

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 23 January 1997

The Council met at half-past Two o'clock

MEMBERS PRESENT

THE PRESIDENT

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

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

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

THE HONOURABLE SZETO WAH

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, O.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE MARGARET NG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

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

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT

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

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

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

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

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

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

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE NGAN KAM-CHUEN

DR THE HONOURABLE JOHN TSE WING-LING

PUBLIC OFFICERS ATTENDING

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.

CHIEF SECRETARY

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

FINANCIAL SECRETARY

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

ATTORNEY GENERAL

MR CHAU TAK-HAY, C.B.E., J.P.

SECRETARY FOR BROADCASTING, CULTURE AND SPORT

MR NICHOLAS NG WING-FUI, J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.
SECRETARY FOR HOUSING

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY

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

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE

MR KWONG HON-SANG, J.P.
SECRETARY FOR WORKS

MRS DORIS HO KO SUET-YIU, J.P.
SECRETARY FOR HEALTH AND WELFARE

MRS STELLA HUNG KWOK WAI-CHING, J.P.
SECRETARY FOR HOME AFFAIRS

CLERK IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

PURSUANT TO STANDING ORDER 4AA, HIS EXCELLENCY THE GOVERNOR, THE RIGHT HONOURABLE CHRISTOPHER FRANCIS PATTEN, ATTENDED TO ADDRESS THE COUNCIL AND TO RECEIVE QUESTIONS.

PRESIDENT (in Cantonese): Members please remain standing to wait for the Governor to enter this Chamber.

CLERK (in Cantonese): His Excellency the Governor.

PRESIDENT (in Cantonese): The Governor will make a brief statement and answer questions on the two subjects of which Members have been notified. A Member who has asked a question and received a reply may, for the purpose of seeking elucidation only, ask a short follow-up question.

GOVERNOR: Mr President, as Honourable Members may know, I visited London from 9 to 15 January. I wanted to visit Britain well in advance of the General Election which must be held before the middle of May this year.

During my visit, I delivered the annual NatWest Lecture and saw a large number of ministers and parliamentarians. In particular, I had meetings with the Prime Minister, the Foreign Secretary and the Home Secretary, as well as with the Minister of State for Hong Kong. I discussed with ministers the latest developments concerning the transition, including China's extremely misguided decision to appoint a body to replace this properly-elected legislature. I also pressed with ministers once more for the deserving claims of the non-Chinese ethnic minorities to full British citizenship. Most of my meeting with the Home Secretary was devoted to this subject, but it formed an important part of my meeting with the Prime Minister and my meeting with the Foreign Secretary as well.

I also had meetings with Mr Tony BLAIR, Mr John PRESCOTT and Mr Robin COOK as well as Mr Paddy ASHDOWN. I raised the issue of the ethnic minorities with them, too. As Honourable Members may know, the Labour Party has now joined the Liberal Democrats in supporting full British citizenship for the ethnic minorities. Mr Robin COOK, the shadow Foreign Secretary, made clear in the debate in the House of Commons in November that his party would support legislation to grant them citizenship. This pledge was reaffirmed in my meeting with Labour Party leaders and by Mr John PRESCOTT in Hong Kong this week.

I also raised the ethnic minorities in meetings with the Foreign Affairs Select Committee and with the British Hong Kong Parliamentary Group. Both were extremely supportive.

As for the British Government's position, while I very much welcomed the Prime Minister's strengthened reassurance to the ethnic minorities which he gave during his visit in March, I am sorry that the Government has still not yet accepted that this unique group of people merit full British passports. I will continue to press their strong case as hard as I can over the remaining months.

In general, I found in London considerable and growing interest in Hong Kong and the handover — interest coupled with optimism about Hong Kong's economic prospects but concern at some of the recent actions by China on the political front. The announcement this week by the Legal Subgroup of the Preparatory Committee, I fear, has done little to dispel those worries. Britain and the Hong Kong Government have made very clear where they stand on the subgroup's proposals to undermine Hong Kong's Bill of Rights and to restore outdated ordinances which are in conflict with the Bill of Rights and the International Covenant.

I would be happy to take Honourable Members' questions on the latter subject as well as on issues arising from my visit to London.

PRESIDENT (in Cantonese): Please raise your hand, Dr Anthony CHEUNG.

DR ANTHONY CHEUNG (in Cantonese): *Mr Governor, under the original "through train" arrangement for the political system, local laws which have to be amended or adapted due to the transfer of sovereignty in 1997 should be first discussed by the Sino-British Joint Liaison Group (JLG) and then introduced by the Hong Kong Government to the Legislative Council for the necessary legislation procedures before 1 July 1997. But now, with the establishment of the provisional legislature by the Chinese side and Chinese officials claiming that the provisional legislature will go through the First, Second and Third Readings of the laws before 1 July, does this mean that the negotiation mechanism of the JLG has become invalid?*

GOVERNOR: Well, I am not entirely sure what it is proposed that the Provisional, so-called Legislature is going to do, but as the Honourable gentleman knows if it purports to legislate — even if that is localizing laws — before 30 June, that action is almost certain to be the subject of legal challenge after 30 June.

