

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 5 March 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 ALLEN LEE PENG-FEI, C.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.

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 SZETO WAH

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

THE HONOURABLE EDWARD HO SING-TIN, 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 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

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

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.

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 LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT:

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE LAW CHEUNG-KWOK

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MRS ANSON CHAN, 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 MICHAEL SUEN MING-YEUNG, C.B.E., J.P.
SECRETARY FOR HOME AFFAIRS

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

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

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

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

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Road Traffic (Public Service Vehicles) (Amendment) (No. 3) Regulation 1997	69/97
Census and Statistics (Quarterly Survey of Service Industries) (Amendment) Order 1997.....	75/97
Official Languages (Alteration of Text Under Section 4D) (No. 4) Order 1997.....	76/97
Official Languages (Alteration of Text Under Section 4D) (No. 5) Order 1997.....	77/97
Official Languages (Alteration of Text) (Fire Services Ordinance) Order 1997.....	78/97
Official Languages (Alteration of Text) (Mining Ordinance) Order 1997.....	79/97
Official Languages (Alteration of Text) (Water Pollution Control Ordinance) Order 1997	80/97
Shipping and Port Control Regulations (Amendment of Tenth Schedule) Notice 1997	81/97
Noise Control (Amendment) (No. 2) Ordinance 1996 (61 of 1996) (Commencement) Notice 1997	82/97

Hong Kong Airport (Control of Obstructions) Order 1997 (L.N. 16 of 1997) (Commencement) Notice 1997	83/97
Waste Disposal (Amendment) Ordinance 1997 (10 of 1997) (Commencement) Notice 1997	84/97
Official Languages (Authentic Chinese Text) (Stowaways Ordinance) Order	(C) 10/97
Official Languages (Authentic Chinese Text) (Mock Auctions Ordinance) Order	(C) 11/97
Official Languages (Authentic Chinese Text) (Post Secondary Colleges Ordinance) Order	(C) 12/97
Official Languages (Authentic Chinese Text) (Immigration Service Ordinance) Order	(C) 13/97
Official Languages (Authentic Chinese Text) (Hotel Accommodation Tax Ordinance) Order	(C) 14/97
Official Languages (Authentic Chinese Text) (Law Reform (Miscellaneous Amendments) Ordinance) Order	(C) 15/97
Official Languages (Authentic Chinese Text) (Fire Services Ordinance) Order	(C) 16/97
Official Languages (Authentic Chinese Text) (Monetary Statistics Ordinance) Order	(C) 17/97
Official Languages (Authentic Chinese Text) (Roads (Works, Use and Compensation) Ordinance) Order	(C) 18/97

Official Languages (Authentic Chinese Text) (Water Pollution Control Ordinance) Order	(C) 19/97
Official Languages (Authentic Chinese Text) (Mining Ordinance) Order	(C) 20/97
Official Languages (Authentic Chinese Text) (Radiation Ordinance) Order.....	(C) 21/97

Sessional Paper 1996-97

No. 71 — The Hong Kong Institute of Education
Annual Report 1995-96 and Financial Report 1995-96

ORAL ANSWERS TO QUESTIONS

Depositing Land Fund in the Exchange Fund

1. **MR SIN CHUNG-KAI** asked (in Cantonese): *Mr President, will the Government inform this Council whether it has made a proposal to the Chief Executive (Designate) of the Hong Kong Special Administrative Region for depositing the Hong Kong Special Administrative Region Government Land Fund in the Exchange Fund managed by the Monetary Authority; if so, of the reasons for putting forward the above proposal; if not, of the options considered by the Government for handling the Land Fund?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, the Hong Kong Special Administrative Region (SAR) Government Land Fund is now managed under trust. While the trustees of the Land Fund are responsible for the management of the Land Fund, the beneficial ownership of the Land Fund belongs to the SAR Government when it comes into being on 1 July 1997 as provided for under the Joint Declaration. How to handle the Land Fund as from 1 July 1997 is a matter for the SAR Government to decide. We have raised the subject in our general briefing for the Chief Executive (Designate) on the matters which have to be dealt with by the SAR Government but we have not made any specific proposal to the Chief Executive (Designate) as to how the Land Fund

should be managed as from 1 July 1997.

MR SIN CHUNG-KAI (in Cantonese): *Mr President, in his reply, the Secretary for the Treasury said that he had raised the subject in the briefing he gave to the Chief Executive (Designate). What were the specific contents when this subject was raised? Have any proposals, including those concerning the procedure, the method and the length of time involved in taking over the assets of the Land Fund, been made to the Chief Executive (Designate)?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, what I meant by raising the subject was that I mentioned to the Chief Executive (Designate) that this matter had to be dealt with by the SAR Government as soon as possible. However, as I said in my main reply, we have not made any specific proposal.

MR ANDREW CHENG (in Cantonese): *Mr President, clause 6 in Annex III to the Sino-British Joint Declaration provides that the income from the Land Fund shall be deposited in banks incorporated in Hong Kong. However, the 10th Anniversary Special Issue of the Land Fund pointed out that some assets of the Fund are now held in the form of securities. Does that violate the Sino-British Joint Declaration?*

PRESIDENT (in Cantonese): This supplementary question has gone beyond the scope of the original question and the reply.

DR ANTHONY CHEUNG (in Cantonese): *Mr President, the Chinese spokesman of the Sino-British Land Commission recently issued a statement through the Hong Kong Xinhua News Agency, accusing some Hong Kong Government officials of making false remarks about some questions raised by the Chinese side regarding the handover of the Land Fund, which would affect the morale of the executives and staff members of the Fund's Secretariat. Will the Secretary for the Treasury inform this Council whether he has raised the matter regarding the future of the staff of the Land Fund Secretariat while briefing the Chief Executive (Designate)? If so, what the specific details are?*

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, I am not sure whether the question raised by the Honourable Member is in conflict with paragraph (i) in clause 18(1) of the Standing Orders.

PRESIDENT (in Cantonese): Secretary for the Treasury, I may rule that this question is not related to the original question, but Dr CHEUNG has raised it in a very clever way. Do the proposals you have made to the Chief Executive (Designate) of the SAR include the matters he mentioned earlier?

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, the question of how to handle the staff of the Land Fund Secretariat is the responsibility of the Land Fund Secretariat itself. We have not made any specific proposal to the Chief Executive (Designate) in this regard.

DR HUANG CHEN-YA (in Cantonese): *Mr President, the assets of the Land Fund amount to about \$140 billion, which is an enormous figure. Based on an annual interest rate of 5%, \$7 billion will be generated every year. This amount will be of great help to the improvement of people's livelihood, but such income is currently used for reinvestment. Has the Government pointed out to the Chief Executive (Designate) of the Hong Kong Special Administrative Region Government that if this amount of money is counted as part of the Government general revenue, it will make a greater contribution to the improvement of people's livelihood and the development of infrastructure in Hong Kong?*

PRESIDENT (in Cantonese): Dr HUANG, the original reply has said that no specific proposal has been made to the Chief Executive (Designate) as to how to manage the Land Fund after 1 July 1997.

DR HUANG CHEN-YA (in Cantonese): *Mr President, I was not asking anything about the specific proposal. What I asked was whether the Government had ever made such kind of analysis so as to help the Chief*

Executive (Designate) make a policy decision on his own? Has the Government provided such kind of information?

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, I believe that you have correctly interpreted my reply given just now.

MR SIN CHUNG-KAI (in Cantonese): *Mr President, the Declaration of Trust of the Hong Kong Special Administrative Region Government Land Fund states that, after the establishment of the Hong Kong Special Administration Region (SAR) Government, the Land Fund shall be handed over to the SAR Government in accordance with the relevant provisions. According to the Declaration of Trust, the SAR Government shall accept those public officers and the body that are responsible for the management of the Fund. As the Land Fund Trust was unilaterally signed by the Chinese Government, has the British Government accepted this condition at the time when the Land Fund was established?*

PRESIDENT (in Cantonese): I am afraid this supplementary question has also gone beyond the scope of the original question and answer.

MR ANDREW CHENG (in Cantonese): *Mr President, I will do my best to keep my supplementary question within the scope of the main question.*

Mr President, clause 6 on Land Leases in Annex III to the Sino-British Joint Declaration provides that income from the Land Fund shall be deposited in banks incorporated in Hong Kong. However, the 10th Anniversary Special Issue of the Land Fund pointed out that some assets of the Fund are now held in the form of securities. Has the Government reminded the Chief Executive (Designate) of the SAR while meeting with him that such a form of investment might have violated the Sino-British Joint Declaration?

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, as far as I know, we have not raised this matter.

DR HUANG CHEN-YA (in Cantonese): *Mr President, in its main reply, the Government mentioned having briefed the Chief Executive (Designate) of the Hong Kong Special Administrative Region. Has it told him that the existing Land Fund cannot be used to defend the Hong Kong dollar when its linked exchange rate system comes under attack, nor does it bring any benefit to the life of the people of Hong Kong?*

SECRETARY FOR THE TREASURY (in Cantonese): *Mr President, the Land Fund is managed under trust. Its purpose has been clearly spelt out in the Declaration of Trust. Of course, the Land Fund cannot be used to defend the exchange rate of the Hong Kong dollar.*

Rights to Privacy

2. **MR LEUNG YIU-CHUNG** asked (in Cantonese): *Mr President, although the Personal Data (Privacy) Ordinance (the Ordinance) was implemented at the end of last year, the public are still not fully aware of their rights to privacy - for example, the public are not clear as to whether it is an offence under the Ordinance for a member of any private or government organization (including a police officer) to inspect a person's Identity Card or ask for a copy of it - thus resulting in the Ordinance not being applied generally in the territory. In this connection, will the Government inform this Council:*

- (a) *Of the ways adopted by the Office of the Privacy Commissioner for Personal Data (the Office) in promoting and publicizing the Ordinance to enhance the public's awareness of their rights to privacy;*
- (b) *Of the steps taken by the Office to promote the Ordinance to various business organizations, so that they can avoid violating the law when requesting personal data from individuals; and*
- (c) *Of the number and major types of complaints received by the Office since its establishment; the number of enquiries concerning infringement of rights to privacy, and whether there have been any such enquiries to which the Office could not provide definite replies; if so, of the number of such enquiries, and whether alternative*

enquiry channels are available to the public?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I should say at the outset that the core provisions of the Personal Data (Privacy) Ordinance already commenced operation on 20 December 1996. Whether or not the public understand their privacy right does not affect the application of the Ordinance. Therefore, I cannot agree with the Honourable LEUNG Yiu-chung's view that the Ordinance is not being applied generally in the territory.

The following are my replies to the three questions asked by Mr LEUNG Yiu-chung:

- (a) The Government began promoting and publicizing the Ordinance in August 1995 when this Council had passed the Ordinance, although the Office of the Privacy Commissioner for Personal Data had not yet been established. Efforts of the Home Affairs Branch to promote the Ordinance in the year starting from August 1995 included the following:
1. 50 000 copies of the two information booklets were prepared and distributed to promote the Ordinance and provide guidance to data users;
 2. Nearly 100 000 posters were distributed, and some had been displayed on 100 advertisement boards at various MTR stations for one to three weeks;
 3. Representatives attended some 30 seminars and workshops during which members of public and private organizations were briefed on the Ordinance. Participants amounted to some 2 400; and
 4. A telephone hotline was set up and approximately five to 10 enquiries were received every day.

Since the establishment of the Office of the Privacy Commissioner for Personal Data on 1 August 1996, publicity and promotion efforts have been stepped up. In order to

heighten public awareness of the rights to privacy, the Office has carried out the following work:

1. Publishing a pamphlet entitled "Personal Information: Your Privacy Rights Explained", and so far around 90 000 copies have been distributed;
 2. Distributing some 7 000 posters and arranging TV and radio promos to go on air from 20 December 1996 onwards;
 3. Organizing a Logo Design Competition to enhance public awareness of the work of the Office;
 4. Joining the Internet, and so far almost 8 000 visits have been made to the Office's home page;
 5. Setting up a telephone hotline; and
 6. Promoting the rights to privacy in relation to personal data through newspaper, radio and civic education exhibitions.
- (b) There are two approaches in helping various industries and organizations comply with the Ordinance.

First, to prepare guidance note to data users. In addition to reprinting the two data user guides issued by the Home Affairs Branch, the Office has produced a new one. A total of about 150 000 copies of the three data user guides have been distributed. The Office, in conjunction with the Radio Television Hong Kong, has also produced a short bilingual video to be used as basic teaching materials. The video is now on sale for \$80. So far more than 250 packages have been sold.

On the other hand, the Office has made direct contact with about 40 organizations and provided guidance on the preparation of internal guidelines for compliance with the Ordinance. The Office has sent representatives to attend some 50 seminars and talks so as to answer questions on compliance with the Ordinance.

- (c) From 20 December 1996 to the end of February 1997, a total of 39 complaints were received, some of which covered more than one subject, thus effectively giving a total of 45 complaints. Most of them related to the use of data, without the data subjects' consent, for purposes not related to the purposes for which they were collected (25 complaints) or inadequate protection of data (10 complaints).

During the said period, some 1 700 enquiries were received. Half of them were about compliance with the Ordinance, including enquiries on whether specific cases amounted to infringement of the rights to privacy. However, we do not know the number of enquiries related to such specific cases since the Office has not further classified the enquiries into different categories.

Bearing in mind that an inquirer may give a one-sided account only, the Office cannot give a definite answer. Unless a full picture of the case is available through contacts with other data subjects or users, the Office cannot and should not provide any definite answer to any enquiry.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, the Secretary for Home Affairs mentioned in the last paragraph of his main reply that it was difficult for the Office to give a definite answer as to whether a particular case amounted to a breach of the Ordinance. However, he stated in the previous paragraph that half of the enquiries received were on whether a specific case amounted to infringement of the Ordinance. If the Office cannot provide a definite answer, what is its function? If no definite answers on public enquiries can be given, how can the Office assist the public to understand the actual contents of the Ordinance?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, we have to understand that an enquiry and a complaint are two different matters. A complaint is a formal procedure under the Ordinance, which means that a member of the public lodges a complaint on a specific case, which will be processed according to the procedures provided in the Ordinance. As to a general enquiry, it refers to a request for information on a certain subject. As I

have just mentioned, if a member of the public makes an enquiry on a certain case, the Office will endeavour to provide an answer in terms of general knowledge. The Office will follow up the case only if the inquirer decides to lodge a complaint after asking about the authenticity of certain cases. Otherwise, we will answer an enquiry in terms of general knowledge. And as I have said, when the public lodge a complaint, we have to follow the procedures and request the complainant to provide evidence. We then have to follow up the complaint with the other party. Hence much work is involved. The Office will not conduct a comprehensive investigation for a general enquiry.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, are you claiming that your supplementary question has not been fully answered? Which part?

MR LEUNG YIU-CHUNG (in Cantonese): *My question is about how to let the public understand the Ordinance. The public make enquiries because they do not know whether certain cases amount to violation of the Ordinance. The Secretary for Home Affairs only says that this is difficult to handle, but the core of the problem lies in how to let the public understand*

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, the Secretary for Home Affairs is talking about whether there is violation of the Ordinance. Would you like him to refer to replies to enquiries or complaints in his reply?

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, the Secretary for Home Affairs has not yet answered certain part of my question, that is how to let the public understand the relationship between the Ordinance and specific cases. He has not answered*

PRESIDENT (in Cantonese): The answer I have heard is that if it is an enquiry, the Office is able to answer whether certain situation amounts to infringement of the Ordinance. However, if the inquirer wants to confirm whether a specific case is in violation of the Ordinance, he cannot give an answer, because it is not a complaint.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, I would like to raise a follow-up question.*

PRESIDENT (in Cantonese): I think you have to wait for the next round.

DR HUANG CHEN-YA (in Cantonese): *Mr President, reference has been made to the Ordinance in the letters issued by some institutions recently. They asked the public to allow them to disseminate their personal data to third parties. However, wordings of those letters are quite general and their coverage is very broad. Those letters do not remind the public that acceptance of those requests means relinquishing the protection they should otherwise enjoy under the Ordinance. Moreover, the letters make no mention of whether the public can turn down those requests or the circumstances under which such request can be rejected. Will the Office initiate examinations on letters of those institutions and point out their mistakes, so as to prevent cases of depriving the rights of the public again?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, Dr HUANG Chen-ya has raised a good question. Actually, the Office is concerned about those situations. Such problems do exist and improvements should be made. The Office issued a press release on 21 February, giving to the media a couple of examples of those situations. In the case of a car park, a car park attendant requests drivers to indicate their ID numbers when they drive their cars out of the car park. The Office reminds car park operators that they have to state clearly the purpose of their request in advance, such as telling the drivers that their personal data are collected for security purpose and to prevent car stealing. This act is lawful, logical and reasonable, but the other party should be informed in advance. Another case quoted involves letters issued to the public by government departments, such as the Inland Revenue Department and the Treasury. The Office concerns that other parties may sometimes see the ID number of the individual addressee, and has reminded the government departments concerned to make improvement in this respect. These are just one or two such examples. In other similar occasions, the Office also took the

initiative to remind individual data users. Of course, in some cases, the Office only knew about the situation when complaints were received and would then take follow up actions.

MR BRUCE LIU (in Cantonese): *Mr President, some banks and credit card issuing companies provide the data of their defaulting customers to debt collecting companies for recovering bad debts without the consent of the data subjects. Is this practice in violation of the Ordinance? How many of the 25 complaints received are of this nature? Has the Office cautioned or advised banks and credit card issuing companies in this respect?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I would like to take this opportunity to explain to Members the principles to handle such cases. Schedule 1 of the Ordinance states clearly the six principles that provide for the circumstances for collecting those data. May I make known to you those principles?

PRESIDENT (in Cantonese): Secretary for Home Affairs, do you totally agree with Mr LEUNG Yiu-chung that the public, or even the Members, do not thoroughly recognise their privacy rights?

SECRETARY FOR HOME AFFAIRS (in Cantonese): I do not mean that. I just would like those who do not know much about the Ordinance to have the opportunity to understand more about the issue through my presentation.

PRESIDENT (in Cantonese): Please be simple and precise.

SECRETARY FOR HOME AFFAIRS (in Cantonese): The six principles are actually very simple. Data users shall (1) collect personal data by lawful and fair means; (2) inform the data subjects of the use of the data collected; (3) use

the personal data exclusively for the designated purpose; (4) ensure the accuracy and security of the personal data; (5) make public their measures and policies regarding personal data; and (6) allow the data subjects to access and amend their personal data. When complaints are received, we will have to know whether the party being complained has complied with those six principles; if so, this will not amount to an offence; if not, it is an offence. Therefore, we cannot say across the board that certain conducts certainly contravene the Ordinance. We have to consider whether those six principles have been complied with.

PRESIDENT (in Cantonese): Three more Members would like to raise supplementary questions and I will draw a line there. I would like to remind Members that this is the time for questions, not for discussion or debate.

MR TSANG KIN-SHING (in Cantonese): *Mr President, at present, the Building Management Ordinance allows the Land Registry to obtain data from the Lands Department, so I would like to ask the Secretary for Home Affairs whether this practice contravenes the Personal Data (Privacy) Ordinance; and whether Owners' Corporations are allowed to disclose the data if they have obtained those data.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, as I have mentioned earlier, this depends, firstly, on the purpose. The Owners' Corporation must give clear explanation to the purpose of collecting the data. For example, to prove that a certain matter is agreed by over 30% of the owners is certainly a logical and reasonable purpose. The second consideration is whether the data is collected by fair and open means. The third consideration is to ensure that the data so collected is used exclusively for the designated purpose and not others. If all these three requirements are satisfied, their acts will not amount to an offence.

MR TSANG KIN-SHING (in Cantonese): *Mr President, will the Secretary for Home Affairs remind Owners' Corporations that they should not disclose the data to a third party?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, according to our principle, we will certainly request Owners' Corporations to do so.

MISS EMILY LAU (in Cantonese): *Mr President, the Secretary for Home Affairs said that since its establishment, the Office had received a total of 39 complaints by the end of February this year. Among those complaints, how many were related to the New China News Agency, that is, how many requests for access to information were rejected? How will the Government or the Office handle these complaints?*

PRESIDENT (in Cantonese): I do not quite understand why the refusal of the New China News Agency to provide data is related to this issue. Secretary for Home Affairs, maybe you know this better.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, according to the law, the Office shall not disclose the content of complaints to outsiders. The Office has to observe the secrecy provision. The Office can only classify the complaints into categories. We know neither who or which organization lodge the complaints, nor who is being complained. Therefore, I am sorry that I do not have information in this regard.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, I would like to follow up the question raised by Dr HUANG Chen-ya. Will the Government review the administrative procedures of government departments in respect of the protection of privacy rights of the public? Among the cases I have received, some members of the public mention that the procedures of some government departments will infringe the privacy right of the public. Will the Secretary for Home Affairs review the procedures and process of government departments again?*

PRESIDENT (in Cantonese): The original question refers to the promotion of the Ordinance to the public and relevant organizations, and the number of complaints received. As you ask for amendments to some provisions of the Ordinance, this is outside the scope for the original question.

Permission to Stay on Compassionate Grounds

3. **MR LAW CHI-KWONG** asked (in Cantonese): *Mr President, it is learnt that during the period from January to November last year, the Immigration Department, in exercising its discretionary powers, granted exceptional permission on strong compassionate grounds to 73 applications from Chinese residents wishing to reside in the territory, whereas other applications were rejected due to the lack of such grounds. In this connection, will the Government inform this Council:*

- (a) of the principles and procedures adopted by the Immigration Department in determining if compassionate grounds exist when processing such applications;*
- (b) in regard to Chinese residents who are spouses or children of local residents applying to settle in the territory, of the number of applications in the past two years in which:*
 - (i) exceptional permission was granted, together with a breakdown of the categories of the grounds for approving the applications;*
 - (ii) exceptional permission was not granted, together with a breakdown of the categories of the grounds for rejecting the applications; and*
- (c) whether the right of the child as stipulated in Articles 9 and 10 of the Convention on the Rights of the Child has been taken into consideration in adopting the principles and procedures mentioned in the answer to (a) above?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, during the meeting of the Security Panel on 16 December 1996, we informed Honourable Members that the Director of Immigration had granted exceptional permission to 73 two-way permit holders between January and November 1996 on strong humanitarian and compassionate grounds.

- (a) Chinese Two-way Permit holders are allowed to enter Hong Kong as

visitors only and they are required to return to China when their limit of stay expires. Under existing arrangement, Chinese residents who wish to come to Hong Kong for residence need to obtain a One-way Permit issued by the relevant Chinese authorities. To prevent the One-way Permit system from being abused, as a general rule, applications for residence from Two-way Permit holders will not be considered except on strong humanitarian or compassionate grounds. Some examples of such grounds are: the need to take care of a seriously ill resident spouse or child, to take care of surviving children on the sudden death of the resident spouse. The Director of Immigration will take into consideration all relevant factors and circumstances put forth by the applicant and assess each case on its own merits. Where necessary, the Director of Immigration will also consult other government departments such as the Hospital Authority and Social Welfare Department for a thorough and comprehensive assessment.

- (b) (i) In 1995 and 1996, the Director of Immigration approved 110 and 80 applications respectively from Two-way Permit holders who are the spouse or children of local residents for exceptional permission for residence. All are approved on humanitarian or compassionate grounds. As the circumstances of the cases are different, and in many cases more than one ground was advanced for humanitarian or compassionate consideration, it is not possible to categorize these cases according to grounds for approval.
- (ii) In 1995 and 1996, the Director of Immigration rejected 54 and 125 applications respectively from Two-way Permit holders because of the lack of strong humanitarian or compassionate grounds. For the same reasons which I have mentioned in part (b)(i) of my answer, it is not possible to categorize these cases according to grounds for approval.
- (c) The Government shares the values enshrined in Articles 9 and 10 of the United Nations Convention on the Rights of the Child, and recognizes the need for family reunion. However, given the substantial number of families involved, we must regulate the immigrant inflow from China for settlement in a controlled and

manageable manner. At present, over 90% of Chinese immigrants coming to Hong Kong under the One-way Permit system come for family reunion purposes. Applications for residence from Two-way Permit holders will only be considered in very exceptional cases on humanitarian and compassionate grounds, and each case is considered on its own merits. The discretion to allow Two-way Permit holders to settle in Hong Kong would only be exercised where there are compelling reasons which require special treatment. Any relaxation of this policy to allow Two-way Permit holders to settle on merely family reunion grounds will punch a hole through the One-way Permit system, and would be unfair to those who are waiting for their turn to come legally.

MR LAW CHI-KWONG (in Cantonese): *Mr President, in part (a) of his reply, the Secretary for Security cited two examples of grounds on which applications for residence from Two-way Permit holders would be considered. They are the need to take care of a seriously ill resident spouse or child and the need to take care of surviving children on the sudden death of the resident spouse. I would like to ask the Secretary for Security whether rejection of such applications will amount to violation of the United Nations Convention on the Rights of the Child. Under such circumstances, is there any channel of appeal such as judicial review available to the applicants?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, in part (c) of my main reply, I have explained the existing policy clearly. As to whether rejection of applications made on such grounds including the two examples mentioned by Mr LAW just now will amount to violation of the United Nations Convention on the Rights of the Child, my answer is in the negative. Of course, people such as the applicants and their families who are aggrieved by the Director of Immigration's decisions can lodge an appeal with me or even the Governor or the Chief Secretary. Moreover, everyone in Hong Kong is entitled to applying to the court for judicial review, but whether such an application will be approved is up to the court to decide.

MR CHOY KAN-PUI (in Cantonese): *Mr President, will the Government advise this Council whether the number of applications to which exceptional permission is granted each year is subject to any quota?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, we never impose any upper or lower limit on the number of such applications. The Director of Immigration will make a decision on each application having regard to all relevant factors.

MR ALBERT HO (in Cantonese): *Mr President, as advised by the Secretary for Security in his reply, the Director of Immigration, in handling some applications, will consider recommendations put forward by other organizations such as the Social Welfare Department and in some cases, even the Immigration Tribunal. However, as far as I know, the Director of Immigration may sometimes make decisions contrary to the advice of the Social Welfare Department or the Hospital Authority or the Immigration Tribunal, that is, he may not take their advice and in such cases, no reasons are provided for such decisions. As a result, the parties concerned are not very convinced by such decisions. Will the Secretary for Security advise us whether the Director of Immigration should provide the reasons for not accepting the recommendations of relevant organizations and provide the number of cases in which the recommendations of relevant organizations were not accepted in the past two years?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, first of all, I would like to reiterate one point. Under the existing policy and the Immigration Ordinance, the power to make decisions rests with the Director of Immigration and he himself alone. Of course, in considering each case, he may turn to other government departments or relevant organizations for professional advice. For example, if a person makes an application on the ground that one of his family members or his spouse is suffering from a terminal disease and will die sooner or later, we will, in accordance with our usual practice, consult relevant organizations including the Hospital Authority to ascertain whether the health conditions of the person in question is really as critical as described by the applicant. Of course, we have to clarify the matter in the first place. In other cases, we may make enquiries to the Social Welfare Department to verify details of financial conditions furnished by applicants. I would like to reiterate that the power to make decisions rests solely with the Director of Immigration. He does not necessarily have to accept the views and advice provided by other government departments and organizations. However, he will definitely take their views into careful consideration.

I would like to add that as far as I know, in such cases, these departments or organizations will assess what actually happens in accordance to their professional judgement and expertise. As to whether they will make specific recommendations, it is up to individual departments to decide. I have no statistics in hand regarding the number of cases in which the Director of Immigration did not take or ignored the recommendations made by other departments.

MR FRED LI (in Cantonese): *Mr President, I have handled many such cases. I would like to ask the Government if the Director of Immigration will consider setting up a task force through the Secretary for Security to assess appeal cases against decisions to reject applications for extension of stay, as in the case of the Social Welfare Department — I notice the Secretary for Health and Welfare is also here — in dealing with compassionate rehousing, in order to have a better understanding of the situation of each applicant's family.*

SECRETARY FOR SECURITY (in Cantonese): Mr President, under the Immigration Ordinance, the power absolutely rests with the Director of Immigration. We cannot set up an inter-departmental task force to take over the exercise of statutory power vested in him. But I have to reiterate that according to usual practice, the Director of Immigration will definitely request relevant departments to provide information or advice if he considers it necessary in handling certain cases. I would also like to reiterate that if someone, no matter it is the applicant himself or his family member, is aggrieved by or is dissatisfied with the decision of the Director of Immigration, he is fully entitled to lodging an appeal with me or the Chief Secretary or the Governor.

MR LAW CHI-KWONG (in Cantonese): *Mr President, in part (b)(i) of his main reply, the Secretary for Security mentioned that as more than one ground was advanced for humanitarian or compassionate consideration in many cases, it was not possible to categorize these cases according to grounds for approval. Given that only 110 and 80 applications were approved in 1995 and 1996 respectively, I believe there are at most 190 grounds involved. Will he tell us what these 190 grounds are?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, besides appealing to Members to spare the staff of the Immigration Department the

trouble to list all of these 190 grounds, I would like to voice my own views on this matter. Putting aside my present capacity as Secretary for Security, I did handle many immigration cases in the past when I worked in the Security Branch. In considering each case, we would take into account many factors, including the family background, age of the persons concerned, the length of stay in Hong Kong, the presence of any relative in Hong Kong, health, welfare, the family situation in mainland China as well as in Hong Kong and the presence of any special or humanitarian ground. It is impossible to say on what single and straight-forward ground the application has been approved as human beings are complicated and each case is in itself also very complicated. To say that certain cases are approved on this ground and some other cases are approved on another ground will only create deceptions.

PRESIDENT (in Cantonese): I believe this is an academic question. No conclusion can be drawn if the matter is simplified.

MR LAW CHI-KWONG (in Cantonese): *Mr President, the Secretary for Security has already answered half of my question because he has listed some grounds, although he has not provided any figures.*

PRESIDENT (in Cantonese): It is because just now you asked the Secretary for Security to list out all 190 grounds and whether the various grounds of each case can be subsumed under one broad category.

Social Networking for the Elderly

4. **MR MOK YING-FAN** asked (in Cantonese): *Mr President, in connection with the project of social networking for the elderly, will the Government inform this Council:*

- (a) *of the total amount of resources allocated for the implementation of this project which will last for two years, and their distribution among various districts;*
- (b) *given that volunteers participating in the project are important*

helpline to identify and understand the needs of the elderly and to bring them into the formal welfare service network, whether the Government has any training programme in hand to enhance the volunteers' knowledge of the general problems faced by the elderly and the formal welfare services provided to them;

- (c) whether there are any other ways to promote the project, besides referrals by local groups and organizations, so that more elderly people can learn of and participate in it;*
- (d) of the respective numbers of elderly people and volunteers who have participated in the project since its implementation last October; and*
- (e) whether the Government has any plan to carry out the project on a long term basis?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President,

- (a) The Social Networking Scheme for the Elderly was launched in October 1996. It is a two-year experimental project. To implement this project, we have provided resources to the existing 25 multi-service centres for the elderly to employ extra social workers, purchase computers, design computer programmes in order to compile and store the information of the participating elderly. Besides, we have provided resources to all the multi-service centres to meet the recurrent expenses such as administrative costs, insurance for staff and volunteers and so on. Aside from the existing 25 multi-service centres, the other five centres which will open in the coming year will also be allocated resources for the project. The distribution of resources among different districts varies, depending on the number of multi-service centres in the respective districts. The total allocation for the whole project is \$22 million.
- (b) Volunteer organizations participating in the project will provide training to the volunteers. The multi-service centres and the Group Work Units of the Social Welfare Department will provide

assistance to the volunteer organizations. An outline for volunteer training is provided in the operational guidelines issued by the Social Welfare Department to the volunteer organizations. The outline includes the following topics: concept of volunteer service; objectives and contents of the Scheme; roles and duties of volunteers; safety of volunteers; communication skills; physical and psycho-social changes of ageing; home safety; community and residential services for the elderly. Besides, the District Committees of Social Networking for the Elderly also arrange training for volunteers.

- (c) Besides referrals by local groups and organizations, the social workers of the District Social Welfare Offices also contact the elderly in the districts to explain to them about the Scheme and to register those who need the service. The Social Welfare Department has also distributed posters, leaflets and press release to promote the Scheme. TV and radio API as well as programmes are produced. The Social Networking for the Elderly — Ambassadors Flag Presentation Ceremony was held on 5 January 1997 to further promote the Scheme. At the same time, the Social Welfare Department and all the multi-service centres organize various activities to widely publicize the Scheme.
- (d) As at the end of January 1997, the Social Welfare Department has received about 10 000 applications and the number of volunteer recruited is over 3 000.
- (e) An evaluation will be conducted on the Scheme at the end of the trial period. We will decide whether the Scheme should be carried out on a long-term basis after the evaluation.

