will dampen the spirit of Hong Kong people remains to be seen, but it definitely will affect Hong Kong's potential in its economic development.

Mr Deputy President, I am not a legal expert, and thus I can only try to analyze the situation from the point of view of an ordinary citizen. Following the announcement of the agreement by the Sino-British Joint Liaison Group, the Honourable Sir T L YANG, Chief Justice of Hong Kong and a world-renowned legal expert, has expressed that the composition of the Court of Final Appeal is acceptable and that there are definitely sufficient legal experts in Hong Kong to become judges of the Court of Final Appeal. Nevertheless, people in the legal profession hold opposite views. They say that to have the majority of Hong Kong's existing judges sit on the Court of Final Appeal is not in keeping with their expectations.

Where does the problem lie? Does it mean that people in the legal profession doubt the capabilities of the incumbent High Court judges and consider them incapable of making proper judgements according to the law? Sticking to one's own arguments is not the best way to solve the problem. The positive attitude should be to look further ahead, to consider future aspects and to begin tacking the practical issues.

The present arguments and criticisms in fact originate from a long-existing problem. It is the problem of not trusting each other, not in the least trusting China. In a society where the atmosphere of uneasiness looms, it is only natural that one develops a suspicious mind for self protection. If we, however, tackle every issue with this attitude, we shall easily drive ourselves to isolation where nothing can be done. To get rid of this psychological barrier, we should try hard to consider practical ways which can ensure the efficient operation of the future Court of Final Appeal. I consider that the most important and practical work for Hong Kong at the moment are: to do our best to ensure judicial independence, to draft a list of judges who may be invited to sit on the Court of Final Appeal as soon as possible, and to set up the Court of Final Appeal at the earliest time so that experience of its operation can be gained.

Last week I had a talk with a group of professionals and I would like to take this opportunity to relate to you some of their opinions. Many of my friends said that if Hong Kong's judiciary relied protractedly on inviting judges from overseas to sit on the bench, little headway could be made in training local talents in the field. A banker friend said that she used to impress upon her clients how independent, creditable and comprehensive Hong Kong's judicial system is, saying that it was better than those of some large cities; but harsh "criticism made by Hong Kong's legal professionals on the low standard of local judges had directly undermined the confidence of many local and overseas traders with respect to the signing of legal documents for their business transactions. Since those who have said all these are not celebrities, their opinions are not known to the public, but I do hope my colleagues here can consider carefully what have been said and the worry behind the words.

Mr Deputy President, now more than a month has lapsed since Legislative Council's In-House meeting held on 25 October. During this period the press has been covering quite a lot of the issue, relating clarification made by the Chinese and British Governments that the agreement reached is in no way a breach of the Joint Declaration and the Basic Law. Given such supplementary information, we should have a better understanding of the legitimacy and far-reaching impact of the agreement. It should also help us considerably when we are to decide how we would vote on the motion today.

Recently the press has often used the phrase "change stands" to describe Members' reaction to certain issues. This I cannot agree for it is not fair to take a handful for the whole sack. Moreover, very often before people make comments, they have not studied carefully all the points raised by the Members.

To categorize a Member merely by the way he casts his vote is indeed not fair to one who is not a star on the political stage. In my opinion Legislative Council Members should be primarily responsible to the public. They should have the public's long-term interest in mind whenever they utter a word, take an action or make a resolution. Members should not, for fear of being criticized for "changing stands", refrain from changing their viewpoints after having probed into, or gathered more information, on the issue. To maintain one's image at the expense of public interest is not a responsible attitude.

Like the Honourable Simon IP, I wish to appeal to my colleagues not to be afraid to "change stands". Even though you said you supported a certain motion on 25 October, after obtaining a full picture of the whole situation now, you do not need to stick to what you said earlier on.

With these remarks and wishing that my colleagues can carefully consider my arguments, I vote against the motion.

MRS SELINA CHOW: Mr Deputy President, Section III of Annex I of the Joint Declaration and Article 82 of the Basic Law provide for the Court of Final Appeal under the Hong Kong Special Administration Region Government in 1997.

In anticipation and preparation of that arrangement, the Chinese and the British Governments have accepted the merits of early set-up of the Court before 1997 in order that the judicial system here can benefit from a smoother transition regarding the transfer of the hearing of final appeal cases by the Privy Council to the Hong Kong Court. This intended objective was generally accepted to be in the interest of Hong Kong, and both Governments have acted accordingly reaching an agreement to enable an early set-up.

A decision was taken by the Executive Council to accept the agreement in its present form. As I was not a member of that Council when the decision was taken, I am not party to the collective responsibility which applies to that decision. I would therefore like to put forth my own views on the agreement in this debate.

Having considered all the information and views presented, I believe the agreement as it stands could be improved upon if more flexibility could be built into it to allow for more overseas judges, as this strengthens the guarantee for impartiality and expertise. This Court of Final Appeal is after all to replace existing arrangements under the Privy Council, which has historically commanded not only local but international confidence. The principle of the independence of the Judiciary is clearly recognized and supported in the Joint Declaration and the Basic Law. It is crucial that the integrity of the Court of Final Adjudication of our judicial system is adequately ensured as far as possible.

For this reason I support Mr Simon IP's motion, which puts forward the request for more flexibility.

However this support is qualified.

When the issue was first discussed at the Legislative Council In-House meeting, the resolution passed by that meeting asked for two things — more flexibility as well as a deadline for the setting up of the Court by 1993. Mr IP has chosen to leave out any mention of timing in his motion, but has made it plain that he is against the setting up of the Court before 1997 if his call for flexibility is not addressed.

I hold a different view, which I understand is shared by some of my "colleagues in this Council as well as some interested and informed individuals of our community.

If Mr IP's motion is carried today, then our hope for more flexibility should be put by the Hong Kong Government to both the British and the Chinese Governments for consideration. After all what is so wrong to ask to be heard by the two Governments which are committed to the betterment of our future?

However, if our request is not taken on board, then the choice should be presented to this Council again as to whether we should proceed with the setting up of the Court in 1993, albeit with limited flexibility, or to leave existing arrangements alone until 1997 thus running the risk of uncertainty and unknown change.

For the sake of Hong Kong, we will of course wish that our voice would be heard.

Equally for the sake of Hong Kong, we will have to satisfy ourselves and the people we serve that the choice we are able to make for them is the best available one.

Mr Deputy President, I support the motion.

MRS RITA FAN (in Cantonese): Mr Deputy President, the basic policies of China regarding Hong Kong are set out in paragraph 3 of the Joint Declaration. Section (3) of this paragraph states that the Hong Kong Special Administrative Region will be vested with the power of final adjudication. At present the Hong Kong Government does not have the power of final judgement which is exercised by the Privy Council. In Annex I of the Joint Declaration entitled Elaboration by the Government of the People's Republic of China of its basic policies regarding Hong Kong", reference is made to the power of final judgement and the Court of Final Appeal. It reads, "the power of final judgement of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal in the Hong Kong Special Administrative Region,

which may as required invite judges from other common law jurisdictions to sit on the court of Final Appeal." As discussions on the Court of Final Appeal have sustained for several years, the abovesaid wordings are not unfamiliar to us. I quote them simply to explain that the Court of Final Appeal promised by China is part of the judicial system of the Hong Kong Special Administrative Region to be established on 1 July 1997.

Hong Kong will now progress from not having the power of final adjudication to enjoying such power by 1997, and from depending on the Privy Council to establishing its own Court of Final Appeal. Moreover, the Court of Final Appeal will be set up in Hong Kong instead of in Beijing. All these are significant achievements in the embodiment of the spirit of judicial independence of Hong Kong. With a view to substantially and effectively strengthening the confidence in Hong Kong through such arrangement, the British side took the initiative to put forward the proposal for the early establishment of the Court of Final Appeal before 1997.

In order to strengthen the confidence in the territory, it has to ensure that the Court of Final Appeal set up before 1997 can still operate beyond 1997. In other words, there should be a "through train" arrangement. To solicit full support and agreement of the Chinese side, the British side should accept the requests by the former regarding the Court of Final Appeal established ahead of 1997 as long as they are workable and in line with the Joint Declaration. On this major premise and after lengthy negotiations, a consensus has been reached in principle as to the composition of the Court of Final Appeal, that is, at most one judge from other common law jurisdictions will be invited to sit on the Court of Final Appeal.

Today's motion requests greater flexibility in the appointment of overseas Judges. Of course, it will be ideal to have more flexibility, the "through train" arrangement as well as the power of discretion fully conferred to the Chief Justice of the Court of Final Appeal. Unfortunately, we cannot have all we wish.

We now have several options:

(1) To set up a Court of Final Appeal by the British and Hong Kong Governments alone and to invite more than one overseas judges to sit in each case to supplement the work of local judges.

(2) To seek a re-negotiation with the Chinese side.

(3) To shelve the issue of the Court of Final Appeal until the Sino-Hong Kong relation is improved.

(4) To accept the present proposal and implement it as soon as possible, hoping that the Court of Final Appeal can, through practice, acquire international recognition and build up confidence in our judicial system.

I believe that the first option, that is, to set up a court of Final Appeal all by ourselves, entails risks. If we go for this option, it is doubtful whether the Court of Final Appeal can still operate beyond 1997. Some people even say that there will not be a through train arrangement if this is to be the case. And whether a Court of Final Appeal without continuity can invite respectable and prestigious overseas judges to sit on it is also open to question. Moreover, as the Chinese side may think that the Hong Kong Government is using public opinion to confront with it, the Sino-Hong Kong relationship will perhaps further deteriorate to the detriment of the confidence in Hong Kong.

The second option, that is, to seek a renegotiation, is a one-sided wish as the Chinese Government has made it clear that re-negotiation is out of the question.

The third option, that is, to shelve the issue of the Court of Final Appeal, means no progress at all and the proposal of setting up the Court of Final Appeal before 1997 will be shelved indefinitely.

The fourth option, that is, to accept the present proposal and implement it as soon as possible, is to accept the constraints of reality and to achieve the best result under these constraints. This option ensures the continuity of the Court of Final Appeal. The price is not to invite more than one overseas judge while the prize is that the Court of Final Appeal can start operation in 1993. As regards the criticism that the proposal is in breach of the Joint Declaration, I think it is a matter of perspectives. It is just common that the understanding of a statement of members of the legal profession is totally different from that of others. I am not in the legal field and simply exercise common sense in reading the relevant parts of the Joint Declaration. I go for the fourth option because I believe that it does not contravene the Joint Declaration and is a feasible proposal.

What makes me uneasy is the uncertainty concerning the quality of performance of the Court of Final Appeal. When the issue of the Court of Final Appeal was discussed at the Legislative Council In-House meeting, I learned for the first time that 30% to 40%, or even up to 50%, of the sentences passed by the Court of Appeal in Hong Kong over the past several years have been overruled by the Privy Council. Being a layman rather than a legal expert, I instantly feel that the percentage is surprisingly high. Does it imply that there is room for improvement in the quality and knowledge of judges of the Court of Appeal in Hong Kong? According to the present proposal, three local judges other than the justice who will act as the Chief Justice are to be appointed from among justices of the Court of Appeal. I wonder if this will have impacts on the quality of the Court of Appeal in Hong Kong as well as its status in the international and judiciary scenes. Mr Deputy President, I have high regards for and trust the judiciary in Hong Kong. Yet, the figures I heard and the discussion and views made at the In-House meeting the other day made me worried. Before I had further understanding of the actual situation in respect of the British Privy Council's overruling of the sentences passed by the Hong Kong

Court of Appeal, I could only abstain from voting when a decision on the "subject of the Court of Final Appeal was made at the In-House meeting.

I obtained some latest information yesterday. In 1990, only two out of nine cases were overruled by the Privy Council. In other words, nearly 80% of the ruling of the Court of Appeal in Hong Kong were supported by the Privy Council. In the same year, the figure for New Zealand was 75% compared with 55% for the United Kingdom. Judging from the figures for the previous year alone, we can see that the performance of the Court of Appeal in Hong Kong is far better than the United Kingdom. In respect of the figures for the last five years, it can be seen that 40% of the sentences passed by the Hong Kong Court of Appeal is overruled by the Privy Council compared to 39% for the United Kingdom, 37% for Singapore and 30% for New Zealand. In fact, it is common that 30% to 40% of the sentences passed were overruled. Though figures alone cannot give us the whole picture, I no longer worry about the quality of the judges of the Court of Appeal in Hong Kong. And I need not abstain from voting again.

Mr Deputy President, in a world of reality, we sometimes have to pay a price for accomplishing a job under practical constraints. Today's motion aims to remove these practical constraints and reopen negotiation, failing which it prefers not to have a Court of Final Appeal before 1997. I think the former is unrealistic at this stage. As regards the latter, I regret to say that "it is difficult to have a job done but easy to spoil it."

Mr Deputy President, I oppose the motion.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, the Sino-British Joint Liaison Group's agreement on the Court of Final Appeal in Hong Kong has immediately sparked off an outcry from the public, especially among the legal sector, not so much because of the ratio of overseas and local judges sitting on the court being 1:4 or 2:3, but because of the fact that any provision or restriction to this effect will go against the original spirit of the Joint Declaration and the Basic Law. What is more striking is the fact that the Chinese and British Governments, without being made fully aware of the practical situation in Hong Kong and the prerequisites for setting up the Court of Final Appeal, have made the choice for Hong Kong people between hastily setting up a Court of Final Appeal in 1993 and allowing flexibility in the composition of its judges. No wonder the agreement reached is nothing like what it should be.

I believe the Government should bear the blame for plunging Hong Kong into the present awkward predicament because it has treated public consultation "a bit too lightly at the outset. As a matter of fact, the two legal bodies have already made known to the Administration their stance on the Court of Final Appeal as far back as early 1988. However, their views on the composition of the Court had been interpreted out of context and taken to mean the baseline for

a political compromise insofar as the legal profession is concerned. Since then, JLG talks have got tied down by quibbling over the early setting up of the court and the ratio of overseas and local judges. But in fact, there is no either-or situation between the two and we cannot exchange one for the other. The Government also failed to consult the two legal bodies on the British Government's baseline shortly before the agreement was reached. And after the JLG's announcement, the Hong Kong Government again underestimated the strong public reactions, especially among the legal sector, as well as China's firm stance that the agreement cannot be altered.

As far as negotiation tactics are concerned, since the Hong Kong Government has treated this issue too lightly and put some misleading messages across, it has undoubtedly given the Chinese side a chance to take advantage of this weakness and to emerge victorious in the negotiations. However, practically speaking, the hard-line stance which the Chinese side has taken to obtain the agreement will only increase the difficulty in establishing the independence and authority of the future Court of Final Appeal. In the end, Hong Kong will have to suffer what adverse effects it may have. Therefore, I sincerely hope that the Chinese side will allow more flexibility in the appointment of judges, taking into account the unique circumstances for setting up a Court of Final Appeal in Hong Kong and the backlash the agreement has created among Hong Kong people, especially the legal profession and overseas investors. In fact, the Joint Declaration and the Basic Law have vested in Hong Kong the power of final adjudication, which has reflected the flexibility already taken by the Chinese side in recognition of our needs. Why is it that what could be done before the June 4 event in 1989 cannot be done now?

Mr Deputy President, though I consider that today's motion debate has come at a time most unfavourable to us, I am duty-bound, as a Member of this Council, to reflect the views of the general public as well as members of the legal profession. Therefore, with these remarks, I support the motion.

MR MARTIN LEE: Mr Deputy President, at the outset, I would like to make clear that I fully support the points made by the Honourable Simon IP as to the need both to preserve the integrity of the Hong Kong judiciary and to establish a Court of Final Appeal that will be of the highest quality and be able to command the unquestioned confidence of the community, and I will not reiterate his points. Rather, I will focus today on the vital constitutional questions at stake on this issue.

The agreement between the British and Chinese Government on the structure of the Hong Kong Court of Final Appeal represents in striking terms the degree to which the two governments have departed from the Joint Declaration: in letter, in spirit, and in process. Rather than seek to establish the promised system of Hong Kong people ruling Hong Kong with a high degree of autonomy, the two governments are now making decisions on Hong Kong's internal matters without even consulting us and then trying to ram those

decisions through this Council in the face of the overwhelming opposition from the representatives of the people of Hong Kong.

This new agreement violates the letter of the Joint Declaration. The clear wording of the Joint Declaration, which is repeated in the Basic Law, gives the Court of Final Appeal the unfettered discretion to invite overseas "judges" in the plural to sit in that Court. For the British Government to claim that this new agreement — which only allows for at most one overseas judge to be invited — is consistent with the Joint Declaration is highly disingenuous and serves only to insult the intelligence of the people of Hong Kong. I call upon the Attorney General to explain to this Council how he could seriously interpret this new agreement as not being in breach of the clear language of the Joint Declaration and the Basic Law, particularly when both the Bar Committee and the Council of the Law Society of Hong Kong think otherwise. Indeed, even the Bar Council of England and Wales has issued a statement in support of the views of the legal professions in Hong Kong. This kind of legal interpretation by twisting the clear language of a written instrument can only bring disrepute to the legal profession.

By this new agreement, the British and Chinese Governments have rewritten their promises given to us in 1984. This new agreement is indeed a Sino-British Joint Breach of Declaration. Such a rewriting of the Joint Declaration is truly frightening to the people of Hong Kong, for it opens the nightmarish possibility that other core promises of the Joint Declaration will be taken away by the two governments under the guise of "treaty reinterpretation." Coming closely after the Memorandum of Understanding on the Airport reached a few months ago, this new agreement makes the people of Hong Kong wonder how many more Sino-British agreements will be reached over the next six years to reduce the Joint Declaration into a litany of broken promises.

Both before and since reaching this new agreement, moreover, the British Government has shown a high-handed contempt for the opinions of the people of Hong Kong and of Members of this Council. Even though it is this Council that has the responsibility for scrutinizing and approving any legislation to establish the Court, the British administration here never even bothered to consult this Council. "Take the agreement entirely as it is, or you won't have anything at all," the colonial administration arrogantly asserts. "You are wasting your time debating the issue today, for we will not change the agreement no matter what you say." Rather than respect the opinions of Honourable Members, the British Government seems to wish to strip this Council of its legislative and supervisory duties. They see this Council only as a rubber stamp whose function is to enact whatever agreement London and Beijing deign to reach. Such an attitude makes a mockery of the so-called partnership" that the Governor said he wished to see develop between this Council and the Executive.

The irony of the British attitude is that the matter in question is one that should be entirely for Hong Kong to decide. For, it is important to emphasize that the establishment of the Court of Final appeal relates to neither defence nor foreign affairs. While we do need the British Government to repeal the relevant Order-in-Council allowing for the right of appeal from Hong Kong to the Privy Council in London, the structure of the Court of Final Appeal is an internal matter that is within Hong Kong's autonomy under the terms of the Joint Declaration and the Basic Law. And this is the crucial point which both the Secretary for Constitutional Affairs and the Honourable Allen LEE have missed, for we can legitimately establish a Court of Final Appeal before 1997 with or without the agreement of the People's Republic of China.

The freedom for the Court to invite overseas judges as required is clearly set out in both the Joint Declaration and the Basic Law. Within the parameters set by these two documents, Hong Kong has full discretion to establish the Court as it sees fit. The Basic Law further emphasizes Hong Kong's responsibility to decide the form and functions of the Court in Article 83, which states: "The structure, powers and functions of the courts of the Hong Kong Special Administrative Region at all levels shall be prescribed by law." According to Articles 82 and 83 of the Basic Law, if we were to wait until after 1997 and allow the SAR Government to establish the Court of Final Appeal, Beijing would have absolutely no right or power to intervene in the SAR's decision. Why, then, are we now in 1991 giving Beijing a right to exercise a veto on the flexibility of the Court to invite overseas judges when Beijing would possess no such right after 1997?

It is true that nothing in the Joint Declaration requires the Hong Kong Government to establish the Court of Final Appeal before 1997; but at the same time, there is nothing in the Joint Declaration that in any way prevents it from doing so. If the Hong Kong Government does enact legislation before 1997 to establish a Court of Final Appeal with the flexibility to invite overseas judges, the PRC Government has no power under either the Joint Declaration or the Basic Law to repeal such legislation, except on the grounds that the legislation is contrary to the Basic Law. Given the extraordinarily clear language in Article 82 allowing the Court to invite overseas judges as required, it is impossible to see how legislation granting the Court such flexibility could in any way violate the Basic Law. Indeed, I would like to pause at this point and ask the Attorney General that if we were to establish a Court of Final Appeal next year and give that Court the flexibility to invite overseas judges as required, what power under the Joint Declaration or Basic Law could the PRC Government use on 1 July 1997 to dissolve such an existing Court?

The British side has argued that because the Court would extend beyond 1997, it was necessary to secure an agreement with the PRC before Hong Kong could establish that Court. Such an argument, however, ignores the Joint Declaration and the Basic Law, which do not give the PRC any power to invalidate any Hong Kong laws except those that are in conflict with the Basic Law. Let us just analyse where the British logic will lead us. According to this

argument, the Hong Kong Government cannot enact any law that extends beyond 1997 — and virtually every law does so — without first obtaining the consent of the PRC for fear that the PRC might revoke such a law in 1997, in spite of the guarantees in the Joint Declaration and the Basic Law.

