

OFFICIAL RECORD OF PROCEEDINGS

立法局會議過程正式紀錄

Thursday, 16 November 1995

一九九五年十一月十六日星期四

The Council met at half-past Two o'clock

下午二時三十分會議開始

PRESENT

出席者：

THE PRESIDENT

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

黃宏發議員，O.B.E., J.P. (主席)

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

李鵬飛議員，C.B.E., J.P.

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

周梁淑怡議員，O.B.E., J.P.

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

李柱銘議員，Q.C., J.P.

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

倪少傑議員，O.B.E., J.P.

THE HONOURABLE SZETO WAH

司徒華議員

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

劉皇發議員，O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

何承天議員，O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

夏佳理議員，O.B.E., J.P.

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

劉健儀議員，O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.

梁智鴻議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG

張文光議員

THE HONOURABLE CHIM PUI-CHUNG

詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE

馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA

何敏嘉議員

THE HONOURABLE EMILY LAU WAI-HING

劉慧卿議員

THE HONOURABLE LEE WING-TAT

李永達議員

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

李家祥議員，J.P.

THE HONOURABLE FRED LI WAH-MING

李華明議員

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

唐英年議員，J.P.

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

黃秉槐議員，M.B.E., FEng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

黃宜弘議員

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

田北俊議員，O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN

李卓人議員

THE HONOURABLE CHAN KAM-LAM

陳鑑林議員

THE HONOURABLE CHAN WING-CHAN

陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN

陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN

鄭明訓議員

THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

張炳良議員

THE HONOURABLE CHOY KAN-PUI, J.P.

蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN

朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

THE HONOURABLE IP KWOK-HIM

葉國謙議員

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

THE HONOURABLE LAW CHI-KWONG

羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

THE HONOURABLE MOK YING-FAN

莫應帆議員

THE HONOURABLE MARGARET NG

吳靄儀議員

THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

THE HONOURABLE TSANG KIN-SHING

曾健成議員

DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E.,
I.S.O., J.P.

黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

ABSENT

缺席者：

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., L.L.D. (CANTAB),
J.P.

李國寶議員，O.B.E., L.L.D. (CANTAB), J.P.

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

黃震遐議員，M.B.E.

THE HONOURABLE JAMES TO KUN-SUN

涂謹申議員

DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE CHENG YIU-TONG

鄭耀棠議員

THE HONOURABLE CHEUNG HON-CHUNG

張漢忠議員

THE HONOURABLE LAU CHIN-SHEK

劉千石議員

THE HONOURABLE LO SUK-CHING

羅叔清議員

THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

IN ATTENDANCE

列席者：

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

CHIEF SECRETARY

行政局議員布政司陳方安生女士，C.B.E., J.P.

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.

FINANCIAL SECRETARY

行政局議員財政司曾蔭權先生，O.B.E., J.P.

MR IAN WINGFIELD, J.P.

ATTORNEY GENERAL

律政司溫法德先生，J.P.

THE CLERK TO THE LEGISLATIVE COUNCIL

立法局秘書

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

秘書長馮載祥先生

PRESIDENT: Will Members please remain standing for the Governor?

CLERK: His Excellency the Governor.

PRESIDENT: The Governor will answer questions on the three topics which have been indicated to Members. A Member who has asked a question may for the purpose of seeking elucidation only ask a short follow-up question. A show of hands please? Mr LEE Wing-tat.

李永達議員問：總督先生，我想提問一項關於《聯合國公民權利和政治權利國際公約》要求提交報告的問題。事實上，議員在立法局亦曾提出同樣的質詢，就是中國政府多次公開聲明由於它並非該公約的簽署國，所以沒有責任在 97 年後代香港向聯合國提交報告。英國及香港政府則似乎認為中國政府有這方面的責任。看來這觀點上的分歧有很大機會持續一段時期。請問總督先生，如果這種分歧繼續下去，有何方法使提交香港人權報告這事得以在 97 年後落實執行？這對於香港的人權保障是十分重要的。

GOVERNOR: It is not just the British Government who believes that there is an obligation to continue to report on compliance with the covenants, it is also the United Nations Human Rights Committee itself. I think it is worth recalling that during this sitting of the United Nations Human Rights Committee, the Chairman made a clear statement about the obligations to report and he cited two particular reasons for that conclusion. The first was a jurisprudential reason, based on the examples of the CIS States and Yugoslavia. The second was a reason lodged at the heart of the Joint Declaration. So let us make this point absolutely plain: there is no doubt whatsoever about the reporting obligation. The only doubt is whether China will continue to decline to accept that obligation or whether Chinese officials will recognize it.