MR MOK YING-FAN (in Cantonese): *Mr President, I strongly support this scheme, because it will enable the people of Hong Kong to pay more attention to the elderly through their participation in voluntary work. It is mentioned in paragraph (a) of the main reply that the total allocation for this two-year scheme will be \$22 million, and some 30 multi-service centres will take part. When the Government consulted the Wong Tai Sin District Board on this scheme earlier*

on, some of our colleagues there told us that although there were as many as 70 000 elderly people in the district, the allocation for them during the two-year period would just be \$31,000. Mr President, is this level of fund allocation sufficient? Also, the people responsible for implementing the scheme will be the staff of the Social Welfare Department (SWD), and no additional manpower will be made available for this special scheme. This will mean that all at the same time, the staff of the SWD will have to handle Comprehensive Social Security Assistance applications on the one hand, and the implementation of the Social Networking Scheme for the Elderly on the other. Will such a heavy workload render them irritable?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the adequacy or otherwise of the resources allocated is also one of the items to be kept under review. Of all the financial resources allocated for the scheme, about 85% will be used to employ extra social workers, purchase computers and meet recurrent administrative costs. The remaining 15% will be used in part as a contingency fund and for meeting the expenses on computer programme design, storage of the information of elderly participants, insurance policies and publicity activities.

As for the pressure which may be felt by our staff, we will handle the matter with very great caution. If we really find it necessary to make improvements in this respect, we will certainly make special arrangements. However, I must point out that most of the work involved under this scheme will in fact be undertaken by voluntary workers in the various districts. As far as I can notice, these voluntary workers are all very happy to join the scheme, and they have not lodged any complaint about heavy workload. So far, more than 3 000 voluntary workers have already joined the scheme, and many more are planning to do so.

MR FRED LI (in Cantonese): *Mr President, according to the Secretary for Health and Welfare, because of the implementation of the Social Networking Scheme for the Elderly, each of the 25 multi-service centres all over Hong Kong will be given funding to employ an additional social worker. As far as I know, in some individual districts such as Kwun Tong, where many elderly people are living, there may just be one multi-service centre. Will the Government introduce any special arrangements or flexible measures so as to promote the*

Social Networking Scheme for the Elderly in this district?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, multi-service centres will no doubt serve as the operational centres of the scheme, because these centres possess the most abundant resources, voluntary workers and experience in this respect. However, I also wish to point out that if necessary, our District Committees of the various districts can also provide assistance. District Committees are made up of representatives from many different government departments such as the Housing Department and District Offices, and non-government institutions are also represented. Therefore, besides multi-service centres, District Committees can also play a special role.

PRESIDENT (in Cantonese): Mr Fred LI, are you claiming that your question has not been fully answered?

MR FRED LI (in Cantonese): *The Secretary for Health and Welfare has not answered my question fully. No doubt, there is a District Committee in each district, but these Committees are unable to solve the special problem experienced by the districts which I have mentioned. May I ask the Secretary for Health and Welfare how the special problems of these districts will be solved?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, in addition to multi-service centres, offices of the Social Welfare Department (SWD) can be found in every district. In case there are any special problems, the social workers and staff of these SWD offices will certainly render their assistance.

Full British Citizenship for Hong Kong People

5. **MISS EMILY LAU** asked: *Mr President, regarding the granting of full British citizenship to Hong Kong people, will the Government inform this Council:*

- (a) *of the number of beneficiaries of the British Nationality Selection Scheme (BNSS) who have applied for renunciation of their British citizenship; and whether the BNSS places arising from the renunciation of British citizenship by this group of people can be redistributed to unsuccessful BNSS applicants;*
- (b) *whether, in view of the British Government's decision to give full citizenship to the non-Chinese ethnic minorities, those BNSS places which have been given to the ethnic minorities can be redistributed to other unsuccessful BNSS applicants; and*
- (c) *whether the Government has any plan to urge the British Government to extend the BNSS to ethnic-Chinese Hong Kong permanent residents wishing to renounce their Chinese citizenship or to grant them full British citizenship outside the BNSS; if not, why not?*

SECRETARY FOR SECURITY: Mr President,

- (a) British citizenship was introduced by the British Nationality Act 1981, which commenced on 1 January 1983. Between 1983 and the end of 1996 when the responsibility for processing renunciations of British citizenship was handed over to the British Trade Commission (future British Consulate General), a total of 43 British citizens submitted declarations of renunciation under section 12 of the British Nationality Act 1981 through the Hong Kong Immigration Department acting as an agent for the United Kingdom Government. Their declarations were all registered by the Secretary of State, and they all ceased to be British citizens. Although there is nothing to distinguish a beneficiary under the BNSS from any other British Citizen, 20 of these 43 persons voluntarily surrendered certificates of registration acquired under the British Nationality (Hong Kong) Act 1990 as evidence of their British citizenship to be renounced.

Under section 1(1) of the British Nationality (Hong Kong) Act 1990, the Secretary of State shall register as British citizens up to 50 000 principal applicants. The Act does not provide for the registration

of an additional number of principal applicants on account of some BNSS beneficiaries subsequently renouncing their British citizenship. Once a principal applicant is registered as British citizen under the Act, a place is used up. Renunciation of his British citizenship does not release a new place for another principal applicant.

- (b) Once 50 000 principal applicants have been registered, there is no legal provision for the registration of any other principal applicants. There is thus no question of depriving BNSS beneficiaries of their British citizenship so that the places could be reallocated. Indeed, there is no such legal power to do so.
- (c) The Hong Kong Government's long standing position is that British citizenship should be granted to all Hong Kong British Dependent Territories citizens (HKBDTCs), regardless of whether they take any action to renounce their Chinese nationality. We will continue to put our position to the British Government, as effectively as we can and whenever the opportunity arises. The British Government has no plan to extend the BNSS in any way. As Honourable Members are aware, nor does the British Government accept the case for granting British citizenship to all HKBDTCs.

MISS EMILY LAU: *I am sure the Government is aware that there is a consensus within the community that the quota of 50 000 principal applicants under the BNSS should be used up entirely; so now I know there are restrictions in the law. But given that some people have already offered to renounce their British citizenship, is it not about time that the Government asked the British Government to amend the law so that all these places, vacancies, whatever you want to call them, can be taken up? Or are there other reasons that the Secretary can tell us that the British Government may be unwilling to do so?*

SECRETARY FOR SECURITY: Mr President, first of all, I will make it clear that we share the Honourable Miss Emily LAU's sentiments that all 50 000 places under the BNSS should be used up. I have no reason to believe that it will not be used up. We have already registered over 49 000 principal applicants. Indeed, very close to 50 000 principal applicants have been registered, and it will be very soon when we have registered the last one and we will then wind up the scheme.

We will, of course, wind up the scheme in such a way to ensure that records will either be destroyed as necessary or shipped to the United Kingdom. But, as I have explained very clearly in my main reply, there are no legal powers to enable places, which might have been issued to persons who have now renounced their British citizenship, to be re-used or reallocated to somebody else. I do not, in my view, believe the British Government would contemplate such a change in the law. In practice, probably it is impractical to do so given the time factor, given the timing that we have to wind up the scheme very soon.

I have to make just one point and, that is, the fact that someone might renounce his British citizenship once does not mean that he will forever forfeit that British citizenship. There are provisions under the British Nationality Act for a person who has renounced his British citizenship in certain circumstances to re-acquire or reapply for it to resume his British citizenship, for example.

MISS EMILY LAU: *Mr President, maybe that is the reason because if they give it up and then a year later they want it back, so that is the point I want to hear the Secretary for Security telling us about.*

On the question of the ethnic Chinese, Mr President, because I have received overtures from local people who say they want to renounce their Chinese citizenship and I think we have been fighting so hard for the ethnic minorities because we feel they would become stateless after 1997, because the British National (Overseas) (BNO) paper is really nothing. It is just a status. It does not really confer them any effective citizenship. So, for those ethnic Chinese who want to renounce their Chinese citizenship, does the Administration not think that it should urge the British Government to look after those people as well, on the principle that you do not want people to be left stateless?

SECRETARY FOR SECURITY: Mr President, as I have said in my main reply, the consistent position of the Hong Kong Government is that all Hong Kong BDTCs should be granted British citizenship regardless of whether they take any action to renounce their Chinese citizenship.

The Honourable Miss Emily LAU would draw an analogy between ethnic Chinese who renounce their Chinese citizenship and ethnic minorities over whom the British Government has made a decision recently to grant them full British citizenship. I do not entirely agree with that analogy. In the first place,

you have to accept that in the case of the ethnic minorities, the fact that they will have BNO status after 1997 is not of their own volition. In other words, they do not do anything to end up in that position. That is one of the factors taken into account by the British Government in announcing its decision to grant them full British citizenship. Whereas in the case of the ethnic Chinese referred to by the Honourable Miss Emily LAU, she was referring to people who deliberately on their own volition choose to renounce Chinese citizenship. I do not believe that their position is the same as the ethnic minorities.

MISS EMILY LAU: *Mr President, I think the Secretary for Security is wrong in saying that these people choose to renounce Chinese citizenship because there are those who say they are not Chinese citizens. They do not want to be. They have always been British. How can you say they choose to? There are many who choose to be Chinese under the Joint Declaration. They are deemed as Chinese citizens. So, I repeat, these people are going to be stateless. They do not want to be Chinese citizens. So is it not a very powerful case that the Administration should continue to make to the British Government that at least, the very bare minimum, they should look after these people?*

SECRETARY FOR SECURITY: Mr President, I think the Honourable Miss Emily knows I do not agree with her either. Having said that I do not for that matter agree with her assertion that by renouncing their Chinese citizenship that they are stateless. I do not regard somebody who is a British National (Overseas) as somebody who is stateless. But, I repeat, we have consistently, and will continue to, do so. We have consistently put to the British Government the Hong Kong Government's position that Hong Kong BDTCs, as I said whether or not they renounce their Chinese citizenship, should be granted British citizenship.

Speculation in Home Ownership Scheme Secondary Market

6. **MR FREDERICK FUNG** asked (in Cantonese): *Recently there are indications that property speculation has spread to the secondary market of Home Ownership Scheme (HOS) flats. In this connection, will the Government inform this Council of:*

- (a) *the total number of HOS flats currently available for free resale;*

- (b) *the total number of HOS flats that have been resold and the percentage of such flats out of the total number of HOS flats available for resale;*
- (c) *the number of transactions in the past year involving the further resale of HOS flats of 10 years standing or above within two years of the resale of such flats, together with the percentage of such transactions out of the turnover volume in the overall secondary market of HOS flats;*
- (d) *the average increase in the price level of secondary HOS flats in the past year;*
- (e) *the number of transactions involving the resale of HOS flats by confirmors in each of the years since HOS flats have become available for free resale; and*
- (f) *the measures adopted by the Government to curb speculative activities in the secondary market of HOS flats, so that prospective home buyers may purchase such flats at reasonable prices?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, as at January 1997, there were about 57 900 Home Ownership Scheme (HOS) and Private Sector Participation Scheme (PSPS) flats, for which the 10-year resale restriction had expired and which could be resold freely in the open market, subject to the payment of premium proportionate to the original price discount at the time of purchase from the Housing Authority. Of these, about 8 200 units or 14% had actually been sold in the open market.

In 1996, there were 535 cases of resale of these flats within two years of sale by the original owner, accounting for 12% of all transactions (4 342) in the open market involving HOS or PSPS flats.

In December 1996, prices of HOS and PSPS flats in the open market increased by an average of 21% over January 1996 prices, depending on location.

As regards Part (e) of the Question, "confirmor" is a term commonly used to refer to people who buy a property and then resell it before completing the assignment of the property. We do not have such statistics before 1992.

Information for recent years is as follows:

	<i>Number of transactions</i>
1992	1
1993	4
1994	12
1995	16
1996	108

As regards Part (f) of the Question, prices of HOS and PSPS flats in the open market are influenced by the same factors as prices of flats in the private residential property market, namely, supply and demand, and general market sentiments. Buying and selling is an economic activity reflecting changing accommodation needs and investment decisions. We will monitor the situation closely, and consider taking appropriate action if necessary.

MR FREDERICK FUNG (in Cantonese): *Mr President, as indicated in the reply of Secretary for Housing to parts (e) and (f) of the main question, the number of transactions involving resale of Home Ownership Scheme (HOS) flats by confirmors in 1996 was seven times that of 1995, and even 108 times that of 1992. The reply of the Government to part (f) of the main question indicates that no actions are being contemplated to deal with this problem. The original purpose of the HOS is to assist people lacking the means to purchase private residential property in buying their own homes, but, recently, some non-users have tried to gain profits by reselling HOS flats as confirmors. Does the Government find this situation satisfactory? If not, why has it refused to work out some ways to make sure that HOS flats are always sold directly back to genuine users?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the sale of property by confirmors is a common and long-standing commercial practice in the property market, and as such, it is not at all illegal. Such property transactions also involve vendors and purchasers and should thus be regarded as normal commercial dealings. Under the existing circumstances, we do not think that this type of commercial activities should be subject to any restrictions.

PRESIDENT (in Cantonese): I suppose Mr Frederick FUNG actually wants to ask whether you really consider the resale of property by confirmors a good practice, and whether you see any need to ban this practice. I believe that this is what Mr Frederick FUNG wants to ask.

SECRETARY FOR HOUSING (in Cantonese): Mr President, this is in fact a long-standing commercial practice, and the Government has never interfered in this respect. Therefore, this practice can continue.

MR LEE WING-TAT (in Cantonese): *Mr President, according to paragraph 2 of the main reply, in 1996, there were 535 cases of HOS flat resale within a short period of two years following the sale by first-hand owners. The Secretary for Housing and the Commissioner of Inland Revenue have said publicly on a number of occasions that property resale within a period of two years will be regarded as trading, for which profits tax is payable. As far as these 535 cases are concerned, does the Housing Branch know whether the authorities concerned have tried to levy any taxes? If so, what is the rate of success?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, we have not made any special efforts to follow up such cases. However, over the past three months, the Commissioner of Inland Revenue has been paying particular attention to some property transactions. My understanding is that over the past three months, he has been closely following some property transactions to see whether profits have been made, and whether it is necessary to issue tax returns to the people concerned. However, the Housing Branch has not made any special request in regard to all the transactions in 1996, and the Commissioner has simply been acting in accordance with his scope of duties.

PRESIDENT (in Cantonese): Mr LEE Wing-tat, are you claiming that your question has not been fully answered?

MR LEE WING-TAT (in Cantonese): *Mr President, if the Secretary for Housing does not have the information to hand now, can he give it to us after the*

Sitting? In regard to these cases of instantaneous resale, which may well be classified as trading, can the Secretary inform us whether tax collection actions should be taken? Will he also inform us of the current status in this regard? If the properties concerned are resold within a short period of time, but tax collection actions are not taken by the Inland Revenue Department, probably everyone will engage in property speculation.

SECRETARY FOR HOUSING (in Cantonese): Mr President, I am sure that the Commissioner of Inland Revenue will certainly have a definition for property speculation based on taxation principles. However, I will still approach the Commissioner and ask him whether he is aware of any such cases in 1996, and I will also ask him whether he has any relevant information. If there is any, I will certainly refer it to Mr LEE. If not, there will be nothing I can do. (Annex)

PRESIDENT (in Cantonese): Secretary for Housing, are you saying that you will submit a written reply to this Council?

SECRETARY FOR HOUSING (in Cantonese): Yes, Mr President.

MR FREDERICK FUNG (in Cantonese): *Mr President, I refer to the Secretary's reply to my question just now and wish to ask a follow-up question on the issue of confirmors. According to him, the sale of property by confirmors is a lawful commercial activity, which is why the Government does not intervene. However, since confirmors are not genuine users, their activities have obviously defeated the original purpose of building Home Ownership Scheme (HOS) flats. While immediate resale can be accepted for private property transactions, this should not be allowed for HOS flats. In the latter case, a period of 10 years must be required, because there is a rigid requirement. Since the problem of HOS flats resold by confirmors has become so serious, will the Secretary consider some policies directed at confirmors, such as forbidding them to resell HOS flats?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, for all those HOS and PSPS flats which have already been sold, we cannot possibly alter any of the conditions of sale, and this is also a matter within the authority of the

Housing Authority. In regard to the question of whether or not we will do so in future, I can only say that I will refer the matter to the Housing Authority for its consideration.

MR LEE WING-TAT (in Cantonese): *Mr President, it is mentioned in the last paragraph of the main reply that prices of HOS and PSPS flats are influenced by supply and demand and general market sentiments. In saying so, does the Secretary for Housing mean that if the resale restriction period for HOS flats is reduced from 10 years to three years, the supply of HOS flats in the secondary market will increase and their prices will not soar as drastically as they have this year?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, we are indeed considering the possibility of relaxing the resale restriction period for existing HOS and public housing flats from 10 years to three years. However, the relaxation being considered will apply only to existing public housing residents or those on the General Waiting List. The aim is to assist them in purchasing these housing units as quickly as possible.

Under the proposed arrangement, if a first-hand purchaser sells his unit to a public housing resident, we will not require him to pay any premium proportionate to the original price discount. We are of the view that this can, in principle, increase the supply of HOS flats in the secondary market.

As for prices, I am afraid that we cannot possibly make any projection. However, in general, it can be said that prices will not shoot up all of a sudden because the market is a restricted one.

WRITTEN ANSWERS TO QUESTIONS

Legislation on Chinese Garrison in Hong Kong

7. **DR ANTHONY CHEUNG** asked (in Chinese): *In connection with the "Garrison Law of the People's Republic of China for Hong Kong Special Administrative Region" passed by the Standing Committee of the National*

People's Congress on 30 December 1996, will the Government inform this Council:

- (a) whether there are any corresponding local laws that need to be enacted before 30 June this year; if so, of the progress of the discussions in the Sino-British Joint Liaison Group in this regard; if not, how the Government can ensure that a legal vacuum will not emerge when the British Forces are replaced by the People's Liberation Army troops stationed in the territory on 1 July 1997; and*
- (b) of the progress of the review of existing laws involving the rights and exemptions enjoyed by troops stationed in the territory?*

SECRETARY FOR SECURITY (in Chinese): Mr President,

- (a) We are studying the Garrison Law carefully to identify any need for enacting new local legislation or amending existing legislation. To ensure that the Law can be successfully implemented in the Hong Kong Special Administrative Region (SAR) after 30 June, we have expressed our wish to discuss with Chinese legal experts and clarify a number of key provisions of the Law. We are still waiting for the Chinese side's response.
- (b) The question of reviewing the rights and exemptions for the garrison under existing Hong Kong laws is dealt with under the overall adaptation of laws exercise. The process is to ensure that they will not contravene the Basic Law and will suit the circumstances of the SAR.

Differential Speed Limits on Highways

8. **MR WONG WAI-YIN** asked (in Chinese): *It is learnt that different speed limits are imposed on private cars and container-trucks on some highways in the territory. In this connection, will the Government inform this Council:*

- (a) *of the highways adopting the above speed limit measures, and the speed limits for private cars and container-trucks respectively;*
- (b) *how the Government monitors the speed of vehicles subject to different speed limits on highways, so as to ensure that no speeding will occur; and*
- (c) *of the number of successful prosecutions against drivers of container-trucks for speeding on highways with different speed limits imposed in the past three years?*

SECRETARY FOR TRANSPORT (in Chinese): Mr President,

- (a) For roads/expressways with a speed limit in excess of 70 km/h, different speed limits are imposed on private cars and goods vehicles. At Annex A is a list of roads/expressways and the speed limits imposed. The maximum speed on these roads/expressways for buses, medium, heavy goods vehicles and articulated vehicles remains at 70 km/h.
- (b) Traffic Police monitor the speed of vehicles on roads by setting up ad-hoc check points on safe positions along roads or on bridges above roads and using:
 - (i) Radar;
 - (ii) Laser Gun;
 - (iii) VASCAR [(Visual Average Speed Computer and Recorder).

The timings and locations for mounting check points are constantly changed for effective monitoring.

Speed monitoring is also carried out by moving police traffic patrol cars using:

- (i) VASCAR (Visual Average Speed Computer and Recorder)

mounted on a police patrol vehicle.

- (ii) VASCAR AUTOVISION (VASCAR equipment combined with a video recording system which is mounted on police patrol vehicle).
- (iii) Calibrated speedometer.

In police speed check of all types, the offending vehicle is either stopped and a Fixed Penalty Ticket immediately issued to the driver; or the vehicle particulars are recorded and reported to a Regional Traffic Office. In the latter case, a notice is sent to the vehicle owner to identify the driver who will then either be sent a demand note under the Fixed Penalty proceedings or issued with a summons to appear in court.

On expressways, vehicles are not generally stopped because of the danger to the officers and other road users. However, if in certain areas of the expressways there is room to safely stop vehicles and officers are available, the stopping operation would be mounted.

- (c) Statistics on speeding are compiled and classified according to the vehicle classes listed in the Schedule to the Road Traffic Ordinance (Cap. 374). A tractor unit which is the prime mover of a container truck is classified as a Medium Goods Vehicle. Record is not kept on whether a speeding medium goods vehicle has a trailer or not. Neither do statistics show the type of road on which speeding is committed.

Appended below are the number of successful prosecutions against speeding medium goods vehicles in the last three years:

<i>Offence Code</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>Total</i>
01 (excess 15 km/h or less)	1 833	1 496	1 102	4 431
02 (excess 16 to 30 km/h)	1 637	2 186	2 879	6 702
2A (excess 31 to 45 km/h)	35	77	105	217
2B (excess 45 km/h)	1	3	2	6

Total	3 506	3 762	4 088	11 356
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We are reviewing the categorization of speeding vehicles for statistical purpose so that in future, there will be a better statistical system to provide, among others, a separate category for speeding container trucks.

Annex A

List of Roads/Expressways with Speed Limit over 70 km/h

<i>No.</i>	<i>Roads/Expressways</i>	<i>Speed Limit (km/h)</i>
1	Sha Tin Road	80
2	Tate's Cairn Highway	80
3	Ma On Shan Road (From Tate's Cairn Highway to Hang On Estate)	80

<i>No.</i>	<i>Roads/Expressways</i>	<i>Speed Limit (km/h)</i>
4	Tai Po Road (From Tate's Cairn Highway to Sha Tin Road)	80
5	Tolo Highway (From Ma Liu Shui to Tate's Cairn Highway)	80
6	Tolo Highway (From Ma Liu Shui to Fanling Highway)	100
7	Fanling Highway (Except Sheung Shui bound section between San Tin Interchange and Fan Kam Road which is 80 km/h)	100
8	San Tin Highway (Except Sheung Shui bound section between San Tin Interchange and a point 330m west of it which	100

	is 80 km/h)	
9	Cheung Pei Shan Road	80
10	Kwai Chung Viaduct	80
11	West Kowloon Expressway	80
12	Kwun Tong Bypass	80
	(From Kwun Tong Ferry Pier to Lam Hing Street)	

Post-1997 Hong Kong Visas

9. **MR HOWARD YOUNG** asked: *At present, the nationals of certain countries are required to obtain visas to visit Hong Kong on business or as tourists, and this process may take many working days. In this connection, will the Government inform this Council whether:*

- (a) *the British Embassies in the countries concerned have been given guidelines as to whether the validity of such visas extends beyond 30 June 1997; and*
- (b) *the Chinese Government has been requested to consider whether special measures need to be put in place in good time to accept visa applications from overseas visitors intending to visit Hong Kong on or shortly after 1 July 1997 and who need to apply before that date?*

SECRETARY FOR SECURITY: Mr President, Hong Kong operates a liberal visa regime which allows nationals of over 170 countries to enjoy visa-free visits. Nationals of only 23 countries have to obtain a visa to visit Hong Kong.

- (a) Visas are normally valid for three months. Article 160 of the Basic Law states that,

"Documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law".

Since all Hong Kong visas are issued on the authority of the Immigration Department, those issued before 1 July 1997 should continue to be valid until their natural expiry date. British Embassies and all other British Visa posts which implement Hong Kong visa policy on the Hong Kong Government's behalf have been given guidance on this.

- (b) Applicants for Hong Kong visas may submit applications either through British Visa posts up to 30 June, or direct to the Immigration Department. The majority of applications are now made directly to the Immigration Department, which, in the majority of cases, has a shorter turnaround time. The Immigration Department is prepared to give advice on application procedures, as they normally do, to applicants who need to come to Hong Kong shortly after 1 July 1997.

Revised Child Adoption Criteria

10. **DR DAVID LI** asked: *It is reported that single men and women, divorcees as well as older people will be allowed to adopt children through the Social Welfare Department (SWD) under the revised criteria for adoption which took effect in February this year. In this connection, will the Government inform this Council whether it will review the existing assessment and supervision systems so as to ensure a healthy upbringing for these children?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the purpose of our adoption service is to find a suitable and permanent home for the child whose parents are unable or unwilling to take care of him/her so that he/she can enjoy family life and grow in a caring and nurturing environment.

The eligibility criteria for an adoption applicant set out in the Adoption Ordinance are the residency and minimum age requirement. The latter is set at 25 or, if the applicant is the relative of the child, 21. There is no other statutory requirement for an adoption applicant in respect of maximum age and marital status.

In the past, prospective applicants who were single or divorced or aged

above 45, would not normally be encouraged to submit applications. In the light of the development in relation to the Bill of Rights Ordinance, the SWD reviewed its practice in early 1996. All eligible applicants are now given an equal opportunity for a full assessment on their suitability as adoptive parents.

In adoption, the primary concern is to find a suitable home for the child and not a suitable child for an adoption applicant. The child's best interests is always of paramount importance.

Applicants are subject to a rigorous assessment and supervision process. They are required to provide detailed information on their personal circumstances to the SWD. This is followed by a thorough investigation whereby the social worker of the SWD visits and interviews the applicant as well as his/her family and nominated referees. The applicant's personality, coping ability, early life experience, interests and integration in the community, marital stability, parenting attitudes and capacities, adoption motivation are all taken into consideration in the assessment on an applicant's suitability.

Should the applicant be assessed to be a suitable adoptive parent for a child, the child will be placed into the applicant's home for a trial period of at least six months under close supervision of a social worker. If both the child and the applicant adapt to each other well and the applicant has proven his/her parenting capacity, the social worker will prepare a report to the Court to outline the circumstances of the adoption application and to make a recommendation based on his or her best professional judgement on whether an Adoption Order should be granted to the applicant. Every such application is carefully examined by the Court to ensure that the adoption is in the best interests of the child before an Adoption Order is granted.

Public Works Project Compensation Claims

11. **MR WONG WAI-YIN** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the individual public works projects in which compensation in excess of \$50 million was claimed by contractors, together with the total amount of compensation claimed, over the past three years;*
- (b) *of the reasons for contractors claiming compensation in respect of*

the above projects, the outcome of such claims and the amount of compensation ultimately paid by the Government; and

- (c) *whether there is an upward trend of such claims in recent years and, if so, what the reasons are; and what measures the Government has put in place to improve the situation?*

SECRETARY FOR WORKS (in Chinese): Mr President, construction contracts for public works apportion risks involved in the construction process between the Employer (Government) and the Contractor. It follows logically, therefore, that contracts should provide means by which contractors may submit claims for additional money (cost claim) or time (extension of time or "EOT" claim) or both, associated with the risks where liability rests with the Employer. Contractual claims are a normal and natural part of construction contracting.

For a construction contract, claims for compensation are assessed, determined and valued, where appropriate, by the Engineer for the Contract (the Engineer) in accordance with the terms and conditions of the contract. The amount so assessed by the Engineer is usually less than that claimed by the contractor, often substantially less.

Referring to parts (a), (b) and (c) of the question, please note that:

- (a) For the past three years up to end of January 1997, there were a total of 29 contracts in respect of which claims in excess of \$50 million have been received under each contract. The total amount as claimed by the contractors under these 29 contracts in the past three years is \$8.6 billion. The total value for these 29 contracts is \$32.2 billion. However, as claims information is confidential under the provisions of the conditions of contract, we cannot disclose individual contract details.
- (b) The reasons put forward by contractors in their claims include, *inter alia*, the following:
- (i) disturbance to works progress for which the Contractor is not responsible;

- (ii) delay in possession of works site;
- (iii) limitations imposed by the Employer on the methods of construction;
- (iv) special provisions for third parties such as access to an adjoining site;
- (v) disruption to or delay in works progress arising from problems associated with interfacing with other contracts;
- (vi) claimed impossibility of works;
- (vii) requirements for additional/extra work and related disputes on rates;
- (viii) under-recovery of overheads where works are deleted from the contract;
- (ix) dispute over interpretation of provisions in the contract or method of measurements;
- (x) prolongation costs where the contractor is not responsible for the contractual delay; and
- (xi) design changes to suit site conditions.

Of the \$8.6 billion claimed by the contractors, \$5.1 billion has been resolved and Government has paid contractors \$1 billion as at end of January 1997. The remaining unresolved claims are still being assessed in accordance with prescribed procedures.

- (c) For the contracts under the Airport Core Programme (ACP), the incidence of claims notifications by contractors depends to a large extent on the stage of construction. The number of claims submitted by contractors have increased as most of the ACP projects have progressed over the past three years. However, the number of new claims for these projects will reduce as the construction is

approaching the completion stage. A downward trend is therefore expected in the next few months.

For the Non-ACP Public Works Programme as a whole, which is a rolling programme with over 1 400 projects at various stages and around 2 000 contracts of different sizes at various stages of completion, there is no evidence of an upward trend in contractual claims over the past three years.

The Government has been closely monitoring the settlement of contractual claims which is part and parcel of our overall cost control measures. Compensation is given to contractors only if the claims are found fully substantiated and justifiable after careful consideration.

Regulation on Sale of Health Food

12. **MR CHOY KAN-PUI** asked (in Chinese): *In view of the great varieties of health food on sale in the market at present, will the Government inform this Council:*

- (a) *of the legislation regulating the sale of health food;*
- (b) *whether a review will be conducted to examine if the legislation mentioned in the answer to (a) above is adequate in safeguarding the interests of the consumers; and*
- (c) *whether there were any cases of people having health problems due to the intake of health food on sale in the market in the past three years; if so, of the total number of such cases and the main causes of their occurrence?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, the legal framework for control of foods is laid down in Part V of the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary

legislation. Under the Ordinance, the sale of any food intended for, but unfit for, human consumption is an offence. The Ordinance and its subsidiary legislation also lay down specific requirements and standards relating to the composition and labelling of foods, use of colouring matter, artificial sweeteners and preservatives. In addition, there are provisions in the Undesirable Medical Advertisements Ordinance (Cap. 231) to prohibit the advertising of any substance for the purpose of treatment or prevention of specified diseases.

At present, there is no established categorization of "health foods" world-wide. The sale of "health food" is therefore subject to the legal provisions described above which are meant to give adequate protection to public health and the interests of the consumers. We will keep abreast of local and overseas developments in considering whether a review of the control measures is necessary.

Since "health food" is not distinguished from the rest of the food items, we do not have any specific information on cases of people having health problems due to intake of "health food" on sale in the market. Nevertheless, the safety of all kinds of foods, including "health foods", is closely monitored by the Department of Health and the municipal departments.

Comprehensive Building Management Improvement

13. **MISS CHRISTINE LOH** asked: *At the meeting of the Home Affairs Panel of the Legislative Council held on 20 December last year, the Government informed the Panel that about 1 000 private buildings in the territory with potential fire and safety hazards had been put on a "watchlist". In his reply to a written question at the sitting on 22 January this year, the Secretary for Home Affairs released a list of 331 buildings on Hong Kong Island targeted for comprehensive building management improvement. In this connection, will the Government inform this Council:*

- (a) *of the names and addresses of the buildings in Kowloon and the New Territories which have been targeted for comprehensive building management improvement;*

- (b) *given that the names of the buildings may be taken off or added onto the "target" list, whether the Government will consider providing an updated list of such building throughout the territory to this Council at 12-monthly intervals; and*
- (c) *whether there have been any changes to the list of "target" buildings on Hong Kong Island since its compilation last year; if so, what the details are?*

SECRETARY FOR HOME AFFAIRS: Mr President,

- (a) The names and addresses of the buildings in Kowloon and the New Territories targeted for comprehensive building management improvement are attached at the Annex.
- (b) The Government will be happy to provide the Legislative Council Secretariat with an updated list on an annual basis, in February, of those buildings added to and deleted from the original lists.
- (c) The list of 331 buildings on Hong Kong Island has not been changed since its compilation for release on 22 January 1997.

