

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 26 June 1997

The Council met at Nine 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, J.P.

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 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, J.P.

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, J.P.

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

THE HONOURABLE LAWRENCE YUM SIN-LING

PUBLIC OFFICERS ATTENDING

MR GORDON SIU KWING-CHUE, C.B.E., J.P.
SECRETARY FOR TRANSPORT

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

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

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

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

MR KWOK KA-KEUNG, J.P.
SECRETARY FOR WORKS

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MEMBERS' MOTIONS**AMENDMENTS TO THE BASIC LAW**

PRESIDENT (in Cantonese): Three motions with no legal effect. I have accepted the recommendation of the House Committee on the time limit on speeches for the first two motion debates and all Members have been informed by circular on 21 June accordingly. Members who move these motions will each have 15 minutes to speak, including the time to reply. I have also ruled that the same time limit on speeches applies to the third motion debate. Under the Standing Orders, I shall direct any Member speaking in excess of the time limit to discontinue his speech.

MR TSANG KIN-SHING to move the following motion:

"That this Council urges the Chinese Government, following the reunification of Hong Kong with China on 1 July 1997, to immediately amend the Basic Law, so as to achieve as soon as possible the objectives of electing the legislature by universal suffrage and the Chief Executive by direct election; give effect to "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy"; and safeguard the democracy, freedom, human rights and the rule of law in Hong Kong."

MR TSANG KIN-SHING (in Cantonese): Mr President, I move that the motion standing under my name on the Order Paper be passed. Pursuant to the Order Paper, I move the motion on "Amendments to the Basic Law" to request the legislature to be returned by universal suffrage and the Chief Executive by direct election.

Mr President, in less than six days, the crown right above you on the back of your seat will be replaced by a "blossoming flower". Thereafter, you could speak your mind in this Chamber. I hope that by then you will first move a motion in the Provisional Legislative Council on behalf of me to amend the Basic Law. Mr President, Hong Kong will soon return to its motherland. In the face of this historic moment, Hong Kong people are excited with mixed feelings. On the one hand, the return of Hong Kong to mainland China signifies the end of the 150-year colonial rule under the British Government and enables China to

complete its mission of reunification. On the other hand, the resumption of sovereignty does not bring about the democracy, freedom, human rights and the rule of law that Hong Kong people well deserve. In my opinion, it is just a move from one autocracy to another autocracy, and from one dictatorship to another dictatorship. To effectively relieve the anxiety of Hong Kong people is an imperative task which has a significant bearing on the political stability of the future Hong Kong Special Administrative Region (SAR) Government, the economic prosperity of the society and the peace of mind of the public.

The Basic Law is an essential legal document of the future SAR. Its main provisions not only affect the operation of the SAR Government in areas of economy and people's livelihood but also provide for the rule of game of the future political system. If there is a fair, open and democratic mode of operation for the rule of game in the future political arena, it will ensure the materialization of the concepts of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" while safeguarding the human rights and freedom enjoyed by Hong Kong people.

Mr President, according to the Basic Law, whether it is before or after 2007, there may not be a legislature with all the seats returned by direct election in Hong Kong, let alone a Chief Executive returned by universal suffrage: "one man, one vote". It can be foreseen that Hong Kong will continue to be ruled by a "half democratic, half dictatorial" government in the next decade or afterwards. There will be no way for Hong Kong people to monitor the operation and administration of the Government through widespread political participation. The accountability, representativeness and public acceptability of the future SAR Government will not be any better than those of the existing colonial Government. Any criticism of the former on the latter will be just like "the pot calling the kettle black". In a "half democratic, half dictatorial" SAR Government, how can we expect "Hong Kong people ruling Hong Kong"? How is it different from "Beijing officials ruling Hong Kong"? In a "half democratic, half dictatorial" SAR Government, how can we expect "a high degree of autonomy"? How is it different from "a high degree of central control"? In a "half democratic, half dictatorial" SAR Government, how can the right to democracy, human rights, the rule of law and freedom of Hong Kong people be preserved?

Mr President, on the eve of the election of the Chief Executive, the Vice Premier cum Foreign Minister of China, Mr QIAN Qichen, stressed that it was

the beginning of genuine democracy in Hong Kong. This implies that after the establishment of the SAR, Hong Kong will no longer follow the practice of the colonial days when the Governor was appointed by the British Government as the Chief Executive is going to be elected by Hong Kong people. However, as everyone knows, the 400 members of the Selection Committee are all appointed by the Central Government. The event has been wrapped as an election, but it is indeed only a political game, or a political "show". The results of this election could be predicted by anyone, and we could all foretell the successful candidate who certainly would not be WOO Kwong-ching or YANG Ti-liang. After the election, as the honeymoon period comes to an end, the Chief Executive TUNG Chee-hwa already fully demonstrates himself a "puppet". Is this "genuine democracy"? What is true or otherwise seems no longer important. The right to democracy has been deliberately trampled on and distorted by those in power to mislead the public. Meanwhile, the absurd theory that a lie being told a hundred times will become truth has already been put into practice by many of those in the press.

What is even more ridiculous is that a Provisional Legislative Council not returned by election, or a so-called "legislature" led by "pro-China clansman club" and the business sector can actually take the place of the Legislative Council elected by more than one million voters in the territory in 1995. Our Legislative Council will be "forced out" by the Provisional Legislative Council in less than five days. Is this "genuine democracy"? If this is "genuine democracy", what is "bogus democracy" and "real dictatorship"?

Mr President, the Chinese Government has always resorted to the "conspiracy theory" in tackling issues relating to the pace of democratic development. It has criticized the British Government for not implementing democracy in Hong Kong over the past 100 years or so but only did so in a high profile during the transitional period, from which it is obvious that a hypocritical government is making troubles in an attempt to leave a "shambles" for the Chinese Government at the handover, creating difficulties in the Chinese rule of Hong Kong upon the resumption of sovereignty. If we do not regard this theory as an excuse used to ignore Hong Kong people's right to democracy, how can the democratic system be preserved? Democratic political system has become a chip in the political negotiation between China and Britain. The way in which the two countries act is just tit for tat. It simply reflects their irrational and low-down behaviour by staking Hong Kong people's right to democracy. Now that one is going away, when will the other give democracy to people? In this

regard, I believe the first step is to amend the Basic Law. To many people, the Basic Law cannot be amended. However, the Legislative Council is in fact amending laws every day. As the Basic Law is the law of the SAR for the next 50 years, why can it not be amended?

Mr President, Mr QIAN Qichen said that whether future elections in Hong Kong were fair and open would be a key indicator for the international community to assess the situation of Hong Kong after 1997. If we want the international community to have confidence in the future of Hong Kong, if we want the economy of Hong Kong to continue to prosper, and if we want to prevent Hong Kong from becoming a laughing stock in the international community for its deprivation of human rights and freedom, elections of the Chief Executive and the legislature returned by universal suffrage should be put in place as soon as possible. By doing so, we will be able to silent the "international anti-Chinese chorus" and the conspiracy of the international anti-Chinese forces will dissolve automatically. Thereafter, China can stand up and say "no" to the international community.

Mr President, democratic system is a prerequisite for ensuring the success of a society, while the existence of an electoral system is an important condition for the establishment of "genuine democracy". Without a direct, fair, and popular electoral system, how can we safeguard the rule of law, human rights and freedom? How can we have "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong"? Mr President, if a democratic political system can be implemented in Hong Kong, not only will it benefit the future of Hong Kong, it will also serve as a milestone for the prosperity of China. It is said that "if Hong Kong is doing well, China will be doing well; if China is doing well, Hong Kong will be doing even better". To achieve this, it is necessary to introduce amendments to those non-democratic provisions in the Basic Law, rather than merely chanting such a slogan.

Mr President, these are my remarks.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr LO Suk-ching has given notice to move an amendment to this motion as set out in the Order Paper circularized to Members.

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

Council shall debate the original motion and the amendment together in a joint debate. I now call upon Mr LO Suk-ching to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the original motion and the amendment.

MR LO SUK-CHING to move the following amendment to MR TSANG KIN-SHING's motion:

To delete "urges" and substitute with "has strong confidence that,"; to delete "the Chinese Government"; to delete "to immediately amend the Basic Law, so as to achieve as soon as possible the objectives of electing the legislature by universal suffrage and the Chief Executive by direct election,"; to add "the Hong Kong Special Administrative Region Government will" before "give effect to 'one country, two systems'"; and to add "in accordance with the Basic Law" after "'a high degree of autonomy'".

MR LO SUK-CHING (in Cantonese): Mr President, I move that the Honourable TSANG Kin-shing's motion be amended as set out in the Order Paper.

Looking back into the past, we see that during the four years and eight months of ups and downs, from the drafting to the promulgation of the Basic Law, Hong Kong people actively took part in the consultation exercise on the enactment of the Basic Law. There were a lot of opinions, submissions and consultation forums, each of which reflected the painstaking process from the drafting to the consultation stage. The preparation of the consultation paper alone lasted three years. Upon its publication, the consultation paper aroused widespread discussions in the community. It was only after repeated revisions that the draft of the Basic Law was completed and finally endorsed by the National People's Congress. The whole process saw genuine democratic participation of Hong Kong people, who made decisions on their own fate together by drawing up the development blueprint of Hong Kong's future. This has never happened, nor been possible under the colonial rule of Britain over the past 150 years. This is also a very rare occasion in world history.

Hong Kong will return to its motherland next week. The Basic Law will be implemented in the Hong Kong Special Administrative Region (SAR) and Hong Kong people will become the master of Hong Kong. That the views of Hong Kong people are respected and adopted has been embodied in the Basic Law. Once promulgated, the Basic Law has gained popularity among Hong Kong people. It is generally considered as surprisingly good, with favourable comments from all sides of the community.

Of course, since individuals or social groups may have different values and interests, it is impossible to bring them all in line. It is natural that the enactment of the Basic Law cannot meet the demands of everybody. It can only be formulated in accordance with the aspirations of most Hong Kong people. Among the provisions in the Basic Law, how the Chief Executive and the Legislative Council of the SAR shall be elected or returned are naturally more controversial. This is not surprising at all. At the end of the century-long colonial rule, people have different views on how to give effect to "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", as well as on the pace of democratic development. While some reckon that democracy should develop at a quicker pace, others think it should progress step by step. I believe the majority of Hong Kong people would consider that haste makes waste. The majority I refer to includes some "democrats". Although these democrats have been chanting slogans and working hard to stage their political performance, I believe they know at heart that it is impossible to implement universal suffrage in Hong Kong immediately after the establishment of the SAR.

Here, I would like to point out that the Democratic Party, which regards itself the pioneer of democrats, does not have its leadership returned by "one man, one vote", although it has called on the legislature to be returned by universal suffrage and the Chief Executive by direct elections as soon as possible after the reunification. In comparison with ordinary members, the founding members (that is the existing core members) of the Democratic Party enjoy relatively superior and special status. It is very obvious that there are two different standards for democracy and human rights in their mind. Their advocacy of democratic elections by "one man, one vote" is only used to catch people's ears. It is learnt that according to their party programme, elections by "one man, one vote" should be held when the party has developed for a certain period of time after its establishment. But I cannot help asking one question: why did the Democratic Party not hold "one man, one vote" elections right after its establishment? Those in the party should be very clear about the reasons. Mr

President, Articles 45 and 68 of the Basic Law specify the methods for selecting the Chief Executive and forming the Legislative Council respectively, that is to achieve the ultimate aim of selecting the Chief Executive and forming the Legislative Council by universal suffrage in the light of the actual situation in the SAR and in accordance with the principle of gradual and orderly progress. The revision mechanism on the methods for the selection of the Chief Executive and the formation of the Legislative Council are stated in Annex I and Annex II of the Basic Law respectively. Why does the Democratic Party object to gradual and orderly progress of this kind, and criticize it as killing democracy? I am afraid it has nothing to do with the real fight for democracy.

Mr President, elections of the Chief Executive and the Legislative Council by "one man, one vote" are one form of election. Such a form of election is only a superficial manifestation rather than the full substance of democracy. If there are people who do nothing but advocate election by "one man, one vote" and think that this means they support democracy, represent democracy and have exclusive use of democracy, I am afraid their views on democracy are just skin-deep.

Mr President, the day of reunification on 1 July is round the corner. The SAR will give effect to "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" in accordance with the Basic Law. At the beginning of this year, Hong Kong people elected their Chief Executive, which was a fair and open process throughout. People in Hong Kong generally support the election of Mr TUNG Chee-hwa as the Chief Executive, putting an end to the colonial dictatorship for over a hundred years under which a British Governor was appointed to rule Hong Kong. The same Selection Committee which had elected the Chief Executive subsequently elected 60 Members of the Provisional Legislative Council. More than half of them are incumbent Members of the Legislative Council with extensive representativeness, political capability and experience. The Chief Executive also appointed Members of the Executive Council from different strata, including grassroots representatives. This has never been found under the colonial rule. Besides, the Chief Executive nominated all the incumbent Policy Secretaries to be the principal officials of the SAR and these nominations have all been approved by the Central People's Government, with the exception of a British Attorney General and the Commissioner of the Independent Commission Against Corruption who insists on retiring. The newly-appointed Secretary for Justice Miss Elsie LEUNG Oi-sie is well accepted by the legal profession and the public in general.

Recently, the Chief Executive has appointed the Chief Justice and permanent judges of the Court of Final Appeal as well as the Chief Judge of the High Court on the recommendation of the independent Judicial Service Commission. These appointments are supported by the entire legal profession.

Mr President, the SAR Government led by Mr TUNG Chee-hwa embarks on its work in a progressive and orderly manner. I have strong confidence that under Mr TUNG's leadership, the SAR Government will be able to give effect to "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" in accordance with the Basic Law. I also firmly believe that only by getting rid of the colonial rule of Britain and putting into practice the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong" upon the reunification with the motherland will there be genuine democracy, freedom and human rights in Hong Kong. It is also only under such circumstances that the law of Hong Kong can be upheld.

Mr President, these are my remarks.

Question on the amendment proposed.

MR ALLEN LEE (in Cantonese): Mr President, on behalf of the Liberal Party I would like to make a few remarks about the motion on "Amendments to the Basic Law".

Firstly, the Honourable TSANG Kin-shing moves that this Council urges the Chinese Government, following the reunification of Hong Kong with China on 1 July 1997, to immediately amend the Basic Law. On the question of amending the Basic Law, we know there is such a mechanism that from 1 July onwards, if the Legislative Council considers that there is a need to amend the Basic Law, any proposal for amendments can be raised for discussion and subsequently submitted to the Chinese Government; if the consent of two-thirds of the Members is obtained, the Basic Law can be amended.

Secondly, I am quite worried about the situation that some Hong Kong people often call on the Chinese Government to do this and that, or even ask the Chinese Government to amend the Basic Law. Formulated after a very long period of consultation and drafting, the Basic Law will become the constitution of Hong Kong after 1 July. Now we only want to amend part of it. But what

will happen if the Chinese Government tries to amend other parts of it? In view of this, I do not agree with such a move as to urge the Chinese Government to amend the Basic Law, nor will I agree with it in the future. Regarding the pace of democratic development, it has also taken a long time of deliberation before stipulations are made in the Basic Law for implementation. In this respect, I think it is most unfortunate that the through-train arrangement has fizzled out as it was agreed by both the Chinese and British sides at the initial stage of the drafting of the Basic Law and was taken as a mode of transition. I will not speak any further on this issue today since we all know why the through-train arrangement fell through.

Can the Basic Law give effect to "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy"? I believe only these elements can provide safeguard for Hong Kong people. Now that Mr TUNG Chee-hwa is elected as the first Chief Executive of the Hong Kong Special Administrative Region, bringing into effect "Hong Kong people ruling Hong Kong", I think no one in the territory, and no one else in the world, will challenge this fact. Will Hong Kong enjoy "a high degree of autonomy" in the future? I think so. Let us just wait and see. As to whether democracy, freedom, human rights and the rule of law in Hong Kong can be preserved, it is already explicitly stipulated in the Basic Law that these will all be preserved. Under such circumstances, do we really need to introduce amendments to the Basic Law? The standpoint of the Liberal Party is that we should act in accordance with the Basic Law because it is our constitution. Elections by universal suffrage should be held in Hong Kong from 2007 onwards. However, the Basic Law must not be amended right after the reunification with China on 1 July.

These are my remarks.

MR AMBROSE LAU (in Cantonese): Mr President, the Basic Law highlights the principle of gradual and orderly progress in respect of the method for the formation of the legislature. Article 68 stipulates that "the method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region (SAR) and in accordance with the principle of gradual and orderly progress." The relevant annex of the Basic Law also follows the principle of gradual and orderly progress in setting out the method for the formation of the Legislative Council in the first, second and third

terms. In the opinion of the Hong Kong Progressive Alliance, democratic development in a gradual and orderly manner is not only a principle laid down in the Basic Law but also a consensus reached by the vast majority of people in Hong Kong. As election politics in Hong Kong is still at the developing stage, it will do no good to maintaining the stability of the Hong Kong society if elections of the legislature by universal suffrage and the Chief Executive by direct elections are introduced too hastily. We are all familiar with the consequences of "enhancing the growth of shoots by pulling them upward". It is dangerous to act in undue haste. As prudent legislators, we are not in favour of letting Hong Kong take such a political risk.

Consultation exercise on the political package under the Basic Law has been carried out for over four years to collect the views of Hong Kong people. The draft of the Basic Law is the result of repeated deliberations in a "three ups and three downs" manner. The package adopted by the Basic Law has consolidated views of different sectors of the Hong Kong community, setting a cautious and steady pace of development for the political system of the SAR. We cannot see why this political package which has undergone extensive consultation and integrated the views of different parties has to be changed suddenly.

Mr President, the Basic Law provides for strict amendment procedures with the aim to ensure the stability and authority of the Basic Law as well as to maintain its status as the fundamental constitution of the SAR through legal procedures. If the Basic Law can be amended arbitrarily, it will undermine the status and nature of the Basic Law mentioned above.

Mr President, these are my remarks.

MISS EMILY LAU (in Cantonese): Mr President, I speak to support the Honourable TSANG Kin-shing's motion and oppose the Honourable LO Suk-ching's amendment.

Mr President, the Frontier is formed to fight for democracy and freedom for Hong Kong. We will undoubtedly support amendments to the Basic Law as soon as possible so that the public can elect the legislature by "one man, one vote" under the "mini constitution" of Hong Kong. However, I do not agree with the phrase "half democratic, half dictatorial" which Mr TSANG Kin-shing

has mentioned for a number of times. To me, democracy never exists in half. Mr President, I believe you would not agree with it either, as you have expressed your views on this before. Although the Democratic Party supported that 30 seats or even 20 seats should be returned by direct elections, democracy is like pregnancy in that one can only be pregnant or not pregnant. There is no half way in between for it will be meaningless in that case. We enjoy no democracy at present, but we are moving towards a democratic direction. I hope Mr TSANG Kin-shing whom I respect will sort out this point because by saying so, he will mislead not only Hong Kong people but also the international community. Now over 8 000 foreign journalists are covering news in Hong Kong. If they hear Mr TSANG Kin-shing's remark that Hong Kong is a half-democratic place, they will think there is really halfway democracy. However, there is no such thing indeed.

On the other hand, Mr LO Suk-ching has just said that the enactment of the Basic Law is actually very democratic, with the participation of the public, and a common decision of Hong Kong people. Mr President, it never occurs to me that Hong Kong people have an opportunity to determine or master their own future. If there had been really such an opportunity, we would not have felt like this in these few days of reunification. There is no one in Hong Kong who celebrates the reunification event on his own initiative. Even though some people have spent tens or hundreds of millions of dollars on holding celebrations, how many people are celebrating on their own initiative when we take a look on the street? If it is really so democratic and so happy, why is there not a single sign of it? The reason is that while the end of the colonial rule is much welcomed, we are very anxious about our future. We do not know whether our freedom of life and the rule of law will be preserved. Moreover, it is also of grave concern to us as to how the Communist Party of China will administer Hong Kong and how TUNG Chee-hwa will suppress or stamp out different voices in the community.

I believe everybody knows that the Basic Law is not any "mini constitution" the enactment of which the public can actually take part in. The most important thing is that the Frontier supports Hong Kong people's right to participate in the enactment of their own constitution and to vote on it by universal suffrage after thorough consultation. Thus, I cannot totally agree with Mr LO Suk-ching that there is democratic participation in the whole process of enactment of the Basic Law and that Hong Kong people are allowed to determine their own future. It is even more ridiculous for him to describe the Basic Law

as "surprisingly good". To be frank, I could not recall anybody who has ever said such things. It is only after the promulgation of the Joint Declaration that some people have made such a remark as "surprisingly good", including some of those in the Democratic Party who are also here today. However, I am sure I have not said such things since there are many grey areas in the Joint Declaration which are subject to future interpretation. The Joint Declaration is considered as "surprisingly good" by some individuals whereas the Basic Law has only received such comments in the Wen Wei Po or the Ta Kung Pao. Nevertheless, I do see eye to eye with Mr LO Suk-ching on one point that this is in fact hardly found in history, or is even the only one of its kind. It is very unscrupulous of the British to hand over several millions of Hong Kong people to the Communist regime without giving us a chance to vote on it. This is a point which I have to reiterate. Therefore, I cannot accept Mr LO Suk-ching's views.

I support Mr TSANG Kin-shing's remarks that Hong Kong people should be allowed to amend the Basic Law as soon as possible so that we can decide through democratic procedures whether we are going to speed up the pace of direct election. Mr LO Suk-ching has just said that it would be just skin-deep if election by "one man, one vote" is thought to be equivalent to democracy. I do not concur with such a view, nor will I think naively that democracy can be achieved as long as there is election by "one man, one vote". We can of course cite examples of some countries which hold "one man, one vote" elections but are not really democratic in our eyes. However, if there is no election by "one man, one vote", it will be hard to convince us that we can enjoy democracy. In view of this, I think election by "one man, one vote" is a prerequisite for democracy. I really cannot understand why Mr LO thinks this is skin-deep. We had better let him speak and make it clear that the authorities concerned is unwilling to give us democracy or allow us to have democracy. This would be better. But we must not be misled by his saying that there can be democracy without elections by "one man, one vote". This is not acceptable at all.

As regards the election of the Chief Executive of the Hong Kong Special Administrative Region (SAR), you all remember that when we were back here following the arrest on 11 December last year, there was a motion debate on this issue. I do not think the election of the Chief Executive of the SAR was held in a democratic manner. Even the Chief Executive himself dare not call it "election". He only described such a totally undemocratic process as "selection". I believe Hong Kong people all realize that only when we can elect the Chief Executive and the entire legislature by universal suffrage on the basis

of "one man, one vote" can we enjoy democracy. This is our goal. I have said many times that unless there are changes to the fundamental policies of China, I will not be able to see a democratic Hong Kong in the rest of my life. I am 45 now. I hope such a view is wrong, but I really worry about it. Despite my worry, I will fight for democracy together with other members of the Frontier to the best of our ability. There is bound to be difficulties in this process while some people may have to make sacrifices. The Frontier and other people of Hong Kong have thought it over and are all clear about it. However, we will not "trim our sails" by choosing only easy ways to go. We have our own ideals and targets. It is our hope that democratic elections can be held in the near future. We believe that people who work in the direction of democracy with ideals and targets in mind will surely win the support of the masses.

With these remarks, I support Mr TSANG Kin-shing's motion and oppose Mr LO Suk-ching's amendment.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, no matter how those in the pro-China camp blow their own trumpet, it cannot be ruled out that the Basic Law is a completely undemocratic product. It is undemocratic in several ways. Firstly, members of the Drafting Committee for the Basic Law are all appointed by the Chinese Government. Moreover, more than half of them are Mainland members while the vast majority of Hong Kong members are capitalists, bosses and conservatives who have in no way reflected the views of the majority of Hong Kong people, in particular the aspirations of the grassroots. Secondly, the so-called consultation exercise carried out during the drafting period of the Basic Law was simply "pseudo-consultation". As a result, the final version of the Basic Law is undemocratic and even violates human rights. Thirdly, the power to endorse the Basic Law is solely vested in the National People's Congress. In this way, the wishes of the six-million people in Hong Kong are totally disregarded as the Basic Law has been passed without the consent and confirmation of Hong Kong people. Since the formulation of the Basic Law goes against the very important principles of democracy in the three aspects mentioned above, I would say that the Basic Law is in itself a "three-violation" document.

Needless to say, Hong Kong people have also realized the shortcomings of the provisions of the Basic Law in such areas as empowering the Central Government to interfere in the affairs of the Hong Kong Special Administrative

Region (SAR), Article 23 on "subversion" which is a violation of human rights, and putting off the implementation of the arrangements for direct elections of the Chief Executive and all Members of the Legislative Council, and so on. Therefore, it is incontestable that the Basic Law must be re-drafted at once. However, as to how the Basic Law should be re-drafted, it is another issue which is worth discussing.

By requesting the Chinese Government to amend the Basic Law, how can we make sure that the results can truly reflect and fulfil the wishes of the majority of Hong Kong people? As the Basic Law is the constitution of the SAR, I think Hong Kong people should be allowed to participate in its enactment, especially to endorse it by "universal suffrage". Thus, rather than simply introducing amendments to the Basic Law, I am in support of "having the constitution drawn up by the whole people". This is one of the four guiding principles for the establishment of The Frontier. In our opinion, not only is there a need for a Basic Law which is well formulated and accords with the will of Hong Kong people, it is also equally important to let Hong Kong people have democratic participation in the enactment of the Basic Law. Democracy is not bestowed as a favour. A constitution that is truly democratic and accords with the will of all people in Hong Kong can only be formulated through democratic participation of Hong Kong people.

Of course, there is a long way to go before we can have the constitution drawn up by the whole people. We cannot and should not have any wishful thinking that there will be a constitution which accords with the will of most Hong Kong people shortly after the reunification of Hong Kong with China. In my view, democrats in Hong Kong should put more efforts in educating the masses at this stage so that a consensus on democracy can be reached in the community. A constitution for the whole people can then be drawn up when the opportunity arises in future. By drawing up our own constitution, we aim not only at opposing what we dislike but also at creating what is to us a reasonable system. In Czechoslovakia of Eastern Europe, the "Charter 77" campaign was launched to promote the idea of "anti-dictatorship" in the form of petitions jointly signed by people even at the darkest age of the country. The Czechs' struggle ended 12 years later in 1989 when they eventually overthrew the dictatorial regime and built up a democratic system. The success of the democratic movement in Czechoslovakia prompts us to have some important reflections, particularly at the sight of the tide of democracy all over Eastern Europe set off by the 1989 student movement in China. In this respect, we find that the

"Charter 77" campaign which the Czechs have upheld for years is able to pull the forces of people together and achieve fruitful results in the end.

Whatever the result of today's motion debate is, the autocratic Basic Law will be imposed on Hong Kong people five days later. Nevertheless, I am sure draconian laws not supported by the public can never last long.

Mr President, finally I would like to quote the lyrics of a song named "Worshipping Heroes" which is often sung when we take part in democratic movements:

"Even though we have no way out, even though we cannot fulfil our wishes, we still have lofty ideals in our mind."

These are my remarks.

MR NGAI SHIU-KIT (in Cantonese): Mr President, we all know that the Basic Law will be the "mini constitution" of the Hong Kong Special Administrative Region (SAR) after 1997. As to whether the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong" will be truly put into effect, and whether the stability and prosperity of the future SAR can be best preserved, the key lies in the upholding of the Basic Law by both Hong Kong and China as well as their dedication to the implementation of the Basic Law by respecting the principle of "a high degree of autonomy" for Hong Kong people.

Mr President, it is proved that with the exception of foreign affairs and defence, the Chinese Government and the Preparatory Committee have been handling all the affairs of the SAR by following the wishes of Hong Kong people and the principle of "a high degree of autonomy". Democratic development would also take place in a gradual and orderly manner as stipulated in the Basic Law. Regarding the motion moved by the Honourable TSANG Kin-shing today to "urge the Chinese Government, following the reunification of Hong Kong with China on 1 July 1997, to immediately amend the Basic Law, so as to achieve as soon as possible the objectives of electing the legislature by universal suffrage and the Chief Executive by direct election", it is regrettable that his request obviously contravenes the principle of "a high degree of autonomy" for Hong Kong people and runs counter to the progressive development of democracy.

Mr TSANG proposes to speed up the pace of democratization in Hong Kong. It is apparently a matter within the limits of autonomy of the SAR and should therefore be handled by the SAR Government on its own. Why does Mr TSANG urge the Chinese Government to meddle in the affairs of the SAR Government which are outside the ambit of the former? The whip of the Democratic Party keeps saying that there must be "a high degree of autonomy" for Hong Kong people. Is Mr TSANG's motion not contradictory to what his party whip says?

The Honourable Allen LEE and the Honourable Ambrose LAU have pointed out that Article 159 of the Basic Law has laid down the mechanism for amending the Basic Law. It specifies that "the power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region." As everyone knows, in dealing with the legal affairs of the SAR, the Chinese Government has made every effort to ensure that the National People's Congress or the Chinese Government does not legislate for the SAR. By moving his motion, does Mr TSANG aim at requesting the Chinese Government to intervene in the legislation of Hong Kong, or is it simply a reflection of the Democratic Party's opportunistic attitude to the issue of political development in Hong Kong? Mr TSANG's motion states the need to give effect to "a high degree of autonomy" for Hong Kong people on the one hand while urging the Chinese Government to immediately amend the Basic Law on the other. Is not Mr TSANG contradicting himself as well?

I can recall that the Democratic Party has refused to participate in the work of the Provisional Legislative Council and declared that it would continue to promote democratic development outside the established political structure of Hong Kong. It turns out, however, that the Democratic Party tries to speed up the pace of democratization in Hong Kong by urging the Chinese Government to amend the Basic Law. There have been signs of such opportunism of the Democratic Party long before now. As far as I can remember, the Democratic Party was highly supportive of the Governor Mr PATTEN's political reform package out of its own interests at the time of controversy over the political reform. As a result, the through-train mechanism for the Legislative Council was ruined. This is just a specific manifestation of the Democratic Party neglecting the well-being of the whole community. Last week, the Chairman of the Democratic Party proclaimed that the Democratic Party would take part in the first Legislative Council election of the SAR. So why do they not wait until

they have joined the Legislative Council of the SAR to have democratic discussions before urging the SAR Government to introduce amendments to the Basic Law in accordance with the provisions therein? The Democratic Party always acts in such ways: being opportunistic, eager for quick success and instant benefit, disregarding people's yearning for a stable and contented life, as well as trying to confuse the thinking of people. Moreover, those people of the Democratic Party deliberately mislead the public by saying that there is going to be no democracy and freedom in Hong Kong after the reunification with China. It casts a shadow over the future of Hong Kong by bringing about more elements of mistrust and instability. Is it not another way of "bad-mouthing" Hong Kong?

Mr President, there is a consensus on the direction of democratic development among Hong Kong people who are all in support of democracy. The only divergence lies in the pace of democratization, which should be dealt with pursuant to the provisions of the Basic Law after ample deliberations by the legislature of the SAR that reflects public opinion. Today, members of the Democratic Party urge the Chinese Government to expeditiously amend the Basic Law to deal with the internal affairs of the SAR. This is a highly irresponsible act disregarding the principle of "a high degree of autonomy" for Hong Kong people.

Mr President, the Honourable Miss Emily LAU just now referred to democracy as pregnancy. Either you have it or do not have it. There is no half way in between. From this I would like to bring out the fact that premature birth would result in abnormalities. It is the same with democratic development. What I mean is that a progressive approach is required for amendments to the Basic Law as well as democratic development. There was no democracy in the past 150 years, but now we want it all of a sudden. Is it an opportune moment? Some people of course would say that time is opportune as the parliamentary system has been in place for several years. However, since we are talking about a long history of 150 years, I think that things should go on in a gradual and orderly manner before the right opportunity arises. It is the same with democratization on which we have already reached a consensus but are divided only on the pace of development. Judging from what Miss LAU has suggested, I believe that abnormalities will surely be the result of premature birth. If we act so hastily in the future and ask for full democracy at a premature stage, I am sure democracy in an abnormal form will come up as well. It will be

detrimental rather than contributing to the well-being of Hong Kong people. Thank you.

With these remarks, I support the Honourable LO Suk-ching's amendment.

MRS ELIZABETH WONG: Mr President, I rise to support the original motion. As a Member of The Frontier I would like to echo entirely the Honourable Miss Emily LAU's point of view. The object of The Frontier is clear and focused. We know the path ahead is difficult but we are unswerving in our endeavour to attain the objective in the hope of peace and harmony so as to achieve peace and harmony for Hong Kong. Because we all care about Hong Kong. We want Hong Kong to be the window to and from China and not to be the doormat on the threshold of China.

Miss Emily LAU mentioned the analogy of a little bit democracy being like a little bit pregnant, and I think the Honourable Member who spoke before me had mentioned that Hong Kong actually should have a very odd kind of pregnancy, the longest pregnancy in the world, of 10 years. Now, I hope the baby that is delivered after the 10-year long pregnancy is still a recognisable baby.

But to take the analogy a little bit further, I would like to compare Hong Kong as part of the Chinese family. It was said to me by some of my Chinese friends in the pro-China camp — nothing wrong with that — who says, "Look, you know, it is like children talking to the parent. Your father will give you, if you behave and if father thinks that you are trustworthy, a little bit more money. If you do not have that trustworthy behaviour, your father will withdraw that."

Now, as a parent in real life with no money to give my children, I just hope my children would support me, and give me the money. So, I think Hong Kong has grown up. Hong Kong can afford to have the conditions right for full democracy, even today. To deny this to Hong Kong people is in fact to underestimate the value of Hong Kong to China.

So, I would like to support the original motion with the added comments. Thank you.

DR YEUNG SUM (in Cantonese): Mr President, first of all I would like to clarify a point just now raised by the Honourable LO Suk-ching about the elections of the Chairman and Vice-Chairman as well as members of the Central Standing Committee of the Democratic Party. These representatives are essentially elected by universal suffrage on the basis of "one man, one vote" at general assemblies of members.

Besides that point, the Honourable NGAI Shiu-kit just now queried why the Honourable TSANG Kin-shing called upon the Chinese Government to amend the Basic Law. It is true that there is a mechanism for amendments to the Basic Law. However, this mechanism ultimately requires the recognition and endorsement of the Chinese Government. Thus, the amending power essentially lies in the hands of the Central Government. Hong Kong only has an opportunity of participation. Nevertheless, people in Hong Kong do not have the final say. I am sure Mr NGAI Shiu-kit is very clear about this point. Under such circumstances, no matter how the mechanism for the Basic Law in Hong Kong works, it will be all to no avail without the consent of the Chinese Government. I think it is just appropriate for Mr TSANG to move a motion urging the Chinese Government to amend the Basic Law. In fact, Mr XU Jiatun said at a recent interview that China should take the lead to introduce amendments to the Basic Law so as to improve its international image. He also considered that the conditions were mature for that in Hong Kong. Of course, as a former member of the Communist Party who had spent some time in Hong Kong, Mr XU Jiatun would certainly see that such conditions are mature in Hong Kong. Therefore, the democrats in Hong Kong will keep on working hard in this direction.

Mr President, the Basic Law is too conservative indeed. The term of the first Legislative Council of the Hong Kong Special Administrative Region is two years, but there is a delay of one year because of the appearance of the Provisional Legislative Council. Twenty seats will be returned by direct elections for the first term, 24 for the second term and 30 for the third term. As for the Chief Executive, the term of office is five years. The first two Chief Executives are returned by a Selection Committee through "small coterie" rather than democratic elections. Thus, the election of TUNG Chee-hwa by such a "small coterie" is in no way different from appointment. Another point is that even though there will be an election review after three Legislative Council

elections and two Executive Council elections, it will not be easy for such a review to be made in the direction of full direct elections. Apart from the consent of two-thirds of the Members of the Legislative Council and the written consent of the Chief Executive, approval has to be obtained from the National People's Congress as well. It would not work without the consent of any one of the parties above. In view of this, a legislature returned by full direct elections is unlikely to come up in the rest of my life. The Basic Law is really too conservative, given that Hong Kong is already a very modern society.

Mr President, "one country, two systems" is actually a very good concept. As everybody knows, the institution of China is so different from that of Hong Kong. "One country, two systems" is a very good way to ease Hong Kong people's mind so that they would be reassured to stay in Hong Kong. Unfortunately, it is not easy at all to give effect to "one country, two systems". Mr President, we hope that the notion of "one country, two systems" can achieve two goals. One is to build up a democratic political system to safeguard the human rights and freedom of the public. The other is to improve people's livelihood by gradually raising their living standard in the light of economic development. From the current state of affairs, it seems that to achieve the goals of democratization and improvement to people's livelihood are like pushing a large boulder up a slope. The boulder would roll back after just a few pushes. It is something very hard indeed. Why did I say so? It is because from many incidents which happened in recent years, we find that the Chinese Government has meddled in the affairs of Hong Kong in every possible way as well as from all sides. Given that this is the case under the rule of the British Government, I believe intervention from China will be even greater after the resumption of sovereignty over Hong Kong. In the first instance, the legislature returned by elections in 1995 will be replaced by the Provisional Legislative Council, which is already a sign of retrogression of democracy. Next comes the requirements on national security, which are included in the Societies Ordinance and the Public Order Ordinance for no reason at all. Why is it that Hong Kong people's freedoms of assembly and association have to be linked to national security? If the point of discussion lies in the problem of sedition or subversion, the requirements on national security may still be introduced in that area. However, what is the point in applying such requirements to public assemblies and the formation of associations in Hong Kong? In fact, this is just some sort of "one country" mentality. Mr TUNG Chee-hwa is also standing by the Chinese side to emphasize "one country", forgetting everything about "a high degree of

autonomy" for "two systems". Obviously, such "one country" mentality will make it increasingly difficult for us to put into practice the concept of "one country, two systems".