Now, it is our hope, and I think the hope of the community, that the reporting obligation will be implemented. We have, through the Joint Liaison Group (JLG), for example, tried to be as helpful as possible to Chinese officials

— and ministers have done the same — and we have pointed out how at present Britain discharges its reporting obligation, so that China can see how — and it is one way of proceeding — it could proceed similarly after 1997. And the United Nations Human Rights Committee has made it clear that it would be happy to accept reports from China. We will continue to stress the importance of the reporting obligation at every level — ministerial, JLG, and through other contacts as well — and we will, of course, have to say, in the further report that we have undertaken to give to the United Nations Human Rights Committee next summer, whether we have been able to make any progress with Chinese officials on this.

I just make one final point, and it is not meant solely rhetorically. What is the problem about reporting? If, as we all hope and believe, the international covenant is still to apply to Hong Kong after 1997, if there is no need for anybody to be concerned about the continuance of Hong Kong's way of life and the continuance of Hong Kong's civil liberties, then what is the problem about reporting? There is nothing to hide. So I hope that that point will be addressed more positively by Chinese officials and we will certainly continue to put the point very vigorously to them because I am sure that it is one of the reasons why there is concern — I do not state the point controversially, it is a matter of fact — about civil liberties and the future of our way of life after 1997.

李永達議員問：我有一項很短的跟進問題。由於《聯合聲明》是中英兩國簽署的文件，兩個國家都有責任保證香港的人權在這聲明的內容下得到保障。現時的問題在於中國政府已多次重複聲明，它不認為它有責任在九七年後提交報告，因為它並非該公約的簽署國。請問如果在未來的一段時間裏，中國政府仍持這種態度，英國政府可以採取甚麼行動？我不希望聽到總督先生只是答覆說會不斷進行游說。請問是否有其他國際上認可的途徑，來解決簽署聲明的兩個國家對責任有不同理解而產生的分歧？

GOVERNOR: Let me make an obvious point at the outset. It is not for me to recommend this way or other, but the easiest way for China to meet concerns and to meet its obligations would be to accede to the international covenants. That, I am sure, would be welcomed to everyone. But there are other ways in which China can continue to meet the obligations which, I repeat, were stated in terms

stated explicitly by the Chairman of the United Nations Human Rights Committee itself; terms which exist jurisprudentially, obligations which exist because of the Joint Declaration. The United Nations Human Rights Committee now has a body of experience to draw on which underpins its view that human rights are devolved to the people of the territory, and when the government of that territory or when sovereignty changes, it does not mean that the human rights that are guaranteed, change. One of the human rights that guarantees that people in Hong Kong have been given is contained in the covenants: the reporting obligation on individual states. And that continues to exist.

What recourse would be opened after 1997 were China not to report — or were China not, for example, which some people have said might be one way through, to agree to the Special Administration Region Government issuing reports — what recourse would be available then would clearly be to take the issue up at the United Nations more generally. But I very much hope, and I am sure that all Honourable Members share this hope, that that is totally unnecessary.

PRESIDENT: Mr Allen LEE.

李鵬飛議員問：總督先生，根據核數署署長的報告，現時聯合國難民專員公署尚欠香港10億元，有些報導更指稱聯合國要在50年後才可歸還這筆款項。請問按照大家當時所同意者，是否其他收容船民的國家，如菲律賓、馬來西亞和印尼也作如此安排呢？若否，為何香港要作出這樣的安排？既然聯合國難民專員公署現時看來根本無心歸還款項，香港的錢便變成“凍過雪水”，請問我們應如何處理呢？是否因官方失職而導致這情況出現呢？

GOVERNOR: No, I do not believe there has been any dereliction of duty. The Council, some Members more clearly than others, will recall that the Hong Kong Government entered into a Memorandum of Understanding with the UNHCR in 1988 which governed the financial contributions and the financial arrangements between the two parties. That is the basis for the unfortunate debt which is owed at the moment. I cannot speak for what precise arrangements were made with other countries in the region, but if they were different, I would be as interested as the honourable gentleman. But I was not, as he will recall, here in

1988, whereas others were. It is important, I think, for us to recognize that the UNHCR undertakes to make good the money which it owes Hong Kong and that point was made clear, once again, in as recently as September, and we will continue to argue the point with the UNHCR because a billion dollars is a very large amount of money for us to be owed.