"Target" Building in Kowloon and New Territories
for Buildings Management Improvement

<i>Serial No.</i>	<i>Name of Building</i>	<i>Address</i>
<i>Kowloon</i>		
<i>City</i>		
1.	Tung Po Building	No. 60 Pak Tai Street
2.	Tung Hoi Mansion	No. 66 Pak Tai Street
3.	-	No. 7 Bailey Street
4.	-	Nos. 2-4, 6-8 and 10-12 Baker Court
5.	-	No. 87 Tak Ku Ling Road
6.	-	No. 26 Whampoa Street

7.	-	No. 20 Wan Fuk Street
8.	-	No. 69 Kai Tak Road
9.	Fung Shing Building	No. 7 Hau Wong Road
10.	Yick Kwan House	No. 244 Chatham Road
11.	-	No. 1 Wan King Street
12.	Prince Chinese Building	No. 376 Prince Edward Road
13.	Menon Mansion	No. 18 Homantin Street
14.	-	No. 48 Nga Tsin Long Road

Kwun Tong

1.	Kin Tak Fung Industrial Building	174 Wai Yip Street
2.	Mai Hing Industrial Building (Block A)	16-18 Hing Yip Street
3.	Mai Hing Industrial Building (Block B)	16-18 Hing Yip Street
4.	Kwun Tong Industrial Centre (Block I)	472-484 Kwun Tong Road
5.	Kwun Tong Industrial Centre (Block II)	472-484 Kwun Tong Road
6.	Kwun Tong Industrial Centre (Block III)	472-484 Kwun Tong Road
<i>Serial No.</i>	<i>Name of Building</i>	<i>Address</i>

Kwun Tong

7.	Kwun Tong Industrial Centre (Block IV)	472-484 Kwun Tong Road
8.	Kiu Sun Factory Building	41 King Yip Street
9.	Sunray Industrial Centre	610 Cha Kwo Ling Road
10.	Yen Fu Mansion	121-124 Hip Wo Street
11.	Hip Wo Building	143-167 Hip Wo Street
12.	Keysky Industrial Building	151 Wai Yip Street
13.	Yee On Building	4-6 Yee On Street
14.	Good Year Factory Building	119-121 How Ming Street
15.	Hung Fuk Factory Building	60 Hung To Road
16.	Camel Paint Building (Block I and II)	62 Hoi Yuen Road
17.	Hong Ning Building	105 Hong Ning Street
18.	Shui Ning Building	38 Shui Ning Street
19.	Selwyn Factory Building	404 Kwun Tong Road
20.	Hoi Bun Industrial Building	6 Wing Yip Street
21.	Morning Star Mansion	42 Wan Hon Street
22.	Yen Hau Mansion	100 Ting Fu Street
23.	Howard Industrial Building	66 Chun Yip Street
24.	Wai King Building	3 Jordon Valley Road North

25.	Tsat Hei Building	4-22 Ting Fu Street
26.	Hang On Mansion	23 Hang On Street
27.	Yau Tong Industrial Building (Phase III)	2 Sze Shan Street
28.	Yan On Mansion	357 Ngau Tau Kok Road
29.	House of Corona	50 Hung To Road
30.	Shui Wo House	49 Ka Lok Street
31.	Wai Yip Industrial Building	171 Wai Yip Street
32.	Wah Fat Building	91 Hong Ning Road
33.	King Yip Factory Building	59 King Yip Street
34.	Hung Shing Industrial Building	27 Tai Yip Street
35.	Chilcott Industrial Building	97 Wai Yip Street
36.	Kin Tai House	88-101 Wan Hon Street
37.	Ting Yip Building	30-42 Ting Yip Street
38.	On Tak Building	44-54 Ting Yip Street
39.	Wing Ming Building	114 Ting On Street
40.	Yau Fook Building	167-175 Cha Kwo Long Road
41.	Chung Nam House	79-83 Hip Wo Street
<i>Serial No.</i>	<i>Name of Building</i>	<i>Address</i>

Kwun Tong

42.	Shiu King Building	6 On Wah Street
43.	Cheong On Mansion	78 Shui Wo Street
44.	Foo Yue Building	93 Ting Fu Street
45.	Wang Yip Building	2 Ka Lok Street
46.	Kwong Fai Building	24 Mut Wah Street
47.	Hong Ning Building	79 Hong Ning Road
48.	Morning Light Building	9 Hong Ning Road
49.	Gee Luen Factory Building	316 Kwun Tong Road
50.	King Wan Industrial Building	54 Hung To Road
51.	Wah Shun Industrial Building	4 Cho Yuen Street
52.	Draco Industrial Building	46 Lai Yip Street
53.	Mai Hong Industrial Building	160 Wai Yip Street
54.	Yip Win Industrial Building	10 Tsun Yip Street
55.	Liven House	61-83 King Yip Street
56.	Tai Hing Lau	1-7 Luen On Street
57.	Yan Ning Mansion	19 Ting Yip Street
58.	Mai Gar Industrial Building	146 Wai Yip Street
59.	Viet Luen Factory Building	126 Wai Yip Street

60.	Hung Fat Mansion	27 Tung Ming Street
61.	Hong Wah Building	38 Hong Ning Road
62.	Kai Tak Mansion (Block 1)	53 Kwun Tong Road
63.	Yip Fat Industrial Building (I)	77 Hoi Yuen Road
64.	Mai Tak Industrial Building	221 Wai Yip Street
65.	Kai Tak Mansion (Block 2)	53A Kwun Tong Road
66.	Lin On Building	23A Luen On Street
67.	On Ning Building	49 Mut Wah Street
68.	Yau Tong Industrial Building (Block 1)	2 Shung Shun Street
69.	Wing Hing Lee Industrial Building	32 Hung To Road
70.	Wah Yee House	2-8 Yan Oi Court
71.	Roomy Mansion	85 Fu Yan Street
72.	Chung Hing House	15-33 Yan Oi Court
73.	-	10-24 Yan Oi Court
74.	Winful Industrial Building	15-17 Tai Yip Street
75.	Kai Tak Mansion (Block 3)	55 Kwun Tong Road
76.	Kai Tak Mansion (Block 4)	55A Kwun Tong Road
<i>Serial No.</i>	<i>Name of Building</i>	<i>Address</i>

Kwun Tong

77.	On Cheung Building	311-315 Kwun Tong Road
78.	On Cheong Factory Building	19 Tai Yip Street
79.	Viet Shing Industrial Building	145 Wai Yip Street

Kwai Tsing

1.	Mei Kei Industrial Building	23-29 Wing Kei Road
2.	On Fat Industrial Building	12-18 Kwai Wing Road
3.	Shui Sum Industrial Building	8-10 Kwai Sau Road
4.	Bold Win Industrial Building	16-18 Wah Sing Street
5.	Mai Wah Industrial Building	1-7 Wah Sing Street
6.	Kam Shing Industrial Building	1-11 Kwai Wing Road
7.	On Fook Industrial Building	41-45 Kwai Fung Crescent
8.	Sing Mei Industrial Building	29-37 Kwai Wing Road
9.	Goldfield Industrial Building Block 1	144-150 Tai Lin Pai Road
10.	Goldfield Industrial Building Block 2	144-150 Tai Lin Pai Road
11.	Wing Hang Industrial Building	13-29 Kwai Hei Street
12.	Wells Industrial Building	21-23 Lam Tin Street

13.	Golden Dragon Industrial Centre Block 1	152-160 Tai Lin Pai Road
14.	Golden Dragon Industrial Centre Block 2	162-170 Tai Lin Pai Road
15.	Golden Dragon Industrial Centre Block 3	172-180 Tai Lin Pai Road
16.	Golden Dragon Industrial Centre Block 4	182-190 Tai Lin Pai Road
17.	Wing Loi Industrial Building	8-14 Wing Lap Street
18.	Grand Factory Building	159-165 Wo Yi Hop Road
19.	Chiap Luen Industrial Building	30-32 Kung Yip Street

Sham Shui Po

1.	Kwong Fung Building	143 Hai Tan Street and 16-18 Nam Cheong Street
2.	-	2 Kim Shin Lane and 586 Fuk Wah Street and 475-475A Castle Peak Road
3.	Kam Wah Building	226-242 Cheung Sha Wan Road

Serial No. Name of Building Address

Sham Shui Po

4.	Merlin Centre	65 Po On Road and 48 Tonkin Street and 88 Shun Ning Road
5.	Chew Onn Building	44-50 Yen Chow Street and 367-369 Lai Chi Kok Road
6.	Sunning Mansion	203-209 Pei Ho Street
7.	Sham Shui Po Building	1A Shek Kip Mei Street
8.	Wing Fat Building	318-320 Un Chau Street
9.	Hoover Building	493-497 Un Chau Street
10.	Sun Ming Court	84-90 Castle Peak Road
11.	-	570-572 Fuk Wah Street and 16-18 Kim Shin Lane
12.	Wah On Mansion	103-107 Fuk Wa Street
13.	-	574-576 Fuk Wah Street and 12-14 Kim Shin Lane
14.	New Pei Ho Building	178 Apliu Street
15.	Wai Bun Building	126-130 Pei Ho Street
16.	Tai On Building	145-149A Cheung Sha Wan Road

17.	-	553-555 Fuk Wing Street and 21-23 Kim Shin Lane
18.	Sheung Wing Building	187-189 Fuk Wing Street and 143-149 Kiu Kiang Street
19.	Ming Hing Building	174-176 Fuk Wing Street and 149A Kiu Kiang Street
20.	Wen Pang Building	66-68 Nam Cheong Street and 270-272 Lai Chi Kok Road
21.	Man Hoi Mansion	80-82 Cheung Sha Wan Road
22.	Cheung Shing Building	1-5 Cheung Sha Wan Road and 41A-D Boundary Street
23.	Ka Wui Building	7 Fuk Wing Street
24.	Un On Building	128-134 Camp Street and 154-160 Un Chau Street
25.	Fat Tseung Building	290 Castle Peak Road and 7C-7E Fat Tseung Street

Serial No. Name of Building Address

Sham Shui Po

26.	Sheung Fook Building	92-98 Fuk Wing Street and 143F-143H Kweilin Street
27.	Fuk Wing Mansion	226 Fuk Wing Street and 149-155A Pratas Street
28.	Federal Mansion	544-560 Fuk Wing Street and 463-471 Castle Peak Road
29.	Kam Ling Building	80-82 Fuk Wing Street
30.	Wah Tong House	187-189 Cheung Sha Wan Road
31.	Maple Mansion	9-13 Maple Street
32.	Kiu Fuk Building	184A and 148B Kiu Kiang Street and 170 and 172 Fuk Wing Street
33.	Golden League Building	76-82 Castle Peak Road
34.	-	101-103 Kweilin Street and 281 Yu Chau Street
35.	Cheong Fat Factory Building (Block C, D)	265-271 Un Chau Street and 344-348 Fuk Wing Street
36.	Cheong Fat Factory Building (Block A, B, E, F)	265-271 Un Chau Street and 344-348 Fuk Wing Street

37.	Wing Shun Building	1-7 Wing Lung Street
38.	Wing Tai Building	280-286A Yu Chau Street
39.	Kan Seng Building	186-188 Cheung Sha Wan Road
40.	Hung Yu Mansion	155-181 Castle Peak Road and 162-164 Un Chau Street
41.	Shun King Mansion	114-118 Yee Kuk Street
42.	Lung Fund Building	151-155 Kiu Kiang Street and 131-135 Un Chau Street
43.	Winsum Industrial Building	588-592 Castle Peak Road
44.	Wing Hong Factory Building	777-783 Yu Chau West Street
45.	Cheong Ming Building	72-74 Cheung Sha Wan Road
46.	Yen Li Mansion	222-224 Yee Kuk Street
47.	-	56 Tai Po Road
48.	Kwong Hing Building	52-54 Cheung Sha Wan Road
49.	Kam Hoi Mansion	243 Hai Tan Street
50.	Golden Jade Heights	482-492 Un Chau Street

Serial No. Name of Building Address

Sham Shui Po

51.	-	75-81 Kweilin Street and 333-337 Tai Nan Street
52.	Mei Kei Mansion	457-463 Castle Peak Road and 501 Un Chau Street
53.	Sum Ming Mansion	124-126 Yee Kuk Street
54.	Ka Ming Court	688-690 Castle Peak Road
55.	Wing Hing Industrial Building	499 Castle Peak Road
56.	Ying Fuk Building	212-214 Fuk Wing Street and 118-122 Camp Street
57.	Tung Shing Building	155-167 Apliu Street
58.	Sham Tsung Court	17-19 Wong Chuk Street
59.	-	205-211A Hoi Tan Street
60.	Diamond Building	154-156 Cheung Sha Wan Road
61.	Por Mei Factory Building	500 Castle Peak Road

Tsuen Wan

1.	Wah Kai Industrial Centre	221 Texaco Road
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2.	Chung Nam Industrial Building	152-160 Kwok Shui Road
3.	Wah Lung Industrial Building	49-53 Wang Lung Street
4.	Lok Shun Industrial Building	6-28 Chai Wan Kok Street
5.	Edward Wong Industrial Centre	13-23 Wang Wo Tsai Street
6.	Metropolitan Factory and Warehouse Building	30-32 Chai Wan Kok Street
7.	Wah Wai Industrial Building	53-61 Pak Tin Par Street
8.	Po Yip Building (Block A)	62-70 Texaco Road
9.	Po Yip Building (Block B)	62-70 Texaco Road
10.	Bonsun Industrial Building	364-366 Sha Tsui Road
11.	Wong's Factory Building	368-370 Sha Tsui Road
12.	Texaco Road Industrial Centre (Block A)	256-264 Texaco Road
13.	Texaco Road Industrial Centre (Block B)	14-22 Wang Lung Street
14.	Lung Shing Factory Building	141-148 Texaco Road
15.	Sun Fung Industrial Building	8-12 Ma Kok Street
16.	Metropolitan Industrial and Warehouse Building No.2	216-218 Texaco Road

Serial No. Name of Building Address

Tsuen Wan

17.	Jing Ho Industrial Building	78-84 Wang Lung Street
18.	Peninsula Factory Building	250-254 Texaco Road

Yau Ma Tei

and Tsim

Sha Tsui and

Mong Kok

1.	Ching King Mansion	36-44 Nathan Road
2.	Mirador Mansion	54-64B Nathan Road
3.	New Lucky House	300 Nathan Road
4.	Pollock Building	9-11 Tak Hing Street
5.	Grandview Mansion	119 Chatham Road
6.	Hung Hsing Building	482-484 Nathan Road
7.	Union House	33-35 Chatham Road
8.	Alpha House	27-31 Nathan Road
9.	Wing On Building	208-212 Shanghai Street
10.	-	200-210 Temple Street

11.	-	150-160 Reclamation Street
12.	Kay Pont Building	29-37 Wai Ching Street
13.	Yen Kit Building	14-18 Kwun Chung Street
14.	Hankow Apartment	45 Hankow Road
15.	Kam Shing Building	65 Parkes Street
16.	Wai On Building	1 Austin Road
17.	David Mansion	83-103 Woosung Street
18.	Carnarvon Mansion	8-12 Carnarvon Road
19.	Kim Hing Mansion	49-51 Kimberley Road
20.	Kam Fai Building	20 Waterloo Road
21.	Far East Bank Mongkok Building	11 Nelson Street
22	Peony House West Block	8-22 Foo Kwai Street and 7A-21 Pok Man Street and 34-46 Hoi King Street and Tai Kok Tsui
23.	Rex House	648-652 Nathan Road
24.	Kingland Apartments	737-741 Nathan Road
25.	Shiu Fung Mansion	33 Bedford Road
<i>Serial No.</i>	<i>Name of Building</i>	<i>Address</i>
<i>Yau Ma Tei and Tsim Sha Tsui and Mong Kok</i>		
26.	Wing Shun Building	53-67 Larch Street
27.	Po On Building	30-36 Mong Kok Road
28.	Manlin Building	96-100 Prince Edward Road
29.	Lee Hung Building	137-143 Fa Yuen Street
30.	Shun King Building	330 Ferry Street
31.	Kwok Hong Building	94-98 Lai Chi Kok Road
32.	-	15-17 Ka Shin Street, Tai Kok Tsui
33.	-	59-61 Prince Edward Road, Tai Kok Tsui
34.	Chung Hing Building	33 Chung Wui Street
35.	Wah Mei Building	150-156 Fa Yuen Street
36.	Wah On Building	201-203 Tong Mi Road
37.	Wong Choi Building	80-86 Hak Po Street

Monetary Authority Expenditure on International Conventions

14. **MISS EMILY LAU** asked: *At its meeting held on 7 July 1995, the Finance Committee approved a non-recurrent commitment of \$485 million at money-of-the-day prices to meet the costs of holding the Annual Meetings of the Boards of Governors of the World Bank Group and the International Monetary Fund in the territory in September 1997. In this connection, will the Administration inform this Council:*

- (a) *whether the estimated total expenses of hosting the above event will be kept within the approved budget; and*
- (b) *of the total amount of financial sponsorship which the Chief Executive of the Monetary Authority has secured to date and whether there is further sponsorship forthcoming?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The estimated total expenses of hosting the Annual Meetings of the Boards of Governors of the World Bank Group and the International Monetary Fund are within the approved budget of \$485 million.
- (b) The Hong Kong Monetary Authority set up a sponsorship advisory committee in late 1995 to help seek sponsorship. Despite the restriction stipulated by the World Bank and International Monetary Fund of not commercializing the Annual Meetings, the Hong Kong Monetary Authority has secured a cash sponsorship of about \$45 million and sponsorship in kind, including saloon cars, telecommunication services and equipment, office furniture and equipment and so on. The cost savings from sponsorship in kind and loan of furniture and equipment from government departments are estimated at \$25 million. More sponsorship in kind is being negotiated.

Prohibition of Smoking in Court Building Lobbies

15. **MISS CHAN YUEN-HAN** asked (in Chinese): *Will the Government*

inform this Council:

- (a) whether smoking is prohibited in the lobbies of all court buildings;
and*
- (b) if the answer to (a) is in the affirmative,*
 - (i) of the respective numbers of persons who were warned and prosecuted for smoking in court lobbies last year; and*
 - (ii) which government department is currently responsible for issuing warnings to, or instituting prosecutions against, those persons who smoke in court lobbies?*

CHIEF SECRETARY (in Chinese): Mr President, according to information provided by the Judiciary Administrator, smoking is discouraged in all public area within court premises, and no-smoking signs are displayed for this purpose. However, these public areas have not been designated as statutory no-smoking areas under Schedule 3 of the Smoking (Public Health) Ordinance (Cap. 371). Accordingly, it is not an offence to smoke in these areas.

The Judiciary Administrator has also advised us that both local and overseas experience indicates that it is difficult to stop people waiting to attend courts, especially the criminal courts, from smoking. Given the stress and anxiety that some parties to court proceedings are under, they may find it difficult to refrain from smoking, regardless of whether smoking is prohibited or not.

Nevertheless, the Judiciary Administrator has assured us that all court staff have been instructed to advise members of the public not to smoke in public areas within court premises and that such efforts will continue. However, the Judiciary Administrator does not have statistics on the number of persons who were advised not to smoke in public areas within court premises last year.

Question 16 withdrawn

Land Rent Revenue after 30 June 1997

17. **MISS CHRISTINE LOH** asked: *Under Annex III to the Sino-British Joint Declaration, all land leases not containing a right of renewal that expire before 30 June 1997 may be extended for a further period, subject to payment of an annual rent equivalent to 3% of the rateable value of the property at the date of extension. For new land leases granted in the period between the entry into force of the Joint Declaration and 30 June 1997, such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3% of the rateable value of the property at that date shall be charged. In this connection, will the Government inform this Council of:*

- (a) *the reasons behind the 3% charge mentioned above; and*
- (b) *the estimated annual revenue arising from the collection of the above rent?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) the annual rent to be charged:
 - (i) upon the extension of leases expiring before 30 June 1997; or
 - (ii) after 30 June 1997 in respect of those leases granted from the entry into force of the Joint Declaration to 30 June 1997,

is in lieu of premium at full market value which could have been charged in these circumstances. From the property owners' point of view, the annual rent is much less burdensome than premium, which is likely to be substantially higher than the rent and will normally have to be paid upfront at one go. The formula of 3% of the rateable value is consistent with that used in renewing leases under the Crown Leases Ordinance (Cap. 40), which was enacted in 1973; and

- (b) revenue from the collection of the annual rent mentioned in (a)

above is estimated at \$3.2 billion in 1997-98 (three quarters), increasing to \$4.5 billion in 1998-99 and \$4.8 billion 1999-2000.

Question 18 withdrawn

Mandatory Provident Fund Assets

19. **MR ERIC LI** asked: *As the Government has proposed that the percentage of the Mandatory Provident Fund (MPF) assets to be held in Hong Kong dollar should be 30%, will the Government inform this Council:*

- (a) *of the foreign currency risks, if any, should the 30% restriction be relaxed to include assets held in the US dollar, to which the Hong Kong dollar is officially pegged; and;*
- (b) *if such foreign currency risks do exist, whether they are within the acceptable limit in the context of prudential regulation to protect the interests of MPF beneficiaries?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The Hong Kong Government is firmly committed to the maintenance of exchange rate stability of the Hong Kong dollar under the linked exchange rate system. The foreign currency risk involved in US dollar investment should therefore be minimal under the linked exchange rate system. Nevertheless, MPF involves very long-term contributions and liabilities, as most contributors may get back his or her contributions only in 20 to 40 years' time. It would therefore be imprudent to assume that foreign currency risk in US dollar investment is totally non-existent in this context.
- (b) As investment in US dollar still involves currency risk (as explained in (a)), it would be inappropriate to consider US dollar as the same as the Hong Kong dollar for the 30% restriction. Should an MPF

fund invest in US dollar assets resulting in less than 30% of its holdings in HK dollar, however, the fund would still be within the acceptable limit if there is appropriate currency hedging to bring the effective currency exposure to within the 30% restriction. It would be useful to note that foreign currency risk is already very much on the minds of the investment managers of voluntary retirement funds in Hong Kong. Assets of these funds denominated in Hong Kong dollar have been ranging from about 25% to 45%.

GOVERNMENT BILLS

First Reading of Bills

SUPREME COURT (AMENDMENT) BILL 1997

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1997

VOLUNTEER AND NAVAL VOLUNTEER PENSIONS (AMENDMENT) BILL 1997

CRIMES (AMENDMENT) BILL 1997

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

Second Reading of Bills

SUPREME COURT (AMENDMENT) BILL 1997

THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to amend the Supreme Court Ordinance."

ATTORNEY GENERAL: Mr President, I move that the Supreme Court (Amendment) Bill 1997 be read the Second time. The Bill aims to amend the Supreme Court Ordinance so as to re-enact, in an updated form, those provisions of the English Habeas Corpus Acts 1679 and 1816 that are relevant to Hong

Kong, and to make consequential amendments to the Application of English Law Ordinance.

Freedom of the person is a fundamental human right. But that freedom would be illusory if there were no effective procedure for protecting it. This is recognized in Article 9(4) of the International Covenant on Civil and Political Rights which states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

Habeas corpus, the most famous of all common law writs, provides the means by which such proceedings may be instituted. The writ can be traced back to the 13th century, even before Magna Carta. It has proved its effectiveness throughout the centuries. In 17th century England, members of the parliamentary opposition, who had been imprisoned by command of the King, availed themselves of this writ to seek their release. And it was on a *habeas corpus* application that slavery was declared illegal in England in 1772.

The independent Judiciary plays a vital part in hearing *habeas corpus* applications. As a great English judge (Lord ATKIN) has said:

"It has always been one of the pillars of freedom, one of the principles of liberty, that the judges stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."

Today, the remedy of *habeas corpus* continues to be of constitutional importance as the classic common law guarantee of personal liberty. It is frequently resorted to in Hong Kong, particularly, in recent years, by Vietnamese detainees. But although *habeas corpus* has its origins in the common law, the two Habeas Corpus Acts of 1679 and 1816 developed the remedy in significant ways.

The Act of 1679 was passed after an individual was arrested for delivering a speech urging the summoning of Parliament, and was kept in prison for several months without bail. Under that Act, if the applicant showed that there was any ground for supposing that the prisoner was wrongfully detained, the writ would be issued requiring the person detaining the prisoner to bring him before the court and to explain the grounds of detention. If it appeared that the prisoner

was confined without lawful authority, the court would release him; otherwise it would release him on bail, or make provision for his speedy trial. The Act also included provisions designed to prevent evasion of the writ, but it only applied to persons imprisoned for alleged criminal activities.

The 1816 Act improved upon the 1679 Act and extended it to detention otherwise than in respect of alleged criminal activities. The later Act has been described as the beginning of the modern jurisprudence, the effect of which is that the courts, in civil cases, will determine for themselves the existence of the facts upon which the executive cites as justifying the detention.

The two English Acts are currently applied in Hong Kong by virtue of being listed in the Schedule to the Application of English Law Ordinance. The Administration is now conducting an exercise that involves identifying those Acts in the Schedule that are still of importance, and re-enacting them in an updated form.

If the provisions in the two English Acts that are relevant to Hong Kong were not re-enacted, and ceased to apply in Hong Kong, this would create great uncertainty as to what the common law position would be. Mr President, given that *habeas corpus* is one of the most fundamental remedies known to our law, the Administration considers it essential that these provisions be re-enacted in an updated form, and that is what the Bill proposes to do.

The Bill contains two main provisions. First, clause 3 adds a new section 22A to the Supreme Court Ordinance to provide for applications for, and the issue of, writs of *habeas corpus*. Secondly, clause 6 amends the Schedule to the Application of English Law Ordinance by repealing items 18 and 50, which are references to the two English Acts.

Mr President, I commend this short but vitally important Bill to the Council for early passage into law. Thank you.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1997

THE SECRETARY FOR BROADCASTING, CULTURE AND SPORT to move the Second Reading of: "A Bill to amend the Places of Public Entertainment Ordinance."

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Mr President, I move the Second Reading of the Places of Public Entertainment (Amendment) Bill 1997.

Under the Places of Public Entertainment Ordinance and its subsidiary legislation, no person shall keep or use any places of public entertainment, including cinemas, without a license. However, the two Municipal Councils, which are the licensing authorities in their respective areas, have not been empowered under the current legislation to close an unlicensed place of public entertainment.

In order to strengthen enforcement action against the continued illegal operation of unlicensed places of public entertainment, the Bill intends to empower the licensing authority to apply to a magistrate for the grant of a Prohibition Order to prohibit the keeping or use of a place of public entertainment for all purposes or for any purposes specified in the Prohibition Order. If the Prohibition Order is breached, the licensing authority may apply to a magistrate for a Closure Order to close the unlicensed business.

Mr President, similar provisions can also be found in the Public Health and Municipal Services Ordinance which regulates unlicensed food stalls.

Thank you.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

VOLUNTEER AND NAVAL VOLUNTEER PENSIONS (AMENDMENT) BILL 1997

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to amend the Volunteer and Naval Volunteer Pensions Ordinance."

She said: Mr President, I move that the Volunteer and Naval Volunteer Pensions (Amendment) Bill be read a Second time.

At present, pensions and allowances are provided to veterans of the Hong Kong Volunteer Defence Corps and the Hong Kong Naval Volunteer Force who fought in defence of Hong Kong during the Second World War. Payments are made by reference to the United Kingdom Naval, Military and Air Forces and so on (Disablement and Death) Service Pensions Order. We feel that it is appropriate to establish a local payment scheme and to remove the reference to the United Kingdom Order.

This can be achieved by amendments to the Volunteer and Naval Volunteer Pensions Ordinance. Under the amendment Bill, payment of pensions, gratuities and allowances in respect of disablement and death of veterans due to service, are largely retained. The prevailing rates will be converted into Hong Kong dollar, and will form the basic rates. It is our intention to adjust these rates in future in accordance with local inflation and in line with the civil service pension increase.

The United Kingdom Order is formulated to cater for members of various United Kingdom forces. We propose to adopt provisions that are relevant and omit those that are no longer applicable to members of the two voluntary forces. The Bill however contains suitable saving provisions to ensure that existing beneficiaries will continue to draw pensions and allowances at levels no worse off than those prevailing under the Ordinance.

We have consulted the Legislative Council Panel on Welfare Services, the Social Welfare Advisory Committee and chairmen of relevant war veterans associations. They are all in support of our proposals.

Mr President, I commend this Bill to Members.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee

pursuant to Standing Order 42(3A).

CRIMES (AMENDMENT) BILL 1997

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to amend the Crimes Ordinance."

He said: Mr President, I move the Second Reading of the Crimes (Amendment) Bill 1997.

The Bill seeks to increase the maximum penalties of certain sexual and related offences to reflect their gravity. It sends a clear signal that the community would not tolerate such crimes.

In response to a motion of this Council, we have reviewed the legislation relating to sexual assaults and improved the procedures adopted by the departments concerned in handling such cases.

In our review, we have selected the 10-year maximum penalty level for indecent assault as the benchmark since it is the most prevalent sexual offence and the penalty level was raised from five to 10 years' imprisonment in 1991. Having completed our review, we propose to increase the maximum imprisonment terms of certain sexual and related offences to 10 years. These offences include, for example, indecent conduct towards a child under 16 and intercourse with a defective. The seriousness of these offences are considered comparable to that of indecent assault.

We have paid particular attention to the offence of incest as it is a more traumatic experience and one over which the community has great concern. Having regard to the position in other common law jurisdictions and taking into account the views expressed by the Security Panel of this Council, we propose to increase the maximum imprisonment penalty of incest with women between the age of 13 and 16 from seven to 20 years. Women of this age bracket are more vulnerable and should therefore be offered increased protection. For incest with women of or above the age of 16, we propose to double the maximum imprisonment term from seven to 14 years.

As regards offences relating to vice establishments, we propose to raise the maximum imprisonment terms on offences concerning premises used as vice establishment or for prostitution from two to seven years, as these offences are less serious when compared with indecent assault. For offenders convicted on indictment of "keeping a vice establishment", we propose to raise the maximum imprisonment term upon conviction on indictment from seven to 10 years and, upon summary conviction, from two to three years. We also propose to remove the maximum fine levels for these offences to allow the courts more flexibility in imposing an appropriate fine.

We understand that raising maximum imprisonment penalties alone cannot be the sole solution to the problem of sex crimes. We adopt a three-pronged approach in tackling the problem. This includes prevention by enhancing sex education, enforcement by increasing the maximum penalties of these offences and providing support to victims by introducing improved procedures so that they are more willing to come forward to report these cases.

On preventive measures, we have launched a publicity campaign on the prevention of child sexual abuse in 1996-97, focusing on teaching young children to protect themselves and promoting awareness of the problem on the parents' and carers' part. To develop students' ability to prevent and cope with sexual harassment, we are reviewing the Guidelines on Sex Education in Schools. In parallel, we are developing a sex education kit for parents. We have also strengthened our sex education programmes for the younger generation so that they will have a proper perspective of sex and are therefore less prone to committing sexual offences.

We recognize that it is important for victims of sexual offences to come forward and report their misfortune. To achieve this, we have improved our procedures for supporting victims of such crimes. The police have emphasized a sympathetic approach in their training for officers handling such crimes. In addition, a comfortable atmosphere is provided in the police report room so that victims will feel at ease to give their statements. In collaboration with the Social Welfare Department, the police have established a dedicated Child Protection Special Investigation Team to handle child victims involved in child sexual abuse cases. Meanwhile, we have introduced measures to protect child witnesses from the trauma of testifying in court in incest cases by, for example, allowing a child's videotaped testimony to be produced as evidence in court. The Victim's Charter was also issued in 1996 to improve services for victims of

crimes. This Charter will be of particular assistance to victims of sex crimes.

We have consulted the Security Panel of this Council and the Fight Crime Committee. Both bodies have indicated support for our proposals.

