

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 24 April 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 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 SZETO WAH

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.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

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

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE CHENG YIU-TONG

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.

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE MARGARET NG

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

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

MEMBERS ABSENT:

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

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

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

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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE PAUL CHENG MING-FUN

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE NGAN KAM-CHUEN

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE LAWRENCE YUM SIN-LING

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 GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR TRANSPORT

MR NICHOLAS NG WING-FUI, J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

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

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

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

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

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

MRS YAU TSANG KA-LAI, CARRIE, J.P.
SECRETARY FOR SECURITY

CLERK IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

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

PRESIDENT (in Cantonese): Will Members please remain standing for the Governor?

CLERK (in Cantonese): The Governor of Hong Kong.

PRESIDENT (in Cantonese): The Governor will answer questions on the four topics of which Members have been notified. A Member who has asked a question and received a reply may, for the purpose of seeking elucidation only, ask a short follow-up question. Show of hands, please. The Honourable IP Kwok-him.

MR IP KWOK-HIM (in Cantonese): *Mr Governor, as it is a matter of wide concern among the people of Hong Kong, I would like to ask a question on the issue of Hong Kong permanent residents and the right of abode. In fact, my colleagues in this Council have been following up on this matter in the relevant panel once every month. According to the information available to us, we are aware that the Chinese and the British sides have been studying this matter at the Expert Group level and will brief us on the progress as soon as possible. Yet while this matter is still under discussion, we all believe that the people of Hong Kong must be well informed of whether they can retain their rights as Hong Kong permanent residents after 1997. Unfortunately, up to the present, the Chinese and the British sides have not yet reached a consensus on this matter. Hence, the Chinese side has indicated that the enactment of legislation will be left to the Provisional Legislative Council. It is learnt that at first the Hong Kong Government has considered consulting the public by way of a White Bill. Then why does the Government not stick to the initial plan of consulting the public by way of a White Bill, so as to enable the public to have a better understanding of the current development with a view to alleviating their worry about the future?*

GOVERNOR: I am glad the Honourable Member has asked that question because it gives us the opportunity to get one or two facts on the record. I listened to an Honourable Member, who is, I think, a member of the Special Administrative Region (SAR) Executive Council (Designate), on the radio this morning, opining on this issue and I welcome this opportunity of informing him

what the facts are, as well as answering the question.

First of all, I would like to make it plain that there is no White Bill or Blue Bill in draft. No White Bill or Blue Bill because there is not, alas as yet, a consensus on all the issues which we would need to cover in legislation. We have got a consensus on about 95% of those issues, but there still is not agreement on a number of issues, such as the position of adopted children, such as the way in which the children of ethnic minorities would claim right of abode after 1997, such as the position of the children of recent immigrants from China and how they would claim right of abode, whether it would come automatically on birth.

I think it is a pity that we have not got a consensus and I think it is a pity that we did not get a consensus way back last Autumn when I think that it was well within our grasp. Why no consensus? Not, I think, because of any fundamental differences over right of abode, but because I think some Chinese officials saw the right of abode issue as a way of trying to provide legitimization for the provisional legislature. I do not think these arguments have had anything to do, or nothing substantial to do, with the right of abode.

Despite that, we have covered about 95% of the ground. Is it the case that the position we have taken up results in people in Hong Kong, by and large, not knowing what their rights are or where they stand? No, it is not. We have set out, for example, in this pamphlet very clearly what there is a consensus on so far — the 95% of issues on which there is a consensus, and our Immigration Department has a hotline answering people's questions on all the issues covered in here every day. So, the fact that we have declined to do what we have been pressed to do does not mean that people are not aware of what has been agreed so far.

Secondly, is it the case that legislation is essential before 1 July? No, it is not the case. It would have been desirable if we could have got legislation by now. I would have liked us to have been able to legislate on this issue as we did on the Court of Final Appeal through this constitutional body. But even though that would have been desirable, it is not essential. It is not essential because Article 24 of the Basic Law provides the Director of Immigration with the legal framework within which she can take decisions after 1 July, and in our judgment, it will not be necessary to have legislation on right of abode on the statute book for some weeks after 1 July.

Let me just remind the Legislative Council what the Attorney General has said on this issue. "On 1 July 1997 the Basic Law of the Hong Kong SAR will enter into force. The right of abode of permanent residents of the region will be provided for under Article 24 of the Basic Law." And he goes on. "Before domestic legislation is enacted the Director of Immigration can make her decisions in right of abode matters on the basis of the provisions of Article 24 of the Basic Law."

Next, what are the consequences of the provisional legislature trying to legislate on these matters? The consequences have been spelt out very clearly. They were spelt out, for example, once again by the Attorney General. "If legislation to amend the Immigration Ordinance is enacted in a manner which raises a doubt as to the validity of the amending legislation, then it is inevitable that that point will be taken in any proceedings before a tribunal or court in which a person's status as a permanent resident is in issue. Whatever the outcome of such proceedings until the proceedings and any appeal are finally disposed of, the state of the law in the vital area of immigration will be uncertain. From past experience, we know that a significant proportion of judicial review cases each year relate to immigration matters."