李鵬飛議員問：問題在於與聯合國難民專員公署簽署的備忘錄，相信香港人並不知道，原來是沒有法律約束力的，直至現時才知道。當時只公布說公署會歸還欠款，因此，我提到失職問題，原因就在於此。政府並沒有告知香港人，也沒有告知本局，這份備忘錄沒有法律的約束力，即我們不能就其採取任何法律行動。如果聯合國不能償還欠款，就要由香港人負責。這就是問題所在。

GOVERNOR: I do not think that the Memorandum of Understanding reached with the UNHCR in 1988 was precisely equivalent to a commercial contract, though I am not sure precisely what the legal effect of an agreement with an international agency like the United Nations may be. I repeat that I was not a party to the negotiations or the agreement on that statement of understanding, but nevertheless, its terms are very clear and one of those terms is that the money owed should be repaid. We will continue to remind the UNHCR of that fact. We will continue to remind the international community of its obligations to Hong Kong. I was pleased, I repeat, that the UNHCR made it clear that it understood what those obligations are and how much that debt is in as recently as September and we will continue to pursue the UNHCR on that point.

PRESIDENT: Mr Martin LEE.

MR MARTIN LEE: *Mr Governor, how do you convince the doubting Thomases, and there are plenty both here and in the United Kingdom, that you still have the full support of the British Government on all your policies?*

GOVERNOR: Well, let us divide doubting Thomases into two categories. In the one category are those who when they see the wounds in the upper room are

prepared to believe. In the second category are those who, whatever they see in the upper room, go on with the same arguments because what they are in the nature of doing is propagandizing rather than seeking out the truth. The fact of the matter is that the policies pursued on behalf of the sovereign power here in Hong Kong, in the interests, I hope, of the people of Hong Kong, are policies on which the Governor of Hong Kong, the Prime Minister, the Foreign Secretary, the Cabinet and, I am pleased to say, the overwhelming majority of Members of Parliament at Westminster, have entirely agreed. If you look at British domestic politics, you may have noticed that there are some issues on which there is not that unanimity of view. But I am delighted that as far as policy on Hong Kong is concerned, we have been able, since I became Governor in 1992, to have a broad measure of cross-party support, as well as having the total support of Her Majesty's Government.

So, while I am sure the question will continue to be raised until 30 June 1997, just as the question of my departure will continue to be raised, despite \$500 fines, until 30 June 1997, they both fall into the realms of propaganda rather than the real concern about the truth.

As far as my own position, and, I will stop teetering on the brink of blasphemy at this point, relationship with the British Government is concerned, no act of faith is required.

MR MARTIN LEE: *But, Mr Governor, maybe I started this analogy, but wounds are not the sort of thing that the people of Hong Kong would love to see. But using this analogy, continuing with it, what are the sacred wounds that you can actually show us in the upper room? (Laughter)*

GOVERNOR: I really do think that Cardinal WOO and others would wish to intervene at this point in the proceedings. On every aspect of the policy which we have pursued in Hong Kong; the difficult negotiations that we undertook on electoral arrangements; the decision that we took that this Council had to decide how far Hong Kong was to go in meeting the promises that had been made on fair elections; the negotiations on the airport; the negotiations on which the Honourable Member and I were not entirely at one on the Court of Final Appeal; the position taken by the Hong Kong Government and the British Government

over the future of civil liberties in Hong Kong and the Bill of Rights; on every one of those issues, the British Government and the Governor of Hong Kong are at one. Were it otherwise, life would be far too complicated and far too difficult. Were it otherwise, I am not sure that I would be able to discharge my responsibilities as I wish to do and as the people of Hong Kong wish me to do.

I suppose it is fair to say that there is one issue on which the Governor of Hong Kong has fallen out with all the political parties, or two of the political parties in the United Kingdom, and that is the question of passports and right of abode, with also some differences of view on war widows and on the ethnic minorities. But on everything else, we have been, to finish finally with a biblical metaphor, a seamless garment.

PRESIDENT: Mr Paul CHENG.

MR PAUL CHENG: *Mr Governor, going back to reporting to the United Nations Human Rights Committee after 1997, in your comments, on the one hand you said they will be happy to receive reports on Hong Kong and then in another part of your comments you said, China has an obligation to report. In the corporate world I am used to, when you need to report something you are accountable to the head office, so to speak. Can you clarify whether China does have an obligation or is it just a voluntary situation that you are talking about?*