Mr President, can Hong Kong afford to have "a high degree of autonomy"? The answer is in fact "yes". We witness three important changes brought about by an open political system over the past five years, which is just a very short span of time. Firstly, the Hong Kong Government is more open with continuous growth of transparency. Secondly, the living standards of the community are gradually improved in areas of housing, welfare for the elderly and social services. Strongly urged by elected Members, the Government has to make some proper improvements which, however, cannot be regarded as substantial. Thirdly, the general public are much more concerned about current affairs than before. The many phone-in programmes on the radio and information programmes on television are good proof. It is evident that over such a short period of five years, Hong Kong has essentially developed in an open direction, being driven by social movements in the 1980s. As a result, we have an increasingly open government with progressive improvements in the living standards of the community. The public are also showing more concern about current affairs.

Nevertheless, the condition for democratization is ultimately subject to certain restrictions. Although we have the potential for democratization, there are certain constraints. Therefore, to materialize the concept of "a high degree of autonomy", our political system should be more open to accommodate the development of Hong Kong in recent years. How can the system be open? There must be comprehensive direct elections. The Chief Executive and all Members of the Legislative Council have to be returned by elections on the basis of "one man, one vote" so that Hong Kong people will become masters of their own affairs. In fact, the problem of sovereignty over Hong Kong has been resolved for a long time without disputes. Moreover, Hong Kong people basically support the resumption of sovereignty over Hong Kong by China. Now the focus ought to be set on the development of "two systems". People in Hong Kong should stand up and continue to fight for democracy, freedom, human rights and the rule of law under the rule of China so that Hong Kong will become a society of fairness and justice. Mr President, a fair and just society, in the long run, will not only benefit Hong Kong people but also contribute a great

deal to China. Hong Kong's contribution to China lies in the economic aspect as well as other areas like social culture, politics, law and arts. I hope that under the Chinese rule, we can keep on striving for democracy, human rights and the rule of law for Hong Kong people. This will be good for Hong Kong, and in the long run very beneficial to China.

Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Mr President, there are only five more days to go before the reunification of Hong Kong with China on 1 July. I still remember Mr TUNG Chee-hwa saying that Hong Kong people would be the masters of their own house. However, I have never had such feelings. In fact, we all know clearly that Hong Kong people do not run the house. Rather, it is the 400 members of the Selection Committee who do so by selecting TUNG Chee-hwa as the Chief Executive. The six million people in Hong Kong have no opportunity to run their own house at all. Therefore, in the face of the reunification, I have no such feelings that we have eventually got rid of the colonial rule and could run our own house from now on. Why do I have such feelings? As everyone knows, it is because a democratic regime is yet to establish.

I think you all notice MAO Zedong's proclamation on the rostrum of Tiananmen in 1949 that the Chinese people finally stood up. But what are we going to say on 1 July? We can only say that the Members elected by people finally "get off the through train". I have considered joining the Democratic Party in declaring our position on the balcony of the Legislative Council Building. However, I want to tell the Honourable Martin LEE that we should wait until Hong Kong people finally stand up, and together we shall go there again to proclaim before Hong Kong people that we have really become masters of our own house. I hope this day will come early so that we can tell Hong Kong and the whole world that we Hong Kong people have become masters of our own house and stood up at last. By then, people in Hong Kong can truly elect the Chief Executive and all Members of the Legislative Council on the basis of "one man, one vote", just like what the Honourable TSANG Kin-shing has said. We can then go up to the balcony of the Legislative Council Building and proclaim that Hong Kong people have finally stood up.

Many Members who have spoken, such as the Honourable Allen LEE and the Honourable NGAI Shiu-kit, consider that Mr TSANG Kin-shing's motion urging the Chinese Government to amend the Basic Law is politically incorrect. At first I also thought they were right. Only when I referred to Article 159 of the Basic Law did I find that the last sentence was the most important one. It reads as follows: "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." To be frank, I did not notice this sentence until today. In short, any amendments to the Basic Law will not be carried without the consent of the Chinese Government. Although Article 159 states that the endorsement of two thirds of the Members of the Legislative Council and the consent of the Chief Executive are required before amendments to the Basic Law can be reported to the Central Government for approval, it is the last sentence which is most important. Therefore, I think Mr TSANG Kin-shing is right because any amendments to the Basic Law ultimately have to be made by the Chinese Government. In fact, this amendment mechanism is not in the hands of Hong Kong as the so-called established policies are laid down by the Chinese Government. Only when such established policies are changed can Hong Kong amend the Basic Law. In view of this, we have to fight for changes in such established policies. If the established policies of the Chinese Government towards Hong Kong allow full democracy, we can introduce amendments to the Basic Law.

With regard to the Basic Law, our standpoint is that "the starting point is too conservative, the pace too slow and the ultimate goal not safeguarded at all". Obviously, "the starting point is too conservative". The current situation is even worse than that under the Basic Law as a result of the retrogression created by the establishment of the Provisional Legislative Council. "The pace too slow" refers to the arrangement that 20 seats will be returned by direct elections for the first Legislative Council, 24 for the second and 30 for the third. As for "the ultimate goal not safeguarded at all", Mr Allen LEE just now said that the legislature should be elected by universal suffrage in 2007. I do not understand why he said so since it is not provided for in the Basic Law. To put it in a more precise way, it is still unknown as to whether direct election of the whole legislature will be in place by 2007, as the consent of two-thirds of the Members is required for amendments to the Basic Law. Let's imagine what sort of legislature we shall have by then. There will be 30 Members returned by direct

elections while the other 30 are not directly elected. Is it possible to obtain the consent of two thirds of the Members (or 40 Members)? In other words, it will need 10 Members from functional constituencies to give up their vested interests in favour of direct elections. Is it possible to find 10 persons who have joined the legislature through an easy channel to give up their privilege? Will those people give up their vested interests? Under such circumstances, if the basic policies of the Chinese Government remain unchanged by 2007, I do not think the legislature then can be easily made to give up its vested interests in support of direct elections. That is why I say that "the ultimate goal is not safeguarded at all".

Just now Mr NGAI Shiu-kit mentioned that premature birth would give rise to abnormalities. I would like to ask him when democracy is fertilized in Hong Kong. If it was fertilized in 1984, the Sino-British Joint Declaration then had already mentioned direct election of the Legislative Council. Assuming that democracy in Hong Kong was fertilized at that time, it is 13 years by now, and 10 years later by 2007 it will be 23 years altogether. If a baby remains in its mother's body, which goes against the law of nature, the mother will die in the end. Hong Kong is just the mother in this case. The mother will finally die of difficult labour if democratization is incessantly delayed and there is no democracy in Hong Kong. I believe no one wants to see such a consequence. In fact, Hong Kong has been longing for democracy. "Progressive approach" for democratization has been advocated for 10 years already. We should not dwell on it any more. It is high time for Hong Kong to have full democracy.

With these remarks, I support Mr TSANG Kin-shing's motion.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I would like to make a few remarks. Firstly, the Honourable LO Suk-ching just now said that the Basic Law was generally considered as surprisingly good after its promulgation. I really doubt whether Mr LO Suk-ching was living in Hong Kong then and knew the pulse of most Hong Kong people. At that time, Hong Kong people were very dissatisfied with the Basic Law, in particular the part on the pace of democratization which was surprisingly poor. But when did Hong Kong people have surprisingly good impressions of the Chinese Government? It was at the time when the Sino-British Joint Declaration (Joint Declaration) was signed. I still remember very well the conversation with the Honourable

SZETO Wah after the Joint Declaration was signed when he said to me, "CHEUNG Man-kwong, the Joint Declaration is good." I asked, "Which part is good?" Uncle Wah said, "There is a clause which specifies that the legislature shall be constituted by elections and the executive authorities shall be accountable to the legislature." Both of us were very delighted, and we firmly believed that there would be an elected legislature when the colonial rule was over. It was the dream of many young people who grew up in the 1970s. While opposing the growth of colonialism, we yearned for a democratic system following the reunification with China to smash up the fetters of colonialism imposed on people in the past. We had strong confidence that this could be achieved. However, upon the promulgation of the Basic Law, we found that the so-called election was not in any way democratic election by "one man, one vote" as expected by all of us. Instead, it is a sophisticated and unconventional mixture of direct elections, functional constituencies and an Election Committee. To be frank, by merely looking at the wording of the relevant provisions, I have no idea at all whether we were innocent enough to be fooled by the Chinese Government, or its policies on Hong Kong have changed at a later stage. Whichever the case may be, I really do not think that the Basic Law is surprisingly good.

Secondly, a lot of Members who have been our friends for more than 10 years keep telling us that a democratic political system should be established in a progressive manner. However, it is not the case that things were not in progress. As the Honourable LEE Cheuk-yan has just pointed out, it has been 13 years already and if democracy were a foetus, it would have turned into a fossil by now. Is such a period not long enough for us to fulfil our hopes for democracy through democratic procedures? Now they say that we should wait until 2007. It will be a good 22 years by 2007 since the first Legislative Council election was held in 1985. How many periods of 22 years can we have in our life? Many of us here have to wait from youth to middle age and from maturity to old age during this 22-year span. Is this what "progressive" really means? Moreover, even if time has come to 2007, so what? The political system would still remain undecided. It is clearly stated in the Basic Law that if this system is to be changed in 2007, it has to go through a number of authorities and mechanisms: the endorsement of two thirds of the Members of the Legislative Council, the consent of the Chief Executive, as well as the approval of the Standing Committee of the National People's Congress. To go through these procedures

is nothing easy. Therefore, we must not be fooled again by the set target of 2007, which may just be a means to deceive us in the long term. By 2007, the situation may remain unchanged and the formation of the legislature by elections as stated in the Joint Declaration could be interpreted on a very absurd basis. Mr LEE Cheuk-yan has also pointed out that two sentences in Article 159 of the Basic Law may puncture our illusions about democracy for the year 2007. The first sentence says, "The power of amendment of this Law shall be vested in the National People's Congress." The second reads, "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." These two sentences, which begin and end the Article respectively, tell us explicitly that any democratic reform which may appear in Hong Kong will in effect be stillborn 22 years later if the consent of the Chinese Government is not obtained. Therefore, on the issue of democratization, we still have a very long way to go.

Thirdly, many people keep saying that things should go on in a progressive manner but at the same time they tolerate "rapid retrogression". The first retrogression is found in the Legislative Council. Members were elected by one million voters in 1995, but now election has rapidly retrogressed to such a state that only the 400-strong Selection Committee can vote. Is this progression or "rapid retrogression"? The second retrogression is the increase of appointed seats in the two-tier councils by a quarter. This leads to a situation that both winners and losers of the election can join the Urban Council. In that case, what point is there in holding Urban Council elections? What point is there in holding democratic elections by "one man, one vote"? Is this progression or "rapid retrogression"? To be frank, the method for the formation of the Provisional Legislative Council is also one great retrogression in comparison with the method for election of the first Legislative Council under the Basic Law. If you are ready to accept these three cases of retrogression, how can you say here that democracy has to be developed in a progressive manner? On what grounds can you convince others that you are in support of a gradual move towards democracy in Hong Kong, no matter how slow it is? Some people think that the concept of "one man, one vote" is skin-deep. However, even such a skin-deep concept has brought about so much intricacies. Whether it is functional constituency and Election Committee elections which replace "one man, one vote" election, or the systems of "multi-seat, single-vote" and proportional representation, which are adopted upon the failures of the

"double-seat, double-vote" system by "one man, one vote" and the "single-seat, single-vote" system, they are all derived from the concept of "one man, one vote". By complicating and intensifying this skin-deep yet common concept, the ultimate aim is only to deter the development of democracy and adopt a progressive approach. Therefore, on the issue of democratization, I have to clearly point out that as we were opposed to colonialism in our youth, we do not want such a colonial system to keep on fettering us in disguise after the reunification with China. We must fight for democracy.

Mr President, with these remarks, I support the Honourable TSANG Kin-shing's motion.

MR ALBERT HO (in Cantonese): Mr President, this is not the first time we launch a campaign to fight for amendments to the Basic Law. I remember that in 1990, when the Draft Basic Law was submitted by the Drafting Committee to the National People's Congress wilfully and was endorsed against the wishes of Hong Kong people, it had aroused strong reaction in the community, and people declared to strive for amendments to the Basic Law. I can still remember that a group of people organized a signature drive in the streets, and they were determined to fight continuously for democracy as well as amendments to the Basic Law.

We feel very regret about the present situation. When the Basic Law is faithfully implemented upon the resumption of the sovereignty over Hong Kong by China, Hong Kong people should become masters of their own house in the post-colonial era and establish a government with a high degree of autonomy. However, not only have these objectives failed, people who used to lend unreserved support for the resumption and the Joint Declaration in the first place have now become the first ones to query whether the so-called promise made by China to Hong Kong people will be honoured. Is the Basic Law a manifestation of democracy, human rights and the rule of law which Hong Kong people pursued? The answer is clearly reflected in the opinion polls conducted, which show that over 60% of the respondents feel that the Basic Law is not democratic enough and does not accord with the aspirations of Hong Kong people.

Today, many people accuse us for heretically asking amendments to the Basic Law. Some people even say that we are "bad-mouthing" Hong Kong and have lost confidence in our country. Yet, I consider these accusations

extremely ridiculous. In the early 1980s, when negotiations between China and Britain on the future of Hong Kong came to a deadlock and people felt worried about its future, only the democrats stood firm to support the reunification. Where were those who accused us of having lost confidence in Hong Kong and "bad-mouthing" Hong Kong at that time? Did they fight with us for reunification on national ground, and strive for the manifestation of the objectives of "one country, two systems" and "Hong Kong people ruling Hong Kong"? Mr President, confidence must be given on objective basis and based on rational knowledge.

Does the existing Basic Law provide for a democratic system? Is the gradual and orderly development progressing in line with the social development of Hong Kong? Can it live up to the aspirations which Hong Kong people have strived for over the years? Mr President, none of them have been fully achieved, let alone amendments to the Basic Law. With the various restrictions imposed on the Law, I am afraid that amendments can hardly be made. Of course, Honourable colleagues of the Democratic Alliance for the Betterment of Hong Kong may not agree with this, and they may argue that the provisions of Annex II are not clear enough. The text of the Basic Law can, in fact, be amended. Pursuant to the Basic Law, all amendments are to be decided by the legislature and require the consent of the Chief Executive. But we have to bear in mind that the Chief Executive is appointed by the Central People's Government. The purpose of such arrangement is, obviously, to ensure that the Chief Executive will implement the established basic policies of the Chinese Government towards Hong Kong. Who will believe that the Chief Executive is willing to contravene the basic policies established by the Central People's Government so readily for the manifestation of democracy for Hong Kong people? I believe that we will fail at last without the approval of China, despite the endorsement of the majority of two-thirds of all Members of the legislature. Just now, the Honourable LEE Cheuk-yan quoted Article 159 of the Basic Law, which says that "no amendment to it shall contravene the established basic policies of the People's Republic of China regarding Hong Kong". But I think there is no need to lay down such provision, because with the appointment of the Chief Executive, the Central People's Government can rest assure that Hong Kong will not go beyond the utmost limit. But in view of the present situation, it is now the opportune time for the Chinese Government to change its basic policies towards Hong Kong. It

should accede to Hong Kong people's request for democracy and keep to its words.

Democracy is not a complicated matter. In fact it is very simple. It means public participation in the election of their own government. With regular elections, the Government will be held accountable to the public. This is an essential condition. Given that there is no mechanism for direct election, and the election includes odd mechanisms like functional constituencies, electoral college and the Election Committee, I believe that even young people who are not very educated can see that this is only a farce to deceive Hong Kong people.

Mr President, I want to raise one question: Although the Basic Law was "amended time and again", does this mean that Hong Kong people have participated in the consultation process? Is this tantamount to the Chinese Government showing respect to the views of Hong Kong people? Can the Basic Law truly reflect the voices of Hong Kong people? Mr President, for those who blindly call on Hong Kong people to have trust in the Central People's Government and to have confidence in the Chief Executive of the Special Administrative Region, they are in fact asking us to have trust in rule by man and power politics, and to have faith in an undemocratic system. I firmly believe that this is something that Hong Kong people can never accept. All in all, the Democratic Party does have commitment to Hong Kong and will try all means to fight continuously for the amendments to the Basic Law, and promote democratic movement in Hong Kong.

MR SZETO WAH (in Cantonese): Mr President, before the Honourable Allen LEE voiced his opposition to the motion of the Honourable TSANG Kin-shing, I thought he might have read the Basic Law. However, I suspect that there is a trouble with his memory. It seems that he does soon forget whatever he sees. Please do not hear it wrongly: I say that he does SOON forget whatever he sees, not that he DOESN'T forget whatever he sees. Perhaps, his knowledge of Chinese and English is not the same as ours. Why do I say so? If it is not the case, he will not have put forth such a logic. On the face of it, what he said just now was to uphold the principles of "a high degree of autonomy" and "Hong Kong people ruling Hong Kong". But in fact, it was in contravention of the

principles of "one country, two systems", "a high degree of autonomy", "Hong Kong people ruling Hong Kong", as well as the Basic Law.

He has raised two points. Firstly, he thinks that Hong Kong people should not ask China to amend the Basic Law.

Let us take a look at Article 159 of the Basic Law, which says,

"The power of amendment of this Law shall be vested in the National People's Congress.

The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two thirds of the deputies of the Region to the National People's Congress, two thirds of all the Members of the Legislative Council of the Region and the Chief Executive of the Region.

Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.

No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong."

These provisions state that Hong Kong is only vested with the power to propose bills for amendments. By this it means we can put forth our requests. If anyone in Hong Kong really puts forth such a request in future, the Legislative Council will have to debate on it. If it happens that anyone put forth such a motion to the Legislative Council in future, and Mr Allen LEE is again a Member of it, I hope he will not use the same logic again. Why can we not put forth our requests? It is stipulated in the Law that it should be the Hong Kong people who make the requests.

Secondly, he says that full-scale universal suffrage will be implemented by the year 2007. But this is in fact wrong and misleading. Paragraph III of Annex II of the Basic Law says,

"Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007.

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress (NPC) for the record."

However, in the course of reporting amendments for the record, those amendments can be referred back to Hong Kong for further consideration by the Standing Committee of the NPC. In other words, they are rejected. I do not know whether Mr Allen LEE will stand for election of the second Chief Executive, or whether he will be elected. If he decides to stand for it and is subsequently elected in 2007, the amendments will not be submitted to the NPC if he alone opposes to them. The Chief Executive, Mr TUNG Chee-hwa, has said that there are two prerequisites for the transition of Members to the two Municipal Councils and the district boards. First of all, they should love the country and love Hong Kong; and second, they have to uphold the Basic Law. As I am on the membership list of the Provisional Urban Council, I feel very honoured to be recognized as loving the country and loving Hong Kong as well as upholding the Basic Law. But as a matter of fact, I can meet those two prerequisites even if I am not selected. For the first condition of loving the country and loving Hong Kong, I was to be appointed Justice of the Peace by the Hong Kong Government in 1987. But since I was required to declare allegiance to her Majesty, I turned down the offer. Besides, there is one thing which I have never mentioned in public. I was told last year that the Hong Kong Government would like to give me a Badge of Honour, but I turned it down again. These serve as evidence that I love China and Hong Kong. However, I learnt from today's newspaper that some people claimed their love to the mother country when they accepted the "Gold Bauhinia Medal". I wonder how those

foreign nationals love the mother country, and which mother country they show affection. Regarding the second prerequisite, I do uphold the Basic Law, especially Article 159, because this provision provides that the Basic Law can be amended. I suggest that Mr Allen LEE should read the Basic Law again carefully. Besides, he should always bring it along with him, so that whenever he speaks about it, he can refer to it before giving opinion, or else he will turn himself into a laughing stock.

Mr President, with these remarks, I support the motion of Mr TSANG Kin-shing.

MR IP KWOK-HIM (in Cantonese): Mr President, when the Chief Executive Designate, Mr TUNG Chee-hwa, and the Chief Secretary, Mrs Anson CHAN were interviewed by different international media separately earlier on, they stressed spontaneously that they would consider resigning if they were forced to do things against their conscience or the principles they kept, or if the principles they were upholding were challenged. What are the principles that they are trying to uphold? I believe that regardless of what those principles are in detail, they must be as follows: to safeguard democracy and freedom continuously in Hong Kong after the reunification of Hong Kong with China on 1 July; to give effect to "a high degree of autonomy", and to preserve the existing lifestyle of Hong Kong people for 50 years. The Honourable Albert HO has pointed out just now the Chief Executive would be a yesman of the Central People's Government as he is appointed by it. Yet, the Democratic Alliance for the Betterment of Hong Kong (DAB) does not agree with the view that the Chief Executive would always be in confrontation with Hong Kong people, and I believe that the whole community will not agree with this either.

Mr President, we have witnessed numerous miracles and successes in Hong Kong during the past century of colonial rule. The existing socio-economic system will be maintained and the principles of "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" will be implemented after reunification with China on 1 July. This is definitely a historical change. The setting up of the Hong Kong Special Administrative Region (SAR) by China to give effect to the principle of "one country, two systems" illustrates its respect to history, respect to reality and respect to disparity alike. Hong Kong has

experienced a transitional period of over a decade after the signing of the Sino-British Joint Declaration, and despite the many ups and downs, it is proved that its economy still prospers. Besides, local and foreign investors attach more confidence in Hong Kong. This is a clear manifestation of smooth transition of Hong Kong, and this has already been realized. According to the opinion poll conducted by the Hong Kong Policy Research Centre on the confidence index of Hong Kong people, it shows that the index was climbing steadily during the period from last April to this January, and the increase was over 20%. This reflects that Hong Kong people are confident in the reunification and are in support of it. I find it hard to agree with the view of the Honourable Miss Emily LAU that Hong Kong people do not take initiatives to organize celebration activities. She might have been inspired by the small group of people around her who had such feelings. But my personal experience or people I met with gave me completely different feelings from those of Miss Emily LAU. I saw that Hong Kong people all took initiatives to organize various kinds of celebration activities with enthusiasm. I believe that Miss Emily LAU will have the same feeling in the following week.

Just now, I heard that the Honourable TSANG Kin-shing and Dr the Honourable YEUNG Sum talked about the purpose of the establishment of the Provisional Legislative Council (PLC), which was to replace or overthrow the existing Legislative Council, which was returned by over a million electors. I think this is a distortion of facts and is simply a lie. There is no through train for the Legislative Council simply because the British Government has taken unilateral action to damage the rail tracks. China was left with no choice but to establish the PLC. During the 1995 election, I heard the Honourable Martin LEE, who is also in this Chamber now, telling the electronic media that he would stand for election despite a term of two years only. This proves that not only the six million Hong Kong people knew that the term of office of this Legislative Council shall be two years, Mr Martin LEE was fully aware of this, too. How can he accuse China for using the PLC to replace the existing Legislative Council? The Honourable CHEUNG Man-kwong also claimed that the election of the PLC was a retrogression, for it did not follow the election method of the first Legislative Council. If the PLC did follow the method of formation of the first Legislative Council, the outcome would certainly not have been the PLC. Instead, it would have been the first Legislative Council. This is the hard fact and not something to be said irresponsibly.

Mr President, in preparing for the establishment of the SAR, the work of the Preparatory Committee, selection of the Chief Executive as well as the work of the Chief Executive to prepare for the formation of the Government of the SAR, are all in strict compliance with the Basic Law and relevant decisions made by the National People's Congress. Moreover, the Chief Executive, members of the Executive Council and PLC Members are all Hong Kong people. In other words, Hong Kong people will take up all the posts in the executive, judiciary and legislative authorities. Therefore, I am confident that the Government of the SAR will certainly give effect to the principles of "one country, two systems", "Hong Kong people ruling Hong Kong, and a high degree of autonomy" after 1 July 1997 in accordance with the stipulations of the Basic Law.

Mr President, the motion moved by Mr TSANG Kin-shing today urges for an amendment to the Basic Law. On the one hand, the DAB agrees that the Basic Law can be amended in the light of the prevailing social and political environment after its operation for a certain period of time, and should be amended pursuant to Article 159 of Chapter VIII of the Basic Law. But on the other hand, the DAB does not echo with the view to amend the Basic Law immediately after the reunification as suggested in Mr TSANG's motion, because the Basic Law was enacted after a consultation period of four years and eight months, and thus every part of it is the fruit of careful discussion of opinions collected by those who had participated in the drafting process of the Law. Moreover, method for the selection of the Chief Executive and the election of the Legislative Council are also in line with and respond to the need for gradual progress towards democracy. In this connection, the DAB considers that the Basic Law should be put into practice first, and then amendments can be made after conducting a review in the light of the prevailing social environment.

With these remarks, Mr President, I support the amendments of the Honourable LO Suk-ching.

DR ANTHONY CHEUNG (in Cantonese): Mr President, this is the last sitting of this elected legislature before 1 July 1997. I consider it the most appropriate occasion to have a detailed discussion on issues concerning democracy while the Honourable TSANG Kin-shing moves such a motion, and to take this opportunity to put the record right. As democrats, what we fight for is "Hong

Kong people ruling Hong Kong" with democracy. I recall that in the early 1980s, the Chinese Government put forward the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong" to resolve problems relating to the future of Hong Kong. Yet, many people doubted these principles. What was meant by "Hong Kong people ruling Hong Kong"? At that time, officials and leaders of the Chinese Government reiterated in many occasions, both in private or in public, that "Hong Kong people ruling Hong Kong" meant that Hong Kong people would rule Hong Kong with democracy. They also said that as the Britons, who were leaving after ruling Hong Kong for over a century, had not given Hong Kong people any democracy, thus when China resumed the sovereignty over Hong Kong in 1997, Hong Kong would start to enjoy real democracy. This is what the Chinese Government has promised us. Nevertheless, just as what the Honourable CHEUNG Man-kwong queried, whether this is a beautiful deception or misunderstanding, I am not sure. But I believe that future history will give an assessment on it.

Over the past decade, there have been many debates on democracy. We have heard lots of reasons that seemed logical but were actually excuses to deter the pace of democratic developments. One of them is the approach of "gradual and orderly progress". Mr CHEUNG Man-kwong has pointed out just now that we have been waiting for more than 20 years since we first put forward our request for democracy, but still, we can only have "gradual and orderly progress". For instance, when we have a chance to implement more democratic elections, most people in the society will no longer accept excuses like "gradual and orderly progress" as they may think it is only a conspiracy on the part of Britons. However, if the flag of nationalism is hoisted, all other reasons will have to step aside. Today, some colleagues claim that there will be universal suffrage after 2007 according to the schedule laid down in the Basic Law. Yet, I do not have much faith in it because by that time, someone may come up and say that the society is not mature enough, or Hong Kong has become a base of foreign powers to subvert China and to bring peaceful revolution to China. In that case, democracy will have to be sacrificed again.

If we look back on the signing of the Sino-British Joint Declaration in 1984, it is found that the democrats were very happy at that time as they believed that promotion for democratic rule in Hong Kong would be in place. We all believed that problems regarding nationalism and sovereignty were resolved in 1984, and from then on, Hong Kong should prepare itself for the full implementation of "Hong Kong people ruling Hong Kong" in 1997. Therefore,

it was necessary to have representative government and democratic election. However, in 1985, the Chinese side said that there should not be representative government nor democracy. This is not because the Chinese Government was against democracy, but on the account that the Basic Law was not yet in operation. Hence, there should be a convergence and we should act according to the Basic Law. From 1986 to 1987, we fought for direct election in 1988. Many people, in fact, agreed that a few seats in the Legislative Council should be returned by direct election. We did not strive for the whole legislature being returned by direct election. However, on the ground of convergence and to save its face, the Beijing Government mobilized the mass media. As a result, people who were originally identified with democratic elections finally changed their mind and said, "We had better take the situation as a whole into consideration. We would rather have a meal ticket than a ballot paper."

Different parties including the Democratic Party, the middle parties (that is the leftists) and the business sectors and so on, all engaged in heated debates on the Basic Law in 1988. Chinese officials remarked that the Government had not set any bottom line in regard to the issue of democracy because "Hong Kong people ruling Hong Kong" is a matter of "internal autonomy". However, as there were different views among the various interested parties in Hong Kong, the most appropriate solution was for Hong Kong people to sit down and have a round table conference first. They could make things clear and reach a consensus; the Beijing Government would accept their proposals. The three major parties finally reached a consensus by the end of 1989. They had put forward a moderate proposal, that is, the Four-Four-Two mode. However, the Chinese Government considered it unacceptable. It was because the OMELCO consensus and the proposals put forward by the Democratic Party, the business sector and the middle parties together after the June Fourth Incident all came out at a time when Britain changed her policy towards China, and were thus considered as part of British conspiracy. Therefore, China found them unacceptable. After Mr Christopher PATTEN assumed office in Hong Kong and put forward his political reform in 1992, the Beijing Government again hoisted the flag of nationalism, alleging that it was part of the British conspiracy. They claimed that countries like Britain, the United States and many others were all directing against China, and the reform was part of the British conspiracy. Therefore, the proposal was unacceptable. As for the 1995 election, not only members of the Democratic Party stood for it, so did many other parties that were opposed to full-scale direct election. At that time, the pro-China media said that this election was tailor-made for the Democratic Party by Mr PATTEN. I have

no idea why this is so. How can an election where millions of people casting their votes for candidates they support be regarded as a tailor-made election?

The Democratic Party has been fighting for amendments to the Basic Law since 1990. Many people held that no amendments could be made as it was not yet in force. Today, when colleagues who are antagonistic to the Democratic Party spoke on the subject, none of them dared to say amendments to the Basic Law should be made after 1997. Some of them said that a decision on amendments should not be made until 2007 pursuant to the schedule laid down in the Law. Earlier on, I have been waiting for the Honourable IP Kwok-him of the Democratic Alliance for the Betterment of Hong Kong (DAB) to deliver his speech, hoping that he would state clearly that the Law could be amended after 1 July 1997, and that it should be made as soon as possible. However, he did not say so. Why do I have to wait for him? I recall that when we had a debate regarding amendments to the Basic Law a few years ago, both Mr TSANG Yok-shing and Mr CHENG Kai-nam said that it could not be amended before 1 July as there was no relevant procedures, but we could do so afterwards. They said that the DAB would support any proposals for amendments put forward after 1 July. However, I was very disappointed after listening to Mr IP Kwok-him's speech. I hold that we must put the record right while having a debate on this issue, and to state out clearly what we are really asking for.

Thank you, Mr President.

MISS CHRISTINE LOH: Mr President, the debate today on the Honourable TSANG Kin-shing's motion, concentrates on asking for immediate amendment of the Basic Law. Obviously he does not think it is good enough on the aspect of promoting democracy. The amendment by the Honourable LO Suk-ching wants to pledge strong confidence in the Basic Law as it is drafted, but I also heard by the speech by the Honourable IP Kwok-him just now who seems to indicate that if the Basic Law is not good enough then, yes, it could be amended but perhaps not immediately after 1 July. So, perhaps if there is any agreement at all we do agree that the Basic Law is not yet a perfect document in this respect and it can be amended and it should be amended.

So, perhaps I can start off, Mr President, by saying a few words about this aspect of the Basic Law. The Basic Law is a constitution and like other constitutions and other pieces of laws, it is by nature organic. Constitutions

prescribe a society structure of power and set out the relationship between the citizens and the government. A constitution fashions lives and destinies and puts a people's identity into legitimising and self-affirming words on a tangible page. A constitution establishes a map for the future based on the realities and the ideals of the present and, as those realities change, so the document that described them must also evolve.

The terms of the Basic Law, like those of most constitutions, are grand and all-embracing. Its articles lay out the fundamental rights and duties of the residents, the basic principles of the political structure of the Hong Kong Special Administrative Region and its relationship with the Central Government. The Basic Law describes the direction for change but it is silent on how to proceed. Therefore, it is Hong Kong people's imagination about how to proceed that I wish to tap to see how our community may become more open, more tolerant and more democratic.

During these heady days, Mr President, and when all the world's attention has drifted elsewhere, Hong Kong people still have to engage in a process of definition. We are creating a working relationship amongst our selves and with the Central Government and the Basic Law in order to reflect what we conclude and how we want to amend the Basic Law in future.

Citizen's Party believe that the Government must represent the people and made decisions on their behalf only with an express mandate to do so. This is the moral imperative of government and in practical terms the only way to harness the ideas and experiences of the people to make their government work. We view the wholesale disenfranchisement of the people of Hong Kong that will take place on 1 July as a profound regression which must be rectified by legitimate elections to this Council as soon as possible. We see no reason why this cannot take place even within 1997 itself and we see no justification for narrowing the terms of election already in place as they constitute a step towards a more broadly representative legislative body and as such they have the support of Hong Kong people.

Elections provide an accountability mechanism, and it is by holding the representatives accountable for their decisions that the Hong Kong people can participate in building the Special Administrative region. Until such a time when the Chief Executive takes office with a popular mandate, the Basic Law provides for his accountability to the legislature — as in the case of a

popularly-elected legislature — making the executive indirectly accountable to the people, but the powers of the legislature in this crucial domain is very weak. It can enact laws that bind the Administration, approve budgets, question the Government and receive the Chief Executive's policy address. This is hardly a good recipe for true accountability. Even in the extreme event that two successive legislatures repeatedly pass a law that the Chief Executive refuses to sign, it is his responsibility to resign. The legislature cannot remove him. It is thus the case that, according to the Basic Law, representatives elected by the people, a category with no members as of 1 July, cannot chart policy direction for Hong Kong.

I believe, Mr President, that in time this must change. Citizen's Party takes the aim of universal suffrage in election for the legislature and the Chief Executive as stated in the Basic Law as a guiding principle and a very real promise. Hong Kong people have never been given the chance to be citizens in the true sense of the word, which is to participate in a process of collective decision-making.

It would be tragic if in gaining a country we were to lose our voices, if we were to have a limited rather than an expanded say in charting our country's future, which is a very real sense. Mr President, it is for us to make these changes.

I believe that Hong Kong's future is ours to create. The Basic Law, with all its imperfections, offers opportunities for the development of democracy in Hong Kong. Its promise of full democracy, while qualified as ultimate rather than immediate, is the first to be heard on Hong Kong soil from official quarters. It is a promise that Hong Kong people have already begun to embrace and one I believe we will work to make a reality, whatever the obstacles.

No matter how the Special Administrative Region's constitutional parameters are put in practice, we must figure out what we want before we can make it happen. It is of no use to complain that the mechanism for amending the Basic Law is inadequate if we have no concrete amendment to propose, either to fix that mechanism or to revise the electoral framework prescribed for the legislatures of the next decade or to effect some even more fundamental change.

Even an ideal constitution means nothing without a civil society to embody and enforce it, how do Hong Kong people want to be governed in the longer term,

and how can this be reflected in our electoral arrangements and political system? I have a feeling that Members of this Council could say much about what we do not want, but what is our vision? And what, more importantly, what is the Hong Kong's collective vision for our home as a unique corner of China in the twenty first century?

These are difficult questions and not the ones we have been asking for very long. It will take time to come up with answers and they can never be conclusive, but Mr President, we need to have a plan before we can put it into action. To abdicate the responsibility of defining Hong Kong's identity and Government to anyone, whether to the National People's Congress or elsewhere, is to undermine from within the principle of Hong Kong people ruling Hong Kong, which is certainly our affair.

Thank you, Mr President.

MR BRUCE LIU (in Cantonese): Mr President, today's motion debate can be regarded as an overture to the movement of amending the Basic Law after 1997. The Association for Democracy and people's Livelihood (ADPL) will continue to lend its support to the fight for amendments to the Basic Law in a rational, peaceful and democratic manner after 1997, so as to expedite the establishment of a democratic system in Hong Kong.

When I received the wordings of the motion to be moved by the Honourable TSANG Kin-shing, I thought it was a copy of the political platform of the ADPL. The focus of his motion is to put in place the system of universal suffrage as soon as possible, so that we can give effect to the principles of "a high degree of autonomy", "Hong Kong people ruling Hong Kong" and "one country, two systems", which are granted to us by the Basic Law, through a democratic system as soon as possible. I have studied Mr TSANG's motion very carefully, and discovered three delicate points which I want to bring out for discussion. First of all, it is the timing of amendments to the Basic Law. The motion says that amendments would only be made "following the reunification of Hong Kong with China on 1 July 1997". Although it did not use the word "after", he was actually referring to some time following the reunification. This is in fact the stance on which the ADPL has all along insisted. Amendments to the Basic Law should only be made after the reunification when the Basic Law has come into force officially; before that, only the National People's Congress

(NPC) can initiate amendments. Yet, this will violate the principle of "Hong Kong people ruling Hong Kong". It seems to me that the Democratic Party and the ADPL share the same objective in respect of the timing of amendments, and both have very similar views.