Indeed, the PRC had stated its opposition on several occasions to the Bill of Rights and threatened to repeal it after 1997. Should we have waited for London and Beijing to hammer out an agreement on the Bill before we in Hong Kong would enact any legislation in this vital area? If no, then I would like to ask the Attorney General to explain to us why it was thought necessary to secure an agreement between London and Beijing on the Court of Final Appeal but not on the Bill of Rights?

What then is the way forward? The direction we must take is clear. Britain and China should continue to use the Joint Liaison Group to discuss matters relating to defence and foreign affairs as well as the procedures to be adopted for the smooth transition in 1997, and I emphasize this word procedures" for this is the word used in the Joint Declaration. As for the internal affairs of Hong Kong, such as the establishment of this Court, they must be for Hong Kong to decide, both before and after 1997 with or without the agreement of the PRC.

Since China will be the sovereign state over Hong Kong after 1997 and since the PRC has such a large economic interest in the territory, clearly China will be very concerned about the decisions we make. We must therefore be prepared to have a constructive dialogue with the Chinese side and to listen to their opinions. Whether we like it or not, it appears the PRC will seek to influence our decisions on all matters large and small — be they town planning, infrastructure, human rights law, or even the committee system of this Council — yet at the end of the day, we must have the courage to stand up and do what we believe to be in the best interest of Hong Kong. For its part, the British Government must respect our decisions.

I therefore call on the Members of the Executive Council to recognize that they have erred badly in capitulating to this Sino-British agreement, and to make amends for their mistake by reconsidering their decision in light of the overwhelming public opposition to it. The near-total silence of the Executive Council Members, and particularly, the Senior Member, on this issue in the two months since this new agreement — despite the much-vaunted policy of collective responsibility — has made it evident that at least some Executive Council Members are opposed to this sell-out of Hong Kong's autonomy and judicial independence. If this motion is passed today, I sincerely hope that Members of the Executive Council would heed the view of Members of this Council and the community at large and formulate a policy on the Court of Final Appeal that is truly in Hong Kong's interests.

After doing so, I hope the Executive council will soon present this Council with a Bill on the Court of Final Appeal that accords with the Joint

Declaration and the Basic Law. Although this motion does not state a year for the establishment of the Court, Members had resolved in the In-House meeting five weeks ago that they would like to see the Court established by 1993, and all the major professional organizations support such a time frame. If the Court is established in 1993, it will have four years to establish a reputation for itself as a court of the highest standard comparable to that of the Privy Council. During these four years, the PRC will see clearly how important such a court is to the continued economic presperity of Hong Kong. I am confident that come 1 July 1997 a Court of Final Appeal with the flexibility and autonomy provided for in the Joint Declaration and the Basic Law will indeed continue to be the Court of Final Appeal for the Hong Kong Special Administrative Region.

Mr Deputy President, I would like now to deal with some of the points made by the Administration to the mass media before the debate, some of which have been repeated in this debate by the Secretary for Constitutional Affairs. But before I do so, I wish to say that I agree with your decision, Mr Deputy President, to give the floor to the Secretary right after the Honourable Simon IP because this enables Honourable Members to hear both sides of the argument in the first two speeches, thus making the ensuing debate a much more meaningful one. I trust, however, that this will not be a one-off situation in favour of the Administration only, but the beginning of a permanent practice of allowing an opponent of the motion to speak immediately after the mover of the motion.

Perhaps the most disturbing argument advanced by the Secretary is his assertion in a letter sent to some legislators which he more or less repeated in his speech today that "deferring establishment of the Court of Final Appeal to 1997 will result in a court fashioned entirely to Chinese liking." Such statement is truly alarming, for as I discussed earlier, the establishment and structure of the Court after 1997 is entirely up to the HKSAR under the Basic Law.

Time buzzer buzzed.

DEPUTY PRESIDENT: Mr LEE, I will regard this as an exceptional circumstance as you are dealing with points raised by the Secretary in a speech following Mr IP's, which has departed from tradition; so I would not hold you strictly bound by the 15-minute rule.

MR MARTIN LEE: I am much obliged, Mr Deputy President. Yet, the Secretary is now saying that after 1997 the HKSAR will not truly be able to exercise the autonomy promised to it under the Joint Declaration and the Basic Law. Rather, the PRC will be able to fashion Hong Kong's internal affairs entirely to its liking"! What does this mean? Does the Secretary truly mean to say that the Government has no confidence at all that the PRC will honour the Basic Law? I hope the Administration will clarify this point.

In conclusion, may I ask the Administration to inform this Council as to how it would like Members of this Council to be its partners in light of this new agreement. Soon after the Chief Secretary learned of our decision reached in our In-House meeting on 25 October 1991, he announced, quite properly, that the Administration would take up the matter afresh with Beijing. But as soon as he heard of Beijing's position, namely, that this matter is not renegotiable, he immediately announced, quite wrongly this time, that the Administration would no longer seek to renegotiate with Beijing. May I ask the Administration whose partner it thinks it is? This Council's partner or Beijing's partner? Or does it say that it is partner to both — Beijing being the predominant partner, the Administration being the subservient partner and this Council being a partner in name only? As to that, I can only say: "Shame on you, partner!"

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy President, the agreement reached by the Sino-British Joint Liaison Group on the establishment of the Court of Final Appeal in Hong Kong is significant in a way that it affects the smooth transfer of sovereignty in Hong Kong and the international credibility of our judicial system after 1997. As to whether the agreement reached between China and Britain will facilitate the realization of the above two objectives, people have completely different views and to this moment, there seems to be difficulty in coming to any definite conclusion on the merits of each of these viewpoints.

Yet the motion for debate today has adopted a negative attitude about the agreement reached between China and Britain. No matter what the original intention is in moving the motion today, it will certainly lead to a distrust of both China and Britain by our Members and greater confusion in public opinion when views expressed by Members of this Council are indiscriminately taken as the general view.

"The tree may long for calmness, but the wind will not subside" is the best pen picture we could have for the present political situation in Hong Kong. The tripartite relation among China, Britain and Hong Kong has gone through many hiccups since the June incident in 1989. It once dropped to the lowest point in the contention concerning the new airport, dealing a heavy blow to our confidence as international investors were discouraged from making investments in Hong Kong. It is worth our second thought as to the role our colleagues in this Council have played in the contention about the new airport.

The new airport issue was then resolved, but not without difficulties, and it brought China and Britain together to conclude the Memorandum of Understanding. With the visit of the British Prime Minister, Mr John MAJOR, to Beijing and his personal presence there to sign the Memorandum, China, Britain and Hong Kong took a great step forward in improving their relationship. It was particularly evident in the work of the Joint Liaison Group, which is now back to normal after a long break.

Mr Deputy President, I hope that Members of this Council will realize that the agreement on the Court of Final Appeal was reached after the visit of the British Prime Minister, Mr John MAJOR, to China, at such time when China and British had mended their fences and meetings of the Joint Liaison Group were called again as usual. In other words, the agreement on the Court of Final "Appeal itself signifies the spirit of the Chinese and the British Governments to co-operate again to solve the problems faced by Hong Kong during the transitional period.

Under these circumstances, should the motion be carried today in this Council to disapprove the agreement reached between China and Britain in their resumed talks, it would certainly strike a new blow to the tripartite relation and drive the situation to the deadlock we experienced before the Memorandum was signed. It may even lead to greater misunderstanding between China and Hong Kong, as well as greater misunderstanding about our colleagues in this Council, which would be detrimental to the interests of Hong Kong as a whole. I believe that most people in the industrial and commercial sectors would not welcome such a development.

Mr Deputy President, there is a Chinese saying which refers to "rash and superficial consideration". According to the "Hereditary House of Zhao" in the Records of the Grand Historian of China", "For a mean person, once he is obsessed with certain wishful thinkings, he will plot with rash and superficial consideration, seeing only the advantages obtainable and disregarding the possible disadvantages incurred".

With these remarks, I oppose the motion.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, as I have said before, the debate on the motion today is absolutely unnecessary. On the one hand, it cannot help in any way to take the matter forward; on the other hand, the Council had already discussed the subject at a previous In-House meeting when individual Members clearly expressed their attitudes towards the issue. Since the motion has been proposed, I nevertheless reiterate my views and stance.

Many people focus the controversy over the Court of Final Appeal issue on "flexibility". I think, however, that the crux of the matter is not so much whether there should be flexibility but rather some people want to engage more overseas judges. In other words, the so-called flexibility means the flexibility to engage more overseas judges". Were it not for a greater number of overseas judges, the question of whether there is flexibility or the degree of flexibility will not be significant at all.

But what degree of flexibility are we asking for, or, in other words, what is the greatest possible number of overseas judges that can be engaged? Does it mean that it should amount to five before it is considered flexible? If the

answer is in the affirmative, I would suggest that we might as well flatly demand to have the flexibility to ask the Privy Council to be responsible for final adjudication. If it is as flexible as this, are we not quite clear about the nature of such a Court of Final Appeal?

At present, the most important argument put forward for opposing the Sino-British agreement on the Court of Final Appeal is that the agreement contravenes the Basic Law and the Joint Declaration. However, if opposition to the agreement is truly from a purely legal angle, why is the problem tackled by political means as it is? If it is purely a legal issue, we should seek clarifications from the Standing Committee of the National People's Congress (NPC) concerning the relevant provisions of the Basic Law because only the NPC Standing Committee has the power to interpret the Basic Law. It is not appropriate to try to solve the problem by exerting political pressure as the present case is. The motion in effect turns the issue of the Court of Final Appeal into a political one.

As for the genuine reasons for preferring more overseas judges, I believe there are mainly two. First is a lack of confidence in local judicial personnel. It is felt that their calibre is not high enough to handle fully the work of the Court of Final Appeal. However, those holding such a view cannot state specifically the qualifications and calibre required of Court of Final Appeal judges. Neither can they provide sufficient evidence to confirm the condition of our current judicial team. Is it really true that we cannot even identify a few persons in the local judiciary who possess the qualifications and calibre of the Court of Final Appeal judges? Therefore, I am indeed puzzled. Moreover, did the Honourable T L YANG, our Chief Justice, not say that there would be sufficient talents in Hong Kong to become judges of the Court of Final Appeal?

The second reason for wanting more overseas judges to sit on the Court of Final Appeal, which is the more important reason, is the worry that judicial independence will be interfered with after 1997. Therefore it is hoped that more overseas judges would help to resist such an intervention. This is also apparently turning the issue of the Court of Final Appeal into a political one.

Hong Kong is now at the turn of history. Therefore, some people hope to reduce the shocks by using what they think the most reassuring means possible, such as making it possible for the Court of Final Appeal to engage more overseas judges. But the point is, would overseas judges be of any assurance if we were really that diffident about our future? The answer should be in the negative. Moreover, China is aware of such worries and has made quite a big compromise to indicate her sincerity in upholding Hong Kong's judicial independence. Apart from allowing the Court of Final Appeal to be set up in Hong Kong, China also allows for one overseas judge to sit on the Court of Final Appeal; moreover, other than the Chief Justice of the Court of Final Appeal, there is no restriction on the race and nationality of the other Court of Final Appeal judges. Indeed, what other sovereign state would allow its own power of final judgement to be vested in a foreign national who will also enjoy

the power to interpret certain legal documents carrying constitutional status? Furthermore, the Court of Final Appeal as provided for by the Joint Declaration and the Basic Law refers to the Court of Final Appeal of the Special Administrative Region after 1997. The fact that China accedes to advance its establishment to 1993 is obviously a great compromise. I think it is extremely unfair if we just turn a blind eye to these important compromises made by China in preserving the confidence of Hong Kong people; it will also jeopardize the relation between China and Hong Kong.

The establishment of the Court of Final Appeal in Hong Kong before 1997 involves the matter of transition. Naturally it requires an agreement to be reached between China and Britain through negotiation and compromise and decisions cannot be made unilaterally. What we have achieved so far by negotiation, I believe, will offer sufficient guarantee to our judicial independence and boost the confidence of Hong Kong people. On the other hand, it also preserves China's dignity as a sovereign state. Therefore I think the agreement is acceptable. Now that the agreement is a *fait accompli*, the negotiating parties should have the obligation and responsibility to carry through and implement the agreement.

Moreover, we must bear in mind that since Hong Kong will be a Special Administrative Region under China, important posts like the judges of the Court of Final Appeal should logically be filled by Chinese citizens as these judges will not merely be consultants but hold the power of final judgement. Even the present agreement should only be a transitional arrangement.

Mr Deputy President, with these remarks, I oppose the motion.

5.03 pm

DEPUTY PRESIDENT: I propose to rise for 20 minutes.

5.27 pm

DEPUTY PRESIDENT: Council will resume.

MR MOSES CHENG (in Cantonese): Mr Deputy President, in participating in today's motion debate, I would first try to see if we have any common goals. I am convinced that anyone or any party concerned will agree that Hong Kong needs an independent and respected judicial system and that Hong Kong's success depends on the fact that judgements passed by its courts are internationally accepted and respected. So in setting up the Court of Final Appeal, we will also be working towards this goal.

The question is what course we should take in order to achieve this goal.

On this very important issue of setting up the Court of Final Appeal, we should not play any political games, nor should we handle this issue in a casual attitude. We should bear in mind the benefits of the citizens of Hong Kong and carefully consider the priorities involved in the handling of this issue.

Most people in Hong Kong will agree that in order to maintain Hong Kong's prosperity and stability, Hong Kong should set up the Court of Final Appeal at an early date. In the JLG meetings, the British and Chinese Governments had also conducted a number of discussions on the issue of the setting up of the Court of Final Appeal. In a public announcement made on 27 September 1991, it was also stated that both Governments had in principle reached an agreement on the issue. The Hong Kong Government could thus start preparation for the setting up of the Court of Final Appeal, with a view to setting up the Court of Final Appeal by 1993 or before.

I am all in favour of setting up the Court of Final Appeal in Hong Kong at an early date. As for the reasons for supporting this view, I believe all Members must have already known about them and I do not intend to make any repetitions here. However, I must point out that whether the Court of Final Appeal can be set up in Hong Kong at an early date is a responsibility that will be equally shared by each and every member of the Legislative Council. Everyone of us should be fully aware of the importance of setting up the Court of Final Appeal at an early date. Everyone of us should therefore try our best to ensure that the Court of Final Appeal can be set up at an early date.

When I studied the above agreement in depth, I found that in future there would be a fixed composition of local and overseas judges in the Court of Final Appeal. I immediately felt that there might be a problem in this respect. However, I must point out that the flexibility in the composition of judges is not a problem of the political system, neither is it a problem of sovereignty. It is a potential technical problem in the daily operation of the Court of Final Appeal when it is set up in future. And in today's motion debate, I want to, once again, bring up this technical problem for consideration.

According to my understanding, the future Court of Final Appeal will take the place of the Privy Council in Hong Kong's judicial system and become its highest court of appeal. In other words, any legal issue or litigation once is heard in the Court of Final Appeal, its decision will be final. As a result, judges who sit on the Court of Final Appeal must have profound knowledge and experience in the various legal problems involved in the cases they are hearing. As they are experts in handling these legal problems, their rulings will be authoritative and will be respected.

Development in Hong Kong over the past several decades has been nothing but spectacular, particularly rapid has been that in the business sector. Judicial services as well as the arrangements for trial of cases are also becoming specialized. The types of cases brought before various courts have increased. Therefore, to handle some comparatively specialized legal problems, the Court

of Final Appeal, after its establishment, will inevitably invite experienced judges with the necessary expertise from other common law jurisdictions to form the Court of Final Appeal to hear such cases.

In the Joint Declaration as well as the Basic Law, there is a provision reflecting such a need. The Provision reads: "The Court of Final Appeal ..... may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal."

In my humble opinion, in the legislation to establish the Court of Final Appeal, we can have the same stipulation regarding the invitation of judges form other jurisdictions. If we do, there does not appear to be any problem; and the matter of flexibility which is discussed in today's debate will also be taken care of.

What puzzles me tremendously is the technical problem as I mentioned earlier on that might arise during the operation of the future Court of Final Appeal. I do not understand by what criteria we decide whether or not foreign experts are required to participate in the trial of a case, or how many of them are required for that matter, before we know (the nature of) a case and the legal problems it involves. If the legislation for the establishment of the Court of Final Appeal must rigidly provide that no more than one foreign expert may be invited, as a legal practitioner myself, I can imagine and understand that there will be a problem if there happens to be a case in the future which involves two comparatively specialized legal problems, such as those concerning marine law, sea transport insurance or aviation law, and if it also happens that no one among the locally appointed judges of the Court of Final Appeal possesses considerable knowledge and experience in such fields. If the flexibility as provided in the Joint Declaration and the Basic Law is suitably incorporated, I believe that such a technical problem is not difficult to resolve.

I think the issue confronting us is not a one relating to the political system as some people may like to think, nor does it involve the sovereignty of a country. It can be settled without going through any political channel or resorting to any contravention of the agreement reached between two countries. The technical problem as I identified can also be resolved pragmatically when the Court of Final Appeal is in operation. To actively stress a problem is not the best solution. This may also distract us from an issue which better needs our attention, that is, how the Court of Final Appeal can be established in Hong Kong at an early date.

If I am asked how I feel right now, I would like to share with Members some experience I have gained as a lawyer over the past many years. Very often we have clients who refuse to accept what best professional opinion we are trying very hard to give them; and we know that if they do not accept the opinion, there will be problems in the future. Unfortunately, I am only the lawyer in such cases and not a litigating party. However, I never gave up, I

always continued untiringly to offer my opinions to my clients, hoping that they would one day appreciate and accept my opinions.

Mr Deputy President, from the points I have made, everybody knows that I am for the spirit of the motion. However, I hope to take this opportunity to call on all parties concerned to continue to find ways to set up the Court of Final Appeal in Hong Kong at an early date.

MR ANDREW WONG (in Cantonese): Mr Deputy President, may I start by stating clearly that I support today's motion because I frankly admit that the agreement reached by the Chinese and British Governments is far from satisfactory. No matter when the Court of Final Appeal is established in Hong Kong, be it today or in the near future, we do not have sufficient well-qualified local judges to sit on it for the purpose of building up a stock of sound precedents for future reference. The authority and expertise of the judges sitting on the proposed Court of Final Appeal should be comparable to those of the judges on the British Privy Council which is to be replaced. Obviously, the standing of local judges falls far short of what is required of the judges in the Privy Council. The setting up of a substandard Court of Final Appeal serves no great purpose for Hong Kong.

Although the debate on the Court of Final Appeal focuses on the flexibility of its composition, I consider that the crux of the issue is the time for setting up the Court of Final Appeal. I believe that apart from a small minority of submissive yes-men, most people of Hong Kong are of the opinion that the Court of Final Appeal should be set up as soon as possible to build up precedents for Hong Kong before 1997 as this would have far-reaching implications for our future. Furthermore, the early establishment of the Court of Final Appeal enables the public and international investors to observe its operation at an early date. They would then have an idea of how the judicial system of Hong Kong works after 1997 and would not fear the drastic changes with the advent of 1997. This is totally in line with the concept of "through train" which we fully support and is beneficial to maintaining confidence, stability and prosperity during the transitional period.

However, as I have just said, Hong Kong lacks high quality judges to sit on the Court of Final Appeal. Greater flexibility regarding the composition of the Court of Final Appeal is needed so that an adequate number of overseas judges can be invited "as required" (to quote the Joint Declaration and the Basic Law) subject to the situation of every quarter and/or the merits of each individual case. The quality of the judgement can thus be guaranteed. Since the Joint Declaration and the Basic Law allow such flexibility, I do not see why such provision cannot be incorporated into the legislation on the Court of Final Appeal to bring such flexibility into full play.

Mr Deputy President, I believe many people will agree that in the run-up to 1997, we do not have to face great economic and social problems. However,

in terms of political structure and judicial system, the problem is tremendous. This is particular the case with our judicial system where we are now faced with an unprecedented problem of fusion of two completely different systems of Chinese law and common law.

I earnestly hope that the Court of Final Appeal can be set up at an early date to allow a smooth fusion of the two systems within the context of the agreement reached between the Chinese and British Governments. Unfortunately, the agreement reached is unsatisfactory.

Mr Deputy President, I wish to point out that Annex II of the Sino-British Joint Declaration states that the functions of the Joint Liaison Group shall be to discuss matters relating to the smooth transfer of government in 1997. The establishment of the Court of Final Appeal is obviously a matter of such category. At present each side of the JLG can put up a matter on the agenda for discussion. If the JLG cannot come up with an agreement, the matter will be referred by either the British or the Chinese side or both of them to the Chinese and British Governments to be resolved at a diplomatic level.