We are still proceeding with our localization programme which has gone pretty well. It has been one of the more successful areas of the work of the Joint Liaison Group (JLG). I think I am right in saying that there are only eight localization items which still need to be agreed with the Chinese side in order for all localized bills to be enacted by June 1997. So, we have made pretty good progress and I hope we can continue to do so through those channels which are agreed between Britain and China.

DR ANTHONY CHEUNG (in Cantonese): *Mr Governor, regarding the purport of some Chinese officials that the provisional legislature would go through the First, Second and Third readings of some bills before 1 July 1997, the Governor has said that such action may be the subject to legal challenge. I would like to know the channels through which the British or Hong Kong Government knew about the relevant situations during this period and whether it has obtained explanations or clarifications from the Chinese government.*

GOVERNOR: The simple point is that the Provisional, so-called Legislature cannot legislate. It has no constitutional power to legislate or purport to legislate for Hong Kong. I will tell you what sort of assurances we have had. The clearest assurances we have had have been from the Vice-Premier of the People's Republic of China (PRC), who made it clear to the British Foreign Secretary in April that there could be only one legislature before 30 June, and I assume after 30 June, just as there could be only one judicial appeals system and only one Governor and Government. If Mr QIAN Qichen is now seeking to resile from that commitment made to the British Foreign Secretary, I think he should explain why.

PRESIDENT (in Cantonese): Mr Fred LI.

MR FRED LI (in Cantonese): Mr President, I would like to raise a question on people's livelihood. Recently, quite a number of organizations have published survey reports on poverty in Hong Kong. Their findings show that the living standard of many low-income earners is deteriorating and they are getting increasingly worse-off. The problem of poverty is worsening every day. The Government has not made even one single comment on these reports. I would like to know whether any government department has studied these reports and formulate policies to alleviate the increasing hardship faced by these people?

GOVERNOR: The Honourable gentleman should not forget that he is addressing the question to somebody who has been widely denounced for his excessive socialism and welfare spending over the last four and a half years. I am grateful to be attacked from the other flank on this occasion. I have to say that the report to which the Honourable gentleman refers was not a prominent issue on my agenda when I went to London, though perhaps it should have been.

Had it been, I am sure that I would have been able to point out that among sociologists and economists there are a number of different models for defining people's poverty and for discussing redistribution of income. I think that this particular model underestimates the impact on people's living standards over the last few years, not just of increases in Comprehensive Social Security Assistance payments but of increases in investment in health care, in education and in other things which help to raise the overall standard of living of those who are poor.

But obviously, the future of social policy in Hong Kong is an extremely important political issue now and over the next few years, and this community, like others, will need to find ways in which it can share its growing wealth with those in need without pushing up taxes so as to choke off further growth.

MR FRED LI (in Cantonese): *I have no intention to argue with the Governor on the definition of "poverty". In fact, many people are having low living standards. Since the issue of poverty involves a number of policy branches, such as the Health and Welfare Branch, and the Manpower and Education Branch, I would like to ask whether the Government will set up an inter-department working group to study these reports and respond to them?*

GOVERNOR: Well, these reports inevitably involve the Government in looking across departments at the impact of our overall policies on those groups concerned, and I am sure that will be done in this particular case.

I do not seek to belittle the importance of the Honourable gentleman's argument in pointing out that for most people in Hong Kong the standard of living has risen very substantially over the last few years. Most people have shared in the spectacular economic growth which Hong Kong has enjoyed, but all of us have to be aware of those who have been left behind while the economy has surged forward, and I agree with the Honourable gentleman that we have to try to ensure that our welfare policies help them too.

PRESIDENT (in Cantonese): Mr LEE Wing-tat.

MR LEE WING-TAT (in Cantonese): *Mr President, I would like to ask a question on human rights. On his visit to France about 10 days ago, Mr QIAN Qichen, Vice-Premier of China, said that China was considering the confirmation of the two International Covenants. In Hong Kong, responses were positive. The Democratic Party indicated its support and thought that it would be the sooner the better for the two covenants to be signed. After a week, however, the Legal Subgroup of the Preparatory Committee recommended that two pieces of legislation, i.e. the Public Order Ordinance and the Societies Ordinance, should be reinstated. This gave very confusing information to both the people of Hong Kong and the international community as to whether the Chinese Government intends to allow the human rights conditions in China and Hong Kong to keep on improving or to circumscribe the human rights condition in Hong Kong? I believe the Governor has heard of this information, and I am not sure if he finds it confusing or not. Can you tell us if you have tried to ask the Chinese Government through diplomatic channels what they are trying to do;*

whether they intend that the human rights condition of Hong Kong should be improved or circumscribed?