Mr President, we believe that by enacting the Bill, it will have a strong deterrent effect against such crimes. These changes will contribute towards our efforts to make Hong Kong one of the safest cities in the world.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

Resumption of Second Reading Debate on Bill

ENDURING POWERS OF ATTORNEY BILL

Resumption of debate on Second Reading which was moved on 8 January 1997

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

POWERS OF ATTORNEY (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 8 January 1997

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

FIRE SAFETY (COMMERCIAL PREMISES) BILL

Resumption of debate on Second Reading which was moved on 29 May 1996

MRS SELINA CHOW (in Cantonese): Mr President, as the Honourable James TO, Chairman of the Bills Committee to study this Bill, is out of town today, I rise to speak on the deliberations on the Bill.

The Fire Safety (Commercial Premises) Bill seeks to provide for better protection from the risk of fire for occupants and users of, and visitors to, the prescribed commercial premises by requiring the owners of relevant premises to implement specified fire safety measures. The background to the Bill was explained clearly by the Secretary for Security when he introduced it into this Council on 29 May 1996.

The Bills Committee commenced its work on 18 July 1996. It has held a number of meetings with the Administration and considered views from professional institutions and concerned organizations.

While the Bills Committee supports the legislative intent to enhance control of fire safety standards in certain kinds of commercial premises and its early enactment, the Bills Committee has identified a number of issues and concerns. I wish to confine myself to highlighting the major concerns discussed by the Bills Committee.

Our first and foremost concern is on the applicability of the Bill and its implementation. Under clause 4, the Bill will apply to prescribed commercial premises that were constructed before the commencement of the legislation and to premises that are constructed after that commencement date. The effect is

that the relevant enforcement authority could serve on the owner of a newly constructed premises a fire safety direction directing the owner to comply with all or any of the requirements specified in Schedule 2 of the Bill. However, the Codes of Practice as referred to in paragraph 2(2) of Schedule 2 are subject to change from time to time. These Codes are namely the Code of Practice for the Provision of Means of Access for Fire Fighting and Rescue, the Code of Practice for the Provision of Means of Escape in Case of Fire, and the Code of Practice for Fire Resisting Construction. In the circumstances, owners of new buildings or buildings completed only a few years ago which were constructed in accordance with the then prevailing fire safety measures and the requirements of the Codes of Practice, may be directed to carry out improvement works once there is a change in the Codes of Practice. In view of the ever bringing-up-to-date of the required safety standards, the Bills Committee has suggested that the Administration consider restricting the applicability of the Bill to commercial buildings completed before a specific cut-off date.

The Administration considers it inappropriate to restrict the applicability of the Bill by doing so. Buildings completed in the same year may vary significantly in their fire safety standards, making it difficult to determine an exact cut-off date. As provided under the Bill, the requirements of the enforcement authority must be reasonable. The Administration undertakes to adopt a flexible approach to ensure that the enforcement actions taken are reasonable, having regard to the circumstances of different cases.

The Bills Committee has, however, pointed out that neither the concept of reasonableness or the test of reasonableness is clearly spelt out in the Bill. The flexible approach would leave much discretionary power to the enforcement authorities and thus give rise to uncertainty.

The Administration stresses that before serving a fire safety direction on the relevant owner, the Administration would ensure that it is reasonable to do so, having regard to the relevant building structure and availability of technology. To address members' concern, the Administration has agreed to move Committee stage amendments (CSAs) to clause 5 of the Bill to reflect this point.

The Administration has also undertaken to elaborate on how the concept of reasonableness in taking enforcement action will be applied under the Bill. For instance, the enforcement authorities, if satisfied that the owner/occupier has genuine difficulties in completing the required improvement works, would accept this as a "reasonable excuse" for not complying with the fire safety direction

within the specified period and extend the deadline. I shall leave it to the Secretary for Security to further explain on this later today.

As regards the concern that the three Codes of Practice are subject to change from time to time, the Administration has agreed to specify the versions of the three Codes of Practice to be applied under the Bill. If any of these Codes is substituted or amended, the substituted or amended Code can only take effect by a resolution of the Legislative Council.

The Bills Committee has been assured by the Administration that it will take a pragmatic approach in serving fire safety directions, taking into account circumstances of individual cases. The enforcement authorities will prioritize the enforcement action according to the level of risks. Buildings which are considered to be at higher risks, such as those without sprinkler systems, will be dealt with first while newly completed buildings with better equipped fire safety measures will be accorded with lower priority. The Administration has undertaken to publicize its phased implementation plan; to take enforcement action in accordance with the plan; and to consult the Legislative Council Panel on Security before proceeding to the next phase of implementation.

Mr President, the Bill will apply to premises which are used for a prescribed commercial activity and have a total floor area of more than 230 sq m. Prescribed commercial activities, as specified in Schedule 1, include banking, conducting off-course betting, conducting a jewellery or goldsmith's business, use as a supermarket, hypermarket or department store, or use as a shopping arcade. The Bills Committee has sought clarification as to whether the back offices of or work places in retail banks, supermarkets, department stores, or jewellery shops will be covered by the Bill.

The Administration has clarified that such kind of offices or work places would normally not be covered under the Bill unless they are located next to the retail banks, supermarkets, department stores, jewellery shops within the same fire compartment; or they are located on the upper floor of the retail banks, supermarkets, department stores or jewellery shops with an internal staircase linking up the two without fire resisting separation. At the request of the Bills Committee, the Administration has agreed to introduce CSAs to clause 3 of the Bill to reflect its policy intent.

As to why jewellery and goldsmith shops are covered by the Bill, the Administration explained to the Bills Committee that the Interdepartment

Investigation Team recommended that any commercial premises having security facilities similar to banks and with significant customer flow be included in this legislation. Hence those shops fall into this category.

Members, however, are of the view that as some modern or small jewellery and goldsmith shops do not have security areas, it is unreasonable for them to be covered by the Bill. The Administration accepted the view of the Bills Committee and will introduce the relevant CSAs.

Another concern of ours is on the definition of "owner" and its responsibilities. Under the Bill, an "owner", in relation to premises, means an owner as defined by the Buildings Ordinance; or a sublessee of the premises (whether the sublease is from an owner as so defined or another sublessee); or a person who occupies the premises under a franchise or a licence to occupy. The owner of the prescribed commercial premises may be directed to comply with all or any requirements specified in Schedule 2. We are concerned that with such a wide definition of owner, a fire safety direction can be served on the owner, the sublessee and the occupier of the premises concerned. However, it is not clear as to who should be responsible for carrying out the required improvement works. The unclear division of responsibilities would thus give rise to disputes between the owner and the occupier. The Bills Committee considers it essential to spell out clearly in the Bill the responsibilities of the owner and the occupier in compliance with the provisions of the Bill.

The Administration recognizes that there would be difficulties in serving the notice on the person who will be in the best position to carry out the required improvement works. Under normal circumstances, the Administration would target enforcement actions against the owner, especially when the improvement works involve the structure of the building concerned. The owner may, by contract, shift the responsibility to the tenant. The Administration, however, considers it more appropriate to take enforcement action against the occupier in cases which involve the provision of minor equipment or equipment exclusively used by the occupier. The Administration has agreed to move CSAs to set out in the Bill the respective responsibilities of the owner and the occupier on the provision of fire safety measures specified in Schedule 2.

We have had considerable discussions on the revised definitions for "owner" and "occupier" proposed by the Administration. We agree that an "owner", in relation to premises, should have the same meaning as that in the Buildings Ordinance. As to an "occupier", it should be the person who is

occupying the premises, including any person who is carrying on or managing a prescribed activity on the premises; and any person who is controlling and managing the premises as the agent of the person so occupying the premises. This will strike a balance between the need to ensure that no one would unreasonably be caught by the definition of "occupier" against the difficulties encountered by the Administration in serving the fire safety directions.

Mr President, having made the report on behalf of the Bills Committee, I, as a Legislative Council Member representing the wholesale and retail functional constituency, would like to express the concerns of the industry on the contents as well as the implementation of the Bill.

The basic premise is that it is an issue of safety. Business operators are in support of a proper control mechanism within the legal framework for better protection of the life and safety of their staff and customers. Despite the fact that operators in the industry had had doubts about the controls provided by the Bill, such as the extent of control and the reasonableness of enforcement criteria, they eventually accepted the Bill after the same has been fine-tuned to cater for the needs of actual circumstances through the deliberations of and amendments suggested by the Bills Committee.

In fact, we consider the Bill, as it stands, satisfactory in general and hope that it will be put in place as soon as possible. Yet we hope that it would achieve the dual purposes of enhancing safety on the one hand and exercising reasonable and practicable control on the other. We, nevertheless, are of the view that more flexibility and reasonable discretion should be allowed in actual enforcement.

Of course, the foremost concern is always safety. However, it is also very important for the Bill to be reasonable in enforcement, particularly in relation to structural works. The Buildings Department may need to adopt a more flexible approach when dealing with such cases. As time is money, and if no flexibility is allowed by government departments, business operations may be affected or operational costs increased unnecessarily. Both situations should be avoided as far as possible.

In fact, this is well understood by Members of the Legislative Council and the Administration alike. But in the course of enforcement, things often go wrong and situations where officials acting like "a donkey in a lion's hide" do occur. I would like to make a special appeal to all those concerned to prevent such things from happening. I would also assure my voters that if they have any

complaints, I would help them check the unreasonable enforcement actions by the department concerned.

Thank you, Mr President. With these remarks, I commend the Bill to this Council.

PRESIDENT (in Cantonese): Mrs Selina CHOW, I have allowed you to speak for a particularly long time just now because the report you made on behalf of the Bills Committee has taken up a considerable time. Does any Member wish to speak? Miss Margaret NG.

MISS MARGARET NG: Mr President, I wonder if we are quorate.

4.17 pm

PRESIDENT (in Cantonese): Let us count the number of Members present.

PRESIDENT (in Cantonese): As we do not have a quorum, I now direct that Members be summoned to the Chamber to attend the meeting.

The Clerk sounded the bell to summon Members.

PRESIDENT (in Cantonese): Will the Clerk please count the number of Members again?

A quorum was then formed.

4.20 pm

PRESIDENT (in Cantonese): Since we now have a quorum, we will continue to deal with the matters just discussed, that is, the resumption of Second Reading debate of the Fire Safety (Commercial Premises) Bill. Please keep quiet.

SECRETARY FOR SECURITY: Mr President, the Fire Safety (Commercial Premises) Bill aims to provide better protection from the risk of fire in certain kinds of commercial premises where members of the public are likely to be present in significant numbers.

I am grateful to the Honourable James TO and members of the Bills Committee for the great care they have taken in scrutinizing the Bill since it was introduced into this Council in May last year. This process has helped the Administration to fine-tune the Bill in a manner which will ensure the purpose of the legislation can be achieved in the most effective and acceptable manner.

In the course of discussions in the Bills Committee, we have also received comments from the Real Estate Developers' Association and the Hong Kong Institute of Architects on the implementation of the Bill. We have carefully considered the views of both the Bills Committee and the two organizations in preparing the Committee stage amendments.

The principal amendments in respect of this Bill which I will propose at the Committee Stage include:

- (a) To specify in the Schedule the responsibilities of owner and occupier of prescribed commercial premises in complying with the fire safety requirements under the Bill. This will reflect clearly that owners will be responsible for those improvement works which require structural changes of the premises, and the occupier for those involving non-structural changes.

There has been some lengthy discussion on the definition of "occupier". Although some members still find it not entirely satisfactory, the proposed definition should ensure that no one will unreasonably be caught by the definition. At the same time, it should enable the relevant enforcement authority to identify a senior staff member responsible for the management of the premises so that necessary enforcement action can be taken to ensure that relevant premises are, as far as possible, kept free from the risk of fire and the consequences of fire.

- (b) To introduce a new clause to reflect that offices in prescribed

commercial premises, for example, offices and banks, will not be covered by the Bill if they are separated by a fire-resistant wall, floor or ceiling, from the area to which members of the public generally have access and they have a separate means of escape.

- (c) To address members' concern about the concept of "reasonableness" for compliance with a fire safety direction, a new subclause will be added to explain what constitutes a reasonable excuse. This includes factors mainly relating to the structural integrity of the building and the technology available to carry out the necessary improvements.
- (d) To specify the versions of the four codes of practice that can be applied to premises that are covered by the Bill, that is, the Code of Practice for Minimum Fire Service Installations and Equipment (1994), the Code of Practice for the Provision of Means of Escape in Case of Fire (1996), the Code of Practice for Fire-Resisting Construction (1996) and the Code of Practice for Means of Access for Fire-Fighting and Rescue (1995).

It is also stipulated that any substituted or amended code in future would apply to premises only after the passing of a resolution by the Legislative Council. This would address a concern expressed by members of the Bills Committee that owners who had upgraded their fire safety measures to the current standard would be required to carry out a further upgrading soon afterwards because of the issue of a substituted or amended code of practice.

- (e) To state clearly in the Bill that only jewellery and goldsmith shops with a security area would be covered by the legislation. As discussed in the Bills Committee, the fire risk is less in those jewellery and goldsmith shops that do not have a security partition that segregates a part of the premises from the part to which members of the public normally have access.

In addition to the proposed Committee stage amendments, we have also discussed the implementation of the legislation. It was proposed that the legislation would be implemented in stages. The 500 prescribed commercial premises without sprinkler installation, as identified by the Fire Services Department in a survey conducted in 1995, would be included in our first phase of implementation.

The next phase will include prescribed premises completed before 1980. The third phase will include prescribed premises completed between 1980 to 1990, and Phase Four includes those premises completed after 1990.

Requirements to carry out fire safety improvements to prescribed commercial premises completed in recent years will, therefore, not be imposed in the immediate future. However, if particular premises are found to be at a high risk of fire, enforcement action will be taken immediately without reference to the age of the premises.

The implementation plan, although not included as part of the legislation, will be publicized. The industry will be consulted on the plan and it will be issued as a Practice Note to the industry. On completion of each phase of implementation, the Legislative Council will be consulted before proceeding to the next phase.

I would also like to reiterate that in taking enforcement action under this Bill, the enforcement authorities will consider extending the specified period for complying with a direction if the owner or occupier found that after commencement of the improvement works he could not finish the work due to unforeseen problems. This is the current practice adopted in other related legislation.

Finally, I am aware that there are increasing concerns expressed on the improvement of fire safety measures in old, commercial buildings and karaoke establishments in the territory. We are actively looking into the possible options to address the problem including legislative and licensing measures. This legislation will provide a very good reference for us to work on.

Mr President, I recommend the Fire Safety (Commercial Premises) Bill to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

AUXILIARY FORCES PENSIONS (MISCELLANEOUS AMENDMENTS) BILL 1997

Resumption of debate on Second Reading which was moved on 22 January 1997

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee Stage of Bills

Council went into Committee.

ENDURING POWERS OF ATTORNEY BILL

Clauses 1 to 4, 6 to 12 and 15 to 19 were agreed to.

Clauses 5, 13 and 14

ATTORNEY GENERAL: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The amendments proposed to clause 5 are drafting improvements to the

provisions dealing with the execution of an enduring power of attorney.

The amendments proposed to clause 13 and 14 are drafting improvements to the Chinese texts of those clauses.

Proposed amendments

Clause 5

That clause 5(2) be amended —

(a) in paragraph (d) -

(i) by adding before subparagraph (i) -

"(ia) that the donor attended before him at the time of the execution of the enduring power;"

(ii) in subparagraph (i) by adding "and" at the end;

(iii) by deleting subparagraph (ii);

(iv) by deleting subparagraphs (iii) and (iv) and substituting -

"(iii) that the instrument was signed in his presence and, where it is signed by the donor, that the donor acknowledged that he was signing it voluntarily and, where it is signed on the donor's behalf, that it was so signed under the direction of the donor; and".

(b) in paragraph (e) by deleting subparagraph (iii) and substituting -

"(iii) that the instrument was signed in his presence and, where it is signed by the donor, that the donor acknowledged that he was

signing it voluntarily and, where it is signed on the donor's behalf, that it was so signed under the direction of the donor."

Clause 13

That clause 13(1)(e) be amended —

- (a) by deleting "一個委員會" and substituting "受託監管人".
- (b) by deleting "委出" and substituting "獲委任".

Clause 14

That clause 14(1)(c)(i) be amended, by deleting "後" and substituting "起計".

Question on the amendments put and agreed to.

Question on clauses 5, 13 and 14, as amended, put and agreed to.

POWERS OF ATTORNEY (AMENDMENT) BILL 1996

Clauses 1, 2 and 3 were agreed to.

FIRE SAFETY (COMMERCIAL PREMISES) BILL

Clauses 1, 2, 4, 9, 17 to 20 and 23 were agreed to.

Clauses 3, 5 to 8, 10 to 16, 21, 22 and 24

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

The amendments to clauses 3, 3(1) and (5) have already been referred to in

the Second Reading debate. Clause 11 is amended to reflect more clearly the power of the police to remove and prevent re-entry of persons to premises that are subject to use restriction order. Clause 21(1) is amended in order to increase the deterrent effect relating to the unlawful disclosure of information obtained in relation to the premises by the authorized officer. Clause 24 is amended to specify the major considerations that would be taken in determining whether a commercial activity should be included as a prescribed activity under the Bill.

Amendments to the other clauses are mainly technical in nature and are consequential to amendments to the other clauses. All the proposed amendments have been discussed in detail by the Bills Committee and received the Committee's endorsement.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(1) be amended —

- (a) by deleting the definition of "firefighter".
- (b) by deleting the definition of "owner" and substituting -

""owner" (擁有人), in relation to premises, has the same meaning as in the Buildings Ordinance (Cap. 123);".

- (c) by adding -

""mechanical ventilating system" (機械通風系統) includes an air conditioning system;

"occupier" (佔用人), in relation to premises, means the person who is occupying the premises (whether as owner or under any form of lease or licence), and in particular includes -

- (a) any person who is carrying on or managing a prescribed commercial activity on the premises; and
- (b) any person who is controlling and managing the premises as the agent of the person so occupying the premises;"

That clause 3(2) be amended, by deleting "m²" and substituting "square metres".

That clause 3(3) be amended, by deleting "m²" and substituting "square metres".

That clause 3(5)(b) be amended, by deleting "或組成任何升降機或自動梯的機械或設備所佔用，或只由構成或組成任何服務該建築物或該建築物的部分的任何空氣調節、暖熱或冷凍系統或任何其他系統" and substituting "任何升降機或自動梯或組成其部分的機械或設備所佔用，或只由構成任何服務該建築物或該建築物的部分的任何空氣調節、暖熱或冷凍系統或任何其他系統或組成其部分".

That clause 3 be amended, by adding —

"(6) A part of a building is not to be regarded as prescribed commercial premises for the purposes of this Ordinance if -

- (a) members of the public have access to that part only by express invitation; and
- (b) that part -
 - (i) is physically separated by a fire resistant wall, floor or ceiling from the parts to which members of the public generally have access; and
 - (ii) has a means of egress that is separated from the means of egress provided for those parts; and
- (c) the separate means of egress does not pass through

those parts."

Clause 5

That clause 5 be amended, in the heading, by adding "**or occupier**" after "**Owner**".

That clause 5 be amended, by adding —

"(1A) The relevant enforcement authority may serve on the occupier of prescribed commercial premises a fire safety direction directing the occupier to comply with all or any of the requirements of Schedule 3."

That clause 5(2) be amended, by adding "or occupier" after "owner".

That clause 5(6) be amended, by adding "or occupier" after "owner".

That clause 5 be amended, by adding —

"(7) The reference in subsection (6) to reasonable excuse includes, but is not limited to, the excuse that, at the time when the fire safety direction was not complied with, it was not reasonable to expect the owner or occupier of the premises to comply with the direction -

- (a) because of the risk of prejudicially affecting the structural integrity of the building where the premises are located; or
- (b) because the technology required to comply with the direction is not reasonably available."

Clause 6

That clause 6 be amended, by adding "or occupier" after "owner" wherever it appears.

Clause 7

That clause 7 be amended, by adding "or occupier" after "owner" wherever it appears.

That clause 7(1) be amended, by deleting "的某項規定或符合消防安全令" and substituting "或符合消防安全令的某項規定".

Clause 8

That clause 8(1)(b) be amended, by adding "and, if the owner is not the occupier, the occupier of the premises" after "of the premises".

That clause 8(2) be amended, by adding "or occupier" after "owner" wherever it appears.

That clause 8(3) be amended, by adding "or occupier" after "owner" wherever it appears.

Clause 10

That clause 10(1) be amended, by adding "or occupier" after "owner".

Clause 11

That clause 11 be amended, by deleting the clause and substituting —

**"11. Power to remove persons from, and prevent
re-entry of persons to, premises that are
subject to use restriction order**

A police officer of or above the rank of inspector -

- (a) may remove from premises in respect of which a use restriction order is in force any person who is apparently contravening or about to contravene section 8(1); and
- (b) may prevent any such person from re-entering the premises while the order remains in force."

Clause 12

That clause 12 be amended —

- (a) in the heading, by adding "**or occupier**" after "**Owner**".
- (b) by adding "or occupier" after "owner" wherever it appears.

Clause 13

That clause 13 be amended, in the heading, by deleting "**of appeal against failure to revoke**" and substituting "**to apply to District Court for revocation of**".

That clause 13(1) be amended, by adding "or occupier" after "owner" wherever it twice appears.

That clause 13(3) be amended, by adding "的規定" after "安全令".

Clause 14

That clause 14(1) be amended, by adding "on authorized officers" after "conferred or imposed".

Clause 15

That clause 15(1)(a) be amended, by deleting "being used for a prescribed commercial activity" and substituting "or may be prescribed commercial premises".

That clause 15(2) be amended, by adding "made in respect of the premises" after "compliance order".

Clause 16

That clause 16 be amended, in the heading, by adding "**or occupation**" after "**ownership**".

That clause 16(1) be amended, by adding "or occupier" after "owner".

Clause 21

That clause 21(1) be amended —

- (a) by adding "or imposed on the person" after "function conferred".
- (b) by adding "and to imprisonment for 6 months" after "level 5".

Clause 22

That clause 22 be amended —

- (a) in the heading, by deleting "**notices**" and substituting "**documents**".
- (b) by deleting "notice to be given under this Ordinance may be given" and substituting "document to be given or served under this Ordinance may be given or served".

Clause 24

That clause 24 be amended —

- (a) by renumbering it as clause 24(1).
- (b) by adding -

"(2) In determining whether or not a commercial activity should be added to Schedule 1, the Secretary for Security must have regard to the fire risks that could arise in carrying on the activity on premises and the consequences that could result should a fire occur on premises while the activity is being carried on there."

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 5 to 8, 10 to 16, 21, 22 and 24, as amended, put and agreed to.

New clause 25 Effect of substituted or amended
 codes of practice

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

SECRETARY FOR SECURITY: Mr Chairman, I move that new clause 25 as set out in the paper circularized to Members be read the Second time. The amendment has already been referred to in the Second Reading debate.

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR SECURITY (in Cantonese): Mr Chairman, I move that the new clause 25 be added to the Bill.

Proposed addition

New clause 25

That the Bill be amended, by adding —

"25. Effect of substituted or amended codes of practice

(1) If a code of practice specified in a Schedule to this Ordinance is substituted or amended, the substituted code or the code as amended applies for the purposes of this Ordinance only when -

- (a) the Legislative Council has passed a resolution declaring that the substituted code or the code as amended is to apply for those purposes; and
- (b) the reference to the code in the Schedule is amended in accordance with subsection (2); and
- (c) that amendment has taken effect.

(2) If the Legislative Council has passed a resolution declaring that a substituted or amended code of practice is to apply for the purposes of this Ordinance, the Secretary for Security may, by order published in the Gazette, amend the relevant Schedule by substituting the reference to the substituted or amended code for the reference to the code then specified in that Schedule.

(3) Such an amendment takes effect on the date on which the order is published in the Gazette or on such later date as may be specified in the order."

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

Schedules 1 and 2

SECRETARY FOR SECURITY: Mr Chairman, I move that Schedules 1 and 2 be amended as set out in the paper circularized to Members. The amendments have already been referred to in the Second Reading debate.

Mr Chairman, I beg to move.

Proposed amendments

Schedule 1

That Schedule 1, section 1(c) be amended, by adding "on premises that have a security area" after "business".

That Schedule 1, section 2 be amended, by adding —

""security area" (保安區), in relation to premises used for conducting a jewelry or goldsmith's business, means a part of the premises that is segregated by a security partition, such as a bullet-proof glass panel, from the part of the premises to which members of the public normally have access.".

Schedule 2

That Schedule 2 be amended, by deleting the Schedule and substituting —

"SCHEDULE 2

[ss. 5(1) & 25]

**FIRE SAFETY MEASURES TO BE
COMPLIED WITH BY OWNERS**

**1. Provision of fire safety installations
and equipment**

In relation to the provision of fire safety installations and equipment, requirements with which an owner of prescribed commercial premises can be directed to comply under section 5(1) of this Ordinance are the following -

- (a) a requirement to install an automatic sprinkler system on the premises;
- (b) a requirement to install an automatic cut-off device for a mechanical ventilating system installed on the premises, but only if the system -
 - (i) forms an integral part of the building where the premises are located; and
 - (ii) also serves other premises located within that building;
- (c) in the case of prescribed commercial premises that are a shopping arcade - a requirement to install emergency lighting within the common areas of the arcade so as to facilitate the evacuation of the premises if the supply of electricity to the premises should fail;
- (d) a requirement to install on the premises one or more manual fire alarms so as to alert occupants, visitors and others in the event of a fire;
- (e) the requirements specified in the Code of Practice for Minimum Fire Service Installations and Equipment 1994, as published by the Director of Fire Services and printed by the Government Printer.

2. Construction requirements for prescribed commercial premises

(1) In relation to the matters specified in subsection (2), requirements with which an owner of prescribed commercial premises can be directed to comply under section 5(1) of this Ordinance are those specified in the following codes of practice published by the Director of Buildings and printed by the Government Printer -

- (a) the Code of Practice for the Provision of Means of Escape in Case of Fire 1996;
- (b) the Code of Practice for Fire Resisting Construction

1996;

- (c) the Code of Practice for Means of Access for Firefighting and Rescue 1995.

(2) The matters referred to in subsection (1) are as follows -

- (a) provision of adequate means of escape from the premises in the event of fire;
- (b) provision of adequate means of access to the premises to facilitate access for fire fighting and rescue;
- (c) provision of measures to inhibit the spread of fire and to ensure the integrity of the structure of the building where the premises are located.

SCHEDULE 3

[ss. 5(1A) & 25]

FIRE SAFETY MEASURES TO BE COMPLIED WITH BY OCCUPIERS

1. Provision of fire safety installations and equipment

(1) In relation to the provision of fire safety installations and equipment, requirements with which an occupier of prescribed commercial premises can be directed to comply under section 5(1A) of this Ordinance are the following -

- (a) a requirement to install an automatic cut-off device for a mechanical ventilating system installed on the premises, but only if the system does not serve other premises within the building where the premises are located and the system -
 - (i) has a capacity to process air at a rate exceeding 1

cubic metre per second; or

- (ii) serves more than one fire compartment located within the premises;
- (b) in the case of premises comprising a shopping arcade - a requirement to install emergency lighting in each separately occupied area located within the arcade so as to facilitate the evacuation of the premises if the supply of electricity to the premises should fail;
- (c) in the case of prescribed commercial premises other than a shopping arcade - a requirement to install emergency lighting within the premises so as to facilitate the evacuation of the premises if the supply of electricity to the premises should fail;
- (d) a requirement to provide portable fire extinguishers, so that there is at least 1 fire extinguisher for each 100 square metres of floor area of the premises or part of that area.

(2) Subsection (1)(d) does not apply to premises that are equipped with a hose reel system.

2. Definition

In this Schedule -

"fire compartment" (防火間), in relation to a building, means a part of the building that is physically separated from adjoining parts by walls, and by a floor and ceiling, that meets the standard of fire resistance prescribed by the Code of Practice for Fire Resisting Construction 1996, as published by the Director of Buildings and printed by the Government Printer."

Question on the amendments put and agreed to.

Question on Schedules 1 and 2, as amended, put and agreed to.

**AUXILIARY FORCES PENSIONS (MISCELLANEOUS AMENDMENTS)
BILL 1997**

Clauses 1 to 25 were agreed to.

Schedule was agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

ENDURING POWERS OF ATTORNEY BILL

had passed through Committee with amendments and the

POWERS OF ATTORNEY (AMENDMENT) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

THE SECRETARY FOR SECURITY reported that the

FIRE SAFETY (COMMERCIAL PREMISES) BILL

had passed through Committee with amendments and the

AUXILIARY FORCES PENSIONS (MISCELLANEOUS AMENDMENTS)

BILL 1997

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Two motions that are not legally binding. I have accepted the recommendations of the House Committee as to the time limits on the speeches for the motion debates and Members were informed by circular on 3 March. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, if any. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

DR JOHN TSE *to move the following motion:*

"That this Council urges the Chinese Government to enter into the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as a signatory as soon as possible, to fulfil its obligations under the Covenants to ensure that the residents in mainland China and Hong Kong can enjoy the basic rights which are recognized internationally, and to continue to report to the United Nations on the human rights situation in Hong Kong after 1 July 1997."

DR JOHN TSE (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Human rights are inborn rights of individuals, deriving from the inherent

dignity of human beings. Entitlement to such rights is irrespective of national boundaries, territory, race and sex. In the 20th Century, the United Nations adopted the Universal Declaration of Human Rights and the ideas of liberty and equality set forth therein have since then become central to the theories of human rights. Evolving from the concepts of liberty and equality are a series of basic human rights including the right to life, the right of men and women to equal opportunities, and the rights of freedoms of thought, religion and speech.

The Democratic Party firmly believes that these rights are recognized by the people of Hong Kong deep in their hearts as basic human rights, which should be enjoyed by the people of Hong Kong, residents in mainland China and everyone in the world alike.

Mr President, the United Nations has subsumed these human rights provisions under a number of international covenants and conventions. Many of its member states have become signatories to these covenants and conventions as an indication of their willingness to co-operate in a bid to achieve the ideal of world peace and respect for human beings. States Parties of these covenants and conventions are duty-bound to fulfil their obligations thereunder and undertake to ensure that all individuals within their territories and under their jurisdiction can enjoy the rights enshrined therein.

As Hong Kong is a colony of the United Kingdom, some of the international covenants and conventions ratified by the United Kingdom are extended and hence applicable to Hong Kong. The major ones include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

With the transfer of its sovereignty on 1 July 1997, Hong Kong will become part of China. However, China has yet to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which are two important international human rights covenants, as an indication of its willingness to uphold human rights and ensure all individuals within its territory can enjoy the human rights recognized in the covenants. These rights include the right to determine one's own political status, the right to life, the right to freedom of speech, the right of everyone to be equal before the courts, the right to form trade unions, the right to education and the right to social security.

Both the Joint Declaration and the Basic Law provide for the continued

application of the provisions of these two international human rights covenants in Hong Kong after the transfer of its sovereignty. However, as China is not a signatory to these two covenants, if it does not comply with or even violates the provisions of the covenants, will China be bound by these covenants, be subject to the supervision of the United Nations Commission on Human Rights and attend its public hearings? What arrangement should be made as to the mechanism of submitting reports on human rights situation in Hong Kong to the United Nations Commission on Human Rights under the covenants? Questions such as how the obligations under the covenants can be continued to be discharged after the change of sovereignty have remained unresolved.

Mr President, China has been founded for more than 50 years and has become a Member State of the United Nations for more than 20 years. It is the one and only permanent member of the United Nations that has yet to sign these two international human rights covenants. Despite repeated criticisms among the international community on the human rights situation in China, the Chinese Government has been dragging its feet in this respect, claiming that the concept of human rights in the context of China means the right to live and it is an internal affair which should not be interfered with by other countries. This by all means is "a narrow-minded understanding of the concept of human rights".

In light of the above, the people of Hong Kong are very concerned about whether the two international covenants can really remain in force in Hong Kong after 1997. In case the Chinese Government resorts to suppression and deprives the people of Hong Kong of human rights and policies safeguarding freedom in order to serve its political ends, will Hong Kong be protected under the international covenants?

Mr President, the people of Hong Kong and the Democratic Party have all the grounds for their worries. The cause for our worries are obvious if we take a look at the past and the present human rights records of China, our future sovereign state. Earlier on, the Chinese dissident WEI Jingsheng called for "democratic reform and the fifth modernization of the political system". As a result of his remarks, he was convicted, sent to prison and ended up spending over half of his life in jail. Shortly after his release, he was persecuted and put behind bars again. In a recent case, WANG Dan, a leader of the students' movement for democracy, was once again convicted as a result of his written works and received a heavy sentence, which has aroused public indignation.