Here, I would like to put forward a proposal which is flexible and does not differ greatly from the present agreement. I have said of this proposal in an RTHK programme. I am of the view that the four permanent judges of the Court of Final Appeal (including the President of the Court) may, each time before the Court sits or before the commencement of a Legal Session, select five judges (including non-permanent local judges and visiting overseas judges) to constitute the Court of Final Appeal, or the four permanent judges (including the President) may select any four judges from the local or overseas benches, who together with the President will constitute the Court of Final Appeal to hear a case or cases within a Legal Session. To comply with the provision in the Basic Law, the appointment of non-permanent judges so selected can be recommended by the Judicial Service Commission and made by the Governor with the endorsement of Legislative Council and after 1997 such appointment should be made by the Chief Executive with the endorsement of the Legislative Council and reported to the Standing Committee of the National People's Congress for record.

Mr Deputy President, while giving support to the motion, I must point out that I have strong reservation to it.

I support the motion simply because it tallies with my idea of a Court of Final Appeal. It calls for more flexibility to invite overseas judges to sit on it than has been agreed by the Joint Liaison Group. I do not ask for a renegotiation. Since an agreement has been reached and the people of Hong Kong think that it is unsatisfactory, I wonder whether the Chinese and British Governments might reconsider carefully an amendment to the agreement with the interest of the people of Hong Kong in mind? Mr Deputy President, my reservation is based on the following reasons:

(1) As a matter of fact, most of the views within this Council have been expressed at the In-House meeting on 25 October. Why, then, should we bother do have this debate today? Does it only want to show that the the agreement is not satisfactory? Or do we just want to say that we would rather not have the Court of Final Appeal before 1997 if we have to follow the arrangements of the agreement? Or do we want to drive home the point that our views must be listened to in the setting up of the Court of Final Appeal and run the risk of having it dissolved by the Standing Committee of the National People's Congress in 1997? At this time of tension, it is unwise to hold this debate. When the Administration presents to this Council the Bill to establish the Court of Final Appeal, we will still be able to debate it having regard to the practical issues and questions then before us.

(2) On the point of a substantive debate, I do not know what sort of purpose that the Honourable Simon IP wants to achieve in moving this motion? Does he want the Sino-British Joint Liaison Group to reopen negotiation? If so, he should have been more "explicit" by pointing to the request for reopening the negotiation in his motion. Some Members might feel like proposing an amendment to urge for renegotiation. In his speech, Mr Simon IP has indicated that his intention is to make a plea to the Chinese and British Governments to consider the question only. However, behind the wording of his motion there seems to lurk an ulterior motive. Though I would not wish to guess what this motive is, yet I would ask what the purpose of the motion is.

(3) As far as I know, and I believe many Honourable Members are aware as well that the original motion mentions the setting up of a Court of Final Appeal by 1993. Why are the words "by 1993" subsequently deleted? I hope that the motive behind such a deletion is not simply to gain more acceptance and support from the Members. If we merely want to have the motion carried, why do we not propose a motion that reads "This Council notes that the Joint Liaison Group has reached an agreement on the Court of Final Appeal." Hence we can all support the motion and can speak freely. Mr Simon IP has made his position clear and that is that he would rather have no Court of Final Appeal established before 1997 than accept an arrangement that bestows no flexibility on the Court. As this is not evident from the wording of his motion, Mr Deputy President, I would ask Mr IP to amend his motion. If I accept Mr IP's interpretation of the wording of his motion, then I shall have no alternative but to oppose his motion as presently worded.

> It is because I believe that Members are in something of a dilemma — whether to have the Court of Final Appeal established early or have one established before 1997 which is hamstrung by a lack of flexibility, or to take the risk of having the Court dissolved, come 1997.

Mr Deputy President, I would like to say a few words to my honourable colleagues through you. The question we are facing is not whether the motion can be carried, but what message will be conveyed after we have, separately and jointly, expressed our opinions in the Legislative Council, and after such views have been finally collated? What reactions will be elicited from the community, the Chinese and British Governments? What consequences will be brought about given the interaction of different responses? Are we going to have a Court of Final Appeal or not? What will the composition of that Court of Final Appeal? Will it be dissolved after 1997? Are such consequences what we would like to see?

Mr Deputy President, we should not have the idea that since we are the representatives of the public", we can say what we like and what the public want us to say. We group together to form a council, our words and deeds in this Council are obviously very influential. Therefore, we must exercise sensible judgement to say the right thing at the right time. I am not asking my honourable colleagues to be hypocritical or to tell lies, I only ask them to be prudent.

Mr Deputy President, what I have just said may already contravene the principle of prudence. Please bear my professional inclination. I often unwittingly turn this Council into a classroom and lecture a little. In fact, I wonder if Honourable Members have ever unwittingly turned this Chamber into a court room, an operation theatre, a public forum, an election forum, a chamber of commerce, a board of directors or even a church? Mr Deputy President, let us all keep in mind that we are working as a Council.

Mr Deputy President, with these remarks, I support the motion. Yet does my speech sound like supporting the motion? Mr Deputy President, I really support the motion before us today but I do not support today's debate or the arguments I have heard.

DR SAMUEL WONG: Mr Deputy president, much learned argument has been put forward to allege breach of the Joint Declaration and the Basic Law in limiting Hong Kong's final court of appeal to one overseas judge. It is not my place to contest the legal position. I might be useful, however, if I introduce a bit of simple engineer's logic. Engineers have a lot to do with contracts.

The first question I will address is: has there been any breach of agreement? Much play has been made on the use of the plural in both the Joint Declaration and the Basic law. Both authorize the final court of appeal to invite

"judges" (with an s) from "other common law jurisdictions" (with an s). By limiting this to not more than one at a time I can see, in my simple logic, no breach of either document. It is a limitation — true — but not a breach. A perfectly feasible interpretation of both documents is that the plural is used to cover invitation of judges over a period of time, presumably 50 years, and to add "no more than one at a time" is not, in my view, a breach.

Both documents do, however, authorize the final court of appeal to invite judges from other common law jurisdiction — "as required". Now this, to my simple logic, is much more serious. If there is a "requirement" for more than one judge from other jurisdiction on a particular case or session, then to limit the invitation to only one judge is a breach of both documents, for the final court of appeal would then not be able to meet its "requirements" as enshrined in the Joint Declaration and Basic Law.

The question of whether or not there has been a breach therefore rests on whether there could conceivably be a "requirement" for more than one judge from other common law jurisdiction at one time.

Such a requirement might, it seems to me, fall into one of two categories:

First it might be for legal advice. For example, Annex I of the Joint Declaration, section II paragraph 2 authorizes the courts to refer to precedents in other common law countries. Suppose a case involved important precedents from two other such countries. The court might regard it as a "requirement" to get judges from both countries to sit on the court. There may be many other examples where it could be a legal requirement" for more than one judge to come from other jurisdictions on specific cases and I would have to leave it to the lawyers to quote such example. But you only need to establish one to make the limitation of only one at a time" a breach of the Joint Declaration and the Basic Law.

Secondly it might be for impartiality. There is an old saying: "if you cannot find a lawyer who knows the law, find one who knows the judge." One of the great advantages of using the Privy Council is that the judges are not normally acquainted with the personalities involved. It was Thomas JEFFERSON who said: "Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and for the privilege of their corps." Hence an important aspect of inviting overseas judges is undoubtedly based on guaranteeing impartiality. It was mainly for this reason that the Judicial Committee of the Privy Council in London was made the final court of appeal for colonies and dominions. For example, on providing it for Canada it was stated: "this Judicial Committee has the advantage of giving Canada an impartial court of last resort far removed from the stress and storm of Canadian politics." In short it has historically been a "requirement" to make the final court of appeal insulated from local pressures and if, say, in a politically charged case, this requirement could need more than one

judge from other common law jurisdictions to ensure complete impartiality, then the limit of "only one at a time" is in breach of the Joint Declaration and the Basic Law.

Once you accept that there could be a requirement for more than one judge in a specific case then, I can say, there has been a breach on that score. But there then follows a breach of the Joint Declaration on another score. In Annex I, section III, paragraph 2, there is the statement "The courts shall exercise judicial powers independently and free from any interference." For the Joint Liaison Group to limit the final court of appeal so that it cannot invite judges "as required" is interference and a further breach of the Joint Declaration.

Now, how has this come about? We are debating the second or final court of appeal. Since in the United Kingdom, whose legal system we have inherited, even the first court of appeal was not constituted until this century, actually in 1907, we can hardly expect a country such as China, so much less advanced in terms of justice and human rights, to have any appreciation for the second court of appeal. In my view the blame for ignoring the importance of the contract in the Joint Declaration, to allow the final court of appeal to invite "as required", "lies almost entirely with the British representatives on the Joint Liaison Group and not with the Chinese. You cannot blame the Chinese for being immature. I do blame the British for being weak.

It seems to me, in my simple logic, that we have a duty to teach the Mainland about justice and rights in an advanced society. How do we do this? Obviously the British representatives failed to do so in the Joint Liaison Group. And I can quite understand the reluctance of Mainland representatives to accept what must appear to them to be just theory. For that is all our protests are if we do not back them up with experience or case history.

I therefore see a lot of merits in the suggestion that we set up a Court of Final Appeal as soon as possible and run it for several years while we can still seek the support of the British. We will then have facts and figures to prove whether more than one judge from other common law jurisdictions is ever a requirement". If so the case is made. If not, then the Joint Liaison Group were right.

At the end of the day we must be able to show that the Joint Declaration and the Basic Law are inviolable, for without that the stability and prosperity of "Hong Kong are in the most serious jeopardy.

Mr Deputy President, on the understanding that efforts will be made to establish factually the requirement for more than one judge from other common law jurisdictions at one time, I support the motion.

MR LAU WONG-FAT (in Cantonese): Mr Deputy President, under the provisions of the Sino-British Joint Declaration and the Basic Law, the Court of Final Appeal will be established when the Special Administrative Region of Hong Kong comes into being in 1997. The agreement reached by China and Britain to set up the Court of Final Appeal before 1997 is clearly out of a consensus between the two countries. The early establishment of the Court of Final Appeal is beneficial to Hong Kong. In view of the fact that both countries have indicated that they would not renegotiate nor amend the agreement already reached, in examining the agreement, apart from the composition and the ratio of judges, it would be more important to consider whether acceptance of the agreement in its entirety is in the interests of Hong Kong. What would it lead to by opposition to the agreement, or what would it bring to Hong Kong?

In all fairness, China has shown considerable flexibility on the issue. For example, it agrees to have the Court of Final Appeal established in Hong Kong instead of Beijing; it also agrees to the British proposal to set up the Court of Final Appeal before 1997, and except for the Chief Justice of the Court of Final Appeal who must be a Chinese citizen, there is no restriction on the nationality of the remaining four judges.

Heung Yee Kuk is very concerned about the controversy arising from an agreement reached by the Chinese and British Governments on the Court of Final Appeal. The Kuk's Political and Legal Research Committee has held discussions over the matter and after careful consideration, it is deemed that the agreement has not breached the Sino-British Joint Declaration nor the Basic Law, and that the agreement is a good one worthy of support. The Committee's concurrence with the arrangements in the agreement is in line with the spirit of Hong Kong people governing Hong Kong, and the early establishment of the Court of Final Appeal will contribute towards the smooth transition of Hong Kong as well as the administration of the future Special Administrative Region Government. As to the composition of the judges of the Court of Final Appeal, we consider that it should be viewed from a more realistic angle and that in implementation, the agreement should be taken as a basis or a starting point. In fact, the establishment of the Court of Final Appeal before 1997 is to give the Court opportunities to acquire and gain more experience and to build up its authority. During the period, the performance of the Court will be under close scrutiny by and assessment of the Chinese and British Governments as well as the people of Hong Kong. After implementation, if it is proved that the composition of the Court does not measure up to the requirements, we believe it is not impossible then to review and amend such composition. Premature judgement of the agreement as being not workable and to engage in disputes over the ratio of judges are not only unconvincing, but also blind to political realities.

Mr Deputy President, international agreements are usually reached after give and take and compromises by both parties in the negotiation, and the agreement on the Court of Final Appeal is no exception. The issue has been considered and reconsidered by the Sino-British Joint Liaison Group for a long

time and the agreement is the result of some very hard efforts. I think we should all assess the agreement on the Court of Final Appeal more rationally. It is narrow-minded to deny the advantages and importance of the whole agreement merely on account of the ratio of overseas judges, and if the early establishment of the Court of Final Appeal is thus scarified, it will be penny wise and pound foolish. This is clearly not in the interests of Hong Kong.

The Honourable Simon IP's motion is practically a rejection of the agreement on the Court of Final Appeal, even at the expense of denying Hong Kong a Court of Final Appeal before 1997. Under the circumstances that there is no way the arrangements of the Court of Final Appeal will be renegotiated, the motion will not produce any positive effect. On the contrary, the passage of the motion will only deprive Hong Kong of the opportunity of early establishment of the Court of Final Appeal and at the same time adversely affect the work of the Joint Liaison Group and the co-operation between the two parties on matters concerning Hong Kong in the future.

Mr Deputy President, with these words, I am against the motion.

MR EDWARD HO: Mr Deputy President, although I regard this motion debate to be extremely untimely, I consider that it is important for me to express clearly my position on the subject of the Court of Final Appeal (CFA).

On 25 October this year, I voted, together with 37 colleagues in the In-House meeting of Members of this Council, in favour of the motion asking for more flexibility for the composition of the Court of Final appeal in accordance with the Joint Declaration and the Basic Law, and that such a Court should be set up by 1993 as scheduled. I also participated in the discussions of the nine professional bodies on the subject; my Constituency and the legal professions are part of the nine professional bodies. As a result of those discussions, the nine professional bodies have issued a joint position statement which is very similar in content to the motion adopted by the Legislative Council In-House on 25 October.

It is not because of speaking out on an issue that may be seen as confrontational that I have regarded Mr IP's motion as untimely. Members of this Council have a solemn duty to speak out if they have genuine concerns over any matter that may affect the interest of our community now or in the future. As long as their motive is sincere they and, for that matter, any member of the community should not feel inhibited to voice their concern even if, by doing so, it would be interpreted as confrontational with China. The balance between speaking out and being confrontational is of course often very difficult to be achieved.

In the case of the Court of Final Appeal, we know that it was an agreement made between the Chinese Government and the British Government and endorsed by the Executive Council after about three years of negotiation.

Therefore, any dissenting opinion expressed by Members of this Council would certainly be interpreted as confrontational by the Chinese Government. Hence, according to the record of the 25 October In-House meeting, it was noted amongst Members' views on the issue that "confrontation with China should be avoided as far as possible in mapping out a strategy to deal with the CFA issue". The same sentiment was expressed by members attending the nine professional bodies' meeting on the issue.

The important thing is that members of both the Legislative Council In-House as well as the nine professional bodies felt that the issue was important enough to warrant their expressing their views, and this was duly done.

Now that views have been expressed clearly, and relevant governments have well understood them, I seriously question the wisdom of a formal debate in this Council. If our objective is to bring about improvements to the proposal, this type of debate, which is sure to attract extensive coverage in the mass media both locally and internationally, would most certainly be counter-productive and would lead to both Governments digging in on their positions. Moreover, this debate has come at a time when the Joint Liaison Group has just regained its momentum after the removal of the deadlock over the new airport project and any negative effect created would impede the progress of the Joint Liaison Group and affect the smooth transition of Hong Kong, a matter of serious concern for the people in our community.

I have no difficulty in supporting the wording of Mr Simon IP's motion but I have difficulty with what is missing from the wording of his motion. In both the Legislative Council In-House majority position and in the joint statement put out by the nine professions, the Court of Final Appeal was urged to be set up by 1993 in addition to the question of increased flexibility. The timing of setting up a Court of Final Appeal is a crucial factor that must not be ignored. The Court of Final Appeal must be set up early so that the people of Hong Kong can gain confidence in its operation before Hong Kong becomes a Special Administrative Region of China. Clearly, it would be far more disturbing if arrangements for a CFA are not certain until after 1997. As we understood from the Legislative Council In-House meeting, the reason that the Executive Council has, after three years, finally endorsed the JLG Agreement was because it decided that it could accept the best achievable proposal for an early setting up of the CFA. It is for Members of this Council to ponder how they will react when such an option is to be presented to this Council in the from of a Bill along the line of the JLG Agreement.

While we desire more flexibility to the composition of the Court of Final Appeal, we must now examine dispassionately the proposed composition to see whether it is workable. Limiting the flexibility of the Court of Final Appeal to inviting just one overseas judge to the court cannot by itself indicate that the composition would not be a workable one. We must also look to other details of the setting up of the Court of Final Appeal, for example, security of tenure of judges, the calibre of judges to be appointed, role of the independent Judicial

Service Commission in advising judicial appointments, and so on, to satisfy ourselves that independence and prestige of the CFA would be ensured. The ultimate success of the CFA would depend more on the quality and integrity of the judges rather than whether one or two or more of the judges would be from overseas.

Because of my reservations over the timeliness of Mr IP's motion, and as it is my opinion that flexibility should not be the sole criterion to judge the acceptability of the CFA, I have given some very serious consideration before deciding that I will support the motion. In supporting it, I do not rule out the importance of the timely setting up of the CFA in Hong Kong well before 1997 nor would I rule out that other aspects of the CFA would rank in importance to that of flexibility in inviting overseas judges.

With these remarks, Mr Deputy President, I support the motion.

DR LEONG CHE-HUNG: Mr Deputy President, in 1985 nine professional bodies in Hong Kong, through their representatives, formed a working group in response to the drafting of the Basic Law. Amongst other things, this group was very much concerned with the provision of the Basic Law on professional autonomy. Professional autonomy we consider most essential, as expertise is needed to ensure that a proper professional service is established for the people of Hong Kong. It is also essential for international confidence that professional practices are not interfered with by the Government other than for the public's interest.

It was not an easy battle; the nine professional groups struggled on, including direct deputation to Beijing. At the end of the day, when the Basic Law was promulgated we felt slightly relieved. Article 142 of the Basic Law gave the professions the comfort of the spirit of professional autonomy. No doubt, all this depends on the issue that the spirit and the letter of both the Joint Declaration and the Basic Law be adhered to, religiously, by all parties concerned, and that no alterations be made without consulting the views of the Hong Kong people.

Similarly, the legal profession, in the protection of the independence of the Judiciary, feels that the spirit has been enshrined in the Basic Law. It is very obvious then, Mr Deputy President, that the confidence in the future of Hong Kong, in the eyes of the public, let alone the professions, depends heavily on the proper commitment of the Basic Law.

When the decision of the Court of Final Appeal was announced, the same nine professional bodies were understandably concerned and passed a resolution unanimously, stating clearly our support for the setting up of a Court of Final Appeal within the flexible framework as depicted in the Joint Declaration and Basic Law.

It would be wrong for me, Mr Deputy President, to form a second-guess of the reasons for other professions to support this resolution. The medical profession that I represent however, Mr Deputy President, feels that the decision of the Joint Liaison Group on the Court of Final Appeal may well be yet another erosion of the spirit of the Basic Law. This will not do, for it will no doubt bring about a deterioration of the confidence of the people of Hong Kong.

Mr Deputy President, the Joint Liaison Group meets today, and there are suggestions that a debate such as this should not be staged today. I am afraid, Mr Deputy President, I share a different view. Instead, I consider this debate timely, in showing the same group the true feelings of Hong Kong people, rather than it being a confrontational issue.

There are others who feel that the decision of the Joint Liaison Group should be accepted now; we should give in, to look for hopeful changes after 1997. This again, I cannot subscribe to, for what guarantee do we have that what we do not get now, we will get it in the future? Too much, too often, have Hong Kong people given in on issues affecting their own rights, so far. To have to swallow a rotten egg or to say that one has no egg for breakfast is something, Mr Deputy President, that I cannot swallow.

The Secretary for Constitutional Affairs has repeatedly said that the Hong Kong Government is not under the Chinese Government's knuckles; yet he repeatedly stressed also that the Hong Kong Government has accepted the decision of the JLG, though they themselves believe that it is not the most ideal. The Secretary also said that, and I quote:

"This boils down to an issue of either two overseas judges or one overseas judge."

With respect, Mr Deputy President, I think the Secretary has got the wrong end of the stick. It has nothing to do with a numbers game, but it is the basic principle that we should be looking into, and that is the principle of flexibility as depicted in the Joint Declaration.

There are many other areas which, I am afraid, I cannot also be a party to in the Secretary's thoughts. Firstly, the Secretary states that the quantity — or the quality — of the Court of Final Appeal will be unknown if formed after 1997. In my mind, the quality of a court depends on the composition, not on the time of setting up.

Secondly, the Secretary hinted that there will be no continuity of the judicial system if no Court of Final Appeal is set up before 1997. This again, I beg to differ with, for I thought that the Privy Council would continue to be the ultimate appeal court until the Hong Kong Court of Final Appeal is established. Having said that, Mr Deputy President, I hasten to add that I am not condoning

the issue that we should not set up the Court of Final Appeal before 1997; it is the flexibility of the setting up, not the timing, which is the issue at stake.