GOVERNOR: I noticed the report which the Honourable gentleman refers to. I think to be fair to the Chinese side, it represented — though it was not denied — the French Government's version of the meeting rather than the PRC Government's version of the meeting. But nevertheless, it sounded helpful and hopeful and I think that the whole international community, and certainly people in Hong Kong, would greatly welcome any positive indication that the PRC was intent on becoming a signatory of the International Covenants. I think it would send a message of confidence to Hong Kong and would greatly please the international community.

That statement was completely at variance with the message which came out of the Legal subgroup, to which I referred a moment or two ago, a message which — if I can borrow a word which perhaps has been over-used in the last 24 hours — certainly shocked people in Hong Kong and shocked people outside Hong Kong as well. *(Laughter)*

But, I just want to say this, these are recommendations, recommendations, and I very much hope that wiser views will prevail. People very often say what is Britain, or what is the international community going to do about this or that issue in Hong Kong, and those are reasonable questions to put to a British Governor. But there are things that people in Hong Kong can do in this particular case, and one thing they can do is to recall what they have done and said in the past.

I hope Honourable Members will bear with me if I recall some of the past discussions of human rights here in Hong Kong. We look back to the Bill of Rights itself. The Bill of Rights, which was agreed by an Executive Council containing many very distinguished Members whose names I will recall to you in a few moments.

During those debates, in the first debate on — let me get the date right — on 27 June 1990, one speaker, Miss Maria TAM, then a Member of this Legislative Council, set out the issue on one question which has been raised in the last few days which she then dealt with extraordinarily cogently. Let me quote: "There has been worry expressed as to the method of entrenchment and the question of supremacy. The convenor of the ad hoc group had already explained how the group dealt with the Administration's proposal of indirect entrenchment through amendment of the Letters Patent and the administrative measures that could be taken in later days to ensure that future legislation would not conflict with the Bill of Rights. This I regard as the best way to answer any worries that either the Bill of Rights will be superior to the Basic Law or override the interpretation of the Basic Law under Article 159."

Then again, when the Bill of Rights was debated on 5 June in 1991, Miss Maria TAM said as follows: "The Bill before Council today does no more than transform the contents of the International Covenant on Civil and Political Rights as it is applied to Hong Kong into a local piece of legislation to make such provision enforceable in the courts of Hong Kong, and I believe we have not contravened the Basic Law. I believe this to be a proper arrangement in safeguarding the rights of those who live in this territory now and in the years to come."

Other people made extremely good speeches as well. We have a speech here in 1990 on the same legislation by the former Honourable Member, Mrs Peggy LAM. "With its present day progress, Hong Kong has a genuine need to introduce legislation to safeguard human rights instead of relying solely on international covenants. In my view, the promulgation of a Bill of Rights Ordinance should be regarded as the factor conducive to the maintenance of stability and prosperity in Hong Kong and a step forward in promoting Hong Kong's rule of law system. It is, moreover, an indispensable part of the journey towards civilized social development. It is apparent", she went on, "..... that the Bill of Rights Ordinance once enacted will not claim superiority over the Basic Law. I think that the enactment and promulgation of the Bill of Rights Ordinance will be conducive to perfecting Hong Kong's laws and promoting Hong Kong people's consciousness of human rights."

Then we had a particularly moving speech from the Honourable Member, Mr Paul CHENG. "It is only right that a Bill of Rights is put into place at a time when the Hong Kong community begins its evolution towards a self-government under "one country, two systems". Given the responsibility of contributing to a successful transfer of sovereignty, we Legislative Council Members are enabled through this draft Bill of Rights to strengthen the foundations of the existing legal system by giving due recognition to the civil and political rights of our territory. It is incumbent upon us as legislators, preparing for the effective running of the Hong Kong as a special administrative region, to ensure that we will entrench essential freedom in line with the International Covenant. A Bill of Rights will allow for this in the most expedient manner."

There was a very good speech by the Honourable Member, Mr Edward HO. (*Laughter*) "As the sovereignty over Hong Kong, a blatantly capitalist society, will be transferred back to China, a steadfast Communist society" — the Honourable Member's words — "..... there is a natural and deep concern amongst the people of Hong Kong that the values attached to fundamental freedoms and rights of the individual as we know them will be different. Few would disagree with me that our worst fear of the future is not so much a lowering of our standing of living but the diminution of our freedoms and the rule of law. Thus it is natural that the people of Hong Kong desire that their civil liberties be codified and enshrined in the legal system so that, as far as possible, such liberties would be protected against the abuse of public powers."

The Honourable gentleman then made a passionate and extremely well-informed contribution to the question of whether or not the Bill of Rights would contravene the Basic Law and whether or not it would take precedence over the Basic Law. And he came down on the same side as Miss Maria TAM on those issues, and I hope that he still does. (*Laughter*)

We had an extraordinarily good speech as well from the Honourable Member, Mrs Selina CHOW, and I want to conclude this anthology with the Honourable Member's remarks. "I am convinced" (— 27 June 1990 —) I am convinced a Bill of Rights, however imperfect, will boost the confidence of our people. It should be seen as an integral part of our democratic evolution." I am not quite sure where the provisional legislature fits into our democratic evolution. "I cannot agree with the thinking that we should let well alone. Is that not a familiar system? The fundamental flaw in the "don't rock the boat" school of thought is a failure to recognize that the boat is rocking." You can say that again.