In the last two years, there have been 200, or just over 200, legal challenges to the Director of Immigration and the Secretary for Security. In the same period, I think I am right in saying, over 450 statutory petitions to the Governor in Council. This is a litigious area, and if there is any doubt about the basis of legislation that will lead to more action in the courts.

If there are some Honourable Members or others who doubt the legal advice of the Attorney General, they might listen to what the Chairman of the Bar Association has said on exactly the same subject. "The difficulty about the provisional legislature passing a law relating to right of abode is that this is a sort of issue that you often attract litigation, and to have it passed by the provisional legislature will add to the controversy and to the uncertainty."

So, legislation is not required before 1 July and if legislation is put through by the provisional legislature, then it is a pound to a penny that will attract legal challenges after 1 July.

In those circumstances, we made what I note one newspaper called "a generous compromise offer" that we would provide a Blue Bill that would attempt to give the community even greater certainty than exists already, and that the legislature of the day would legislate on that from 1 July. That was the "generous compromise" that we put. It is still on the table. I very much hope it will be taken up.

I would just want to underline one point. We do not want unnecessary arguments at this stage in the transition, but for us there is one fundamental principle which we are not going to move away from and, that is, that the spine of this society, that what distinguishes this society more than anything else, is the rule of law and we are not going to do anything now or in the future which, in our judgment, undermines or calls into question the rule of law.

MR IP KWOK-HIM (in Cantonese): *After listening to what the Governor said, I am shocked once again. (Laughter) It dawned on me that the Government neither published a White Bill for consultation nor addressed expeditiously the concern of the people of Hong Kong, simply because the Governor believed that the Chinese side would use this as a pretext to strengthen the position of the provisional legislature as a legitimate body. With such a thought in his mind, the Governor has not provided the long-awaited answer to the question that nags the people of Hong Kong as well as my colleagues in this Council. As I kept on listening, the Governor said that presently there was no White Bill but then he said that a Blue Bill would do. So, is there, or is there not a Bill? After hearing what the Governor said, I do not understand why there is not one. Under such circumstances, he was just finding a way out. He also claimed that it was not essential to have the bill before 1 July 1997 and things could be sorted out by administrative measures. If that was so, the Government need not discuss these issues with us in the Legislative Council Panel on Security. Instead, it could solve the problem directly by administrative measures. Mr Governor, will the Government consider following the original agenda by tabling the White Bill to consult the public, thus enabling them to have a grasp of the real situation? Perhaps Mr Governor thinks that there is no big deal. For those Hong Kong people who are living abroad, having right of abode in foreign countries or holding foreign passports, however, this is the answer they want most to know. A lot of people asked the same question at the consultative meetings I convened.*

They want to have a clear understanding of the matter; they want early enactment of the relevant legislation for them to go by.

GOVERNOR: I answered the Honourable gentleman's question extremely fully. I do not think that he has raised any additional points that I did not cover in my first answer in what he has just said. But I am sure that if he reads my answer afterwards, he will find it contains all the information to answer his second group of questions, which appeared to me to be identical to the first lot.

PRESIDENT (in Cantonese): Mr Eric LI.

MR ERIC LI: *Mr Governor, my question touches on both human rights and the right of abode and the star person in question is none other than the Commissioner of Police himself. I am of course referring to the right of the Commissioner to reside in the government quarter in breach of the double housing benefit rule.*

This is a subject matter of the Public Accounts Committee (PAC) Report No. 27 in which the PAC is unanimous in supporting the Director of Audit's finding that the double benefit rules prescribed by the Executive Council have been breached. We were also seeking for a ruling or a more authoritative statement from the Executive Council. Now, the Committee is surprised to hear the reply of the Chief Secretary yesterday when she introduced a Government Minute in response to the PAC Report concerned. The Chief Secretary is, of course, saying that she will do exactly nothing.

Now, the question is the PAC Report and all the arguments are now in the public forum. Can you still let the Chief Secretary get away with a no-action answer, and with the Executive Council not even taking a decision in the matter, and be accountable to the public openly and directly?

GOVERNOR: I do not think that the expression "get away with" is entirely appropriate when talking about the Chief Secretary. It is certainly not an expression I would dare to use in the company of the Chief Secretary and I am surprised at the Honourable gentleman's audacity.

I do not have anything to add to what the Chief Secretary has said but I will, in view of the fact that the Honourable gentleman has raised it again, of course write to him subsequently about it after having had a word with the Chief

Secretary. But at present I do not have anything to add.

Can I just add one point as a footnote? It is entirely proper for the PAC of a legislature like this to concern itself with the minutiae of public spending and the work that is done in this area is one of the things that keeps the Government of Hong Kong clean and, I hope, competent. So, I in no way criticize what the PAC have concerned themselves with. The only point I wanted to add was that I hope that this controversy will not in any way be thought by some to tarnish the reputation or image of the Commissioner of Police who is a very distinguished public servant, one of the finest heads of our Police Force that this community has had, and I think that the community has every reason to be proud of him and proud of his record.