Secondly, it is the powers to propose bills for amendments. Mr TSANG's motion did not touch on this aspect. Who should initiate such amendments? We think that three authorities are vested with such powers under the Basic Law, namely the Standing Committee of the NPC, the State Council and the Government of the Hong Kong Special Administrative Region (SAR). All along, we have suggested that the bills for amendments be proposed by the SAR Government, and they should only be put forward after thorough discussions and must follow the wishes of Hong Kong people. The purpose of amendments is not to make the Basic Law worse, change it completely, or make it a retrogression. We do hope that the Basic Law sees on-going development and improvement. If Hong Kong people are vested with the powers to propose bills for amendments, the concept of "Hong Kong people ruling Hong Kong" can be materialized. Given that only the Chinese Government, the NPC or the State Council can initiate amendments unilaterally, even if the intention it is good, Hong Kong people may not show appreciation to it as this is indeed an attempt to interfere with the "high degree of autonomy" of Hong Kong. I believe that the Honourable Frederick FUNG will elaborate on our views in respect of the powers to propose bills for amendments later on.

Finally, it is the objectives. Mr TSANG wants to achieve the objectives of electing the legislature by full-scale direct election and the Chief Executive by direct election as soon as possible. In fact, they are promised in the Basic Law. Article 45 of the Law provides for the selection of the Chief Executive by universal suffrage, and Article 68 provides for the election of the members of the Legislative Council by universal suffrage. There are two ways to "achieve as soon as possible" what the motion requests for: first, to complete in one step. It means there will be implementation of full-scale direct election immediately upon amendments, and the Chief Executive will also be selected by direct election. If the Chief Executive is to be selected by direct election, it can only be realized, at the earliest, on completion of the five-year tenure of office of Mr TUNG Chee-hwa. I believe that Mr TSANG is not calling on Mr TUNG to step down upon the amendments to the Basic Law and to implement an election immediately afterwards. He does not have such an intention at all. As for the Legislative Council, if the one-step approach applies, it will be the year 1998 at

the earliest when all seats will be returned by full-scale direct election. This is the first suggestion. The other is the two-step approach. In regard to the election of the Legislative Council by universal suffrage, although the ADPL does not oppose to the idea of achieving full-scale direct election in one step, we have all along advocated the "190 proposal", which suggests the achievement of full-scale direct election as soon as 2003 or even one year earlier in two steps, or even three steps. And before that, there may be half or more of the seats to be returned by direct election. This is the two-step approach and we can have further discussions on this matter.

We approve of Mr TSANG's wish to "achieve as soon as possible" the objectives to expedite the pace of democratic development. Does Hong Kong meet the requirements necessary for carrying out universal suffrage as soon as possible? This is a matter of judgement. If we take a look at our social and political environment, I think Hong Kong is "over-qualified", and it can no doubt achieve full-scale direct election as soon as possible. This is a view shared by the academic field and people engaged in political study. For instance, the general education level has been raised dramatically, and there are a number of universities in Hong Kong now. Besides, Hong Kong people are becoming more civic-minded, especially in the sense of democracy. We have gained lots of experience for elections in the past, and we have had 20 seats in the Legislative Council returned by direct election. Therefore, we are bound to have adequate experience and are fully capable of having all seats returned by direct election. This requires no fundamental changes. Moreover, the political system and the rule of law in Hong Kong are also very well-established. Given such sound social basis in respect of rule of law and democracy, we should be able to carry full-scale direct election now.

What are the merits of achieving universal suffrage as soon as possible? There are at least three of them. First of all, it helps materialize the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong, a high degree of autonomy", which enable us to establish a democratic system in Hong Kong. These principles are in fact promises laid down in the Basic Law and the Joint Declaration. Second, it serves as a positive demonstration to Taiwan, showing that peaceful unification of China is the common wish of all Chinese and should be achieved as soon as possible. In so doing, Hong Kong can play an exemplary role. Whether our democratic system can be preserved in future will denote Hong Kong as either a positive or negative example. Finally, it serves as an important example of democracy to China, which illustrates that,

sooner or later, China will have democracy, and Chinese people will enjoy a democratic system.

Mr President, these are my remarks.

MR FREDERICK FUNG (in Cantonese): Mr President, I support the motion of the Honourable TSANG Kin-shing, because it seems that the subject of this motion, as moved by the Democratic Party, is coming closer to the established stance of the Association for Democracy and People's Livelihood (ADPL). Previously, the Democratic Party had urged for amendments to the Basic Law to be made before 1997, but it has postponed the time to some day after the establishment of the Hong Kong Special Administrative Region (SAR). In other words, amendments would be made after the day of its establishment. This is exactly what the ADPL has insisted on. It is not only the stance of the ADPL, but also one of the major issues in respect of the Basic Law which the democrats successfully strived for in the 1980s. There are two very important political issues concerning the Basic Law. One is how the principle of "Hong Kong people ruling Hong Kong" can be implemented, and the other is the timetable for the implementation of political reform.

After discussions, two prominent leaders of democrats, the Honourable Martin LEE and the Honourable SZETO Wah, as well as representatives of the business sector and the middle parties found that, pursuant to the Constitution of the People's Republic of China in force at that time, the power to propose bills for amendments to the Basic Law shall be vested in the National People's Congress Standing Committee and the State Council only. Therefore, in order to ensure that the principle of "Hong Kong people ruling Hong Kong" would be upheld, we had to strive for a third option for proposing bills for amendments. On this account, the Government of the SAR was chosen to take up such responsibility. Under the Constitution of China, only Hong Kong is vested with the powers to propose bills for amendments to the Basic Law. Yet I still worried that such guarantee was not good enough at that time, so I requested the Chinese Government to make a pledge in public. The then Chinese Premier Zhao Ziyang stated clearly in the parliaments of the United States and Germany that there would be a third mechanism for proposing such bills. China would give priority to Hong Kong in making proposals, and would try to refrain from exercising its vested power. This mechanism is what we have strived for after experiencing innumerable difficulties. It guarantees that we will have "Hong

Kong people ruling Hong Kong", and the Central People's Government will prevent anyone in it from making such proposals. All along, the ADPL has taken a firm stance on this. In fact, the two prominent leaders had also lobbied the ADPL to support their proposal. In the plenary session of the ADPL held in 1988, there was unanimous support for their proposal, and our support to this decision has never changed. The SAR, however, cannot exercise its power to propose bills for amendments until its establishment. That is why we have opposed persistently to the amendments to the Basic Law before 1997. Nevertheless, we will give full support if amendments are to be made after that. This explains why the Honourable Bruce LIU has said that the motion today is very close to the political platform of the ADPL.

The second thing I would like to bring out is the pace of development of political reform. There had been numerous discussions among democrats on this matter, and there was unanimous support to the "190 proposal". It suggests that 50% of the seats should be returned by direct election by 1997, and the percentage should be increased to 75%, and finally 100%. In other words, it will achieve 100% direct election by two steps. The ADPL is not only a supporter of this time frame, but also one of the signatories. Although it was in fact the ADPL's target to achieve 100% direct election by 1997, in order to reach a consensus, we supported the "190 proposal", that is, to achieve full-scale direct election by two steps. No matter full-scale direct election is achieved at one go or by two steps, the ADPL does not have any objections because this is one of our early targets. We hope that all the seats of the legislature will be returned by universal suffrage, no matter it is achieved by the first or second Legislature. We would like to take this opportunity to state that we would work hard to achieve this objective together with other political parties. In fact, we have said this before.

Another thing I would like to point out is about the suitability of Hong Kong for democratic development, as well as the appropriateness of the pace. I studied politics at the Chinese University of Hong Kong, and I have mentioned that one of the subjects which I studied was the relationship between democracy and economy. Some academics have conducted studies on more than 120 countries, especially those that implement democratic elections, with an aim to analyze whether democracy affects their economy or *vice versa*. But no inexorable relationship has been found between them. A good economy does not necessarily mean the existence of democracy; whereas the existence of democracy does not necessarily constitute a good economy. However, the

findings clearly reflect a phenomenon that countries with democratic elections are relatively more stable, provided that they have certain foundations. What are these foundations? There are three of them. First of all, there is a high percentage of literacy in the country. Election results in countries with a larger literate population are usually more stable, and the society as a whole is more stable, too. Certainly, a stable society will not exert an adverse impact on the economy. Second, it is the accessibility to the information network. If more people can gain access to the information network, which includes media like telephone, television, newspaper and radio, the dissemination of information will be easier. If information can be disseminated easily, the promotion of democracy can be more effective. Third, it is a more affluent society. Indicators of an affluent society include the number of people having refrigerators, cars, telephones and so on. If a high percentage of the population possesses these facilities, it reflects that the social condition is relatively stable. From this point of view, it is found that the existing condition of Hong Kong is far more superior to that of the United States and Britain 200 years ago in respect of literacy, information network and an affluent society. Therefore, there should not be any difficulties in the fight for democracy in Hong Kong.

On the other hand, I would like to point out that there are different views between Members of the ADPL and the Democratic Party. Despite our common goal, we pursue different means to achieve it. First of all, I would like to focus on the last paragraph of Article 159 of the Basic Law, which states that no amendments to the Basic Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong. It seems to me that if you have not read the Basic Law, you will have no idea of what those basic policies are. You may think that the schedule laid down in the Law are the basic policies, but it is not. The preamble of the Basic Law has stated clearly what the established basic policies are. It is prescribed that "one country, two systems" is the basic policies of China towards Hong Kong. In other words, any amendments to the Basic Law shall not contravene the basic policies of "one country, two systems". To expedite the pace of democratic development will in no way contravene the principle of "one country, two systems", and therefore it does not contravene the established basic policies. In this connection, we should read every part of the Basic Law, not just individual provisions.

Secondly, I strongly disagree with the speech made by the Honourable CHEUNG Man-kwong just now. He said that if anyone willingly accepted to be appointed as Members of the Provisional Legislative Council, he would not be in the position to talk about "gradual and orderly progress". In fact, the

progress can go at either a fast or slow pace. Full-scale direct election may be achieved by the first Legislature, or we may have to wait till the second. It seems to me that the Democratic Party also accepted the arrangements of appointed members because some Democratic Party members have accepted the appointment as Members of either the Provisional Regional Council, Provisional Urban Council or the Provisional District Boards, and they have accepted willingly. If, however, they were unwilling, they could have given an explanation. What aroused my dissent is that they have pushed others out too quickly. People who support the progressive approach may be going in the same direction, no matter whether they support the implementation of full-scale direct election by the first, second or third Legislature. I hope that the Democratic Party can be more tolerant and accept people who are also fighting for democracy. Moreover, I hope that they can be broad-minded because whoever supports democracy is good.

The last thing I would like to comment on the Democratic Party is that it claims to have lost confidence in the Central People's Government of China on the one hand, but requests it to amend the Basic Law on the other. Such cases of inconsistencies are always found when the Democratic Party presents its arguments. For me, I do not have confidence in the Central People's Government, nor will I request it to amend the Basic Law. I hope that amendments can be made solely by Hong Kong people. Thus, the most important thing is to reach a consensus among ourselves. There are only two ways to achieve this: one is the top down approach, and the other is the bottom up approach. I incline to support the latter one, and there are two ways to achieve it. The first one is revolution, which means to seize political power from the authorities. This is neither the stance of the ADPL nor a suggestion that we support. The second approach is to exert "pressure". How can we do this? The answer is to make use of the Legislative Council, other provisional authorities, or by mass movement. I think there are various channels through which we can "exert pressure" on the SAR Government, making it alert of the fact that social unrest will arise if the situation is not handled properly. If the requests are not acceded to, it may not be able to win over public support. I think this is practicable. The main purpose of my speech is to bring out one point: even though no consensus can be reached, we can still get together by the same objective we share.

Thank you, Mr President.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, we all know that, in Hong Kong, the Basic Law was enacted for the purpose of transition, and even more, it is as important as the Common Law. Can we amend it? The answer is absolutely positive. If appropriate amendments to the Basic Law are good for the country, the whole region, and also the people of Hong Kong and China, I firmly believe that the Chinese Government should do so in response to the need of the time. However, we must beware that some people, who call themselves democrats, usually make use of constitutions, the Basic Law or even speeches to attack the leading officials of the Central People's Government of China. They make unreasonable requests and even intervene in the policies of China. It has been over 40 years since the Communist Party liberated China in 1949. Was its policy good for the community and people of China? Hong Kong people should make an assessment of it with a broad vision and be farsighted, and should not narrow themselves to the perspective of Hong Kong or their own political party. I am sure that many people join a political party not because of what it has done, but just for winning votes more easily so as to have a better chance of being returned to the Legislative Council. Actually, such behaviour does not conform with the thinking of political parties.

Mr President, the so-called "eight major powers" have recently made lots of comments on the affairs of Hong Kong. This reminds me of the historical event which eight major powers, including Britain, the United States, France, Germany, Italy, Japan, Canada and Russia, joined their forces to invade China. Why have the democrats not made any noise about the interference of these eight major powers? Do they think this is the way to achieve their targets? What are their objectives? I hold that amendments to the Basic Law is a very serious matter. Politicians should be broad-minded and should not work only for their own interests. We can, of course, be demanding with our country, but we cannot be indifferent to the interference and unfair treatments of foreign countries. We are, after all, Chinese. The Honourable Martin LEE of the Democratic Party was very well received during his overseas visits. Yet, how does he actually feel? He is, in fact, only a peg being manoeuvred and is in a similar position with Dalai Lama. But undoubtedly, he is of a much lower class. I hope that he would not chime with such complacency. He can only hope to have representation in Hong Kong, and to express the wishes of Hong Kong people on their behalf in the capacity as Legislative Council Member. As such, he should call upon world countries not to meddle in the internal affairs of China and push their noses in every matter about Hong Kong.

Mr President, I strongly believe that we are at liberty to discuss anything with the Central People's Government or air our opinions during the transitional period. However, unreasonable criticisms or attacks are unacceptable, either to the public or man in the street, let alone a successful country. The Basic Law has, in fact, stated clearly that arrangements will be in place for different elections in Hong Kong. Undeniably, there are different views in the community on the controversial Provisional Legislative Council (PLC), but we have repeatedly asked ourselves: Who started this controversy? Who brought about the present situation? Why do we not get to the bottom of truth but get into a dead end instead? It is true that many countries have said that they will boycott the swearing-in ceremony of the PLC, and this is up to them. But we must keep our dignity. There is no need to care about them. They are free to come if they are interested. There is no need to look down upon ourselves even if they are not interested to come.

I want you to understand that countries like India, the Philippines and Italy hold many elections every year, and there are re-elections after elections. Many people regard these elections as indication of democratic development, but what have they actually achieved? I am not saying that Hong Kong is not qualified to have democratic elections. I just want to point out that election is not the answer to everything. We may not get what we want. Besides, we should understand that we must make sincere and constructive suggestions in order to deal with problems. Many columnists, especially those living overseas, who do not have a good understanding of Hong Kong but making radical criticisms on it frequently, often get themselves to dead ends in many problems. This is indeed extremely unfair to Hong Kong people. Therefore, I hope that we can give rational and constructive opinions to problems. I have expressed my views to some columnists who are friends of mine, but they say they have the right to do so, and it is the responsibility of people in power to make constructive suggestions. Yet, I think they have gone to extremes. Finally, I hope that all political parties can set an objective to giving constructive opinions. I firmly believe that no matter the opinion is made by major political parties or just a small one, the authorities will definitely listen to it, provided that they are constructive. Otherwise, opposite parties will only court their own destruction in a political sense.

Mr President, I eagerly hope that you can bear in mind that the Basic Law can be amended if the amendments can do good to the Central Government, the

Government of the Hong Kong Special Administrative Region, and the people of China and Hong Kong. These are my remarks.

MR MARTIN LEE (in Cantonese) : Mr President, I have never chimed with any complacency. I think the Honourable CHIM Pui-chung himself may chime with that, as his surname "CHIM" is much closer to "chime" than mine, which is "LEE".

Some Members in this Chamber may have forgotten the drafting process of the Basic Law. At that time, only four Members of this Council were members of the Basic Law Drafting Committee, namely Dr the Honourable David LI Kwok-po, the Honourable LAU Wong-fat, the Honourable SZETO Wah and me. Therefore, it is wrong for the Honourable LO Suk-ching to say that the Basic Law was determined by Hong Kong people. There is one thing which we all remember but Mr LO may not know. When the Chinese Government drafted the Basic Law, it regarded the piece of legislation solely an affair on the part of China. Britain did not have a part to play and was kept out completely. So when did the Britons start to have a hand in it? The answer is after the June Fourth Incident. However, "Uncle SZETO" and I were no longer members of the Drafting Committee at that time. In fact, 11 out of 18 members had written a letter to the Chinese leaders and put forward two requests. The first one was to add some democratic provisions to the Basic Law and the second one was to oppose the bicameral model of voting. Since the Chinese Government was aware that the majority of committee members of Hong Kong had the same requests, it brought up the issue to Britain for discussion. This gave rise to the seven confidential documents which we all know by now. Therefore, what Mr LO said just now was wrong. The Basic Law is not determined by Hong Kong people. Final decisions are made by the Chinese and Britons.

Just now, the Honourable LEE Cheuk-yan and the Honourable CHEUNG Man-kwong mentioned Article 159 of the Basic Law, which is the last provision of it. The Honourable Frederick FUNG Kin-kee was right in saying that the inclusion of this provision was what we had successfully strived for. We insisted on its inclusion because we worried that after amendments were made to the Law, it would be in contravention to the Sino-British Joint Declaration, and there was nothing we could do by then. However, committee members from the Mainland considered it inappropriate to mention the Sino-British Joint Declaration in the Basic Law again, so it is said in the preamble, "The basic

policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration." Besides, it is added as the last sentence of Article 159, which reads, "No amendments to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." The word "established" means something that had been in existence before the promulgation of the Basic Law, which in fact refers to the Sino-British Joint Declaration. Therefore, this provision can be amended to make it more specific, but it cannot be deleted.

The Honourable NGAI Shiu-kit mentioned the "abnormal foetus". Yet, he has forgotten that there exists an abnormal foetus now, that is, the Provisional Legislative Council (PLC). The PLC was neither mentioned in the Basic Law nor the Joint Declaration. Some people may feel so excited sometimes that they forgot they were a part of the abnormal foetus. We may say that they are "growing up in the belly", and "belly" is the abdominal part of the body. It seems that "they do not know they are growing in the belly".

Mr President, the Basic Law should be amended. Mr XU Jiatun is not the first one to bring out this issue recently. Many years ago, Mr HUANG Wenfang said to me, "The Basic Law was promulgated in 1990. Things should have changed during the period from 1990 to 1997, so why can we not amend it? Amendments must be made." He hoped that the Chinese Government would make amendments on her own so as to tie in with our social developments. Some of those who are in this Chamber are sometimes "very miserable", some may be even more "leftish" than the Communist Party. Of course, the Basic Law can be amended, and should be amended. But the problem is that many colleagues in this Chamber do not want this to happen. Why are they reluctant to do so? Let me hit the mark with a single comment. They worry that they would not be elected again after the amendment. It is as simple as this. Mr President, can you imagine how many seats the Democratic Party will win if all the 60 seats of the PLC are to be returned by direct election, regardless of the election method or proportion being adopted? I think you all know the answer and there is no need for me to tell you. Although we have only obtained 20 seats now, they still have to "use underhand method". The reason behind is crystal clear.

Mr President, one thing we should know when looking at this issue is that there will not be any freedom or rule of law if we do not have democracy. We should amend the Basic Law and must do so with no hesitation. Colleagues of

the Association for Democracy and People's Livelihood (ADPL) are concerned about who will initiate the proposals for amendments. But in fact, it does not matter who puts forward the proposal. It would be better if it is done by Hong Kong. However, do members of the ADPL have a chance to put forward such proposals? Even the First Legislative Council does not have a chance to do so. Therefore, in order to save time and effort, it is better to be initiated by the National People's Congress as it is the only authority that is vested with the power to amend the Basic Law. We can see that this motion is very meaningful because only the Chinese Government can amend the Basic Law. Since whoever started the trouble should end it, I hope that the Chinese Government will amend the Law. Mr CHIM Pui-chung has mentioned about the part played by Chinese. Are we not Chinese? But what is the ideal China that we want to have? Mr President, I hope that the strong China that we belong to now will become a great country in future, and in this great country, the human rights of every Chinese will be respected and also safeguarded by the constitution.

DR HUANG CHEN-YA (in Cantonese): Mr President, just now a Member made wanton criticisms on the Democratic Party on the one hand, and held that the Communist Party of China could not be criticized on the other. Why can some people be criticized but some cannot? The party in power of China has never regarded itself as emperor; nor has it said that anyone who criticized it would be beheaded. Why do we have to regard it as a holy authority which cannot tolerate any criticisms? It is right for us to praise what is good, but anything bad is not likely to escape criticisms as this can help the Government to make corrections. Why do we refrain from doing so? Does anyone prefer China to remain in the feudalistic time? Are they going to disclose the secret of a country?

Mr President, Hong Kong is still a colony to date. Although we have repeatedly said that we have at least some democracy, we are still slaves of a colony. And in the near future, we will at best become housemaids of the Special Administrative Region. Why do I say so? It is simply because we do not have the right to select the ultimate leader of our government, that is the Governor of Hong Kong or the Chief Executive of the Special Administrative Region. Although every Council Member can be said to be elected by the public, none of us is returned by universal suffrage. The future Legislature will not be returned by universal suffrage either. Moreover, the proportion of democrats in the Council will become smaller. Therefore, the problem under

discussion is a technical one. Many colleagues have talked about the technical aspects, such as how the Basic Law will be amended, but what lies in front of us is a matter of principle. It concerns with whether Hong Kong should have democracy or whether it can be the master of its own house. But many people have evaded the major part of the problem and dare not speak directly.

Mr President, I came from Australia and I know that there is a "white Australian policy" in place for many years. Recently, a woman has become very well-known because of this policy. These Australians are discriminatory on racial ground and always try to exclude the Chinese. Yet, Asians or Hong Kong people who have settled there are not deprived of the right to vote. They are not refrained from electing Members they like. The Government does not do so. If any Hong Kong people emigrated to Australia, Canada or the United States were told by the local people, "You do not have the right to vote because you were not granted with such right in Hong Kong either. You are in no way qualified to do so." Do you think this is racial discrimination? However, to one's surprise, some Hong Kong people now admit that they themselves are not good enough and cannot elect their own Legislature or the Chief Executive by universal suffrage. What kind of logic is this? Are they imbued with colonial education and so they think they are inferior to foreigners, so that both Chinese and Hong Kong people are not qualified to have democracy? This is, in fact, racial discrimination against ourselves, and is absolutely racial discrimination. I believe that if Ms Hanson comes to Hong Kong one day, she will be very happy to hear such anti-democratic speech. After she returns to Australia, she will tell her people, "Chinese are useless. Some legislators believe that democracy in Hong Kong has to depend on future political developments and other factors. So is it necessary for us to give emigrants from Asia and Hong Kong democracy? I think they are not qualified at all."

Second, is the society of Hong Kong inferior to other countries? Just now, a colleague pointed out that when the United States, Britain and other European countries started to develop democracy, they were not as affluent as Hong Kong today in many aspects. Nowadays, the economy, social education and educational standard of Hong Kong are better than those of many other regions. Since countries that have less favourable conditions can also have successful democratic development, we can see that social factors are not hindrances to democratic development in Hong Kong. The Honourable IP Kwok-him has said that final decisions have to depend on future political situations. What sort of argument is this? What is the implication? Mr

President, during the 1991 direct election, many people worried that more democracy would deal serious blow to Hong Kong. Now, several years later, we can see that Hong Kong does not "break up", despite a larger proportion of democrats in this Council. Rather, the economy and people's livelihood have improved. Besides, government policy can also cater for the needs of the people. It is proved that democracy is good for Hong Kong and will not do any harm. Why do we oppose to the suggestion to expeditiously implement universal suffrage?

Some people say that the rule of law and the economic situation are important factors of Hong Kong, and both of them are indispensable. Democracy, on the other hand, is of a lower priority. As a matter of fact, there will be no rule of law without a mechanism to monitor democratic development. The court will be reduced to a tool for the "legalization of tyranny". How can we eradicate corruption if we do not have democracy and with no monitoring mechanism in place? How can we revoke the privileges of some people? Can a free market really operate? It is not enough just to have confidence in Hong Kong after 1997. What is more important is to design a system to retain the confidence of Hong Kong people so that they will not dwindle to nothing. This technical problem can be resolved. However, we must fix the direction correctly and cannot act without principles. I hope that you will not forget that the Basic Law is not determined by Hong Kong people through voting. Instead, it is determined by a small group of people. The present situation is just like an engineer building a road. If the road leads to a wrong direction and heads towards a dead end, it may result in car crash and death of people at any time. Why should we not correct it once we notice it and to do so immediately?

PRESIDENT (in Cantonese): I now invite Mr TSANG Kin-shing to speak on the amendment to his motion. You have five minutes to speak on the amendment, Mr TSANG.

MR TSANG KIN-SHING (in Cantonese): Mr President, the Honourable LO Suk-ching has just now pointed out that the Basic Law cannot be amended, and that the election method of "one man, one vote" is not suitable for Hong Kong. In fact, the mechanism as provided in the Basic Law allows amendments to be made flexibly so as to tie in with the need of the time. Mr LO did not take

notice of the text of Article 160 of the Basic Law, which provides that provisions that are outdated shall be amended.

Secondly, Mr LO vehemently opposes to the election of the legislature by universal suffrage and selection of the Chief Executive by direct election. Undoubtedly, for those people with vested interests, electing the Chief Executive or the legislature by universal suffrage means not only that they will be turfed out, but also that they cannot take orders from the Central Government anymore. Hence their privilege gained from "licking the boot of the Central People's Government", the so-called political free lunch, will also disappear. For Mr LO and those in the pro-China camp, to amend the Basic Law to achieve the objectives of electing the Chief Executive and the legislature by universal suffrage is tantamount to political suicide of those people with vested interests, taking themselves to the road of destruction. Therefore, Mr LO strongly opposes to any amendments to the Basic Law.

It is very crucial for those people with vested interests to delay the amendments to the Basic Law. The crux of Mr LO's amendments is that there is no need to amend the Basic Law, to elect the legislature by universal suffrage or to select the Chief Executive by "one man, one vote". However, what is the purpose of his joining the legislature or the Provisional Legislative Council (PLC) if there is no election? Both the PLC and the Legislative Council are legislatures. As he holds that there is no need to amend the Basic Law, believing that the Basic Law is a perfect document, there is no need for him to be a Member of the legislature. He can go home and have some sleep, to rear pigs or plough the fields.

PRESIDENT (in Cantonese): Is this a point of order?

MR LO SUK-CHING (in Cantonese): Mr President, I have never said that the Basic Law cannot be amended, nor it need not be amended.

MR TSANG KIN-SHING (in Cantonese): Mr President, when can the Basic Law be amended if Mr LO says that we can do so? Do we have to wait till 2047, 2007 or any other time? The motion I move today is to urge the Chinese Government to immediately amend the Basic Law. What "immediately" may

mean after 1 July, or by the coming first Legislative Council. Nevertheless, Mr LO still wants to mobilize Members who can cast a vote in this Council to vote against the motion, so that the requests for amendments to the Basic Law will fail at last. Is the Basic Law a decree of China or being a holy canon that cannot be amended?

Mr President, am I only allowed to speak on Mr LO's amendments and not to respond to others?

PRESIDENT (in Cantonese): You have the last chance to speak after the Secretary for Constitutional Affairs speaks.

MR TSANG KIN-SHING (in Cantonese): Mr President, I am not sure whether it is a deliberate act or otherwise to have the last paragraph of Article 159 of the Basic Law printed on a new page where one can hardly notice. However, this sentence of Article 159 is last but not least, which reads, "No amendments to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong." Earlier on, a colleague mentioned the preamble of the Law, but in fact, the power of interpretation of the Law was vested in the National People's Congress. It is rule by man, not rule of law at all. Therefore, we must amend the Basic Law. I hope that Mr LO Suk-ching can make an "about-turn" for the interests of Hong Kong people, and support our requests for amendments to the Law. It is not our intention to have any government step down. All we want is a good legal system.

Thank you, Mr President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Mr President, the election of the Chief Executive of the Hong Kong Special Administrative Region (SAR) and the formation of the legislature are very important issues, and the public have expressed considerable concern about them. There is expectation that the procedures involved must be fair, open and transparent. We fully appreciate such wishes. The motion moved by the Honourable TSANG Kin-shing suggests that the Basic Law should be amended immediately after 1 July 1997, so as to achieve the objectives of electing the

legislature by universal suffrage and the Chief Executive by direct election. Our views on this motion are as follows:

First of all, the procedures regarding the election of the Chief Executive of the SAR and the formation of the legislature have been provided for in the Basic Law. Regarding the election of the Chief Executive, Article 45 of the Basic Law reads, "The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Regarding the formation of the legislature, Article 68 of the Basic Law stipulates: "The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." Our consideration on the development of a representative government has all along been based on two important principles. First, it must be carried out in a progressive manner. Second, it must be open and fair. These principles have been well-established and have gained widespread support and recognition from the community.

Secondly, I would like to touch on the procedures regarding the amendment to the Basic Law. These procedures are also provided for in Chapter VIII of the Basic Law. Any proposals to amend the Basic Law should not be made casually, and amendments should be made only after serious consideration of all the relevant factors. This should be the responsibility of the Central Government and the future SAR Government.

The Basic Law sets down the blueprint for the lifestyle of Hong Kong after 1 July 1997. Every citizen of Hong Kong wants the principles set down in the Sino-British Joint Declaration to be faithfully implemented. These principles are: "one country, two systems", "Hong Kong people ruling Hong Kong" and "high degree of autonomy". We all expect that our existing lifestyle can be maintained, our human rights and freedom can be safeguarded, the spirit of the rule of law can be sustained and the economic competitive edge can be further enhanced. If all these can be achieved, I think we will have a brighter future.

Question on the motion put.

Voice vote taken.

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

Mr LO Suk-ching claimed a division.

PRESIDENT (in Cantonese): Council shall 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 Mr TSANG Kin-shing's motion be amended in accordance with the amendment proposed Mr LAW Suk-ching.

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

Members may wish to check their votes. 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, Dr Philip WONG, Mr Howard YOUNG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, 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, Mr James TO, 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, Dr LAW Cheung-kwok, 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, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 22 votes in favour of the amendment and 31 against it. He therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, you are entitled to your final reply and you have five minutes and 48 seconds out of your original 15 minutes.

MR TSANG KIN-SHING (in Cantonese): Mr President, first of all, I would like to respond to the points made by Members of the Association of Democracy and People's Livelihood (ADPL). Earlier on, ADPL Members said that my motion to urge for amendments to the Basic Law was close to its stance, and they had been keeping this stance all along. Yet, if they really kept such stance, they should not have joined the Provisional Legislative Council (PLC) so that the establishment of this political embellishment would not be made impossible. I believe that Hong Kong people would be pleased to see that.

The Honourable IP Kwok-him mentioned the Chief Executive, Mr TUNG Chee-hwa, and the PLC earlier on. He said that Mr TUNG would resign if his principles were challenged. However, it is an irresponsible act to resign. In fact, Mr TUNG should know that he is under great pressure from Beijing and is controlled by it. If he is not happy with his work, he will resign. Why would he do so? This is because he knew that tyranny is fiercer than a tiger.

As the Honourable NGAI Shiu-kit mentioned the abnormal foetus just now, I would like to talk about a mother's choice. Hong Kong people were the mother twice in 1991 and 1995 when they gave birth to democracy and Legislative Council Members. However, after the Beijing Government and the Hong Kong Special Administrative Region (SAR) delivered the PLC in 1997, the Legislative Council returned by direct election was destroyed. In the words of Mr IP, it is a matter of "who started this policy". Since someone had committed "three violations", some six million Hong Kong people were punished. They did not have a vote in the election of the PLC nor a say on how it should be returned. Was it necessary to impose such punishments upon Hong Kong people? It was the British colonial government who had done something that

China regarded to be wrong, so China "should not do to others what it did not want others to do to it". But the fact is not like this. Since it was a wrong move for Britain to let Hong Kong people have democratic election, China has decided to punish Hong Kong people after resuming the sovereignty over Hong Kong. Hong Kong people can no longer participate in elections and there will not be any elections. The reason is as simple as this. What I want to say about mother's choice is, a mother who will soon have her baby should be the one to decide when to deliver it, and this is not to be decided by the house-keeper she has employed, even if the house-keeper is British. Of course, we are not in a position to choose the house-keeper for Britain, but why do we not have a say even in employing our own keeper, the one for the future Hong Kong SAR? The Beijing Government will not only appoint a keeper for us, but also decide on the time and the way to bear our baby. It is provided that no more than 12 seats in the legislature shall be taken by foreign passport holders, but it is up to us to decide on the way to return the other 20 seats. As for the rest of the seats, we are told by our keeper to include people from the legal, professional and educational sectors. Why cannot the mother choose to have all the 60 seats returned by herself?

I feel very worried about the future SAR, and think that the future of Hong Kong is very grim and will surely be in a mess. The reason is very simple. Regarding the composition of the PLC, 80% of its members come from the business sector, and only 20% come from the grassroots. However, over the past two years, the Hong Kong Federation of Trade Unions (FTU) and the ADPL, who claim to represent the grassroots, have not only voted against the proposal to put the fare increase mechanism of the three railways and four bus companies under the monitor of the Legislative Council, but also voted against the proposal to urge the Housing Authority to enhance its transparency. Are these acts to safeguard the interests of the grassroots? The ADPL regards itself the ruling party, and hopes that if they can secure power, the game will last longer. Therefore, it tries to set some rules for the game to preserve its privileges. I think the ADPL is no longer a political party fighting for the interests of the grassroots, nor is it a party serving them. It has, in fact, betrayed them because it has already secured its privileges.

I admired the Honourable Allen LEE very much as he has the "guts" to stand for direct election. He once said to me in respect of the appointment of members of the Urban Council and the district boards for the coming two years, "I will not accept any appointment." That is it, and I respect him a lot. All

along, he has kept his stance and is always ready to fight for the interests of the business sector. Besides, I also respect the stance of the Liberal Party. Yet, why have the FTU and the ADPL abandoned their long-established objective of fighting for the grassroots and changed to follow the policy line of the Liberal Party, and have gone even further than the Liberal Party and Mr Allen LEE? In view of this, you may have a feeling that the future SAR Government will be a mess. Mr President, the one who will be in the seat which you are now sitting — Mrs Rita FAN — has become the Parliamentary Party Convenor and Spokesman of the 60-Member PLC, who always makes irresponsible remarks. I admire you, Mr President, because you are excellent. Over the last 20 months, you dare not speak about your political stance. But you can do so four days later. What do you expect the well-being of Hong Kong people to become, with such a legislature? We have, in fact, been betrayed by some people who flaunt the banner of the grassroots.

In a nutshell, the ADPL is a group "blackmailing democracy", and they have been doing so over the last 20 months. They have taken advantage of the four votes they have, knowing that on which side they cast their votes, that side will "win". However, they have no choice today but to vote for amendments to the Basic Law, and therefore, the motion on this subject can be passed. I do not want to talk too much about the ADPL, and I am going to use a few words to describe it: blackmailer of democracy, the child of whoever feeds it, and a hundred-percent opportunist.

With these remarks, I hope that Hong Kong can have a beautiful and democratic society, where people can enjoy stability and prosperity, and live happily in peace. I hope that Members of the PLC can make a timely turn, and make every effort to fight for the future of democracy in Hong Kong, and to build a democratic society with the rule of law and a good constitutional framework. This is not only for themselves, but for the generations to come and for Hong Kong as a whole.

Mr President, I was interrupted by somebody who is standing like a log in front of me.

PRESIDENT (in Cantonese): Is this a point of order?

MR FREDERICK FUNG (in Cantonese): Mr President, I have two points of order. First, does the word "opportunist" carry any negative meaning or insulting sense?

PRESIDENT (in Cantonese): As this is the last sitting, I am not going to rule on this question. *(Laughter)*

MR FREDERICK FUNG (in Cantonese): Mr President, the second point of order. I hope that the Honourable TSANG Kin-shing can elucidate a point. If he said that anyone who accepted the appointment of Membership of the Provisional District Board or the Provisional Regional Council were opportunists, why did the Democratic Party join these institutions? Are they opportunists, too?

PRESIDENT (in Cantonese): This is not a point of order but the first one is. Although this last sitting may last five days, unless there are similar rulings before or unless it has gone too far, I will not interfere with the choice of words. As for the word "opportunist", I heard that many of you made use of "opportunistic" yesterday. It is just that this time it is used on people. This is something very hard to judge, and I hope you can understand. Concerning your second point of order, I think this is not a point of order but a refutation.

MR TSANG KIN-SHING (in Cantonese): Mr President, there are a few seconds left and I have not yet finished.