With the transfer of sovereignty of Hong Kong approaching, China has decided, at the expense of the interests of the people of Hong Kong, to abolish with effect from 1 July 1997 the legislature which was elected by and

representative of the general public. Instead, it has appointed a legislature consisting of people who are willing to bow to the pressure from the Chinese Government. These people will serve as the hatchet men of the Chinese Government and join forces to make draconian laws that will lead to a retrogression of democracy.

Recently, the Standing Committee of the National People's Congress has declared that it has resolved to repeal in full or in part certain existing local laws which are proved to be effective in the protection of human rights. They include the Hong Kong Bill of Rights Ordinance, Personal Data (Privacy) Ordinance, Public Order Ordinance and Societies Ordinance. The Chinese Government's intention to tighten up and even curb the freedom of speech and the basic human rights as enjoyed by the people of Hong Kong is very obvious.

Mr President, recent reports have shown that the Chinese Government is considering entering into these two international human rights covenants as a signatory. The Democratic Party welcomes its intention and we hope that by doing so, China will bid farewell to the days of its narrow-minded concept of human rights.

Finally, as I pointed out in the beginning of my speech, everyone should enjoy basic human rights. The Chinese Government should sign the two international human rights covenants as soon as possible, discharge its international obligations and responsibilities of safeguarding human rights within its territory.

In this connection, the Democratic Party would like to move a motion to urge the Chinese Government to enter into the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as a signatory as soon as possible, and to ensure that the residents in mainland China and Hong Kong can enjoy basic rights and freedoms.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr MOK Ying-fan has given notice to move an amendment to this motion. Mr NGAN Kam-chuen has also given notice to move another amendment to Mr MOK Ying-fan's proposed amendment. Both amendments are set out on the Order Paper circularized to Members on 3 March.

I propose that the motion, the amendment, and the amendment to the amendment be debated together in a joint debate.

Council shall debate the motion, the amendment, and the amendment to the amendment together in a joint debate. I will first call upon Mr MOK Ying-fan to speak and to move his amendment to the motion, and will then call upon Mr NGAN Kam-chuen to speak and to move his amendment to Mr MOK Ying-fan's proposed amendment. After Members have debated the main motion as well as the amendments, we will first vote on Mr NGAN Kam-chuen's proposed amendment to Mr MOK Ying-fan's amendment to the motion. I now call upon Mr MOK Ying-fan to speak and to move his amendment.

MR MOK YING-FAN to move the following amendment to DR JOHN TSE's motion:

"To add "in order to implement Article 39 of the Basic Law" after "That,"; to delete "the Covenants" and substitute with "these two international covenants"; to delete "Mainland China and"; to insert "continue to" before "enjoy the basic rights"; to delete "which are recognized internationally" and substitute with "prescribed therein after China resumes the exercise of sovereignty over Hong Kong"."

MR MOK YING-FAN (in Cantonese): Mr President, I move that Dr the Honourable John TSE's motion be amended as set out under my name on the Order Paper.

Mr President, under Article XIII of Annex I to the Joint Declaration of the Chinese Government and the British Government, the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force after 1 July 1997; and Article 39 of the Basic Law also provides the legal basis for the continued application of the two covenants to the Hong Kong Special Administrative Region (SAR) in future.

In 1976, the British Government agreed to accede to the two international covenants and notified the United Nations that these covenants would apply to its dependent territories including Hong Kong. To fulfil its international obligations as a signatory to the covenant, since 1988, the British Government has submitted periodic reports to the United Nations Commission on Human

Rights (the Human Rights Commission) on the human rights situation in Hong Kong in accordance with Article 40 of the International Covenant on Civil and Political Rights. These reports set out the laws involved in, the administrative measures for and application details about the implementation of the covenants. In addition to submitting the reports, the British Government has to make oral or written replies to any queries raised by the Committee. This reflects that the two covenants as applied to Hong Kong provide for, *inter alia*, the obligation of the sovereign state to submit periodic reports to the Human Rights Commission on the human rights situation in Hong Kong.

In fact, when considering the reports submitted by the signatories, the Human Rights Commission, apart from playing the monitoring role, gives constructive advice on the difficulties which the signatories have encountered on the protection of human rights in a positive, encouraging and helpful manner.

Take Hong Kong as an example. Through the effort of the British Government to submit periodic reports to the Human Rights Commission on human rights situation in Hong Kong and attend relevant international conferences on behalf of Hong Kong to seek dialogues and exchange ideas on the issue of human rights in Hong Kong with the international community, Hong Kong has drawn on their precious experience in the protection of human rights. Taking into account its own development needs and overcoming its weakness by learning from others merits, Hong Kong has introduced legal reforms which have resulted in a great strides forward in its human rights development. Apart from the abolition of death penalty and removal of the restriction on publication of false news provided in the Public Order Ordinance, the most significant improvement was the enactment of the Hong Kong Bill of Rights Ordinance in 1992, which implemented the spirit as well as the principle of Article 39 of the Basic Law and provided a fundamental safeguard on human rights of the Hong Kong people. This is the landmark in the history of human rights development in Hong Kong.

Due to different political culture in mainland China and Hong Kong, it is not surprising that, when faced with the transfer of sovereignty, local people feel uncertain of the lifestyle they are going to live and the freedom they are going to enjoy after 1 July. For this reason, people generally wish that on the premise of "one country, two systems", all the safeguards for human rights in place before 1 July would continue to exist on 1 July and beyond. The mechanism under which the sovereign state submits periodic reports on the human rights situation in Hong Kong has been effective in promoting the human rights development in Hong Kong. It is the expectation of most Hong Kong people that this

mechanism will remain unchanged after 1 July 1997.

Furthermore, through the reports submitted by the British Government on the human rights situation in Hong Kong to the Human Rights Commission, the international community will have a better understanding of the human rights development in Hong Kong and avoid unnecessary misunderstanding. This helps build up the confidence of international investors in the political and social stability of Hong Kong. Hence it is of utmost importance that reports on the human rights situation in Hong Kong should be submitted to the Human Rights Commission to uphold the international image and reputation of Hong Kong.

With effect from 1 July 1997, China will resume its sovereignty over Hong Kong. To ensure that the civil rights enjoyed by Hong Kong people before 1 July 1997 will remain unchanged, to implement Article 39 of the Basic Law which provides for the continued application of the two covenants on human rights to Hong Kong, and to make the international community and investors understand that the Chinese Government is determined to ensure the prosperity and stability of Hong Kong for 50 years, the Hong Kong Association for Democracy and People's Livelihood (ADPL) is of the view that the Chinese Government, being the sovereign state of Hong Kong, is obliged to continue submitting reports to the Human Rights Commission on the human rights situation in Hong Kong after 1 July 1997. Since China is not a signatory to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and 1 July 1997 is just 200 days ahead, the ADPL would like to appeal to the Chinese Government to sign the two covenants as soon as possible in order to assume the obligations of a signatory to submit reports to the United Nations on the human rights situation of Hong Kong after 1 July 1997 as a means to ensure that after 1 July 1997, the people of Hong Kong will keep enjoying the rights provided under the two covenants.

On the point of urging the Chinese Government to enter into the covenants as a signatory as soon as possible to ensure that the people of Hong Kong would continue to enjoy the basic rights which are recognized internationally, I think the ADPL and Dr John TSE take the same position.

In fact, the ADPL all along believes that as part of the Chinese population,

Hong Kong people are under a responsibility to be concerned with state affairs. They also have the right to express views and give comments on internal affairs and institutional issues such as the human rights situation in the Mainland as an individual or a group in a peaceful and rational manner. However, as the Legislative Council is part of the government structure, when it criticizes the system of the Mainland, it will expect the Central Government to return its criticism on the Hong Kong Government about the local system. If the Central Government frequently criticizes the internal affairs of Hong Kong, this will certainly shake the people's confidence in the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong". As to the original motion of Dr John TSE, it is moved in the name of the Council calling for colleagues to urge the Chinese Government to introduce changes to the existing diplomatic and human rights situations in China. It is nothing but to gesticulate and criticize the Central Government's internal policy in the name of the Hong Kong Government. Hong Kong people would not like to see that the Central Government gesticulates and criticizes the internal affairs of the SAR Government for other reasons in return in future. For these reasons, I move to amend Dr John TSE's motion on behalf of the Hong Kong Association for Democracy and People's Livelihood.

Mr President, with these remarks, I move the amendment.

Question on the amendment proposed.

PRESIDENT (in Cantonese): I call upon Mr NGAN Kam-chuen to speak and to move his amendment to Mr MOK Ying-fan's amendment.

MR NGAN KAM-CHUEN to move the following amendment to MR MOK YING-FAN's amendment:

"To delete "in order to implement Article 39 of the Basic Law," after "that,"; to delete "urges" after "this Council" and substitute with "is pleased to learn that according to the spokesman of the Chinese Ministry of Foreign Affairs,"; to delete "to enter" after "the Chinese Government"

and substitute with "is actively considering entering"; to delete "as soon as possible, to fulfil its obligations under these two international covenants to ensure that the residents in Hong Kong can continue to enjoy the basic rights prescribed therein after China resumes the exercise of sovereignty over Hong Kong, and to continue to report to the United Nations on the human rights situation in Hong Kong after 1 July 1997" after "as a signatory".

MR NGAN KAM-CHUEN (in Cantonese): Mr President, I move that the Honourable MOK Ying-fan's amendment be amended as set out on the Order Paper.

If what I have heard is correct, Dr the Honourable John TSE said in his speech that China has been founded for more than 50 years but it has not yet signed the Covenant on Human Rights. However, as far as I know, the People's Republic of China was founded in 1949. Where comes the period of more than 50 years? As Dr TSE is confused even when such basic information is concerned, one cannot help having doubt about his knowledge of China, let alone his understanding of the human rights situation in China.

As early as 1993, the Democratic Alliance for the Betterment of Hong Kong (DAB) already emphasized in its platform that human rights must be firmly protected and laws passed by the Legislative Council should not contravene the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong. On the submission of the report on the human rights situation in Hong Kong after the establishment of the Hong Kong Special Administrative Region (SAR), the DAB has all along been active in striving for China to become a signatory to these two human rights covenants. If China becomes a signatory, it will be able to submit the report to the United Nations on behalf of Hong Kong. The above appeal was contained in the submission of the DAB to the Chinese Government in early 1994. Therefore, the DAB welcomes the remarks made earlier by Mr TANG Guoqiang, the Spokesman for the Foreign Ministry of China, that the Chinese Government is actively considering signing the two international covenants on human rights. The DAB hopes that the Chinese Government can turn this consideration into action as soon as possible.

The Sino-British Joint Declaration and the Basic Law have already

provided adequate protection for human rights and freedoms enjoyed by the people of Hong Kong. Article 39 of the Basic Law provides that "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region." No direct relationship exists between the rights enjoyed by the people of Hong Kong under the two international covenants and whether China becomes a signatory to these two international covenants on human rights. The protection of human rights enjoyed by the people of Hong Kong will not be affected in any case.

Some people have suggested that, if the Chinese Government does not submit the report on human rights on behalf of Hong Kong after the establishment of the SAR Government, the reports submitted by non-governmental organizations should be accepted and public hearings on Hong Kong should be held. However, under international covenants, the signatory shall be responsible for submitting the report on human rights and public hearings are channels for communication between commissions of the United Nations and signatories, and not a procedure for having dialogues with non-governmental organizations. These organizations can only play a supporting role by providing more information to commissions of the United Nations. The DAB is of the view that, under the Joint Declaration, China is not required to submit any report to the Commission on Human Rights of the United Nations. Meanwhile, we also support and encourage the Chinese Government's active consideration of signing these two international covenants on human rights. If China becomes a signatory to these international covenants, it will be of greater help to the improvement of its international image and the protection of human rights in Hong Kong.

Some Members urge the Chinese Government to do this and do that in the name of the Legislative Council, the legislature under the British colonial administration. The DAB is not in support of such an attitude. Moreover, Mr PATTEN, the Governor, wrote an article entitled "Farewell to My Hong Kong" in the latest edition of *Newsweek* published the day before yesterday, in which he said "..... China's decision to scrap Hong Kong's Bill of Rights and its Societies and Public Order Ordinances". Mr PATTEN thinks that "such a decision"

has aroused anxiety among the people of Hong Kong and those who do not know much about the situation. What is really surprising is that Mr PATTEN has misled the world in his capacity as the Governor of Hong Kong. The accusation by the Governor that China has made the decision to repeal the Bill of Rights Ordinance is not true at all. Nobody has ever made the decision to repeal the Bill of Rights Ordinance in Hong Kong. Neither the National People's Congress of China, nor the Hong Kong and Macau Affairs Office, nor the Preparatory Committee of the SAR, nor Mr TUNG Chee-hwa, the Chief Executive designate of the SAR, nor the Provisional Legislative Council has ever made that decision. The controversy over the Bill of Rights has always been confined to whether the Bill of Rights Ordinance should have overriding effect on all other laws. The final decision made at present is just to abolish the provisions concerning its overriding effect, instead of repealing it in its entirety. I hope that Mr PATTEN will no longer do anything to "bad-mouth" Hong Kong during the last few months of the British administration, in order not to affect the smooth transition of Hong Kong and the confidence of Hong Kong people.

The DAB has always held the view that the Sino-British Joint Declaration and the Basic Law have already provided adequate protection for human rights and freedoms enjoyed by the people of Hong Kong. If the Chinese Government becomes a signatory to the two international covenants on human rights, the people of Hong Kong will certainly support it. Therefore, the DAB hopes that the Chinese Government will sign these two covenants on human rights and the DAB will continue to make representations to the Chinese Government in this respect.

Mr President, I so submit in opposition to the Honourable John TSE's original motion and Mr MOK Ying-fan's amendment. Thank you.

Question on Mr NGAN Kam-chuen's amendment to Mr MOK Ying-fan's amendment proposed.

MR LAU CHIN-SHEK (in Cantonese): Mr President, it has become a trend for members in the international community to sign international covenants on human rights and I cannot see any grounds for China to refuse to sign these two important international covenants on human rights.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were based on the Universal Declaration of Human Rights adopted by the General Assembly of

the United Nations in 1948. The Chinese Government has given high regard to this Declaration, praising it for "being the first international document on human rights and laying the foundation for the exercise of human rights on an International level". China has long insisted that provisions for its citizens' political, economic, social and cultural rights in its constitution conform with international standards on human rights. If this is the case, it should not be afraid of signing these covenants on human rights.

In the past, China used the argument that "the issue of human rights is an internal affair and foreign countries are not allowed to meddle in it" as a ground for resisting other countries' criticisms on its human rights record. The same ground was used for refusing repeatedly to sign these two covenants on human rights. However, the official Xinhua News Agency of China yesterday published an 11 000-word article under the name of "The United States human rights record", strongly criticizing various deficiencies in human rights protection in the United State. Even the official Chinese media are now openly criticizing the human rights record of the United State. One can say that China is "slapping its own face" in so doing. In my opinion, if its criticism has got any valid grounds, it should not use the excuse of "internal affairs" as a cover for its violation of human rights.

As a matter of fact, China has long subjected its human rights situation to international surveillance. It has also joined international organizations in monitoring other countries' human rights. In fact, China has become signatory to four of the six major covenants of human rights adopted by the United Nations. China signed the Convention on the Elimination of All Forms of Discrimination Against Women in 1980, the International Convention on the Elimination of All Forms of Racial Discrimination in 1981, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988 and the Convention on the Rights of the Child in 1990. On many occasions China submitted reports to the relevant committees of the United Nations in accordance with the provisions of the covenants and conventions. Last year, China submitted the report on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. During the hearings, China's prison system came under severe attacks from delegates of the committee and the Chinese Government was requested to provide supplementary information. In the end, China complied with the decision of the United Nations committee instead of using "internal affairs" as a ground for refusing to provide the information requested. Moreover, representatives of China have been sitting on the United Nations Commission on Human Rights since 1981 and

the duties of the committee are to monitor the human rights situation of member countries of the United Nations. Therefore, now that China has agreed to fulfil its obligations under the international covenants and participate in work concerning human rights on an international level, it does not have any grounds for refusing to sign the other two covenants.

I believe no one will dispute the rights to survival and development as emphasized by the Chinese Government. However, any country which uses various specious arguments to deprive its people of their political, economic, social and cultural rights should be rebuked by any other country, organization and individual. As the links in the international community are getting closer and the exchange of information is becoming more frequent, the argument that "the issue of human rights is the internal affairs of a country" is no longer a valid excuse for resisting the surveillance of the international community. The signing of international covenants on human rights is a concrete step towards positive participation in international affairs.

While I welcome the Chinese Government's continued criticism of the human rights record of the United States, I also request that it should not resist other people's criticism. On the other hand, it should set up a proper channel for dialogue with the international community by signing the international covenants on human rights.

Mr President, these are my remarks.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

MR ALBERT HO (in Cantonese): Mr Deputy, human rights do not only mean the rights to live and we do not only live for warmth and food. Human beings are not beasts which are only after warmth, food and reproduction. The Chinese are certainly very successful in terms of reproduction, perhaps far too successful. However, the hope that the people could have enough to eat and wear is not the sole aim of the founding of China. It is not enough for a person, either Chinese or otherwise, to be able to get enough to eat and wear and continue living. For a person to live in a dignified and meaningful way, he has to be allowed to think, enjoy freedom, and engage in activities, creation and development.

Therefore, in order that everyone can live in a dignified and meaningful manner, the United Nations has promulgated the Universal Declaration of Human Rights, and later formulated the International Convention on Civil and Political Rights as well as the International Convention on Economic, Social and Cultural Rights. More than 230 countries have signed these two conventions and become signatories so far, and these countries are voluntarily subject to the surveillance of the United Nations Commission on Human Rights.

Mr Deputy, it has been almost 50 years since the founding of the People's Republic of China. It became a member of the United Nations in 1972 and accepted the principles of the Universal Declaration of Human Rights. It has also signed five conventions one after another, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, as well as the now out-dated International Convention against the Apartheid Policy of South Africa. China has undoubtedly become a member of the international community and gradually affirmed that the safeguard of basic human right and freedom are the values jointly founded and recognized by the international community after the Second World War.

The Chinese Government has recently stated that it is considering signing two international human rights conventions, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights. Moreover, not long ago, China sent representatives to attend and sit in on the hearing of the Commission on Human Rights and showed concern over the hearing at which the relevant contracting parties submitted a report on human rights. The Democratic Party supports and welcomes the positive attitude of China and we urge the Chinese Government to accede to these two conventions and become their signatories as soon as possible.

In fact, Chinese people should not regard human rights as political tools by means of which the United Nations or any other country interferes with the internal affairs of other countries. It is a backward idea to think like that and it goes against the paramount trend of the development of world history and the common values of the civilized countries in the world.

Mr Deputy, Mr TUNG Chee-hwa often says, "If Hong Kong is good, China will be good; and if China is good, Hong Kong will be even better." I wholeheartedly agree to this saying, and on this basis, the Democratic Party again

invites Mr TUNG to join us in urging the Chinese Government to accede to these two conventions as soon as possible.

I must mention once again that Mr Francisco AGUILAR-URBINA, Chairman of the United Nations Commission on Human Rights, reaffirmed when he met the members of the Legislative Council Panel on Home Affairs on 1 October last year that, when its sovereignty is handed over to China, Hong Kong should continue to enjoy the protection under the international human rights conventions currently applicable to Hong Kong. He said, "the Commission on Human Rights is of the view that, the International Convention on Civil and Political Rights as well as other human rights conventions must be inherited together with the territory. If the country which previously governs the territory has acceded to the said conventions, the country which is going to take over the governance of the territory should continue to perform the duties provided for in the conventions. Once the local people are protected by the conventions, the various rights they enjoy cannot be stripped merely as a result of the carving up of the territory or the transfer of the rights of governance to another country."

Even if China still does not accede to the two international conventions after 1 July 1997, the Chinese Government should still ensure that Hong Kong people can continue to enjoy the protection under the two conventions and make appropriate arrangements to enable the report on human rights of the Hong Kong Special Administrative Region (SAR) can still be submitted to the Commission on Human Rights for scrutiny. By that time, the Chinese Central Government and the SAR Government should send personnel to attend the hearings of and answer questions asked at the Commission on Human Rights meetings.

Mr Deputy, under the policy of "one country, two systems", although Mainland China and the SAR implement different systems, there should not be any regional or territorial difference in respect of basic human rights. How can we say that only Hong Kong people are entitled to the protection under these two international conventions while the people in the Mainland should not or are not entitled to such protection or that they do not meet the relevant requirements?

Upon the unification after 1997, Hong Kong people certainly have to be concerned about the state and take part in the affairs of the state, put forward proposals to the Central Government, give impetus to the progress of the state and improve the people's livelihood, and these are our responsibilities as nationals. Similarly, before 1997, we should also regard ourselves as Chinese people who have the same responsibilities. Why are there so many people, including Members of this Council, advocating self-censorship while being

reluctant to put forward reasonable and appropriate proposals?

Should the Honourable MOK Ying-fan's amendment be approved, we are worried that it would give a message that we are discriminating against our compatriots in the Mainland and regarding them as second class Chinese. Have we been fair to them?

On this basis, we strongly oppose the amendment moved by Mr MOK Ying-fan today.

With these remarks, I ask Members to support Dr the Honourable John TSE's motion.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, the Section on "the Fundamental Rights and Duties of Citizens" in Chapter 2 of the Constitution of the People's Republic of China has guaranteed comprehensive rights for all Chinese citizens, including: "all citizens are equal before the law"; "all citizens who have reached the age of 18 have the right to vote and stand for election"; "citizens enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration"; "citizens enjoy freedom of religious belief"; "the freedom of person of citizens is inviolable"; "the freedom and privacy of correspondence of citizens are protected by law"; "citizens have the right to criticize and make suggestions to any state organ or functionary"; "citizens have the right as well as the duty to work"; "all citizens have the right to rest"; "the livelihood of retired personnel is ensured by the state and society"; "citizens have the duty as well as the right to receive education"; "citizens have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits"; and so on. In terms of the language of the constitution wording, the provisions about social and cultural rights for citizens are broadly in line with those found in the United Nations' International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. If the Chinese Government has always fully respected various rights and freedoms enjoyed by the people as provided in the Constitution, it should sign these two international covenants on human rights without any hesitation.

Of course, the fact as we know is that the freedoms and rights as prescribed in the Chinese Constitution are just "empty talks" in reality. The freedoms and rights enjoyed by the people are not protected in any way. The Constitution is but something in words only.

By the same token, Chapter III of the Basic Law also contains various provisions for the protection of human rights. If any of my colleagues present thinks that the Basic Law has fully safeguarded human rights for the people of Hong Kong, I will challenge him to explain whether the current human rights situation in China is already very satisfactory.

All people are born with these inalienable basic human rights. I do not think one should use the excuse of giving prior consideration to people's rights to survive and to be provided with adequate food and clothes over their other rights, and deprive them of their rights. In 1948, the United Nations unanimously passed the Universal Declaration of Human Rights, pointing to a universal consensus reached after the painful experience brought about by the Second World War that the respect for human rights is the important basis for achieving world peace. The United Nations subsequently promulgated the two international covenants in accordance with the Universal Declaration of Human Rights, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which reflect the international consensus on the respect for human rights more clearly. Therefore, the signing and implementation of the two international covenants on human rights are a fundamental international obligation. It also shows a government's commitment to its people.

The two international covenants as applied to Hong Kong were signed by Britain. The best way to ensure the continued application of their provisions for the protection of human rights is, of course, for China to become a signatory to these two international covenants and continue to submit reports on the human rights situation in Hong Kong to the United Nations after 1997. But whether this will be realized remains unknown until now. However, in my opinion, the silence on the human rights situation in China in the amendment is a distortion of the international concept of "human rights" as well as a reflection of the incorrect thinking of the so-called "well water should not interfere with river water", that is, each one minding his own business.

Various mechanisms for the protection of international human rights, including the mechanism for the submission of human rights reports as well as that for the adoption of resolution in the Commission on Human Rights, have steadily been strengthened after the Universal Declaration of Human Rights was passed by the United Nations 50 years ago. The aim is to promote the

protection of human rights in the world through open discussions and exchange of ideas among different countries on the question of human rights.

The principle behind the covenants on human rights is that human rights is a universal concern instead of the internal affairs of an individual country. To put it simply, each signatory to these two international covenants is entitled to being represented in the ad hoc committee specially formed under the covenants and to regularly study reports submitted by other signatories and to take part in open hearings. Therefore, the mechanism for the submission of reports under the covenants on human rights aims at making the issue of human rights a universal concern and to prevent any country from using "internal affairs" as an excuse to trample on the human rights of its own people.

In fact, even if China is not a signatory to these two international covenants on human rights, it does not mean that its human rights situation will not be challenged on the international stage. In the past few years, a number of countries have sponsored resolutions in the annual conference of the Commission on Human Rights of the United Nations to denounce China's human rights record. This clearly demonstrates the United Nations' understanding that the human rights situation in any country is not just a matter of its own internal affairs but a common concern for the international community.

If, on the one hand we hope that the United Nations will continue to show its concern about the human rights situation in Hong Kong, while, on the other hand, we dare not express our concern about the human rights situation in China, that will be a serious distortion of the international understanding of human rights.

The thinking of "well water should not interfere with river water", which reflects the complacent mentality among the people of Hong Kong, is a typical self-deception. I would like to point out unequivocally that democracy, human rights and freedom in Hong Kong are inseparable from those in China and they should not be separated. In fact, this Council has recently passed a motion calling on the Chinese Government to release WANG Dan. A motion calling for the release of WEI Jingsheng was also passed by this Council early last year. I really do not understand why Members from the Association for Democracy and People's Livelihood has proposed amendment to today's original motion and why they dare not raise the issue of the protection of human rights on behalf of the Chinese people at the same time.

Mr Deputy, I so submit and reiterate my demand that the Chinese Government should become a signatory to the two international covenants on human rights as soon as possible.

Thank you, Mr Deputy.

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy, in his speech just now, Dr the Honourable John TSE mentioned that the People's Republic of China had been founded for more than 50 years. Well, it should be 47 years to be exact. As Dr TSE is so ignorant about China, how can he comment on Chinese affairs?

The successful implementation of "one country, two systems" hinges not only on the presence of a sound regulatory framework in the legal system, but also on the mutual respect which China and Hong Kong have for each other's social system. Article 39 of the Basic Law serves to realize the commitment made by the Chinese Government to ensure that the rights and freedoms enjoyed by Hong Kong residents shall remain unchanged. It also provides that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied shall remain in force in the future Hong Kong Special Administrative Region (SAR). It is widely known that the Basic Law is a mini-constitution derived from the Constitution of the People's Republic of China. Not only does it reflect China's determination to put into practice the concept of "one country, two systems", but also serves to confirm that the specific provisions therein can only be put into force in the SAR.

Judging from this, I wonder if Dr TSE intentionally or unintentionally left out Article 39 of the Basic Law in moving his motion by which the Chinese Government is urged to enter into the two international covenants as a signatory as soon as possible in order to ensure that residents in mainland China can enjoy basic rights. Such a call is devoid of any legal support and is only meddling in others' affairs. It seems that he has forgotten the fact that the People's Republic of China is a sovereign state and that what China practises is socialism. The basic rights enjoyed by residents in mainland China are provided by its Constitution and any changes to such basic rights have to be effected by way of legislative procedures in its legislature. Therefore, Dr TSE has in fact picked the wrong place to move his motion. Earlier, Mr TANG Kuoqiang, spokesman of the Chinese Ministry of Foreign Affairs indicated that the Chinese Government was actively considering entering into the two international covenants. As such, there is in fact no need for Dr TSE Wing-ling to be so anxious for residents of mainland China and to move a motion in this Council

urging the protection of their basic rights. The Chinese Government has its own idea on this matter and there is no need for others to tell it what it should do.

Mr Deputy, in extending international covenants to its own territory, not every sovereign state always takes them as they are. When the British Government, as the sovereign state of Hong Kong, ratified the two international covenants on behalf of Hong Kong, it also had reservations about certain provisions and hence excluded their application, having regard to its stance and whether those provisions could be applied in the context of Hong Kong. Article 39 of the Basic Law stipulates, "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR". This Article not only provides for what is to be applied, but also stipulates that the contents of the two international covenants as applied should be implemented through the laws of the SAR. Similarly, before deciding whether to ratify the two international covenants on human rights or not, the Chinese Government naturally has to take into consideration various factors such as the compatibility of Chinese laws and international covenants under two different social systems, and how to make legislation to implement the provisions of the international covenants. In this regard, as the Chinese Government has indicated that it is actively considering the matter, it naturally has its own ideas and thinking and has its own decisions.

Mr Deputy, I so submit in opposition to the original motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy, I would like to respond to several points.

First, I would like to respond to the comments of the Honourable NGAN Kam-chuen of the Democratic Alliance for the Betterment of Hong Kong (DAB) because I think his comments contradict the way he is going to vote. Mr NGAN said in his speech that the DAB has always taken on an active approach in pushing for China to become a signatory to the two International Covenants, hoping that afterwards, China would submit reports to the United Nations as a signatory on behalf of Hong Kong. If China becomes a signatory to the International Covenants, it certainly has to submit reports and such reports should of course include reports on Hong Kong. If this is the case, why then is he against the amendment proposed by the Hong Kong Association for

Democracy and People's Livelihood (ADPL)? The ADPL's amendment is in fact very simple: they are asking for China to become a signatory and to submit reports on the situation of Hong Kong. I think the DAB should explain why it is in support of the stance of the ADPL but against its amendment.

This however is not the crux of the matter. The crux of the matter is that there is one thing common to the comments of the ADPL and the DAB: they will not allow others to be concerned about China affairs, not even in their capacity as Chinese. Mr NGAN Kam-chuen said we cannot, on the pretext of being the legislature under the British colonial government, urge the Chinese Government to do this and that. Mr Deputy, if we are so sorry for this Legislative Council which is under British colonial rule and hate it so much that there can be no discussion in this legislature on China affairs, we are in fact giving up our identities as Chinese and our capacity as Chinese elected Members. Our capacity as elected Members are of course realized in the legislature of Hong Kong.

I think it is natural and normal for each Chinese to be concerned about human rights in his country and to be concerned about the progress of human rights in his country. Why then can we not be concerned about China affairs in the Legislative Council? Why should membership of this colonial legislature of Hong Kong corresponds to an automatic void of our identity as Chinese? Does it mean that after we have become Members, we resign ourselves to being subjects of a colony and we cannot discuss our country affairs or human rights of China here in this Council? I do not think that there should be such a restriction.

Members and friends of the DAB have always been advocating the idea of "love China, love Hong Kong". I have no doubt about that. If you really "love China, love Hong Kong", irrespective of where you are, in the Legislative Council as well, you should manifest the tradition of "love China, love Hong Kong". No matter what you feel about human rights in China, so long as you think that it should be a topic of concern for the Chinese, the conclusion that "nothing concerning human rights in China can be discussed" or "so long as it remains the legislature of the British colony, there can be no discussion on human rights of China" should under no circumstances be arrived at in this Council. Otherwise, you will be reducing yourselves to colonial subjects willingly.

Second, the ADPL holds the same argument. They said that the

Legislative Council is a part of the Hong Kong Government. Hence, if we criticize human rights in China, it is equivalent to interfering with China's policy in the name of the Legislative Council. One is saying that we cannot do this and that regarding human rights in China; the other is saying that we cannot interfere with human rights in China. Both are in fact relinquishing their identity as Chinese. Chinese should show concern towards Chinese affairs. We are not foreigners and therefore, it cannot be regarded as foreign intervention.

The Honourable NGAI Shiu-kit holds the same opinion. He said that it is not necessary to be over-concerned, nor should we poke our nose into other people's business. I just want to say that we are not being "over-concerned". As Chinese, we are "concerned with human rights in China". If we take a look at the situation of WANG Dan and WEI Jingsheng, I think it is justified for us to be concerned. No one should be made guilty because of his words; one's human rights should not be infringed upon in one's territory. This is but a fair comment, one that should be made by a Chinese. Moreover, we are not "other people". Why should comments made by the people of Hong Kong on China be regarded as poking into other people's business? I am not a Caucasian, nor am I a foreigner. I am a Member of Chinese descent. I therefore think that it is wrong to treat us as other people.