Mr Deputy President, I am thankful to the Honourable Rita FAN for confirming to this Council that it was Britain's initiative to negotiate with Beijing to set up the Court of Final Appeal before 1997. Was it also Britain's initiative to neglect Hong Kong people's wishes and thoughts and those of this Council to agree on this very rigid formula? We in this Council have no right to push the Beijing Government to renegotiate because this Council has no constitutional channel with Beijing, but we are legitimate in appealing to Britain. If it is true that Britain kicked off this negotiation, then as the Chinese saying goes: "解鈴還須繫鈴人", it is for the United Kingdom Government to get the issue straight.

Finally, Mr Deputy President, Mr Allen LEE said that after the last Legislative Council In-House meeting of 25 October, he reflected the views of the majority of Legislative Council Members to the Administration to ask for more flexibility in setting up the Court of Final Appeal. I hope the word majority" today will be proven to indicate those who will stand by the decision as stated on 25 October, and that this same word "majority" will not be used to denote the number of turncoats.

Mr Deputy President, with these words, I support the motion.

MR JIMMY McGREGOR: Mr Deputy President, my colleague Mr Simon IP has eloquently set out the background to his motion and the reasons why this Council should support it. I agree with all of his reasons and I will therefore support the motion.

That it should have become necessary in the first place is rather strange and somewhat disturbing although no doubt there is a logical explanation.

The Joint Declaration and the Basic Law provide for flexibility in the appointment of foreign judges to the Court of Final Appeal. The term "as required" appears to me to establish that flexibility. If that is so, a Court of Final Appeal could have been set up in Hong Kong by 1993 using that definition and meaning, without seeking specific concurrence from the Chinese Government although no doubt keeping Beijing fully informed. As far as we are aware the Chinese authorities had not insisted upon any particular formula or proportions in the question of the use of foreign judges. Where then did the initiative originate to set out a specific limitation on the use of foreign judges? Who took the initiative to approach the Chinese Government to obtain agreement on a numerical limitation? Who decided what the formula should be? And why was the Hong Kong legal profession not at that time consulted? How could a discussion in early 1988 which did not even produce an agreed written result and which has been disputed by the parties concerned be held by the Hong Kong Government to have represented a firm concurrence by the

Hong Kong legal profession with a proposition that there must never be a majority of foreign judges on the Court of Final Appeal? These are serious questions which the Government should be prepared to answer fully.

The last question is, in my view, the most important. It seems clear that the British Government, working on behalf of the Hong Kong Government, entered into formal discussions with the Chinese Government to establish, *inter alia*, the composition of the Court of Final Appeal. They did so with a proposal that not more than two foreign judges should be appointed, the so called 3:2 formula. This initiative was not discussed with the Hong Kong legal profession. Nor was the alternative arrangement that the Joint Declaration and the Basic Law would permit a Court of Final Appeal to be set up without any specific formula on the number of foreign judges.

The Chinese authorities responded by negotiating 3:2 into 4:1. The Hong Kong Government took this to the Executive Council which approved it without apparently thinking that it might be politic to check the proposal out again with the legal profession. The Chief Justice was consulted and agreed with the proposal. As far as I know, he did not consult any of his senior judges; so I assume he was persuaded not to do so. Either that, or he did not think it necessary.

It is also clear that the British and Chinese Governments, therefore the Hong Kong Government, therefore the Executive Council, consider that we are not talking about a proposal requiring further consideration or any other endorsement and that what we have is a formal agreement between two sovereign governments. That view has been confirmed today by the Government. So what do we actually have? An agreement which is considered by virtually the whole of the legal profession in Hong Kong and by expert British legal opinion to be flawed and unsatisfactory, an agreement which should be amended to be in line with the Joint Declaration and the Basic Law if Hong Kong's judicial independence and quality of appeal are to be secured before and after 1997. Mr Simon IP has gone into detail on these points.

This matter was discussed by the Legal Committee of the Hong Kong General Chamber of Commerce which unanimously agreed that the arrangement reached between British and China is not acceptable for the reasons that Mr Simon IP has expounded. The General Committee of the Chamber, although not rejecting the Legal Committee's views, is deeply concerned not to exacerbate the steadily improving relations with China and has not taken a specific position. Individual businessmen, some of them are very large businessmen, have advised me that the question of judicial independence and the fairness and quality of the legal appeal procedures are matters that every major foreign investor must consider in its country risk assessment prior to making a decision on location or addition to investment. That was my own personal experience throughout many years of direct industrial investment promotion in overseas countries.

I therefore believe that we must do all we can to bring about a modification to the agreement, one which will use the same expression as the Joint Declaration and the Basic Law, that is "which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal." I hope the Chinese Government can be persuaded to modify the existing agreement. It can do them no harm and, in fact, will do China a great deal of good in that it will demonstrate to all the interested parties here and abroad that, in negotiations on important issues, China can be understanding and flexible. It will certainly enhance business confidence in Hong Kong's legal system after 1997.

The Chinese Government may well be exasperated at being asked to look again at a done deal but I hope this debate will allow the Chinese leaders to see that there is real cause for serious concern throughout the legal profession and more generally in Hong Kong. Only China can now put it right and I hope the British Government can be persuaded to seek re-negotiation of the agreement on the Court of Final Appeal.

If this proposal fails, we must then consider how best to proceed and within what time span.

Nobody seeks confrontation with China. But I would remind Members that strong sentiment in Hong Kong and expressed in this Council at a particular time has brought about a substantial increase in the number of fully elected seats in this legislature from 10 to 18. Had there been no such pressure, are we to imagine that China would have taken any such action unilaterally? To state a strong view and to hold to it is not confrontation. It is the art of negotiation.

I also want to say that China's fear that this debate and its underlying intention may be an attempt to move policy responsibility from the Executive Council to the Legislative Council is simply not warranted. China has nothing to fear. This is an executive-led government and it will clearly remain so. I do not know of any feeling in this Council that the existing division of responsibility between the Executive and the Legislative Councils should be substantially or fundamentally changed. What we are witnessing today is the proper application of the authority of this Council to disagree with a policy decision already made and the action already taken as a result. If we cannot express our views in this way how then are we to function at all when it comes to matters of such importance to our future. This Council cannot function as a rubber stamp for the Executive and must reflect as well as it can the diversity of views that together make up public opinion. I repeat that I do not believe that any Member of this Council seeks power to formulate government policy and therefore to subvert the legal and constitutional authority of the executive and the Executive Council. But, equally, the function of this Council and its legal authorities must not be set aside nor taken lightly.

Mr Deputy President, I support the motion.

MRS ELSIE TU: I think many laymen feel, as I do, that we respect and support the legal and other professional bodies who request more flexibility for the Court of Final Appeal, yet realize that decisions made by the Joint Liaison Group as set up in the Joint Declaration seem regrettably to be beyond our control.

It would be unfortunate if this Council were to be asked to pass a Bill which we have no power to discuss or amend, and on which there has been no public consultation. I would consider it improper for the Government to ask us to do so.

Therefore if the decision of the Joint Liaison Group cannot be amended at this time and the majority of Members of this Council feel that they cannot accept the decision of the Joint Liaison Group on this issue, I consider that the Bill should be delayed, rather than risk a defeat of the Bill which would again cause public anxiety. I shall therefore abstain from voting on the motion, but would like to urge that the aspirations of the Hong Kong public be considered in future discussions of the Joint Liaison Group in order to avoid repeated alarm and confrontation.

MR VINCENT CHENG: Mr Deputy President, we are dealing with a difficult issue which demands sensitivity and care by both the legislature and the community. Today's debate goes beyond the simple wording of the motion which by itself is difficult to refute, particularly for those who have no legal background. I have been told that the word "flexibility" could be interpreted as meaning "having no foreign judges at all"; I doubt if any one of us would seriously believe in that.

Judging from the responses of the Chinese Government and the Hong Kong Government in the last month, the issue before us today is not just how many overseas judges we could get, but whether we will have a Court of Final Appeal before 1997. Some of us prefer not to have a Court of Final Appeal unless we have more flexibility in inviting overseas judges. I, however, would rather see a Court of Final Appeal created well before 1997, so that it could have the time to establish its stature and correct whatever mistakes it would make during the transitional period, so that by 1997 we have a court which we know and trust. It is too much to ask this community to live under the uncertainty of not knowing how our judicial system will evolve in the next six years. I, for one, do not want to see a Court of Final Appeal imposed in or after 1997, which might be of an entirely different nature.

I do not have the legal expertise to judge the merit of the agreement, and therefore I have to rely on the advice of the legal profession. Since the legal profession has criticized it so strongly, I have to accept the judgment that the lack of flexibility is indeed a problem. However, rather than killing it at this stage, on the number of overseas judges, we should look at the whole package. The integrity and independence of the Court of Final Appeal depend not on the

number of overseas judges, which is the focus of the current debate, but also on a number of areas, such as the process of selecting judges, the quality of the judges, and the independence of the court itself. These areas are no less important than the number of overseas judges.

Therefore, despite today's debate and whether the motion is passed, I hope the Administration will continue to look into the details of the future court under the present agreement, and address the technical issues raised in this Council so that the people of Hong Kong could see the entire package rather than just on the number of overseas judges.

Despite the official comments from the Governments, I still do not understand why the two Governments, which are committed to maintaining the stability and prosperity of Hong Kong, would not discuss this matter again. But if this Council fails in this bid to convince the two Governments to renegotiate, I personally would want to see a Court of Final Appeal by 1993, even if it has to be based on the current agreement. This should then give us a chance to see whether under this sort of restriction on foreign judges, we would still be able to achieve the final objective of the judiciary system which is justice for all. If the court failed to live up to people's expectations in the next few years, we could, and indeed should, demand further changes.

Mr Deputy President, we are walking an extra mile down the slippery road of no return. I hope the views of the legal profession will be listened to and taken seriously by the two Governments. If both Governments are really concerned about the future of Hong Kong there is no reason why the agreement cannot be discussed again.

I would also urge my colleagues in this Council to assess the implications of not having a Court of Final Appeal before 1997; it concerns the future of six million people. We should not let politics come into the decision; the judiciary is too important and should be kept out of politics — which I am beginning to learn, slowly.

Mr Deputy President, with these strong reservations mentioned, I have to support the motion which merely seeks more flexibility, but if I have to choose between no Court of Final Appeal or a court in 1993 with less flexibility in inviting overseas judges, I would choose the latter, no matter how reluctantly and unfairly.

Thank you, Mr Deputy President.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, in this motion debate, I fully support Mr Simon IP's motion that when the Court of Final Appeal is set up, it should have flexibility, in accordance with the Joint Declaration and the Basic Law, to invite overseas judges to sit on it.

But, Mr Stephen CHEONG is of the view that Mr IP's motion might lead to the repudiation of the agreement reached by the Joint Liaison Group. I think that those who have such a view are putting the cart before the horse, because the Joint Declaration and the Basic Law clearly provide that the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on it. This provision has been put down in black and white. The fact that the JLG has failed to consult the Legislative Council and members of the Hong Kong public and thus breached the provision is itself a matter which warrants reproach. Moreover, the JLG is not a sacred and inviolable body. If it has made a wrong decision which is in breach of the Joint Declaration and the Basic Law, members of the Hong Kong public including Members of the Legislative Council have a duty to correct or even overturn the wrong decision so as to defend the Joint Declaration and the Basic Law on which is based the lifestyle of Hong Kong people in the coming 50 years.

Mr CHEONG has said that if we take such action, we will bring about shock and confrontation, thus affecting a smooth transition. I feel that this view is not justified because he is putting the blame for causing shock and confrontation on those Members who support Mr IP's motion. He has ignored the fact what caused shock to Hong Kong people is the Chinese and British Governments and the Court of Final Appeal agreement reached by the Chinese and British Governments in breach of the Joint Declaration and the Basic Law. If the Joint Declaration and the Basis Law can be changed at will by the Chinese and British Governments behind closed doors, we can image that, in the years to come, shocks will keep emerging and the confidence of Hong Kong people and the prosperity and stability of Hong Kong will be affected.

Today, when we, Members of the Legislative Council, stand up to defend the Joint Declaration and the Basic Law, we are deemed by Mr CHEONG as causing confrontation. As a matter of fact, the strength of Hong Kong people is limited, how can they manage to confront? What we are doing is a most pitiful act of self-defence, we are just speaking our minds through a motion. We know well that this voice will be belittled and ignored by the Chinese and British Governments. We are only "trying to do the impossible". However, this humble wish of ours, this feeble motion, has been considered to be confrontational. How unreasonable!

Mr CHEONG said that he did not know why nearly every agreement reached between the Chinese and British Governments after closed-doors negotiations was criticized by some people and met rejection. As a matter of fact, Mr CHEONG's words have themselves provided the answer. As pointed out by Mr CHEONG, the negotiations between the Chinese and British Governments were held behind closed doors. They were negotiations which took no account of the public opinions in Hong Kong. What Hong Kong people could do was only to wait for the result of the negotiations. Their fate is in the hands of the Chinese and British Governments. Should we show any dissatisfaction, we would be accused of causing shock and confrontation. What can we call it if it is not a pitiful plight?

I would like to appeal to all my colleagues in the Legislative Council not to be afraid, fear not any accusation of causing shock and confrontation, but defend the Joint Declaration and the Basic Law, which are our last line of defence. On this issue, we can no longer retreat. Nor can we change our stand. If we do that, what will be sacrificed is not just the Court of Final Appeal but the future and well-being of our next generation.

With these remarks, Mr Deputy President, I support Mr IP's motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, it is understandable for Mr Simon IP from the legal field to propose a motion for debate but the contents of his motion leave room for discussion.

His motion definitely rejects the number of judges for the Court of Final Appeal agreed by the Joint Liaison Group (JLG) with an intention of repudiating the decision of the JLG. Apart from the official Members, there are at present 55 Members coming from all walks of life, 21 elected by functional constituencies, 17 from the districts and 17 appointed by the Government. Therefore, we are from three main streams but all aim at serving the people of Hong Kong.

It is all agreed that the sooner the Court of Final Appeal is set up, the better it would be. Some even opined that international investors will be prompted to make investment plans and given administrative guidance to the future of Hong Kong. As the issue is of such an importance, the JLG has come up with a decision. Of course, some parties and groups do not agree to the Four-One" composition. However, we should fully understand that Hong Kong has neither the right of self-determination nor independence, it is only a British dependent territory at present and a special administrative region under the rule of China after 1997. If the speeches, opinions or arguments of the Members generate fear and misunderstanding from the general public or confrontation with whosoever, would it be fair and reasonable to the general public?

Mr Deputy President, I am of the opinion that whether the Court of Final Appeal is set up in Hong Kong under the rule of the British Government in or before 1993, or by the Government of the Special Administrative Region after 1997, there will not be too great an impact on the people of Hong Kong. The most important is that the legal sector of Hong Kong should have confidence in the judges of Chinese nationality and give them their support. We cannot expect that the judges of Chinese nationality would enjoy the same world status as that of their counterparts in the Privy Council but we must get to know the real situation and face the reality in order to correctly lead the future. Being Members of the Legislative Council, we are specially entrusted with a historical mission to see through the transition of Hong Kong. We should face all problems in a sensible way and contribute positively to a better future for Hong Kong. Some Members have argued at In-House meetings that there should be flexibility in the number of judges, but I hope that nobody will expect their

argument to change the final decision; in particular, our friends of the United Democrats should fight for what the general public need instead of sacrificing again the well-being of the general public on the issues of Vietnamese refugees and the re-introduction of the death penalty. I would like to take this opportunity to tell all the people of Hong Kong .....

MR MARTIN LEE: Mr Deputy President, I see no relevance in the points Mr CHIM is making. Clearly, the death penalty and the Vietnamese boat people are points outside the topic under debate.

DEPUTY PRESIDENT: Mr CHIM, please try to make your point relevant to the debate.

MR CHIM PUI-CHUNG (in Cantonese): if my speech makes our friends of the United Democrats uneasy, I have stated my position. (*Laughter*)

I would like to take this opportunity to tell all the people of Hong Kong not to take the argument on the issue of the Court of Final Appeal too seriously or attach too much importance to the result of voting. Nor allow our daily lives be affected by the result of the debate.

Mr Deputy President, with these remarks, I do not support the motion of Mr IP though I do appreciate it.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, I would like to divide my speech on today's motion debate into two parts. In the first part, I would express my feelings of and response to the topics of the three motion debates which I have attended. In the second part, I would make known my stance on the topics of the debates.

After I was elected to the Legislative Council, except the Motion of Thanks on the policy address by the Governor in which I expressed my thanks to the Governor, I have tried, as far as possible, to maintain a neutral stand on all three other motion debates, including the present one. Originally the motion debates on the sale of public housing and the present one were multi-directional, but later the directions were removed by the proposer of the motion himself. I think that such a neutral motion may have some other meaning behind. On the other hand, the motion itself may be neutral, but the atmosphere is not. Quite the contrary, the atmosphere is usually political.

The first motion touched upon the question of profit control or franchise. It was described as a fight between two parties, both quarreling with each other, Party A accusing Party B and Party B accusing Party A. Words of accusation were evident both in the atmosphere and in the speeches of the Members. The

second debate was concerned with the sale of public housing flats. My original intention of amending the motion was to introduce a policy discussion. However, the final version of the motion was still directed at administrative issues rather than policy matters. The motion on the sale of public housing was described as Frederick FUNG raising a challenge against the United Democrats of Hong Kong. At least newspapers reported that way. Through newspapers and speeches made by officials, the Chinese, British and Hong Kong Governments unanimously said that the motion debate was inappropriate, and that the debate was a challenge to both the Chinese Government and the Sino-British Joint Liaison Group. It was a confrontation because the debate denied recognition of the Basic Law. I feel that sometimes reports of the newspapers have gone too far and the wording used by some people are too drastic. However, "being too drastic" did catalyze very strong political atmosphere in the last few debates. Such a political atmosphere seems to have put a kind of pressure on the Legislative Council Members: are we going to vote in support of the motion, against the motion or simply abstain from voting? No matter how we cast our votes, it will make us become political animals. In fact, many Members, including myself, are not so political. Sometimes I feel that these motions are proposed for the sake of being carried rather than for the purpose of discussing a policy or an issue. Perhaps this is the way some people make use of a topic or a neutral sentence to expound on their own ideas and to find an opportunity of expressing themselves. I reckon that these few motions did not focus on government policies. They did not recommend any actions to be taken nor did they propose to give any instructions. Let us look at the topic of this debate. Under this topic, are we required to discuss whether or not a Court of Final Appeal is required? Are we required to discuss if we need a Court of Final Appeal before 1997? Are we required to discuss if we would still like to have a Court of Final Appeal if the ratio between overseas judges and local judges is 1:4? We are only touching on one of the issues of the Court of Final Appeal discussed by the Joint Liaison Group, and that item is that we would like to have more flexibility to invite overseas judges to sit on our Court of Final Appeal. I feel that I fail to see the motive behind the purpose of our discussion. Even this motion itself does not reflect that we would not wish to have a Court of Final Appeal if the ratio between overseas judges and local judges is still 1:4 by 1993. If that is not the case, I fail to see if the motion has basically become a confrontation or a rejection of the Joint Liaison Group agreement on the Court of Final Appeal. However, I must emphasize that this is a controversial point worth our discussion.

In the second part I would like to talk about the jurisdiction of the Legislative Council. The issue of the Court of Final Appeal was discussed exclusively in the Joint Liaison Group between China and Britain. However, in the entire course of discussion, neither the Hong Kong Government nor any council representing Hong Kong, the Legislative Council in particular, was involved, nor had they ever been consulted. As far as I can see, the Legislative Council itself has jurisdiction over the following three aspects. Firstly, regarding the enactment of legislation, we have the power to enact, reject or amend Bills. Secondly, we can veto the Government's Budget. Thirdly, we are

obligated to give advice to the Government. However, in respect of an important issue such as the Court of Final Appeal, the Legislative Council, in which Government's Bills may be passed, amended or rejected in the future, has not even been given a chance to discuss. In fact, I find the most controversial point of the issue is that the conclusion comes out all of a sudden, yet we have never taken part in the discussion. We have also been informed that such an outcome can neither be discussed nor amended.

Mr Deputy President, I would like to express my views on the Court of Final Appeal. If it is agreed that a government is basically made up of these organizations, namely, the Executive, the Legislature and the Judiciary, I think those at the helm of these three organizations should be nationals of that very country. Though Hong Kong is not a country, the same argument applies to it. In other words, in Hong Kong, the Executive, Legislature and Judiciary should be headed by Hong Kong Chinese. As the Court of Final Appeal is the highest authority of the judicial system of a country or a region, the Court, I opine, should be composed of citizens of that country or region. The British Commonwealth countries are under the same legal system, mainly due to historic factor. As former British colonies, these countries follow the common law practised in Britain and adopt Britain's Privy Council as their Court of Final Appeal. Though Hong Kong is a British colony, we are given the right to administer our own affairs and we are now practising British laws. However, are we going to accept Britain's Privy Council to be our Court of Final Appeal even after we have come under the rule of our own sovereign state when Hong Kong is reverted to China? In what way should we transform the so-called Privy Council" or "Court of Final Appeal" into one that belongs to us Hong Kong people? This is exactly what I consider to be our ultimate goal. Therefore, in the final analysis, I still hold that the Court of Final Appeal should be in place as early as possible and that it should eventually replace the Privy Council to become a system of our own. We need a transitional period for the realization of such a goal, because Hong Kong still lacks the conditions for a Court of Final Appeal of high status and efficiency. I therefore accept such a transitional period which will prepare us for the establishment of the Court before 1997. The judges to sit on the Court can be our present local judges. It is possible that their number, quality, qualifications and status may not meet the required standard. They may lack the necessary experience and their ability has not been considered nor put to the test. I believe that we, Hong Kong people, are not stupid as compared with the people of other countries including Britain and America. I do not believe that the solicitors and barristers in Hong Kong are worse than those in other countries and cannot be trained to become judges of the Court of Final Appeal. As Hong Kong has become a cosmopolitan city which ranks above 20 productive countries in terms of productivity, I think we possess the prerequisites, qualities and intelligence to develop our own Court of Final Appeal.