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

Thinking back to the remarks of the ubiquitous Foreign Affairs spokesman in Beijing the other day, I am not quite sure who is misleading whom. I would go on. We have a moving speech from the Honourable Member, Mr ARCULLI, in which he criticizes the Bill of Rights for not going far enough. Now that Bill of Rights was introduced by the Government when Members of the Executive Council included the aforementioned Miss Maria TAM, Mr Allen LEE and Mrs Rita FAN. It was passed by the Legislative Council on a voice vote with nobody voting against it.

What about the Societies Ordinance? Well, among those existing Legislative Council Members who supported the Societies Ordinance, which is now apparently to be struck down, were Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Dr Philip WONG and Mr Howard YOUNG. The Public Order (Amendment) Bill was passed by a voice vote with nobody voting against it. Then we come to the Societies Ordinance. Perhaps I should mention one or two other people who voted for the Societies Ordinance. They included, on the Third Reading, Mrs Rita FAN and Mrs Elsie TU.

We then come to the Boundaries and Election Commission Bill — a bill which was passed by this Legislative Council because this Legislative Council believes that these matters of electoral arrangements should be handled by an independent body in order to ensure that the arrangements are fair. I am not quite sure what it is about having fair elections which is thought to contravene the Basic Law but I will leave that to others to describe. Boundaries and Election Commission Bill. Members of the present Legislative Council who voted for it included Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, and so on.

So, to return to my starting point whether or not these vital elements in maintaining Hong Kong's way of life are maintained is very much in the hands of Hong Kong people, some very distinguished Hong Kong people who have already told us how important this legislation is.

PRESIDENT (in Cantonese): What a detailed reply. I think there is not much you can follow up, is there? *(Laughter)*

MR LEE WING-TAT (in Cantonese): *I think the Governor should be grateful to me for the question I have asked, which gave him a chance to read out the historical records. (Laughter) However, I think there is one matter that the Governor has yet to learn, and that is, many Members are able to "defeat their present selves with their past selves".*

Although the Chinese Government has at this stage mentioned that the Preparatory Committee will not make a decision on the Legal Subgroup's recommendation until next week, I would like to know what the Governor and the British Government can do during this last week?

GOVERNOR: Well, I just make one gentle remark in relation to what the Honourable gentleman has said about about-turns. There is a difference between an about-turn and a revolving door, and I really do think that people are going to be required to stand up for the way of life which they say they believe in and which has been guaranteed by the Joint Declaration.

But let me tell you what I am going to do. I am going to go on speaking out for those values which have made Hong Kong so successful. I notice that that same Foreign Affairs spokesman said the other day that the PRC had changed in the last 40 or 50 years. Had we not realized that? Absolutely. I am sure he has noticed that Hong Kong has changed as well. That Hong Kong today is one of the most sophisticated cities in the world, and it would be extraordinary to argue that a first-world economy should be saddled with the sort of political institutions which would be rejected by a third-world economy. That is the truth of the matter. And, the Foreign Affairs spokesman should, I think, recognize that.

I think the Honourable gentleman will have noticed that it is not just the Governor of Hong Kong who has expressed his concern. Right around the world, newspaper editorials, governments, political leaders and others have expressed their concern. So, I really do urge those who were responsible for these matters to think again, and think again hard. This is a very responsible community. It is a mature community. It is a law-abiding community. Allowing people to use a loud hailer is not going to bring civilized society as we know it crashing down. I would remind some of those who will be responsible for Hong Kong in the future of a very wise remark of the political philosopher, Edmund BURKE. "People", he wrote, "..... crushed by law have no hope. If laws are their enemies they will be enemies to laws." The law has to serve the values and decency of a society like this. The law does service those values at the moment. I hope it will continue to do so.

PRESIDENT (In Cantonese): Mrs Elizabeth WONG.

MRS ELIZABETH WONG: *With deference to you, Mr President, I would like to ask the Governor a question. And the question I would like to ask the Governor is this: Mr Governor, are you sitting comfortably right next to an Honourable gentleman who aspires to be the President of the provisional legislature that you considered a moment ago to be illegal?*

GOVERNOR: Well, I am a man of legendary charity. *(Laughter)*

PRESIDENT: Same here.

GOVERNOR: And everybody has to justify their actions, particularly to those who, in a democracy who elected them and everybody has to be, I guess, easy with their own conscience and I do not seek to be judgmental about individuals. But I do take the view that if Hong Kong is to have the democratic evolution of which the Honourable Member spoke and which has been promised to it, then it is perfectly clear that those who are going to play the most prominent part in that democratic evolution are those who stand for the principles of democracy and do

not compromise them.