PRESIDENT (in Cantonese): It was the final reply, Mr TSANG. You cannot speak anymore. Now question on the motion put.

MR TSANG KIN-SHING (in Cantonese): Mr President, there are a few seconds left and I have not yet finished.

PRESIDENT (in Cantonese): Time is up.

MR TSANG KIN-SHING (in Cantonese): He interrupted me. You have to give me at least ten seconds or more to finish what I intend to say.

PRESIDENT (in Cantonese): He did not interrupt you, and I have let you speak until the timer showed it was five minutes and 48 seconds.

Question on the motion put and agreed to.

IMPROVING UNDERGROUND WATER QUALITY AND WATER SUPPLY IN VILLAGES

MR AMBROSE LAU *to move the following motion:*

"That, as the survey findings on the quality of local well water show that most of the well water in the New Territories has an E-coli count in excess of the established standard and is definitely not suitable for drinking, this Council urges the Government to expeditiously draw up a comprehensive plan to improve the quality of the well water concerned and to install water pipes for the over 80 villages in the New Territories which are currently deprived of tap water supply, so as to enable villagers to enjoy tap water."

MR AMBROSE LAU (in Cantonese): Mr President, Members may probably find it surprising as I do not follow others to take this opportunity to move a motion that is more "sensational" or controversial at this last sitting. Why do I move a motion that looks so "pedestrian"? Some people even suspect that this motion has certain underlying implications. Therefore, I feel obliged to elucidate on the matter.

Mr President, as an ancient saying goes, "no matter how insignificant it is, do not refrain from doing good". In my capacity as a Legislative Council Member, I have the responsibility to strive for the interests of the public. However, during the past two years, some of the motions moved in this Council were so broad that they could be regarded as hollow. Yet, Members spent hours going through marathon debates on these "hollow" motions, which were simply

empty talks and did not have any contributions to the economy or the people's livelihood. Some of the motions were very controversial or extremely politicized in nature. Although Members had heated debates on those subjects, they did not give any practical help in solving the problems. They only impaired our relations. Therefore, in order to save the money of taxpayers and to make proper use of the rights conferred on us, I have decided to move a motion that can practicably improve the economy of Hong Kong and the people's livelihood. If a motion can do good to the community, "no matter how insignificant it is, we shall not refrain from doing good", and it does not matter if it is ordinary or low-key. These are the reasons I move such a motion at this very last sitting, and there is no underlying implications at all.

Mr President, there are many outstanding socio-economical problems in Hong Kong. The majority of well water in the New Territories has an E-coli count in excess of the established standard and is definitely not suitable for drinking or food-processing purposes. This is one of the long standing socio-economical problems in Hong Kong, and only the tip of an iceberg. This problem seems insignificant, but it affects the health of residents living in some 89 villages in the New Territories which are deprived of tap water supply. As there are several food-processing plants in the New Territories, the use of well water that has an E-coli count in excess of the established standard for food-processing purpose may result in the spreading of illnesses like cholera and typhoid fever in Hong Kong.

Mr President, in the wake of the cholera cases in Hong Kong earlier on, there is widespread fear in the community. It was reported that some of the cholera cases could be traced to two food-processing plants located in North West New Territories. Since these two plants do not have tap water supply, they can only resort to contaminated well water for food-processing purpose. Ever since these two plants were covered by the media, the public "tremble with fear on hearing of food". The business of restaurants was also adversely affected. In this connection, we can see that well water having an E-coli count in excess of the established standard is not something insignificant or without bite.

Mr President, the survey findings on the quality of local well water conducted by the Hong Kong Open Learning Institute show that well water has an E-coli count exceeding the world health standard by 180 times. Well water in the North West New Territories is particularly bad. The study was conducted

in 1993 where water from over 50 wells in the New Territories was tested. The findings show that well water is definitely not suitable for drinking. This is because the majority of wells in the New Territories are not deep enough, so they are susceptible to contamination by dirty water permeated from septic tanks nearby. There was another study conducted in 1988 on the quality of well water in the New Territories. Nevertheless, the findings of 1993 show that well water quality has in no way been improved despite the implementation of a piece of legislation regarding the control on livestock waste. It was even worse than that of 1988. We can thus infer that the quality of well water in the New Territories nowadays is probably worse than that of 1993. This gives evidence that food-processing plants in those places have become the hot bed of cholera because of the use of well water.

Mr President, the survey findings of wells in the New Territories in 1993 show that the E-coli count in every 100 ml of well water is 1 800 units. This far exceeds the health standard, which should not exceed 10 units for every 100 ml of water. As such, well water in the New Territories is definitely not suitable for drinking nor food-processing purposes.

Mr President, what worries us is that, as reported by the Water Supplies Department, 89 villages in the New Territories are still deprived of tap water supply. They represent 12% of the total number of villages there. Despite the Government's plan to install water pipes for the majority of these 89 villages in the coming four years, as 21 of them are at very remote locations and are sparsely populated, the cost incurred in the installation of water pipes will be very high. The villagers there can only rely on well water or mountain water for drinking purpose for the time being.

Mr President, I find the above plan very irresponsible. If well water of these 89 villages is definitely not suitable for drinking purposes, why does the Administration still wait for four years before taking any action? As a saying goes, "If someone suffered from an acute disease and came to a very inefficient doctor, he would bode ill rather than well." If it really takes four years for the Administration to install water pipes as scheduled, the health of those villagers will be threatened. Besides, the food-processing plants there will also become hot beds for contagious diseases. Therefore, this Council urges the Government to draw up a comprehensive plan to improve the quality of well water and to install water pipes for those villages with no procrastination.

Mr President, it is extremely irresponsible for the Administration to say that residents in those 21 villages can only drink well water or mountain water for the time being, simply because the costs incurred in the installation of water pipes in those remote and sparsely populated villages are very high. It is true that those villages are at remote locations and are sparsely populated, and so the costs of water pipe installation will be very high. But the Government should not shirk its responsibility. It has to find appropriate solutions to the problem. For instance, the Administration can identify places in those villages that can meet the health standards, and dig deep wells for the villagers there as underground water deep down is less susceptible to contamination.

Mr President, to improve the quality of well water and the supply of water in the New Territories, the Government should do two things. First, it should install water pipes supplying tap water to those villages as soon as possible; and second, it should dig deep wells that are up to health standards for villages that are at remote locations and sparsely populated, so that the villagers there can have clean well water for consumption. The Administration should expeditiously draw up a comprehensive plan and implement it immediately along these two approaches. They should not allow procrastination or show indifference to it.

Mr President, these are my remarks.

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

Question on the motion proposed.

MR LAU WONG-FAT (in Cantonese): Mr Deputy, Hong Kong is a well-known financial centre, and also a prosperous and modern metropolis. It has been called "the Pearl of the Orient". However, ironically and surprisingly, there exists great rural-urban disparity in this small city with an area of less than 1 000 sq km. With huge resources committed to large-scale development of new towns and renewal of old urban areas in the past one or two decades, the environment and quality of living have been significantly improved. However, development in the rural area has been neglected. Problems in road transport, flood relief, health and recreation still remain unresolved. People living in the rural area cannot enjoy the fruit of prosperity like others living in the urban area. Instead, they have to suffer inconveniences in many aspects of living due to a

lack of facilities. As a result, many of them leave the villages to seek better living and prospects elsewhere, leaving the places in desolation.

Heung Yee Kuk has been very concerned about the problem of water supply in villages for more than 10 years. After repeated negotiations, the Government has finally agreed to implement a programme to supply tap water to villagers in the New Territories, and to submit relevant progress reports to the Heung Yee Kuk twice a year. To be fair, with the implementation of the water supply programme for over 10 years, the majority of villagers in the rural area have been supplied with tap water, and this should be commended. But since over 80 villages in the New Territories, which accounts for 12% of some 700 villages there, are still deprived of tap water supply, we are very disappointed with the progress and pace of the programme.

Mr Deputy, it is obvious that the above problems rest with how the Government values the people's livelihood in the rural area. In 1989, the Administration undertook to spend 4.4 billion dollars on the implementation of the Rural Planning and Improvement Strategy in 10 years. However, funds allocated for this purpose was very small in the first few years. Upon repeated requests by the Heung Yee Kuk, progress has been expedited in these two years, yet it is still a long way from the target. In fact, it is the basic responsibility of the Government to provide clean drinking water for people. Since survey findings reveal that the majority of well water in the New Territories have an E-coli count exceeding the established standard and is not suitable for drinking, it is the responsibility of the Government to take immediate actions to complete the programme as soon as possible.

Mr Deputy, the Hong Kong Government has all along been well-known for its efficiency. However, there have been cases where the Administration responded to important problems with panic, and could only take remedial measures seriously after problems actually propped up. We do not expect the Government to possess a peculiar ability of prediction, but Government officials should have a sense of responsibility and should "plan and worry ahead of the people". If they can do so, I believe precautionary measures can be taken before problems affecting people's livelihood actually prop up.

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

MR MOK YING-FAN (in Cantonese): Mr Deputy, there is a saying that says, "Green mountains are always there, and running water flows on to every field." However, this is no longer applicable to villages in the North West New Territories of Hong Kong, because there are two underlying pre-conditions to this saying. First, there should be no pollution in the environment; and second, the place is not too crowded. If we take a look at the western or northern part of the New Territories nowadays, these two pre-conditions no longer exist.

A survey conducted in 1993 on the quality of well water indicates that the E-coli count in every 100 ml of well water in Hong Kong is 1 800 units, which far exceeds the world health standard. In other words, well water has been contaminated and it is not suitable for consumption for both human beings and animals. Serious pollution of underground water is the direct cause. Besides, rapid population growth in the North West New Territories in these few years and the misuse of land have further worsened environmental pollution. These all brought adverse effects to the quality of water at its source.

At present, 89 villages in the New Territories are still deprived of tap water supply. Water for consumption and drinking purposes in these villages mainly comes from wells. However, as underground water has been heavily polluted and the bacterial content of well water is too high, it is not suitable for drinking and may even be toxic or contagious. Two of my colleagues have just mentioned the case in which the use of well water by two food-processing plants in Yuen Long has resulted in the spreading of cholera. This is something we must watch out for, and it also serves as an alarm for us.

Underground water sustains the lives of all plants and animals in Hong Kong. If it is contaminated, the survival of these lives will be threatened. Moreover, the ecological environment of Hong Kong will be altered and result in massive death or extinction of plants and animals.

Mr Deputy, the sources of pollution of underground water are very widespread. In order to improve its quality, the Government should draw out comprehensive plans and measures in various aspects, including drainage, land use, waste disposal and environmental planning, and put them into practice.

In order to deal with the water supply problem faced by the 89 villages in the New Territories that are deprived of tap water supply, the Water Supplies Department should arrange the installation of tap water supply facilities for them

as early as possible. Only in this way will the villagers be supplied with clean potable water and their health be safeguarded. After all, they are taxpayers.

Mr Deputy, "Green mountains are always there, and running water flows on to every field". However, if there are no green mountains, will there be any running water flowing onto fields? I once went on a picnic at Tso Kung Tam in Tsuen Wan when I was young, and I remember that I enjoyed a very delicious lunch of noodles cooked with the pond water there. Yet, by a look at the water in Tso Kung Tam at present, I dare not make tea or cook noodles with it any more.

It is commonly known that water quality of Hong Kong is very poor. Recently, we have learnt that reclamation projects will be carried out in Tolo Harbour, and the development programme at Nam Sang Wai near the Mai Po Nature Reserve is also in the pipeline. The ecological environment in the countryside of Hong Kong is now under revolution, which is starting from the underground and the source of underground water. The magnificent view of the countryside in the New Territories will soon become history with these developments.

It is most regrettable that although improvements to the ecological environment are not beyond our control, it is just because we have simply ignored environmental protection in our economic developments. Mr Deputy, there is a saying among environmentalists that "we perish because we are indifferent to environmental problems; we sacrifice our ecology because we are weak in the mind." There is no way we can shirk our responsibility regarding the contamination of underground water.

With these remarks, I support the motion.

MR NGAN KAM-CHUEN (in Cantonese): Mr Deputy, for people who enjoy tap water simply by turning their water tap on, I wonder if they know that tens of thousands of people living in villages of Hong Kong are still deprived of tap water supply. At present, 89 villages in the New Territories are in such conditions. Although a concession of 7.5% to 15% is deducted from their rates, I believe they would rather pay the full amount of rates in return for the supply of clean and convenient water supply than having to rely on mountain water or well water. The Democratic Alliance for the Betterment of Hong Kong hopes that

this motion can be carried today to urge the Government to install water pipes for those 89 villages as soon as possible, so as to enable the villagers to enjoy tap water at any time like other people in Hong Kong.

In the past, since water sources were free from contamination, villagers did not bother much about the supply of tap water. "Mountain water bean curd" and "mountain water tea" were exclusive products of villagers. If people living in the urban area wanted to have a taste of them, they would have to travel a long way to those villages. However, with contamination at water sources in villages, the whole picture has changed. Villagers do not have tap water supply and their health is being threatened.

Just now, a few Members mentioned the findings of a survey conducted by the Hong Kong Open Learning Institute, which shows that water of many wells in the New Territories, and the western part in particular, is not suitable for drinking. The E-coli count of well water exceeds the health standard by 180 times, which is even worse than that of the Shenzhen river. How can villagers rely on such dirty water for drinking? However, according to the plan of water supply drawn out by the Government, only 68 villages will be supplied with tap water in the coming four years. For the remaining 21 villages, the provision of tap water is a long way off. To one's surprise, the reasons are the small population in those 21 villages which only amounts to 600, and their location being far away from the existing water supply network, which render it inefficient to supply these villages with tap water at this stage. I find these reasons very far-fetched. In fact, there is no difference between villagers and all of us. They are also Hong Kong residents and have to pay tax to the Government. Why should they suffer such differential treatments?

Mr Deputy, there are now a total of 17 licenced restaurants and two food-manufacturing plants using mountain water or well water for manufacturing purposes, and they are all in the Regional Council area. The Regional Services Department (RSD) will send officials to take water samples for inspection once every two weeks to examine the bacterial content in it. Besides, it will also take water samples for inspection every month to examine the chemical contents. If anything abnormal is detected from the samples, staff from the RSD will order operators of those restaurants or food-manufacturing plants concerned to clean up their water containers, and to examine whether the sources of water are subject to contamination. This is to ensure that the manufactured foods meet with the health standards.

Regarding the mountain water or well water consumed by those 89 villages at remote locations which are deprived of tap water supply, the RSD will send people to take water samples from the 87 springs and six wells there, to ensure that the water is not subject to contamination by chemicals or bacteria. If anything abnormal is detected in the course of routine inspection, the RSD will assist villagers to sterilize their water containers, and advise them to boil the water before consumption.

Mr Deputy, I believe that today's motion touches the heart of the Honourable CHAN Kam-lam most. Mr CHAN is living in a village called Shap Yi Wat in Shatin, which is one of the 89 villages that are deprived of tap water supply. Just like other villagers, Mr CHAN drinks mountain water every day. Villagers there have to pool funds for the installation of a catchment system for collecting mountain water. Nevertheless, Mr CHAN is luckier because his village will have tap water supply by this September. From then on, the villagers there need not worry about the quality of water for consumption. But when will the other sparsely populated villages be supplied with tap water? God knows the answer.

The Democratic Alliance for the Betterment of Hong Kong hopes that the Government will install water supply system for those 89 villages as soon as possible, especially for the 21 villages that have a small population. We should not turn a blind eye to them on the excuse of their small population. During this transitional period, the Administration should allocate funds for the cleansing of water containers periodically in order to safeguard the health of villagers.

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

MR CHOY KAN-PUI (in Cantonese): Mr Deputy, we enjoy prosperity and the advent of technology, but we have also paid a price for it. Wastes have piled up and the environment has been heavily polluted. Over the past two decades, rapid growth of population has made Hong Kong the most densely populated city in the world. Nevertheless, the Government has turned a cold shoulder to the adverse effects of rapid population growth on the environment, and has not taken appropriate measures against them. As time goes by, our ecology has been seriously damaged. Water quality control was not an important aspect in the early years of development in Hong Kong. Different kinds of urban wastes,

including untreated effluent, would be discharged directly to the sea. The same applies to rivers and streams in the New Territories. Besides, there are livestock wastes, too. As time goes by, beaches became heavily polluted by effluent discharged from nearby residential buildings. Rivers and streams were also polluted or silted up with human and livestock wastes or other pollutants. The water quality of Hong Kong has deteriorated to an intolerable level, and Hong Kong has become a "stinking harbour".

It is only in recent years that the Environmental Protection Department (EPD) has committed to the improvement of sea water quality. However, it only focuses on surface water, that is water at sea, in rivers and streams, and not underground water. In other words, the quality of well water is not under control. Furthermore, it seems that the EPD has only paid attention to urban environment and neglected the hygiene of the rural areas.

The spreading of cholera in Hong Kong recently has brought to light the cause of such contagious disease — contaminated well water. It was not until then that the public became aware of the heavy pollution of well water in the New Territories. A survey on the quality of underground water conducted by a post secondary college shows that most of the well water in the New Territories has an E-coli count in excess of the established standard and is definitely not suitable for drinking.

In general, wells in Hong Kong are not deep in the ground, so they are susceptible to pollution by dirty water. With rapid population growth and lack of control on underground water, the quality of well water further deteriorates.

Over the past two decades, the Hong Kong Government has been very keen on the development of new towns but it turns a blind eye to villages that do not have sufficient transport facilities. In short, it is a policy of the Government to ignore places that are not under town planning developments. The environmental and public facilities in these places have fallen behind the urban area by two to three decades.

It is commonly recognized that tap water is an essential public utility in a modern society. The Water Supplies Department admits that over 80 villages in the New Territories are still deprived of tap water supply. This is an irony to a metropolis like Hong Kong. The Department has not installed water pipes for

these villages probably because of their remote locations, sparse population and expensive installation costs.

Mr Deputy, I think the Government should understand that villagers living in remote villages are citizens of Hong Kong and they are taxpayers too. They should be entitled to the same rights and share the fruit of modern facilities in the society. On the other hand, as the size of Hong Kong is so small, there should not be any geographical boundaries for environmental hygiene or contagious diseases. It is wrong to think that the hygienic condition of those sparsely populated and remotely located villages would not have much impact on the overall health condition of Hong Kong. With regard to the widespread fear in the society in the wake of cholera spreading in Hong Kong recently, food-processing plants at remote locations which use contaminated well water for food processing purposes should account for the spread of diseases.

Mr Deputy, why has the Government not installed water pipes for these villages? Given the prevailing economic conditions of Hong Kong and the "excessive reserve" in the Treasury, we know for certain it is not financial reason that has prevented the Government from doing so. Is it a problem of inefficiency? If so, it is a mistake on the part of the Government. In my opinion, the most important reason for not having installed the water pipes is Government bureaucracy. It does not care about the hardship of the people; nor does it take the initiative to make positive response to people's needs.

I hope that the Government will learn a lesson from this cholera crisis, and urge that it expeditiously install water pipes for villagers who need tap water, so that everyone in Hong Kong, including people living in remote areas, can enjoy tap water.

Mr Deputy, these are my remarks and I support Mr Ambrose LAU's motion.

MR WONG WAI-YIN (in Cantonese): Mr Deputy, I support today's motion on behalf of the Democratic Party. Several of my colleagues have already spoken on the subject, so I am not going to repeat those points.

Mr Deputy, Hong Kong is a prosperous society and boasts its huge reserve of 300 billion dollars. But under the veil of prosperity, we can see the dark side and unfairness of our community.

As I grew up in the New Territories, I have been criticizing the Government for its unfair treatment of people living there. It seems to me that suburbanites, including myself, are regarded as second class citizens. I wonder if this is discrimination. All we have are second class services. What is more, the problems we encounter are more serious than those of the urban dwellers. The transportation system of the New Territories, for example, is widely known to be full of problems. The transportation network, especially in rural areas, is grossly imperfect.

Second comes the medical services. The waiting time for emergency treatment or specialist services is relatively shorter in the urban area, and it takes much longer in some areas in the New Territories. It may take residents in the urban area several weeks to get specialist services, but dwellers in the New Territories will have to wait several months for their turns. People there who are in need of emergency treatments may have to wait for hours before they are attended to. Why is there such a great disparity in the provision of services between the two places?

Regarding school places, many children living in the New Territories have to travel long distances to go to schools in other districts. They have to wake up early before sunrise. Students in the urban area do not have such experience. Have the Government ever thought of the reasons for such significant rural-urban disparity in Hong Kong?

Faced with so many problems and given second class services, people living in the New Territories in fact have not been silent on these matters. They have expressed their dissatisfaction. We, in the capacity of representatives of the New Territories residents, have been making efforts to strive for their interests, but often to no avail. Government officials have all along neglected these problems. This is nothing surprising, as all our policy-making officials are living in the affluent urban areas. I think the situation would be reversed if they lived in the New Territories. The scale of developments there would be larger and at a quicker pace, and the problems would be solved.

Just now, the Honourable NGAN Kam-chuen has mentioned that one of our colleagues, the Honourable CHAN Kam-lam, is also living in one of the villages that are deprived of tap water supply, but tap water will be available in his village by the end of the year. I wonder if this is a result of his being a Member of this Council, which has spurred the Administration to speed up the installation works to enable Mr CHAN to have tap water supply.

Mr Deputy, the provision of basic facilities and services in villages of the New Territories have long been neglected. Serious problems like poor water quality and lack of supply of tap water that we are discussing now, inadequate streetlamps, flooding problem of the drainage system and the installation of sewerage which we have fought for all the way, are commonly found in the New Territories.

All along, the Government has been emphasising that the decision to provide those facilities and services rests with population size. As many villages are at very remote locations with very small population, considerable resources would have to be committed for this purpose.

We should bear in mind that people living in remote locations in the New Territories are also taxpayers. Why would they choose to live in such remote places? Undoubtedly, everyone wants to live in the urban areas with a better transportation network. Moreover, it is a common wish to live in more spacious places rather than remote villages. As some Hong Kong people cannot afford to live in more expensive places, they have to live in villages, although the facilities there are far from adequate in many aspects. In order to survive, they dug wells on their own and pooled funds for the installation of water pipes to collect mountain water or stream water to their villages or households. We all know that water and air are indispensable to human beings, and water is very important.

I am living in Yuen Long in the New Territories. When I was a child, our house did not have supply of water or electricity. We had to dig wells on our own. I also had the experience of digging wells, and helped cleaning the bottom part of wells every year. Despite continuous developments in the New Territories, the Government still turned a blind eye to the problems or the adverse effects brought about by those unplanned developments. Since the Government does not have a foresight, the problems have deteriorated to such an extent that we can no longer bear it. Yet, it seems that the Government is in a hopeless tangle and does not know where to start. Therefore, only remedial measures have been taken but in fact they are not effective.

Along with the developments in the New Territories, many small houses have been built. There are also other commercial developments. However, planning in these areas is far from perfect. Serious seepage is found in many of the septic tanks. Sewage facilities are not available in many of the buildings because drainage system for sewage is not provided in the New Territories. Another problem is tap water supply. We have repeatedly criticized the Government in this Chamber for its slow pace in respect of the installation of water pipes and small-scale improvement works in villages. Amidst recent improvements, however, I hope that the Government can make use of the available resources to solve those problems in the New Territories as soon as possible.

There are two major problems: first, the installation of tap water pipes; and second, the installation of sewage pipes for effluent discharged to treatment plants.

Mr Deputy, the subject of today's motion is about one thing: water. All the problems concern with "water", including that of tap water supply and quality of water. The solution will no doubt relate to "supply", the "supply of resources" provided by the Treasury, which in fact refers to "money". Therefore, I eagerly hope that the Government will "supply water" as soon as possible and "supply" as much "fund" as it can in order to solve problems with the quality and supply of tap water faced by villages in the New Territories.

With these remarks, I support the motion.

MRS ELIZABETH WONG: Thank you, Mr Deputy. I rise to support this motion because it is environmentally correct and politically significant. Behind the wording lies the concept of whether river water should offend well water or whether well water could offend river water, or we should dig for our own water in order to get the right sort of water we need.

Taking this motion figuratively we know that it is an incontrovertible fact that water is a source of life. Everybody needs water. No water will be good if it is polluted. No river water or well water or even money can help us if the water quality is not potable. So, the important thing is to clear the water from its pollutive elements so that we can get water everywhere and every drop is to drink. Then all the villagers will be happy. Hong Kong will be happy.

At this very significant moment of change, at this last debate when we have limited time to get all the important ideas onto the Hansard, I thank the Honourable Ambrose LAU for his very meaningful motion.

MR ALBERT CHAN (in Cantonese): Mr Deputy, first of all I would like to give my high regard to the political intelligence of the Honourable Ambrose LAU, for putting forward this apolitical and non-controversial motion to end the last motion debate of this session. This motion earns the support of the Democratic Party and other parties, thus creating a politically harmonious atmosphere in this Chamber. His motive is indeed very clear.

For water, we may associate it with river water and well water. And in relation to it, I hope that Hong Kong can maintain her high degree of autonomy, just like the concept of "river water should not offend well water", and put it into practice. Mr Deputy, the implication of this motion or the problem it brought about is that, despite the colonial rule by Britain for more than a hundred years, several dozens of villages in Hong Kong are deprived of potable water supply, even at this last moment of colonial rule.

Despite the \$300 billion Government reserve, some problems remain unsolved. It clearly reflects that the colonial government has not paid much attention to the people's livelihood, especially the interests of the grassroots. Regrettably, such apathetic attitude is even more obvious in regard to people living in villages or remote areas in the New Territories. This has cast aside the mask of hypocrisy of the Government.

Mr Deputy, I have witnessed many scenes beyond our imagination which were brought about by the lack of supply of potable water. When I was a social worker in the squatter area of Tsuen Wan many years ago, I strived for the supply of tap water for the residents there. Although much effort had been put in the work of organization and coordination, miserable pictures were found everywhere. At present, many villages still have to rely on potable water collected illegally from catchments or stream water for daily use. Many villagers living at the lower part of hillslopes have to go over hills and dales to get stream water for consumption. In order to catch less polluted water for consumption, they have to climb over hills and lead water to the bottom parts with plastic or metal pipes. Although there is water supply in rainy seasons, the water they get is dirty. Worse still, the supply of water will stop when the water level is not high enough to reach the connection point of pipes during dry

seasons. If the water pipes have moved out of position, the villagers will have to experience innumerable hardships to solve the problem. All along, villagers have been subjected to such kind of problems which cause them unnecessary inconvenience in their daily life. It is even more serious in places where people are engaged in farming and agriculture. I have seen some villagers diverting water from the bottom part of streams by pipes at its source. They made use of the gravity force to channel water down to the bottom part of the hills. Yet those streams were found to be covered with wastes of pigs and chickens. It is shocking to find that Hong Kong people have to consume such seriously polluted water. Even though the villagers know that there are wastes floating on those streams, they have no choice but to consume it.

We have repeatedly raised questions on this subject in this Chamber. Besides, relevant panels and the Public Works Sub-committee have also raised similar questions many times, urging the Government to take immediate actions to tackle the problem. For years, little progress has been made upon our repeated requests, and plans for the supply of water for some villages are yet to be worked out. The installation project of potable water pipes at Ha Fa Shan of Tsuen Wan reflects that, even if plans have been drawn up, factors like poor planning or errors in geological assessment would also result in delay of projects. The completion date of the water supply project will become indefinite. If the Government is determined to hasten the completion of a project, it can always do so. The construction of the Hong Kong Convention Centre is a good example. It took only four years from reclamation of land to completion of the entire building. However, in regard to the project of water pipe installation, four years has lapsed but it is still underway. It is hard to believe that the Government dares to boast of its efficiency. It seems to me that the Government is indifferent to these outstanding problems. If they still remain unresolved, I suggest that the water supply of the quarters of senior officials be severed, leaving them to experience the situation themselves. This will force them to expeditiously implement the plans. If water pipe installation works for other villages cannot complete on time, I suggest that senior officials living in quarters, especially staff of the Works Branch, should be forced to use mountain water. With such measures, the problems would probably be solved earlier.

I hope that the Government will handle this problem as early as possible in the wake of this debate. Given the human resources available at the moment, there is absolutely no excuse for it not to provide these villages and squatters with potable water supply in the near future.

With these remarks, Mr Deputy, I support Mr Ambrose LAU's motion.

DEPUTY PRESIDENT (in Cantonese): You have to declare interest because your living place is also deprived of water supply.

MR CHAN KAM-LAM (in Cantonese): Mr Deputy, thank you for reminding me.

I know that lots of villages in the New Territories are in fact facing serious problems in the supply of potable water. Despite that the Government had put much efforts in improving the quality of potable water of villages over the years, it is still not enough.

We now have several problems in front of us. Firstly, the water collected by villagers from underground or from streams has never been inspected. It is highly probable that the water is subject to contamination by E-coli or other kinds of contagious diseases.

We all know that some food-processing plants in the New Territories that use underground water or stream water experienced the aforesaid scenario a few months ago. Thus, it is the responsibility of the Government to inspect water quality of those villages regularly to assure that they are not subject to contamination.

The sum of money which villagers spent on getting potable water every year is usually higher than that of people living in the urban area. As far as I know, each household in the village has to spend thousands of dollars every year for the payment of electricity for the supply of water, the maintenance of water pumps and water pipes. The cost is indeed very high.

Cleansing of water ponds constitutes another major problem. It is a common practice for village households to share the same big pond of water, which is different from that of housing estates. We all know that as time goes by, the pond will gradually be deposited with all kinds of wastes. Problems would arise if cleansing work is not done frequently. The Administration should allocate funds for the improvement of the rural environment, helping those villagers to solve their problems.

On improvement to the overall environment, the Government should solve the problem of water supply as soon as possible. I am aware that villagers living in the upper part of hills encounter problems in water collection. The financial situation of the Government should allow it to solve these problems easily. As we can see, new housing estates are now better equipped and planned than before. In the past, squatters were built here and there, but they are now better planned and are supplied with tap water. I think that the Government should expeditiously allocate funds to improve the livelihood of villagers. It seems that the Government has no intention to clear the squatters in the coming few years. If this is really the case, it should improve the arrangements of water supply immediately.

Mr Deputy, these are the points I would like to make briefly today. Thank you.

SECRETARY FOR WORKS (in Cantonese): Mr Deputy, since the quality of well water may vary with the surrounding environment or subject to contamination, it is thus very difficult to control. In general, the Government advises against the use underground well water for drinking purposes.

In remote villages where tap water supply is not available, well water becomes the major source of potable water supply. Well water is regularly chlorinated by the Regional Services Department (RSD) to ensure that the chlorine concentration of water conforms with the recommended standards of the World Health Organisation for drinking water. The RSD also takes water samples from wells periodically to monitor the water quality against such standards. Moreover, health education is also given by District Health Inspectors during their routine inspections to villages, advising villagers and operators of restaurants and food-processing plants that well water should be boiled before consumption. They are also advised to take steps to prevent the water from contamination. At the same time, Health Inspectors would also remind them to observe and comply with Sections 63 and 69 of the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations. These two provisions stipulate that no septic tank or cesspool shall be situated within 18 m and 20 m respectively from any well, spring or stream, if the water there is to be used for drinking or domestic purposes or manufacture of food.

As a long term solution to the problem of tap water supply of those remote villages, it has been the established policy of the Government to provide tap water supply to them wherever practicable. In 1980, after negotiations with the Heung Yee Kuk and the City and New Territories Administration, a list was drawn up by the Water Supplies Department on the names of villages in the New Territories. The purpose is to arrange extension of tap water supply to these villages by phase. To date, there are 744 such villages on the list, among which 655 were already provided with tap water supply. There are still 89 remote villages being deprived of tap water supply, and they have a total population of about 13 800 people. Out of these 89 remote villages, works for the supply of tap water are being carried out in 42 of them, which have a total population of about 10 100 people. The works concerned are of Category A. Therefore, the supply of tap water will be gradually available to those 42 villages between the period from the end of 1997 to late 1999. For the remaining 47 remote villages, we are reviewing the scheme for extending tap water supply to 26 of them which have a total population of about 3 100 people. The estimated cost for the supply of water to these 26 remote villages is 330 million dollars at the price level of December 1996. For the other 21 villages, the total population is only 600. These villages are very remote and far away from the existing water supply network. Besides, they are very sparsely populated.

As stated in the information paper submitted by the Administration to the Legislative Council Panel on Planning, Lands and Works in March 1996, it has been considered inefficient economically to extend tap water supply to those 21 remote villages at this stage. We will carry out a review in early 1998 on the situation of providing tap water supply to the remaining villages, and to determine the way forward.

Thank you, Mr Deputy.

DEPUTY PRESIDENT (in Cantonese): Mr Ambrose LAU, you are now entitled to reply and you have five minutes and 40 seconds, out of your original 15 minutes.

MR AMBROSE LAU (in Cantonese): Mr Deputy, first of all I would like to thank my colleagues for having given valuable opinions on the motion that I move, and for their support to it. I am particularly happy to see that this motion has the effect of casting brick to attract jade, as Members have come up with valuable opinions. Some of them are views which I hesitated to bring up, but my colleagues have taken them out of my mouth, so I must thank them. On the

other hand, it shows that if Members pool efforts, we can be very efficient, and can even come to a consensus in less than an hour to achieve the objective of monitoring the work of the Government.

The Honourable Albert CHAN has just passed me a note asking me to do him a favour. I think he wants me to remind the Government that some people in Hong Kong still have to rely on stream water but some of it has not undergone any inspection. Under the principle that we should work in harmony and pool efforts, I would like to ask the Administration on behalf of Mr CHAN if it is really the case. This is what Mr CHAN want to say. But I think he can rest assure. If this Council agrees to request the Government to solve the problem of water supply of villages, I sincerely believe that it will deal with this motion and the resolution passed seriously.

I do not want to take up any more of your time. I eagerly hope that this session can end as early as possible under a harmonious debating atmosphere and in a very efficient manner, so that we can enjoy a happy and relaxed dinner on Friday night. I also hope that the Government can solve the problem of potable water supply as efficient as we are in endorsing this motion, and will not drag on four years to resolve it. I hope, if lucky enough, it can be solved in only four months.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

Question on the motion put and agreed to.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

MR WONG WAI-YIN to move the following motion:

"That this Council strongly urges the Government to expeditiously re-introduce the Independent Police Complaints Council Bill into this Council."

MR WONG WAI-YIN (in Cantonese): Mr President, I move that the motion standing in my name on the Order Paper be passed.

Mr President, Miss Emily LAU was to move a motion to reprimand the Government. After discussions among you and other colleagues about this, it was considered that it would be more appropriate to move the motion in my capacity as Chairman of the Bills Committee. Because of the urgency of the Bill, Mr President also dispensed with the notice we should have given for moving a motion for debate. We have also changed the wording to urge the Government to expeditiously re-introduce the said Bill to be approved by this Council as soon as possible.

Mr President, the community has been strongly demanding that the Government should expeditiously improve the existing mechanism for complaints against the police. To human rights organizations, many Members of this Council and members of the public, the practice of investigating police officers by police officers adopted by the Complaints Against Police Office ("CAPO") is a defective mechanism which lacks credibility. Therefore this Council has been urging the Government to make the CAPO independent of the Police Force. Regrettably, the Government has not been willing to do so. Only when faced with tremendous pressure from all sides has the Government introduced some remedial measures.

The Independent Police Complaints Council Bill introduced this time provides a statutory basis for the Council and it is hoped that it will be vested with more powers. But the amendments are basically no more than "confined" amendments as it is impossible to truly empower the Independent Police Complaints Council (IPCC) to monitor with total independence the investigation work of the CAPO.

In fact, this issue has been discussed by the Human Rights Commission of the United Nations for years. In examining the Fourth Report on the implementation of the International Covenant on Civil and Political Rights by Hong Kong in October 1995, the Human Rights Commission of the United Nations expressed its concern over the credibility of the investigation of the CAPO of Hong Kong, and suggested including non-police members to take part in the relevant investigations.

In response to the demands of members of the public, colleagues proposed amendments to the Bill in this last sitting of the Legislative Council. The amendments were entirely in line with the demands by members of the public for further monitoring the work of the CAPO. The amendments we proposed in

fact mainly sought to enhance the independence of IPCC. Therefore, the amendments were to enable IPCC to set up an independent secretariat, and only when necessary; let me emphasize, even when we discussed with the Government, we agreed to add the wording "when necessary"; together with the approval of the Governor, or the future Chief Executive, could the Council re-investigate a certain case, provided that the case was a serious one, such as one where the IPCC was extremely dissatisfied with the investigation conducted by the CAPO and found it totally unacceptable. The inclusion of the approval by the Governor was a very large concession, but the Government was still reluctant to take it. In addition, our amendments also included the addition of an independent observer. During the Second Reading debate, we explained that only this independent observer could effectively carry out the monitoring function on a full-time basis as many members of the IPCC were busy. I am not going to say much in this regard.