GOVERNOR: No, the terms of Article 40 of the international covenant are entirely clear. Since China accepts that the international covenant should apply to Hong Kong it must accept that Article 40, which contains the reporting obligation, should apply to Hong Kong as well. But the Chairman of the United Nations Human Rights Committee raised a different issue, which is an important matter of international jurisprudence, which is what happens to human rights undertakings given in respect of individual countries when the government of those countries changes or when those countries split up, as has happened with the CIS states and Yugoslavia, or by extension, when the sovereignty of a country changes. And the Chairman, and, I think, others, have made perfectly clear that because the human rights, which are guaranteed, are devolved to the

individuals in the country, rather than just being something to be locked up in a bank by the government of that country, and even when the government or the sovereignty changes, there is no difference as far as the human rights that have been guaranteed are concerned. So, on two grounds there is no doubt whatsoever about the reporting obligation. And I repeat, not in order to try to extend or arouse controversy, but very much in the attempt to do the reverse, that there are very few things that would make more difference to people's confidence in the future of civil liberties and human rights in Hong Kong, than a clear statement that China will find some way of reporting after 1997, because until that statement is made, people wonder what the problem is.

I am bound to say that I think there were very few people who understood there was any problem at all until recently.

MR PAUL CHENG: *Is this not more of a question on the fact that, from a sovereignty point of view, until China becomes a signatory, at which time then China would have a formal obligation? But at this point in time, until they become a signatory, it is strictly on a voluntary basis?*

GOVERNOR: No, and that is a point made by the United Nations quite clearly itself by the Chairman of the United Nations Human Rights Committee for the two reasons that I have expressed. First, the human rights undertakings made about Hong Kong are not undertakings which are retained by the Government. They are undertakings which apply to the individuals, to the people of Hong Kong, and those undertakings remain with the people of Hong Kong after 30 June 1997.

Secondly, because it is accepted that the international covenants should apply to Hong Kong and because Article 40 of the International Covenant that we are talking about makes the reporting obligation clear, then I think that every international lawyer concedes that the reporting obligation, in some way, and there are different ways in which you could do it, continues after 1997. Now in some ways it would be presumptuous for me to argue that the best way of ensuring that the reporting obligation will continue would be for China to accede to the covenants, but plainly that would be a very satisfactory way and would give a great deal of reassurance, I think, beyond Hong Kong.

PRESIDENT: Miss Christine LOH.

MISS CHRISTINE LOH: *Mr Governor, I would also like to ask about the international obligation. You have made Britain's interpretation of the reporting obligation as part of the Joint Declaration quite clear. China obviously has a different interpretation of that obligation. Now, do you consider that if on 1 July 1997 those reporting procedures are not put in place — have not been agreed with China, then would the Joint Declaration be effectively breached on that day on a very fundamental term? If your answer is yes, what will be the consequences?*

GOVERNOR: First of all, let me make it clear once again that it is not solely Britain's view that there is a reporting obligation. That view was put very clearly by the Chairman of the Committee to which we, as part of the British delegation, gave evidence only a few weeks ago, as the Honourable Member knows. Now, I have difficulty with "what if" questions, and most of the hot water I have ever got into is as a result of having answered those hypothetical questions. All I would say is — no, it involves me saying "if". *(Laughter)* All I would say is that the Joint Declaration makes it clear that the international covenants should apply to Hong Kong. There are reporting obligations under those international covenants and therefore not to report would, it seems to me, be difficult to reconcile with one's undertakings under the Joint Declaration. And I think that is a situation which all of us would want to avoid.

MISS CHRISTINE LOH: *Mr Governor, if I can then change the question to a not "if" question. Is it possible for the Joint Declaration to be breached? And if it is, what can we do?*

GOVERNOR: Well, it is possible for the Joint Declaration to be breached. The New China News Agency relentlessly argues, with no justification

whatsoever in fact, as one sees from squads of international lawyers who have appeared in front of the Select Committee on Foreign Affairs of the House of Commons, that having fair elections in Hong Kong is a breach of the Joint Declaration, whereas having fair elections in Hong Kong is a clear implementation of the Joint Declaration. But it is possible for either party to be in breach of the Joint Declaration and of other international treaties. But nobody who signs an international treaty should wish to breach it. If you breach an international treaty with another sovereign power, then it stands to reason that that sovereign power would wish to take up the matter, not least in the United Nations where the international treaty is lodged.

PRESIDENT: Mr Bruce LIU.

廖成利議員問：總督先生，無論在正式或非正式的場合，港府很多高級官員經常會與中方官員、本局議員或社會人士商討或談論九七過渡、人權、難民等問題。請問總督先生，港府有否內部守則，給予港府官員指引，讓他們在公布或引用本局議員或中方官員的談話內容時有所依循？

GOVERNOR: There is perhaps an inwardness in that question which I do not quite follow. But it is of course true that when discussing human rights or other matters bilaterally with Chinese officials, whether in the Joint Liaison Group or through other channels — and there are, as the Honourable Member makes clear, other channels — that Hong Kong Government officials or British Government officials would have speaking notes and briefings which reflected both the consistent positions of the Hong Kong and British Governments, and which, I am sure, took account of some of the arguments which they thought officials on the other side of the table would put to them. But perhaps I am being very dense and missing out on a point.