I think that the *New York Times* was right the other day when it said that Hong Kong is a place of the future — represents a slice of the future, to get it absolutely accurate, and I think the future in Hong Kong will combine political and economic liberty, whatever the problems of the next year or two.

MRS ELIZABETH WONG: *In many countries, parliamentary members cannot really serve two sovereign powers at the same time because it would offend in one way or the other the law of that particular land. Have you considered, Mr Governor, or has your Administration considered the legality of Honourable Members of this distinguished Council serving, under another sovereign power, another council, either simultaneously or consecutively or concurrently? In other words, is the legal position very clear? That is: Honourable Members of this Council under British sovereignty can sit at the same time as members of the Provisional Legislature coming under Chinese sovereignty?*

GOVERNOR: Well, it is said by Mr QIAN Qichen not to be a legislature. It is clearly going to be rather an exotic debating society which meets on occasional Saturday mornings in Shenzhen. But if what it then does purports to be legislation, and if that legislation takes effect on 1 July 1997, I imagine that there will be people who will wish to challenge it under the Basic Law. I mean I do not do other than repeat what every lawyer in town will tell you.

PRESIDENT(in Cantonese): Honourable Mr Albert CHAN.

MR ALBERT CHAN (in Cantonese): *Mr Governor, you are said to have read the Basic Law more than the Bible. I believe you have spent more time reading past records of proceedings of this Council than the Bible lately.*

Mr Governor, you have just quoted many speeches, especially those of the 90 and 91 sessions, made by several Honourable Members here. Among them, certainly, there are gems of wisdom and inspiration which deserve reading and studying by the public, should such opportunities arise. So, will Your

Excellency consider advising the departments concerned to compile these inspiring speeches into an anthology so that we can benefit from those gems of wisdom of our forerunners when we conduct researches on issues concerning human rights, democracy and freedom in future?

GOVERNOR: It is certainly an interesting suggestion. I think that I am far too charitable to want to inflict on too wide a community too large a selection of readings from speeches made even in a Chamber as august as this one. I think that on reflection, having read some of these speeches and having read again the Basic Law, I am in future going to spend more time reading the Bible.

PRESIDENT (in Cantonese): Mr Andrew CHENG.

MR ANDREW CHENG (in Cantonese): *Mr Governor, Britain has summoned the Chinese Ambassador to Britain through diplomatic channels in protest of the reinstatement of the draconian laws. On the contrary, the British Administration in Hong Kong, apart from a statement issued by the Governor on Monday, which in my view is "strong but not tough", seems to have taken no specific actions. On the other hand, the British Administration in Hong Kong has recently seconded 27 administrative officers to the Office of the Chief Executive (Designate) of the Hong Kong Special Administrative Region. While China is determined to reinstate the draconian laws, can the Governor tell us how the British Administration in Hong Kong can guarantee that these government officials will not act against the human rights policies of the Government, and how they can avoid becoming accomplices in the reinstatement of the draconian laws in future?*

GOVERNOR: I think the Honourable Member will recognize the difficulty, the dilemma, that we face. We wish, and it is a genuine wish, to be as helpful to Mr TUNG as possible. At the same time we do not wish to put civil servants in difficult or awkward or embarrassing situations. I have taken the view, and the Chief Secretary and Financial Secretary, I think, share that view, that the best way we could try to deal with this dilemma was to second civil servants to Mr

TUNG's private office in the same way that we would second civil servants to bodies outside the Government. Mr TUNG has said that he recognizes the importance of not putting civil servants in awkward situations and I hope that that can be avoided. But ultimately, I guess Mr TUNG is going to have to explain what he asks civil servants to do and the reasons for those actions.

I certainly think that the community also recognizes that it would be totally wrong of us to provide parliamentary draughtsman to draft legislation for the Shenzhen politicians. So, we have to try to deal with these matters in a way which helps meet Mr TUNG's legitimate requirements while at the same time ensuring that the Civil Service retains its reputation for being politically neutral and meritocratic.

I just want to add a couple of points. It is not unusual for civil servants to be seconded to bodies which take a different line from the Government. I do not say that it is a strictly accurate analogy but I think it is worth bearing in mind. And the second point I wanted to make is that civil servants will still be, of course, obliged to operate according to the high standards of conduct which would have applied if they had not been seconded. They will be expected to abide by the Official Secrets Act. They will be expected to abide by the Civil Service Regulations, and so on.

MR ANDREW CHENG (in Cantonese): *Mr president, it seems that the Governor has difficulties in giving me a satisfactory answer. It is never my intention to oppose the Government's move to second officials to the Office of the Chief Executive (Designate). My point is: when two specific policies are in conflict with each other, what specific actions will the Governor take? Will the Governor at least meet with the Chief Executive (Designate) and express strongly the Government's discontent with the reinstatement of those draconian laws?*

GOVERNOR: I think the Chief Executive or Chief Executive (Designate) is very well aware of my views and he heard my views on this human rights legislation for a number of years in the Executive Council. I understand that he is going to give his own thoughts on this issue tonight and I think the whole

community will welcome that and will be interested in what he has to say. I hope he has had the benefit, as I have, of reading what some of his friends and acquaintances and colleagues have themselves said on this question, the sagacious advice they have been able to give in the past.