I hope that the two friends of the DAB and the ADPL and even Mr NGAI Shui-kit would think about this. This in fact is not an ill-intentioned motion. It is only saying that as a civilized and advanced nation, China should come into line with the other countries and be concerned about human rights. As Legislative Councillors of Hong Kong, we should join our fellowmen in China and be concerned about China affairs, including human rights. If we look at the motion in this way, we will not have to remove the part concerning China, the part which a Chinese can concern himself and participate. It is then possible for the purpose of this motion and the amendments to be achieved, that is, once China becomes a signatory to the International Covenants of the United Nation, it should be concerned about human rights in Hong Kong and in China, and submit reports to the United Nation.

Thank you, Mr Deputy.

MR MARTIN LEE (in Cantonese): Mr Deputy, Dr the Honourable John TSE is wrong. The People's Republic of China does not have such a long history of 50-odd years. However, Dr TSE was not yet born in 1949, and as a Chinese, it

is not such a big deal to add a few more years to the history of his motherland.

Mr Deputy, the Chinese leaders have mentioned several times to foreign leaders that the most important question of China's human rights situation is the right of living, and whether the Chinese people are well-fed and well-clad. Is this saying an insult to the Chinese people? Are all these human rights? If we are talking about proper-feeding, even dogs, cats and tropical fish have to be fed properly; and if we are talking about well-cladding, even those who raise tropical fish understand that they have to keep their fish warm. If all these are so-called human rights, it is better to say that they are "animal rights". If we say that human rights in China are equal to "animal rights", I really think this is somewhat inappropriate.

Mr Deputy, also, very often when the Asian leaders mention human rights, they will put forward the values of the Asian people to indicate that the values of Asians are different from those of the Americans and Europeans. In fact, is this an insult to Asians? If we put a European, an American, an African and an Asian into prison, all of them will hope that they can resume freedom. If we break these four persons' arms, they will all feel painful. If we shoot a bullet through these four people's heads, they will die. What is the difference of the values of Asians in terms of human rights?

Mr Deputy, today, I read a report of more than 11 000 words from the New China News Agency (NCNA) titled "Please look at the human rights record of the Americans" and I am very pleased with it. The report condemns the malpractice of the American Government in these 200-odd years, with which I totally agree. It is said that the Americans' politics is only a game for the rich, a parliament for the rich, a ruling under the rich and it only cares for the welfare of the rich. I am very pleased that an official report published by the Chinese Government can criticize America to such an extent, condemning her lack of democracy and human rights. I hope the Chinese leaders can learn this passage by heart, then organize a game that can involve all the Chinese people, establish a parliament with the participation of every Chinese and China can be ruled by her people, and the Chinese leaders will also fight for the interests of every Chinese. I believe every Chinese will be pleased about this.

Mr Deputy, I have a hope, hoping that our strong motherland can become a real great nation in the near future, in which every citizen will have his human rights being respected and protected by the law.

These are my remarks.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy, first of all, we have to acknowledge that human rights are certainly something good. They allow people in the world to know where they stand. However, we also have to remember that human rights should not be utilized by some countries as weapons to criticize or override other countries or regions.

Just now the Honourable Martin LEE said that there is, in theory, no difference between Western countries and Asian countries as every person is a human being. But in reality is it really so fair, objective and of the same value? I believe that we all know the fact. There are 1.3 billion people in China, among which 85% are peasants. If you have had the chance to visit different places in China, such as the remote North-west or Tibet, and have asked the peasants what they need, you may have the correct or constructive comments and conclusions. Otherwise, how can you force your conclusions upon the peasants without asking them? Therefore, although human rights are good, the objective factors and situations of China have to be observed before making proposals. We should not emphasize the importance of a certain thing without doing a comprehensive research on it.

China needs to join international organizations such as those concerning tariff. However, other countries, such as the United States, think that they should assess China with their own standards as developed countries. Is it fair? Why do we not, as Legislative Councillors, demand that the United States lift its embargo on China and let it join the organizations? Have you ever thought of doing so? This is the constructive way of doing things. We should first assess the actual situation and then put forward constructive views. This is what Legislative Councillors should do, but have you done so? You have not only failed to do so, but you always, in theory, direct your attacks against the errors of the Chinese Government or against the things it has not done due to objective factors. What is your actual purpose? The Members from the Democratic Party are supported by the majority of Hong Kong people because they are willing to speak up. But if their views are deviated, I, as one of their colleagues in the Council, would feel sceptical and sorry about their performance. For example, moving challenging motions which attack China about things it is unable to achieve at the moment will only instigate the hatred and hostility of Hong Kong people against their own country, and will indirectly invite the

British Government to sit and snigger on one side. What do you get from this? Can you have a dialogue with China in this way? How can they have the confidence that you can run Hong Kong properly in future?

We have to know that Hong Kong has really been developing incessantly in the past 10 to 20 years, and with a pace so fast that other countries in the world find it unbelievable that Chinese can be so developed. This disbelief even gives rise to a deviated incorrect assessment. China should learn a lesson from this experience. However, our proposals have to be constructive instead of abusive, and we should not push all the responsibilities onto the Chinese Government. I personally think that the ideology of the Democratic Party and the democrats of participating in Hong Kong politics and of leading Hong Kong people in the future has to be changed.

At present Hong Kong does enforce the two international covenants of human rights. We should try to find out ways through which we can make the Chinese Government agree that, under the circumstances of "one country, two systems", Hong Kong keeps on adhering to the covenants. The Chinese Government is now studying the possibility of signing these two covenants. If this is done, Hong Kong will naturally be able to enforce them. What should we do in the meantime before the Chinese Government signs them? Some people suggest that non-governmental organizations or the future Provisional Legislative Council should put forth proposals or submit reports to the United Nations. I have to stress that the submission of reports does not mean that we are inviting other people to intervene in our policies. If there are things that we have not done adequately, we should try to deal with them better. This is a constructive way.

If the motion proposed by the Legislative Council uses words such as "request", I am sure the Chinese leaders would accept it objectively and would hear the voice of Hong Kong people. If, however, we deal with such requests with an "equal footing" mentality, I think it will never bring any advantage to Hong Kong people. Mr Deputy, nowadays a lot of people, especially the concerned ones in China, criticize that Hong Kong people are too self-important and arrogant. It is true that Hong Kong has a certain degree of achievement, but I must emphasize that there is a very important factor backing up Hong Kong's four great achievements, and that is the huge rear support provided by China. We ought to remember the benefits of China to Hong Kong when we are

enjoying our achievements and so we should not write off our feeling towards the Chinese people. We can offer constructive proposals to let them understand the world situation and know that the giant wheel of time is rolling forward. We should face the world together instead of picking on the ruling attitude of the Chinese Government. The next motion debate will be on the activities of the Communist Party and it is in fact of the same attitude as this motion. Although some Honourable colleagues have to "get off the train" on 30 June, they can stage a comeback on 1 July 1998 if they are capable. To this end, moving a constructive motion is always better than advancing a non-constructive theory.

Mr Deputy, these are my remarks.

MR AMBROSE LAU (in Cantonese): Mr Deputy, as for the issue of China entering the two international human rights covenants, the Chinese Vice-Premier and Foreign Minister QIAN Qichen has made it clear that China is willing to consider allowing the Hong Kong Special Administrative Region (SAR) Government to report directly to the United Nations on human rights in the territory after 1 July. This is acceptable to the United Nations, and it should also be welcomed by the people of Hong Kong.

Furthermore, GUO Chongli, spokesman for the Chinese Foreign Ministry, said on 15 February in Singapore that the Sino-British Joint Liaison Group was discussing whether China would submit the Hong Kong human rights report to the United Nations Commission on Human Rights. As to when China would enter the human rights covenants, he said that if China wanted to adopt and sign the international laws, they had to be in line with China's domestic laws, and the issue was being studied by Chinese legal experts.

It is then obviously out of step for this Council to endorse the motion of calling for China to sign the human rights covenants as soon as possible, and to report the situation of human rights in Hong Kong to the United Nations after 1 July. Firstly, as the issue is now under active consideration by the Chinese Government, any pressure from this Council would politicize the issue and bring forth just the opposite effect. Secondly, it is a matter of diplomatic consideration for a sovereign country. Any intervention from this Council is an infringement on the sovereignty of China. Thirdly, whether the China's domestic laws are in line and compatible with the international laws is a complicated legal issue which needs in-depth studies by legal experts before a conclusion can be reached. It is then not a down to earth and serious attitude of

this Council, prior to any in-depth studies, to urge the Chinese Government to sign the human rights covenants as soon as possible.

Mr Deputy, I am in agreement with the Chief Executive (Designate), Mr TUNG Chee-hwa, that the immediate issues of this territory are economic development and improvement in people's livelihood, and not the empty talks on human rights, democracy or freedom. The human rights, democracy and freedom in Hong Kong after 1 July are fully safeguarded in the Basic Law. It can be seen by any unbiased eye that the human rights, democracy and freedom of Hong Kong people as guaranteed in the Basic Law are more than those they have enjoyed under the hundred years of British rule. Furthermore, Article 39 of the Basic Law promises the continuing implementation of the provisions of the two human rights covenants, as stated in the Joint Declaration, as well as the provisions of the international labour conventions that are applicable to Hong Kong. Hence, human rights in the SAR are fully safeguarded. Moreover, Chinese officials have clearly stated China's willingness to consider allowing the SAR Government to directly report the human rights situation in Hong Kong to the United Nations after 1 July. Hence, it is unnecessary for this Council to intervene in something which is progressing well, and tainting something which is developing well with infringement on the sovereignty of China.

Mr Deputy, I so submit.

MR ANDREW CHENG (in Cantonese): Mr Deputy, since Hong Kong is a British colony, when the United Kingdom became a signatory to the two International Covenants, they were extended to Hong Kong. Under Article 40 of the International Covenant on Civil and Political Rights, all signatories are required to submit human rights reports on the measures they have taken to implement the rights recognized by the Covenant and the extent to which the people are able to enjoy those rights. Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights also provide for the obligation to submit periodic reports. Therefore, the United Kingdom has all along submitted periodic reports to the United Nations Commission on Human Rights on the measures taken to implement the Covenants in Hong Kong and how far Hong Kong people are able to enjoy those rights.

However, with the transfer of sovereignty in 1997, Britain will pull out from Hong Kong, while China will resume the exercise of its sovereignty over Hong Kong. Thereafter, the obligation of submitting reports to the United

Nations Commission on Human Rights should fall on the Chinese Government.

Section 11 of Annex 1 to the Sino-British Joint Declaration provides expressly that "International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements."

Article 39 of the Basic Law also provides that "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force".

As China has signed the Joint Declaration, the Chinese Government has the responsibility and obligation to implement the relevant International Covenants after 1 July, 1997 and submit reports to the United Nations in respect of the human rights situation in Hong Kong.

Mr Deputy, after considering the human rights report on Hong Kong submitted under the International Covenant on Civil and Political Rights on 19 and 20 October 1995, the United Nations Commission on Human Rights issued the following conclusion on the implementation of the Covenant after the transfer of sovereignty:

"The Commission on Human Rights — dealing with of dismemberment of States parties to the International Covenant on Civil and Political Rights — has taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State."

Mr Deputy, this conclusion tells us that China cannot escape from its international obligation to submit reports to the United Nations on the human

rights situation in Hong Kong. With regard to the specific arrangements, the Central Government should authorize the Hong Kong Special Administrative Region (SAR) Government to submit the reports and attend the hearings. This would be in the best interest of Hong Kong people.

Mr Deputy, the Democratic Party urges the Chinese Government to sign the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the hope that when China becomes a signatory to these two International Covenants, it will recognize the rights enshrined in the Covenants and make efforts to promote and implement the rights recognized by the Covenants, thereby protecting the civil and political rights of the people in Mainland China and Hong Kong. These rights include the freedom of speech, freedom of press, freedom of association and the freedom to develop economically, socially and culturally, such as equal opportunities in employment, education and cultural activities. Besides, it has the obligation of submitting relevant reports under the Covenants.

Mr Deputy, under the present mechanism of the Covenants of the United Nations, a signatory can enter certain savings to reserve the right not to implement individual articles, while recognizing that the basic rights recognized by the covenants and the reporting requirement must be implemented and complied with. We do not see how the Chinese Government can sign the Covenants merely for the sake of Hong Kong and put all articles of the Covenants under the savings so that they apply only to Hong Kong and not to mainland China.

Mr Deputy, the signing of these two Covenants entails a commitment applicable to the whole nation, without distinction of race, colour, sex, language, religion, politics, national or social origin. It is an international obligation and not an arrangement specially made for Hong Kong or the provisions of the Basic Law. However, there is no doubt that the signing of these two international human rights covenants will help China to honour its commitment under the Sino-British Joint Declaration and the Basic Law.

Is it right that the basic rights of the individual affirmed by the Covenants should only be applicable to Hong Kong and not to mainland China? The Honourable CHIM Pui-chung said just now we had not asked the opinion of the over one billion Chinese people. Can we not ask China to sign, as an international obligation, these two International Covenants which apply with no

distinction of race, colour and sex? If Hong Kong people enjoy the right to life, civil and political rights and the rights to develop economically, socially and culturally, why should our compatriots in Mainland China not enjoy these rights?

Therefore, the Democratic strongly demands that China sign these two International Covenants with applicability to the whole nation.

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

MR ALLEN LEE (In Cantonese): Mr Deputy, the provisions of these two international covenants have in fact been clearly laid down in the Basic Law and similar debates have also been held in this Council. Hong Kong people are naturally very concerned with human rights and all other kinds of freedom.

I think the crux of the problem lies in whether we have faith in the Basic Law. In fact, the freedom of the press, of association and all other forms of personal freedom as mentioned by some Members of this Council earlier on have been clearly stipulated in the Basic Law. If you do not believe in the Basic Law, whatever covenants signed by China is of no avail. As far as I know, every country will, in signing this kind of covenants, lay down saving provisions in the light of its own circumstances. Therefore, I think the crux of the issue is whether we believe that Hong Kong will enjoy human rights and all other kinds of freedom. All other sayings will be meaningless. We can only wait until 1997 to see how the situation will turn out in Hong Kong.

MISS EMILY LAU (in Cantonese): Mr Deputy, after listening to the Honourable Allen LEE's speech, I still do not know whether I should have confidence in the Basic Law. We certainly hope that the Basic Law will be implemented, and I also hope that the Sino-British Joint Declaration will be implemented. However, whether we have confidence in the Basic Law or not is meaningless. The Basic Law never mentions the setting up of a Provisional Legislative Council, but now there is a Provisional Legislative Council. Therefore, when what is stated in the Basic Law is being contravened, how can you say we should have confidence in the Basic Law? Dr the Honourable John TSE has now proposed such a motion, but Mr LEE said that the crux of the question is just whether you have confidence in the Basic Law or not. I think such attitude is a bit imprudent.

Mr Deputy, I am in support of Dr John TSE's motion, and I strongly hope that the Chinese Government will be sincere in considering the signing of the two international human rights covenants. I do hope that the Chinese Government will sign them. We all understand that many countries in the world have signed these two covenants, but their human rights records are still very poor. Therefore, the signing of the covenants is not a panacea. However, if China is not willing to enter into them, the situation will be even worse and people will have even less confidence. We hope that the Chinese Government will really take action this time, especially when Hong Kong people are now so worried about their human rights in future. Moreover, Mr TUNG Chee-hwa is very concerned about the international community. He always criticizes the Honourable Martin LEE "bad-mouthing" Hong Kong, but what the international community concerns is in fact human rights. Therefore, this is indeed a very important issue. In fact, Mr Allen LEE has made some good comments recently. He has asked Mr TUNG not to criticize Mr Martin LEE and let him continue to "bad-mouth" Hong Kong as he wishes. After all, it will not bring any harm to Hong Kong. If Mr TUNG Chee-hwa can behave in the same way as Mr Allen LEE, perhaps Hong Kong people will have less ill feelings towards him.

Mr Deputy, I hope the Chinese Government will enter into the two covenants as soon as possible, but it should not only enter into them but also implement them, and present reports to the United Nations. In fact, why are we so insistent that China should become a signatory to these covenants? Mr Deputy, I believe you are aware that the Department of State of the United States of America has recently published a series of reports on human rights, and yesterday China also published a report on the human rights situation of the United States of America. Both countries start to condemn each other, and a report from the United States has mentioned that China has no dissidents at present because all of them are either dead or imprisoned or exiled. We can see how horrible the human rights record is in China. I believe if China is willing to move a step forward to sign the covenants and do something in this regard, people will think that it has made some improvements and given them some hope. We will be under its rule a few months later. We are also very worried and hope that she can be a signatory to the covenants. At the same time, we urge the Chinese Government not to treat its people as tokens, releasing anyone they like at anytime. WANG Dan has been arrested, and then XI Yang is released but over 40 people that we do not know are imprisoned afterwards. The Chinese Government treats their people as tokens, and will release them one

by one whenever they intend to gain economic and commercial advantages. We also hope that the Chinese Government will no longer behave in this way.

To conclude, it is not merely a question of whether we should have confidence in the Basic Law. We think that China should really implement the international covenants and honour their obligations. Also, we are very much concerned whether we would be put under international supervision in future. I think what we aspire most is that the Chinese Government can allow the Hong Kong Special Administrative Region (SAR) Government to present its own reports, that is to accompany the Chinese delegation to those two commissions of the United Nations to present the record of Hong Kong. Regarding China, we do not have any intention to meddle into its internal politics, but since Hong Kong will become part of China in future, it is not at all inappropriate to bring out this matter for discussion. Besides, human rights transcends any boundary. I believe all the people in the world can speak out on this issue. Therefore, Mr Deputy, as a member of the international community, I think Hong Kong people absolutely have the obligations, rights and duties to discuss this question.

I fully support Dr John TSE's motion today, but I do not agree with the two amendments, especially the one proposed by the Honourable NGAN Kam-chuen. It really seems very ludicrous. He just simply says he is "pleased to learn" that, but he should at least urge the Chinese Government to do something after he "is pleased". China only declares it will "consider" this issue, and I believe the Democratic Alliance for the Betterment of Hong Kong (DAB) also wants China to sign the covenants. I have to apologize that I was not in the Chamber just now. Perhaps later they can clarify whether the DAB is also in support of China entering into the covenants. I think we can also urge China to sign the covenants after we are "pleased to learn" the news. I think this point is very important. Therefore, we hope the Legislative Council can join efforts to give the Chinese Government a message, stating that Hong Kong people sincerely hope that China will enter into the two covenants, not only for the sake of Hong Kong, but also the whole of China, so as to give people an impression that the Chinese Government is really sincere in taking concrete actions to improve the human rights record of China.

Thank you, Mr Deputy.

MR BRUCE LIU (in Cantonese): Mr Deputy, I rise to speak in response to the criticisms made by the Honourable Albert HO and the Honourable CHEUNG

Man-kwong against the Hong Kong Association for Democracy and People's Livelihood (ADPL). They said the Honourable MOK Ying-fan's amendment was a kind of self-censorship, discriminatory against compatriots in China because it treated them as second-class citizens.

First, I want to reiterate the fact that the ADPL fully supports and fights hard to have China sign the two international Covenants as soon as possible. However, the main point of our debate today is the protection of human rights in Hong Kong after 1997. This discussion provides a framework for the protection of human rights under Article 39 of the Basic Law. To implement the Article, the Chinese Government should take concrete steps to sign the two Covenants.

Second, when China has signed the two Covenants relating to human rights, it will automatically continue to submit reports on human rights, and this does not exclude the possibility of its submitting reports in respect of human rights on the mainland. However, this possibility is the domestic affairs of the Chinese Government, which will make decisions for itself.

Third, I think Dr the Honourable John TSE has found a wrong forum for a debate on his motion. I think he should work hard to choose some Democratic Party members to be elected committee members in the National People's Congress (NPC) and then go one step further to put forward the motion to be debated in the Great Hall of the People to urge China to sign the two Covenants on human rights. Of course, if China could sign them in the current year, there will be no need for the motion then.

Fourth, I think it is a right, duty and obligation to continue to comment on the human rights position in China in the capacity of a non-government group, political party, individual or a party not in office, or particularly as a Hong Kong Chinese.

Under the premise of "one country, two systems", it is not appropriate for us to pass resolutions in this Chamber in the name of the Legislative Council as a whole about human rights policies in China. Similarly, we, as Hong Kong people would not welcome the idea of having the NPC in future to debate at its meetings about requests made to the Hong Kong Special Administrative Region to amend some laws.

In our discussion about whether or not China should sign the two

international Covenants, we must not detach ourselves from the historical background of Hong Kong.

Just now, the Honourable Albert HO quoted from what the Chairman of the Commission on Human Rights (HRC) said. The main idea is that when China resumes sovereignty over Hong Kong, it is not taking over just a piece of land; it will also inherit all contractual obligations, including the obligations of Hong Kong to submit reports to the HRC. When the Honourable Andrew CHENG quoted from a conclusion of the HRC in 1996, this idea was repeated. However, the HRC was dealing with specified issues then. Those issues were about the reversion of Hong Kong to Chinese rule or issues arising when China resumes the sovereignty, rather than arriving at conclusions about China as a whole.

Therefore, it is within the scope of the said discussion, and under the premise of "one country, two systems" that we put forward our amendment, the purpose of which has been enunciated in Mr MOK Ying-fan's amendment. I hope Mr CHEUNG Man-kwong or Mr Albert HO will take great care not to label us as having abandoned our Chinese identity or exercised self-censorship or even say that our amendment treats our compatriots on the Mainland as second-class citizens. This kind of labelling is not going to add anything that benefits our discussion.

I so submit.

THE PRESIDENT resumed the Chair.

MR IP KWOK-HIM (in Cantonese): Mr President, originally I did not intend to speak. However, I would like to respond briefly to the Honourable CHEUNG Man-kwong's criticisms on the Democratic Alliance for the Betterment of Hong Kong (DAB).

The stance of the DAB in respect of these two international covenants on human rights has been clear and explicit. We are of the opinion that should the Chinese Government become a signatory to the two covenants, there will be opportunity for us to reflect the human rights condition of Hong Kong in the United Nations. We have opined that this is the correct way and the

Honourable NGAN Kam-chuen has brought out this point unequivocally in his speech. Regrettably, however, I heard Mr CHEUNG levelled criticisms at us twice that we should not relinquish our status as Chinese and that we should not prohibit others to concern about China's affairs in the status as Chinese. I think such criticisms levelled at the DAB are irresponsible. The community will judge whether or not we have relinquished our status as Chinese. I am sure the public understand DAB's stance and contribution to the community and no further explanation is required.

Why do we oppose Dr John TSE's motion? The most important rationale is that in our opinion, the Legislative Council has its own prescribed authority. From our point of view, the authority of this Council is limited because it is a legislature of a colony under the British rule and it is inappropriate for this Council to discuss issues concerning China. Nor will it be appropriate for this Council to urge the Chinese Government to do something. We have pointed this out clearly, not only now but also in the past. So I would like to quote Mr CHEUNG Man-kwong's words. He said that this motion is not ill-intended, yet the DAB thinks that this motion is not appropriate. Thank you, Mr President.

DR YEUNG SUM (in Cantonese): Mr President, it seems that the Honourable Bruce LIU of the Hong Kong Association for Democracy and People's Livelihood (ADPL) wishes to debate on the amendment of the Honourable MOK Ying-fan in the context of "one country, two systems" but I feel that it is not very appropriate to apply this on human rights.

First of all, the ADPL did support the urge of this Council for the Chinese Government to release WANG Dan or WEI Jingsheng. Therefore, as regards the matters on human rights of China, the ADPL have put forward its views in the Legislative Council before without giving any reference to the so-called difference between river water and well water; otherwise, they would not have supported the urge of this Council for the Chinese Government to have an early release of WANG Dan. Hence, this can well repudiate one of the reasons given by Mr LIU earlier on.

Secondly, it is inappropriate to apply the principle of "one country, two systems" on the human rights issue because whoever has any knowledge about human rights knows that human rights do transcend national boundaries. Since there are no national boundaries, it cannot be said that basing on the principle of "one country, two systems", we only concern about the human rights in Hong

Kong and that human rights only matter to Hong Kong. Given that human rights transcend national boundaries, how can we make a distinction between the human rights of China and those of Hong Kong? Therefore, his second reason can also be repudiated.

Thirdly, if Mr Bruce LIU is in support of China becoming a signatory to these two international human rights covenants, he should know that China will naturally have to report on the situation in both China and Hong Kong. Therefore, in deleting the part in the motion of Dr the Honourable John TSE concerning mainland China, is Mr MOK Ying-fan in fact asking China to report on the situation of human rights in Hong Kong only while giving no account of the situation in China? Is it not equivalent to attending to the trifles to the neglect of essentials? Therefore, the three reasons given by Mr Bruce LIU are in fact not valid.

As regards the Democratic Alliance for the Betterment of Hong Kong (DAB), it seems that they are being evasive for as far as I understand, the DAB has also requested the Chinese Government to enter into these two international covenants as a signatory. Such being the case, and they are pleased to learn that China is considering doing so, what is wrong with Dr John TSE's calls on us elected representatives to urge the Chinese Government to take early action? In not stating their stance, the DAB is in fact trying to avoid the essence and dwell on the trivialities. In so doing, their stance will also be affected.

Thank you, Mr President.

MR FREDERICK FUNG (in Cantonese): Mr President, at first I did not intend to speak, but since Dr the Honourable YEUNG Sum queried us, I would represent the Hong Kong Association for Democracy and People's Livelihood (ADPL) to respond to his question.

In the past we supported the release of WANG Dan and WEI Jingsheng because we believed that the judgements were inappropriate and we felt that these people should be released. Yet we were not directing against certain fundamental systems of China. We just felt that those judgements were judging the values of some people. However, it is different from asking China to sign the two covenants and to implement the stipulations in the covenants, bringing a presently non-existing system into existence. This is point number one.

Point number two, human rights indeed know no frontier, but the practices of human rights differ, and the time to practise differ. (*Laughter*) Although you may laugh, you can take a look at the United Kingdom and the United States, or the United Kingdom and Germany. Are their policies and laws of putting human rights into practice exactly the same? I wish you could prove that they were identical. In fact they are not. Therefore, I feel that different places may use different methods or enact different laws to carry out the human rights covenants. At present, certain countries have not made laws for human rights — the United Kingdom is a very good example. It has not enacted human rights laws for human rights — whereas certain countries have. From this we can see that the interpretation of human rights differ from country to country. How does China actually interpret human rights? I think that it is already a very important start if, under "one country, two systems", Hong Kong can manage to protect Hong Kong people, turn the two international covenants into Hong Kong laws and government policy, and while implementing them in Hong Kong, sow and let them blossom in China. As to what China will do, I do not know, because I do not have the right to influence China. But as a Chinese, as a member of the ADPL, as a human being, I feel that we have the total right to talk about these and do those in Hong Kong, outside the Legislative Council, be they actions, press conferences, demonstrations. And we have done them all. In fact, history has witnessed that the ADPL has done those things. So it cannot be said that the ADPL, as Chinese, has not demanded for human rights in China.

However, if the Legislative Council, in the capacity of a part of the Government and a part of the regional parliament, passes a motion demanding that the Chinese Government do this, I think it is not appropriate under "one country, two systems".

Our amendment is to urge that a report on the human rights conditions in Hong Kong be submitted to the United Nations Commission on Human Rights. I have to point out that, with this, we are obligated to report. As regards whether China will submit its report, whether it would violate the two signed covenants if it does not report after signing, whether other countries feel amiss for other reasons, I think China does not need our reminding. The Chinese Government itself should consider the issue.

We believe that as the local people of Hong Kong, and even as the local government of Hong Kong, we have to contemplate: what must we ask China to do? What must we safeguard, protect and speak out clearly? When China

wants to do something, we can discuss, but not in the form of a local government parliament motion.

Therefore, the amendment we move is to ask China to submit the report on human rights conditions in Hong Kong to the United Nations Commission on Human Rights. This is something we should do and definitely have to do. What China will do after it signed the covenants is its own problem, which it has to deal with and face. There is no need to argue over it in today's motion.

Thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr President, I think the more the Honourable Frederick FUNG explained the position of the Hong Kong Association for Democracy and People's Livelihood (ADPL), the less credible it appears. Obviously, the demand for the release of WANG Dan cannot be said to be not interfering with the system in China. WANG Dan is a victim of the judicial system in China which has no respect for or which infringes on human rights. Therefore to demand for the release of Wang Dan is really asking the Chinese Government to do something, and not just shouting out an empty slogan. Instead, there is a distinct goal, which is to ask the Chinese Government to release WANG Dan. Therefore, I hope that we will not argue on this point any further. Actually, both today's motion and the motion debate over the demand for the release of Wang Dan are of the same nature, which is that of expressing concern over human rights in China. This is an indisputable fact.

Secondly, a colleague mentioned just now that "human rights know no national boundaries". But what shocked or astonished me was the new theory which says that the implementation of human rights has national boundaries. With the saying "human rights know no national boundaries", their implementation is also implied, meaning that there are some basic standards which should be met by all countries in the world. If you say that the implementation of human rights has national boundaries, are you saying that the Chinese are less deserving because they live in China? That is what implementation is about. I am sure that none of us thinks of it this way, nor did the Honourable Frederick FUNG mean this. We simply believe that as human beings, we should have those standards. The implementation of human rights knows no national boundaries.

Thank you, Mr President.

MR WONG WAI-YIN (in Cantonese): Thank you, Mr President. My speech will be very short. After listening to the Honourable Frederick FUNG's response a while ago, I finally come to believe the criticisms directed at the Hong Kong Association for Democracy and People's Livelihood (ADPL) and Mr Frederick FUNG for their sophistry, which is an eye-opener for me.

The two points Mr Frederick FUNG raised have in fact been answered by the Honourable LEE Cheuk-yan. I do not want to repeat them here. He said he supported the release of WANG Dan because he cared for the person (meaning WANG Dan was not given fair treatment) rather than targeted at the system. But please do not forget that the unfair treatment WANG Dan suffered from was exactly the unfair trial system. This is in fact a matter of system.

PRESIDENT (in Cantonese): Mr FUNG, do you have a point of order? Mr WONG, are you willing to let him ask you to clarify?

MR WONG WAI-YIN (in Cantonese): Yes.

MR FREDERICK FUNG (in Cantonese): I wish to clarify whether it is true that the wording of the motion at the time to demand the release of WANG Dan did not ask that China make changes to the system. Is that so?

At the time, the debate on the motion to demand the release of WANG Dan

PRESIDENT (in Cantonese): Mr FUNG, your words are clear enough.

MR WONG WAI-YIN (in Cantonese): Mr President, I am not good at sophistry. I do not think I need to respond to the clarification requested by the Honourable Frederick FUNG. That particular motion clearly stated the demand of this Council for China to release WANG Dan. The wording is extremely clear.

"Human rights know no national boundary, but its implementation is

different from country to country." This is a new idea put forward by Mr Frederick FUNG. I cannot find a way to rebut this new idea. Mr President, I very much want to respond to the points put forward by some of our colleagues. The Legislative Council is not a part of the Hong Kong Government; it is a representative of public opinions. The 60 colleagues in this Chamber at present are all elected by Hong Kong people. We have a duty to reflect their opinions.

As the Honourable CHEUNG Man-kwong has said, our motion this time is not meant to politicize the issue. It is just that we were happy when we knew the relevant Chinese officials indicated in public they would consider signing the two international Covenants. And we hoped the Chinese Government would sign the same, which are about human rights, as soon as possible. Hence, we asked Dr the Honourable John TSE to put forward a motion, hoping the Chinese Government can actually sign them.

Just a while ago, some Honourable colleagues referred to Chinese affairs. People say "Hong Kong and China should not interfere with each other". Therefore, we should not direct an undue amount of criticisms against China. But I wonder if these colleagues note that Chinese officials recently wrote an article over 10 000 words long severely criticizing the human rights position in the United States. It pointed out that the position was not good there; it mentioned discrimination and unsatisfactory human right records. Why do these colleagues not say that the Chinese Government is "meddling" with human right issues in the United States? Instead, they reprimanded us, as members of the Hong Kong community or the Chinese community for making suggestions or recommendations for improvement in Chinese affairs. Chinese people should care for Chinese affairs, and I believe every Member in this Chamber will agree with me on this. We hope the Chinese Government will change for the better and so we urge the Chinese Government to sign the two human rights Covenants as soon as possible.