I do not think, if I can add the point, that diplomacy is entirely like political debate. Sometimes it is more restrained, sometimes, I think, it is less restrained. In political debate, you very often note, for example, how people have spoken and how people have voted on an issue in the past. On the issue, for example, of the Bill of Rights, that might be an appropriate way of conducting the argument. But normally, a dialogue between diplomats does not

necessarily pursue up and down the highways and byways what other people have said on previous occasions.

PRESIDENT: Mr Fred LI.

李華明議員問：我不會問及人權的問題，而是提出一項關乎地區的問題。昨晚觀塘仁愛圍發生簷篷塌下的不幸事件，今早我也曾到現場視察。該宗意外造成一死數人受傷的慘劇。我相信總督先生也可能知道這件事。這類事件偶有發生，都是涉及一些僭建簷篷。政府現時說會成立專案小組進行調查，但每次都只是在事後進行調查，然後清拆附近的僭建物。請問政府可否較為積極進取，做一些具前瞻性質的預防工作，以免這些不幸事件一再發生？

GOVERNOR: I am very prepared to answer it because it is obviously a subject of considerable concern to the community and I would like to offer my condolences to the family and friends of those who were injured, and the fatality.

We have, as the Honourable Member said, appointed an investigation team to establish the causes of the collapse and the Director of Buildings has set up a special task force to survey the buildings involved and to examine the scope for enforcement action against all unauthorized building works in the vicinity.

The Honourable Member is correct in saying that we should go beyond that. We do consistently urge the public to seek proper approval for building works in order to comply with safety standards. We do not have as much success as we would like, so what we are planning is to launch an intensive public education campaign in the early months of next year, to try to bring some of the problems to wider attention in the community and to try to avoid people putting up unauthorized buildings with the sort of calamitous consequences that we saw yesterday. I hope that will have some effect. As with industrial accidents and industrial safety, what is important is to combine rigorous enforcement with as much public education as possible and that will be our objective.

李華明議員問：總督先生，現時屋宇署是在有人投訴後，才會進行這些行

動。如果沒有人投訴，即使情況危險，也不會處理。政府有否考慮派遣巡查員到舊區逐座樓宇巡查，特別是一些非法食肆，因為今次事件也是非法食肆的簷篷塌下所致？請問政府可否積極進行巡查，而不是有待市民投訴後才處理？政府會否轉變工作的方式呢？

GOVERNOR: I have actually been with inspectors when they have been doing exactly what the Honourable Member recommends. It is an issue on which one needs to be proactive and not just reactive. If you travel around Hong Kong, as the Honourable Member will know better than me, you are, I suppose, impressed, among other things, by the large number of examples of illegal structures which our inspectors have to deal with, particularly in some of the most crowded and busy and elderly areas. And so, it is a combination of the proactive and the reactive. But I hope that people will recognize that what will sometimes seem to them merely the extension of a commercial opportunity, can be the end of somebody else's life.

PRESIDENT: Mr LEE Cheuk-yan.

李卓人議員問：最近預委會建議還原六條根據《人權法》修訂的法例所引起的爭論，令香港市民開始非常關注自己的人權保障。但很多人，甚至包括本局一些議員，其實對《人權法》的認識並不太足夠。在昨日的辯論中，本局有些議員提到《人權法》會令罪犯得到更多的保護，或《人權法》令個人權利過度膨脹。我覺得這些言論會令香港市民對人權保障和《人權法》感到非常混亂，令他們對本已認識不深的《人權法》概念更加模糊。因此，請問總督先生有否考慮成立一個人權教育基金，讓香港的非政府組織能有資源推動深入的人權教育工作，令香港市民對《人權法》、人權保障，以及剛才我們提到的兩條國際公約有更深入的认识？

GOVERNOR: There were a number of claims made yesterday about the impact of the Bill of Rights. There were a number made in one Councillor's speech — I am not sure whether he is here this afternoon, but I am sure he will not mind me addressing his doubtless inadvertent errors in the course of my remarks this afternoon, errors which underlined the case which the Honourable Member has

made for greater human rights education.

It was claimed yesterday that the Bill of Rights Ordinance has enabled tax defaulters to leave Hong Kong without paying their tax. The fact is that the Commissioner of Inland Revenue has ample power to prevent people who owe tax from leaving Hong Kong without paying it. Since July 1993, 119 Departure Prevention Orders have been made by the District Court on application by the Commissioner.