Training is a problem if Hong Kong people are to become judges of the Court of Final Appeal, the judges of their own people. Two things are required for training. The first thing is time. Training needs time. I cannot see how we

can get what we want immediately by training. The second thing is the accumulation of experience, which means that the deeds, words and interpretations of overseas judges invited to sit on the Court of Final Appeal should be accumulated for Hong Kong's use in future.

From this point of view, I support the motion. Why does this motion lead to such controversies? I believe the major reason is that the Sino-British Joint Liaison Group has not consulted this Council, in the process of the negotiations, especially on matters relating to legislation. The entire process of discussion and decision-making lack one procedure, thus leading to today's contradictions, and turning the issue political and confrontational. I am just a member of the general public, not a legal expert. I come from the community. I do not understand why there is contention and rivalry. I would like to make two proposals regarding this matter.

Firstly, I strongly request the Sino-British Joint Liaison Group to seek, in future, prior advice of this Council and the legal sector on all issues under discussion if they relate to legal procedures.

Secondly, no matter whether this motion was subsequently passed or rejected, I hope that, on the issue of inviting overseas judges to the Court of Final Appeal, both the Chinese and the British sides of the Joint Liaison Group will take into consideration the decision of this Council and the speeches of my colleagues, so as to include the opinions of the people of Hong Kong in its final decision. I still do not consider the decision of the Joint Liaison Group final, as there are still the National People's Congress in China, and the Parliament in Britain.

Thank you, Mr Deputy President.

MISS EMILY LAU (in Cantonese): Mr Deputy President, I speak today in support of the motion moved by the Honourable Simon IP. I feel that the debate today is one of great historic significance. After 150 years under the rule of the British, this is perhaps the first time in Hong Kong when Members of the Legislative Council would cast a majority vote to repudiate a decision of the Chinese and British Governments after a debate in this Council. I do not feel proud about this Council having the power to repudiate the decision of the Chinese and British Governments. On the contrary, I much regret this, the reason being that we have been compelled to do so. This is because the Chinese and British Governments have made a major decision without consulting this Council. This decision concerns the future of Hong Kong. It is the future of the six million of us, not the future of the British people, nor that of the Chinese Government. In spite of the objection of the legal profession to this decision, the Chinese and British Governments turn a blind eye to it, simply saying that the decision has been made and cannot be changed.

I heard some of my colleagues say that the debate today was "to play a game of politics". I feel sorry about this. I am an independent Member without any affiliation with any party or group, nor do I have any political background. It is also my belief that the Honourable Simon IP who has moved this motion today is representing the legal profession and is not "playing politics". But I find it extremely unfair and regrettable that some of my colleagues should make such a remark, since I believe most of the Members are concerned with the overall interests of Hong Kong. What we hope to attain is an independent judicial system. Therefore I agree with the Secretary for Constitutional Affairs in that we are not haggling about the question of whether it is 4 to 1, 3 to 2 or even 5 to 0 because this is not a ball game. What we are discussing is the independence and flexibility of the future court of final appeal, and whether the court will enjoy the autonomy to decide on important matters. I cannot agree with the Honourable TAM Yiu-chung in that we are talking about a racial issue. All this is clearly stated in the Sino-British Joint Declaration of 1984 in which we had no part to play. Why do we have to invite foreign judges to join the court of final appeal? One of the reasons is that we need to maintain a high quality court of final appeal. Also, we hope that foreign judges will not be subject to the political pressure exerted by Beijing. There are those who do not wish to talk about such political questions. But I will speak up.

Mr Deputy President, I agree with some colleagues in that the decision made this time by the Chinese and British Governments in the Joint Liaison Group is in contravention of the Joint Declaration. It is much to my regret that they have chosen such a course. I agree with the Secretary for Constitutional Affairs in that we should not dwell only on the figures. As a matter of fact, during the debate on the Governor's policy address, I had already stated that it was more important for us to concentrate on the question of the power of final adjudication. Mr Deputy President, it is known to all that in the future the power of final adjudication will be vested in the court of final appeal of the Hong Kong Special Administrative Region while the power of interpretation of the Basic Law will rest with the Standing Committee of the National People's Congress. Under such circumstances, in what way will this decision impinge on the power of final adjudication that Hong Kong will enjoy in the future? I have repeatedly raised this question with the authorities concerned, but the Administration is not prepared to give any reply. I think this question may even be more important than those on figures or flexibility.

In the view of the officials in the United Kingdom and in Hong Kong, it is untimely and improper to have today's debate. Some colleagues share this view. Some Members of this Council ask why we still need this debate since 38 Members have already made clear their objection to the decision of the Joint Liaison Group at last month's In-House meeting. They have forgotten that 18 of us are returned by direct election and as such, must be accountable openly to the public. What we have said behind closed doors at In-House meetings, especially on matters concerning how the Hong Kong Government should function, are not known to the public. So, if there are people who think that we should not be having this debate today, I really do not understand their logic.

The Administration has informed us that the decision was made by the British and Chinese Governments without consulting this Council. In face of the objection raised by many among us, the Administration said it made no difference. I would like to put a question to the Administration. Is it the case that this Council should from now on act only as a rubber stamp, that all decisions made without having first consulted us have to be approved by the Council irrespective of whether we agree with them or not? I do not believe that this is the spirit of representative government and I hope the Administration will confront itself with this question in real earnest.

Mr Deputy President, the Sino-British Joint Declaration refers the Sino-British Joint Liaison Group as an organ for liaison and not an organ of power. Yet, seeing the decision on the court of final appeal, we find that it is absolutely an organ of power, for we are told that decisions made cannot be changed. We also have a very strong impression that there already exists "Sino-British Co-administration". I am extremely astonished. I have always cherished illusions that Hong Kong will enjoy a high degree of autonomy in future. However, now there is already "Sino-British Co-administration" and in future Hong Kong will be administered by the PRC Government. What would become of our "high degree of autonomy" and "one country, two systems" in future?

Finally, I wish to remind the Hong Kong Government that we are well aware of what the Government has in mind. Even if we have rejected the decision of the Sino-British Joint Liaison Group today, the Government will introduce the Bill to this Council and ask to have it passed. That is to say, the Government has already made its decision, it is up to us to decide whether it should be endorsed. If we vote down the Bill so that the court of final appeal cannot be established, then the responsibility will have to be borne by the Legislative Council Members. Being elected Members, we will certainly shoulder our responsibility. But I would like to let the Hong Kong Government know that if we are being treated as rubber stamps and compelled to take the responsibility for something for which we have no part to play and which we by no means support, I myself and many of my colleagues, I believe, will be unable to do so.

Mr Deputy President, I hope the Chinese, British and Hong Kong Governments will reopen the issue of the court of final appeal. I, on my part, support Mr Simon IP's motion. If we cannot have a perfect court of final appeal, I would rather not have it established before 1993 or 1994.

With these remarks, I support the motion.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, I did not intend to speak but after listening to the Government's case, I think I need to say something.

First, it is very good to have today's debate because we can at least debate on major issues affecting the people of Hong Kong in future. The crux of the motion under debate does not hinge on the number of overseas judges sitting on the Court of Final Appeal. Neither does it lie in the calibre or training of the judges of the Court of Final Appeal or even the degree of flexibility as mentioned by Mr Michael SZE. The heart of the matter is how to safeguard the implementation of the provisions of the Joint Declaration in full and keep on urging the Chinese and British Governments to do so. The Court of Final Appeal is just a manifestation of the problem.

Second, I would like to respond to Mr Michael SZE's speech. He has given us a problem in saying that if we oppose now to the setting up of a Court of Final Appeal with only one overseas judge in 1993, there may be no Court of Final Appeal before 1997. He is also worried that China's actions after 1997 is beyond our control. He thinks the agreement reached can ensure its continuity and is therefore a guaranteed agreement.

I just want to ask the Hong Kong Government one question. If we can change at this stage the Joint Declaration signed by the Chinese and British Governments before the people of Hong Kong and the world in 1984, what makes Mr Michael SZE and the Government he represents so confident that negotiations on the agreement can be reopened after, or even before, 1997? Once the agreement is amended once, it can be amended again for the second, third or even fourth time. Mr SZE's speech has failed to give me a clue as to why he is so confident. For this time, he thinks the agreement is final and will not be amended.

Third, I would like to point out in response that I have discussed this issue with the British Foreign Office during my visit to the United Kingdom and the United States a month or so ago. During the disussion, I had a distinct feeling that the foremost concern of the officials of the British Foreign Office in handling the Sino-British relations was, in one word, "continuity". They could afford to overlook anything else, except for continuity, which was of prime importance to them. It is difficult for me to work out why the officials of the British Government, and even those within the Hong Kong Government, have such mentality. It is probably due to the following reasons: Firstly, it is out of the good intention that they wish to do something for the people of Hong Kong before 1997 as best they can on the understanding that these things can continue beyond 1997. Secondly, they might have encountered difficulties which could not possibly be surmounted. So, very often, they would tend to make concessions during the course of negotiation so as to reach an agreement which they consider the best available deal at the present stage for the sake of continuity beyond 1997. I would like to ask the British and the Hong Kong Governments whether such continuity is worthwhile if the agreements so reached and the framework or policies so formulated are not that good or are even in breach of the Joint Declaration? Is it wise to let continuity override any other consideration?

Having listened to Mr Henry TANG's remarks about Hong Kong's waters today, I have come up with a thought — say the Secretary for Security declares later that it is impossible to stop the Chinese public security officials or people in Chinese public security uniform enter the Hong Kong waters, will the Administration propose that we enact another piece of legislation to allow these people to perform patrol duties in our waters together with the police of Hong Kong since it is a practical arrangement? Although this is not a good arrangement, it is a practical arrangement. We can cite many other examples to demonstrate that if we do not safeguard the Joint Declaration signed in 1984, we will have to give in on many policy matters.

Mr Michael SZE mentioned one point that the fact that the British Government had reached the agreement with the Chinese Government did not mean that they had knuckled or kowtowed to China. I have no intention to do any guess-work or make any conjecture as to whether the British Government has knuckled or kowtowed. However, the fact before us is that every time, it was our side, not their side, which has knuckled and kowtowed. If the same thing repeats itself, to us, students of science, albeit we do not have a perfect assumption to prove the certainty of such a phenomenon, we may as well presume it is true when the phenomenon keeps repeating itself. This may be the fifth or sixth time that (our side) knuckled and kowtowed. A few years later, there may be a seventh, eighth, ninth or even a tenth time. I am a student of science. Though I cannot be absolutely certain for the time being that we have knuckled and kowtowed, I have to believe it after it has been repeated many times.

It took me by surprise to know that colleagues speaking on the motion seem to blame Mr Simon IP for initiating today's debate. To me, this is a major issue of principles. It is about how we can safeguard the Joint Declaration. I must salute Mr IP for moving the motion, especially because he is not affiliated to any parties or factions. I do not see any political motives behind the motion though some would use political motives to belittle the subject of today's motion debate. I do not think it necessary. How could we have this debate if an agreement has not been reached by the Joint Liaison Group in the absence of an understanding of local views and any consultation by the British and Hong Kong Governments? If we blame the person moving the debate every time, there would be no more debates in the Legislative Council in future. Some colleagues say that our comments are too political. But we are basically involved in political issues. We are here, representing the citizens of Hong Kong, to discuss issues that affect them. If it is not politics, what is it? I only hope that a Court of Final Appeal compatible with the provisions of the Joint Declaration and the Basic Law will be established in 1993. This is the best course which will reflect the views of many sectors. I do not know whether this can be realized or not. But if we do nothing at all, we are bound to be losers. We are now in a position like a man wearing many clothes to prepare for the north wind. Now, the two parties have begun to take off their clothes. Nothing happens when the first layer is cast off because there will still be lots of clothes left behind. It does not matter either when the second layer is taken off. But when less and less clothes

are left behind, the two parties will feel cold. They will even get sick and be regarded as immoral when all their clothes are taken off.

Mr Deputy President, with these remarks, I support Mr Simon IP's motion. Thank you.

MR FRED LI (in Cantonese): Mr Deputy President, more and more of my four-page speech has been deleted as many aspects of the subject have been covered by my colleagues. As a late speaker, I can, however, enjoy the benefit of making response to and stating my immediate views on the points expressed by my preceding colleagues.

First of all, Miss Emily LAU held that the motion before us would overrule the agreement between the Chinese and the British Governments. I do not think we have such powers. We are only a Hong Kong British internal organization and a consultative machinery. Nobody would consider us powerful and therefore we have no way to grab power. I am of the opinion that what we are doing today is to indicate our attitudes and express our views on the issue. That is not a so-called political struggle. Mrs Rita FAN said that she was not worried about the quality of judges of the Court of Final Appeal. She later provided statistics in support of her argument which showed that only a certain percentage of the cases involved the Privy Council and the Court of Appeal and few of them were overruled. It is normal even if cases are overruled, and this is common all over the world.

I am not in the legal profession. However, I have made some researches on this subject. There are nine Justices of Appeal in Hong Kong, all of whom are foreigners and not Hong Kong natives. As all of them have their home countries, I do not know if they will stay in Hong Kong after 1997. These Justices, including the Chief Justice, Sir Ti Liang YANG, who is the tenth Justice and the only Chinese, are approaching 64 in age on the average. Based on qualifications, they are the most suitable candidates to serve as Justices of the Court of Final Appeal but not from the age point of view. They will be nearly 70 years of age several years later. So we should objectively look at Hong Kong in its right perspective. I do not mean that the 20 richest Hong Kong merchants should rule Hong Kong in realization of the principle that Hong Kong should be ruled by Hong Kong people. Nevertheless, we should not lose our confidence. Hong Kong people should not look down on local judges and there is no reason why Hong Kong cannot train judges. I would like to draw Members' attention to the Justices of Appeal and the High Court Judges to see what their ages are and where they come from. We should not think that magistrates can fill the vacancies of judge of the Court of Final Appeal. They must come from the Appeals Court by promotion step by step. For a judge is required to have ample experience. Members should realize the fact that Rome cannot be built in one day.

Mr TAM Yiu-chung mentioned that some countries have their own Courts of Final Appeal whilst others count on the Court of Appeal of another country. Mr Simon IP has also made it clear that New Zealand has obtained its independence for a long time, but up to now it relies on the Privy Council of the United Kingdom as its Court of Final Appeal. Many countries have been independent for a long time, but they rely on the Privy Council as their Court of Final Appeal. This is particularly true in the case of British Commonwealth countries which did not have their Court of Final Appeal immediately upon independence. Therefore, this is not a question of face or sovereignty, but reality.

Mr Michael SZE Cho-cheung said the agreement was acceptable, though not ideal, and the Hong Kong people were not sold down the river. However, I want to ask if any one of us has ever seen the agreement. The answer is none. Although it was said the agreement was unalterable and would not be opened for discussion, yet the agreement itself was never made public. I am not sure, of course, if Members of the Executive Council have seen the agreement. I am neither qualified nor longing to be one of them. How many Members of the Legislative Council have seen the agreement? I believe the answer is none as the agreement has never been released. The Memorandum of Understanding concerning the new airport was given wide publicity but this agreement was not. What the agreement is all about we do not know. We can only rely on press releases and information supplied by the Government but these are not the authentic text of the original agreement. I think the British Government should be held mostly responsible for this matter, and what I have said, therefore, would not undermine the Sino-British relations since the British Government should shoulder most of the responsibility and the Executive Council could not shirk its responsibility either.

First of all, I should like to ask why the British Government brought the three-two" formula into the negotiations with the Chinese Government at the outset. Even so, the proposal itself is already in contravention of the principle of flexibility. The negotiations have got off to a wrong start with the introduction of the "three-two" formula, and it was quite natural that the "four-one" formula was agreed in the end. In fact the "three-two" formula is not that bad, but it has definitely violated the principle. The Executive Council had supported the "three-two" formula, and it was fortunate that the Executive Council and not the Legislative Council was cousulted by the British Government. The "four-one" formula was accepted eventually and I do not know if the acceptance was based on a thorough consultation with the Executive Council. Mr Michael SZE has just admitted acceptance of the agreement. Subsequently, some Executive Council Members openly criticized the agreement and called for further discussion. Does this suggest that the system of collective responsibility no longer exists? That I do not know, but I appreciate what they have done. I hope this practice would continue and that this is not a unique case in history. I also hope that the Executive Council Members would make their decision in today's voting according to their own judgement. Having said all that, I now return to the main theme.

In fact, the main question is that I hope the Chinese Government would appreciate that we all agree that the vesting of the power of final appeal is a manifestation of state sovereignty. But allowing overseas judges to participate in the trials of a country is, in itself, also an act to exercise sovereignty. This is because we have decided on the invitation of overseas judges to discuss a case and assist us in the adjudication of disputes. Such practice is in fact an exercise of sovereignty. Also, the Chinese Government allows the post-1997 Special Administrative Region (SAR) to introduce a set of common laws entirely different from that of Mainland China. This is indeed a manifestation of China's sovereignty. The reason is that China can give the HKSAR the green light to adopt, after 1997, Hong Kong's own laws different from those of China's. By so doing, China is exercising her sovereignty. In view of this, having one more or one less overseas judge is, fundamentally, not a question of sovereignty. I think this point is very important. From the point of view that Hong Kong is to implement the principle of "Hong Kong people ruling Hong Kong", it is logical to restrict the number of overseas judges and attach importance to local judges. But this is not the question we are arguing about, and I have earlier pointed out the objective situation of the age problem. It is unreasonable to assume that the participation of overseas judges in the adjudication of disputes will diminish the ability of "Hong Kong people ruling Hong Kong". The appointment of members of the Judiciary should be made by reference to their judicial qualities, not the question of their political inclination or nationality. The future Basic Law provides that the principal judge should be a Chinese national with permanent SAR residence status and has no right of abode in any overseas country. It does not, however, impose such restrictions on other judges. No restrictions of nationality and right of abode are imposed on the other so-called three local judges. In other words, all the other judges of the Court of Final Appeal can be foreigners, just like the case when all the nine overseas Justices of Appeal are now promoted to the Court of Final Appeal. All these overseas judges create an uncommon situation in the judicial system of Hong Kong. If this arrangement is said to be detrimental to the principle of Hong Kong people ruling Hong Kong", I would say the "four-one" formula is even more detrimental because nothing is mentioned about the nationality status of the three local judges. For this reason, I think the crucial point is not the nationality status but the selection of judges with the best qualities for the establishment of a sound judicial system in Hong Kong. As I have just said, among the 19 High Court judges, only two of them are Chinese, the others are foreigners. Even if all of them are promoted one rank higher to sit on the Court of Final Appeal, there are only two Chinese in the establishment and this reflects the limitations of the system itself. Training (of qualified judges) cannot be done overnight. It has been argued that invitation of overseas judges (to sit on the Court of Final Appeal) may weaken the judicial independence of Hong Kong and affect the confidence of the people of Hong Kong. I am afraid this is an overexaggeration of the case. If the Chinese and British Governments stubbornly impose limitations on the number of overseas judges, then I think that their so doing is tantamount to taking a tree more important than a jungle. According to the decision of the Sino-British Joint Declaration on (the appointment of) overseas judges, the spirit (of appointment) is based on need,

thereby providing flexibility. If we adopt a practical and realistic approach to settle the issue with flexibility, the controversy on the agreement of the Court of Final Appeal can be resolved gradually without dwelling on a tedious discussion on whether the arrangement has violated the Basic Law and the Joint Declaration.

Mr Deputy President, it would be better if the Legislative Council were a church, for we could eventually pray and hope that no similar case would happen in the future. This is because we do not know how many more of such arrangements in the transition period would come up over the next few years, which require the Chinese and the British Governments to reach an agreement behind closed doors. As Legislative Council Members who have played no part in the agreement, what functions could we perform? For this reason, I absolutely support Mr Simon IP's motion. Secondly, I hope that Legislative Council Members would unanimously strive for the opportunity of playing a part in matters affecting the well-being of Hong Kong people over the next few years, particularly policies which have a bearing on post-1997 affairs and which require legislative enactment to be effective. If these were brought up for discussion in the Sino-British Joint Liaison Group, I sincerely hope that the Hong Kong Government would, through different channels, exchange views, communicate and consult with Legislative Council Members.