The decision of the Government to withdraw the Bill again in a "take-the-winnings-and-sack-the-losses" manner before the Third Reading after Mr TO's amendments to it had been passed and accepted by the majority of the Members at the Committee Stage obviously ignored the joint decision of the Members of this Council and the persistent demands of Hong Kong people. This has not only jeopardized the rapport between the Government and the Legislative Council but also ignored the six months' hard work of the Bills Committee. On behalf the Bills committee, I regret and strongly reprimand the withdrawal of the Bill by the Government. Its decision was obviously attributed to the statement of objection made by the Police Force. In so doing, the Government has sent a very negative message to the entire community of Hong Kong that the Police Force is the part of the Government that owns the greatest power. The Police Force had the final say. When it voiced objection, the Government did not dare to do anything but to withdraw the Bill. This has jeopardized Hong Kong's status as a place of justice and rule of law. Our international image will also be irreparably tarnished. The Hong Kong Government has always emphasized its strong governmentship. Regrettably, what we see today is not a strong government, but a supreme Police Force. So long as the Police Force says "no", the administration has to go by its wish.

Mr President, I remember that when this Council resumed the Second Reading debate on 18 December 1996 on the Commission for Administrative Complaints Bill to which Mr TO moved a few amendments, the Chief Secretary was no less than threatening when she told Members that the Government would withdraw the Bill upon the passage of the amendments. This time, the Secretary

for Security gave no warning, not even a single word of reminder. In fact, he had mentioned nothing of the sort throughout.

I remember that when we held the first meeting of the Bills Committee, the first question that I, as Chairman of the Bills Committee, put to the Government was: "If the amendments that our colleagues will move are passed, will the Government withdraw the Bill?" The Government did not answer. After the deliberations of the Bill had been completed, I kept asking the Government if it would withdraw the Bill. The Government, however, only avoided my question, and would not even care to relay any clear message to members of the Bills Committee as to its move. Of course, the Government might have talked to some Members in private, but it never openly talked to us. Mr TO's amendments then were not passed, so the Government did not withdraw the Bill consequently. In her speech, the Chief Secretary said that the Independent Police Complaints Council Bill was already introduced into this Council back in July 1996. She emphasized in particular that if Members wished to improve the police complaints system, they should propose amendments to the Bill. It was 18 December 1996 when the Chief Secretary made the remark before this Council. She further said that Members should not mix up the Bill with the Commission for Administrative Complaints Ordinance. Therefore, we focused our efforts on this Bill in a bid to improve the police complaints system as much as we could to meet the demands of the people, and to make it more sound and effective.

We have put in much effort in deliberating this Bill. In fact, Government officials, colleagues and staff of this Council had held 13 meetings, which means almost one in every two weeks, before we came up with the conclusion. I do not know whether the Chief Secretary was making an undertaking last December when she said she would let Members of the Council propose amendments to the Bill to improve the police complaints system. But now we are told that we cannot do so, and that if the amendments are passed, she will withdraw the Bill. How can the Government maintain its credibility when it does such a thing? How can Hong Kong people accept such procedures of investigating complaints against the Police? How can the international community recognize that the existing investigation procedures are credible and that the investigations are fair?

Mr President, the Bills Committee hopes very much that the Government will not be irresponsible again, and that it will respect the decision of this Council. I do now know how much time we still have, and I wonder if we can have the Government re-introduce the Bill into this Council within these two days for approval. I would like to emphasize that I hope the Bill to be

re-introduced by the government for approval is the amended version, which has gone through the Second Reading and the Committee Stage, and not the original version.

Mr President, at the end of this month, the Government will submit to the United Nations its last Progress Report on the implementation of the Covenant on Human Rights. The whole world knows that the Hong Kong Government has introduced the IPCC Bill, and that Members of this Council have completed deliberating the Bill, which has gone through the Second Reading and the Committee Stage. I feel compelled to ask the Government that in submitting the Progress Report at the end of the month, how it is going to face the questions and accusations put by the human rights organizations of the United Nations? The Government is only concerned about its authority and ignores the interests of the people. I also feel sorry for the Secretary for Security because I believe that it was not his decision but his superiors'. And then I remember that some while ago the Chief Secretary said that if she were told to act against her own conscience, she would resign. The Chief Executive also said the same thing. But now I know they do not have to resign because they do not have to do any of those things themselves; all they have to do is pass the dirty jobs on to the policy secretaries. They have done nothing against their conscience, so they do not have to resign.

Mr President, I hope the Government will expeditiously re-introduce the Bill into this Council for immediate approval in order to improve the existing police complaints system.

These are my remarks for the motion.

Question on the motion proposed.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, from the beginning of our deliberation of the Bill, I have had a strong feeling that the Police Force is an independent privileged kingdom, and that any means to check its privileges from outside will be turned down by the Government. We all know that the license plate of the Commissioner of Police is No. 1, which is superior to any other policy secretaries; he has a purpose-built official residence grander than that of the Secretary for Security; police officers, although part of the civil service, are privileged with a special system in recruitment, promotion, welfare and even complaints against them, which is different from other civil

servants. Of course, in the colonial years of the past, the armed force ruled over everything, and that was why the army and the Police Force were the national machinery to maintain the colonial authorities. Empowering the Police Force would mean strengthening the management of the colony. These historical and political factors have granted the Police Force its privileges, thereby have turned it into an independent kingdom.

But now we have come to the eve of the reunification of Hong Kong with China. The colony is about to vanish. Hence the privileges of the Police Force, which were born along with the colony, should also be done away with. To civilize the Police Force in line with the civil servants is an essential and rational reform. To change the police complaints system is the first step in this reform.

This Council has proposed that the Complaints Against Police Office (CAPO) should be independent in order to correct the flaws derived from the practice of investigating police officers by their colleagues. But the suggestion was turned down as a result of the strong objection by the Police Force, which claimed that it would affect the morale of the Police. I can still remember how determined the Government was when it decided to establish the Independent Commission Against Corruption to take anti-corruption action against the Police Force. But today, the Police Force does not have that same courage to establish an independent CAPO.

To relieve the pressure from this Council, the Government proposed the establishment of a statutory Independent Police Complaints Council (IPCC) to monitor the work of the CAPO. With no alternatives, this Council compromised by accepting the IPCC, which has very limited powers. The only requirement that we proposed was empowering the IPCC to conduct investigations on its own into cases where *prima facie* evidence makes it dissatisfied with the investigation report of the CAPO. Everyone knows that the manpower and resources of the IPCC are limited, and that members of the IPCC are always busy. The power of investigation we mean is no more than some reserved power, which will only be exercised when there is crystal clear *prima facie* evidence of a complaint and when justice cannot be upheld. It is just because this limited and reserved power endorsed by this Council, which challenges the privileges of the Police Force, that the Government played the old trick again to blatantly withdraw the Bill, which was already introduced into this Council and was about to be enacted.

Mr President, the practice of "take-the-winnings-and-sack-the-losses" is absolutely a violent behaviour. It is an insult to this Council and a shame of the Government. What was even more shocking was the hubris of the Government when it withdrew the Bill without giving any apology, explanation or even a word, ignoring public opinions and the resolution of this Council. What government is this? It will only leave a blotch of its bullying along with the transfer of sovereignty.

Mr President, I totally disagree that the Police Force should be different from the civil servants and be allowed forever to stay away from independent surveillance by a third party. Please think about this: such privileges will only protect the few black sheep of the Police Force which have tarnished the reputation of the entire Force. Please think about this: under such privileges, how many humble, innocent people have been bullied, insulted, beaten and framed, which have prevented the law from being upheld and shamed the Police Force? If the law can only protect the Police Force and not the weak, the so-called rule of law is nothing but another kind of tyranny.

Today, all this Council wants to do is to pass a barely acceptable bill to place the unlawful behaviour of some police officers under the monitoring of the law. But surprisingly, it was withdrawn at last. What world is this? What do we need the Legislative Council for? Is this a show to demonstrate what "take-the-winnings-and-sack-the-losses" or a "rubber stamp" mean?

Mr President, it was like playing a football match. When there was only one more minute to go, the Government foresaw that it would lose the match, so it picked up the ball by hand, left the pitch and refused to play anymore. A team like this lacks sportsmanship; a Government like this lacks political ethic. In fact, it is the second time the Government has withdrawn a bill. If it were shown a yellow card for the first time, it would be shown a red card and sent out of the field for the second time. But who is authorized to show the Government a red card? The answer is "None"! It is because the time has dismissed us. This is the last sitting of the Legislative Council. Even when we can come back to this Council in 1998, we will have lost the right to introduce private Member's bills. In the future, if the Government still does not agree with us, the Police Force can continue to enjoy its privileges of conducting investigating by their own people. No yellow cards, no red cards, no fear of being sent out of the field.

Mr President, I strongly protest the repeated violent behaviour of "take-the-winnings-and-sack-the-losses" by the Government. Although I know my protest is only rage on paper, I would like my feelings of unfairness and rage as well as the violence and shame of the Government to be put down in the Official Record of Proceedings.

Mr President, these are my remarks.

MR JAMES TO (in Cantonese): Is it time for lunch?

PRESIDENT (in Cantonese): It was my intention to let more Members speak. The more Members could speak the better (*Laughter*). But it seems that Members are not ready. I now suspend the Sitting. One hour for lunch. Council will resume at 2 pm.

1.00 pm

Sitting suspended.

2.05 pm

Council then resumed.

MR BRUCE LIU (in Cantonese): Mr President, I would like to make three points on behalf of the Hong Kong Association for Democracy and People's Livelihood.

Firstly, during the deliberation of the Bill, this Council had in fact been very willing to discuss, coordinate, and compromise. One of the clauses the Government was most concerned about was whether the Independent Police Complaints Council (IPCC) should be given the investigative power. After lengthy discussions, we decided to put in place an appropriate system, which include, among others, conducting investigations by the IPCC only when it has

resolved in its general meeting that it is not satisfied with the report submitted by the Commissioner of Police. In addition, we made a counter-proposal which requires that the permission of the Governor should be obtained before the investigative power can be exercised. We made the concession because all along we had wanted to enact the law as soon as possible to make IPCC a statutory body. This was the common goal of all Members. It was regrettable that the Government did not make their concession, and refused to accept the decision of this Council.

Secondly, the Government should have told this Council that it would not accept the bottom-line from the outset of the deliberation of the Bill. If the Government had said so earlier, today's debate would not have been necessary. The Government eventually withdrew the Bill, in the same way as it did with the Legal Practitioners (Amendment) Bill. In that occasion, this Council did not move any debate to express its regret, dissatisfaction or to reprimand the Government because Members were prepared. We understood the Government's standpoint, and this Council had its own. Although we could not agree to the Government's, and did not like the decision by the Government, at least we did not move any motion debate to say how much we were dissatisfied or to strongly reprimand the Government.

Thirdly, the decision by the Government revealed the relationship between the Executive and the Legislature. When a bill is introduced into the Council passes through the Second Reading, it becomes a public asset, and members of the public make their decision through Members of this Council. In the present case, however, under the same circumstances, the Government had no faith in this Council and withdrew the Bill. It can be said as the suppression of the decision of the Legislative Council by the Executive through its manipulation of the procedures. We have to say that we regret it and we reprimand it.

Lastly, I urge the Government to expeditiously re-introduce the Bill, which we have made the amendments to, into this Council for scrutiny.

Thank you, Mr President.

DR LEONG CHE-HUNG: Mr President, I rise to speak on the motion, and I would like to speak on this motion wearing perhaps three hats: firstly, as myself, of course; secondly, as the Vice-Chairman of the Independent Police Complaints Council (IPCC); and thirdly, as the Chairman of the House, and I would like to raise a few areas of concern.

As a start, the IPCC and the Chairman of IPCC has repeatedly said, and we have discussed that repeatedly in the current IPCC, that we want to be empowered with a statutory base to operate because it would definitely give us more flexibility, a better means to operate this very important monitoring body of the Complaints Against the Police, and on that basis I would have thought that I can speak for the IPCC to ask this Administration or the next Administration to come up quickly to re-introduce the IPCC Bill.

Mr President, as the Chairman of the House Committee, I have to state my strongest reservation on the attitude of the Administration. Now, we know, all of us know, the Administration knows that this Legislature, especially in the last few months, has a very, very tight schedule. Government, towards the last few months, has lambasted this Legislature with bills after bills. Understandable to a certain extent, because a lot of these bills are necessary to be enacted before the change of sovereignty. Yet there are lots of other bills that could have well been introduced months beforehand, should the Government have made proper planning.

Now, be that as it may, this Legislature has been extremely responsible and we have tried our best to do our best to scrutinize as many bills as possible to the extent that in the last few months we actually extended our functions, increasing staff, extending our sessions from four sessions a day to five sessions a day, cutting down or perhaps even removing our lunch time, and there are occasions where each session will hold four or five bills committees and panels at the same time just for one thing: to co-operate, to do our best, to be responsible as legislators to finish what we need to do.

I think the IPCC Bill was one of the very important bills that Members have been extremely conscientious about doing it. During the discussion on the IPCC Bill, many points were brought forward. Many different ideas, objections and otherwise were brought forward. Some of them were discussed and

ultimately thrown out, I have to say. For example, there was a lot of discussion on the independence of the Complaints Against Police Organisation, which was ultimately thrown out because it was not within the ambit of the Bill.

Therefore, it really comes as a great regret that the Administration had to suddenly withdraw the Bill at the Third Reading. It definitely indicates too many aspects. Firstly, it indicates that the Administration is not willing to swallow their pride, to eat the humble pie of defeat. Secondly, efforts of legislators who have really been working hard, we almost had to clone ourselves at one point at time to try finish our work, the efforts of all the legislators who had been working very hard, months after months, are now vanished into thin air, *sans* faith, *sans* hope and *sans* everything.

Perhaps we should not be overly-critical of the Secretary for Security because obviously the decision is not his and his alone, and he has taken collective ideas on this. But let me perhaps at this point in time offer a few possible suggestions for the future.

To start off with, there needs really, perhaps, to be a better rapport between the Executive Administration and the Legislature. If this Legislature, the Bills Committee, as Members have already expressed, the Chairman of the Bills Committee has expressed, that if this Bills Committee and this Legislature were made to understand the possibility of such a withdrawal, perhaps there could be another way out at the end of the day. So, I do call upon a better rapport in the future between these two very important arms of the Government.

The second thing is that I do feel that perhaps the Administration should look at in the future to place more responsibility on decisions made by the Legislative Council. Let them take the responsibility. After all, we are all people elected by the people of Hong Kong. We are here, not just to scrutinize bills but we are here to scrutinize past bills, or whatever it is, and ultimately to take the responsibility. I can see Government's difficulty here and they say, "look, if you pass this Bill", they have difficulty in taking it into operation. But if this Legislature were to pass the Bill they have to take the responsibility of passing it and I think this is what we are here all about. I think this is something that the Administration should in the future really look at it, and as I say, "Look, collective decision of the Legislature is this way. They are elected

by the people of Hong Kong. If they so wish to push it ahead in this direction they need to take the responsibility".

Mr President, on that basis, I will support on a personal basis the early re-introduction of this Bill. Thank you.

DR YEUNG SUM (in Cantonese): Mr President, the Secretary for Security (Secretary) might have foreseen that this Bill, when passed, might affect the Police Force or might cause difficulties to his work. This was why he decided to withdraw the Bill at that critical moment.

Mr President, what the Secretary did in fact has devastated the rapport which Members of this Council and the Government have established between them. The Government and we have coordinated well with each other on the bills on a number of occasions. When there was something we could not totally agree on, we would say so. Basically, over the past few years, this Council and various government departments have established rapport between them. Although this Council has had different standpoints from those of the Government on numerous occasions, it has never turned into hindrance to the rapport and coordination between the two. Members of this Council have spent so much time on the scrutiny of the Bill and on debates, which only resulted in the government withdrawing the Bill at last. Members of this Council could feel nothing but the practice of the Government to "take-the-winnings-and-sack-the-losses".

Mr President, you might have noticed that a report of the World Bank mentions that the Independent Commission Against Corruption (ICAC) of Hong Kong is doing a very good job, and Members of the public generally think that the ICAC presents a very good image too. However, despite the good performance of the Commission, the report points out that the ICAC has its inadequacy as no one is monitoring it.

Mr President, I believe members of the public are well aware that the monitoring work on the Police Force is far from being adequate. The establishment of a monitoring mechanism or the grant of the investigative power, in fact, will do more good than the so-called harm to the Police. If the Police have made no mistakes, it should not be afraid of any investigation or monitoring

control. There is no reason for the Police to let a few black sheep ruin the image of the entire Force. Does the withdrawal of the Bill by the Government mean that it is afraid that there will be a monitoring body investigating the Police? I think this is an even more negative message.

Mr President, I very much regret the decision by the Secretary. Of course, the decision might not be his own. Nevertheless, I very much regret the way the Government dealt with this matter.

Thank you, Mr President.

MRS ELIZABETH WONG: Mr President, the Government's decision to withdraw the Bill at the last stage, at the eleventh hour, took me by surprise. In fact it deeply hurt me because I did support the Government on the essential element that at this stage of the game there should not be parallel investigation because it would pose very real practical difficulties in the way of the Administration, and I supported the Government and Government lost. Now, I could not understand Government's decision. I could not make head or tail of it, and to put it in the Chinese language, it is almost like "heads I win, tails you lose". You lose anyway.

I seldom agree with my Honourable colleague Dr LEONG Che-hung, but today I entirely agree with his statement made earlier. The Government has revealed its ugly face to the whole Hong Kong population and to this Legislature. It has demonstrated an unacceptable paternal despotism, to use a very gentle word, by stepping on a decision of this Legislative Council to a Draconian withdrawal of a bill which is gaining passage through this Legislature. It slaps the face of this Legislature. It steps on the spirit of democracy and it bares its teeth on Hong Kong people. This is the worst case, or one of the worst cases of the ugly face of colonial power which is centralised in the hands of an executive-led Government.

So, what is the use of us sitting here talking when in the final analysis if the Government likes what you say the Government will let you go? If the Government does not, it withdraws. It slaps you in the face and walks away with it. And I think this is not the right message one should give to Hong Kong people, and it is really very disgraceful in this day and age.

Now, I am a person of very few words and even so, I am a person of very few angry words. I am a gentlewoman, if you can call me that. But today I am not gentle and I am very upset and I regret Government's decision.

MISS EMILY LAU (in Cantonese): Mr President, I rise to speak in support of the Honourable WONG Wai-yin's motion.

Firstly, I would like to say that the wording of this motion is a bit weird. Mr President, we were to use such wording as "to reprimand" or "to strongly reprimand" when we first discussed this. But I heard that you did not permit us to do so. Anyhow, I can feel how pitiful you are as you can just sit there making no speeches. But I can. We are really "talking to ourselves". I want to say that we really want to reprimand the Government, but the motion now has been changed to urging the Government to re-introduce the Bill. Mr WONG Wai-yin should know that today is Thursday, so how there can be time for the Government to re-introduce the Bill into this Council?

I think that we should reprimand the Government for what it did this time. I do not understand why we are not permitted to reprimand the Government, but only to urge the Government to re-introduce the Bill. Perhaps Mr WONG can explain later on.

PRESIDENT (in Cantonese): Point of order?

MISS EMILY LAU (in Cantonese): Yes, Mr President, point of prodder, so you can speak.

PRESIDENT (in Cantonese): I can speak even it is not about a point of order. You said I had ruled that if Members wished to move a motion, it must be in a certain form, or else I would not allow it. Of course, if your speech under a motion contains words of reprimand, it is in order. But if I had to allow one more motion, and to dispense with the required notice, I had to be satisfied that the matter was important (in this case, it was important) and urgent. However, I did not think that reprimanding the Government was so urgent.

MISS EMILY LAU (in Cantonese): Mr President, are you not aware that this Council is left with only a few days? If it is not urgent enough for a reprimand now, when it is?

PRESIDENT (in Cantonese): I consider not only the number of days this Council has left with, but also the future Council. The succeeding Council still has plenty of time to go. Therefore I had to consider the motion. If it would meet the requirement of Standing Order 9(2) in respect of motions for the adjournment of the Council for the purpose of discussing a specific matter of urgent public importance, a question with a wide scope would be fine, but if Members insist that there be a question, it has to be one that would satisfy me. You are free to reprimand the Government as you speak, and this is in accordance with the Point of Order. Please continue.

MISS EMILY LAU (in Cantonese): Mr President, this matter is absolutely urgent. We do not know if we can make it happen because today is Thursday, and I doubt whether the Government will re-introduce the Bill into this Council. But putting aside the issue of urgency, Members of this Council can still reprimand the Government. That is why I find it so hard to understand why Mr President did not permit us to do so

PRESIDENT (in Cantonese): Miss Emily LAU, it is not in your position to comment on my ruling.

MISS EMILY LAU (in Cantonese): Mr President, I have made my point. In other words, we will have to reprimand in turn. I think the way the Government dealt with this was too bad. Referring to the statement of the Secretary for Security, there was only one point that he actually made, which was that this Council moved some amendments, being supported by the majority of the Members, that were not acceptable to the Government. So this Council may have to amend the Standing Orders to provide that motions that cannot have the support of the Government should not be moved in order to save Members' time. Mr President, you said that the Government had wanted to withdraw the Bill earlier, but you would not allow, and told it to wait until the Third Reading.

And that alone took up several hours of this Council. Of course, I would not support the withdrawal of the Bill regardless of the timing

PRESIDENT (in Cantonese): Miss Emily LAU, are you saying that the Standing Orders are not good enough and that they have to be amended by means of a motion or that I made mistakes in implementing them?

MISS EMILY LAU (in Cantonese): I did not say there was any mistake. I am only telling you the facts.

PRESIDENT (in Cantonese): According to the Standing Orders, a Bill cannot be withdrawn when it has proceeded to the Committee Stage.

MISS EMILY LAU (in Cantonese): Mr President, please be patient. Let us both be calm, like Miss Elizabeth WONG said that we

PRESIDENT (in Cantonese): Miss Emily LAU, please be calm, and say what you want to.

MISS EMILY LAU (in Cantonese): I mean if we had foreseen that it would turn out that way, we should not have waste our time. But I did not support the Secretary's decision to withdraw the Bill. The issue is why some unacceptable amendments have evolved. The Legislative Council is already subject to a number of restrictions, and there are many from the Basic Law, too. According to the Secretary, the Government thought that there were the so-called unacceptable amendments. In fact, if it had wanted to save time, it should have raised them much earlier. In other words, it will be useless even when some unacceptable amendments get passed luckily by a majority because the Government will withdraw the bill to forestall its enactment by Members.

I think there is a big problem when the Government does something like that. Although it is provided in the constitutional framework that the Administration can do so, and some people even call this check and balance, I

think that in so doing, the Legislative Council, and even the entire Government, which comprises the Administration and the legislative arm, will become a laughing stock. What does it mean? It means that there are certain things that are deemed unacceptable from the outset. We witnessed such a situation yesterday.

Mr President, I do not think it will do if the Government withdraws a bill whenever it finds something unacceptable, regardless of the months of time that Members have spent on discussing it. Earlier on my colleague raised the issue about the relationship between the Executive and the Legislature. I am very much in support of checks and balances between the two. But in doing so again and again by the Government, I believe that the entire system of Hong Kong will become a laughing stock by the international community. There are several thousands of journalists all over Hong Kong digging news at this time, and this Council just has had so many problems. The Government withdrew the bill on every occasion when it came to a point when it was about to lose.

I do not understand why the Governor had to do this, and why the Secretary was in support of this too. He said that it would impair the morale of the Police. This has made us feel that the Police is too bullying. When the Police objects to something, the Government will do as told. We do not think that this will do. If the Executive and the Legislature share the view that something needs to be changed, they should convince the Police to accept it. Why is the Police giving us an impression that they make all decisions, and that if they say that they are not willing to do something, no one else will insist doing it? I do not think this will do. If this is not the case, the Secretary should explain to us later. It is not good to be unfair to anybody, after all. But now the paper from the Secretary is just giving people that impression, saying that the morale of the Police cannot be impaired and that the Police will not accept it either. I do not know what will happen, nor do I know if it is some kind of threat. So I think there is a problem.

Mr President, we all are busy, and I do not want to waste our time on it. But I do think we must review this relationship between the Executive and the Legislature. Otherwise both parties will face much tension in their relations, which will do no good to either side. And I do not think that will do any good to the development of Hong Kong on the whole.

Thank you, Mr President.

DR JOHN TSE (in Cantonese): Mr President, I now speak in support of the Honourable WONG Wai-yin's motion. The main reason, I think, is that we cannot bear Hong Kong being called a police state.

I think the incident has allowed us to see clearly that our civilian Government has almost lost its control. It fears the Police Force very much. When it comes to the Police, the Government becomes very cautious. Hong Kong may well be called an independent Police Kingdom.

This is in fact a very serious crisis. I hope to take the opportunity in this last session to urge the Government to have some serious thought about it. I believe the key issue lies in the investigative power. If we interviewed members of the public now, I think they would support or even request the establishment of an independent investigation body to investigate police complaints. The current practice is to investigate police officers by their own people, which can hardly convince people that there are no prejudice in it.

I believe the majority of the Police are clean, and the black sheep only account for a very slim part of the force. If there are black sheep, why should it be afraid of this independent investigative power? In fact, the Human Rights Commission of the United Nations has criticized the Hong Kong Government for its work in this respect, and has suggested that a completely independent body be set up to monitor the human rights situation in Hong Kong, as well as that of the abuse of power by the Police. In spite of years of efforts and the criticism from this Council and the international community, and of the fact that the Human Rights Commission of the United Nations is an internationally recognized and almost the most important human rights monitoring mechanism, why our Government still refuses to listen to its opinion?

The main purpose of legislation, in fact, is to protect some of the basic human rights of the people. I cannot see why the Police Force of Hong Kong has to be protected; it is members of the public who should be protected. We do not want to create so many opportunities for some of the police officers to abuse their power when there is no independent monitoring mechanism. Going back to the morale of the Police, well, it certainly has to be maintained. No one can

even touch the "No. 1" license plate, or else it will affect their morale. Of course, the license plate is not the subject of today's discussion, but the fact that this "No. 1" license plate cannot be auctioned is already serving as an index. Mr President, we are now maintaining the morale of the Police at the expense of the human rights of the general public.

I looked up the meaning of the word "dictatorship" in the dictionary to see what it means. Please allow me to quote from an Oxford English dictionary, "A dictator is a ruler who has total power over his country." Another explanation is: "a person who insists that people do what he wants." Simply speaking, he is supreme. I was so naive as to think that the civilian Government of Hong Kong was supreme here. But the sad truth is that the genuinely supremacy is the Police. I used to think that an Executive-led administration meant dictatorship, but it was not true. The most dictatorial was those with arms. I thought that the civilian Government only feared the Police, but in this incident it was best described that it "had a phobia" about the Police rather than "feared" it. To put it in English, "Fear is different from phobia. Phobia is out of proportional fear."

As a legislator, I think there is at least a division of power among the three authorities in Hong Kong, but the withdrawal of the Bill by the Government has totally blurred this division. The Legislative Council is supposed to have the power to monitor the Government through legislation. But how can this be achieved now?

Mr President, I hope that the Government respects this division of power among the three, and does not have a phobia for the Police, so that Hong Kong people can enjoy their basic human rights. And I do not want to see a withdrawal at the last moment of such an important bill as this one happen again. More importantly, I hope the Hong Kong Government will sincerely respect the suggestions of the Human Rights Commission of the United Nations.

Thank you, Mr President.

MR MICHAEL HO (in Cantonese): Mr President, with regards to the withdrawal of the Bill, the Government says in its statement that it is in accordance with the powers conferred upon it by the Constitution. True, it is lawful, but it is unreasonable. It is a typical example of the "take-the-winnings-and-sack-the-losses" approach.

It is the second time that the Security Branch has withdrawn a bill in this Council, and their third time to do it. The first time could be the most difficult one. The first time is the most difficult one to all. But after the first time, the second, third and fourth will be a lot easier. I do not know if the Government has developed a habit of treating the withdrawal of a bill as a common practice. I do not know if it is ready to withdraw any bill in the future.

The Government always says that the Legislative Council is an elected body, that its Members are returned by more than one million Hong Kong people, and that this Council represents the people and is therefore representative. This Council can scrutinize, read and discuss legislation introduced, but it is not allowed to propose amendments. Does the Government treat this Council a "rubber stamp" and forbid it from making amendments?

In an open society, everything is done with due transparency. Over the past few years, government departments have been increasing their transparency and become more accountable to the public. Why can the Police Force, as one of the government departments, be so different from the others? Does the Police Force not need to enhance its transparency or its accountability? Why is it so special? This is truly an ugly face of the colonial Government. The Police Force is the armed force of the colonial Government for controlling its people. With the end of the colonial rule, why should the privileges of the Police Force be retained? Perhaps the Government can put it this way: There is one more week before the colonial rule ends, so we have to retain this. After all, what can be changed, what cannot, or what cannot be acceptable? What have we changed? We just suggest investigations, and that is all. And only with the permission of the Governor can an investigation be carried out. It is not completely independent investigative power. No independent investigation will be carried out so long as the Governor alone objects to it. Even with such a final say, the Government is not feeling safe. What is it that cannot be made known? Why do they fear being investigated? Whenever there are amendments not acceptable to the administration, the bill will be withdrawn. For the blue bills, the Government had better write down those areas that cannot be changed so that we may know them more clearly when we scrutinize them in future.

If carrying out investigations would affect the morale of the Police, why is their morale so vulnerable? The Ombudsman has been carrying out investigations into all government departments, civilian officers and

departmental staff alike. Why have those investigations not affected the morale of those people? Is the Government telling the Police that investigation will affect their morale? Is this the internal business of the Police Force or that the executive-led administration is telling the Police Force, "If you are investigated, you should feel that your morale is affected."

Why does a civilian government fear the Police Force so much? The Police Force is after all one of the government departments. If an investigation is a fair one, should there be anything that cannot be brought under broad daylight? I believe most members of the Police Force are honest, loyal, and dedicated officers, who fear no investigation.

Today's motion is to urge the Government to expeditiously re-introduce the IPCC Bill. I have to say this lest Mr President say that I am straying from the subject. I hope the Government will expeditiously re-introduce a better bill. The colonial system that oppresses the people, although unreasonable, is understandable to us. But now we are on the eve of the reunion, leftover of the colonial rule should no longer exist in the Special Administrative Region.

These are my remarks.

DR ANTHONY CHEUNG (in Cantonese): Mr President, I am aware that colleagues all wish the meeting to proceed expeditiously. But on this issue, as a Member of this Council, I have something I must say. Although my viewpoints may be similar to some of those of my colleagues, I feel that if I do not say them, it will not show how furious many Members of this Council are at the Government for what it has done this time.

I would like to make three points. First, let me repeat what some of my colleagues have said. I think that in this matter, the Government really "takes the winnings and sacks the losses". Although the Government has mentioned constitutional principles, which state that it can withdraw a bill during the process of its enactment, I think that the problem does not lie in the procedures or constitutional principles. In terms of constitutional principles, under normal circumstances, the powers of the Executive and the Legislature are separate and there are checks and balances between them. The former is responsible for introducing legislation and the latter passing it. But let us not forget that this Council is elected by the people, and our Government and the executive

authorities are not. Therefore we should not support the act of the Government by means of those simple constitutional principles. In my view, after the Government has introduced a bill into this Council, Members are empowered to make amendments to it on behalf of their voters and in the light of their opinion. The rules of procedures, or to put it differently, the rules of the game of this Council are open. The Government can do its best to lobby Members beforehand, and if it succeeds and the amendments fail, it is the success of the Government. But if the lobbying work of the Government fails, and the Members, most of whom being elected by the people, are not convinced, it should accept the results derived from public opinions.

Secondly, what has scared the Government so much that it decided to withdraw the Bill? This is the question that most Members put earlier on. The question is simple. If the government truly fears the Police, why? Is the Police as untouchable as "the bottom of a tiger"? What is so big about the investigative power of the Independent Police Complaints Council (IPCC)? I remember when the Government decided to set up the Independent Commission Against Corruption (ICAC) in the 1970s, the Police also objected to its establishment, saying that the problem of corruption should be handled by the Police itself, and not by anyone else. But considering the political situation then, the Police finally accepted the establishment of the ICAC.

Was there any problem in that? Today, I doubt anyone would say that the establishment of the ICAC was a bad decision. In fact, the establishment of the ICAC has done good to the morale of the Police as well as its reputation in society. By the same token, if the IPCC has the investigative power, I think it will once again do good to the morale of the Police. In my view, the withdrawal of the Bill by the Government has had a very serious consequence. The Government is sending a very wrong message to members of the public, including the Police. To the Police, the message means that police officers or the Police as a whole have the final say in respect of any movement of the Government or executive authorities. If the Police do not like something, it cannot be passed or even proposed. This is a very wrong message, and equally wrong to members of the public. Does every police officer of the Police Force really want people to look at them that way, or think that the Force is supreme? I believe most police officers do not like that.

The withdrawal of the Bill at will by the Government is also telling this Council that if we support a bill introduced by the Government, we can pass it

and can make amendments to it. Otherwise, this Council shall have no right to make amendments because the Government will withdraw the bill at the end of the day. This is also a very wrong message.

So I urge the Government again to expeditiously re-introduce the said Bill into this Council for Third Reading. Thank you, Mr President.

MR YUM SIN-LING (in Cantonese): Mr President, on the radio yesterday someone queried whether I had received any advantage for abstaining on the vote the other day. If I had, those supporting the Government would have earned a lot. So I phoned to the radio today to clarify.

In fact, I did not receive any advantage, but I did receive some information. A Government official told me that if we endorsed granting the investigative power, it could give rise to a riot. I do not want to quote that official's words directly. It reminded me, though, that when the Independent Commission Against Corruption was set up, someone charged the Commission and smashed some glass, which caused some injuries. I am afraid that such things might really happen, although the chances are slim. Since someone has told me this, I had to abstain on the vote out of sympathy, and as a result, I was cursed on the radio.

This incident has truly disappointed me because no matter how lobbying is carried out, everyone should abide by the rules of the game. Anyone who "takes the winnings and sacks the losses" will only give people a very bad impression. Is it really true that the Executive is above the Legislative, and that the Police is above the Executive? Just as Dr John TSE said earlier, even that license plate has an implication. Who is the "No. 1 man"? Only the "No. 1 man" can use the car bearing the "No. 1" license plate. This has made Hong Kong people lose a great deal of their faith in the Government.

Nevertheless, I really sympathize with the Secretary for Security (Secretary) because most probably he had to be accountable to his colleagues. Now that the Secretary has done that, can he immediately re-introduce the Bill? As the Secretary has done his part as a friend and brother, will Mr President please permit him to re-introduce the Bill tomorrow for Third Reading?

Thank you, Mr President.

MR TSANG KIN-SHING (in Cantonese): Mr President, this is no friendship or brotherhood. If we cannot change the Independent Police Complaints Council within the current session, the days ahead will be even darker and any change will be even more difficult.

I hope the Secretary for Security will answer me: is it really true that "the Police has unlimited power and that human rights are sold out"? is it really true that "the Police has unlimited power and that human rights are sold out"? Is the Police truly supreme? Is the Police truly supreme?

Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, as the Chairman of the Panel on Security, I have heard colleagues say, and I agree, that deep down we think the power of the Police is greater than that of the civilian Government. It is a sad truth that the Police is subject to no monitoring control. But in fact, we are talking about the abuse of power by only a small group of the Force. The majority of members of the Police Force are in fact dedicated officers.

The crime rate now stands at its lowest among the past 15 years. A few weeks ago, when the Secretary and I met with the press when attending a meeting of the Fight Crimes Committee, we were proud to say that we needed the determination to tell colleagues of the Police Force that their culture needed to be changed. Although the Government and the Police have made some efforts, they are far from being enough. I have to admit that compared to 10 or 20 years ago, the Police Force has improved a lot. But the point is that this is still not enough. Without an independent complaints office to conduct investigations to get rid of the black sheep of the Force, the Force cannot convince the people.

I can say that the Government is the victim in this incident because there are a few more days before the Governor's term comes to an end, and he needs the Police to protect him, especially when the British Garrison are now almost all gone. So he is not in a position to put big reforms because the Police Force might tell him to get the British Garrison to protect him. Although the People's

Liberation Army may enter the territory three hours ahead of schedule, the Chinese Government knows well from the talks that two types of people must be taken care of first. One of them is the Police Force because it is the unit that is responsible for maintaining safety, security and public order. The second is the triad society because triad members can cause chaos. Then come, in this order, civil servants, their stabilization, the assurance that nothing wrong will happen to the foreign exchange reserves, to the economy, and so on. So the Police is really important.

Imagine that I were the Secretary for Security (Secretary), I would have to do a lot of work before I would have the guts not to withdraw the Bill. But I would like to ask the Secretary, the Government and the Commissioner of Police whether they have done their best to explain to their staff? Whether sufficient channelling work has been done? Whether sufficient arguments have been given to let them know that the society has changed, and therefore they need to change too? If they had done that sufficiently, I believe it could have worked out. If I do not have the confidence to do something, I will not be so bold as to force the Government to do so.