MR ERIC LI: *Mr President, I certainly concur with the last remark of the Governor, and if the Governor would care to look at the Report there is no direct criticism directed at the Commissioner of Police or his integrity in that sort of manner. But I think the PAC should be fearless and forthright*

GOVERNOR: Absolutely.

MR ERIC LI: *Just as we would expect the Chief Secretary and civil servants in putting a point through when a matter of public policy is being placed under controversy. We are concurring with your own official, Mr Governor, the Director of Audit in that case, so it is not entirely a matter between the Legislative Council and the Government. I think there is an independent auditor who has expressed that view too.*

I am directed by the full Committee this afternoon to write directly to the Executive Council and the Standing Committee on Directorate Salaries and Conditions of Service on the matter, and Mr Governor, can I expect that you would direct both these bodies to give the public, and of course the PAC, a full reply stating the reason and the position of the matter?

GOVERNOR: First of all, I would not wish the PAC to be anything other than fearless and forthright, and I hope that those will be the watchwords that govern its behaviour for the foreseeable future.

Secondly, we shall look forward on the Executive Council to receiving the communication from the Honourable gentleman and responding to it suitably.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-Chung.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, I believe the Governor knows about the consultative paper that the Chief Executive's Office recently released, which is a document on civil liberties and social order and which is indeed "having a major retrogressive effect on human rights", and the official who is promoting the document happens to be an official seconded to the Chief Executive's Office with the Governor's approval. Prior to his secondment, this specific official has promoted on behalf of the Governor a more progressive piece of legislation, that is, the Hong Kong Bill of Rights Ordinance. In the run-up to the handover, many foreign journalists have come to Hong Kong. As such, not only the Hong Kong people, but also foreigners can clearly see the official is a "double-dealer" who contradicts himself within a very short period of time. Mr Governor, are you satisfied with the performance of this official who has been seconded to the Chief Executive's Office? Do you approve of his attitude? Recently, there has been rumour that the official will very likely introduce in future the consultative document in the provisional legislature. If that is really the case, then objectively, the legality of the provisional legislature will be established, which is in opposition to the policy upheld by Mr Governor all along. Mr Governor, how are you going to handle this problem? Will you tolerate this situation going on?*

GOVERNOR: When the Secretary concerned worked as a key member of my Administration, he worked extremely hard and competently and professionally in the interests of Hong Kong. He has a considerable reputation in our public service and I think that I can say without any reservation that I received from him great support which also displayed at every time considerable integrity.

I would never seek to put a public official like him in a position which could be awkward or embarrassing for him as a civil servant, and I hope that those with whom he is now working will behave in the same way. I think it is important that we avoid putting our excellent Civil Service in positions which can cause difficulties for them as public servants. The Civil Service in Hong Kong, independent, meritocratic, politically neutral, is one of the main reasons for Hong Kong's success and I think we should all be very careful not to do anything which affects the Civil Service adversely.

It is in the nature of, I suppose, our attempts to help an incoming Administration at this stage in the transition that there may from time to time be difficulties that individuals will find themselves in difficult positions. We should try to minimize those difficulties and those difficult positions. I hope that that will be borne in mind by some of those who have, in my view, wrong-headedly pressed us to help with the work of the provisional legislature — something for the reasons which I mentioned earlier, our concern about the rule of law, we would not of course do. But were we to do so, it would create far more of the sort of problems which the Honourable gentleman has alluded to.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, this is of course something we least wish to see. But unfortunately it is the case today in reality. It is also against my hope to see that our civil servants give people the impression of a "double-dealer", as this will deal a major blow to the future operation of the civil service system. Most unfortunately, this sad situation and unfavourable fact is unfolding before us. Mr Governor, how will you handle the situation if this particular civil servant is indeed going to brief the provisional legislature on the consultative document? Will you suspend the secondment arrangement?*

GOVERNOR: I very much hope that some of the concerns expressed by the Honourable gentleman and elsewhere will be borne in mind by the SAR Government Designate and those who lead it. It is important that the integrity and professionalism of Hong Kong's Civil Service remain unquestioned after 1

July as they are unquestioned today.

PRESIDENT (in Cantonese): Mr LAW Chi-kwong.