Mr Deputy President, with these remarks, I support the motion.

PROF FELICE LIEH MAK: Mr Deputy President, not being a lawyer, I am not qualified to comment on the finer legal aspects of the motion. And as a professional and a Hong Kong person I shall limit my comments to two points. First, there is a need for expertise. Second, the Court of Final Appeal's decisions will affect everyone who lives and works in Hong Kong.

The world is not only characterized by increasing complexity but also rapid change. We are now witnessing more collaborative efforts, where experts in specific fields from all over the world come together to discuss and solve problems. We see this in issues relating to the environment, to AIDS, drug trafficking and even little Gordon in his search for the right blood type.

The legal profession also benefits from world-wide expertise. In trying complex cases, whether they be criminal or commercial, I am sure that any Chief Justice will appreciate having the ability to call on the best legal brains available in the world. The question before us today, therefore, like many other Honourable Members have said, is not the actual number of foreign judges who may sit on the Court of Final Appeal, but the flexibility to call on the best legal experts from countries where the legal tradition is based on common law. The decision is therefore what it will take to enable the future Court of Final Appeal in Hong Kong to achieve international respect and credibility that it deserves.

Our new court must succeed the Privy Council in both function and stature. Those of us who are not involved in the legal profession are often unaware of the formidable task that we undertake in this succession. The Privy Council's wealth of experience and expertise is not generally recognized by the community. But important decisions, with ramifications that affect everyone, are made each year by the Privy Council.

The Honourable Simon IP in moving this debate mentioned the appeals that had been made to the Privy Council since 1985. I would like to go further into time and look at the appeals made in the last decade and in that period, the Privy Council reviewed 79 appeals. Of these cases, it affirmed the appeal of 34. Thus, 43% of all cases heard by the Privy Council in the 1980s ruled against the highest court in Hong Kong. This fact alone, despite what the Honourable Rita FAN had said, is a credible argument for greater flexibility, since it indicates that our present system is still dependent upon foreign expertise.

The Honourable Simon IP also cited cases that were relevant to the business community. I shall now mention a few cases that has wider relevance. Thirteen of the affirmed appeals were criminal cases, including two death sentences. In one instance the Commissioner who first tried the case made improper summations of the evidence for the jury, not making clear that the burden of proof rests on the prosecution, not the defence. The legal dictum of innocent until proven guilty" is a fundamental precept of our justice system and our Bill of Rights. And yet the Court of Appeal at that time allowed the conviction of murder and the death penalty to stand despite the flawed proceedings.

In another criminal case, a man was accused of loitering. This is an important issue in view of our anti-loitering law. The case was dismissed because the Magistrate, and later the Court of Appeal, held that there was no opportunity given to the defendant to explain the reasons for his suspicious behaviour. When the Attorney General appealed the case to the Privy Council, the appeal was affirmed because the defendant had not sufficiently explained his behaviour when he was questioned.

In a 1981 trial, the Court of Appeal of Hong Kong made a ruling on necessary evidence in a bribery case. They held that, in order to prove disproportionate assets, the prosecution must show the value of the defendant's assets, both at the time of purchase and at the time of the criminal charge. The Privy Council ruled against this decision, calling it an unwarranted restriction on allowable evidence. This ruling is a significant decision affecting the future prosecution of bribery.

The Privy Council affirmed appeals on a number of cases that involved general principles of law. One such case ruled on the law governing the relationship between the banker and the customer. A trusted clerk had embezzled money from his company by submitting forged cheques to three different banks where the company held current accounts. The courts had to

assess culpability for this crime on either the company or the bank. The Court of Appeal of Hong Kong ruled in favour of the banks, but the Privy Council reversed that decision. They ruled, rightly so, that the company, ignorant of the deceit through no fault of its own, could not be blamed for the bad cheques. Thus, customers are protected from paying the penalties of banking crimes committed against them.

Another case is very interesting because it has relevance to decisions regarding whether it is local jurisdiction or not. Another case considered the proper assessment of damages to an injured party. One question before the court was: Should the court, in the process of assessing damages, consider the level of awards in places outside Hong Kong? In this particular case, the Court of Appeal believed it was appropriate to consider the levels of awards in other countries, especially England. But awards of the United Kingdom are much higher than Hong Kong's award. The Privy Council modified this ruling, stating that when assessing damages, only those jurisdictions "where the relevant conditions are similar" should be considered. This ruling will help keep damages awards at a reasonable level in Hong Kong.

So although it receives little coverage in the newspapers, the decisions of the Privy Council shape the business and the community of Hong Kong. These decisions, and the stature of the Council, are the source of our confidence in the rule of law. As the cases I have described reveal, the Privy Council is a source of expertise not presently found in Hong Kong as yet. That expertise can and will be developed here, but we must have the flexibility to seek guidance and assistance from abroad. The evidence reveals that our Courts are not yet ready to stand alone. In time, with the flexibility to consult foreign legal expertise, the Court of Final Appeal can become our foundation of security. But, today, we must guarantee that flexibility.

With these remarks, I support the motion.

MR MAN SAI-CHEONG: Mr Deputy President, as a member of the legal profession as well as a previous member of the Basic Law Consultative Committee, I would like to express my view on today's motion.

I will speak first on the status of the Joint Declaration (JD), and then I will talk about the quality of local judges, and lastly, I will address the question of judicial independence.

When the British and Chinese Governments signed and then ratified the JD, they did not intend the agreement to be just a gentlemen's agreement, that is, just to be kept by mutual good faith, or worse still, to be breached with impunity. The JD was, and is, an international agreement registered in the United Nations as an internationally binding agreement.

As my colleague, the Honourable James TO, is soon going to address the legal issues and technicalities of the JD and the Basic Law (BL), I will only spend a little time, except to say that as the JD is an internationally binding agreement, regard must be given to the Vienna Convention on the Law of Treaties adopted by the United Nations in 1968. Article 31(1) of the Convention provides that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

Much of the confusion so far engendered will not have arisen if enough attention had been given and paid to the words "ordinary meaning" instead of twisting words for political expediency.

Now I come to my second area of concern, which is the quality of Hong Kong judges to fill the future Court of Final Appeal.

While it is undeniable that Hong Kong judges, living in Hong Kong and sitting in the Hong Kong Court of Appeal for a number of years, will have tremendous experience about local legislation, Hong Kong judges may not be as experienced as eminent overseas judges in areas where Hong Kong laws are similar or the same as those of English laws, or those of the other "Commonwealth countries.

The law on taxation is a handy example in this respect. Some of our tax laws are similar to those of the English and Australian legislation, and some Hong Kong cases have gone from the Hong Kong Court of Appeal to the Privy Council. A lot of case law in this area accumulated through appeals from Hong Kong and other Commonwealth countries. The fact that many Hong Kong cases have been overturned on appeal suggests that while the quality of Hong Kong "judges may be high, there are some very complex areas of our law which is, at least for the time being, much better to be left to judges more experienced in complex and controversial matters.

I wish to emphasize that this is not so much an admission of the comparatively high standard of overseas judges but rather an acceptance of the fact that Hong Kong judges need time to build up their exposure and experience, particularly in complex and commercial matters.

This leads me to my last area of concern, namely, the question of judicial independence, which has been the subject of a lot of comments today and recently.

When we talk about judicial independence, there are two aspects we need to look at; actual independence and apparent independence. Actual independence is the Court's freedom from any pressure in whatever manner in its exercise of power. Apparent independence means perceived independence, that is, how the public will interpret whether in any given situation the Court is being independent, and also be seen to be independent.

Just as justice must not only be done, but also that it must be seen to be done, so the Court of Final Appeal must not just be independent, but also be seen to be independent. This is especially important to Hong Kong if it is to perpetuate its position as an independent financial centre. Foreign and local investors must have the same confidence that the highest court in our legal hierarchy will be able to run with equal competence and integrity as it is running. A disturbing argument by the Secretary for Constitutional Affairs today is that it would be dangerous for this Council to force the Administration to break this new agreement for fear that it might invite the PRC to break other agreements reached between the two sides. But this argument fails to address a crucial point, namely, that this new agreement itself is in breach of the JD and that what this Council is seeking to do is to undo this new agreement in order to comply with the JD. This is a case where two wrongs do make a right.

To sum up, I think that the CFA should have the absolute discretion to decide whether, and if so, how many judges are to be invited in any given case. As a lawyer, I am of the opinion that this interpretation is exactly in accordance with the spirit as well as the clear wording of the JD and the BL. And Mr Deputy President, I give my strongest and firm support to Mr IP's motion.

MR STEVEN POON (in Cantonese): Mr Deputy President, the issue of the Court of Final Appeal was raised at the Legislative Council In-House meeting on 25 October by Mr Allen LEE and Mr Simon IP. Among the eight points recorded in the minutes of meeting, the Members' opinions as set out in the following two points are the most important:

(1) The agreement reached by the Sino-British Joint Liaison Group (JLG) has not allowed sufficient flexibility in the number of overseas judges as was provided for in the Sino-British Joint Declaration and the Basic Law.

(2) The Court of Final Appeal should be set up in 1993 as originally scheduled.

At the In-House meeting, it was passed by an overwhelming majority that Mr Allen LEE should reflect the above opinions to the Administration. Since 25 October, the issue of the Court of Final Appeal has been widely discussed and afterwards, a draft motion on the Court of Final Appeal was proposed by Mr Simon IP as follows:

> "That a Court of Final Appeal be set up in Hong Kong at an early date, by 1993 if possible, with more flexibility for the Court to invite overseas judges to sit on it than has been agreed by the British and Chinese Governments, and such flexibility should be in accordance with the Joint Declaration and the Basic Law."

It was noted that the draft motion still requested the setting up of the Court of Final Appeal by 1993. However, when I received the final version of Mr Simon IP's motion last Friday, 29 November, it was evident that he had changed his mind, that is, what we call "having made a swerve". He no longer considers the early establishment of a Court of Final Appeal important. So the motion before us today does not request the setting up of the Court by 1993. Although this is a very minor amendment in wording, the meaning of the motion now differs completely from the understanding, spirit and expectation of most of the Members at the In-House meeting on 25 October.

As for myself, I am of the view that the establishment of the Court of Final Appeal in 1993 is the major premise which will play a positive role in training up local judges of suitable calibre. If anyone should, like many others, have worries about the spirit of rule of law in Hong Kong, we had better not lump such worries together with the year 1997 because so many things will have to change in 1997. Actually, the establishment of the Court of Final Appeal in 1993 can somewhat allay the misgivings of the people of international commercial concerns. If the issue is left unresolved till after 1997, with the right of interpreting the Basic Law vested in the hands of the National People's Congress of China, there is no guarantee that we can have terms more agreeable than those offered to us now. That is why I say that the establishment of the Court of Final Appeal in 1993 is the major premise. Without this premise, there will not be any basis upon which Britain and China can negotiate. The Court of Final Appeal will become the affairs of China if it is to be established after 1997. The present motion, which merely emphasizes flexibility about the number of overseas judges while disregarding the basic principle of setting up the Court of Final Appeal in 1993, is putting the cart before the horse and there is suspicion of trying to pass off fish-eyes as pearls. I, therefore, beg to differ. I believe that Mr Simon IP must have amended his motion out of good intention. Neverthess, by so doing, he has unwittingly made fools of those Members who supported his views on October 25. The attitude of the legal circle in upholding judicial independence and the dignity of the law, without doubt, deserves our admiration. But the so-called flexibility and power of discretion are all words without well defined meaning. Considering that Hong Kong will become a Special Administrative Region of China, it will be somewhat naive and unrealistic to think that China will tolerate a majority of overseas judges in the five-member Court of Final Appeal.

Unlike in the past 300 years when China was subjected to foreign oppression, China now plays a decisive role in international affairs and has the power of veto in the United Nations Security Council. At a time when Hong Kong is to be reverted to China, I reckon under no circumstances will China allow or tolerate the internationisation of the future administration of the territory. Hong Kong cannot be compared with Singapore, Malaysia and New Zealand which are independent sovereign countries. As we will be a local government of the big and strong China after 1997, it is impossible for the Court of Final Appeal to have such flexibility as to allow the number of overseas judges to be more than two. Judging from the present situation, the so-

Called "flexibility" and "power of discretion" are, in essence, only the choice between one and two overseas judges. As to what difference it will make, there is just no definite answer. If we ask the general public or the industrial and commercial sector whether it is worthwhile to give up the establishment of the Court of Final Appeal in 1993 just for the difference of one overseas judge, I believe many people will answer in the negative.

Mr Deputy President, concerning the Court of Final Appeal, I have come to the conclusion that:

(1) The establishment of the Court of Final Appeal in or before 1993 should be considered the most important principle. The present motion to remove this demand is to deny its importance and thus has breached the understanding reached in the Legislative Council's In-House meeting on 25 October.

(2) The so-called "flexibility" is, in essence, only the choice between one and two overseas judges. By no means should we give up the basic principle of establishing The Court of Final Appeal in 1993 for the sake of this minor difference.

Based on the above, I am afraid I have to attach one condition to my support for the Honourable Simon IP's motion, that is, the Court of Final Appeal must be established in or before 1993. With these words, I hereby conclude my speech.

MR JAMES TO (in Cantonese): Mr Deputy President, I was afraid we lack a quorum. (*Laughter*)

After listening to Mr Steven POON Kwok-lim, I wish to point out one thing: I hope he would not misunderstand our colleagues. I have listened for a long time and have not heard any Member supporting the motion speak on one or two issues. Generally, it was those against the motion who spoke on one or two (issues?). (Those) supporting (the motion) have all along maintained that there should be flexibility. I hope Mr POON would listen carefully.

With regard to the composition of the Court of Final Appeal, the Joint Declaration reads: "The power of final adjudication of the future Special Administrative Region shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal". The provision concerning the Court of Final Appeal in the Basic Law (Article 82) has been similarly worded. It is therefore essential to explain the above provision clearly if we are to judge whether the agreement on the Court of Final Appeal reached by the Joint Liaison Group contravenes the Joint Declaration and the Basic Law.

First of all, "may as required" — who is to decide whether overseas judges are required? It is clearly stipulated in the provision that "the Court of Final Appeal may as required....." That is the discretion and autonomy which the Court of Final Appeal can exercise in the composition of judges in specific cases. It is also an important link in judicial independence. Letting the Joint Liaison Group or the Chinese and British Governments decide now what will be required in the future is undermining the independence of the judiciary.

"The Court of Final Appeal may as required" — when should it be decided that it is "required"? Required by what? Required politically? Of course not. A Court of Final Appeal which enjoys judicial independence will of course consider the details of individual cases before deciding if there is any need to invite overseas judges to take part in the hearing. If there is such a need, overseas judges should be invited. If not, no overseas judge should be invited. Thus, there should not be any hard and fast rule stipulating that one overseas judge must be invited or that the number of overseas judges invited must not exceed one. It should all depend on what is actually required. China and Britain have now made the decision for the future Court of Final Appeal. Does that mean they can foretell whether overseas judges and how many such judges will be required by each and every case in future? For this reason, the agreement, by stipulating the number of overseas judges and the number of local judges in every case, obviously contravenes the Joint Declaration and the Basic Law.

Some may argue that since the article says "may invite" but does not say how many, the inclusion of one overseas judge as specified in the agreement is in keeping with that provision. But if someone invites you to dinner and says you can eat as much as you need, does that mean you can eat only one mouthful?

Recently, WU Jianfan, a member of the Institute of World Politics of Chinese Academy of Social Sciences cum former member of the Chinese side of Basic Law Drafting Committee, issued a lengthy article which discussed the composition of the Court of Final Appeal systematically and in detail. There are several points worth noting. He pointed out that the reason for restricting the number of overseas judges to one is that China will resume sovereignty, including the judicial power over Hong Kong. Therefore, the place should be administered by those Chinese who constitute 98% of Hong Kong people. Thus, the Court of Final Appeal should be made up of mainly local judges, who represent the majority of the people of Hong Kong, so that the principle of Hong Kong people running Hong Kong can be put into practice. In response to his comments, I have two points to make:

A. The exercise of sovereignty in respect of judicial power, in fact, is fully covered by the Basic Law. Firstly, it is provided for in the Basic Law that the Chief Justice of the Court of Final Appeal shall be Chinese citizens with no right of abode in any foreign country. Secondly, issues concerning the exercise of sovereignty over defence and foreign affairs are not under the jurisdiction of the Court of Final Appeal. Moreover,

before the enactment of any law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Special Administrative Region, it must be tabled before the National People's Congress for consideration. Is this not exercising sovereignty? Should China want to restrict the number of overseas judges, I wonder why it is not stipulated in the Basic Law that the Special Administrative Region (SAR) "may as required invite overseas judges who should make up not more than half of the total number of judges to sit on the Court of Final Appeal" or that the SAR may as required invite overseas judges "on condition that the majority of the judges sitting on the Court of Final Appeal shall be Chinese citizens".

B. Since the overseas judges are invited to sit on the Court of Final Appeal, there will be no question of infringement of sovereignty because it is up to the Court of Final Appeal in the future HKSAR to decide whether or not overseas judges should be invited. Of course, overseas judges can be invited when required, but they may also not be invited even when required. This is legally justified and does not constitute an infringement of sovereignty. The problem is that where there is a genuine need and wish to invite overseas judges, it will be unreasonable to stipulate rigidly that the number of judges invited cannot exceed a certain number to sit on the Court of Final Appeal. Along this line of reasoning, the agreement between China and Britain limiting the number of overseas judges to only one constitutes an infringement of sovereignty.

Mr WU also mentioned that the setting up of the Court of Final Appeal is within the jurisdiction of the Central Government and that even though it is stated in Article 83 of the Basic Law that the structure, powers and functions of the courts shall be prescribed by law, the Central Government can still make provision for them by enactment of laws. I think what Mr WU has said is wrong. According to Article 18 of the Basic Law, only several national laws as listed in Annex III shall be applied in Hong Kong and such laws shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the future SAR. Does it mean that the establishment of Court of Final Appeal is not within the autonomy of the future SAR?

Some may consider the agreement worth supporting as it is conducive to the localization of judges. Rightly so, we are also looking forward to localization. However, subjective thinking is one thing and reality is quite another. The fact is that it takes time to train up local judges, and what we need are those who are capable of sitting on the Court of Final Appeal, which is on a higher level in the Judiciary, and the training of these judges cannot be accomplished overnight. At present, United Kingdom judges must have at least 20 to 30 years' experience and of the highest calibre before they can be promoted to be judges of the Privy Council. Those who are less capable may be eliminated in a few years' time. The existing uncertainties over our political and economic prospects and the fact that the political system and the Legislative

Council are not fully democratic make the localization of judges all the more difficult. Under such circumstances, inviting overseas judges to sit on the Court of Final Appeal is, indeed, helpful in building up the expertise of local judges by giving them the chance to share experiences with and to learn from overseas judges. Furthermore, the general public believes overseas judges will withstand political pressure better and maintain impartiality when sensitive cases and those involving the interests of the Government are put before the Court of Final Appeal. It will ensure judicial independence and give status to the Hong Kong Court of Final Appeal. If we insist that judges must be promoted from the local Court of Appeal, the Court of Final Appeal in essence will only be another appeal court. It is not of a comparable stature to replace the Privy Council (the existing court of final appeal) and will undermine the confidence of the people of Hong Kong as well as the investors in the rule of law. I am not against the appointment of local judges to sit on the Court of Final Appeal. As local judges are familiar with local systems and customs, they may be more capable of mastering the rule of justice when dealing with local cases. But we should also make sure that these local judges have sufficient qualifications and ability to ensure that the principles of common law are correctly applied in Hong Kong. In order to raise the standard of local judges, we should not just set our minds on speeding up the training of local judges and resist the interflow with other common law jurisdictions.

I hope that the Hong Kong Government will not delay the establishment of the Court of Final Appeal. They should not say that if everyone is not in favour of it, the agreement should then be cancelled. I hope that the Court of Final Appeal can be set up as soon as possible so that we can accumulate experience and precedents, which will boost the confidence of Hong Kong people and investors in the Court of Final Appeal. At the same time, the Government should not forsake the principle of judicial independence and the autonomy of the Court of Final Appeal in Hong Kong in return for the establishment of the Court of Final Appeal in 1993 or even earlier.

Finally, I request the Hong Kong Government to promptly submit to this Council, according to the Joint Declaration, an agreement which is consistent with the Joint Declaration and the Basic Law. The Government may think that I deliberately make things difficult for the Administration. But if we are not forgetful, we faced the same situation when the Bill of Rights Bill was introduced. On that occasion, the Government was adamant to what it believed was right and we applauded its steadfastness. I hope it will do the same this time. In order to show its determination to maintain good administration and to shoulder its responsibilities towards the people of Hong Kong, the Hong Kong Government should set up the Court of Final Appeal according to the provisions of the Joint Declaration and the Basic Law as soon as possible.

Mr Deputy President, I would now like to retort some misleading arguments which have been put forward. Mr Michael SZE said he hoped that there would not be a break in the judicial system of Hong Kong or a reconstitution (of the Court of Final Appeal) in 1997 because in either event,

Hong Kong would suffer. When I talked about the Bill of Rights earlier on, I mentioned that there was precedent. The Bill of Rights was enacted in spite of China's objection.