Some colleagues say that we are the opposition, not Government officials. But I can tell the Secretary and Mr President, if I were the Secretary, I would be bold enough to do that. The Secretary has done so much, and this Council has also given him so many years to do it. The motion was passed in 1992. Why could it be passed? It was because the many appointed Members then, the so-named "pro-Government party", saw that the Government was not whole-hearted on the matter, and that the Police was truly too bullying. Therefore they were forced to vote in favour of the motion, thereby sending a strong message to the then Secretary, urging him to introduce reforms.

It is not an issue that was raised just today, nor is it one that came out of nowhere to strike the Government beyond reaction. Why must the Complaints Against Police Office (CAPO) be independent? Why should the Independent Police Complaints Council (IPCC) suddenly need that power? The Government knew well that it was not unpredictable. Back in the 1994-95 session, the Government was preparing to introduce the draft Bill to this Council, and had kept asking Members whether they would move amendments to the Bill and propose adding the investigative power after it was introduced. If Members

would do that, the Government would not introduce the Bill into this Council. In the 1995-96 session, the Government again incorporated the Bill into the legislative programmes, and again asked Members if they would "play tricks"? In the 1995-96 session, the Government at last did not dare to introduce the Bill to this Council. In the 1996-97 session, it did at last. What had been on the mind of the Government was whether the Bill would get enough votes to be passed, whether it would have enough votes in favour of the Government. The government did not introduce any improvement or any reform at all. All it did was transferring an administrative officer to the CAPO to do some so-called observation and make suggestions thereafter. But those suggestions could hardly boost people's confidence.

I hope the Government will learn a lesson. Even though the Government will not re-introduce the Bill soon, I hope the Hong Kong Special Administrative Region Government or the Secretary will continue to study as to how much more effort it will have to make to re-introduce the Bill? Has the Government done so positively? If it does not have enough votes, it should not introduce the bill; but once it is introduced, it should not be withdrawn. Both morally and procedurally, the Government should not have withdrawn the Bill, even though it has the right to do so as conferred by the Constitution.

In fact, there was an alternative to the withdrawal of the Bill by the Government. If after the Bill was introduced, the Government considered that too many amendments had been moved, making the Bill totally different from the original and no longer consistent with the initial intent of the Government, which it found unacceptable, it could set the Bill on the table, and let it be a Member's bill, and let Members propose the Third Reading, and the Government itself could stay out of it. The Government did every calculation in that it did not introduce the Bill in 1994, 1995 or 1996. It only does so at this last moment. It has performed its foul play to extremes. Without the Government's consent, this Council could have nothing, and no reform could take place. In the end, Members could not even propose a Member's bill.

Mr President, I would like to say that during the enactment of the Interception of Communications Ordinance, the Government was equally cunning. It adopted the "drag-along" approach again, showing no sincerity at all. I regret having been cheated by the Government for over a year. I should have proposed the Bill one or two years ago. I am glad, though, that there are

two days left for its Second and Third Reading. And I also believe that the Bill will be passed. The way the Government behaved shows that it truly "takes the winnings and sacks the losses", which is totally immoral.

MR SIN CHUNG-KAI (in Cantonese): Mr President, I am so shocked to hear that the Honourable YUM Sin-ling's reason for abstaining on the vote, being his fear for a riot should the investigative power be endorsed. Hearing that, I felt a bit panic. If a riot could be caused that way, I should be scared.

Why were there riots in the '70s? It was because corruption had become uncontrollable, and in one big hit it was revealed that so many people were corrupted, making it necessary for the Government to proclaim an amnesty at last. By the same token, does it mean that every police officer is beating people up, or doing something they should not do? Otherwise, why would there be a riot? I feel puzzled and amazed to find that Mr YUM based his decision on such a reason! What is this all about! What age and era are we in? Shouldn't there be a better reason!

Mr President, I have been working on the district level for years, and have had a good relationship with the Police in the districts. There should be a good way to enhance cooperation between the Police and the people. Why should we fear investigations, fear independent investigations? After the Ombudsman's investigation, people now know well which government departments have received compliments or complaints. What comes after an investigation? Things seem to turn for the better, not as bad as it was. Independent investigation in fact has a positive effect. We need not fear investigations. Is that right? If one has done nothing wrong, why should he fear investigations? The more independent an investigation is the better. Why does the Government fear so much? I really do not understand.

Is it true, as the Public Accounts Committee says, that the "No. 1 man's" official residence, even when submitted to the Governor, would not be approved, and the "No. 1" license plate is no exception? Is it true that the power of the Police is greater than that of the Governor? From the standpoint of the Police or the Government, should such colonial practices be retained? Should we not do things in the 20th or 21st century way: be more open and enlightened to let

people feel that the Police is protecting them, to let them feel that there are ways to institute complaints?

What will happen if the investigative power is endorsed? The Government should be happy and applaud it because this will elevate the status of the Police in the eyes of the people. This is the positive approach. There is only one reason behind the withdrawal of the Bill, and that is deep down they feel guilty. If not, why should they panic? One who has done nothing wrong should be able to face up to other people and need not fear any investigation. I hope the Secretary for Security will answer this question. Are they afraid of investigations or they know that they have done wrong things?

MR ALBERT HO (in Cantonese): Mr President, today's debate is about whether the decision of the Secretary for Security (the Secretary) was right or wrong. I would like to make two points.

Firstly, should the power be exercised this way, despite its constitution status? Should it be exercised in a fairer and more civilized manner? The Government should have stated clearly beforehand that if this or that clause were amended, the Bill would be withdrawn. I am not saying that this is acceptable to me, but some Members said that they knew it, so it would be fair to other Members if the Secretary had said so. Anyhow, we still do not think it was right. Even if the Government had said so beforehand, should the constitutional right have been exercised that way?

Under the existing constitution, the Government is a colonial Government, not one elected by the people. But this Council is elected by the people. The power of this Council is already subject to a number of restrictions. In fact, since I joined this Council, I have experienced numerous occasions when we could not enter the restricted area. To cite an example, Members could not step into the businesses on which the Chinese and British sides have made an agreement. I do not know whether a bill will be withdrawn if it breaches such agreements would be withdrawn. This has not happened up to date. Maybe the Governor would refuse to sign it. I am not sure. All in all, these restricted areas tell Members that they cannot touch any business that the Chinese and British sides have agreed on. If the Government has an obligation, what legal obligation does it have? Or what kind of contract has been signed and cannot be changed? Just yesterday the Government said that it would hold on to its

legal advice and standpoint, that there would be no room for negotiation and that it would not seek alternatives to resolve problems in a rational manner.

Today the Secretary has reiterated some changes that the Government will not accept, but earlier on he said he was not sure what those changes were. Of course, if there are certain changes which the Government find unacceptable, they have to go through the procedures of this Council before any amendments can be made. But now when Members had proposed their amendments, the Government withdrew the Bill unilaterally. The Bill had taken up months of hard work of Members, and the relevant amendments were derived from consultation, which could reflect public opinion to a certain extent. The Government will be reprimanded by this Council as well as the entire community for what it did. So it brought out the second issue: the Government is unfair in acts and unjust in mind.

Let's go back to the Secretary. He said that it would give rise to a confusion of roles. I do not understand what kind of confusion of roles could there be. It is perfectly clear to us that the front-line investigation will be made by the Complaints Against Police Office (CAPO), and the Independent Police Complaints Council (IPCC) only plays a monitoring role. Only under very exceptional circumstances, where we believe that it is a very serious and controversial case, will the IPCC exercise the power we have proposed. What confusion of roles is there? I believe the policy intent of the Bill is very clear. In fact, there is no parallel investigation in our system. The Police are empowered to conduct investigations into cases involving deaths, and the coroner has the same power to do so. Both the Police and the Labour Department are empowered to find out the cause of a fire, and the Government also has the power to set up a committee to conduct an investigation in that regard. Is that confusion of roles? We think that it is only an excuse. In fact, we can see that the terms of reference of the IPCC is very clear. I believe the reason lies in the second point, that is the Government fears that the morale of the Police might be seriously impaired.

Mr President, whether the morale of the Police would be impaired will depend on how the Police and the Government act. If the Government had not given such a wrong message to the Police that they are entitled to special treatment and protection, and that only their own colleagues can conduct investigations, the Police would not have been so arrogant. If there were no such arrogance, how would their morale be impaired?

In fact, all we are asking for is that all departments be treated the same, and that the Police should not be treated differently. Earlier on the Honourable YUM Sin-ling said he feared that there might be riots. If that is true, I really do not know what to do. If there is any problem with the People's Liberation Army in future, I may be so scared as to fall on my knees. If the Government dare not investigate the Police, what will it do in respect of activities involving the People's Liberation Army? This is a wrong message, and I hope people know that this is so. But the Government has in fact given out this message, which will have a disastrous consequence.

Mr President, we have been fighting on more accountability on the Police. In fact, we have raised that many times. The existing system is very special, under which the Commissioner of Police has almost the same status as the Secretary. We have always said that the Commissioner of Police should be accountable to the Secretary and be led by him, like the heads of all other departments. On the policy level, why should the Police be like an independent kingdom? I do know if the Secretary agrees with me. In short, as at today, all we can ask the Government is that they should expeditiously re-introduce the Bill into this Council. But I believe the effects and harms already caused are beyond repair.

PRESIDENT (in Cantonese): Fellow Members, I would like to read out a Standing Order for your reference. As this is the last sitting, I am being more lenient, but we still have 16 more bills to deal with. This is Standing Order 34(1), and I now read it out to you, "The President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee, after having called the attention of the Council or the committee to the conduct of a member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate, may direct him to discontinue his speech." I am not going to comment whether we had a situation like that, but I hope Members will bear in mind the existence of this particular Standing Order.

SECRETARY FOR SECURITY: Mr President, let me first of all express my sincere hope that Honourable Members would look forward rather than back. While clearly there remain disagreements between the Administration and some Honourable Members on what might be an appropriate police complaints system at this point of our development, as a consequence of which I had to withdraw the Independent Police Complaints Council (IPCC) Bill last Monday under

Standing Order 52, there is nonetheless a common objective, and that is we all want to make improvements, indeed continuing improvements, to the system.

Like Honourable Members we too appreciate deeply how important it is that the community should have trust in their police force and that must include a system for handling complaints against the police which is as credible, as transparent and as effective as possible.

As I said at the resumption of the Second Reading debate of the IPCC Bill, the Administration's efforts towards this end did not begin with the Bill nor would they end with the Bill. Over the last three years we have enhanced publicity about police complaints system and the independent monitoring role of the IPCC. We have introduced the IPCC Witness Interviewing Scheme. We have installed close-circuit television, video on tape recording facilities in the Complaints Against the Police Office (CAPO), and we have introduced the IPCC Observer Scheme whereby IPCC members may initiate both scheduled and surprised observations of CAPO investigations.

We are committed to continue with the implementation of a package of additional measures arising from the IPCC's own review of the investigation procedures of CAPO and the comparative study of police complaints systems in other jurisdictions. These include: first setting up a special IPCC panel to monitor serious cases, and enable the Council to submit its findings in a special report to the Government; secondly, tightening up CAPO procedures to prevent any tipping-off of officers under complaint; thirdly, gauging public opinion towards the overall performance of the police force including the police complaints system by regular surveys; fourthly, setting time limits for CAPO in handling complaints and keeping a complainant informed of progress as far as possible; and fifthly, opening part of the IPCC's meetings to the public.

These are our clear public commitments and we will see to it that they are fulfilled. More fundamentally the Commissioner of Police is determined to improve the service quality of the force: For example, by conducting regular and large-scale surveys to suggest areas where service standards might be improved; by inculcating a client-based culture amongst police officers of all ranks; by promoting a force vision and stating a common purpose of values so that every member of the Police Force shares the common values of integrity and honesty, respect for the rights of members of the public and of the Force, and fairness, impartiality and compassion in all its dealings; by conducting pro-active and

systematic and systemic inspections of force units and formations to ensure that standards and objectives are met in the most effective and efficient manner; and by starting up training, especially at the recruit level of the importance of courtesy to the public and the avoidance of behaviour that might cause misunderstandings and complaints.

All these measures attack the root cause of the problem, for with a more user-friendly police force there should be less occasions when individual members of the community might have just cause for complaint. But there will always be complaints. That is in the nature of police work. We all know, for example, that a substantial proportion of complaints arise from cases where criminal elements come into conflict with police officers, who are charged with enforcing the law and protecting the public. We must also acknowledge that in a 28 000-strong police force, it is no surprise that there are a few bad eggs. We are not perfect, nor do we claim to be. That is where a credible police complaints system comes into play. Wherever there is a complaint of mis-behaviour or of criminal behaviour against a police officer there must be a thorough and exhaustive investigation in fairness both to the complainant and to the complaine.

Above all, there must be some outside independent bodies to monitor and review such investigations, to ensure that there is no bias and who have direct access to the highest level of the executive authorities. That is a system that we have had and which we seek to enhance by introducing the IPCC Bill. That is a system which works, albeit not perfectly. A study conducted jointly by the IPCC and the Administration of the police complaints systems in other jurisdictions have not found a system that works much better elsewhere, although there are ideas that we could usefully draw on to improve our own system. And as I said, we are drawing on those ideas to improve our system.

That brings me to why the Administration consider that there was no option but to withdraw the IPCC Bill after an unacceptable Committee stage amendment to clauses 7 and 8 to the Bill was passed last Monday. I regret it as much as some Honourable Members do. After all the hard work that had gone into it and the package-related administrative improvements over the last two years, it saddened me to have to withdraw it. We did not do it lightly. We could have lived with, even if we did not believe they are necessary, virtually all of the amendments that were passed at Committee stage except one.

Why? For two reasons. First, we do not think it is right to turn the IPCC system on its head and give it an investigative role. To do that would be to change the existing IPCC from an independent monitoring and review body into an investigative body which it is not equipped to be. I should add just for the record that the exercise of such investigative powers as set out in the Honourable James TO's Committee stage amendment is not, I repeat not, subject to the Governor's permission as one or two Honourable Members claim today.

Secondly, we do not believe that fundamental changes, no matter how attractive in political terms, is warranted especially in this sensitive time. For more detailed explanation of why we cannot possibly accept these amendments I recommend you to go over once again the reasons that I set out clearly and unambiguously at my speeches at the Resumption of Second Reading Debate and in response to the Committee stage amendment moved by Mr James TO to clauses 7 and 8 of the IPCC Bill. I do not wish to waste Honourable Members' time in repeating them today.

I do not believe in dwelling on recriminations as some Honourable Members seem to indulge in. I believe in working towards the last measure of consensus that would enable the Administration to put forward once again a bill to establish the IPCC on a statutory basis and I will work towards that end. Whether, and if so when, the IPCC Bill will be introduced into the Legislature in the future is a decision that will have to be taken by the Special Administrative Region Government. In addition, we shall also examine carefully the further improvements which might have been provided for by law had the IPCC been passed to see whether these can be implemented by administrative means, that is to say, without the Bill.

Last Monday, regrettably, we were all losers, but tomorrow, we may all be winners and the community of Hong King will be the real beneficiaries.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr WONG Wai-yin, you can now reply. You have one minute 17 seconds left out of your 15 minutes.

MR WONG WAI-YIN (in Cantonese): Thank you, Mr President, and thanks to colleagues. I feel strange because apart from Members of the Democratic camp, no one from other parties, including the Liberal Party, the Democratic Alliance

for the Betterment of Hong Kong or the Hong Kong Federation of Trade Unions has spoken a word. I wonder if they agree to the Government's move.

Mr President, we, including the Government, all know that the police complaints system has had problems, and therefore improvements are needed. It is just a matter of pace. Perhaps the Government thinks we are proceeding too fast, but we Members think we are too slow. Our ultimate goal is to make the Complaints Against Police Office independent, and this concept is crystal clear. I believe many of our colleagues have been fighting on this since they joined this Council in 1991. It is only when we could not get exactly what we wanted that we accepted other suggestions. If the Government only proposes remedial measures, thinking that by establishing a statutory body only will resolve the problem, I think the Government is wrong.

Mr President, the harm already caused is now beyond repair. Is the Government going to rebuild its image or commit one mistake after another? I believe the decision lies in the Government itself. We sincerely hope the Government will expeditiously re-introduce the Bill.

Thank you, Mr President.

Question on the motion put.

Voice vote taken.

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

Miss Emily LAU claimed a division.

PRESIDENT (in Cantonese): We have a little time left. Earlier on I read out Standing Order 34(1) when many of the Members were not present. Now would Members please read it for yourselves. This is the last sitting, and I would like to be lenient, but I cannot. I have to be strict.

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 Mr WONG Wai-yin be passed.

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? A few short of the head count. The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mr Edward HO, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr James TIEN, Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr Paul CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Dr Philip WONG, Mr CHOY Kan-pui and Mr David CHU abstained.

THE PRESIDENT announced that there were 41 votes in favour of the motion and no vote against it. He therefore declared that the motion was carried.

MEMBERS' BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bill

EMPLOYMENT (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 19 February 1997

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I would like to briefly report the deliberations of the Bills Committee in the capacity of Chairman of the Bills Committee on the Employment (Amendment) Bill 1997 (the Bill). As explained by the Honourable Mr LEE Cheuk-yan when he introduced it, the Bill, which is a Member's Bill, seeks to give employees greater protection against discrimination on the ground of trade union membership and activities by allowing employees to bring civil proceedings against their employers. The Bills Committee has held one meeting with the Administration.

The Administration has stated categorically that it does not support the Bill. The Administration explains that it has introduced the Employment (Amendment) (No. 2) Bill 1997 (No. 2 Bill). The No. 2 Bill seeks to strengthen protection of employees against unreasonable termination of employment including the ground of anti-union discrimination. The Bills Committee has compared the provisions of these two Bills and notes that although the No. 2 Bill overlaps to some extent with the Member's Bill, they differ in some major aspects. The ambit of the No. 2 Bill is confined to dismissal, while the Member's Bill deals with any anti-union discriminatory acts including but not limited to dismissal. Moreover, as far as the scope of civil remedies available is concerned, the Member's Bill is wider than the No. 2 Bill. Albeit the provision for re-employment as a remedy in both Bills, the No. 2 Bill stipulates that reinstatement be subject to the consent of both the employer and the employee, whereas under the Member's Bill, this decision rests solely with the court. In addition to re-employment, the court may also order promotion of the employee concerned under the Member's Bill. Another major difference between these two Bills is that the No. 2 Bill imposes a ceiling of an award of compensation of \$150,000 in a substantiated case of unlawful

dismissal, whereas the Member's Bill does not provide for the maximum amount of compensation and damages to be awarded by the court. The No. 2 Bill was passed at the last sitting of this Council.

Mr LEE Cheuk-yan has accepted some of the proposals of the Bills Committee and agreed to propose a number of amendments in response to Members' concerns. Such amendments include the redrafting of the provisions relating to the onus of proof in civil proceedings, imposing a time limit of 12 months between the exercise by an employee of his right to take part in trade union activities and the occurrence of a discriminatory act for initiating civil proceedings against an employer, and specifying non-application of certain provisions in Part VI of the Employment Ordinance relating to dismissal on the ground of union activities.

The Bills Committee also notes the intention of Mr LEE Cheuk-yan to delete the proposed increase in penalties for offences relating to acts of anti-union discrimination, to designate the Labour Tribunal instead of the District Court to handle cases relating to unlawful dismissal, and to add a transitional provision to clarify that the Bill shall not apply to detriment suffered by an employee before the commencement of the Bill.

Mr President, I so submit.

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

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, the provisions of the Employment Ordinance relating to criminal liabilities for discrimination against trade unions have been in existence for years, but up to now only two cases of criminal prosecution have been instituted and no defendant has ever been convicted at all. Does this situation indicate that there is no discrimination against trade unions in Hong Kong? Of course not! I have actually encountered such cases one after another in my experience in trade union work in the past approximately 30 years and most of the victims have been unable to obtain their due compensation under the existing legislation.

In 1984, staff members of the Mass Transit Railway (MTR) launched a strike and, as a result, the MTR management dismissed more than 260 employees at one stroke. Only after vigorous struggles of the workers and pressed by public opinions did the MTR promise to reinstate the majority of the dismissed workers, with the exception of 13 executive members of the trade union whose reinstatement the MTR vehemently refused. Obviously, it was a serious case of discrimination against the trade union and the obvious reason for the refusal was that they were executive members of the trade union. Clearly, they were discriminated against on the ground of participation in trade union activities.

In 1990, Mr LEUNG Ting-kin, an executive member of the Kowloon Motor Bus (1933) Company Limited (KMB) Staff Association under the Hong Kong Confederation of Trade Unions (CTU), was dismissed by the KMB for pointing out the areas of its working environment which were in need of improvement at a press conference. Not after several struggles, including a three-day slow driving of buses initiated by the KMB staff and a long hunger strike staged by Mr LEUNG outside the Premises of the KMB, had taken place did the KMB allow him to reinstate, but he did not obtain any compensation for his loss.

Although the Cathay Pacific Airways (CPA) promised openly during the strike of its employees in 1993 that it would not take any "reprisals", it suddenly dismissed in mid-1993 the Deputy Chairman of the trade union who had served the CPA for 17 years. It was announced openly that the reason for the dismissal was, to one's surprise, an allegation on her having stolen a box of nuts and a magazine while working on an airliner.

In 1994, the Wellcome Company Limited dismissed three active members of the trade union and transferred another one. Following a complaint from the trade union, a prosecution, being the second time that the Government had initiated in accordance with the Trade Unions Ordinance, was instituted, but it was not successful owing to the difficulty in proving that the employer's real reason for dismissal was one of discrimination against trade union activities.

Such cases are just rather remarkable examples. In fact, more and more forms of discrimination take place year after year, so the Bill introduced by the Honourable LEE Cheuk-yan on behalf of the CTU should have been enacted and implemented early for the purpose of providing comprehensive protection for workers. I urge all colleagues to support the Bill.

Mr Deputy, the Bill is the first of the labour-related Private Bills to be considered at this Sitting. I believe that colleagues are all aware that the Secretary for Education and Manpower made a great effort in these few days to lobby strong objections to the seven labour-related Private Bills introduced by the Mr LEE Cheuk-yan, the Honourable LEUNG Yiu-chung and I respectively. I wish to respond to the attack launched by the Government on their behalf as a whole during the commencement of the debate on these Private Bills and the Member in charge will then respond to the detailed criticisms made by the Government on his Bill respectively.

First of all, I cannot accept the remark of the Secretary for Education and Manpower that our Private Bills destroy the advisory mechanism of the Labour Advisory Board (LAB). As early as November 1995, we submitted a list of 16 labour-related legislative proposals to the Government and made it clear that, unless the Government took the initiative to legislate, we would proceed to undertake the drafting work. After the Private Bills had formally been introduced in this Council, we even took the initiative to give the contents of the Bills to the Chairman of the LAB, that is the Commissioner for Labour, and explicitly proposed that the LAB should discuss them. The Government did not take any action at all and not until the Panel on Manpower of this Council and the Bills Committees had made a strong request did it arrange for all three of us to explain our Private Bills at a meeting of the LAB. We attended the meeting in person on 28 May this year to explain our legislative proposals and a discussion was carried out immediately at the meeting.

We did consult the LAB and many of the amendments that we propose today have been made to incorporate its views, so I do not see any damage done to the advisory mechanism of the LAB. If consultation with the LAB means that the LAB should reach a consensus for this Council to legislate, would this Council not become a "rubber stamp"? Of course, each colleague here can have his or her own reasons as to whether to support a particular bill or not. While I uphold the rights and interests of "the wage earners" as the premise of my decisions, other Members may think that the consensus of the LAB, which takes the interests of "the bosses" into account, is most important. It is natural for different Members to represent the interests of different levels in a democratic council, as long as they make their own stance clear and decisions are made through voting. But we should absolutely not "void our own powers" and sort of give the legislative power to the LAB.

Second, I also find the remark of the Government unacceptable, who regards our Private Bills perfunctory. The legislative proposals, such as making 1 May a labour holiday, unfair dismissal legislation, right to collective bargaining, greater protection for trade unions and so on, have been raised by the labour sector for nearly twenty years. After we had formally put forward 16 labour-related legislative proposals in November 1995, we immediately proceeded to conduct an in-depth study of incorporating these proposals in legislative provisions. As we hope that the proposed contents of the Private Bills and the legislative provisions will be viable and specific, they took a longer time to draft and they can only be introduced to this Council at the current session. I consider this a responsible arrangement. Although no Bills Committee could be set up in respect of four of the Bills, all the Private Bills were, firstly, discussed by the Panel on Manpower. Secondly, the provisions of two of these four Bills are actually very straight forward. Thirdly, a briefing session was organized for each Bill, such as the one on the right to collective bargaining, on our own initiative for all the colleagues and their assistants. As a matter of fact, I find it most regrettable that the Government did not scrutinize these Private Bills in a positive manner at all. Instead of taking part in the scrutiny willingly and putting forwards constructive proposals for improvement, it just made an all-round effort to lobby Honourable Members to raise objection to them. What is really perfunctory is its approach. If the Government spent the time on putting forwards legislative proposals or Committee stage amendments out of its own initiative, it would, I think, be a constructive and responsible approach.

Finally, I wonder why the Secretary for Education and Manpower, Mr WONG Wing-ping, said openly on Monday this week that the introduction of the Bills "indicated that some of the "out-going" Members wanted to accumulate "political clout" for the 1998 election only". I remember that when I resigned from this Council in 1994 as a protest against the Government's "take-the-winnings-and-sack-the-losses" approach for withdrawing the Bill on the improvement of the severance payment and the long service payment, I was also alleged to have eyes for political clout. I would like to make a serious reply that it is our primary undertaking to struggle for the enhancement of the rights and interests of labour and, no matter how Mr WONG and others will say, I shall only reply: "Do as you like." My colleagues and I will, as in the past, struggle for the interests, rights and dignity of labour to the end.

Mr Deputy, with these remarks, I support Mr LEE Cheuk-yan's Bill. Thank you.

MR MICHAEL HO (in Cantonese): Mr Deputy, the Democratic Party supports the Bill. During the deliberation of the Bill, there were different views in the Committee, but after having studied the Bill, the Democratic Party finds it basically acceptable, particularly the main contents of the Bill which include penalties for anti-union discrimination, civil claim and so on. In fact, the six labour-related Members' Bills have something in common. During the debate on the first Bill, we wish to clearly express our views on it and the remaining five Bills because we are not going to repeat them during the Second Reading debates on the remaining five Bills.

These Members' Bills are respectively proposed by different colleagues. In its lobbying letter, the Government pointed out that these Bills would have an impact on the mechanism of the Labour Advisory Committee (LAB). In addition, the Secretary for Education and Manpower said in his letter to us on 21 June that the Bills were not supported by the LAB and that such move, which totally disregarded the consensus of the LAB and tried to unilaterally change the rights and interests of labour, was absolutely not in line with the long-term benefits of employers and employees. In response to the clause "which totally disregarded the consensus of the LAB", I cannot help asking: "Is it the principle of the Government to say that legislation cannot be enacted if the LAB has no consensus or fails to reach a consensus?"

I wish to remind the Government clearly once again here that only this Council is the legislature entitled to amend legislation in the absence of a consensus or even without holding discussions at all. This is the power constitutionally rested with the Legislative Council. We must certainly listen to and take into account of the views of the LAB and we shall also meet with some of its members to discuss some of the issues, but the present situation is that, apart from inadequate communication, the pace taken by Members of this Council or political parties differs from that of the LAB. As a result, some issues have not been discussed; others are left untouched or given different priorities in their treatment.

In fact, this should be a matter to be co-ordinated by the Education and Manpower Branch (EMB). If this Council had different views with the LAB in respect of the pace and issues to be discussed, why was the Government not responsible for the co-ordination of such matters concerning education and

manpower which are within the purview of the EMB? It is a great pity that the EMB has failed to carry out its co-ordination work.

As a matter of fact, it was evident in the last legislative session that Members introduced their respective Bills and the situation today has already been predicted. I remember that about June 1995 the Honourable LEE Cheuk-yan proposed that the payment for maternity leave of an employee be increased from two-thirds to 100%. At that time, a meeting was co-ordinated by the former Commissioner for Labour, Mr Stephen IP Shu-kwan, and officials of the EMB for representatives of employers, employees and political parties at the library of this Council and a consensus was finally reached to set the allowance at 80%. It was also agreed that after the 1995 election all the representatives of employers, employees and various political parties would come together again to hold discussions in the hope of reaching a consensus on hundreds or thousands of matters to be handled in future. They also undertook to act in accordance with the consensus. However, the EMB forgot it all after the election. I do not know whether this is due to the replacement in the post of Deputy Secretary for Education and Manpower (DSEM), that is the promotion of the Commissioner for Labour to the post of a policy Secretary, or otherwise. Although I have mentioned the matter to the Government for many times, no such arrangement has been made. At last, we can only express our views respectively today.

It infuriates me more to have heard the remarks that the Honourable LAU Chin-shek made just now. He said that he presented a list containing, among others, 18 issues for discussion in April 1995. Why did we not come together to discuss them? Was it considered to be certainly fruitless to discuss them in 1995? I do not think so. It should be a good practice to hold discussions first to let us know which ones of the 18 issues should be prioritized and which ones can be handled later. Otherwise, each of us will act differently. We are lucky today to have six Bills only. There were originally seven Bills, including the one introduced and withdrawn by the Honourable MOK Ying-fan.

Just now the DSEM lobbied me by saying that he hoped that the result would not be 6:0. In fact two Bills have been withdrawn. If we had convened a meeting and made undertakings, these undertakings would certainly be conformed with as if they were gentleman agreements. Regrettably, there were neither undertakings, nor gentleman agreements, nor opportunities for discussion. I hope that the SEM will not tell me that discussions did take place when he

replies later. Indeed, a discussion was held several weeks ago in April or May 1997, but it was really too late.

If we had reached a consensus, the Democratic Party, the Hong Kong Association for Democracy and People's Livelihood, the Liberal Party, the Honourable LEUNG Yiu-chung, Mr LEE Cheuk-yan or the Mr LAU Chin-shek would, much to my belief, all have conformed with such gentleman agreement. I do not believe that anyone of them will break his promise. If this happened, that is, matters discussed in a face-to-face manner are disregarded, I think we would not support it. Thus, the situation of today is in fact solely caused by the Government and not until today does the Government try to lobby the Honourable Members. Why should we not discuss the issues properly at an early stage?

Mr Deputy, we support the contents of the Bill and disagree with the claim of the Government that it is impracticable without the consensus of the LAB. We hope that after the passage of the Bill the Democratic Party or the future Legislative Council should both maintain close communication with employee members and employer members of the LAB.

I so submit.

THE PRESIDENT resumed the Chair.

MR JAMES TIEN (in Cantonese): Mr President, I am speaking on behalf of the Liberal Party. As far as the Employment (Amendment) Bill 1997 is concerned, I think the business sector will of course keep the issue of the trade union at a distance, thinking that trade unions will cause difficulty to employers. The several questions raised by the Honourable LAU Chin-shek just now about the public utilities companies and several large enterprises can all be solved, but is it necessary to enact such major legislation? The business sector thinks that with plenty of employment opportunities, a low unemployment rate and a good economic environment in Hong Kong, employees can actually have lots of opportunities to choose their jobs. Do you find, by just figuring it out, that there are more cases of resignation than dismissal? I believe that this is absolutely

the case. This special feature of Hong Kong absolutely does not appear in many other countries and that is why these countries have powerful trade unions to negotiate with the management of enterprises on issues relating to wages or conditions for reinstatement. Basically, both the Liberal Party and the business sector do not think that Hong Kong has such a need in view of its good economic environment and low unemployment rate. I believe that most employees will rather seek another good job or the same kind of job than reinstatement in case of disputes.

Mr President, I only have two points to make. Firstly, it is about "proof" as emphasized by the Bill passed last week. If a complaint is made, the subject of the complaint is presumed to be innocent under all the existing legislation unless proved otherwise by the complainant. Such requirement was amended last week to the effect that now an employer, if being complained against, has to prove his innocence himself instead of letting others to prove his guilt. Take a very simple example, if an employer wants to dismiss an employee on the ground that he reads the newspaper or drinks tea before 9:30 am every day instead of working on the job, the employee may say, "It is not the case. Being a member of the trade union, I just discuss with other workers on issues relating to the trade union from 9.00 am to 9.30 am. If you want to dismiss me, you must prove my guilt." I think it is unreasonable to impose the burden of proof on the employer. Under other legislation, the employee should prove that he was laid off or dismissed on the ground of his trade union membership, instead of failing to work from 9.00 am to 9.30 am with a mind for drinking coffee and reading the newspaper only. Secondly, it is about reinstatement. As far as the relationship between employees and employers in most cases is concerned, if compensation is paid, the problem will be deemed to have been settled, but now it is up to the Labour Tribunal to decide on reinstatement. In fact, reinstatement will cause embarrassment to both employers and employees in their daily contact and is of little benefit to either party. Will the passage of the Bill really lead to its frequent application by members of the trade union? We are quite suspicious about this. I am not going to speak on each amendment. In short, the Liberal Party does not support the Bill. Of course, we hope that the future Labour Advisory Board (LAB) which consists of six employers and six employees will discuss issues calmly and that the Government can arrange for Mr LAU Chin-shek and the Honourable LEE Cheuk-yan to join the LAB on behalf of employees, or appoint members of the Democratic Party to the Board, so that

when they return to this Council after the 1998 election, none of them will say that the views of the representatives from this Council, political parties or trade unions cannot be reflected in the LAB. I hope that such specific relationship between employers and employees can be discussed in a more harmonious LAB under the supervision of the Government, which will enable employers to make some concessions. It will be rather difficult for both sides to make concessions at the level of this Council.

Thank you, Mr President.

MR LEE KAI-MING (in Cantonese): Mr President, the Government has early on introduced a number of employment bills which were the outcomes of repeated negotiations and consultations at unofficial meetings behind the scene between the Labour Advisory Board and representatives of both management and labour. These bills were passed smoothly in the Council with the support of Members representing the business sector. Although the bills so passed might not fully meet the expectations of the labour side, both labour and management made concessions during the process of consultation and to a great extent reached compromises which were openly alleged by some representatives of employers as collaboration between the Government and labour. The contents of a number of amendments proposed by some Members had already been discussed during the process of consultation and in fact, those parts on which a consensus had been reached have been incorporated into the Government bills so passed. Since I have taken part in these negotiations and I have to keep to the promise which I made during the process of consultation, I have to object to the amendments proposed by these Members. These are my remarks.

MR CHENG YIU-TONG (in Cantonese): Mr President, any trade union member will consider that retention of the job is most important to employees. However, if we look at the existing laws, we can say that there is almost no protection for job security. Although some amendments were made to the Employment Ordinance the other day, the legislation still fails to provide adequate protection for job security to employees. As such, Members of this Council belonging to the Hong Kong Federation of Trade Unions support the Employment (Amendment) Bill 1997 because the Bill allows any employee to

invoke the right of reinstatement if he is dismissed by his employer on the ground of trade union membership. Undeniably, this provision renders protection to those persons who take part in trade union activities.

However, I have to emphasize one problem existing in the Bill. New Section 21H(2)(h) stipulated that: "Without limiting the generality of the power conferred by subsection (1), the Labour Tribunal may declare that a legislative provision has been repealed in whole or part, or that a rule of the common law has been abrogated." I think such provision is definitely not in line with the existing laws because subsequent legislation should override preceding legislation in the laws of Hong Kong. If we are going to apply this provision of the Bill, it will be a contravention to the legal system which we have been practising all along. I very much hope we can support the Bill for its Second Reading. But we wish the Bill can be dealt with during the Committee stage, otherwise we will find it difficult to support the Bill during its Third Reading. Thank you, Mr President.

MR BRUCE LIU (in Cantonese): Mr President, I am speaking on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL) on the labour-related Bills, especially the contents of the Honourable LEE Cheuk-yan's Bill.

In the past we received quite a number of papers circulated by the Secretary for Education and Manpower and some of them were issued by the Government Secretariat or the Commissioner for Labour. These papers, resembling the "essence books" we studied in our school days to prepare for the Hong Kong Certificate of Education Examination, help us a lot. As no Bills Committee was set up to scrutinize the majority of the Bills, the Government has to provide us with a large number of reference papers of good quality to help us get familiar with the contents of the Bills. As a result, we have acquired a good understanding of each of them as if we had private tutors giving us the answer to each question.

During the process of deliberation, the Government has put forward several reasons against these Private Bills. I would like to comment on these reasons one by one. Firstly, the Government thinks that it is inappropriate to

legislate without the support of the Labour Advisory Board (LAB). Since a Member has responded to this argument a moment ago, I just want to add that it is a question of the system. The LAB is inherently defective because it comprises no Members of this Council representing some trade unions, such as the Hong Kong Confederation of Trade Unions (CTU), and political parties, such as the Democratic Party and the ADPL. It is hardly convincing to say that we cannot discuss or enact laws in the absence of a consensus.

In addition, it is also concerned with the legislative mechanism. If a Member is to express his views on behalf of a political party, he will of course try to get the most of it. If he is not supported by the LAB, he is entitled to introduce his own Bill. He is compelled to do so in the absence of a suitable mechanism on the part of the LAB and it is a normal practice. We reminded the Government at a very early stage that it was necessary to improve the mechanism of the LAB to co-opt some representatives from political parties and, in particular, some important trade unions. Otherwise, it will be the worst flaw in the selection method persistently adopted by the Government. If there are no representatives from major trade unions in the LAB, it is justifiable and fair for the Member to introduce his private bill to this Council to achieve his goal. Thus we find it very difficult to accept this first reason.