MR LAW CHI-KWONG (in Cantonese): *Mr President, at the Governor's Question Time on 27 February, the Governor has responded to my question on the influx of refugees. The Government provided us with some information then on its projection of the number of children who will have right of abode in Hong Kong under Article 24 of the Basic Law after 1 July. The Governor told us very clearly on that day that there was no sign indicating that an influx of refugees might take place. In March, however, we were informed that, when compared with that in December, the actual figure in January had increased by five to six times, and the figure for February had also been increasing. This has cast doubt on the credibility of the Government, and on its ability to handle the situation, as it appeared that the Governor was still not aware of the problem at the Governor's Question Time on 27 February. I very much wish to know if the Government has any plans in place to cope with this problem. Is the Government really serious about tackling the problem? Recently, there is suggestion that the Government should register those people who meet the requirement under Article 24 of the Basic Law, that is, those who are children of Hong Kong permanent residents born in Mainland China, so that it may examine their eligibility for the right of abode in Hong Kong. Mr Governor, what is your response to this suggestion?*

GOVERNOR: I think I am right in saying that a paper was presented to the relevant Legislative Council Panel this morning on this issue, and that paper, of course, gave some indications of the sort of steps that we are considering to take, and I do not think I could usefully add to that, save perhaps to make these two obvious points.

First of all, it is extremely important that people do not seek to jump the queue; do not seek to enter Hong Kong illegally. When they do so, difficult and unattractive as it is, there is only one thing which a responsible Government can do after the law has run its course. That we have done, and that we will continue to do, because not to take that action would send all the wrong signals across the border and would encourage more illegal immigration rather than the

reverse.

Secondly, knowing the entitlements that exist under the Basic Law, we have been trying for some time to minimize the problems which the SAR Government will face after 1 July by increasing the one-way permit quotas and, in particular, by trying to balance those quotas so that we absorb as many children as possible before 1 July as we can. We increased the quota, as you know, to 150 a day and took that increase into account in our planning of resources for the future, such as the provision of primary school and secondary school classes.

Now, for that quota to work effectively, it does require the assistance of the authorities in China. We have been discussing ideas for trying to make the system work better, for example, by making it more transparent so that parents could know how long they were likely to have to wait before their children could come into Hong Kong. There are things like that which I think we will perhaps need to implement. But what is essential is that we should have the assistance, the full assistance of the authorities in China, in making the system work.

MR LAW CHI-KWONG (in Cantonese): *Mr President, just now the Governor has not responded to the first part of my question. Perhaps he does not wish to mention again the fact as to whether the information he provided to this Council at the Governor's Question Time on 27 February, had totally underestimated the situation. Members who were present on that day may still recall that I expressed grave doubts as to whether the promotion work undertaken by the Hong Kong Government would be more effective than the words spread by those "snakeheads". The Government indicates that it will continue its promotion work in this aspect, but I still believe the rumours spread by "snakeheads" will be more effective than the publicity of the Hong Kong Government. Does the Government have any better ways in its promotion efforts? Following the meeting held on 27 February, the increase in March was even higher, with the number of illegal immigrants amounting to over 600. Obviously, the decrease in the number of illegal immigrants who surrender themselves to the authorities does not necessarily mean that there is a decline in the number of illegal immigrants. I wonder if the Government has any more resolute measures.*

GOVERNOR: Well, I am prepared to concede that my predictive capacities

were not as extensive as the Honourable gentleman's. But the one message it seems to me important to send out clearly in order to reduce the attractiveness, or so-called attractiveness, of whatever offers snakeheads offer, is that Hong Kong is going to continue to police its immigration regulations vigorously.

If we take actions which make it look as though the rumours of amnesties or of slackening in the rigour of our procedures may have some basis in fact, if we act in that sort of way, then it will play into the hands of the snakeheads. Every indication that the Government may change its mind inevitably would condemn more children to the dangers of the snakehead operations and that is why we have to be absolutely firm as well as fair in trying to make this difficult policy stick.

PRESIDENT (in Cantonese): Miss Margaret NG.

MISS MARGARET NG: *Mr President, may I refer to the Governor's plan or proposal to publish a Blue Bill on 30 June on the right of abode? Mr President, would the Governor agree with me that the position of the Hong Kong Government about the provisional legislature's legitimacy before 1 July and after 1 July is exactly the same?*

Now, the Governor said that no legislation is necessary before 1 July. I think he said that it is alright to have legislation a few weeks after 1 July. But a few weeks after 1 July, the legislature of the day is still the provisional legislature and so, according to the Bar's view, the legitimacy of that legislature is still open to litigation. So, any legislation passed by it is still not completely safe.

In view of that, is there any reason why this Administration should not put the Blue Bill before this Council so that this Council, the legitimacy of which is not in doubt, can pass that law before 1 July to give certainty to the people of Hong Kong? Thank you, Mr President.

GOVERNOR: As I said in my earlier reply, I would very much have liked to have legislated on the right of abode as we legislated on the Court of Final Appeal with the approval of this Council and with the agreement of Chinese

officials. I think that would have been incomparably the best way forward.

And to suggest somehow that this legislature or this Government has no role in determining these matters is an absurdity. We are not talking about definitions of Chinese nationality. Definitions of Chinese nationality are matters, quite properly, for the National People's Congress. What we are talking about is the right of abode here in Hong Kong, and it is perfectly within the powers of this Council to deal with that issue. The fact that it was a legitimate issue in the Joint Liaison Group (JLG) is perhaps best recognized by the fact that it has been discussed in every JLG meeting since JLG XX, and I think has been mentioned in every communique of the JLG since JLG XX.