It was claimed that the Bill of Rights Ordinance had been used by Vietnamese migrants denied refugee status to delay their return to Vietnam. In the very few judicial review cases which the Government has lost in this area, the Bill of Rights Ordinance was not the deciding issue at all. Indeed the Bill of Rights Ordinance specifically provides that it does not affect immigration legislation governing the entry into, stay in and departure from Hong Kong of persons who do not have the right of abode here.

Similar claims, and I could go on at this sort of length, made about the recovery of drug proceeds were wrong and we will write to the Honourable Member because I am sure he will want to know what the facts are; similar claims made about the enforcement of drug laws were wrong; and similar claims made about the Prevention of Bribery Ordinance were wrong.

So there is a strong case for more human rights education, and I am delighted to say that one of the issues on which the Human Rights Committee in Geneva congratulated the Hong Kong Government, was that they thought we were doing a good deal more to educate people about human rights and their civil liberties here in Hong Kong.

Perhaps I can add one other point. What has happened in the last years since the Bill of Rights Ordinance was introduced? What has happened is that our courts have shown a considerable sense of balance in weighing up, on the one hand, the importance of protecting human rights, and on the other, broader interests such as the importance of fighting organized crime. They have struck that balance in a very sensible way and doubtless a consequence of that is that Hong Kong has not been ravaged by crime. The suggestion that the Bill of Rights has led to the breakdown of law and order in Hong Kong is probably, of all the crazy things I have heard since I have been Governor of Hong Kong, the

maddest of all.

I have got in my hand, as lawyers occasionally say, a copy of the *Straits Times*, Singapore. The *Straits Times*, the headline of which, for 6 November, stated, "Crime rate here", that is in Singapore, "higher than in Hong Kong". That is what the headline says. So are we really to believe that the Bill of Rights has broken up Hong Kong society? Are we really to suppose that in one of the most law abiding communities anywhere in the world, that the Bill of Rights has done the sort of damage which people were suggesting preposterously yesterday? What the Bill of Rights is, is a sign of the sophistication of this community. Why people are concerned about it is because they are concerned about their future. They are concerned about their way of life and they are concerned not about what will happen to that way of life before 1997. Does anybody here really think that they are concerned about that? No, so we are unanimous on that point. What they are concerned about is their way of life after 1997. Now are there people here who deny that those concerns about the future exist? Well, we are unanimous about that as well. So 40 - 15 last night, 60 - love today.

PRESIDENT: 59 - love!

GOVERNOR: 59 - love. These are the truths. We are not making it up. This argument was not started by my honourable friends in the Administration. It was not started by the Hong Kong Government. It was not started by the British Government. This controversy blew up because of things that were said by the PWC, despite the fact that many members of the PWC had voted for the Bill of Rights Ordinance, and things which subsequently have been said by Chinese officials. And do not let anybody think that an argument about human rights in Hong Kong does not have any effect on economic confidence. One of the reasons why we have got to stop these arguments, one of the reasons why we have got to give people the reassurance they want, is because we have got to show that we are concerned about confidence both here and internationally in Hong Kong's future. So if there is no problem about securing Hong Kong's freedoms in the future, let us have more Chinese officials and let us have more members of the PWC making that absolutely clear.

And if I can say one other thing in a long answer. What would really be breaking the Basic Law? I will tell you what would be breaking the Basic Law: not trying to implement the Bill of Rights. What would be in breach of the Basic Law would be to put laws back on to the statute book of Hong Kong which are clearly in contravention of the international covenants. That would be clearly in breach of Article 39 of the Basic Law. So in this whole sad and sorry business, we have the extraordinary spectacle of members of the PWC and Chinese officials themselves making proposals which would be in breach of the Basic Law.

I hope that we can end this argument soon with a clear statement which people will believe in Hong Kong of the commitment of the PWC and of Chinese officials to the future of Hong Kong's way of life.

李卓人議員問：我很少同意總督先生的意見，但我今次卻完全同意。不過，總督先生沒有回答我的問題，就是我剛才提及希望設立人權教育基金。我希望由於我完全同意總督先生的說法，他接⁹也會說同意我的建議，設立人權教育基金，讓香港的非政府組織可以長期深入推廣人權。

GOVERNOR: Well, I can prolong this joyous period of amity (*Laughter*).....

MR LEE CHEUK-YAN: *the importation of labour scheme!*

GOVERNOR: by telling the Honourable Member that there already is such a fund. It may not be as large as the Honourable Member would like. Sometimes it is true that one of the things that we disagree about is that he wants to spend more money than I do, but it is a substantial fund. It was increased recently and I have to say that I think it is exceptionally well used. The quality of the material produced by those who are responsible for dispersing these funds is exceptionally high and I think they deserve a good deal of credit for that.