Mr president, finally, I want to respond to what the Honourable IP Kwok-him said. He indicated a while ago they also would like China to sign the international Covenant on human rights. But when we put forward the motion and requested everyone to show his stance, the Democratic Alliance for the Betterment of Hong Kong (DAB) seemed to have "chickened out" and was too shy to openly demand that China sign the two international Covenants on human rights. This gives me the impression that after the DAB made public

their stance, they received instructions from China and then became reluctant to indicate clearly their stance.

Finally, Mr President, I wish to reiterate here the main thrust of today's debate is the wish that the Chinese Government can sign the two international Covenants on human rights as soon as possible. After signing them, it will naturally have a responsibility to report to the United Nations about the human rights position. I repeat the thrust of today's debate is that we hope China can sign the two international Covenants on human rights.

Thank you, Mr President.

PRESIDENT (in Cantonese): Gentlemen, a moment ago, Mr FUNG wanted a clarification pursuant to Standing Order 29(b). But what he wanted to clarify was in fact his own speech. Hence Standing Order 28(2) should be invoked instead. This section reads, "A Member who has spoken on a question may again be heard, if the President so permits, to explain some part of his speech which has been misunderstood, but when speaking he shall not introduce new matter." I believe you made a clarification in that you explained. What you said at the time was that the motion to demand the release of WANG Dan did not contain wording about the system. You made an explanation. I deemed it to be your personal explanation.

MR MARTIN LEE (in Cantonese): Mr President, but did you give him permission to speak?

PRESIDENT (in Cantonese): He requested a clarification by way of a question. Although it looked like a clarification, in fact, he provided an explanation. If he went on, he might introduce new matter. What I want to say here, however, is that during a Member's speech, making requests for clarification by intervention in most cases turns out to benefit the other party.

MR CHAN KAM-LAM (in Cantonese): Mr President, originally I did not intend to speak. However, I think the Honourable WONG Wai-yin has put an undue criticism on us. The stance of the Democratic Alliance for the

Betterment of Hong Kong (DAB) has been clear and explicit. Now the Chinese Government has unequivocally stated that it will keenly consider signing up the two international covenants. This is a fact. Despite that, Mr WONG alleged that the DAB is as coward as a pulled-head tortoise. In what position can you criticize the stance of the DAB in human rights and give us such a bad name? I would like to remind you that you should not be so careless about your words, Mr WONG Wai-yin. As a legislator, you should not criticize others' stance in humiliating words in this Council

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, you can continue your speech. But please use the word "he" instead of "you". (*Laughter*)

MR CHAN KAM-LAM (in Cantonese): Thank you, Mr President. Mr President, I think (*Laughter*) I would like Members to lower down their noises before I go on.

PRESIDENT (in Cantonese): Quiet please. Mr CHAN Kam-lam, you may continue.

MR CHAN KAM-LAM (in Cantonese): In fact, human rights are implemented by different means in different countries. The Bill of Rights or the relevant legislation is given effect in response to the peculiar circumstances of the country concerned. This is an international understanding.

I do not agree to the Honourable Miss Emily LAU's argument that human rights transcend all national boundaries. It is now obvious that some people are trying to interfere with other countries' ruling or administration in the name of upholding human rights. We do not want to see that some people are imposing their so-called "standard" on other countries with an intention to interfere with the latter's internal affairs. In fact, the United States is just doing this. Mr WONG Wai-yin commented that the Chinese Government is pointing an accusing finger at the United States in respect of its human rights record. I hope he can seriously look at the truth to see who is accusing whom.

Mr President, I so submit.

MR LEE WING-TAT (in Cantonese): Mr President, colleagues in this Council like to use the catch phrase "Do you have the right to speak?" lately. That puts us in a very difficult position. Mr President, must I also ask whether I have the right to speak? According to the Standing Orders, every Member in this Council has the right to speak. In discussing the affairs of Hong Kong, we are Members of the Legislative Council of Hong Kong, representatives of the people. In discussing the affairs of China, we are Chinese and even when discussing the issues in the United States, as I feel that we speak in the capacity of residents of the earth, we do not have to question the eligibility of speakers. In fact, it is not too good to question others' eligibility.

Earlier on, I was glad to hear the Honourable CHAN Kam-lam question the concept of human rights transcending national boundaries. This is a very good debate topic. In future, we really get to re-establish our understanding about the principle of "human rights transcending national boundaries", a principle which many countries and those who defend human rights hold firmly to, and see if the Democratic Alliance for the Betterment of Hong Kong (DAB) supports it. I did not hear Mr CHAN Kam-lam say whether they support it or not but he sounded as though he was questioning this principle. If the DAB feels that "human right transcending national boundaries" is wrong, that human rights should have national boundaries, then it should write it down in its platform that they agree that human rights should have national boundaries where some countries should have human rights while others should not. Of course, the Honourable Frederick FUNG and Mr CHAN Kam-lam put it in the way of a debate, making us feel that the principle of human rights transcending national boundaries is not very correct and it is different in each phrase of implementation. Of course, when applying the International Covenant of Civil and Political Rights, the laws of different countries regarding the protection of the freedom of assembly and freedoms of speech and the press may not be exactly the same. It is not that the United States copies the French version and France copies the German version. It is just not so. But the fundamental principle is the same and that is most important. I rather have them say that the details are not the same. There would be disputes if the standards for human rights are different. If the standard is the same while only the details of implementation are different, such differences do not imply that different places have different means, steps and strategies in their implementation of human rights. I feel that such saying is distorted.

Secondly, last year I received a publication of the DAB which was very well written. I do not recall its — it was something like ten big things done for the people of Hong Kong — but it clearly stated that the DAB is in favour of China entering into the two international human rights covenants as a signatory as soon as possible. I was very glad to read it and I wanted to cut it down and circulate among my colleagues in the Democratic Party to show them how advanced the DAB was and that they also supported that. That publication contained such a point and was handed out on the streets. However, when it comes to the real discussion, they have cold feet. I will not use the term used earlier on to describe the DAB. I will put it in a more refined way. I feel that when you really want to carry out something, you have to make public your stance. Why can the Legislative Council not discuss it? The Honourable IP Kwok-him said that the Legislative Council is a colonial council and so it should not discuss the affairs of China. Such a logic is actually wrong. First, the Honourable NGAN Kam-chuen has moved an amendment today. Moving an amendment already implies he agrees that this topic can be discussed but what you want to discuss is that you are "pleased to learn" and pleased to accept that the Chinese Government is considering this issue. Do you actually mean that when Legislative Councillors gladly embrace or support the Chinese Government's decisions, you will agree to discuss this subject. But when we urge — urging is also a positive thing and it is not a negative criticism, not regret or rebuke; there is no such wording; to urge is just to ask the Chinese government to do it better, faster — then you say that we cannot discuss it? Is this not the relationship between the monarch and the subject or between the father and son? When the monarch speaks, it is the great bounties bestowed on us. And now we are being showered with great bounties, we the subjects are very happy, so happy that we cannot sleep at night. But when we urge the Chinese Government to do it better and faster, you find it disagreeable. What are we supposed to do then? Therefore, your logic is not correct. Why can an issue be discussed only when ardent wording is used, and not otherwise? I feel that a debate cannot be like that.

This Council has debated on this issue time and again and the DAB has also got a stance of its own, which, as compared with Dr the Honourable John TSE's, there is actually not much difference. Nevertheless, the question lies with the fact that it is put forward by Dr John TSE of the Democratic Party. If it is put forward by the DAB, it would not have been any problem. I think what matters most is that when this issue meets the requirement which the Chinese Government also considers all right, there should not be any disputes.

I think that the point that Mr CHAN Kam-lam raised regarding "human rights have national boundaries" is horrifying because with this principle and excuse, the action taken by different countries or places to suppress human rights can be justified. It is the same as what the Communists used to say, that is, when the people had food, they had human rights. Not only the Communists hold such an argument, a well-known figure in the executive council has also said recently that it is already very important to have our stomachs filled and after that, nothing will matter. That has distorted the concept of human rights beyond measure. It also seems that after having our stomachs filled, all our other rights can be taken away. This, to me, is absolutely unacceptable.

Mr President, I feel that since all parties have stated their support of human rights in their platforms, and that the DAB also urges the Chinese Government to enter into the international human rights covenants as a signatory, they should not amend but should support Dr John TSE's motion instead.

Thank you, Mr President.

MR TSANG KIN-SHING (in Cantonese): Mr President, originally I did not intend to speak today. But just now someone mentioned WANG Dan, my old friend, so there is no reason why I do not speak up. The Hong Kong Association for Democracy and People's Livelihood has just used a formidable term, saying that if the system in China is touched then WANG Dan may not be released. If they really have such a concept, are they not touching China's internal affairs by going to the Hong Kong Alliance in Support of Patriotic Democratic Movements of China every year on 4 June for the last seven years? What is meant by putting an end to one-party dictatorship? What is meant by building a democratic China?

MR FREDERICK FUNG (in Cantonese): Mr President, can I quote Standing Order 28(2)?

MR TSANG KIN-SHING (in Cantonese): I object, lest he should "block the earth from revolving".

PRESIDENT (in Cantonese): Mr FUNG, Standing Order 28(2) is about personal explanation. If you think that he has misunderstood some of the things you

said, you can explain after his has finished his speech.

MR TSANG KIN-SHING (in Cantonese): Mr President, I do not want to let him quibble. This is my time of speech.

PRESIDENT (in Cantonese): Now you can go on with your speech.

MR TSANG KIN-SHING (in Cantonese): Mr President, since the current legislature is elected, everyone has the right to free expression. However, since the legislature after 1 July is appointed, I believe there would not be so many debates. You can see whether there are any debates when they hold their meetings and elections in Shenzhen. When LU Ping says no, it means no. The pun in "why do you ask about the election rules? You have no 'rules'" means that you have no manners, and not there are no election rules. After 1 July, there will be no such game.

Just now the Honourable Bruce LIU mentioned standing for the election of the National People's Congress (NPC). If the NPC could be directly elected, we would certainly express our views and strive for reforms within the system to build a democratic China. The problem is that it is appointed. If not, how could you join? You would not stand a chance. If it were elected through universal franchise, you would surely not stand a chance. I hope that the Hong Kong Association for Democracy and People's Livelihood (ADPL) will say clearly on 4 June whether it demands the end of one-party rule, whether it wants to build a democratic China, whether it demands the vindication of the 1989 Pro-Democracy Movement and the prosecution of those responsible for the massacre. Remember these five principles well and do not cite them wrongly.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, please change the singular "you" to "he" and the plural "you" to "they".

MR TSANG KIN-SHING (in Cantonese): I mean whether "they", the ADPL, have forgotten those five principles. They should not omit any one of them. Mr President, this is all I have to say. I do not want to hold up the meeting.

MR FREDERICK FUNG (in Cantonese): I still demand to speak in accordance with Standing Order 28(2). Regarding the speech I made just now, while I feel that people should have freedom of expression, one should talk reason and facts.

PRESIDENT (in Cantonese): Which of your points were misunderstood?

MR FREDERICK FUNG (in Cantonese): Just now the Honourable TSANG Kin-shing said that we will not fight for human rights and that the ADPL has changed its stance. We have always been against the Legislative Council passing motions to ask China to change its system. However, as Hong Kong Chinese, as Legislative Council Members and as a political party, we absolutely agree that we should do this and we are doing it. I would like to tell them that the ADPL participated in marches in the past seven, eight years

PRESIDENT (in Cantonese): The last remark is new. *(Laughter)*

MR FREDERICK FUNG (in Cantonese): I hope that every member of the Democratic Party will have marched all eight times.

PRESIDENT (in Cantonese): Please do not bring in new topics.

MR TSANG KIN-SHING (in Cantonese): Mr President, I wish to elucidate.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, which point of yours was misunderstood?

MR TSANG KIN-SHING (in Cantonese): He can check with my speech just now. I did not say the ADPL had changed its stance. I did not say that. He said it himself.

MR CHEUNG HON-CHUNG (in Cantonese): Mr President, the Democratic Alliance for the Betterment of Hong Kong has always held the position that China should be asked to enter into the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as a signatory as soon as possible.

The two policies and what we said in our platform have not changed. Today, we still demand that China enter into the abovementioned Covenants as a signatory as soon as possible. What some Members said just now gave me the impression that they thought we had changed our position. In fact we have not. Moreover, the DAB also thinks human rights are natural rights and are universal, just like what other political parties think.

Mr President, today we oppose Dr the Honourable John TSE's motion. One very important reason is his idea that entering into the Covenants meant that the basic rights of Hong Kong people and the people of China can be protected, which sounds as if not so entering means no protection. We have avoided the misunderstanding. We think Article 39 of the Basic Law has set out clearly that human rights in Hong Kong are safeguarded by the Article. Therefore, basically it is not absolutely necessary for China to enter into the two Covenants in order for human rights in Hong Kong to be protected. We oppose the motion of Dr John TSE so as to avoid a misunderstanding. Our fundamental position is that we support the call for China to enter into the two Covenants as a signatory to protect the basic rights and interests of Hong Kong people and the people of China.

Thank you, Mr President.

PRESIDENT (in Cantonese): Since Mr MOK Ying-fan has not had the opportunity to speak on Mr NGAN's amendment to his amendment, I now invite Mr MOK to speak for the second time on the amendment moved by Mr NGAN Kam-chuen only, for up to five minutes. This is in keeping with the spirit in which the House Committee recommends speaking time for Members.

MR MOK YING-FAN (in Cantonese): Mr President, I am pleased to learn that the Honourable NGAN Kam-chuen has moved an amendment to my amendment. (*Laughter*) But we, the Alliance for Democracy and People's Livelihood find it unacceptable for two reasons.

First, the Foreign Ministry of China has indicated that it is actively considering the issue but active consideration does not follow that they will definitely do it. We hope that the Chinese Government will actively go ahead with it and actually do it.

Second, we feel that Hong Kong, as an international commercial metropolis with a free economy, other than having a stable, strong and powerful economic system, it is most important for Hong Kong to integrate into the international community and for its people's human rights to receive proper protection. Therefore, we propose that the Chinese Government should consider entering into the covenants as a signatory on behalf of Hong Kong first. We do not think that this contradicts the concept of "one country, two systems".

Of course, we would like to lobby for some votes here. If Mr NGAN Kam-chuen's amendment is not passed, and as we have been repeatedly labelled today, I hope that the Democratic Alliance for the Betterment of Hong Kong will support our amendment.

Thank you, Mr President.

PRESIDENT (in Cantonese): I now invite Dr John TSE to speak on the two amendments. You have five minutes to speak on the amendments.

DR JOHN TSE (in Cantonese): Mr President, in its amendment, the Hong Kong Association for Democracy and People's Livelihood (ADPL) has committed a major flaw in its logic. It urges China to enter into the covenants as a signatory but suggests that China implement the provisions of the covenants only in Hong Kong but not in mainland China. That is to say, the covenants will only be binding on the Hong Kong Special Administrative Region but not the whole country. That is out of the question.

Mr President, in his amendment, the Honourable MOK Ying-fan deletes from the original motion the part on safeguarding the human rights of the residents of mainland China. The Democratic Party strongly opposes to this. The Democratic Party sees this as a matter that concerns with the principle of every individual's personal dignity and fundamental rights. Our compatriots in

mainland China, like the people in Hong Kong, should be protected by the international covenants. We cannot say that we have human rights and Hong Kong can be protected by the international covenants while our compatriots in the Mainland are not entitled to such rights or the protection of the international covenants. When the basic human rights of our fellow Chinese are trampled upon and taken away, can we turn a blind eye to it? Can we bear with it? Can we not care about the human rights situation in China? Some say that China and Hong Kong have different social systems and hence the Legislative Council of Hong Kong should not intervene in the internal affairs of China. I reiterate, what the Democratic Party puts forward today is an issue concerning the protection of the basic personal human rights as recognized internationally. Different political systems in the two places cannot be used a pretext for denying the people of their human rights and the practice of dictatorship. The Chinese Government cannot turn down and neither can the Legislative Council of Hong Kong evade this demand. Hong Kong is separated from China by a river only and after the changeover of the sovereignty after 1997, both will go under the rule of the same state. I think everyone is well aware of the truth that when one falls, the other will be exposed to danger. In addition, in the signatories' agreement, mainland China should not be excluded.

The Democratic Party thinks that the Honourable NGAN Kam-chuen proposes his amendment just for the sake of amending my motion. I believe that all Legislative Councillors have already read the announcement of the Foreign Ministry of China from the recent report in the press. But what shall we do after having learned that? Should the Legislative Councillors just sit back and do nothing after hearing the news? The Legislative Council learned long ago from the newspaper or from the report of the Legislative Council's delegation who attended the hearing in the United Nations that China was considering entering into the two international human rights covenants as a signatory and had also sent government officials to the hearing of the Commission on Human Rights. The problem is that the DAB cannot act according to their knowledge and most strangely, they hope that China will sign the covenants but it does not matter to them whether China will implement them or not.

The motion of the Democratic Party today goes beyond the state of just knowing. It calls on China to accede to the two human rights covenants of such significance as soon as possible and discharge its obligation and duty of a signatory to safeguard the basic rights of the residents in mainland China and Hong Kong as provided by the covenants. Among the 180 member states of the

United Nations, over 130 have already entered into these covenants as signatories but China, as the permanent member of the Security Council, is still dragging her feet. Can we still remain in the stage of knowing only?

For the above points, the Democratic Party hopes that all Honourable Members of the Legislative Council will put forth the conscience that everyone should possess and the assurance of everyone's personal dignity and support our original motion.

Thank you, Mr President.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, the two international human rights covenants, International Covenant on Civil And Political Rights (ICCPR) and International Covenant On Economic, Social and Cultural Rights (ICESCR), are paramount for the United Nations in the safeguarding of human rights all over the world.

In 1948 the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. The Declaration set out the general principles of human rights "as a common standard of achievement for all peoples and all nations." It was later followed by the ICCPR and the ICESCR. The two Covenants, which came into force in 1976, stand as clear guidelines for the implementation and monitoring of these standards.

The ICCPR guarantees the right to life and other civil and political rights for everyone, including freedom of movement and freedom to choose residence; freedom of thought, conscience and religion; freedom of opinion and expression; the rights to participate in public life; the right of peaceful assembly; and the right to freedom of association.

The ICESCR stipulates that people are free to pursue their economic, social and cultural development, and to dispose their natural wealth and resources. Besides, the covenant affirms the right to work, the entitlement to just and favourable working condition, the right to join trade unions, and the entitlement to social securities and appropriate living standard.

These are inherent, inalienable rights safeguarded by the state parties. China, though not a state party, but being a permanent member of the United

Nations Security Council and encompassing one-fourth of the world population, together with a growing prosperity accompanied by the rising expectation of the people, is urged by many countries, among them Britain, to enter the two covenants. Mr Rifkind, during his meeting with the Vice Premier and Foreign Minister of China, Mr QIAN Qichen, in Singapore last month, too called for China to be a signatory state. That it would be most welcome for China to sign the two Covenants is also the common conclusion reached by the United Nations Commission on Human Rights on examination of the Supplementary Report by Hong Kong Under the International Covenant on Civil and Political Rights, and the Commission on Economic, Social and Cultural Rights on the Third Periodic Report by Hong Kong Under the International Covenant on Economic, Social and Cultural Rights. It is clearly the common wish of the United Nations, the whole world, as well as the Hong Kong community, for China to be a signatory state of the Covenants, and sign them as soon as possible.

Hence, it is encouraging that China has recently stated it is positively considering signing the two international Covenants.

Should China agree to enter these Covenants, it would then become a state party to all major United Nations covenants. China has, respectively, ratified the Convention on the Elimination of All Forms of Discriminations Against Women in 1980; the Convention on the Elimination of All Forms Of Racial Discriminations in 1981; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1988; and Convention on the Rights of the Child in 1992. It can be discerned that it is just a matter of time for China to adopt the remaining two major covenants. To be a state party to these covenants is not an easy matter for any country. The United States signed the ICCPR in 1977, but it was only in 1992 that the ratification process was finally concluded while the ICESCR has yet to be ratified. We, however, will of course welcome our future sovereign country to conclude the procedure concerned as soon as possible.

Hong Kong is no stranger to these two Covenants as, when Britain ratified the two covenants in 1976, provisions applicable to the territory was extended here. The two Covenants have far reaching influence in the safeguarding of human rights in Hong Kong. The most important thing is that, in our enactment of the Bills of Rights Ordinance in 1991, provisions of the ICCPR relevant to Hong Kong were incorporated into our domestic laws. Human rights in Hong

Kong after 1 July 1997 are further safeguarded by Section XIII of Annex to the Sino-British Joint Declaration and Article 39 of the Basic Law, which guarantee that the provisions of the ICCPR and ICESCR as applied to Hong Kong shall remain in force. We are hence guaranteed that, should any restrictions be exercised to the rights and freedom enjoyed by Hong Kong residents, such restrictions shall not contravene the provisions of the Covenants as applied to Hong Kong. It is undoubtedly shown that our human rights will continue to be safeguarded by the international obligation so entered by China and Britain.

It is thus to be regretted that the Standing Committee of the National People's Convention has adopted the Preparatory Committee's proposal of the partial abolition of the Society (Amendment) Ordinance, the Security (Amendment) Ordinance, and the Bill of Rights. We do hope that, in future, any proposals to abolish or to dispose these provisions will be the actual reflection of the opinion of the community and be in line with the stipulations of the two Covenants, and the commitments of the Joint Declaration and the Basic law.

One of the key provisions of the continuing implementation of the two Covenants is the fulfilling of the periodic reporting obligation to the United Nations monitoring bodies. Article 40 of the ICCPR and Article 16 of the ICESCR respectively stipulate the submission of reports. All Honourable Members will agree that the submission of reports to the United Nations is useful and constructive. The reporting process, which involve the Government, the Legislative Council and non-government organizations, from the submission of reports to the direct dialogues with relevant United Nations bodies, is helpful in the comprehensive revelation of human rights safeguarding in Hong Kong. The periodic submission of reports and the hearing process have been regarded by the community as the yardstick of the implementation of human rights safeguards in Hong Kong.

The Chinese Government, however, has not yet agreed to report on Hong Kong to the United Nations on the grounds that it is not a signatory state to the two Covenants. This is a view not concurred by the Hong Kong Government and the relevant United Nations committees. The monitoring committees of the two Covenants have respectively pointed out that, according to the Joint Declaration, China has the obligation to continue the implementation of the two covenants in Hong Kong, as well as the periodic submission of reports on Hong Kong. The two committees are in view that, with the signing of the Sino-British Joint Declaration, it means that both sides have agreed to the

continuing implementation of the provisions as applied to Hong Kong, including the submission of reports to the United Nations, after 1 July 1997. As the Honourable Albert HO and the Honourable Andrew CHENG just quoted, the committees opine that the human rights covenants should be handed over together with territory, as the new sovereign power has the obligation to continue the implementation of the covenants entered by the predecessor. Residents of a region, once under the protection of the Covenants, will not be deprived of these safeguards just because of territorial split or changeover of sovereignty.

The two United Nations committees have expressed the willingness to be more flexible in report submission, and are prepared to accept, after 1 July 1997, reports on Hong Kong either by the People's Republic of China, or, so endorsed, by the Government of the Hong Kong Special Administration Region. The British Government, too, has clearly agreed to the workability of such an adaptation. We are encouraged when the Chinese Vice Premier, Mr QIAN Qichen, during his meeting with the British Foreign Secretary, has expressed the willingness to consider delegating the future submission of reports on Hong Kong to the Government of the Special Administration Region. The British Government will continue to urge the Chinese Government for a positive response through the Joint Liaison Group meetings.

We are confident that China will eventually become a signatory state to the two Covenants. It is just a matter of when.

Thank you, Mr President.

Question on Mr NGAN Kam-chuen's amendment to Mr MOK Ying-fan's amendment put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr NGAN Kam-chuen and Mr CHAN Kam-lam claimed a division.

PRESIDENT (in Cantonese): Council shall proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Member that they are now called upon to vote on the question that the amendment moved by Mr NGAN Kam-chuen be made to Mr MOK Ying-fan's amendment to Dr John TSE's motion.

Will members please register their presence by pressing the top button and proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 26 votes in favour of Mr NGAN Kam-chuen's amendment and 28 against it. He therefore declared that the

amendment was negatived.

PRESIDENT (in Cantonese): As Mr NGAN Kam-chuen's amendment has been negatived, the Council shall now vote on Mr MOK Ying-fan's amendment made to Dr John TSE's motion. Members are now called upon to vote on the question that the amendment moved by Mr MOK Ying-fan be made to Dr John TSE's motion.

Question on Mr MOK Ying-fan's amendment put.

Voice vote taken.

THE PRESIDENT said he thought the "Noes" had it.

Mr Frederick FUNG and Mr Bruce LIU claimed a division.

PRESIDENT (in Cantonese): Council will proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr MOK Ying-fan be made to Dr John TSE's motion.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? One short of the head count. It was 54, now 53. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr

Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Mr Howard YOUNG, Mr James TIEN, Mr Bruce LIU and Mr MOK Ying-fan voted for the amendment.

Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr LO Suk-ching, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted against the amendment.

Dr Philip WONG and Mr CHEUNG Hon-chung abstained.

THE PRESIDENT announced that there were 14 votes in favour of Mr MOK Ying-fan's amendment and 37 against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Dr John TSE, you are now entitled to your final reply and you have six minutes 43 seconds out of your original 15 minutes.

DR JOHN TSE (in Cantonese): Mr President, someone says, "Well water does not intrude into river water". In fact, the sentence is not finished yet. He wants to say, "Well water does not intrude into river water, but most importantly, I must have water." The Chinese people in Hong Kong and their compatriots in China have blood relations. Hence we should treat them as we would do to ourselves and put ourselves in their shoes. We should encourage and support the Chinese government to sign these two important international covenants on human rights, so that both people in mainland China and residents of Hong Kong will receive equal treatment and enjoy the same rights.

The amendment of the Hong Kong Association for Democracy and People's Livelihood (ADPL) says that we ought to have human rights, but not our neighbours. If we put it in the way China remarks, it would be: in China, human rights are equivalent to the right to food; it will do as long as I have enough food. In other words, as long as one has enough to eat, it is not my business even if his neighbours are starved to death. This kind of thinking is a selfish mountain-stronghold mentality. To be frank, if the neighbours have nothing to eat, how can your provision be guaranteed all the time? If the neighbours have no human rights, how long can you enjoy your human rights?

I think it is ridiculous that the Honourable MOK Ying-fan should mention "peaceful and rational" criticisms and say that "we should not treat other people in the way which we would not like ourselves to be treated in", and that Hong Kong had better refrain from criticizing China. In fact, he is saying that if one does not want others to criticize him, he should not criticize others. Is this rational? Is this improvement? On human rights, the theory of the ADPL is worse than that of the Communist Party. On the implementation of human rights, the ADPL is more conservative and backward than the Communist Party. The Chinese Communist Party is already actively considering signing the two international covenants on human rights, but the ADPL does not support China to consider becoming a signatory to the covenants and grant human rights to the people in China. Actually I should not criticize the ADPL alone. The mentalities of the Members and the parties which oppose my motion are even less open than that of the Foreign Minister QIAN Qichen, a member of the Chinese Communist Party. In the final analysis, one word can explain it all: "fear". When the Chinese Communist Party is actively considering signing these two important covenants, why do the Legislative Councillors in Hong Kong fear to ask it to do so? It is actually a very simple matter. How can we count on these cowardly people to fight for and safeguard the interests of Hong Kong people?

Some other people say, "Democratic Party, why are you so impatient? Let the Chinese Government think about it slowly!" However, if they consider it a mistake to discuss openly, to encourage, to support a government to do something positive about human rights, I can only say that those people who oppose my motion are getting irrational to think that "what the enemy says is always wrong."

The Honourable Ambrose LAU also mentioned that China has already

stated Hong Kong could submit its own report. Unless the Chinese Government becomes a signatory, Hong Kong cannot submit a report on its own. I think what Mr LAU said just now was a little misleading.

I am very grateful that the Honourable NGAN Kam-chuen pointed out my shallowness in the knowledge of China. In fact, I want to know more, the precondition is — I should not say precondition, as it sounds like some sort of trading off is involved — but I am blocked from knowing China because my Home Visit Permit was confiscated. I did wrongly say that China has been established for more than 50 years. This is actually the "Freudian slip" in psychology, for I wish that China can last more than 50 years, and even thousands of years more.

Dear Members, please vote with righteousness and truth for my motion. The people to the south of the Shenzhen River should have human rights, and by the same token, the people to the north should also have human rights. Human rights know no frontier, let alone Hong Kong is reuniting with China after 1 July. However, my horizon is really broadened tonight. People would go so far as to advance theories such as there are frontiers to human rights, and human rights and the practice of it are two different matters. I hope that all the parties and the Members can respect human rights more in the future.

Lastly, I want to say, "People of China, please do not forget who suggest today that the basic human rights and freedom which should be entitled to the people in China be neglected, discriminated and even deprived."

Thank you, Mr President.

PRESIDENT: Mr Ambrose LAU.

MR AMBROSE LAU (in Cantonese): Dr the Honourable John TSE just now misquoted me, and that is why he said I was misleading. It was actually he who misled himself as I have never said that China had agreed to Hong Kong submitting the Human Rights Report to the United Nations. My words are: "According to Chinese Foreign Ministry spokesman GUO Chongli who so said in Singapore on 15 February, whether China would submit human rights reports

on Hong Kong to the United Nations Commission on Human Rights is still being discussed by the Joint Liaison Group." That is the first point.

Secondly, he too quoted me as saying: "Hence, the human rights in the Hong Kong Special Administration Region are fully safeguarded, with the Chinese officials clearly expressing the willingness to consider the direct submission of the human rights reports to the United Nations by the SAR Government."

PRESIDENT (in Cantonese): Mr LAU, which part of your speech was misunderstood?

MR AMBROSE LAU (in Cantonese): He mentioned that I said the Chinese Government had agreed to the direct submission of the human rights reports to the United Nations by the SAR Government.

PRESIDENT (in Cantonese): That means you have not said so. Now you have clarified it.

PRESIDENT (in Cantonese): Mr Frederick FUNG, are you also making a request to explain the part of your speech which has been misinterpreted?

MR FREDERICK FUNG (in Cantonese): Yes, Mr President. Dr John TSE has repeatedly alleged that the Hong Kong Association for Democracy and the People's Livelihood (ADPL) opposes that Chinese people should have human rights and the signing of the two human rights conventions by China. I have reiterated our position time and again, but he seems not to hear what I say. So I want to clarify again that the ADPL has been in support of the signing of the two conventions by China and has urged the China to do so by actions. However, in our opinion, under the principle of "one country, two systems", a legislature should not have

PRESIDENT (in Cantonese): Mr FUNG, is this the content of your speech made just now?

MR FREDERICK FUNG (in Cantonese): Yes, I just repeat what I have said because I feel that he has failed to listen to my words, and more importantly, he put labels on me. So I have to clarify once more.

PRESIDENT (in Cantonese): So you are now explaining the part that have been misinterpreted — unless you think that you have not been misinterpreted. No, Dr TSE, you raise up your hand because

DR JOHN TSE (in Cantonese): Mr President, I am the mover of the motion, but my speech is the shortest. Some Members stood up to speak more frequently than I did and their speeches were even longer than mine.

PRESIDENT (in Cantonese): Dr TSE, you have a total of 20 minutes to speak. Are you saying that some points in his speech have not been misinterpreted by you? Do you want to point them out? If not, time for clarification will be over after their explanation.

DR JOHN TSE (in Cantonese): Mr President, I just want to point out one thing. The result of our voting will show whether or not there is misinterpretation. Thank you.

Question on the original motion put.

Voice vote taken.

PRESIDENT (in Cantonese): The Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Dr John TSE as set out in the Order Paper be approved.

Would Members please register their presence by pressing the top button

and then proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Dr LEONG Che-hung, Mr Frederick FUNG, Mr Bruce LIU and Mr MOK Ying-fan abstained.

THE PRESIDENT announced that there were 24 votes in favour of the original motion and 26 against it. He therefore declared that the motion was negatived.

ROLE OF CHINESE COMMUNIST PARTY IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION

MISS CHRISTINE LOH to move the following motion:

"That, in the light of the fact that the Chinese Communist Party openly plays a leading role in governing China, this Council urges the Government to seek clarification from the Chinese Government and the Chief Executive (Designate) about how the Party will be represented in the Hong Kong Special Administrative Region, what its role in the Region will be, what channels of liaison it will maintain with the Government of the Region and with the Chief Executive, and what the content and limits of that liaison will be."