Mr SZE stated that "for the sake of certainty and continuity, some moderation of our aspirations for greater flexibility becomes necessary." But if ours is a noble aspiration, to what extent should it be moderated? Should our aspirations be lowered to such a level that we must give up even our judicial independence and autonomy?

Mr SZE further stated that the "four-one" composition of the Court of Final Appeal is a workable proposal. Is a workable proposal equivalent to a good proposal which is not interfering with Hong Kong's power of exercising judicial independence? I wish to draw Members' attention to the fact that this would hinder the court in dealing with its own affairs. For example, the selection of a suitable number of judges to hear a particular case is an internal affair for the judiciary, and is also part of what constitutes judicial independence. Hence, the four-one formula, whereby the numbers of overseas and local judges are predetermined, is in fact a hindrance to judicial independence.

Besides, Mr SZE also said that any suggestion that some judges in Hong Kong were less independent in the discharge of their judicial functions than judges anywhere else was a totally unsupportable and invidious assertion. I believe that after 1997, members of the public will think that overseas judges are free from any influence and can discharge their functions independently. That is what the Honourable MAN Sai-cheong meant when he said, "It is not just the question of whether the judges will discharge their duties independently, but also that people will believe and feel that they are independent and just."

Moreover, Mr SZE stated that with regard to legal interpretation the Attorney General would later elaborate on why the provisions of the Joint Declaration cannot be interpreted as giving the Court of Final Appeal an unlimited power to invite as many (overseas) judges to sit on it as it wishes. I will listen to the Attorney General's explanation carefully and see whether he has any expert views on international law and whether the British and Hong Kong Governments honestly believe that the "four-one" composition of the Court of Final Appeal is still consistent with the provisions of the Joint Declaration. I hope that they will put this down on record.

Besides, what has been very enlightening to us is that, as what Mr SZE has said, our fundamental difference in fact can be boiled down to difference between two overseas judges and one overseas judges. If this is what he honestly believes, then there is little wonder why members of the British team at the Joint Liaison Group meeting only proposed two overseas judges at the outset. It is because they genuinely believe it is only a matter of having two overseas judges or one overseas judge.

Mr SZE has, in his speech, shed some light on a very important point for us. He stated that he had just come from a meeting of the Joint Liaison Group, at which the Chinese side had made it absolutely clear that there would be no question of renegotiation on the issue. But, in fact, we had earlier on learnt from some newspaper reports that this matter had not been put on the agenda of the Joint Liaison Group. If the Chinese side had, as Mr SZE said, ruled out the possibility of further negotiations, I would like to know whether the British side had brought up the subject on Hong Kong's behalf despite the fact that it was not on the agenda of the JLG meeting. If so, I hope it would be made public so that the people of Hong Kong know that efforts have indeed been made.

Furthermore, concerning Mr SZE's remark that without such an agreement, Hong Kong's judicial system would not continue unaltered beyond 1997, I would like to ask Mr SZE whether we have to believe fully the Chinese Government's remarks that the composition of the Court of Final Appeal will be abolished or altered. If Mr SZE thinks that it is the time for political bargaining, should Britain not adhere to her principles and bravely continue to fight for a better agreement for Hong Kong people?

Mr Deputy President, with these remarks, I support Mr IP's motion.

DR PHILIP WONG: Whether the Court of Final Appeal should be set up in Hong Kong before 1997 and how it should be constituted are matters of judgement. The Chief Justice of Hong Kong, the Governor, and the Governments of China and Britain have exercised their judgement on the matter. I can detect nothing in the published expertise of Honourable Members which provides any evidence that their judgement on this matter is likely to be superior.

The very terms of the motion is unfortunate because it implies that somehow the Basic Law which is an integral part of the Chinese Constitution can be complied with by an act of this Council. I trust that this error was an unintentional mistake and not a mischievous attempt to mislead.

The underlying feeling of panic displayed by some Honourable Members in having to appoint Hong Kong lawyers to the Court of Final Appeal is disturbing. If we have no confidence to appoint from amongst Hong Kong people final arbiters of the laws we enact, are we entitled to have confidence reposed in us to enact laws at all?

I think we should support the Governments of China and Britain and the judgement of the Chief Justice, and reject this motion.

DR YEUNG SUM (in Cantonese): Mr Deputy President, I would like to express with great emphasis my deep regret over the agreement reached by the Chinese and British Governments on the Court of Final Appeal. I am greatly dissatisfied

with the way in which the Executive Council and the British Government handled this matter.

According to the Sino-British Joint Declaration, there should be room for flexibility in the forming of the Court of Final Appeal and the forming and operation of this Court of Final Appeal is a matter to be dealt with under the jurisdiction of the Special Administrative Region Government. The arguments for this have already been put forth by some Members in this Council and I do not intend to repeat them. I only wish to concentrate on discussing other issues concerning "Hong Kong people ruling Hong Kong", "the promised high degree of autonomy" and the responsibilities of the Executive Council and the United Kingdom Government. Under the Sino-British Joint Declaration, Hong Kong will put into practice the formula of "Hong Kong people ruling Hong Kong" and enjoy a high degree of autonomy after 1997. With regard to the establishment of the Court of Final Appeal, the Joint Declaration has stated in no uncertain terms that the SAR Government is to be vested with power of final adjudication. The British Government is obliged to implement the Joint Declaration while China, acting as the Central Government, is only responsible for Hong Kong's future foreign and defence affairs. The present agreement on the Court of Final Appeal is clearly a violation of the Sino-British Joint Declaration. It may rightly be concluded as a joint attempt by the Chinese and British Governments to commit a breach of the Joint Declaration in the absence of an open and full consultation of the general public in Hong Kong.

With the formula of "Hong Kong people ruling Hong Kong" and "the promised high degree of autonomy", the people of Hong Kong are not only given the right to make their own decisions on matters pertaining to the administration of Hong Kong's domestic affairs but, most importantly, are free to uphold the rule-of-law spirit and retain their judicial systems. Some people are of the view that the Sino-British accord on the Court of Final Appeal is not the best arrangement and that Hong Kong should have its own Court of Final Appeal established before 1997 in order to boost the confidence of the investors and help the Court of Final Appeal build up a larger stock of legal precedents. Mr Deputy President, I wish to point out in particular that this is a seemingly true argument which tends to turn black into white.

Those people who support such an argument are of the view that the setting up of Hong Kong's own Court of Final Appeal before 1997 will have a decisive effect on the local judicial system. The establishment of the Court of Final Appeal serves to symbolize the existence and independence of Hong Kong's judicial system, thus strengthening the confidence of the local people and investors in the future of Hong Kong.

Unfortunately, this argument is ill-founded. It is as impracticable as driving a clay ox into a river and wishing it to reach the opposite bank all in one piece. If the pre-1997 Court of Final Appeal in Hong Kong is to take the shape as suggested by the Sino-British agreement on the Court of Final Appeal, it will be composed of four local judges and one overseas judge. The arrangement as

to the Court's composition constitutes a material breach of the relevant article of the Joint Declaration which provides for a degree of flexibility in regard to the composition of the Court of Final Appeal. It also manifests the joint endeavour by the Chinese and British Governments to override the Joint Declaration through an executive act. Thus, the rule-of-law principles and spirit are shattered by the proposed establishment of such a Court of Final Appeal. Since it is a joint attempt by the Chinese and British Governments to overturn the "Joint Declaration, the setting up of the proposed Court of Final Appeal will only symbolize a deliberate act of the executive authorities to interfere in the development of Hong Kong's judicial system and undermine its independence. In that case, how can such a Court of Final Appeal be of any help in promoting the confidence of the local people and investors in the future of Hong Kong? Some people wonder if today's debate is indeed timely and cast doubt on the motion of the debate. It has always been my belief that as legislators, Members of this Council are obliged to observe and protect the Sino-British Joint Declaration even at the risk of facing great political pressure. Since the general public want us to be responsible legislators and commit ourselves to the cause of protecting the rule of law spirit and the independence of Hong Kong's judicial system, we have no other choice but to hold our ground.

To some people, politics is an art which lays much emphasis on practicability. However, the observation of certain principles and ethics is also very important in politics. To me, nothing is more ridiculous than the violation of a legal agreement in an attempt to prove the importance of the rule of law and that of the judicial system.

It can be seen from the way the agreement on the Court of Final Appeal was reached that both the British Government and the Executive Council have not taken the long-term interest of the Hong Kong people into account. They just wanted to fulfil their own wish of maintaining the temporary stability without paying regard to the price Hong Kong people would have to pay. The ways in which the democratic development in Hong Kong, the construction of the new airport and the agreement on the Court of Final Appeal were handled have given Hong Kong people the impression that the British Government is only setting its mind on planning for an honourable retreat and maintaining good diplomatic relations with the Chinese Government without giving any thought to the long-term interest of the Hong Kong people. And I stress that it is Sino-British not Sino-Hong Kong relations that they are concerned about. I believe the way how the British Government handled the affairs in Hong Kong in recent years will leave a stain in the British history.

Furthermore, what have the Executive Councillors done to fight for the interest of Hong Kong people? In the light of the agreement on the Court of Final Appeal which is an attempt to violate the Joint Declaration and to confuse what is right and wrong, have they ever tried their best to uphold the Sino-British Joint Declaration and protect the independence of Hong Kong's judicial system? Some people think that it is pointless to put up a fight in a no-win situation. However, I do not agree with this kind of attitude. In fact,

circumstances are subject to the influence of subjective and objective factors. If one gives up fighting for what he considers as right instead of standing firm and keeping up his spirits, then the impact of external elements on the circumstances will become much greater.

Mr Deputy President, all in all, both myself and other members of the United Democrats of Hong Kong in this Council are all against the agreement reached by the Chinese and British Governments over the Court of Final Appeal, mainly because that agreement was in breach of the Joint Declaration and jeopardized the independence of the judicial system in Hong Kong. May I express hereby my deep regrets over the attitudes of the British Government and the Executive Council on this issue. Recently, the Government has been actively engaging itself in lobbying activities and criticizing publicly against some of our colleagues in this Council for conducting this debate. This again proves that this Council will never become a legislature-led organization. Lastly, on behalf of the United Democrats of Hong Kong, I would like to express my greatest respect to the legal profession and other professional bodies for their efforts in upholding the independence of Hong Kong's judicial system.

Finally, the United Democrats of Hong Kong are of the view that the Chinese and British Governments should renegotiate an agreement on the Court of Final Appeal. If the two governments really care for the well-being of Hong Kong, they should let the Hong Kong Government set up the Court of Final Appeal before 1997 in accordance with the Joint Declaration. If the Court is in place by 1993 or any time before 1997 and operates so smoothly as to have gained international recognition, then the Chinese Government will have to pay a heavy price if it abolishes the said court after 1 July 1997, not to mention the opprobrium it will incur from breaching the Basic Law which it took part in formulating.

Mr Deputy President, with these remarks, I support the Honourable Simon IP's motion.

8.00 pm

DEPUTY PRESIDENT: It is now 8 o'clock and under Standing Order 8(2) this Council should now adjourn.

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

Question proposed, put and agreed to.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, first of all I would like to point out that today's debate is untimely. The judgement is passed after taking into consideration the effects of the debate and whether the debate can achieve the desired objectives. Notwithstanding my doubts about Mr IP's intention of moving this motion, I consider him the appropriate person to do so as he is looking at the question from a legal point of view. However, to discuss the question right at this moment when the Sino-British Joint Liaison Group is having a meeting would only make it more difficult, rather than easier, to achieve a greater degree of flexibility.

When the question was discussed at the last In-House meeting, several Members and I abstained from voting. The reason was that the question was not only very important, but also very controversial. As I am not a lawyer, I think it is better to stay calm and collect views from all parties concerned before passing any judgement. This is a controversial question on which no simple judgement can be passed, particularly because the general atmosphere at that time, as I recalled, was that the agreement reached by the Sino-British Joint Liaison Group was in contravention to the Basic Law.

Since that meeting, I had discussed the question, which was really a hot subject, with friends of mine from the trade and industry sectors, the tourism sector, as well as friends in the legal profession. Today many of my colleagues are of the opinion that if the Court of Final Appeal is properly established in accordance with the Sino-British Joint Declaration instead of the Basic Law, the confidence of investors will be boosted. If not, investors will be deterred from making investment in Hong Kong. I have met with friends in the trade and industry sectors this month, but I have yet to find anyone who has really taken the matter seriously. If a Court of Final Appeal is established in a very satisfactory manner, it may somewhat help to boost the confidence of the investors. However, the difference between one overseas judge or two overseas judges on the Court of Final Appeal would not matter so much as to affect the decision of a multi-national company in making investment in Hong Kong. To the investors, it is not a matter of great significance. The question has given rise to so much controversy that I believe if one asks 10 different people, one may get 10 different views. What is the baseline? At least those I have met with do not want the matter to develop into a controversial political issue that would lead to confrontation between the Governments of Hong Kong or the United Kingdom and China.

Most people agree that the establishment of the Court of Final Appeal before 1997 would be good for Hong Kong, both for investors and the general public.

If we had an ideal which could not be realized, what would we choose?

Two days ago, the media put to me this question: "Last time you abstained from voting. What about this time?" I said I was hesitating between an abstention vote and an affirmative vote, as I had not yet come up with sufficient

reason to vote against the motion. But one thing worried me very much when Mr IP moved his motion just now. In my opinion, if we have an ideal, it is perfectly reasonable for us to go and fight for it. But if we fail to achieve it, we should accept the reality. We should take as much as we manage to get instead of giving up the whole thing simply because the reality falls short of our ideal. So during the break, I asked Mr IP again what he meant: whether he would rather give up the agreement reached by the Joint Liaison Group if it could not be changed — at least that is how I take his motion. If such is the case, then it is something that I personally cannot accept. So I think we should still wait for the Government to submit its Bill so that we may examine it from an overall perspective. I think that after this debate, it will not merely be a question of whether the majority or the minority have voted for the motion but rather the opinions voiced. I believe all my colleagues, whether voting for or against the motion or abstaining from voting, think that the greater degree of flexibility there is, the better, and that we should not come to a final judgement until the Bill is debated in its totality in the Legislative Council.

So, unless Mr IP indicates clearly in his winding-up speech later on that what he meant was not "he would rather the Court of Final Appeal not established if the ideal could not be achieved", I cannot vote for his motion and will stick to my earlier position of casting an abstention vote.

MR SZETO WAH (in Cantonese): Mr Deputy President, it is said that the Court of Final Appeal is an issue concerning sovereignty, implying that the decision on the composition of the Court of Final Appeal rests with China as it is a matter of China's sovereignty and to reject the "4 plus 1" agreement and to request for more flexibility, that is, flexibility in line with the Sino-British Joint Declaration, is tantamount to having China's sovereignty violated. Is such a statement correct?

It would be correct if there has never been the Sino-British Joint Declaration; otherwise, the person who makes such statement is like a fellow going back on his words and violating the rights of his own. He slaps his own face but accuses others of assaulting him.

China has never recognized any unequal treaty. To exercise her sovereignty, she need not have taken the trouble to negotiate with Britain. Nor does she need to have signed the Sino-British Joint Declaration to reclaim Hong Kong after 1997. No provision needs to have been made about the *status quo* and the Court of Final Appeal. However, negotiations were conducted with Britain, and the Sino-British Joint Declaration was signed. It has been provided that Hong Kong will maintain her capitalist system and life style for 50 years after 1997. Except for foreign affairs and defence, Hong Kong will be vested with executive power, legislative power, independent judicial power, including that of final adjudication. This is the decision of China in exercise of her sovereignty. The conclusion of the Joint Declaration is a realization of China's sovereignty. Any development in breach of the Joint Declaration is a violation

of China's sovereignty as realized in the conclusion of the Joint Declaration when Mr ZHAO Zi-yang, the then Premier, gave his signature on behalf of the Chinese Government to the Joint Declaration on 19 December 1984. If it has to be said that some party has violated the sovereignty of some other party, it is the agreement reached by the Joint Liaison Group that has violated the sovereignty of the two signatories to the Joint Declaration. This is what I mean when I said a while ago that some one has gone back on his words and violated the rights of his own.

Some have denied that the "4 plus 1" agreement is in breach of the Joint Declaration, saying that it merely specifies what has been agreed in the Joint Declaration. Let us see if it is a kind of specification or a violation-cum-falsification.

It has been clearly provided in black and white in the Joint Declaration that "Special Administrative Region's Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on it". There is absolutely not any restriction on the number of judges to be invited. Considerable flexibility is allowed.

This provision in the Joint Declaration has in fact been tampered with by the "4 plus 1" agreement to read as follows: "The Court of Final Appeal may as required invite no more than the maximum limit of one judge from other common law jurisdictions to sit on it". Obviously the restriction of "no more than the maximum limit of one" is an extra qualification to deprive the great flexibility originally allowed. Should this be considered not a breach of the Joint Declaration but only an act to make it specific, then such act of making thing specific is most appalling. This trend, should it go on, will have the Joint Declaration distorted beyond recognition and have Hong Kong in chaos.

It has been spelt out in the Joint Declaration that "In addition to Chinese, English may also be used in organs of government and in the Courts in the Hong Kong Special Administrative Region." Would this be made specific to become, Before using one sentence in English, people have to use four sentences in Chinese"?

It has been stipulated in the Joint Declaration that "The provision of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force." Would this be made specific to become "one in every four or five of the original provisions as applied to Hong Kong shall be chosen by ballot to remain in force"?

Would the "right to raise a family" provided in the Joint Declaration be made specific to become "under the '4 plus 1' principle, people may enjoy such right only after 50 years old"?

Someone is going to play the role of ZHAO Gou and refer to a deer as a horse. However, in the 90s of the 20th century today, we belong to an era different from the reign of the son of Emperor Qin 2000 years ago.

Somebody claims it a distrust of the local judges to oppose the "4 plus 1" agreement. I remember the one who makes that claim gave a stunning remark six years ago that it was not scientific to have the people of Hong Kong running Hong Kong. Today I would like to quote to him his exact wording that "it is not scientific to have people of Hong Kong running Hong Kong.

It is really a bit "unscientific" to have the "people of Hong Kong running Hong Kong", because it is a rule by man rather than by law. "A rule by law" is scientific. The paramount code for Hong Kong in the future is the Basic Law formulated under the Joint Declaration. If the Joint Declaration and the Basic Law are subject to violation and falsification to an extent as they are now in the name of "making specific", to where we shall be led by "making specific" the unscientific principle of "people of Hong Kong running Hong Kong"? On where could we found our confidence?

As regards the invitation of foreign judges, the Joint Declaration emphasizes on the court experience of judges, their knowledge of the common law, and their authority in the international legal sector. The yardstick is the law". The focus of the "4 plus 1" agreement, however, is on the race of the judges, the kind of passports they are holding, and the closeness of their connection to the Hong Kong community, implying strongly that "people not of our race shall think differently". When compared, one places its emphasis on law" while the other on "man". The implications encoded in the two, that is, the "rule by law" and the "rule by man" are clearly discernible.

What do we want then, a "rule by law" or a "rule by man"?

It is said that the flexibility regarding the invitation of foreign judges to sit on the court is not so important, and that what is more important is to set up the Court of Final Appeal before 1997. To this, I want to ask a question: Why should the flexibility regarding the invitation of foreign judges and the setting up of the Court of Final Appeal before 1997 be a choice of mutual exclusion; why must we sacrifice one for the other? Is there anybody forcing us to sacrifice one in order to have the other? If so, is this not similar to blackmail?

In my opinion, the flexibility regarding the invitation of foreign judges and the setting up of the Court of Final Appeal are both important. But they are not of top importance. What is of top importance is that we should stand up to protect the Sino-British Joint Declaration. The Sino-British Joint Declaration must not be violated or falsified in excuse of making it "specific". It must be faithfully implemented in spirit and in letter. This is the most important principle for us. This is the life line of Hong Kong in future.

What else cannot be falsified and violated if the Joint Declaration, clearly laid down in black and white, can be falsified and violated openly by a "4 plus 1" agreement? Under such circumstances, would we still consider the setting up of a Court of Final Appeal before 1997 important or even more important?

Some have remarked that the work of the Joint Liaison Group is to hold consultations under the instruction of the two Governments and that agreements reached by the Joint Liaison Group are therefore those reached by the two Governments. It has also been said that some institutions within the British Hong Kong Government may have different views on the Court of Final Appeal but that cannot change on agreement reached by the two Governments. I must respond to such remarks.

It is stipulated in Section VI of Annex II of the Sino-British Joint Declaration that "The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration."

"Is it proper for a liaison body, even if it has, through consultations, reached an agreement under the instruction of the two Governments, to have the power to violate the Joint Declaration under the pretext of "making things specific"? We are of the view that even representatives of the two Governments were to hold another round of Sino-British negotiations, the Sino-British Joint Declaration recognized throughout the world cannot be changed.