I do think we have got to address one pretty central question. Are Hong Kong's freedoms, civil liberties, after 1997 going to be the same as they are today? Yes or no? If the answer to that question is, "yes, of course they are, do not confuse people, do not worry people", then why the need for these changes in the law? And why the refusal which is all of a piece with these changes and which raises our anxieties even further, why the continuing refusal to which many Honourable Members have referred in the past, to accept the reporting obligations to Geneva under the International Covenants?

If there is nothing to worry about, why be concerned about reporting? If on the other hand Hong Kong is not to have the same freedoms as it has got today, a point which many people have inferred from what, for example, Vice-Premier QIAN Qichen has said, then we are entitled to know in what way those liberties are going to be curtailed and how that is consistent with the Joint Declaration, with the Basic Law, and of course with the International Covenants which are applied to Hong Kong. I think that is the central question which has to be addressed, and I hope it will be clearer as a result of today's speech.

PRESIDENT (in Cantonese): Mr Howard YOUNG.

MR HOWARD YOUNG: *Mr Governor, you mentioned just now the subject of ethnic minorities and you said that the Labour Party and the Liberal Party would support legislation to grant them full British nationality, and they may or may not command a majority in Parliament. It depends on who turns up to vote or who is away at the time. But the governing party has not said that they will initiate legislation and the Labour Party merely said that they would support legislation. So, if no one initiates it, there is nothing to support.*

Can you tell us whether you are aware if there is any sentiment within the ruling party in the United Kingdom now to initiate the legislation so that it can

be supported, or on the other hand, is it a topic that is possible to be dealt with by Private Members' Bills from the opposition?

GOVERNOR: Well, at the moment, it is being dealt with by a Private Member's Bill which was started in the House of Lords and I think has been introduced by a Conservative peer in the House of Lords. The bill is proceeding through the House of Lords and I think I am right in saying that a Conservative Member of Parliament is minded to introduce the bill in the House of Commons, a Conservative Member of Parliament, Sir Patrick CORMACK, who was here a few months ago and was totally convinced by the arguments he heard from a number of Honourable Members about the ethnic minorities.

I have to say that I detect in the House of Lords, in the House of Commons, very little opposition among ordinary backbench members to the proposal that the ethnic minorities should get a fair and honourable deal. I am pleased that the Labour Party has officially changed its position. It would be a curious paradox if I was to prove more successful in convincing Labour politicians of these matters than those who belong to other parties, but the Labour Party has, I think, changed its position officially. And, I do not think that there is any sleight of hand on the part of Labour politicians. I think when they say they support legislation, the implication is that if they were in Government they would propose legislation as well. They have moved from a position in which they supported right of abode for the ethnic minorities, which was a substantial step forward, to a position in which they support outright legislation on nationality.

I hope that in the weeks and months which remain to me, I will be able to convince the Conservative leadership of the importance of moving beyond the position which Mr MAJOR staked out in a welcome statement last March. I said yesterday in a speech that as far as I was concerned, this was one of the main tasks for my last weeks and months as the Governor. I would find it, and I will say this very openly to the Council, I would find it very difficult to depart on 30 June — that is not to suggest that I am not going to depart on 30 June — I would find it extremely difficult to depart on 30 June leaving behind some thousands of people who had right of abode in Hong Kong but no nationality here, a sort of nationality in Britain but no right of abode there. That may not literally be statelessness, but it looks awfully like statelessness to those who are in that position. I think it would be an exceptionally unfortunate way for Britain to bring the curtain down in this last of its great colonial dependencies.

MR HOWARD YOUNG: *With your parliamentary experience in London, if the election is held as late as the middle of May, then does it look likely that such a bill could physically pass through Parliament, bearing in mind the Easter recess and all that?*

GOVERNOR: Well, I think to be honest, whenever the election came, a commitment by the government of the day either not to oppose private members' legislation or to put forward legislation itself would pretty well deal with the question of the ethnic minorities even if that legislation had not completed all its stages before 30 June. I think they would be content to know that they were going to get a passport.

In an ideal world, that would all be accomplished before the middle of the summer, but I think to be realistic, those who have campaigned so eloquently and so decently for a fair deal for the ethnic minorities would be pretty satisfied by a pledge to legislate even if it could not be guaranteed that that legislation would be in place before the change of sovereignty.

PRESIDENT (in Cantonese): Mr SIN Chung-kai.

MR SIN CHUNG-KAI (in Cantonese): Mr President, I would like to ask a follow-up question about human rights. If the Preparatory Committee really implements the Legal Subgroup's recommendation to repeal the Public Order Ordinance and the Societies Ordinance, does the Governor consider this a breach of the Sino-British Joint Declaration? If so, what action can the British Government take?