Secondly, the Government advises us not to support any bills that have not been discussed by the Bills Committee of this Council. In this "unprecedented and non-recurring" historical moment that the Legislative Council is unfortunately coming to an "end" shortly, it is natural for Members to hurriedly introduce their Private Bills if they need to.

This reason can hardly be established at all as I mentioned just now that we had some officials explained the contents of each Bill to us just like our private tutors, so it is unlikely that we do not understand them.

No matter how complicated the Bills are, after the lobbies conducted by the Government in the past two weeks, each of us can be said to have "fully understood" the contents of the Bills and fully considered the views of the Government and Members.

Thirdly, the Government says that a private bill will cause confusion. This remark warrants our consideration. As some of the Bills are Private bills, they will certainly contain undesirable elements. If these elements cannot be improved, it will cause confusion. Thus, each Bill should be scrutinized in detail.

In view of this reason, the ADPL scrutinizes, weighs and decides on each Bill carefully. As regards Mr LEE Cheuk-yan's Bill, the Government has put forwards three reasons against it. First, why should such Bill be introduced in addition to a similar one which has been passed? So the Bill is unnecessary. But we see that there is an inadequacy in the legislation as it fails to provide enough protection against discrimination for those employees dismissed on the ground of their trade union membership. That is why Mr LEE Cheuk-yan has introduced his Bill. Mr LEE considers that there are inadequacies in two areas, namely the right to reinstatement and the filing of claims with the court.

In regard to the right to reinstatement, if an employee is dismissed on the ground of his trade union membership, one of the important factors to be considered for the grant of reinstatement is his agreement to it. What we have to judge is: Should the consent of the employer, rather than the unilateral agreement of the employee, also be required in this respect? But if the consent of both sides is needed, the right to reinstatement is impracticable. It is basically up to the court to judge on it after having considered all the relevant factors. If it is imposed that the consent of the employer is also required, such right can never be exercised because the employer will certainly not give his consent. Thus, it is necessary to ask the employee concerned whether he agrees to be reinstated. Only with the employee's consent to consider his reinstatement can the court exercise its power of decision. This restricts the right to reinstatement to those employers dismissed due to discrimination on the ground of their trade union membership.

As regards compensation, it is really an indication of our willingness to follow good advice as we are not going to further propose the imposition of criminal punishment at the Committee Stage.

Finally, in respect of the legal question raised by the Honourable CHENG Yiu-tong just now, Mr LEE Cheuk-yan will withdraw the new section 21H(2)(h) in his amendments later with the consent of the President. I would like to point

out that, in my opinion, a principle of the common law can be amended through legislation, but is it necessary to make such an amendment in view of the principle that subsequent legislation should override preceding legislation? We have not discussed this question in detail in the Bills Committee. Based on this reason, I suggest that Mr LEE Cheuk-yan should not argue on this point. He should delete the provision without reservations to get three more votes from the Federation of Trade Unions. Is it not a reward? Under these circumstances, subsequent to my discussion with the Mr LEE Cheuk-yan and the Honourable Miss CHAN Yuen-han and with the sensible approval of the President, the ADPL supports the Bill.

Thank you.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, according to the Legislative Council Order Paper, the Second Reading debates on six labour-related Members' Bills, including the Employment (Amendment) Bill 1997 introduced by the Honourable LEE Cheuk-yan, are to resume today. These Members' Bills involve a wide range of highly controversial labour issues which include trade union activities, unfair dismissal, drastic amendments to the Occupational Deafness Compensation Scheme, an increase in statutory holidays, the right to collective bargaining and so on.

First of all, let me make it clear that the Government opposes the hasty passage of the six bills. There are mainly four reasons. Firstly, the passage of these Members' Bills will strike heavy blows at the Labour Advisory Board (LAB), which is a long-established advisory mechanism in Hong Kong composing representatives of employees, employers and the Government, thus affecting the harmonious labour relations in Hong Kong. These six labour-related bills had been discussed at the meetings of the LAB, but none gained its support. The Committee stage amendments to be moved by Members who introduced the bills have not in the least been discussed by the LAB, and the Government does not even know the contents of some of the amendments because they have not been put forward yet. In its public statement the LAB urged Members of the Legislative Council to vote against these six bills when the Second Reading debates on the bills resume. Members representing the interests of the labour sector should know that the employees' representatives on

the LAB are returned by election and therefore, they are widely representative. In criticizing the Government, political parties and Members alleged that the Government invariably dissuaded the Legislative Council from supporting certain Members' Bills on the basis that the LAB had reached no consensus. They also alleged that this was a covert attempt to allow the LAB's advisory status to override the legislative status of the Legislative Council. I am afraid that such criticism is only an excuse. I believe that Members certainly agree that when it comes to matters on workers' rights and interests, employers and employees basically take very different positions, and sometimes to such extent that their stances are entirely confrontational. Hence, the implementation of any proposal to improve workers' rights and interests hinges on a right point of balance between employees and employers, and such point of balance has to be acceptable to both sides. To this end, a representative and sound mechanism for negotiation has to be put in place to facilitate discussions on the relevant issues. This is unique to legislative proposals which seek to improve workers' welfare, and such uniqueness also explains the basic difference between these legislative proposals and those in other aspects. The LAB, being a tripartite advisory mechanism made up of employees, employers and the Government, just fits for the job. Furthermore, the long-established *modus operandi* of the LAB has also gained the recognition of employees, employers as well as members of the community.

To avoid confusion, I would like to recapitulate that Members of the Legislative Council obviously have the right to make laws, and that they can do so without having regard for the opinions of the LAB. Yet, I hope Members will think twice about the possible consequences. Comprising representatives of employees, employers and the Government, this tripartite framework is highly commended by the International Labour Organization which has also praised the LAB as an exemplar of its kind. So far as the improvement of workers' rights and interests is concerned, if this area of work is no longer carried out on the basis of a tripartite consensus and thorough deliberations by the legislature, but proceeds by bringing everything to the legislature only, with decisions made according to the number of votes representing the industrial and commercial sector or the grassroots at a certain time or at a particular sitting, it is absolutely not in the interests of employees. Nor is it in the long-term, or even short-term, interests of the economy as a whole.

As I mentioned earlier on, legislation on the improvement of workers' rights and interests requires thorough deliberations by the legislature. This is the second reason why the Government opposes the bills. Given that four of the bills have not been scrutinized by a bills committee of the Legislative Council, no detailed assessment of the implications has been made. Later on, I will detail the reasons for the Government's objection to each of the Members' Bills individually. However, I would like to remind Members in support of the bills that the community has the right to ask whether this is something that a responsible legislative councillor is supposed to do. If the Government introduced a bill which entails far-reaching implications and the Second Reading debate on the bill resumed hastily without the prior consent of the LAB, without any widely-conducted consultation and without thorough deliberations by this Council, I wonder how Members will react under the circumstance.

The third reason why we object to the bills is that many of the clauses, if passed, will immediately bring adverse effects, which can hardly be remedied, to the community of Hong Kong. I will explain in detail later. In fact, on a number of occasions, and in the papers circulated to Members, I have highlighted the serious consequences brought by individual clauses, particularly those on the right to collective bargaining.

Fourthly, some of the clauses, if passed, will cause unnecessary confusion and even difficulties in implementation. This Bill introduced by Mr LEE Cheuk-yan is a case in point. I will explain in more detail shortly. Mr President, I now respond to the points that Members made in their speeches. The efforts and achievements the Government has made in the past two years in improving workers' rights and interests are unquestionable. We have broken the record by introducing to the Legislative Council a total of 23 labour-related legislative items which have all been approved. Members from the labour sector have expressed their admiration only last week for the efforts made by the Government. I very much hope that they will take concrete actions to show their admiration by supporting the position of the Government today. Here, I would also like to say that I greatly appreciate the speech that Mr LEE Kai-ming made earlier on. The hasty resumption of the Second Reading debates by the Legislative Council to decide whether or not to pass the six bills has already aroused grave concern in the community. Recently, a newspaper which is highly reputable both locally and internationally, and which has all along supported that the fruits of prosperity be shared by employees and employers

together, commented on the matter in its editorial. It concluded that while employees' welfare should be appropriately taken care of, it is a wrongful and irresponsible act on the part of Members if they pass these bills hastily without extensive discussions only with a view to finishing their job before the changeover of the Legislative Council. Today, another editorial under the title "The Legislative Council must refrain from legislating in haste which is detrimental to the community" concluded that "in so doing, all Hong Kong people will be disappointed and so will the electors. This is a retrogression of democracy in its real sense so it is hoped that Members will think twice." In this connection, I very much hope that political parties and Members that have always given much weight to public support will vote rationally and responsibly.

Now I would like to state specifically the three reasons why the Government opposes the Employment (Amendment) Bill 1997 introduced by Mr LEE Cheuk-yan. Firstly, the Employment (Amendment) (No. 3) Ordinance 1997 passed on 17 June in this Council aims to strengthen employment protection across-the-board, thereby safeguarding employees against unreasonable termination or variation of the employment contract and unlawful dismissal. As regards the prevention of unlawful dismissal, the Ordinance already embodied remedies for employees unlawfully dismissed as a result of their exercising the union rights. The remedies included arrangements for reinstatement under the agreement of the employees and employers, the award of terminal payments and a lump sum of compensation not exceeding \$150,000. This Ordinance is similar to Mr LEE's Bill in many areas but the former is more comprehensive than the latter in terms of the scope of protection. Such being the case, if Mr LEE's Bill is passed in this Council, confusion will arise in the implementation of the two ordinances by the Government or in the hearing of claims lodged under the two ordinances in court. As a result, both the employers and employees will be at a loss as to what to do.

Secondly, the major difference between Mr LEE Cheuk-yan's Bill and the Employment (Amendment) (No. 3) Ordinance 1997 lies in the provisions on compensation. Under Mr LEE's Bill, the court can order the employer to take remedial actions which include employing, re-employing, or even promoting the affected employee without the employer's consent. We are of the view that the court should not interfere with decisions on personnel matters in the private sector. Moreover, as most employers in Hong Kong take on less than 20 employees and the order made by the court will come into effect only with the agreement of the employee and the employer concerned, it is unworkable to force

the employer to comply with the order. Nor can it improve labour relations that have turned sour already.

Thirdly, I have to point out that the Government has consulted the LAB on Mr LEE's original proposal. Members of the LAB unanimously declined to support it mainly because under the Employment (Amendment) (No. 3) Ordinance 1997 introduced by the Government, employment protection against anti-union discrimination is already strengthened. Nevertheless, it does not mean that the LAB has ignored the interests of trade union members because it has undertaken to monitor the operation of the new legislation and study the issue of reinstatement or re-engagement at a later stage in light of the operational experience. Mr LEE Cheuk-yan's recent proposal to amend his original Bill has not been scrutinized by a bills committee. One of the amendments proposed the addition of an exception, under which the provisions of Part VIA of the Employment Ordinance do not apply to claims for remedies in respect of dismissals relating to breaches of provisions on anti-union discrimination. In fact, Part VIA of the Employment Ordinance is added by the Employment (Amendment) (No. 3) Ordinance 1997 as introduced by the Government and passed by this Council last week. I would like to point out that adding in such exception cannot remove the confusion caused by this Bill because there is no provision in law prohibiting the same employee being dismissed on the ground of anti-union discrimination from lodging separate claims under different provisions of the two ordinances. Consequently, both the employers and employees will be at a loss as to what to do. Besides, this amendment will also give rise to a new problem, making it impossible for employers being prosecuted for dismissing their employees on the ground of anti-union discrimination to prove, on the basis of the five statutory justifications for reasonable dismissals as set out under Part VIA, that they did not sack the employees for their trade union membership. Undoubtedly, this is grossly unfair to employers. For the above reasons, particularly with the earlier passage of the relevant legislation introduced by the Government, and given that the LAB has undertaken to review the question of reinstatement or re-engagement at a later stage, the Government is of the view that the Bill, which will give rise to confusion, should not be passed in a hasty manner.

I urge Members to vote against Mr LEE Cheuk-yan's Bill. Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Mr President, first of all, I would like to thank the Chairman of the Bills Committee, the Honourable Miss CHAN Yuen-han, and its members for their assistance which enabled the scrutiny of this Bill to have been completed at one meeting of the Bills Committee. Most of the amendments that I shall propose to the Bill later have been made in response to the advice from the members of the Bills Committee and the Government.

The Honourable James TIEN has just asked: "Why should the legislation be enacted in such a high-profile manner?" It should be understood that the Bill under consideration is concerned with the freedom of association which is the basic right of trade union members. If reprisals will be taken against those involved in union affairs, it means that workers in Hong Kong have neither freedom of association nor the right to form trade unions at all. It can be imagined that if a democratic election is held in which voters must write their names in the ballot when voting and, as a result, reprisals are taken against them for voting for someone or some political party, can it be said that Hong Kong people enjoy democracy? It is believed that every one will deny it. Just like the case of forming a trade union, if, after having made a painstaking effort to form a trade union, employees are dismissed on the ground of participating in its activities with no possibility of reinstatement, no protection is provided for the most basic right of the trade union. Thus, the Bill seeks to grant reinstatement and compensation to workers who are dismissed on the ground of participating in trade union activities or who suffer from other forms of discrimination. I believe that only with these measures can trade union members and organizers be protected effectively and thoroughly.

The Government said a moment ago that the Employment (Amendment) (No. 2) Bill 1997 passed last week had provided civil remedies for anti-union discrimination, so it was unnecessary to further legislate in this respect. However, I have to point out here that the legislative proposals of the Government differ greatly from my Bill in at least the following several aspects:

The biggest difference, which I have to emphasize, is that the most important issue of the entire Bill to be dealt with is concerned with the grant of the right to reinstatement to workers dismissed on the ground of their trade union membership. Why is such right so important? It is because if an employee enjoys the right to reinstatement, the employer can no longer dismiss him as a warning to others. That is to say this tactic of the employer will no longer be effective as, with the right to reinstatement, employees can return to work after being dismissed. Thus, the existence of the right to reinstatement can prevent

employers from using such tactic to strike a blow at the work and survival of the trade union. With the provision of such right, workers can feel assured and find themselves protected when taking part in trade union activities, but the Government may say that they have been given compensation for dismissal. I want to ask: "Can compensation replace a job?" If one is dismissed for organizing a trade union after nearly 20 years' service, can he lives on the compensation for the rest of his life? If one gets compensation instead of reinstatement and becomes jobless, will there be workers willing to form a trade union? If the Government says that employees dismissed for forming a trade union can only be awarded compensation, there will possibly be some workers who are reluctant to form it because jobs are very important to them. They prefer jobs rather than compensation. This clearly explains why the right to reinstatement must be provided for in the Bill and the most basic need of a worker is a job rather than compensation. Secondly, I want to look at the issue from another perspective, that is the formation of a trade union. If, while negotiation is being conducted between the trade union and the management or in the process of organizing an activity, the organizer is dismissed by his employer, it will be very detrimental to the trade union even though he is awarded a large amount of compensation for the dismissal as he can no longer come back to serve the trade union or carry out any organization work involving employees. This deprives the trade union of an active member or leader, which cannot be compensated. To put it in a vulgar way, the award of compensation is tantamount to the "suppression" of the trade union and its leaders; money is used to settle the issue of his dismissal. We are not asking for compensation, but the rights that organizers of trade unions can continue to exercise. The right to reinstatement is very important. If the Bill is passed, workers will feel assured and find themselves protected when taking part in trade union activities. Mr James TIEN may probably dislike trade unions most and so he evaded the issue at the beginning of his speech. I very much respect his views, but to workers, the trade union is a collective power to protect themselves and balance the relationship between them and their employers. From this perspective, workers are absolutely in need of trade unions.

The second biggest difference is that the Government has failed to address discriminations of lesser degrees because its legislation only provides for compensation in respect of dismissals. But this creates a problem. Sometimes, instead of being dismissed, an employee is transferred to another post, given no opportunity of promotion, nor a salary increase. How can this kind of suppression be eliminated? If the Bill is passed, such suppression will

disappear. Thus, employees will not suffer any loss from participation in the trade union, which can really ensure their job security.

The third difference is that, in order to be in line with the various anti-discrimination legislation, my Bill does not specify \$150,000 as the ceiling of a compensation award. As we expressed our views on such amount of compensation thoroughly last week, I am not going to repeat.

On the other hand, if the Bill is not passed, it will actually give rise to the problem of inconsistency with other anti-discrimination legislation because the right to reinstatement is now provided for in the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. I opine that if people suffering from age and other forms of discrimination enjoy the right to reinstatement, it will really be discriminatory against the trade union if no such right is provided for in the anti-union legislation. It is undesirable indeed to enact anti-discrimination legislation which is discriminatory against the trade union. Thus, I hope that those Members who support the provision of reinstatement in the anti-discrimination legislation should also support the Bill.

I am going to briefly introduce my amendments now, so that I do not need to repeat too much later.

First, why do I have to propose amendments? I have deleted the part relating to the increase in criminal penalties in response to the view of employers, who think that it is a threat to them. But I think such feeling is unnecessary because it is very difficult to institute prosecutions. Anyhow, I have finally deleted this part.

Second, it was originally proposed that cases of anti-union discrimination be tried by the District Court, in the same manner as that under other anti-discrimination legislation, but I now propose to refer them to the Labour Tribunal in order to bring the Bill in line with the legislation on dismissal enacted last week.

Third, in response to the views of the LAB and the Government as well as taking into account the Government's Bill, I have added a clause specifying that the condition for filing a claim for compensation by an employee dismissed or persecuted for exercising the right to take part in trade union activities is that the

period between the exercise of such right and the dismissal or persecution concerned shall not be more than 12 months. Simply speaking, if a person who organized a trade union twenty years ago is dismissed some twenty years later, he cannot relate his dismissal with the then organization work as persecution must occur within one year of his dismissal.

Fourth, I have added a transitional provision to explicitly specify that dismissals or persecution suffered prior to the commencement of the Bill do not apply to the proposed provisions on claims in the Bill. That is to say, the Bill does not have any retrospective effect.

Fifth, I have added exceptional circumstances in clause 21J. The Secretary for Education and Manpower has just said that he thinks that there are problems with these exceptional circumstances. I want to tell him, firstly, that it is up to our legal adviser to sort out for me how the Bill should be put in line with other Government's ordinances. With the passage of my Bill, if an employee thinks that he is dismissed on the ground of participating in the trade union, he can only sue his employer in accordance with this Ordinance or Part VIA of the Ordinance passed last week, but not both. We have made reference to the provisions of the Government's Ordinance concerned, so if the Government finds the Bill problematic, so is the Government's Ordinance. In the Ordinance passed last week, exclusions are also provided for sex discrimination and disability discrimination; that is, if an employee wants to take legal action against his employer on the ground of sex discrimination, he cannot do so by invoking the Ordinance. If the Government finds it problematic, the problem lies in the previous Ordinance because I have only made reference to the approach of the Government.

Lastly, in respect of the question raised by the Honourable CHENG Yiu-tong and the Honourable Bruce LIU on clause 21H(2)(h), although my legal adviser differs with theirs in legal points, I usually take good advice and I hope that all of you will do the same too.

With these remarks, I hope that all of you will support my Bill. Thank you.

Question on the Second Reading of the Bill put.

Voice vote taken.

PRESIDENT (in Cantonese): Council shall 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 Employment (Amendment) Bill 1997 under the name of Mr LEE Cheuk-yan be read the Second time.

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

Mr Andrew CHENG says he has pressed the wrong button.

PRESIDENT (in Cantonese): You can correct it by pressing the top button again.
(*Laughter*)

PRESIDENT (in Cantonese): And then proceed to vote by pressing one of the three buttons below. If you make a mistake, please do it all over again.

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, 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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 Paul CHENG, 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 33 votes in favour of the motion and 23 against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EMPLOYMENT (AMENDMENT) BILL 1997

Clause 1 was agreed to.

Clause 2

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, before moving the amendments, I seek your leave to delete clause 21H(2)(h) in the Bill.

CHAIRMAN (in Cantonese): You have my leave.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the Bill be amended as set out in the paper circularized to Members.

I have just said that the amendments are made in three aspects. First, the part relating to the increase in criminal penalties is deleted. Second, cases of anti-union discrimination are referred to the Labour Tribunal instead of the District Court. Third, a period of 12 months is added in the amendments. Cases related to anti-union discrimination can be proceeded for prosecution only within 12 months of their occurrence.

On the other hand, as the Honourable James TIEN has mentioned, if an employee, being a member of the trade union, is always late for work and does other matters or talks a lot during the time between 9.00 am and 9.30 am, can he be dismissed on such grounds? If the amendments are passed, the employer can dismiss the employee in accordance with the relevant legislation, as long as he can prove that the main cause for the dismissal is not related to his involvement in the formation in the trade union. Thus, it is explicitly stated in a provision of the amendments that the onus of proof is rested with the employer. In fact, such provision has been made with reference to the Government's Bill passed last week.

Thank you, Mr Chairman.

Proposed amendment

Clause 2 (see Annex XVII)

MR JAMES TIEN (in Cantonese): Mr Chairman, I only want to respond to a point raised by the Honourable LEE Cheuk-yan and that is the example that he finally quoted. Of course, although the employer would point out that the employee was dismissed on the ground of reading newspaper and drinking coffee between 9.00 am and 9.30 am, the employee dismissed would explain that he was just discussing with other workers on issues related to the trade union during that time. My LEE Cheuk-yan asked, "Should an employee not talk about issues concerning the trade union when he starts working at 9.00 am? In many companies, most of the work of the trade union is not actually done during the working hours and no employers will interfere if it is done outside the working hours. If trade union affairs are discussed at supper at 10.00 pm or 11.00 pm, it

is even not covered by these Ordinances at all. However, what we refer to are matters occurring between 9.00 am and 6.00 pm in the workplace. How can the employer prove the case? In the first place, the employer alleges that the employee is guilty and then asks him to prove his innocence. But the employee denies it by saying that he just talks about trade union matters. As a matter of fact, it is unreasonable that the employer should presume the guilt of the employee before proving it. Thank you Mr Chairman.

MISS CHAN YUEN-HAN (in Cantonese): Mr Chairman, the Hong Kong Federation of Trade Unions (FTU) supports the Bill.

Just now the Chairman of the FTU has already made this point clear. However, I would like to tell Members a story. It is about a case in which the ordinance prohibiting anti-union discrimination was invoked for the first time in the history of Hong Kong. I was involved in that particular case, where a staff member working in the personnel department of a plastic factory was dismissed a few months after he had engaged in the activities of the trade union to fight for the rights of his fellow employees. According to his employer, the reason for his dismissal was that he had been too talkative. There is nothing unusual about a member of the staff in the personnel department talking a lot in the office. Yet, the employer said that the employee was fired for being too talkative. The employee, however, said that his dismissal was due to his involvement in union activities and labour disputes. Consequently, the trade union was of the view that the employer had discriminated against the employee. We referred the case to the Labour Tribunal and during the time the case was being examined, I gained deep insight into the matter. It took a long time for the case to be examined by the Labour Tribunal but the case, in which the ordinance was invoked for the first time in the history of Hong Kong by the Government to prosecute the employer, was unsuccessful. Why was it unsuccessful? The reason was that the onus of proof rested with the employee. In my view, as the employer should know beforehand that there is an ordinance prohibiting anti-union discrimination unless he was insane, how would he possibly say that he fired the employee because he discriminated against the employee on the ground that the employee had participated in union activities? Instead, the employer used other excuses like the employee being too talkative. Since the employee was fired by the employer in such a way, I think it is fairer if the employer should prove to the court that he did not discriminate against the employee. This is a very important point. Besides, that particular case has

given me a deep impression. The employee being dismissed was very young. Throughout the time when the case was being processed, he had been busy running about for the case and did not utter a word of complaint while he realized that the case stood little chance of success. However, he was very indignant because the existing legislation was originally drawn up for his protection and he had bargained with the employer only to safeguard his own rights and yet, he was fired several months later. Worse still, after being dismissed, he still had to produce evidence against his employer. This is very difficult indeed.

Why the FTU supports the Bill introduced by Mr LEE Cheuk-yan? In the labour circle, there have been numerous similar cases showing that in order to bring prosecution against the employer successfully, legal actions should be instituted by the Labour Department, not the employees. However, it is very difficult to convince the Labour Department to institute legal proceedings. In this connection, I think clause 21I is very appropriate.

Just now the Government said that providing for the reinstatement of a dismissed employee in law would sow hatred between employers and employees. I agree that hostility may arise but we have asked that employee why, in busying himself for the case, he insisted on reinstatement rather than compensation. He replied that it was most important to do justice to him. The employee involved was very young, aged 22 or 23 some years ago when the case took place. He told me that he was not worried about not being able to find a job and that he felt he had done nothing wrong. Since there is legislation to protect his participation in union activities, why should the employer treat him in such a way? Even if he was offered reinstatement, he might resign in the end but most importantly, it was a matter of principle and he held that he should have the right to be reinstated. Therefore, what matters is that employees should have the right to reinstatement under justifiable circumstances and whether or not the employee will continue to work in the company concerned is up to the employee to decide. This is a very important point.

While some amendments in this respect have been made in the bill passed last week, the Government did not include in the amended ordinance the issues that the labour sector has long pursued. For this reason, the FTU supports the Bill.

Thank you, Mr Chairman.

MR JAMES TIEN (in Cantonese): Mr Chairman, the case that Miss CHAN Yuen-han cited just now is about an employee being "too talkative". First of all, if I were the boss, it would not bother me if one of the employees was "too talkative" and I would pay no attention to such a case. Neither would I fire the employee just because he was too talkative. But I wonder if the case needs to be explained more clearly. Did the employee spend most of the time on personal phone calls and neglect his duties? If so, this could be something different.

That employer might have fired the employee because the employee always made personal phone calls and neglected his duties. However, the employee said that he was fired because he had once been a leader of the trade union. What should that employer do? The employer might wish to prove that he did not discriminate against that employee, that he did not fire the employee on the ground that the employee was a union leader, and that he fired the employee because the employee had talked too much or spent too much time on personal phone calls and neglected his own duties.

How can that employer prove that he did not discriminate against an employee on the ground of his participation in the trade union? It is very difficult for an employer to prove that an employee is dismissed not because he is a member of the trade union, but because he has done some other things wrong, say making too many phone calls or going away for tea breaks and so on. Thank you, Mr Chairman.

CHAIRMAN (in Cantonese): I think we should not discuss past cases. Otherwise, it would cause a lot of trouble.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I just want to add one point. Under the law, an employee must obtain the prior consent of the employer if he wants to take part in the activities of a trade union during working hours. If the employee takes part in union activities within his working hours without the consent of the employer, he will not be protected by law. It is because Section 21B of the Employment Ordinance (Cap. 57) has clearly stated

the appropriate time for an employee to take part in the activities of a trade union. The appropriate time certainly refers to time which is outside the working hours. The employer's consent must be sought for an employee to participate in such activities within his working hours. I just want to clarify this point. Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

Mr LEE Cheuk-yan claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendments moved by Mr LEE Cheuk-yan to clause 2 be approved.

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

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

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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

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 Paul CHENG, Mr CHOY Kan-pui, Mr David CHU, Mr Ambrose LAU, Mr LEE Kai-ming and Mr LO Suk-ching voted against the amendment.

Mr CHAN Kam-lam, Mr CHEUNG Hon-chung, Mr IP Kwok-him and Mr NGAN Kam-chuen abstained.

THE CHAIRMAN announced that there were 33 votes in favour of the amendment and 19 against it. He therefore declared that the amendment was carried.

Question on clause 2, as amended, put and agreed to.

Heading before New clause 3	Consequential Amendments Labour Tribunal Ordinance
New clause 3	Schedule amended
New clause 4	Transitional

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

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the Heading before new clause 3, new clauses 3 and 4 as set out in the paper circularized to Members be read the Second time.

These are only technical amendments to expand the terms of reference of the Labour Tribunal and add in transitional provisions. Thank you, Mr Chairman.

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

Clauses read the Second time.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the Heading before new clause 3 and new clauses 3 and 4 be added to the Bill.

Proposed additions

Heading before new clause 3 and new clause 3 (see Annex XVII)

New clause 4 (see Annex XVII)

Question on the addition of the Heading before new clause 3, new clause 3 and new clause 4 proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

MR LEE CHEUK-YAN reported that the

EMPLOYMENT (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill put.

Voice vote taken.

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

Mr James TIEN claimed a division.

PRESIDENT (in Cantonese): Council shall 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 employment (Amendment) Bill 1997 be read the Third time and passed.

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

Before the result is announced, Members may wish to check their votes. Are there any queries? The result will now be displayed.

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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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 Paul CHENG, 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 33 votes in favour of the motion and 23 against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

UNFAIR DISMISSAL BILL

Resumption of debate on Second Reading which was moved on 23 April 1997

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party supports the Bill. This Bill is somewhat similar to the government bill on unreasonable dismissal passed last week. One of the arguments of the Government in lobbying Members is that many issues have already been addressed by the government bill passed last week. In fact, I found that the two bills are very different from each another and I like this Bill more and more. The Democratic Party has spent plenty of time studying the Bill. As no bills committee was formed to study the Bill, it took me quite some time to consult legal experts and make phone calls on my own. I wish to thank the staff members of the Legal Service Division of this Council for the assistance they have provided for me. I am also grateful to the Honourable LEUNG Yiu-chung for sparing a lot of time to explain his Bill to the Democratic Party. Last Thursday, we had a further discussion with the Secretary for Education and Manpower (SEM) and his colleagues at the Education and Manpower Branch. I would like to thank the two employers' representatives on the Labour Advisory Board (LAB), Mr Andrew LEUNG and Mr Joseph LAU, for sparing their time to study the Bill and giving us their comments.

Having listened to the respective views of the Government, Mr LEUNG Yiu-chung and the two employers' representatives on the LAB, and having spent a very long time discussing and gauging their arguments, we come to the view that we really have to support the Unfair Dismissal Bill. In fact, at the meeting with the Secretary for Education and Manpower in the afternoon of 19 June, the arguments that the Government put forward to lobby us were untenable. All the Government told us was that if the Bill was passed, problems would crop up. Firstly, the number of cases would increase. I agree with the Government's analysis that the number of cases may increase. But does it mean that we should not support the Bill just because of the anticipated increase in the number

of cases? In the judgment of the Democratic Party, the answer is in the negative.

Regarding the provisions in the Bill, the Government said that many people would lodge claims in the wake of redundancy. However, having discussed with Mr LEUNG Yiu-chung, we are of the view that Mr LEUNG's explanation is acceptable and that is, even in the absence of any expressly stipulated arrangement, these cases can still be processed.

Then, I would like to turn to the arguments that the Government based on in lobbying Members. Just now the Honourable Bruce LIU said that the letter dated 21 June served as useful references and enabled Members to fully understand the Bill. I beg to differ on this point because the arguments in the letter are merely cliché. How possibly can these arguments be convincing? It is impossible indeed. In the letter, it was only mentioned that the Bill, if passed, would bring along adverse consequences, that the adversities could be remedied and that conflicts between employers and employees would be intensified. However, the Government did not explain the justifications or logic of its arguments. It was also mentioned in the letter that the Government had introduced a package of 23 "great" measures for improvement. I admit that improvement has been made in many aspects and this is definitely attributable to the Government, the LAB and persons who have taken part in this area of work. However, while the LAB and the Government have introduced a package of 23 improvement measures, the Honourable LAU Chin-shek and Mr LEE Cheuk-yan have proposed a range of 18 measures for improvement. Clear enough, the two sets of proposals do not tally. It shows that the two sides are not working in synchronization with each other and besides, the priorities they set are somewhat different from each other. Given that both sides think differently about the issues to which importance should be accorded, I hope the Government will earnestly improve co-ordination in this regard and if such problem is not dealt with properly, this is certainly an instance of blunder on the part of the Government.

In the discussion of the Bill earlier, the SEM said in response that this was the legislature so we did not have to necessarily follow the advice of the LAB. He also said that this was merely a pretext.

I will be greatly disappointed if the Secretary has the feeling that it is our pretext. The Legislative Council is responsible for enacting laws while the

LAB is an advisory committee responsible for giving advice for our reference. This is a very important principle and if the Government takes such important principle as a pretext, our perspectives on the matter are obviously different and I think it will be very difficult indeed for us to have further discussions in future. The Government may think that a couple of weeks later, it will no longer be necessary to have discussions with us but I reckon that the Government will have to deal with us again in 1998.

The SEM opined that it was a gross retrogression of democracy. However, the meaning of a retrogression of democracy should not be interpreted in such a way. Democracy means people casting votes to elect the ones whom they have in mind to speak for them, or casting votes to expel those whom they dislike. Please do not tamper with the concept.

At the meeting with the SEM last week, one of the arguments put forward to lobby us was that the Bill had not been scrutinized by a bills committee. However, when I went through the records today, I found that the Bill was gazetted on 23 April, which was quite some time ago. With the many elite administrators and legal advisers in the Government, it is in a good position to conduct studies on the Bill. Although the Government has both the manpower and resources, it has obviously failed to point out specifically the problems with the provisions of the Bill. The Government was still unable to state the specific problems even when it attempted to lobby us last Thursday. Indeed, I think the government officials have not done their homework properly. How can they possibly succeed in lobbying us without clearly pinpointing the specific problems with the provisions?

Yesterday, the Commissioner for Labour paged me, saying that she had some urgent matters to talk to me. The Commissioner told me that legal advice had been received and the shortcomings of the Bill were clearly stated therein. This has proved that the Government always finishes its work at a time barely before the deadline. It is only yesterday, 25 June, or perhaps a few days ago, that the Government obtained legal advice and in fact, the Government should have obtained it much earlier. As soon as I received the Government's legal advice yesterday, I consulted our Legal Adviser right away. Having read the Government's legal advice, the Legal Adviser made certain consequential amendments to the Bill and the problems were resolved. The legal advice that

the Government provided yesterday fails to convince us that the Bill should not be supported. The Government should have conducted studies in this respect long before and such attitude of procrastination is undesirable indeed.

On the contrary, I admire the two employers' representatives on the LAB, Mr Andrew LEUNG and Mr Joseph LAU, for their sincerity because when they came to discuss the matter with us, at least they were able to state specifically which part of the Bill they considered problematic. Although the problems they pointed out can be resolved after discussions with Mr LEUNG Yiu-chung, I must say that I do admire the two employers' representatives.

During the past few months, I took part in the scrutiny of several bills and chaired a number of bills committees formed to study bills on labour matters. It has been a great pleasure to work and discuss with Mr James TIEN and Mr Henry TANG. Regrettably, we do not have the opportunity to discuss the issue together so as to incorporate in the Bill the views of the employers or their proposed amendments. I hope I will have the chance to co-operate with the two Members again in future.

I agree that the Bill is largely drafted in favour of employees. There is no provision to protect employers. Nor is there any provision to prevent abuses of the legislation or vexatious claims. However, the Government could have expressed this view had it studied the Bill. Perhaps employers or their representatives on the LAB do not have the resources to provide support for themselves so they are unable to come up with remedies or provisions within the timeframe for the protection and assistance of employers. It is my hope that such remedies can be made in future.

I very much hope that there will be further amendments to the Bill in future. As a matter of fact, employers need not be so afraid of trade unions. Instead, I think assistance should be provided to facilitate the development of trade unions in Hong Kong and enable them to become mature so that there will be more rational trade unions. If we can assist trade unions to become mature, a harmonious relationship between employers and employees can be established, in which case both sides will be able to communicate and negotiate with each other constructively on a truly equal footing. This is the way through which labour relations can genuinely be improved.

Mr President, the Democratic Party supports the Bill.

MR JAMES TIEN (in Cantonese): Mr President, first of all, I would like to thank the Honourable Michael HO for his commendation of the representatives of the trade and industry sectors in this Council as well as Mr LEUNG and Mr LAU, employers' representatives on the Labour Advisory Board (LAB). From the speech of Mr HO, it is clear that the employers' representatives on the LAB have not only done their best to listen to the views of the employees, but have also made a lot of improvements.

Mr President, this is also the reason why I would like to speak on the subject today. While the Employment (Amendment) (No. 2) Bill 1997 passed by the Government on 17 June has dealt with the issue of unreasonable dismissal, the Bill proposed by the Honourable LEUNG Yiu-chung today is about unfair dismissal. In fact, there are overlaps in most of the points discussed on both occasions. On passing the Employment (Amendment) (No. 2) Bill 1997, the employers' representatives on the LAB had already made a lot of concessions in respect of maternity leave, sick leave, duty-related injury and participation in union activities. We had also encouraged and supported the employers' representatives on the LAB in making compromises. As a matter of fact, many employers have complained and asked why the employers' representatives had made such major concessions. Why were the employers afraid of the unions? Why did they make such major concessions last week in passing that particular Bill? Perhaps the employers had made too many assumptions, such as assuming that after the passing of the Employment (Amendment) (No. 2) Bill 1997, the bill on unfair dismissal would not be further pursued. Under such circumstances, the employers might feel greatly disappointed to find that, after having made major concessions in the LAB, they still have to start from the very beginning to deal with another bill. And in future, will the representatives be willing to take the initiative of asking other factory or business operators to support the concessions they make? For the employers, if they have to start all over again to negotiate with the unions after having made concessions, they would rather not make any concessions at all, and let everything start from the beginning. In fact, this is unfair to the employers. Therefore, we feel greatly disappointed

after Mr Michael HO delivered his speech in support of Mr LEUNG Yiu-chung's Bill.