The motion put forward today has no intention of changing an agreement already reached by the two Governments. We just do not want to see another agreement that would violate the Joint Declaration. If this Council cannot change an agreement reached by the two Governments, likewise, can such an agreement impose changes to the Joint Declaration? Why does a liaison body have such great powers?

The motion put forward today is not just a call for flexibility on the composition of the Court of Final Appeal, but also a call with greater meaning. We are here to stand up for the Sino-British Joint Declaration and allow no one to alter, tread on or violate the Joint Declaration. In doing so, we are fighting for the future of Hong Kong.

Mr Micheal SZE has said that the United Kingdom Government fully consulted the Hong Kong Government and the Executive Council and that it has not betrayed us in the matter of the Court of Final Appeal. If what Mr SZE has said were true then it would have been the Hong Kong Government and the Executive Council that had betrayed us. Mr Allen LEE has told us that if the setting up of the Court of Final Appeal is deferred until after 1997 it will be the Chinese Government which will decide the Court's composition. As a matter of fact, neither the Joint Declaration nor the Basic Law contains any provision to that effect. Even after 1997, it will not invariably be the Chinese Government

which will be deciding everything. Mr Stephen CHEONG has described this motion as confrontational and has warned, yet again, those citizens of Hong Kong who will be staying in Hong Kong after 1997. However, his good friend, Mrs Selina CHOW, who also hates confrontation, supports this motion. I wonder what explanation Mr Stephen CHEONG will offer. Mr TAM Yiu-chung and Mr Steven POON have made the point that the power of interpretation of the Basic Law lies with the Standing Committee of the National People's Congress. Be that as it may, I would say that the law must be interpreted according to the normal rules of construction and can never be interpreted arbitrarily, say, black be construed as white.

Mr Deputy President, with these remarks, I support the motion.

ATTORNEY GENERAL: Mr Deputy President, the many speeches today on this motion have underscored the importance which all of us attach to the establishment of the Court of Final Appeal. My colleague, the Secretary for Constitutional Affairs, has explained in clear and unambiguous terms the choices that lie before us, and I would urge Members most seriously to reflect carefully on his words before they cast their votes.

I would like, Mr Deputy President, to respond to a number of the legal issues that have been mentioned in this debate.

Firstly, let me explain why I believe it is so important to have the Court of Final Appeal set up now in a durable way to ensure continuity past 1997. A Court of Final Appeal, as has been said repeatedly this evening, deals with cases of the greatest importance. The Court's judgments, binding on all lower courts, are not simply legal opinions on legal issues — they are the law itself. Those judgments represent a body of law — a jurisprudence to which we can turn with confidence and certainty. It is, I believe, of fundamental importance that the Court of Final Appeal be established as early as possible to begin the process of building up a Hong Kong jurisprudence within the common law tradition. Were the Court not to be set up until after 1997, then we would have lost a golden opportunity for the Court to establish itself, and to have begun its vital work.

Much of the debate has focused on whether or not the agreement reached in the Joint Liaison Group accords with or is in breach of the Joint Declaration. The agreement is attacked as being a serious erosion of judicial independence. Mr Deputy President, I will not weary this Council this evening by rehearsing the clash of legal opinions. Annex I, para III, sub para 4 to the Joint Declaration, a provision mirrored exactly by Article 82 of the Basic Law, provides that the Court of Final Appeal in the Hong Kong Special Administrative Region may "as required invite judges from other common law jurisdictions to sit on the court of final appeal". But that provision <u>does not say</u> that the Court "may as <u>it</u> requires" invite overseas judges; it says the Court "may <u>as required</u>" invite such judges. This is clearly an objective test and does not

give an unfettered discretion to the Court to invite as many visiting judges to sit on it as it wishes.

If the discretion of the Court of Final Appeal to invite other common law judges were unlimited, it would mean that after 1997 all the judges in that Court of Final Appeal could consist of judges from other common law jurisdictions. It should be clear to Members that such a situation would not be tenable. The discretion of the Court of Final Appeal was never intended to be an unlimited one. It is an objective test and it is one which it is proper for this legislature to provide for in the legislation constituting the Court of Final Appeal.

There is one more important fact that must not be overlooked. Nowhere in the Joint Declaration, or in the Basic Law, is a minimum number of judges, or indeed any number of judges, specified. It is therefore entirely proper and indeed necessary for these details to be filled in by this Council by means of an Ordinance.

The Joint Declaration is an international treaty registered at the United Nations under Article 102 of the United Nations Charter. International treaties are interpreted not in accordance with restrictive provisions of national law but in accordance with international law as codified in the Vienna Convention on the Law of Treaties. Mr MAN Sai-cheong has very helpfully spoken about Article 31, but for convenience I would remind Members again what that says. Article 31 of the Convention sets out the rule that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given in its term in their context and in the light of its object and purpose. The same article also provides that there should be taken into account, together with the context, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.

Applying these rules of international law the Joint Liaison Group agreement on the composition of the Court of Final Appeal is consistent, I believe, with the Joint Declaration.

In summary, Mr Deputy President, on this issue I take issue with the view that the agreement contravenes the provisions of the Joint Declaration. The agreement has been reached in a manner consistent with the original international treaty and is in accordance with its provisions, when these are properly interpreted.

Some here today have cast doubt on the quality of the Court of Final Appeal by noting the number of decisions of the Court of Appeal that have been reversed by the Privy Council. There is the implication that the judges of the Court of Appeal would not have sufficient calibre to sit on the Court of Final Appeal.

Mr Deputy President, I have considerable difficulty in understanding that point. Firstly, courts of final adjudication in many places are, on the whole,

manned by judges who have reached their positions by way of promotion, usually from a court of appeal. Most members of the Privy Council previously served in lower courts — the English Court of Appeal. So there is nothing novel in providing the Court of Final Appeal with a core of judges drawn from our own excellent Court of Appeal. Secondly, if these doubts are intended to reflect on the quality of the Hong Kong Court of Appeal, then I must state, emphatically, that I do not share them.

The fact that some of a court of appeal's judgments are reversed at a higher level is an inescapable feature of a judicial system where there is a hierarchy of courts. It is inevitable that some decisions will be reversed or varied at a higher level. The fact that this occurs should not be used to criticize the system, or the courts, or the judges; rather it should be used as an indicator that the system to which we all attach so much importance, and rightly so, is working properly. Judicial reversal at a higher level occurs in all reputable jurisdictions.

The statistics quoted to this Council today do no more than illustrate what I have said.

Whilst I do not believe that we should be led too far by statistics, they certainly cannot be used to the detriment of Hong Kong's Court of Appeal.

Members have been given figures for appeals from the Hong Kong Court of Appeal to the Privy Council and by way of comparison appeals from the English Court of Appeal to the House of Lords for the five years between 1986 and 1990. As Members will be doubtless aware, appeals from the English Court of Appeal lie to the Appellate Committee of the House of Lords, which consists largely of the same judges who sit in the Judicial Committee of the Privy Council. When the Privy Council hears an appeal from Hong Kong, we are in effect having a case decided by the judges of the House of Lords. The figure showed that for both Courts of Appeal of Hong Kong and England, about 60% of that judgments were upheld on appeal.

In the year 1990, the last complete year for which figures are available, 45% of the judgments of the Court of Appeal in England and Wales were reversed by the House of Lords, while the figure for Hong Kong's Court of Appeal was only 22%; put it the other way round, 78% of the judgments of our Court of Appeal last year were upheld by the Privy Council. Somehow, that track record in relation to Hong Kong is used to suggest some inferior quality. Yet no one can seriously level that accusation against the English Court of Appeal. And remember that appeals from both courts go essentially before the same judges.

I believe that our Court of Appeal has established a fine reputation for quality. If some of its judges sit on the Court of Final Appeal, they will undoubtedly enhance its authority and reputation.

Mr Deputy President, the Secretary for Constitutional Affairs has spoken of a comprehensive set of measures intended to establish the Court of Final Appeal. There is much work to do and many legal issues to be considered. Some of those have already been mentioned by the Secretary for Constitutional Affairs. I earnestly hope that we can have the co-operation of all Members of this Council and of the legal profession in working together in this historic task.

In conclusion, Mr Deputy President, let me restate that the agreement reached in the Joint Liaison Group is not in breach of the Joint Declaration. I believe that the agreement provides us with a workable and durable framework — a view shared by the Chief Justice, the head of the Judiciary — and that it gives us a great opportunity to establish a Court of Final Appeal well before 1997, with all the benefits I have described, with in particular the guarantee of continuity in our judicial system.

Mr Deputy President, I oppose the motion.

CHIEF SECRETARY: Mr Deputy President, in a few moments Members will be asked to vote on this motion. Many cogent and differing arguments have been put by Members in the course of this debate. It is very clear that there are strongly held views on both sides. I sincerely hope that Members, having listened to what has been said, will be prepared to consider their positions in the light of those comments. This has been a real debate; it would be very sad if all Members had come into this Chamber at 2.30 this afternoon with closed minds and a firm decision as to how they were going to vote.

I know that some Members are concerned that their credibility would be damaged in the eyes of the public and the media if they were to vote differently today from the way they voted during the In-House meeting some five weeks ago. But time and events have moved on. A week is a long time in politics; the five weeks since the In-House discussion is a lifetime. And I ask Members to consider two important points. Firstly, the situation has become much clearer since that first In-House vote was taken. The Chinese Government have formally stated that a renegotiation of the agreement reached in the Joint Liaison Group is not possible. Clearly, any thinking person would accept that it is entirely reasonable for any Member of this Council to take that factor into account in considering the issues today.

Good politicians know that politics is the art of the possible, and I believe that the people of Hong Kong would expect us to take account of what is achievable and what is practicable in trying to take this matter forward.

Secondly, I think that many Members are inclined to vote for the motion, since it is very similar to that agreed by the In-House meeting. "How can we not vote for it?", some people say, "It is as wholesome as motherhood or slice-bread." But today Mr IP has spelt out the implications of voting for his motion. He certainly does not intend to offer Members a soft option; what he is saying is

that the agreement reached in the Joint Liaison Group must be reopened to achieve more flexibility, and if that is not possible he believes most strongly that it is better not to have a court established ahead of 1997 than to accept the arrangements which have been agreed in the Joint Liaison Group. So Mr IP is committed to an all-or-nothing approach: more flexibility or no court before 1997, and that is why he has amended his motion to delete the reference to the setting up of the court by 1993.

Let me finally try and sum up the position of the Government very briefly. I believe that Members must ask themselves whether they wish to have a Court of Final Appeal, albeit not the most ideal in their minds, well before 1997, which is guaranteed to carry on unaltered across 1997? Or are they prepared to face the prospect of uncertainty, of drifting towards 1997 with no clear idea of what would be put in place eventually? On an issue as important as this, surely we should not let the best become the enemy of the good. In making up our minds we should not lose sight of our primary objective in establishing a Court of Final Appeal in Hong Kong ahead of 1997. This is to instil certainty, to allow time to build up the membership and the reputation of the court, and to reinforce the message to the Hong Kong community and investors that Hong Kong's legal system will continue unchanged after 1997.

I hope Members will consider very carefully the real issues involved and the real options when they come to cast their vote. To strike a balance between what is desirable and what is achievable is not to take a soft option; it is to take a hard-headed and mature judgment as to what is in the best interests of Hong Kong.

Mr Deputy President, I oppose the motion.

MR SIMON IP: Mr Deputy President, some Members have implied that there may be some sinister or improper motive in the timing of this debate, and also the meaning and intention of the motion. I could ignore those views but I think it is better that I should answer them, lest it should generate even greater suspicion and speculation.

As far as the timing of the debate is concerned, as I explained when I moved the motion, I think there is no better time than now, really, to debate the issue. There will never be a better time because whatever time one expresses disagreement with the Joint Liaison Group (JLG) agreement, it will be regarded as confrontational. Thus if we did not have this debate today, and we wait for the Administration to introduce a Bill into this Council and views were expressed against the Bill, that would be regarded as confrontational. So why wait for a debate?

As far as the meaning and intention of the motion is concerned, some Members have said they do not quite really understand. The motion is really quite simple. It says, when the Court of Final Appeal in Hong Kong is set up it

should have more flexibility to invite overseas judges to sit on it than has been agreed by the British and Chinese Governments, and such flexibility should be in accordance with the Joint Declaration and the Basic Law. So, in other words, whenever the Court is set up, be it in 1993, 1994, 1995, 1996, 1997, all I am seeking is that there should be greater flexibility than the agreement arrived at by the JLG.

As I said earlier in my speech, if we can set it up in 1993 with the right composition and flexibility, all the better — everyone would be happy. But if, as we are told, it is not possible to have it in 1993 with that flexibility, then, as I have said quite clearly in my speech, let us defer the setting up of the Court until some future date, whatever that date may happen to be. And I did say very clearly that I and the legal profession take the view that the composition and unrestricted flexibility as promised under the Joint Declaration and the Basic Law were more important than the early setting up of the Court. I hope there is no misunderstanding of my position.

Mr SZE said that to set up the Court early would give confidence to the community. And my answer to that is, yes, it would give confidence to the community provided it had the right composition and the right flexibility. We should not compromise quality for speed, and quality is a function of composition. So when Mr SZE says, let us look at the rest of the package, do not judge the package simply by the composition, I would ask him: What is more important than the composition? Because the composition will determine the quality.

We are told that the JLG agreement is not open to renegotiation. We have been told that through the press, by the Chinese Government, by the British Government; we have been told that today. But we live in hope. I think many Members today have expressed the hope — Mrs CHOW has expressed it and many others have expressed it — that we would like our views to be taken into account, that there is no reason why our views should not be taken into account. This is an agreement that relates to very fundamental issues affecting Hong Kong and our views should be canvassed, and our views should be taken into account. And part of the reason why we have this debate now is so that our views may be taken into account. A lot of very valuable views have been expressed today, very well researched speeches have been given over a period of five and a quarter hours. What we say is on the record. If Britain and China and the JLG wish to take those views into account, they are available. If they wish to ignore those views, that is their prerogative; but we have done what is expected of us.

Mr SZE in his speech said that the provisions of the Joint Declaration, which is a binding international treaty, cannot and should not be interpreted as giving the Court of Final Appeal an unlimited power to invite as many visiting judges to sit on it as it wishes; to argue otherwise is to put a gloss on the Joint Declaration which cannot be supported by a proper interpretation of the

relevant provisions of the Joint Declaration in accordance with the canons of international law.

That theme is repeated by the Attorney General when he said that having a preponderance of overseas judges or all overseas judges on that court would be untenable after 1997.

Mr Deputy President, I see nothing in the Joint Declaration or in the Basic Law which says that the number of overseas judges must, as a matter of interpretation, be limited to two. That, really, is the fundamental error that was made at the very start. As I said in my speech earlier, once one starts on the wrong footing it is not surprising that one ends up at the wrong place.

Mr MATHEWS also read us the relevant part of the Joint Declaration. When he says that "as required" does not read "as it requires" — as if there is any great difference between the two — what he does not go on to explain is what then the words "as required" mean. Yes, it does not say "as it requires"; but what do the words "as required" mean in that case? And by whom is that requirement to be determined if not by the Court itself? So I would like to suggest to this Council that the distinction pointed out by Mr MATHEWS between the words "as required" and the words "as it requires" really makes no difference at all. The meaning is perfectly clear: it is a matter for the Court to decide "as required" how many or how few judges to invite.

There is a point mentioned by Mr Allen LEE which I would like to answer. He said that in 1997 it will be for China to set the Court up for Hong Kong. I would like to disagree with him, respectfully, on that. I think it is a most dangerous concession to make; it has very far reaching implications on Hong Kong's autonomy. As I pointed out in my speech, there are many other articles in the Basic Law which have a similar formula as the article we are talking about, Article 83. If we make a concession in respect of the Court of Final Appeal, that is, we concede that it is for China to do these things for us, then we would be conceding a very large chunk of Hong Kong's high degree of autonomy. In my submission, Article 83 quite clearly gives the power to the Hong Kong legislature and the Hong Kong Special Administrative Region Government to decide on the structure, powers and functions of the Court of Final Appeal, as a matter for Hong Kong and its internal autonomy.

I would like now to refer to the speech of Mrs FAN when she very helpfully produced some figures comparing the casualties of the Hong Kong appeals with appeals from other jurisdictions, like Singapore and New Zealand. She said that she took comfort in the fact that we were only marginally worse than other territories when it came to having our appeals overturned. But in my submission, those figures are not really very helpful. What is really at issue here is this: Can our judges in the Court of Appeal, overnight — and I do mean overnight, not tonight of course, but when it is set up, in 1993 or whenever — become judges in the Court of Final Appeal? I do not think that is really a way of setting up our highest court; that would be simply promoting the Court of

Appeal to the Court of Final Appeal. We would have a Court of Final Appeal which is simply the Court of Appeal in a different guise.

One point I would like to answer. In his speech, Mr LAU Wong-fat said that China had already given us a concession by agreeing that the Court of Final Appeal should be in Hong Kong and not be in Beijing. If such a concession was made, I am not sure when it was made. It certainly was not made after the Joint Declaration because the Joint Declaration says that the power of final judgment of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal in the Hong Kong Special Administrative Region. No talk about the Court being outside the Hong Kong Special Administrative Region. So if there is a concession, the concession was made before 1984 and did not form any part of concession made in relation to the Joint Liaison Group agreement.

Mr Deputy President, I hope that my fellow Legislative Councillors are satisfied that in moving this motion my intention is merely to allow this Council to express its views. I have no political motives; as I said, I did not wish to embarrass, criticize or assign blame. I think it is our duty to express our views, to protect the interests of Hong Kong and to protect the rights of Hong Kong, as we perceive them to be. We have to discharge an obligation which we assumed the moment we took our seats in this Council, and I think — I am sure — that Members of this Council will vote according to the merits of the situation and according to their own conscience.

CHIEF SECRETARY: Mr Deputy President, I wonder if I might raise a point of elucidation and ask Mr IP to elucidate what he has said in his speech. He said, "The quality of the Court will depend on the composition of the Court." Could I ask him whether he is suggesting that by making that remark he is in any way inferring that our Court of Appeal is in any way inferior to courts of appeal in other places from which normally courts of final appeal judges are appointed?

DEPUTY PRESIDENT: Mr IP, it is entirely up to you whether you do give the elucidation requested or any part of it.

MR SIMON IP: I have made my point, Mr Deputy President. I do not wish to repeat anything.

Question on the motion put.

Voice votes taken.

DEPUTY PRESIDENT: We shall need a division. Council will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

Will Members please maintain order as we are still in session?

The system is now activated. There will be no countdown; so Members need not feel under pressure of time to get their votes properly recorded. We shall not display the results until all Members are satisfied that their units are working properly. The first thing you should do therefore is to press the Present" button. When you have done that please proceed to press the button for the way you wish to vote. The result of this should be that all lights other than the light for the way you have voted will go out. Have all Members registered their votes? And do any Members have any queries about their votes being recorded correctly? If not, I will ask the Clerk to activate the display.

Mrs Selina CHOW, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Prof Edward CHEN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Micheal HO, Dr HUANG Chen-ya, Mr Simon IP, Dr LAM Kui-chun, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Gilbert LEUNG, Mr Eric LI, Mr Fred LI, Prof Felice LIEH MAK, Mr MAN Sai-cheong, Mr NG Ming-yum, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mr Stephen CHEONG, Mrs Rita FAN, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr CHIM Pui-chung, Dr Philip WONG voted against the motion.

Mrs Elsie TU, Mr Steven POON, Mr Henry TANG, Mr Howard YOUNG abstained.

THE DEPUTY PRESIDENT announced that there were 34 votes for the motion, 11 votes against it and four abstentions. He declared that Mr Simon IP's motion was carried.

Loud clapping in the Chamber.

DEPUTY PRESIDENT: Order please! Order!

Adjournment and next sitting

DEPUTY PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 11 December.

Adjourned accordingly at Nine o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Securities and Futures Commission (Amendment) (No. 2) Bill 1991 and the Pensions (Special Provisions) (Hospital Authority) Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWER

Annex I

Written answer by the Secretary for Health and Welfare to Dr LEONG Che-hung's supplementary question to Question 2

The question of exercising control of medical gases under the Pharmacy and Poisons Ordinance had been examined by an inter-departmental ad hoc committee and its report was presented to the OMELCO Standing Panel on Health Services on 9 December 1991. It concluded that it would not be appropriate to bring medical gases within the ambit of the Pharmacy and Poisons Ordinance and that the present legislative machinery and controls under the Dangerous Goods Ordinance should continue.

The existing provisions under the Dangerous Goods Ordinance provide a simple and direct system of control. They empower the Director of Fire Services to stipulate such licensing conditions as necessary to ensure the safe supply of compressed gases, including those for medical use. The onus for complying with safety standards and for observance of licensing conditions rests, quite rightly, with the licensed manufacturer. As the licensing authority, the Director of Fire Services has the requisite expertise and experience in ensuring the safety of manufacture, storage and transportation of such gases. There is no justification for transferring the responsibility for control or authority for licensing.

To facilitate better co-ordination and communications in the interest of safe patient care, the Government adopts a multi-disciplinary approach and has strengthened inter-departmental collaboration.