GOVERNOR: Well, what is it in breach of if this is done? First of all, it seems to me that what is proposed is in breach of all sense. As I understand it, what has been proposed is that these ordinances should be struck down and the implication is that the old out-of-date colonial ordinances should be put in their place. But if you repeal these ordinances, you do not automatically put another law in their place unless, that is, that the National People's Congress (NPC) says

that it is now going to legislate for these matters in Hong Kong as well. If you just strike the legislation down you are left with a legal vacuum. So, what would the public order legislation in Hong Kong be on 1 July or 2 July? The proposal makes no sort of legal sense.

Secondly, we would be left in a situation in which there were provisions of the International Covenants which were directly contradictory to the laws on the Hong Kong statute book and that would be bound to lead to one legal challenge after another in Hong Kong's courts.

It is also, of course, the case that some provisions of the Basic Law, for example, those that deal with freedom of assembly and freedom of association, would be contravened by bills being put back onto the statute book which have been amended or changed precisely because of our concerns about their relationship to the International Covenants. So the whole thing would create, in our judgment, a terrible legal muddle. It would mean, inevitably that the early months of the Special Administrative Region (SAR) Government would be dominated by battles fought out in Hong Kong's court rooms, and I cannot for the life of me think how that is thought to be for the good of Hong Kong's stability and prosperity.

We hear quite a lot about Hong Kong being too politicized these days. If you want to know how to really politicize Hong Kong, follow that course of action. So, quite apart from the fact that, as I said, that these proposals seem to us to be in breach of the International Covenants and therefore a challenge to what has been promised in the Joint Declaration and the Basic Law, they are also in breach of all good sense and they are clearly in breach of what is in the best interests of Hong Kong.

MR SIN CHUNG-KAI (in Cantonese): *Mr Governor, regarding the problem of legal vacuum, it is said that the Provisional Legislature can legislate immediately on 1 July in order to put the outdated colonial Societies Ordinance and Public Order Ordinance on the statute book. Is it in breach of the Joint Declaration if the colonial versions of these two ordinances are restored?*

GOVERNOR: My first observation is I am not quite sure why it is that anybody should want the first act of the SAR Government after the return of Hong Kong to Chinese sovereignty to be to put out-of-date so-called colonial laws on the statute book, laws which are no longer appropriate to a sophisticated, modern city like Hong Kong.

But precisely whether anything is in breach of the Joint Declaration or in breach of the International Covenants depends, I suppose, on what precisely is done and what precisely the law says. But it is incredibly difficult to imagine how putting a law back on the statute book which had been taken off the statute book because it was in contravention of the International Covenant could be other than a contravention of the International Covenant. And, the Chinese side has signed up to the International Covenants being applied to Hong Kong both in the Joint Declaration and in the Basic Law.

PRESIDNET (in Cantonese): Dr YEUNG Sum.

DR YEUNG SUM (in Cantonese): *I regret that the British Government has so far failed to help those ethnic minorities in Hong Kong get a British passport. I hope this is not a question of honour on the part the Governor but on that of the British Government as a whole.*

I would like to ask Mr Governor a question: if the Preparatory Committee endorses the recommendation of the Legal Subgroup to put back the draconian laws on the statute book and the National People's Congress also accepts it, they will certainly have to legislate before 1 July 1997. When the Provisional Legislature proceeds to legislate on this matter, will Mr Governor submit the case to the law court of Hong Kong?

GOVERNOR: Well, just on the first point the Honourable gentleman made, I agree it is a moral issue and a question of honour.

Secondly, if the Provisional Legislature purports to legislate before 30 June, I do not even think that some of its noisiest and most ideological and

dogmatic adherents have suggested that what it does can become law before 30 June. But if it is involved in a process which clearly produces a law after 30 June, then that is, I think, what lawyers have all said is likely to be challenged in the courts. But I do not think these Shenzhen debates could come under any present Hong Kong law. In our judgment, they have no constitutional status or legal status whatsoever.

Can I add one point about the central issue? It is sometimes argued that this has to be done because these are bills which were introduced since 1984. Now, is it suggested that the clock should have been stopped in 1984? I do not hear Chinese officials saying all the economic growth and development, all the infrastructure investment that has taken place, since 1984 in Hong Kong should be removed and — I do not know — taken back to Britain, donated to Oxfam. I am not sure what the proposal is. Nor do I understand how anybody can suggest that Hong Kong could have lived without changing the law from time to time since 1984. There have been hundreds of new laws passed since 1984, but it is just this handful which appears to have some relationship to political control which the Chinese side have turned their fire on.

And does the Bill of Rights represent the sort of fundamental change which the Chinese side say they are legitimately opposing? What we are talking about is not legislation which fundamentally changes Hong Kong, but legislation the purpose of which is to try to ensure that Hong Kong does not change. It is the Chinese side, it is this so-called Legal Subgroup, which is proposing the changes, and very fundamental changes they would be too.