However, our proposals that we should legislate, even our proposals that we should legislate partly, for foreign nationals for example, were rejected by China. So, the position we find ourselves in today is one in which we could only go ahead with legislation at the risk of a, I imagine, major argument. And at this stage within a few weeks of the transition, I am anxious to have fewer arguments rather than more.

The situation would, I concede to the Honourable lady, be totally different if we were obliged to have legislation on the statute book before the transition as we are obliged to have legislation on the statute book before the public holidays on 1 and 2 July. But we are not obliged, for the reasons which I mentioned earlier — as regards Article 24 of the Basic Law. In those circumstances, the proposal, I think, that we have put which I still hope will be taken up, is to publish a White Bill but to delay legislation until the legislature of the day takes office on 1 July.

Now the Honourable lady raises the questions of legality of that operation. There are, I suppose, two sorts of legal challenge that people might make to the provisional legislature. The first one, which is of direct concern to me because I am at present head of the Hong Kong Administration, is a challenge against any legislation which appears on the statute book after 1 July at the end of a process which began on Saturday mornings in Shenzhen before 30 June, before 1 July. Now, every or most of the lawyers whom I have seen commenting on this seem to think that it is very likely that there will be legal challenges to legislation produced in that way.

The second area in which there may be legal challenges is, I imagine, in

the relationship between the provisional legislature and the commitments to a Legislative Council made in the Joint Declaration and the Basic Law. Those will continue, I would judge, to be questions of international argument, whatever happens here in Hong Kong. But those questions of legal validity, are not ones that I can, as it were, take up at this time. What I have to deal with are those matters which, as it were, affect Hong Kong while I am directly responsible for it. But I do not doubt, as the Honourable lady says, that there will be some who raise legal challenges to the provisional legislature, not because of what it has done before 30 June but for what it has done after 1 July.

MISS MARGARET NG: *Mr President, I hear the Governor say that he has no doubt in his mind that it is entirely proper and beneficial for this Council to enact on the right of abode before 1 July. In that case, can the Governor agree with me that we should go ahead with doing what we consider to be right in the hope that other people would agree with us, rather than avoid doing what is right and in fact do what might be a wrong in response to the thought that other people might also do a wrong?*

GOVERNOR: I am very keen on trying to do what is right. I am also keen on trying to minimize, rather than maximize, argument and controversy in an area where it is important that there is the maximum certainty and where it is important that there is the minimum legal challenge. I do not doubt that if we were to bring forward legislation before 30 June that itself would be a subject of very considerable controversy with Chinese officials, and I am not sure that would provide the sort of certainty that we require in this area.

What I am determined to do, even if I am not prepared to do as much as I would have liked to have done, what I am certainly not prepared to do is what I think is actually wrong, which is a slightly different way of putting it. I repeat, if it was remotely the case that we needed the legal certainty of something on the statute book before 30 June, I would have no doubt that we should go ahead. But that is not the legal advice that we have been given.

Now, let me make just one other point which I hope the Honourable lady will take in good part. One thing which I do not think would be helpful at this stage in the transition — it is not very helpful any time — is the politics of gesture. And let me put that in context. We were pressed by this Legislative Council, by a majority in this Legislative Council, many of whom I see here

today, to legislate on Basic Law Article 23, across the board. I have got, I sometimes come as Honourable Members know, armed with quotations and voting records. I have done it today, but there is a very nice lady who often waits for my arrival and departure at the Legislative Council Building who said to me as I came in today, "don't embarrass anyone". So, I am going to keep all those quotations and all those voting figures closed in the file.

On that issue of Basic Law Article 23, we were pressed very hard to legislate and when we could not get an agreement with Chinese officials we brought forward the legislation. And I now read what some people say about it, and some people's doubts about whether we will get it through or not. So, I am not madly keen on putting forward legislation which I cannot in all honesty recommend to the Executive Council or to others and which is likely to get through the Legislative Council.

PRESIDENT (in Cantonese): Mrs Elizabeth WONG.

MRS ELIZABETH WONG: *I would like to ask the Governor a question, not on the possibility of civil servants being schizophrenic or having split personalities in future, neither on the question which is a heavy-duty question on the legal challenge. But I would like to ask a question which touches on the rights of the child, human rights, civil liberties, all rolled into one. I am referring to the sad case of the illegal child, CHUNG Yeuk-lam, who was evicted from Hong Kong with her parents. Her mother was bound and hurt and wounded. And I do not know whether the Governor would agree with me that this eviction, which touches upon human compassion, is also something which is incompatible with Hong Kong, with our stand on civil liberties, our stand on human rights and our stand on the rights of the child, even though she is an illegal immigrant. Now, I would like to have the Governor's answer to that, please.*

GOVERNOR: The photographs which go around the world when one has to deal with a case like this, and it is the same in any society, give the worst sort of public relations, give the worst sort of impression of a society. We, of course, recognize that. But who is to blame? Many of us here are parents, and I think we have views about how as parents we would be prepared to act towards our children and how we would not be prepared to act. I am not sure, whatever the

bonds of affection and love, I would want to fill the corridor outside my flat or home with 30 journalists and television cameras. There for what reason? Of course reporting an important news matter, but there also to try to serve the interests of a parent who had presided, not for the first time, over something that was illegal.