MISS CHRISTINE LOH: Mr President, I move the motion standing in my name on the Order Paper. The official silence that envelops the Chinese Communist Party in Hong Kong is a colonial relic.

It has always been unthinkable for the Communist Party to ask the colonial Hong Kong Government to grant it legal recognition. From the Party's perspective, that government is an illegitimate foreign administration on Chinese territory, with little right to grant legal status to anyone, least of all to an organ of China's ruling party. So long as Britain administers Hong Kong, it seems the Communist Party must necessarily remain unregistered in contravention of the law.

Indeed, before the 1992 amendments to the Societies Ordinance, legal recognition for the Communist Party would have been impossible in any case, by virtue of the Ordinance's ban against contacts with foreign political organizations. The provision was more or less directly aimed at the Chinese Communist Party and its united front organizations. The provision is now set to be revived by Basic Law Article 23, though it is disturbingly unclear at whom it is to be aimed in future.

Meanwhile, the Hong Kong Government has never been in a position to suppress the Communist Party, an action that China would view as an intolerable assault. At the same time, the Government can hardly admit that it tolerates the Communist Party's quiet defiance of the laws of Hong Kong. A mutual pretence that there is nothing going on has therefore been necessary for both sides.

This pretence is one of many strange but, perhaps, practical accommodations that enabled Hong Kong to survive and to prosper in the past. Colonial Hong Kong's status and identity has always been a potentially

dangerous bone of ideological contention. The ideological differences were sharp and apparently could not be bridged. Hong Kong was a British territory to the British; or to the contrary, it was a Chinese territory to the Chinese. The Hong Kong Government was foreign and illegitimate as far as Chinese political ideology was concerned; or to the contrary, the Chinese Communist Party in Hong Kong was foreign and illegal as far as British law was concerned.

The mix was made more explosive by the Kuomintang, which for many years, was very active in Hong Kong. The colony was well-suited to serve as an arena for political contention by proxy between the two governments across the Taiwan Strait, not least because the British Government in Hong Kong allowed greater freedom of association and expression than either the Nationalists or the Communists did in their own territories.

Riven by multi-faceted ideological conflicts, Hong Kong might have been torn apart, but it was in no one's interests to let that happen. Quite simply, everyone was making too much money. So, quiet accommodations were reached that allowed everyone, not least Hong Kong people themselves, to keep on making money here. As a result, instead of heads being broken, fortunes have been made. Official silence about the Communist Party is only one notable example of a web of omissions, evasions and half-truths that have been considered necessary to hold Hong Kong together despite the contradictions inherent in its status as a British colony in China.

But omissions and evasions, Mr President, about the Communist Party have taken their toll on public discourse. Where the Communist Party is concerned, there is no discussion, or at least very little. On the contrary, past efforts to broach the subject publicly have been greeted not only with stony official silence, and I note there is no official member here today, but with dismay and anger in other quarters that sometimes verged on the hysterical. The rule seems to be that, not only do Britain and China not talk about the Communist Party — Hong Kong people also do not ask. When I proposed a motion debate similar to this one almost two years ago, I recall hearing some extraordinary personal attacks on my family background in this Chamber, and I recall another Member asserting that merely by raising the subject, I was "destabilizing Hong Kong".

This latter assertion typifies many people's instinctive reaction to any public discussion on the Communist Party. Hong Kong people's reticence on the subject arises from the perception that talk is dangerous, that to acknowledge the ideological contradictions running through Hong Kong is to revive them.

Perhaps that was so in the past. But as the colonial era ends, and we prepare to reintegrate this society into China, how can we possibly still pretend that the Communist Party does not exist and does not matter in Hong Kong?

There is no such reticence across the border, in the society with which we are about to join. The preamble to the Chinese Constitution repeatedly invokes the leadership of the Chinese Communist Party in the nation's tasks. After the preamble, the 138 articles of the Constitution never mention the Party. That is not because the Party's leading role is a lofty principle which, once invoked, may be put aside. It is because the Party's leading role is too important to be limited by the Constitution. Its leadership applies everywhere, and the Constitution merely embodies its most basic policies. As a practical matter, the Party maintains its own structure in parallel to the government structure established by the Constitution. Every organ of the Government has its Party cell, and every principal official is paired with a Party secretary —and the latter outranks the former. Fundamental policy decisions flow from the top down, and the Communist Party is always at the top. Mr President, this is the situation on the Mainland.

Not surprisingly, on the Mainland, the Communist Party's structure, membership and policies evoke keen public interest, and are major topics of discussion, albeit within the strict limits set by the Party's intolerance for dissent. In a particular organization or place, everyone knows and keeps track of who is in the Party, how they rank, where their authority extends, and so on, and so forth.

From this perspective, the reluctance in Hong Kong to even ask basic questions about the Communist Party looks increasingly odd as we draw closer to China. It is an open secret, of course, that the Communist Party does united front work in Hong Kong, and that it is led locally by the Hong Kong and Macao Work Committee operating out of the Xinhua News Agency. It is not plausible to believe the Communist Party will wither away in Hong Kong after 1997, satisfied that its work is done. Every government everywhere seeks to exercise influence over the actions and opinions of the people under its sway, and every government always will. What should concern us are the details of how the Communist Party plans to do its work here, and yet we are still struggling to acknowledge the basic fact that it is here at all.

The most dire speculation is that the Communist Party will operate here much as it does in China. Like the body of the Chinese Constitution, the Basic Law does not mention the Communist Party, and the Basic Law may similarly be

taken merely to embody the Party's basic policies as they relate to Hong Kong, and as such to remain ultimately subject to the Communist Party. Does this mean, Mr President, that the Communist Party will permeate the Hong Kong Special Administrative Region (SAR) as it does the Chinese Government? Will there be a First Party Secretary for Hong Kong whose office parallels the Chief Executive's, and from whom the Chief Executive will take directions? Such political arrangements would be disastrous for Hong Kong. They would be as fundamentally subversive of our way of life as would the introduction here of a full-blown, communist economic system.

Last year, the Chinese Foreign Minister, QIAN Qichen, finally made a few remarks to answer such questions. If he is prepared to answer them, I do not see why Members and members of the public are fearful of asking for clarification. Mr President, this is what he said. He said that after 1997, the Communist Party will not work here in the same way it does on the Mainland, and he added specifically that it will not set up a parallel structure to the SAR. These reassurances are welcome and they are helpful. But he then went on to say that the Party will not operate openly in the SAR. Although helpful, this answer is not helpful enough. It is not helpful enough as a statement of policy. It is not good enough merely to offer a few words of bland reassurance, and then to step back behind the old curtain of silence. We need to know, if the Communist Party will operate here as it does in China, and how if it does not, then how it would, operate?

I hope Members of this Council will join me in asking for more details and this is essentially the purpose of today's debate.

Some questions of interest to us should be: What will happen to the Hong Kong and Macao Work Committee? What will its functions be? Who is on it and when does it meet?

Will Communist Party members participate in the SAR Government? Will Communist Party members serve on the Executive Council, or as advisers to the Chief Executive? If so, who are they? How will they balance their duties and responsibilities as Party members and as Hong Kong public officers, and where will their accountability lie?

What will the Communist Party's involvement be in elections to public office in the SAR?

Who will report to the Hong Kong Leading Small Group in Beijing, the top Party organ with a membership that overlaps in part with the Politburo, and which has ultimate responsibility for setting Chinese policy on Hong Kong?

Of course, Mr President, the answers to such questions would not end public discussion of the Party's role in Hong Kong. Rather, they would represent the beginning of that discussion, which is absolutely necessary if Hong Kong is to be run openly, accountably, and well. The formula, "one country, two systems" is a challenge as much as it is a promise. It is not only Hong Kong people who must grapple with that challenge. The Chinese leadership, and the Communist Party itself will need to exercise a great deal of imagination and ingenuity to find a path that serves the needs of China without erasing the very differences that make Hong Kong so valuable as a part of China in the first place.

The public discussion prompted by fuller information about the Party would no doubt be loud and vigorous. I really hope, Mr President, this would take place. That is as it should be in a free, open and democratically-spirited society, which is what Hong Kong is, and what we aspire to become even more as a highly autonomous SAR under the Basic Law. We should remind the Chinese Government that, in a society such as ours, speech is always the cure, and never the disease; so, please, please, talk to us.

Mr President, I beg to move.

Question on the motion proposed.

MR ALLEN LEE (in Cantonese): Mr President, on 26 April 1995, the Honourable Miss Christine LOH proposed a similar debate about the role of the Chinese Communist Party (CCP) in Hong Kong. My response then was that everybody knows the ruling party in mainland China is the CCP and its agency in Hong Kong is the Xinhua News Agency. We also know perfectly well of the existence of the Hong Kong and Macao Work Committee.

Today, Miss Christine LOH proposed this debate about the role of the CCP in the Hong Kong Special Administrative Region (SAR) once again, with special reference to the liaison between the CCP and the Chief Executive. The Chief Executive has now been selected. If we are to really implement the principle of "one country, two systems", the Chief Executive should be responsible for the

governing of Hong Kong. This is clearly stated in the Basic Law. Naturally, the Chief Executive is accountable to China. Therefore I am not at all surprised if the Chief Executive maintains channels of liaison with the ruling party in China. We see Mr TUNG Chee-hwa going to Beijing all the time, because the Basic Law provides that the appointment of principle officials must be endorsed by Beijing. Therefore, same as two years ago, I fail to understand why Miss Christine LOH should propose this debate about the role of the CCP in the SAR.

Everybody knows that the CCP exists in Hong Kong and so do organizations of the Kuomintang. Can the matter be solved by blaming the Hong Kong Government for not dealing with the problem? I do not think so. What is important is whether the Chief Executive will uphold Hong Kong's interests and fulfil his commitment to Hong Kong when he assumes his post. This will of course depend on the future performance of Mr TUNG Chee-hwa. However, if you talk about the relationship and liaison between Mr TUNG and the CCP, I would be very much surprised if Mr TUNG does not maintain any channel of communication or liaison with the ruling party in China, since this is unavoidable in his work of governing Hong Kong.

Will the CCP rule over Hong Kong? If it did, it would have to go through the process of election. If the CCP should rule over Hong Kong, there would not be any need to talk about "one country, two systems" or implement the Sino-British Joint Declaration or the Basic Law. Since Hong Kong will become a part of China, I think these motions are not very meaningful. I said in the last debate that Hong Kong people have a certain perception about the CCP because of its history. However, China today is very different from China during the 1950s and the 1960s. Therefore I think there is not much point in debating this. I think this kind of debate is just a debate to publicize one's stance.

DR ANTHONY CHEUNG (in Cantonese): Mr President, on behalf of the Democratic Party, I would like to speak on the Honourable Miss Christine LOH's motion. The motion moved by Miss LOH today is a motion on a similar topic moved for the second time within these two years. In this motion as well as her previous one, it urges the Hong Kong Government to clarify or to seek clarification from the Chinese Government about how the Communist Party will be represented in the Hong Kong Special Administrative Region (SAR). In fact, activities of the Communist Party in Hong Kong have all along been existing. It is unrealistic to avoid discussing this issue by turning a deaf ear to it. It should adopt a pragmatic attitude in such a way that the activities of the

Communist Party in Hong Kong after the handover be dealt with in a fair way.

Under the constitution of the People's Republic of China, it is a constitutional fact that the Chinese Communist Party is the ruling party of China. But due to ultra-left policies of the Chinese Communist Party, many Hong Kong people have a strong objection to the Communist Party for they fear that it will extend its web to Hong Kong and interfere in Hong Kong's affairs after the handover. It is normal for the public to have such worries. I believe the idea of "one country, two systems" is devised by the Chinese Government in response to the misgivings of the Hong Kong people. Under this principle, it has undertaken not to impose the systems which are prevailing in China on Hong Kong in order to pacify Hong Kong people. From the perspective of Hong Kong people, we do not wish to see any direct involvement in Hong Kong's internal affairs by the Communist Party despite its status as the ruling party of China. We do not want to see its direct involvement in Hong Kong's internal affairs. There is no stipulation in the Basic Law about the role of the Communist Party in the political system or governance of Hong Kong.

Under the Basic Law, the Central People's Government shall be responsible for the defence and foreign affairs of the SAR. The Central Government, therefore, will have a certain role to play in the future SAR. According to the Basic Law, the Central Government will also establish an office in Hong Kong to deal with foreign affairs. Besides, departments of the Central Government, provinces, autonomous regions, or municipalities directly under the Central Government can set up offices in the SAR with the consent of the SAR Government and they have to abide by the laws of the Region. Most of the officials from the Central Government and officials from other departments are members of the Communist Party. It seems that exchanges between these officials and the SAR Government as well as members of the public in Hong Kong are inevitable. It is crucial that they will conduct their business in accordance with their official capacities or the offices they hold rather than show off their status as members of the Communist Party. At all events, they have to abide by the laws of Hong Kong and run their business in compliance with the laws. They should not expect any special respect or preferential treatment to be given in Hong Kong just because of their status as members of the Communist Party.

From a realistic point of view, the operation of the Chinese Communist Party started long time ago and has also existed for a long time. Hong Kong people all know the operation and the nature of the New China News Agency,

which has been analyzed in the memoirs of some people. All along, the Chinese Communist Party has been operating in the form of an underground party in Hong Kong and its activities are not conducted openly because Hong Kong is under the British governance. Moreover, quite a lot of Hong Kong people are on guard against and even harbour scruples towards the Chinese Communist Party. In the past, the Chinese Government did not want to bring any impact on the governance of the Hong Kong Government or to cause any panic among the Hong Kong people. It, therefore, conducted its activities in a low profile or in the names of other organizations.

After the handover in 1997, the operation of the Central Government and relevant Chinese departments in Hong Kong will become a hard fact. How should the activities of the Chinese Communist Party be dealt with?

First of all, the Democratic Party is of the opinion that as the SAR is part of China, we cannot see the rationale of forbidding the operation of the Chinese Communist Party in Hong Kong. On the contrary, the higher the transparency of its activities in Hong Kong the better. However, under the principle of "one country, two systems", Hong Kong people do not want to see that the Chinese Communist Party behaves as if it were the sovereign descending in Hong Kong. The Hong Kong people require that the Chinese Communist Party respect the system of the SAR and that it will not gain privileges here or act as if it were the super-sovereign in Hong Kong by assuming a high profile of the ruling party of China. Neither will Hong Kong people wish to see that the systems in China are imposed on them or the interference of the Communist Party in the internal administration of the SAR.

Secondly, the Chinese Communist Party should abide by the laws even if it conducts its activities in an open manner. It should, of course, observe the legal requirements laid down in Hong Kong and operate in a lawful way like any other political parties.

I do not think that there is anyone who will believe that the Chinese Communist Party will not operate in Hong Kong. After the handover in 1997, the activities of the Communist Party will increase rather than decrease. The focus, however, is not on a speculation whether it will operate or not, but on whether it will be under the regulation of the laws of Hong Kong. One more point is added in the wordings of Miss LOH's motion today. She urges the Government to seek clarification about the channels of liaison it (the Communist

Party) will maintain with the Government of the SAR and with the Chief Executive. In my opinion, this part has assumed that a liaison channel will come into existence between the Chief Executive and the SAR Government and the Communist Party. We do not see why such a liaison channel should be emphasized because the party-government relationship, that is, the Communist Party leading the government, does not exist in the SAR.

As regards the motive of Miss Christine LOH's motion, if the Chinese Government can clarify the operation of the Chinese Communist Party in Hong Kong and dispel our misgivings, this will certainly help relieve Hong Kong people's worries. This will be a positive move.

Mr President, based on the above rationale, the Democratic Party supports Miss Christine LOH's motion.

MR IP KWOK-HIM (in Cantonese): Mr President, I have gone over records of past meetings. Before I became a Member of this Council, a motion debate on a similar topic took place in this Chamber and was voted down by former Members. So, I do not want to spend a lot of time to talk about the issue here. I will only concisely make clear to Members the stance and attitude of the Democratic Alliance for the Betterment of Hong Kong (DAB) on the matter.

It has been the view of the DAB that after China resumes its sovereignty over Hong Kong on 1 July 1997, the policy of "one country, two systems" and "Hong Kong people ruling Hong Kong with a high degree of autonomy" will be implemented in Hong Kong. This is a policy laid down by the Chinese Government for the administration of Hong Kong after it resumes the exercise of sovereignty over it. The policy is supported by the Chinese Communist Party (CCP). It was reiterated by the General Secretary of the CCP, JIANG Zhemin, who is also the present President of the People's Republic of China, when he recently attended a mourning service for DENG Xiaoping. From 1 July 1997 onwards, any political party in China, even the CCP, the ruling party of China, will not and should not be given any special status. When they want to conduct activities in the Hong Kong Special Administrative Region (SAR) (if they do), they must abide by the Basic Law and the laws of the SAR.

Article 22 of the Basic Law clearly stipulates that all offices set up in the Hong Kong Special Administrative Region by departments of the Central

Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region. Therefore, the question has been given a clear answer in the Basic Law. Political parties in China conducting activities in Hong Kong will not be given any special status, just like other political parties in Hong Kong, which are not given any special status. Hence, it is not necessary to request the Chinese Government or the Chief Executive of the SAR to give clarifications.

Moreover, I would like to know whether the Honourable Miss Christine LOH has received information relating to any public activities Chinese political parties intend to carry out in Hong Kong. If she has, please tell the meeting; otherwise, to hold discussions on this topic now will, I suppose, only confuse the public. There is nothing to worry about. So I would advise that Miss LOH should not worry about troubles out of her own imagination.

Mr President, with these remarks, I oppose the motion put forward by Miss Christine LOH.

MR YUM SIN-LING (in Cantonese): Mr President, as regards this motion today, we can only ask questions. We shall not be able to find the answers, and nobody will answer, either. Therefore, I shall merely raise the queries in the mind of many people. There are 10 of them in total. I am only asking and not seeking any answer.

1. Will the Chinese Government rule Hong Kong through its national administrative system only, and will not influence the policy of the Hong Kong Special Administrative Region (SAR) through its party system?
2. When a member of the Chinese Communist Party (CCP) comes to stay or sojourn for a short while in Hong Kong, will he be brought into the Hong Kong organization of the CCP, or will he be retained in the organization of the original unit in China?
3. Will there be channels for the incumbent Hong Kong civil servants to join the CCP in the future? If so, should they join openly or secretly?

4. Will the CCP set up Party organizations in the three-tier councils in Hong Kong?
5. Will there be channels for the various parties of Hong Kong to communicate with the CCP organizations in Hong Kong?
6. What will the SAR Government do if a person applies for a post in the SAR Government and voluntarily attaches or produces his CCP membership identification?
7. Should the SAR Police inquire the Hong Kong organizations of the CCP for information when it deals with cases in which the people involved are members of the CCP?
8. What will the SAR Immigration Department do with the recommendation letter or guaranty issued by units or local Party committees in China when it deals with certain cases at its discretion?
9. Should the Party committee in the Hong Kong garrison of the People's Liberation Army make known to the public his identity? Should it establish a working relationship with the Secretary for Security with regard to public order (that is, issues not concerning national defence)?
10. Should members of the SAR judiciary be ordered explicitly not to be a member of any political party (including the CCP)?

Mr President, I hereby raise 10 questions just for the sake of records, but not answers. Thank you.

MR DAVID CHU: Mr President, I can allay the Honourable Miss Christine LOH's private fears about the Chinese Communist Party exerting influence here. I can also assure her that Hong Kong will remain an open — and tolerant — city.

We have in Hong Kong permanent residents who are Americans. They may be members of the American Democratic and Republican parties. We have

permanent residents who are British. They may belong to the Conservative and Labour parties. We have permanent residents who are Japanese. They could be members of the Liberal Democratic Party. So what? Not one of these individuals represents his party when he is in Hong Kong. We do not insist that they declare their party connections in our society.

The Communist Party is the ruling party of China. There is nothing inherently right or wrong about this. We also have Chinese Communist Party members in Hong Kong. Again, so what? We should not discriminate. These people — like the Americans, the British and the Japanese — are also free to associate within the law.

The local Communist Party members will not be involved in Hong Kong politics in their party capacity. To do otherwise would be a breach of the "one country, two systems" principle. This the Chinese Central Government does not permit. This the Basic Law does not allow.

Our Government does not deal with the Chinese Communist Party neither here nor on the Mainland. We work with the Chinese Central Government on national issues. We work with the Guangdong Government on regional issues. This is the same situation as when we have a trade disagreement with the United States. We do not resolve this dispute with the ruling Democratic Party there. We settle it with the American Federal Government.

Miss LOH in a recent press article says she is afraid that the Chief Executive may take the Communist Party's advice. Well, as far as I know, he has been taking advice from all kinds of people including me. I doubt whether the Chief Executive is aware of my former political ties in the States or now. I believe he is a man of enough wisdom to judge the advice on its quality and not its source.

Is this motion another political posture, one of many we have had in recent years? The only other explanation I can think of is someone is trying hard to scare or confuse the public. I hope I am wrong on both counts. Instead of wasting our time, we should be focusing on real issues which affect the Hong Kong people. Thank you, Mr President.

MR MARTIN LEE (in Cantonese): Mr President, I would like to tell the

Honourable Miss Christine LOH that I highly respect her for her moving this motion debate time and again although she is bound to lose. I can also predict that not many Members will speak on this subject and the Members who speak today are not communists, who will never reveal themselves or do anything themselves. In the past, I read martial-art novels, which I have no time to read now. In those stories, the best swordsman is the one who bears a sword not in hand but at heart, and dubbed the "first sword under the sky". Mr President, the Communist Party can be described as the first party in the world because it is the largest ruling party in the world. Moreover, it does not have to go through election. Unlike the Governments of Britain, Germany and France, which have to worry about the forthcoming elections. The Communist Party has no such fear.

As a matter of fact, I do not know much about the Communist Party. Back in 1987, however, I already knew that the Communist Party was very powerful. In 1987, I was a member of the Basic Law Drafting Committee. Mr SZETO Wah and I were members of the political subgroup under the Committee. In the beginning of 1987, I, at a subgroup meeting, proposed to discuss the status of the political parties in the future political system of Hong Kong. Suddenly, the Chairman of the meeting said that it was not possible to discuss this issue. I asked why. He said that it was not on the agenda. "Is it not kidding?" I said, "Where is the agenda? We have had so many meetings without any agenda." He assured that this issue could not be discussed because there was no agenda. As a result, no discussion on the topic was held on that day. In mid July 1987, four members of the Basic Law Drafting Committee on the Chinese side, Mr LU Ping, Mr SHAO Tianren, Mr XIAO Weiyun and Mr WANG Shuwen came to Hong Kong to have exchanges with the Consultative Committee members. During the exchanges, they said that the Drafting Committee would study the issue concerning the political parties in Hong Kong. I was delighted on hearing that. On 28 September 1987, Mr SZETO Wah and I wrote a letter to the two convenors, Mr Louis CHA and Mr XIAO Weiyun in the hope that the position of political parties would be discussed at the forthcoming meeting of the Ad Hoc Group. At that time, I stressed that it was impossible for the Hong Kong people to have no political parties because elections would lead to the formation of political parties. I also pointed out that should the Communist Party operate in Hong Kong, I wished it would reveal itself and would not hide itself just like the "first sword under the sky" — I did not borrow this phrase at that time — because it would be very difficult for us to deal with an invisible political party. So I stressed that I did not mean that provisions concerning the political parties had to be added in the Basic Law. In my letter, I raised three proposals. In my

first proposal, I suggested that provisions should be added in the Basic Law to stipulate that no political parties would be allowed in the future Hong Kong Special Administrative Region (SAR). In my second proposal, I suggested that political parties would be allowed in the future SAR but subject to limitations or legal restrictions. In my third proposal, I suggested that we would come to a consensus that no provision concerning political parties would be added in the Basic Law after discussion was held. In fact, I had tried to be flexible in handling this issue and put forth three proposals. It would be unreasonable to have no proposal on this issue at all. What I mean is that even though no proposal would be made, we should, at least, put it on our agenda for discussion.

In early October 1987, the political subgroup convened a meeting. I thought that the issue would be put on the agenda as I had given sufficient and adequate prior notice. But it was not what I thought. The convenor, on convening the meeting, told us that we had to discuss a question first because he had received my letter. He indicated that we had to decide whether this issue should be put on the agenda. Discussion then began. I remember a Hong Kong member opposed it. In fact, more than one member opposed it. All members opposed it except Mr SZETO Wah and me. One of the Hong Kong members, to my surprise, asked me: What was the relationship between political parties and our political subgroup? What was the relationship between political parties and the future SAR? He even said that we had better discuss Shakespeare. That was the first time I discovered that Shakespeare was equated with political parties. I do not know which party Shakespeare belonged to because I know very little about history. The above incident shows that it is impossible to discuss the issue. Mr President, I can say that this is unprecedented. Thereafter, no one mentioned it again. This is the only time where an issue which is clearly related to the Ad Hoc Group is not allowed to be discussed. At that time, I felt that the Communist Party was really powerful. You can feel that it is all around you and yet you cannot even talk about it.

Mr President, I earnestly hope that in future the Communist Party will reveal itself or operate openly so that in the City Forum or the Political Forum, one more party can join discussion with the Democratic Party, the Liberal Party, the Hong Kong Association for Democracy and People's Livelihood, the Democratic Alliance For the Betterment of Hong Kong and other parties. Perhaps a very big seat or a very big sofa should be put there for the representative of the Communist Party so that we can discuss with him. But now the biggest problem is that we do not have this opportunity. Although you know that it is here, what it has done and you know that the black hand is working behind the scene, yet you do not know where it comes from. So I emphasize once again that not many people will speak today. Nevertheless, Mr

President, I can predict that Miss Christine LOH's motion will be defeated again because no one can put up resistance against the first sword under the sky.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, the subject of today's debate reflects a very essential point, namely, that Hong Kong people are afraid of communists and that they have no confidence in the implementation of "one country, two systems" by the Chinese Government.

As everyone knows, the Chinese Communist Party (CCP) is an "overlord" above the Chinese constitution. All Government organizations, including legal and judicial departments, are an instrument of class dictatorship for the CCP. We do not have to go far back into history. After years of reform and open-door policy, communist China still ordered the army to bloodily suppress the democratic movement, and used draconian laws to track down or arrest people involved in the democratic movement. Against this historical background, it is understandable that Hong Kong people are afraid of communists.

Mr President, indeed Hong Kong people are worried about whether communist China will become an "overlord" of the future Hong Kong Special Administrative Region (SAR) and whether the future administrative and legislative authorities will be under the leadership of the communist party.

Moreover, will underground party members of communist China play the role of secret police, so that the CCP operates in the form of an underground party?

Whether the CCP will have to abide by the laws of the SAR when it operates in Hong Kong is another source of worries. When the CCP violates the law, will Hong Kong courts be able to try them?

The above questions are the worries at the back of the minds of Hong Kong people.

Although the Basic Law clearly states that the SAR enjoys a "high degree of autonomy" and the previous capitalist system and way of life shall remain unchanged, and the Honourable IP Kwok-him has said Mr QIAN Qichen stressed there would be "one country, two systems, a high degree of autonomy, and Hong Kong people ruling Hong Kong", we know from history that the CCP has always had the habit of not observing the law, and this nature of it has not changed over the years. So, even though the guarantee was made verbally or in black and

white, what is the use? How can Hong Kong people have faith in China?

After the death of DENG Xiaoping, people in power in communist China have been making promises about their determination to implement "one country, two systems". People are extremely sceptical about such behaviour. Will Hong Kong be able to enjoy "one country, two systems with a high degree of autonomy and Hong Kong people ruling Hong Kong"? We heard and saw too many unfulfilled promises in the past. As far as we are concerned, the promises cannot have any material effect.

If those insiders still urge us to spend more time reading the Basic Law, listening to the promises of the people in power in communist China, it is likely they do not understand the sentiments of Hong Kong people and are quite distant from them. I suggest these people go into the crowds, get to know the crowds and understand their sentiments and experience their worries.

Some may say people who pose such questions are using Hong Kong people's caution and fear against the CCP to advocate anti-Communist mentality. Such tactics are frequently employed by those who try to "rebel against China and create trouble for Hong Kong", with ulterior political motives. For those who think this way, I want to share with them the following political statement:

"One needs to reason to distinguish clearly between right and wrong. With justice on our side, we are bold and assured. However, we need to be patient in convincing others. Even though we think we are in the right, we should not preach whenever we feel like it. Even if reason is on our side, we need to forgive others. The basis on which right is distinguished from wrong includes facts, legality and morality."

People who attack those who represent public opinions are said to be patriots and persons who love Hong Kong. People who harm the democratic system of Hong Kong are said to be persons who guard the prosperity and stability of Hong Kong. Such people will not stand the test of time no matter how much they pretend to bewail the times and pity the people, or to carry out the true way on behalf of Heaven. Time will make us distinguish between right and wrong and between truth and falsehood so that falsehood will show itself eventually.

To be convincing, one must stick to facts and reason. To alleviate the fears of others, one should let others see the facts and past history. Empty words are never helpful. By proposing the motion debate, the Honourable Miss

Christine LOH is exposing the mentality and worries of many Hong Kong people.

Mr President, I so submit.

PRESIDENT (in Cantonese): Miss Christine LOH, you are now entitled to reply and you have three minutes 32 seconds out of your original 15 minutes.

MISS CHRISTINE LOH: Mr President, the room is empty, the silence is deafening. But as you well know, Mr President, silence can also be very eloquent. However, you will remember, Mr President, the debate two years ago. Since then I think we have moved along a little bit. At least, there were no personal insults laid before me and there have been no hysterical outbursts. So, perhaps we have made some progress.

I just wish to remind Members that I am not the only person who is bringing up the issue of the Communist Party. Mr QIAN Qichen himself has made a few comments in public last year, and I quoted that in my speech. Our Chief Executive (Designate), Mr TUNG Chee-hwa, during his selection process, during his campaign, also made some comments, albeit very elliptical, about the Communist Party's future role in Hong Kong.

Like with the earlier debate today that was moved by Dr the Honourable John TSE, the people who are against my raising this motion seem to presume that I ask these questions in order to cause trouble. Perhaps if there was a National People's Congress member who were asking exactly the same question in some other forum, or perhaps if there were a member of the Preparatory Committee asking similar questions in the Preparatory Committee, perhaps those people who are upset with me would be applauding their efforts. So, why do we just want to shoot the piano player? I am just asking some objective questions.

The Honourable Allen LEE said the most natural thing, and I agree with him, is of course for the Chief Executive (Designate) to maintain communication channels with the ruling party in China. Of course, I agree entirely. Perhaps he is less curious than I am. He is simply just ready to accept that, well, let us just leave it to the Chief Executive. I would just like to know some details. I do not presume anything is wrong. I would just like to have some assurance that everything is right. I am very curious, and have been very curious about

government links between our Administration and Whitehall. I am very curious about how the Hong Kong Government itself operates, because I want to know that those procedures and what they do, that everything is in order, not that I wish to destabilize.

As for the Honourable IP Kwok-him's comments, well, I do not think I need to answer them. I think my honourable friend, Mr YUM Sin-ling, posed a whole lot of quite objective questions that Mr IP Kwok-him might like to ponder. And as for Mr David CHU, my good friend, he also chose not to answer the questions I am raising.

I never said there is anything inherently right or wrong with the Chinese Communist Party. I just want clarification from Chinese officials about the role and the plans of the Communist Party. So, do not take me wrong. You could vote for me and not get into trouble. Thank you.

PRESIDENT (in Cantonese): I am sorry, Mr NGAI Siu-kit. The speech of Miss Christine LOH was the final reply. You might have had a chance if she had not spoken, but it is too late now.

Question on the motion put.

Voice vote taken.

PRESIDENT (in Cantonese): The Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Miss Christine LOH as set out in the Order Paper be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 25 votes in favour of the motion and 25 against it.

PRESIDENT (in Cantonese): In accordance with the rule laid down by Speaker DENISON in 1867 as well as my previous rulings, I now exercise my deciding vote in the negative in the absence of a majority.

THE PRESIDENT therefore declared that the motion was negatived.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 12 March 1997.

Adjourned accordingly at five minutes past Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Enduring Powers of Attorney Bill, Powers of Attorney (Amendment) Bill 1996, Fire Safety (Commercial Premises) Bill and the Auxiliary Forces Pensions (Miscellaneous Amendments) Bill 1997, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.