PRESIDENT: Mr TSANG Kin-shing.

曾健成議員問：多謝主席先生。總督先生，在剛過去的星期日的一個紀念會上，我最欣賞的並非總督先生在會上靜默，而是法律界人士帶上很美麗的假髮，一身莊嚴的裝束。我非常欣賞他們，我欣賞香港有一群好的司法人員，這是我的夢。不過，當我仍陶醉在夢中時，在晚上卻被惡夢吵醒，就是這群人公開對《人權法》有其他意見。請問總督先生，司法人員公開批評《人權法》，在執法的角度上，有何看法？又總督先生知否現時有多少高級公務員、司法界及執法界人士對《人權法》有負面的意見？有關情況是否嚴重？總督先生怎樣可以使《人權法》貫徹落實，配套式在香港實施？我很希望總督先生能將我的美夢還原。

GOVERNOR: I much enjoyed seeing the Honourable Member at the moving Cenotaph ceremony last Sunday, and I noted that the Honourable Member was in full gear; and I was in what has been gubernatorial full gear, at least since 1992; and the judges were in full gear. And we all know that an independent Judiciary is one of the most important bulwarks in protecting and preserving the rule of law and hence Hong Kong's freedom and pluralism, both today and in the future. I have confidence in our Judiciary and I also have respect for the separation of constitutional powers, which means that this legislature makes laws, and means that the Judiciary implement the laws which this legislature makes. And that is the constitutional position today, and will continue to be the constitutional position.

Now, there are slight differences between the constitutions of different communities. In this community, the Chief Justice used to be a Member of the Legislative Council in the last century. In the United Kingdom, the head of the Judiciary is a member of the government, a member of the Cabinet. In the United States, there is an absolute and clear separation of powers and those things would be impossible. But whatever the nuances of constitutional difference, wherever there is the rule of law, you have a clear recognition of the leading roles of the legislature in making laws, and the Judiciary in implementing them. This Chamber recognizes some of the consequences of that; you have in your Standing Orders specific rules which you follow about not criticizing the Judiciary. And that is as it should be in any honourable legislature like this one.

I am sure that just as this legislature respects the role of the Judiciary, so the Judiciary today and in the future will continue to respect the role of the

legislature. And we certainly do that in the Government, and the Judiciary has my full confidence.

曾健成議員問：總督先生，我再與你爭論下去也沒有用，你又會說我妨礙司法公正。因此，我想以另一個角度來回應李華明議員所提出的問題。現時建造業訓練局並沒有提供拆樓的專業課程，讓業內人士修讀，而拆樓絕對會影響途人的安全....

PRESIDENT: You cannot ask a question which is not related to your original question. I am sorry. Mr YUM Sin-ling.

MR YUM SIN-LING: *Mr Governor, I would like to follow up on the debt owed by the UNHCR. We, the Panel on Security, have had a meeting with the responsible person from the UNHCR and he told us that how soon they could repay the debt depended on the donations from other countries. So, we think we should have a binding contract — some sort of contract — with repayments scheduled, so that they can show it to other countries who are willing to donate, then that would help his job and also help the repayment to us.*

GOVERNOR: Sorry, is the Honourable Member suggesting that there should be a schedule of repayments agreed by the UNHCR?

MR YUM SIN-LING: *Yes, some sort of a contract with the repayments scheduled.*

GOVERNOR: We would obviously like the repayment made as rapidly as possible, and we could then use that money on some other purposes. The commitment to the UNHCR was made in good faith and we expected to get the money back quickly. We still expect to get the money back and the UNHCR still says it is going to give us the money back. I am sure we would be prepared

to consider arrangements with the UNHCR which would enable the UNHCR, which is of course dependent on the contributions made by member states, to collect larger contributions from them. If there are particular proposals, then I am sure we would be prepared to look at them.

I would just add this. I, too, met the UNHCR representative when he was in Hong Kong. I think he was totally committed to helping us resolve the problem posed by the Vietnamese migrants, and I think that all of us should recognize the role that he and other members of the UNHCR have played in the last few years in dealing with this very difficult problem. Shortly before I arrived in Hong Kong, the number of Vietnamese migrants in our camps had peaked at over 60 000. We had got that down to about 21 000 when we first ran into some difficulties last year; we were just starting to cope with those difficulties when, as the Honourable Member knows, the United States Congress intervened unhelpfully. But I hope we can get back to the earlier period in 1992 and 1993 when we were enjoying such a rapid rate of voluntary repatriation.