I have to say my heart goes out to those people who have to make the policy work, who have to implement it. My heart goes out to the immigration officials, to the Social Welfare Department people, for whom the Honourable lady was once responsible with considerable distinction, having to make a policy like this effective. And why do they have to do it? For the reasons which we were discussing earlier. Because the moment that we back off, the moment that we are not prepared to see a policy through, is the moment when the snakeheads are able — the skinheads too! *(Laughter)* — is the moment when the snakeheads, with their skinhead views, let me put it that way, are able to increase the credibility across the border that there may be some changes in policy.

I have been through one or two of these cases before and the moment that you are not prepared to see a policy through which is right just because of the photographs, the moment you are not prepared to back up your own officials when they are doing a very difficult, unpleasant job, the moment you get to that situation, is the moment you are ceasing to provide any leadership in a community.

So, I take full responsibility for what has happened as the head of the Administration. I hope that we have learnt from our experiences this time and can avoid some of the problems which were created, but it is very difficult to carry off something like this in a way which cannot be used and manipulated. And I regret that that happened once again.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing.

MR TSANG KIN-SHING (in Cantonese): *Mr President, with only 68 days to go before the handover, I believe that I will not be able to see the Governor off on the day he leaves, as I will have to face new challenges and pressures; hence I will not be able to see him off on his final journey, the journey back to Britain.*

(Laughter)

Today, I do not want to discuss how he has broken his promises, and the fact that he has not yet been able to demolish the 13 Temporary Housing Areas; nor do I want to discuss the failure of the British Government to take legal action over the legality of the Provisional Legislative Council. I just want to offer some assistance to the illegal immigrant children. In fact, the problem of illegal immigrant children (II children) has been widely discussed these days. The Governor said that the problem was about snakeheads and publicity campaigns should be stepped up. But I think the problem is about II children rather than snakeheads. Who are the II children? They are the children of Hong Kong parents. As such, it will serve no useful purpose to conduct publicity campaigns on the Mainland, as it is the parents in Hong Kong who want their children to come here. So how can their parents make them come here? Out of the daily quota of 150 places, 66 are for children, but how are the 66 places allocated? Those places are not allocated by the authorities in Hong Kong. Well-to-do parents can afford to buy places for their children, while the other children will continue to be brought up in the Mainland. Children who are only two to three years old manage to come to Hong Kong because their parents can afford to buy the places. Those who cannot afford it will have to wait further, not knowing how long they are going to wait. If the Governor does not take urgent measures to tackle the problem before he leaves Hong Kong, parents who can afford it will be able to buy one-way permits for their children, whereas those who cannot afford it may subject their children to the perils of the seas on illegal journeys to Hong Kong, or to the risk of being thrown overboard by snakeheads when they are being chased after by law enforcement officers. What measures can be taken to eradicate the problem? Mr Governor, although not being an intelligent person, I have thought up a proposal. I suggest that we should adopt the approach taken by Mr Dominic WONG and the Housing Authority by first conducting a registration exercise for all mainland-born children of Hong Kong parents, and then by compiling a register together with a waiting list to be handed over to the Chinese authorities. With such an arrangement, even if places would still be bought, it will be necessary for the children to wait for their turns according to the waiting list. Otherwise, children from poorer families will be deprived of the opportunity of coming to Hong Kong as they grow up, simply because their parents cannot afford to buy the places. Hong Kong has a system which is different from the one adopted in the Mainland. The Hong Kong society is governed by the rule of law. But in China, you can buy anything with money, be it a one-way permit or an official

position. With 68 more days to go before the Governor leaves Hong Kong, I hope he will do a favour for those people whose wives and children are on the other side of the border, by conducting a registration exercise for them, and forwarding the register and the waiting list so compiled to the Chinese authorities through the Sino-British Joint Liaison Group or any other channels. At the same time, the mainland authorities should be informed that Hong Kong will take in its quota of immigrants daily according to the waiting list, and that the power of final vetting and approval should rest with the Hong Kong authorities. By means of the above arrangement, we will be able to save and help the II children, instead of relying solely on publicity campaigns. In China, those who have money can open every door, but this is not necessarily the case in Hong Kong because of our adherence to the "one country, two systems" principle. Therefore, whatever the system in China may be, we will stick to our own system in Hong Kong. Now, may I wish the Governor good luck as it will not be possible for me to see him off.

GOVERNOR: I am grateful for that characteristically terse question. It will of course be a particular sadness for me not to see the Honourable gentleman in the future as regularly as I have over the last few years, beginning on the picket line and ending up in the Legislative Council, part of the process of democratization which one sees in Hong Kong and elsewhere. It is an even greater sadness to hear that I am not going to be able to say farewell to the Honourable gentleman, but perhaps we will be able to say so, and to make it "*au revoir*" rather than "goodbye".