DR YEUNG SUM (in Cantonese): *Mr Governor, I have a very straightforward question to ask. If the National People's Congress really announces that the Societies Ordinance and the Public Order Ordinance are in breach of the Basic Law, will the Hong Kong Government, which is still under your leadership before 1 July 1997, file the case with the law court of Hong Kong?*

GOVERNOR: Well, I am not sure that an action by the NPC in Beijing would be justiciable in the Hong Kong courts before 30 June. I do not think it would have any standing in the Hong Kong courts before 30 June. I mean I will take legal advice on that. The Honourable gentleman and I both suffer from the disadvantage, or have the advantage of not being lawyers, but I think that would

be my understanding of the situation.

What I repeat though is perfectly clear, that is, even if the NPC can strike down Hong Kong laws, the consequence of striking down those laws is not the reinstatement of the laws which were there before. That requires new legislation, unless, that is, the NPC is proposing to take on a legislative role in Hong Kong in relation to matters which are specifically, specifically part of Hong Kong's autonomy under the Basic Law and under the Joint Declaration.

DR YEUNG SUM: *So, you are going to seek some legal advice?*

GOVERNOR: Yes, absolutely.

PRESIDENT (in Cantonese): Miss Christine LOH.

MISS CHRISTINE LOH: *Mr President, I would like to go back to the problem of statelessness. There are actually two groups here. One group is the ethnic minorities which the Governor has addressed. But to follow on from that I am happy to hear, Mr Governor, that you will press as hard as you can in the final months. Is there something that this Council can do? If there is something that, in your opinion, will be helpful to the cause, I think we would like to know.*

Secondly, just now you talked about the possibility of legislation only being passed perhaps even after 30 June 1997. If that is the case in order to identify the deserving cases amongst the ethnic minorities that will qualify for full British citizenship, can we be assured of having the full co-operation of the Hong Kong Immigration Department? I believe that is where the files rest for those people right now in Hong Kong.

Mr Governor, the other group that could be a problem are the Vietnamese migrants, a small group of people whom Vietnam has said are not their nationals. They are right now in Hong Kong. It seems like that if that continues to be the situation, even if they volunteer to go back to Vietnam, Vietnam will not take them, they will have nowhere to go to and they could very well also effectively become stateless. Hong Kong should be doing the decent thing. If they have nowhere to go to, perhaps that very small group of people will have to stay until some other international solution is found. Has Britain been looking into this

issue and is there any update on what might be a possible course of action?

GOVERNOR: Yes, Britain has been looking at this issue and exploring it at every opportunity and at every level with representatives of the Vietnamese Government. It has been raised by the Prime Minister, by the Foreign Secretary and by the Minister of State, to take three examples.

I think there are two problems and they have to be set against the considerable success we have had over the last year in reducing the number of migrants in the camps. Last year, I think I am right in saying that we sent home over 15 000 migrants which should have put us well on course for completing the task before 30 June.

The problem we have is the number of Vietnamese in the camps who still are not cleared for return, for repatriation to Vietnam and the number of that group who are ethnically Chinese and whom the Vietnamese authorities have been resisting taking back for reasons which we have discussed in this Chamber before, principally the fact that the Vietnamese authorities clearly see them as a precedent for the 260 000 or so ethnically Chinese Vietnamese migrants who are in China at the moment.

I hope that the Vietnamese authorities will speed up the clearance of migrants and will, in particular, address this question more positively of the ethnic Chinese migrants. And it would be more helpful for, I think, the Chinese authorities to help on that issue rather than just wagging their fingers at the British authorities from time to time and saying we are not dealing with the problem rapidly enough. We have dealt with the problem extremely rapidly over the last year and I think that should, with assistance, help us to reach a complete solution.

On the question of the ethnic minorities. First of all, so far as legislation is concerned, I do not want to get the matter out of proportion. I would hope that legislation could be passed before 30 June. The point I was trying to make was if that did not prove possible I was sure that the ethnic minorities would recognise that the commitment to legislate, even if the legislation came a bit later,

would pretty well satisfy their demands.

And, I cannot imagine that the Hong Kong Immigration Department would find any difficulty in being helpful. After all, these are a group who cannot acquire Chinese nationality because of the ethnic provisions of Chinese nationality law. So it would be a bit unreasonable not to give them at least some assistance in those circumstances.

And the Honourable lady's first question?

MISS CHRISTINE LOH: *Basically, in your opinion, whether there is something that this Council can do to promote the cause of the ethnic minorities?*

GOVERNOR: I think this Council has been extremely helpful in promoting their cause. It has been a considerable help that both the Executive Council and all sides of this Council have been united on this issue. It has been a considerable help in lobbying visiting Members of Parliament, in lobbying ministers. I think the Council should continue to keep up the pressure, but I do not think there is any particular new initiative which the Council needs to take.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 29 January, 1997.

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