PRESIDENT: Mr CHENG Kar-foo.

鄭家富議員問：多謝主席先生。剛才曾健成議員提到妨礙司法公正，我想他可能是指司法獨立。我也想問總督先生這個問題。剛才總督先生的答案似乎很官式，說政府行政部門與司法部門屬不同架構。但問題是，最近兩位司法機構的官員對《人權法》提出一些批評，但總督先生剛才振振有辭，說他領導的政府會保障香港的人權，以及《人權法》值得繼續在香港的司法架構下推行。如果司法機構官員真的在某些場合向中方官員批評《人權法》的不是，香港人對司法制度定感不安。請問總督先生如何能夠令香港市民，包括本局議員，深感到由你領導的行政部門能與司法機構的官員取得共識，在《人權法》這問題上，兩者都真正為香港的市民保障人權？

GOVERNOR: I am sure that all individuals in Hong Kong, including members of the Judiciary and including members of the Administration, will have reached certain conclusions as a result of events in the last weeks and months. I think that I do not wish to say anything else about the Judiciary, which has my full confidence. I do not wish to say anything, nor have any of my honourable

friends, which would cross the important boundary line between the executive and the Judiciary. Though I have to say this: obviously, the events of last Sunday raised a lot of questions in people's minds and we therefore, in the Administration, welcomed the Chief Justice's offer to make the views which he was said to hold, by a functionary of the New China News Agency, clear to the Administration as well. And we will look forward in due course to hearing what those views may be, which I think the Chief Justice has said are of a technical and jurisprudential character. But nobody is doubting the role of the legislature in making laws, and I go further than that and point out the breadth and depth of the debate in 1991 when the Bill of Rights was being considered and drafted; all the consultations which took place with the Law Society, with which some Honourable Members are more familiar than others; the debate and discussion that took place with the Bar Council, with the community as a whole; the consideration that was given at the time to the so-called New Zealand model, though it has to be added that the President of the Appeal Court in New Zealand recently said that in practice there is not very much difference between the application of the law under the New Zealand model and under our model. All those matters were widely discussed and debated in Hong Kong at the time and this Legislative Council came to some sensible conclusions under which, I think I am right in saying, 36 Bills have been amended or changed or repealed since then, and none of them — none of them — with any detrimental effect to Hong Kong's way of life, to the stability of our society. Look around Hong Kong, does this look an unstable society? Look at one or two other places in the region.

PRESIDENT: Mr MOK Ying-fan.

莫應帆議員問：主席先生，我也想就那熱門話題發問。剛才總督先生說不想再多說，但我希望他回答我的問題。最近我們從報章得知首席大法官楊鐵樑先生會在短期內向布政司提交一份報告。請問總督先生，這樣是否行政干預司法呢？

GOVERNOR: I do not think that the Chief Justice saying that he would give the executive in writing his views on the Bill of Rights represents an interference by the executive in the Judiciary. My honourable friend, the Chief Secretary, did

not tell or instruct the Chief Justice to do that. She would not have dreamt of doing so. Had she done so, which she would not have dreamt of doing, the Chief Justice would not have dreamt of complying, because that would have been interference in the Judiciary. So, I think there is one of those authentic Hong Kong, whale-sized, red herrings crossing the path of the shoal of fish.

The fact of the matter is that certain remarks have been made in private by the Chief Justice, and I read a very interesting column in the *Economic Journal* yesterday about the dangers if everybody made clear things that had been said to them in private, would find themselves in hotish water. The Chief Justice, having been reported as having said things in private, said that he would actually let us have those views so that we could see what they were and that seems to me to be a helpful contribution by the Chief Justice. It is not unusual for members of the Judiciary to give the Administration their views on aspects of public policy, or aspects of the administration of the law, and I am sure that they will continue to do so, though this Administration will not, at any time, seek to influence the views of the Judiciary or to interfere in the affairs of the Judiciary. Nor, I am sure, will anyone in this Administration report as matters of public controversy things that are said to them at private dinner parties.

莫應帆議員問：我想跟進這問題。港府會否將這份報告或意見交給立法局呢？

GOVERNOR: What the Chief Justice does with his written observations, if or when he produces them, is entirely, entirely a matter for the Chief Justice and I would not seek to influence what he does or says on this point or on any other because I have too much of a respect for the rule of law and because of the importance of an independent, a robustly independent Judiciary — one, as I said, of the bulwarks of Hong Kong's freedoms, openness and pluralism.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm Wednesday 22 November 1995.

Adjourned accordingly at twenty-seven minutes to Four o'clock.