The Honourable gentleman, and I will not take him up on the allegation about broken promises. Actually, we have kept very precisely the promises that we made on temporary housing areas as I will be happy to point out to the Honourable gentleman. When I arrived in Hong Kong, there were 55. Now there will be 12 or 13 when I leave, and all the promises that we made on THAs will have been kept. There would, of course, have been far fewer, perhaps none at all, if it had not been for the continuing steady immigration into Hong Kong.

But the important point which the Honourable Member made is again about the way in which the quota is implemented, and the Honourable gentleman is right to underline the extent to which we are in the hands of those who run the system on the other side of the border. One of the reasons why we have been pressing for greater transparency, for example, for a points system, is to try to

ensure that the sort of problems to which the Honourable gentleman alluded cannot actually distort the policy. The more transparency, the more openness, the more parents can see how long they are likely to have to wait, the more they can see that the policy is being implemented fairly so that people are not being allowed to jump the queue, the more that can be done the more effective will the policy be, and the less likely will it be that snakeheads will be able to operate in the disgraceful and dangerous way in which they have in the past.

So, I hope before 30 June, we will have made some progress in that area. I know that it is an area to which the Chief Executive (Designate) and his team also attach priority. And I hope, in the interests of Hong Kong and in the interests of a lot of families who will have rights to be here in Hong Kong, the policy can be made to work more effectively in the future. And I would like to wish the Honourable gentleman well in his future political career.

MR TSANG KIN-SHING (in Cantonese): *Mr Governor, the Security Branch managed to make a response to a consultation document released by the Chief Executive's Office in less than 36 hours. Hong Kong people took great encouragement from the efficiency with which the policy branch did its work in this case. It is my hope that the Hong Kong Government will handle this problem with similar efficiency, so that it will not be necessary for us to wait until 30 June. Mr Governor, as I will not see you any more after 30 June, I will be unable to ask you questions again. Can you promise us that the children in question will be allowed to register in Hong Kong on 30 April or 30 May? You mentioned transparency, but there is no transparency in Mainland China; there is transparency in Hong Kong only. We should do our best to do whatever we can in Hong Kong. We should give assurance to the parents in Hong Kong and inform them of the time they will have to wait before their children will be allowed to come here, be it five, 10, or 11 years. As long as they have an understanding of the waiting period, they will not resort to buying places. Without such an understanding, they may resort to buying places on the snakeheads' boats, and the repercussion could be very serious. Mr Governor, I hope the Government will tackle the problem of the daily quota of 66 children with the same efficiency that it accorded to its move to respond to the consultation document.*

GOVERNOR: I agree with the Honourable gentleman that we reacted with our

customary competence in reacting to that consultation document. I only say in passing, since the Honourable gentleman gives me the opportunity, that I wish we had not needed to do so because the one thing which the consultative document does not do is to demonstrate in any way how any of the laws referred to contravene the Basic Law or for that matter the Joint Declaration. This has been, in my judgment, a wholly unnecessary controversy which has, I think, done some damage to our reputation and I wish the argument had not been embarked on in the first place.

As for the suggestion from the Honourable gentleman that we should attempt to be as competent in the area he has touched on as we have been in others, we will certainly take that to heart. And I am sure if he wears those braces I will be able to go on seeing him, even in the dark! *(Laughter)*

PRESIDENT (in Cantonese): Mr Andrew CHENG.

MR ANDREW CHENG (in Cantonese): *The President has been generous today in allowing the Honourable TSANG Kin-shing to ask such a long question and speak at length. With so little time left, I would have thought that there would be no chance for me to ask a question. Now, I just hope the President will not cut short my question.*

PRESIDENT (in Cantonese): Will you be more concise, Mr Andrew CHENG? As we started a bit later than 2.30 pm, I shall allow one more question. Please be concise.

MR ANDREW CHENG (in Cantonese): *Mr President, I would like to change the subject from something sad to something which concerns fund-raising. After the Democratic Party's recent overseas fund-raising drive, the Civil Liberties and Social Order Consultation Document has been published. We fully agree with the Government that it is unreasonable for the consultation document to propose the prohibition of local political societies from accepting financial support from an alien. And in particular, despite the fact that Mr TUNG Chee-hwa made a donation of £50,000 to the British Conservative Party in 1992, our party is still in agreement with the Government's view. Mr*

TUNG, however, refused to give a direct explanation on why his donation was a sensitive subject. I therefore believe that the Governor is the only person in a position to answer this question, as he was one of the persons responsible for the Conservative Party's overseas fund-raising at that time. Whilst the Government thinks and I agree that the idea of banning overseas donations is unreasonable, other people have taken a different view. Mr Governor, what are your views on the issue? Are these views in support of the Government's position?

PRESIDENT (in Cantonese): I would like to remind the Governor that he should answer the question in his capacity as the Governor of Hong Kong, rather than the former Chairman of the British Conservative Party. *(Laughter)*

GOVERNOR: A short tour of the constitution of the Conservative Party. As the Chairman of that body when I was young, *(Laughter)* before I had all these grey hair, I was responsible for spending the money, not raising it. *(Laughter)* There is a constitutional distinction between being Treasurer of the Conservative Party and being Chairman, and happily I was in the position as Chairman rather than Treasurer. Nevertheless I read what the newspapers say with interest.

I think my views on this particular issue are much the same as my views on the other matters covered in the consultation document. I cannot understand what the purpose of all this is. It is conceded, I think, by some of the authors of the document that Hong Kong is an incredibly stable, moderate, balanced place. So, it is also, I think, conceded implicitly that none of our laws at present in this area contradict the Basic Law. Does anybody in this Legislative Council, can anybody in this Legislative Council this afternoon, tell me any way in which the Societies Ordinance or the Public Order Ordinance contradict the Basic Law? I am glad we have got agreement on that. There were some who I am sure would have spoken up if they could have thought of any reason.

So, I ask myself what is the point of all this? It causes a great deal of concern in the community. It causes a lot of bad publicity around the world, and it raises inevitably questions about the future commitment to civil liberties. It may be that when people start using expressions like "national security", they do not mean some of the things that people think they mean. But they should not be surprised if, when you start opening up a debate on issues like that, it causes a lot of worry and concern around the community.

The one good thing which seems to me to have come out of it, whether talking about donations to political parties or whatever, is that it has given the community the chance of speaking out and the community has spoken out extremely eloquently within a few weeks of the transition. Our legal profession has spoken out with considerable intellectual vigour. I get a transcript of the phone-in programmes on radio every morning. Ordinary people have spoken out. People have spoken out in the streets. A lot of people have spoken out in the newspapers. So, I think that is a good sign that it has shown for once and for all how much people in Hong Kong are concerned about their freedoms. It is not a question of fund-raising and contributions to political parties.

Of course, many societies have limits which they apply to the amount of money that can be donated for election campaigns, and of course it is true that many countries have laws about the transparency of political donations. But I think trying to prevent any contribution at all would cause very considerable difficulties, difficulties of definition and difficulties of implementation in practice.

And for what purpose? There is a sort of implication of threats in the shadows which none of us at present are aware of but may exist unless these rather illiberal measures are taken. I do not think that there are any threats in the shadows unless people find it threatening that the ordinary men and women of Hong Kong want to go on living in a free and democratic society. If that is a threat then heaven help all of us.

MR ANDREW CHENG (in Cantonese): *I would like to ask a very simple follow-up question. Mr Governor, before we accuse Mr TUNG Chee-hwa of allowing the powerful to do whatever they want whilst restraining the ordinary people from doing anything reasonable, we have to know if any political deals were made behind the scenes in the case of his donation to the party. This is precisely the point which arouses sensitivity and conjecture. If it is known that political deals were made, then in formulating legislation banning local political organizations from receiving donation from overseas places and aliens in future, the legal criterion could be whether political deals are involved, rather than imposing a total ban on all political donations, that is, no political organization can, on any condition, receive donations from overseas places. I hope the Governor will present his views on this issue without too much digression.*

GOVERNOR: Well, let me answer that question in the particular and in the general. I think it would be a grotesque and wholly unwarranted attack on Mr TUNG's integrity to suggest that there was any political transaction as the result of a donation that he made to the Conservative Party. I saw a suggestion in one British newspaper the other day that had obviously been heavily crawled over by the libel lawyers in order to make sure that it did not quite transgress — the suggestion that because Mr TUNG had made a donation to the Conservative Party the Governor of Hong Kong had put him on the Executive Council. I mean, anybody who knows anything about Hong Kong, whose mind is not entirely distorted by conspiracy theories, would know precisely what nonsense that was. So, the particular point I would want to make is that I do not think that this controversy should be used by anybody to cast wholly unwarranted slurs on the, I think, unquestioned integrity of the Chief Executive (Designate).

Secondly, are there sometimes political consequences of people making political donations? I suppose there are. There is plainly a great deal of controversy about this in one or two countries right at the moment, but that is why there is an argument for transparency. There is not an argument for not, I think, allowing people to make a donation in the first place. One Honourable Member is keen that there should be transparency when discussing other political activities or political parties here in Hong Kong, and I am sure that is an issue which will continue to command interest in the future.

But I do not think that the wholly correct arguments that the Honourable gentleman put about political transparency should be taken as being on all fours with them prohibiting any donation at all. Where do you draw the line? Where do you draw the line between, for example, a political party and a group which is arguing for a particular political cause, maybe for the improvement of people's human rights? How do you draw the distinction between an alien in Hong Kong and somebody who is local? You could have people who had right of abode in Hong Kong, I suppose, but were still covered by these sort of restrictions. It is a very complicated area and I see no conceivable advantage for Hong Kong in getting involved in it.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 30 April 1997.

Adjourned accordingly at nineteen minutes to Four o'clock.