I would also like to draw your attention to two points. Under the Mandatory Provident Fund Schemes Ordinance, long service payments and severance payments are to be paid from the employers' contributions to the provident fund. However, there is no such provision under the Unfair Dismissal Bill proposed by Mr LEUNG. As a result, employers and Members who have all along supported the concept of provident fund think that they are compelled to pay double compensations. Under these circumstances, employers will not know whether they should observe the provisions of the Mandatory Provident Fund Schemes Ordinance or the provisions of the Unfair Dismissal Bill, which may be passed today.

Thirdly, concerning the ceiling of the compensatory award, there is a major difference between the proposals put forwards by Mr LEUNG and the Government. According to the Ordinance passed, an employer will know for certain the amount he is required to pay if he is ruled to pay the award in a judgement. And if there are differences of opinion in respect of this ceiling in future, I believe this can be negotiated from time to time and an increase in the amount is possible. However, there is no such provision in the Bill proposed by Mr LEUNG.

Mr President, basing on these three reasons, the Liberal Party opposes Mr LEUNG's Bill. Thank you, Mr President.

PRESIDENT (in Cantonese): Mr LEUNG, you may speak if you wish. Since we are in the Committee stage, you may speak more than once. But if you are just seeking elucidation, you may simply say that.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I would like to respond briefly to a question raised by Mr James TIEN. The contents of this Bill and the Employment (Amendment) (No. 2) Bill 1997 do not overlap with each other. They focus on separate issues.

I would like to clarify a point with Mr TIEN, that, in this Bill, the newly added award in the amendment will not overlap with long service payment. In other words, an employee can either claim his long service payment or the award specified in the Bill. He cannot claim both at the same time.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Government objects to the Bill introduced by the Honourable LEUNG Yiu-chung. In fact, I am greatly disappointed that Mr LEUNG insisted on the introduction of the Bill. I remember clearly that shortly after I took office as the Secretary for Education and Manpower, Mr LEUNG expressed the view that the existing provisions relating to dismissal failed to provide adequate protection to employees. We considered his view actively and did our utmost to co-ordinate the stance of employers and that of employees. We also obtained the consensus of the Labour Advisory Board (LAB). In the meantime, my colleagues had maintained constant contact with Mr LEUNG. The Employment (Amendment) (No. 3) Bill 1997, which incorporates provisions on protection against unreasonable dismissal, was subsequently drawn up and was enacted at the sitting of the Legislative Council last week.

I am pleased to admit that Mr LEUNG played a significant role this time for the improvement of workers' rights and interests. Yet, I find it regrettable that Mr LEUNG was unwilling to go by the rules of the game that employees, employers and the Government agreed on, and refused to withdraw the proposal on which no consensus has been reached.

We object to the hasty passage of this Bill which is flawed in many aspects. Firstly, while a dismissed employee may claim terminal payments, such as the long service payment, under the existing Employment Ordinance, the employee can also lodge claims for compensation under Mr LEUNG's Bill. If the court ruled that the employee had been unfairly dismissed, the employee may be granted a basic award and a compensatory award. The basic award is calculated by multiplying the monthly pay of the employee, or \$25,000, whichever is smaller, by the number of years of service. When compared to the current calculation of severance payment and long service payment, the basic award provides a larger amount of compensation. Moreover, no ceiling is set for the compensatory award. Hence, Mr LEUNG's proposal will create heavy and even unbearable financial burdens to employers, especially the so-called "small employers".

Besides, the Bill empowers the Labour Tribunal to make an order for reinstatement or re-engagement without the consent of the employer and the employee. In Hong Kong, as most of the employers are "small employers" who take on less than 20 employees, this proposal is by no means workable. If the relationship between the employer and the employee is in tatters, there is no guarantee of a harmonious labour relationship between the two sides even though they are forced to comply with the orders.

Furthermore, as defined in the Bill, redundancy is a valid reason for the dismissal of an employee. However, if the employer dismissed only some employees on the ground of redundancy, the employer is still required to explain why these employees are dismissed but not others who hold similar positions. Besides, the employer has to ensure that the decision on the dismissal is not in contravention of a customary arrangement or agreed procedure relating to redundancy and that it is not resulted from anti-union discrimination or the employee's pregnancy. Otherwise, the dismissal will still be regarded as unfair even if the employees are dismissed on the ground of redundancy. This provision is not in the least beneficial to employees. On the contrary, employers will only dismiss more employees unnecessarily to avoid breaching the law and this will bring about a negative impact on the employment opportunities of workers.

In fact, the Employment (Amendment) (No. 3) Bill 1997 introduced by the Government, which was passed by this Council on 17 June, has provided employees with more protection against unreasonable dismissal, unreasonable variation of the terms of the contract of employment, and unlawful dismissal on grounds of pregnancy, an employee's taking sick leave and sustaining work-related injuries and so on. The Government's Bill contains provisions of a protective nature, including terminal payments for dismissed employees. Besides, the Labour Tribunal may make an award of compensation up to \$150,000 payable to the employee, or make an order for reinstatement or re-engagement with the agreement of the employer and the employee concerned. When compared to the Bill introduced by Mr LEUNG, one will find that the Government's proposal is fairer and more prudent, and it can duly strike a balance between the interests of employers and those of employees.

The Government has consulted the LAB on Mr LEUNG Yiu-chung's Bill but the LAB did not support it. The LAB is of the view that the Employment

(Amendment) (No. 3) Bill 1997 introduced by the Government has, in fact, achieved the purpose of strengthening employment protection and that Mr LEUNG's Bill resembles the legislation, which has just been enacted, in many aspects. The LAB also agreed that a review on the issue of employment protection should be conducted only after the newly-enacted legislation has been implemented for a certain period of time.

I have to remind Members that neither Mr LEUNG's Bill nor any of the amendments he will move at the Committee stage has been scrutinized by a bills committee of this Council, and one of the amendments was only put forward early this week. This clearly shows that the Bill has not been considered thoroughly and deliberated in detail before being tabled at this Council. Under such haste, the possible legal consequences of the Bill and the proposed amendments have not been studied in detail. Therefore, the question of whether other problems will arise is still unknown. For example, the law does not preclude an employee who is being discriminated against and dismissed for his trade union membership from lodging claims for compensation under Part VIA of the Employment Ordinance, which consists of provisions on protection against unlawful dismissal, and at the same time, lodging separate claims under this Bill in order to secure two different types of compensation. Is this the purpose of Mr LEUNG in proposing the amendments? Given these uncertainties, this Council should not rush through the Bill and its amendments. It is also a grossly irresponsible act done to the public if this Council is to decide hastily whether the Bill should be passed without any detailed study and scrutiny.

Mr President, just now the Honourable Michael HO spoke at great length and seemed to be utterly emotional. I would like to make two points briefly in response to his speech. Firstly, regarding the attitude that the Legislative Council should take towards the consenting or dissenting views of the LAB, I have made myself very clear when I spoke the first time. My speech has certainly been put on record so I hope Mr Michael HO will read it calmly and think over whether what he said just now is entirely correct.

Secondly, Mr HO remarked that he highly appreciated the attitude of the employers' representatives on the LAB. As I remember, on behalf of the Democratic Party, Mr HO has said before that they not only considered the views of employees, but also took into account those of employers. Now, we still have to deal with many labour-related bills. While I hope I am wrong, I am

afraid that in dealing with the rest of the bills, Mr HO's attitude towards employers' views will not go any further than sheer admiration.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr James TIEN.

MR JAMES TIEN (in Cantonese): Mr President, may I speak again?

PRESIDENT (in Cantonese): Pardon me. I was mistaken just now. I thought we were in Committee. We are now in Council so you cannot speak again.

MR BRUCE LIU (in Cantonese): Mr President, I would like to speak on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL). There has been a discussion on the Bill between the Honourable LEUNG Yiu-chung and me since Mr LEUNG is sitting next to me and he has been continuously lobbying me to support his Bill. It would have been better if the Honourable James TIEN were sitting next to him as representatives of the employees and the employers would then have an opportunity to hold a miniature meeting of the Labour Advisory Board (LAB). I have read his Bill in details, and would like to put forward two reasons for opposing it.

I received a detailed document from the Government, which has been described by Mr Michael HO as a routine paper. But in my opinion, the paper, though a routine one, is similar to an "essence book" for students preparing the Certificate of Education Examination. It states clearly seven reasons for not supporting the Bill, one of which has very good justifications. But just now I have mentioned, the other reasons are unconvincing. For example, the Government claims that the proposed compensation will add to the burden of the employers. In fact, this is a matter which should be left to the court to decide. As for reinstatement, whenever there are cases of unfair treatment and discrimination, it is always hoped that reinstatement in favour of the claimant will be ruled by the court. So I think the reason is not good enough to convince us. Another point listed in the document for not supporting the Bill is that it has not been supported by the LAB. Again, this is not acceptable. At present,

members of the LAB are elected. However, members of the Hong Kong Confederation of Trade Unions (CTU) are not represented on the LAB. I wonder why the door of the LAB has been closed to the CTU. Actually, under what system are the representatives of some of the large unions allowed to join the LAB? There are no representatives of some large trade unions on the LAB, and even if they are represented, Members of the Legislative Council are still be able to participate in the legislative process.

Another point raised by the Government for not supporting the Bill is that the amendments have not been studied by a bills committee. In fact, those amendments are very simple. Basically, Members can give due consideration to them.

I would like to raise two points. The first one is on the legislative procedure. As a matter of fact, it is most suitable to make use of Mr LEUNG Yiu-chung's Bill to amend the Government's Bill tabled two weeks ago since both Bills are very similar. The Government's Bill aims at addressing the issue of unreasonable dismissal. Employers have to pay a compensation if they dismiss their employees in an unreasonable manner. Mr LEUNG Yiu-chung's Bill aims at addressing the issue of unfair dismissal. How do we define "unfair"? Well, first of all, we have to see if the dismissal is unreasonable. So it is also a matter of whether the dismissal is unreasonable or not. Secondly, we have to take into account all related factors in order to determine whether the dismissal is unreasonable. This is particularly so because section 6(3) states clearly that "the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee". This illustrates that the Bill not only considers whether the dismissal is reasonable, but also takes into account all related factors. In terms of the approach adopted to determine whether the dismissal is fair, the one proposed in this Bill is different from that contained in the Government's Bill. While the previous Bill introduced by the Government aims at examining whether each and every reason for dismissal is reasonable, this Bill takes into account all the factors, including whether the reasons submitted by the employer are sufficient to prove that the dismissal is fair.

All in all, the proposals in the two Bills are quite similar, but there are still some minor differences. What the Legislative Council should have done is to debate and decide which Bill is better before adopting it for implementation. But now we have twins instead.

Since we have to incorporate these laws into the law-books of Hong Kong, we should do our best to formulate laws that are specific. If there are rules and ordinances that are found to be unreasonable, inappropriate and outdated, they should be amended, so that a better version can be adopted. We would not proceed to formulate two similar ordinances for employees to choose from during the litigation process. Legislative process of this kind is rare in Hong Kong and will probably result in confusion.

Secondly, the passage of the Bill will put the employers in a more disadvantageous position in the relationships between the employers and the employees. I am not speaking for the employers. In fact, I should speak on behalf of the employees. However, we must maintain a reasonable and balanced relationship between the employers and the employees. But the Bill will enable a lot of employees to sue their employers first. Subsequent to the legal action taken by the employee, the employer concerned has to defend his action and justify that the dismissal is a fair one, which is very difficult. In our deliberations of the issue, many members have stressed that "small" employers or employers of domestic helpers are vulnerable to the loopholes of the Bill. Some domestic helpers will sue their employers first and wait for the setting down of hearing. The litigation period can drag on for a long time. Employees have to submit reasons first when they ask for a ruling on whether they are fairly dismissed. And they usually put forward a specific claim that they have been unfairly treated by their employers. In the litigation process, the employees have to submit reasons for their allegations while the employers have to submit reasons for their actions.

This situation is unfair to "small" employers such as employers of domestic helpers. We can, of course, formulate certain terms of exemption so as to eliminate the loopholes in the concept of unfair dismissal. In fact, this can be done. However, we have not discussed the issue in great details when we studied the Bill.

After scrutinizing the Government's Bill and the present Unfair Dismissal Bill, we have come to the conclusion that we should consider amending the

Government's Bill in due course in future. But we have to allow the Government's Bill which had already been passed to become operational for a period of time first. On finding anything inappropriate or loopholes during this observation period, we can further "update" the legislation by adopting the concepts proposed by Mr LEUNG Yiu-chung to amend the legislation concerned.

I am sorry. But I have to inform Mr LEUNG Yiu-chung that we have to vote against his Private Bill.

Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Mr President, I would like to speak on behalf of the Hong Kong Confederation of Trade Unions (CTU) in support of the Honourable LEUNG Yiu-chung's Bill. However, I would leave the technicalities of the provisions and the issue of employment protection to Mr LEUNG for further discussion later in the reply session.

First of all, I would like to respond to the issue of the Labour Advisory Board (LAB). I hope that the Government would not repeatedly discuss this issue in future. Should I choose not to refer to the LAB, it would appear that I have not responded to the question raised by the Honourable Bruce LIU just now. However, I hope that Members will not talk about this any more. Firstly, as we all know, the LAB is a tripartite body consisted of representatives from the employees, the employers and the Government. Representatives from the employers and the Government are absolutely able to veto proposals of the employees. Very often, it will depend on the attitude of the government officials. As the government officials have the "final say", if they are willing to commit themselves and reach a consensus with the employees and the employers, they can easily get the job done. But if they are unwilling to commit themselves to accomplishing their tasks, there will not be any opportunity for improvements. Therefore, it all depends on whether the government officials are willing to use their say.

In the case of the LAB, representatives of the labour sector have to wait for the government officials to support their proposals. This has created a major difficulty for labour representatives. As labour representatives, what can we do if the government officials refuse to give the green light to our proposals? Are we going to wait forever if the government officials do not give their nod of approval? Are we going to wait for the benevolence of Mr WONG Wing-ping

in granting rights to the labour sector? Very often, we have to spend a lot of time in our negotiations with the Government. If both parties fail to reach a final agreement, we will have no other option but to introduce Private Bills. As illustrated in these examples, it is clear that the LAB is basically a government-led body.

Members often say that tripartite negotiations are common in other countries. I would like to remind them that there is a major difference between Hong Kong and other countries in that officials of other countries can be replaced while officials in Hong Kong cannot, except by the Governor or the future Chief Executive. In other words, we neither have an elected Government nor a mechanism to address the issues generated by the refusal of the Government to follow public opinion. It is obvious that the LAB is a government-led body. On the other hand, the Administration itself is also a government-led institution that does not allow opportunities for the public to make any changes.

I am pondering why we cannot hand over the initiative to the LAB. One of the most important reasons is that the LAB itself can be completely controlled by the Government and the employers. However, results of the discussions of the LAB can be submitted to the Members of the Legislative Council for reference before they make a decision on which measure is reasonable and appropriate. That is the reason why we think that the initiative cannot be handed over to the LAB.

Secondly, sometimes the Government is being unfair to the LAB. As I recall, the LAB has not been consulted on the issue of labour importation from the Mainland. I would like to raise a further question on why the LAB has not been consulted on the issue of the interface of long service payment and mandatory provident fund. The crux of the question is that the agenda and the discussion of the LAB are under the control of the Government. With a view to avoiding the legislative proceedings of labour-related legislation being controlled by the Government, and with a hope that more opportunities for improvement will be available, the CTU will not hand over the initiative to the Government.

Lastly, in response to the question raised by the Honourable Bruce LIU on the reason why the CTU is not represented on the LAB, I would only like to remind Members that the election of the LAB is not based on the "one-man, one-vote" System. Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, first of all, I would like to thank the Honourable Michael HO. He has spent a lot of time on acquainting himself with this Bill, as well as on discussing the Bill with members of his political party through various channels. I really appreciate his spirit of adopting a pragmatic approach to find out the facts before arriving at a decision.

As I recall, the last time I tabled the Bill on underemployment, Mr Michael HO had also adopted the same approach in scrutinizing the Bill. At that time I had thanked him for his speech. But eventually the Bill was not passed. Under the same circumstances of thanking Mr HO, I wonder whether the Bill I table this time will have the same fate of being voted down. Of course I hope this will not happen.

I would like to respond to the Honourable Bruce LIU's remarks first. He has made two points that are worth responding. First of all, Mr LIU alleged that, to a large extent, my Bill would affect small businesses and those hiring domestic helpers such as Filipino maids and overseas workers. It worries me that Mr LIU does not fully understand the provisions of my Bill. If he could have a clearer understanding of this Bill, he would find that the alleged problem in this Bill is identical to that found in the Bill introduced by the Government which was supported by Mr Bruce LIU and Honourable colleagues of the Hong Kong Association for Democracy and People's Livelihood (ADPL) last week. I believe you can recall that representatives of employers of domestic helpers have repeatedly asked the Government for exemption from the Bill but to no avail. If my Bill is said to contain such a problem, the same also exists in the Bill introduced by the Government. I simply cannot understand why they support the Government's Bill but refuse to support mine.

Secondly, Mr LIU said that it was rare for a piece of legislation to specify one option and not two options, or that another legislation is enacted to avoid contradictions. He may recall that the same situation arose in the Bill proposed by Mr LEE Cheuk-yan and supported by him in less than an hour ago. The Bill proposed by Mr LEE Cheuk-yan had also undergone some amendments. And we had to choose either the Bill proposed by Mr LEE or the one introduced by the Government.

Hence, I do not understand why he has taken these two points as reasons for opposing or not supporting my Bill.

Furthermore, I would also like to thank the Secretary for Education and Manpower for his commendation of my efforts in fighting for the rights of the working class just now. Meanwhile, I thank the Secretary for incorporating a number of my views into the Bill that was passed by the Council last week. I would also like to thank him for having listened to our views. But unfortunately, instead of accepting all of my views, he only listened to part of them. As a matter of fact, colleagues who have taken an interest in labour issues are clearly aware that the labour sector has been reiterating the need for a bill on unfair dismissal since the beginning of the 1970s. In fact, right until now, the Government has not faced up to this issue for more than twenty years. It was only after I had tabled my Bill in this Council that it began to look at the issue seriously and then responded to it. Of course, having some responses is better than having none at all. However, there are still many defects in its response so I have no alternatives but to introduce this Member's Bill.

Mr President, many colleagues of this Council have already asked why Mr LEUNG YIU-chung still insists on introducing this Bill, as the Bill introduced by the Government was passed last week and what exactly is the difference between the Bill introduced by the Government and the present Bill. Just now Mr Bruce LIU has attempted to analyze the difference between the two Bills. However, I think his analysis is fragmentary and incomplete, and he has misinterpreted the entire Bill.

As a matter of fact, the Government's Bill which has already been passed focuses on the following three aspects only.

1. An employer who unfairly dismisses an employee to avoid observing the rights vested with the employee by law: This issue is related to long service payment. We all know that the Government's Bill only aims at addressing workers who have been employed for two to five years. Only such workers are eligible for the rights stipulated under the bill passed last week. Workers employed for over five years are absolutely not affected by the new bill. Hence, the bill concerned does not benefit all employees.

2. An employer who changes the terms of employment contract to avoid observing the rights vested with the employee by law: I cannot deny that there has been improvement in this aspect.
3. Civil remedy provided to illegal dismissal as defined under the existing legislation: The Government has done reasonably in this aspect. For cases such as pregnancy and job-related injury, the Government has penalized employers to pay compensations up to \$150,000 for illegal dismissal of employees under these circumstances.

However, the scope of concern and the extent of protection as mentioned in my Bill have not been covered by the Government's Bill. Taking a worker who has been employed for more than five years as an example, if he is unreasonably or unfairly dismissed by his employer, what compensation will he get? According to the existing labour legislation, what other compensations is he entitled to, apart from the compensation of long service payment? I hope the Secretary will be able to provide me with the answers. In fact, apart from the long service payment, and perhaps the payment in lieu of notice, he will not be able to get any other kinds of compensation. The question I would like to ask is, what compensations can the employee get for the loss of his rights and benefits? The existing legislation is unable to provide him with compensations. This is the greatest difference between my Bill and the Government's Bill.

On the other hand, some colleagues may query that, since this Bill has not been scrutinized by a bills committee, it may possibly contain certain technical problems. Some colleagues, especially those from the ADPL, have raised this point just now, alleging that since the Bill has not undergone scrutiny, it might give rise to many problems. The Secretary also queried just now why I proposed last-minute amendments recently or even during last week. I would like to inform the Secretary that the additional provisions I proposed last week are provisions on Codes of Practice, which are very important. I did not succeed in my last attempt to amend the Bill introduced by the Government. That is why this time I try to strengthen and enrich the provisions of my Bill by adding the provisions on the Codes of Practice, in the hope that practices being implemented in the United Kingdom can be really introduced into Hong Kong.

Furthermore, I would like to respond to the question raised by Mr James TIEN just now. He was concerned that with the Government's Bill passed last

week and my Bill being proposed now, the two Bills would cause confusion. I would like to clarify that there is no need for us to choose between the two Bills or that we cannot have them both. All I have done is adding certain additional provisions to the Bill. As for the other amendments, they are written in such a way that they are compatible with the wordings of the Government's Bill, which was passed last week, without changing the contents. As the wordings are adopted from the Government's Bill, there is no question whether my Bill has been written in an incomplete or inappropriate manner. I have intended to model my Bill on the Government's and tried to avoid adopting different wordings technically.

I would also like to point out that the allegation that my Bill is confusing is totally unfounded. This is because when I am introducing the Unfair Dismissal Bill, as the Government and many of you know, I am just introducing to this Council the Unfair Dismissal Ordinance that has already been in place in the United Kingdom for over twenty years. In other words, the Ordinance has already been implemented in the United Kingdom for more than twenty years. In addition, the Employment Rights Act 1996 was enacted in the United Kingdom in 1996. Having been implemented in the United Kingdom for twenty years, the Ordinance has clearly proved itself to be both practicable and effective. Therefore, the allegation that the implementation of my Bill will lead to chaos are groundless and unfounded.

The Secretary said that there would be problems in the enforcement of the Ordinance. Just now Mr Michael HO has spoken on my behalf and said that this will not be the case. Even if there is an increase in the number of cases, it may not necessarily lead to problems. This is because, when there is a case of labour dispute, or when an employee thinks that his employer has violated certain provisions of labour laws, the first gateway to the resolution of dispute will be the Conciliation Officers of the Labour Department, instead of the Labour Tribunal or the court. It is only after the Conciliation Officers fail to resolve the problem that the case is submitted to the Labour Tribunal or the court for arbitration. With the mechanism already in place, it will not bring about a drastic increase in the number of cases or lead to extra burden for the court. And we must not forget that in a complaint lodged by an employee and submitted to the Labour Tribunal, if it is found that the reasons submitted by the employee are inadequate, the Tribunal may rule that the employee has to pay the costs as a penalty. In fact, over the past two years, the amounts of penalties in the form of costs imposed by the Labour Tribunal are increasing. They have some deterrent effects. Many workers are reluctant to submit their cases to the Tribunal even if they think they have good causes to do so. Therefore, even after the enactment

of the Bill, employees will not be allowed to abuse the Bill and make the lives of employers difficult. Such an allegation is unfounded and untrue.

Mr President, colleagues of this Council are also concerned whether the Bill will affect the operation of enterprises. Let me put your mind at ease by assuring you that the Bill only targets against unreasonable dismissal by employers which leads to complaints by employees. As a matter of fact, the Bill has specified five areas where valid reasons should be given on dismissal of an employee. They include the employee's capability or qualification, conduct of the employee, redundancy, legal provisions and other specific reasons. These five areas are exactly the same as those stipulated in the Government's Bill passed last week. If you think my Bill will bring about chaos and create difficulties in the operation of enterprises, the same will happen in the Government's Bill. I do not understand why Members, particularly colleagues from the ADPL, showed their support for the Government's Bill last week, but are opposing my Bill now. As the two Bills are exactly the same, I do not understand why they have changed their stance over a span of just one week or two. This is really incomprehensible.

As for the provisions on compensations in the Bill, the concepts of providing compensation and protection in my Bill are the same as those in other ordinances related to discrimination, including the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the recently enacted Family Status Discrimination Ordinance. I do not understand why colleagues of the ADPL voted in support of these ordinances two weeks ago or even a few days ago, but choose to oppose my Bill today. I really do not have a clue to their rationale. As a matter of fact, we shared the same views on the Bill some time ago. At first, the ADPL colleagues suggested that I should be responsible for drafting the Bill as I was more experienced in labour affairs. After taking up the responsibility of drafting the Bill, I started to collect relevant information. If I did not take up the drafting job, it would be Members from the ADPL who would draft and introduce the Bill. After suggesting that I should be the one to draft the Bill, the ADPL Members now oppose the Bill I have drafted. I just cannot understand them. I sincerely hope that they will pull back before it is too late, change their minds and support me. Even if they do not lend me their support, I hope at least they will not go against me.

Mr President, another point of concern of some colleagues is that the amount of compensation proposed in this Bill is too high. I have mentioned time and again that the calculation of the compensatory amount is based on the provisions of the ordinances against discrimination. For instance, penalties for

illegal dismissal due to union activities will range from nothing to \$150,000. Furthermore, I have put forward three levels of compensation, namely the basic award, the compensatory award, and the special award. No ceiling has been prescribed for the compensatory award. The reason for this is that when an employee is unfairly dismissed, he may suffer a lot of losses. He should be able to lodge a claim to the court, and it should be at the discretion of the court to decide the amount of his compensation. I think it will be unfair to prescribe a ceiling. Will it not be unfair to the employee if his losses amount to \$200,000 while the ceiling is prescribed at \$150,000 only? If we respect the law, why do we not leave it to the court to decide the amount of compensation? Hence, I do not think that the amount of compensation is too high.

Mr President, all in all, in terms of the practical implementation as well as the actual content, the general concept of my Bill is similar to that of the Government's Bill. But the scope and extent of the Government's Bill are very limited. That is why I have to introduce my Bill.

If Members can support the Government's Bill, why can they not support my Bill as well? The ADPL, in particular, has always claimed that they are working for the interests of the grassroots and labour. Then why can they not support this Bill so that the grassroots can enjoy the protection provided by the Unfair Dismissal Bill? As a matter of fact, the Unfair Dismissal Bill aims at rationalizing dismissals.

MR BRUCE LIU (in Cantonese): Mr President, may I briefly say a few words in accordance with Standing Order 28 to clarify a point that I have been misunderstood?

Just now the Honourable LEUNG Yiu-chung asked why we had reacted differently as the Ordinance passed last time and this Bill are very similar. I think he has misunderstood a point. It is exactly because the two are so similar that he should make use of the proposals in his Bill to amend the Government's Ordinance. We have, therefore, illustrated our stance. Secondly, I have raised the issue that the Bill does not provide for any exemptions, which is also the area that has to be reviewed in the Ordinance passed. I have not indicated whether I would support exemptions or not. But this is just the fatal point of the Bill. Thirdly, he spoke at length that there were no major differences between the two

bills and asked why we did not support his Bill. This is the point I have mentioned just now — since there are only minor differences between the two, Mr LEUNG should make use of the proposals in his Bill to amend the Government's Ordinance. I think it is regrettable that he has not done that.

PRESIDENT (in Cantonese): Mr TIEN, do you also wish to clarify a point that has been misunderstood?

MR JAMES TIEN (in Cantonese): Mr President, I am not raising a point of order. But I would like to seek elucidation from the Honourable LEUNG Yiu-chung on certain issues. I do not know whether you would allow this. Of course, I understand that he can refuse to elucidate.

PRESIDENT (in Cantonese): Which parts of his speech would you like to seek elucidation?

MR JAMES TIEN (in Cantonese): I am sorry. I am not seeking elucidation on his speech, but his view on this Bill

PRESIDENT (in Cantonese): I am sorry. You cannot do that. You are only allowed to seek elucidation on certain part of the Member's speech which has been misunderstood, not on the whole issue. That would evolve into a debate on the issue.

Question on the Second Reading of the Bill put.

Voice vote taken.

PRESIDENT (in Cantonese): 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 question that the Unfair Dismissal Bill under the name of Mr LEUNG Yiu-chung be read the Second time.

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 Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, 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 SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, 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, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 24 votes in favour of the motion and 32 against it. He therefore declared that the motion was negatived.

Resumption of Second Reading Debate on Bill

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 16 April 1997

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party supports this Bill. We hope that with the enactment of the Bill, compensations can be made available to workers at an earlier time. However, I am not too happy in rendering my support. I have received certain information and I welcome verification from our colleagues if it is inaccurate. I have been informed that the Government and the Labour Advisory Board (LAB) had spent a lot of time in discussing the issue. Some of my friends from the employers' sector have revealed to me that they are extremely displeased. They told me that in the process of studying the issue, the task force of the LAB had invited experts to compile a report and formulate proposals for improvement. All these plans for improvement are nearing completion and are ready to be released. Hence, they have a feeling that their proposals are pre-empted by Mr LEUNG Yiu-chung's Bill, giving the impression that Mr LEUNG's Bill is the catalyst conducive to all the final achievements. If what they said is true, I can understand why they are so upset. If I were in their place, I would have openly accused the person who had forestalled me in claiming all the credits. The tolerance they have shown today has made me admire their generosity. If what they said is true, I can appreciate the feelings of those who have contributed. Their displeasure is justifiable. If what they said is true, I have to give credit to the tripartite representation of the employees, the employers and the Government on the LAB for their achievements. I do not know whether it is pure coincidence that Mr LEUNG Yiu-chung is on the same wavelength as the Government, so that the Bill he tabled is the same as that of the Government. I hope that this will be clarified later in the debate. At any rate, the present situation is attributable to the fault of the Education and Manpower Branch. Why is it so? If we had held meetings to discuss this issue in details and if political parties had committed themselves in a pledge in 1995, we would never go back on our words. Never. I know that the Government had discussed with some people on the issue in 1995. However, I was not present on that occasion. The Democratic Party has all along informed the Government that I am the spokesman of the Democratic Party on labour issues. While the Democratic Party will uphold any agreement to which I have committed, it will not accept something to which I have not given my assent. If the measures the Government intends to take, the schedule of its actions, and the plans to be released in 1997 had already been known to us, and the parties concerned had pledged their support, we would definitely not support such measures.

However, this has not taken place. As there has not been any undertakings, I hope the Bill will be passed as early as today, so that workers will have their rights protected as early as possible. All I can say is that the Government is facing the consequences of its own actions. My first reaction to this is that it gets what it deserves. Mr President, I support this Bill.

MR MOK YING-FAN (in Cantonese): Mr President, on behalf of the Association for Democracy and People's Livelihood (ADPL), I am going to speak on the Occupational Deafness (Compensation) (Amendment) Bill 1997. I hope that in a while, the Honourable LEUNG Yiu-chung will praise us because we are going to offer our support to the Bill. Earlier on, we objected to his proposed bill and he criticized us at length. This time, we are going to support his bill, and so he should shower praise on us, at least for two minutes. *(Laughter)* Earlier on, when some other Members speaking on behalf of trade unions objected his bill, he made no criticism on them; he only picked at the ADPL.

Mr President, the Bill seeks to revise the definition of noise-induced deafness under the present occupational deafness compensation scheme, and to increase the percentage of permanent incapacity in respect of noise-induced deafness. The ADPL supports the Bill because the amendments it proposes will bring additional benefits to employees. We support the Bill for two reasons and they are quite simple. First, through the Bill, employees will be eligible for a larger amount of compensation. Also, we are in support of the proposal to relax the 50 dB requirement to 40 dB in terms of hearing loss. In western countries, such as the United Kingdom and the United States, the definition for noise-induced hearing loss is 20 dB to 35 dB in general, and so we think the definition currently adopted in Hong Kong is really too stringent. If such definition can be relaxed, it will be a good thing for employees, especially those who operate pneumatic drills or workers at construction sites.

Mr President, with these remarks, I support Mr LEUNG Yiu-chung's bill.

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

MR JAMES TIEN (in Cantonese): Mr Deputy, with regard to the occupational deafness compensation scheme, the Government is currently conducting an

in-depth review. If this Bill is passed, much of the work done by the Government in such review will become redundant and some of the proposals would not even be implemented. As an employer, we are in fact very worried about one thing. That is, some employers in the relevant sectors, not all employers, in fact have to pay a levy towards the Occupational Deafness Compensation Fund. Now, if the Honourable LEUNG Yiu-chung's Bill is passed, under the current level of levy, the Fund will see a deficit of tens of million dollars by the end of this year. Within three years, the deficit toll of the Fund will soar to over a billion dollars. Under the circumstances, the Fund would either have to go bankrupt or those employers in the relevant sectors would have to have their levy substantially increased. As the Government has undertaken to conduct a review and such review is in fact underway, we should wait for the outcome of the review and then consider its suggestions and recommendations.

Therefore, the Liberal Party is against Mr LEUNG Yiu-chung's Bill.

MISS CHAN YUEN-HAN (in Cantonese): Mr Deputy, the Hong Kong Federation of Trade Unions (FTU) supports the Occupational Deafness (Compensation) (Amendment) Bill 1997.

We recall that in the mid-1980s, the entire community paid little regard to the issue of occupational deafness. In conjunction with the Government and some universities, FTU had then conducted testing in sites of all noisy occupations. After the Government got hold of the findings, it still took a long time before a compensation scheme was finally established. With regard to the present level of compensation, we have all along considered it to be inadequate. Under the Bill, the Honourable LEUNG originally proposed to lower the level of hearing loss to 30 dB. When we knew about such a proposal, we discussed the matter with some experts in the field. In fact, I myself may be counted as an expert because I also participated in the campaigning for occupational deafness compensation in the 1980s, and some doctors gave us some advice then. The doctors worried that whether 30 dB was an adequate indicator depended on one's age. I am not sure if Mr Deputy agrees with this view or not. Later on, Mr LEUNG Yiu-chung revised the proposal to 40 dB. We think it is a reasonable level and so we support his amendment very much.

As regards his amendments in other aspects, we are also in total support. In order to show our support, we have in fact contacted the Government a couple of weeks ago. The Government's response was very puzzling indeed. When Mr LEUNG originally proposed a level of 30 dB, it said the Fund would go bankrupt. When the level is now revised to 40 dB, it still says the Fund would go bankrupt. Thus, when the Government tried to lobby for our support, we asked it when the Fund would actually go bankrupt.

Mr James TIEN just said, Well, he is not here at the moment. Sometimes, I am really very doubtful about the figures given by the Government. Revising the level from 30 dB to 40 dB has in fact made a great difference in terms of the number of employees involved. However, the Government still says that the Fund will go bankrupt. So how can we believe in what it says?

Mr Deputy, as people who have all along been campaigning for occupational deafness compensation, we are in support of Mr LEUNG Yiu-chung's amendment Bill.

Thank you.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr Deputy, the Government objects to the Occupational Deafness (Compensation) (Amendment) Bill 1997 introduced by the Honourable LEUNG Yiu-chung. The Bill aims to amend the Occupational Deafness (Compensation) Ordinance to substantially relax the disability requirement for occupational deafness compensation. Mr LEUNG had later given notice that he would propose new suggestions at the Committee stage to replace the Bill he was to introduce. The Government objects to Mr LEUNG's Bill and his amendments mainly because those suggestions will immediately bring a heavy financial burden to the Occupational Deafness Compensation Board (ODC Board) and will directly affect the Government's proposal to comprehensively improve the Occupational Deafness Compensation Scheme. The original suggestions of the Bill would drastically increase the number of claims for compensation, which will cause a corresponding increase in the amount of compensation to be paid, imposing a huge financial impact on the Occupational Deafness Compensation Fund (ODC Fund). As estimated by the ODC Board, the current reserves of the ODC Fund will be exhausted within one year after the suggestions of the Bill have been implemented, and a \$60 million deficit will be seen in the 1997-98 session. If Mr LEUNG's amendments are implemented instead (this is in response to Miss CHAN Yuen-han), there will be a deficit in the financial budget of the ODC

Board every year, and its financial resources will be exhausted within three years. There is a difference between the two.

Mr LEUNG's suggestions will prevent the ODC Board from discharging its statutory obligations for lack of financial resources to the extent that it cannot pay compensation to qualified claimants on time, which will ultimately make people suffering from occupational deafness face unnecessary difficulties. This is indeed unfair to them. Given this consequence, if this Council still votes to pass the Bill, it would mean a very irresponsible move to me. I would also like to remind Members that neither the Bill nor the relevant amendments have been scrutinized by a bills committee, and the public has not been widely consulted either. Hence, it will mean a very inappropriate move if this Council passes the Bill today.

The Government recently conducted a comprehensive and in-depth review on the operation of the Occupational Deafness Compensation Scheme and its scope of protection in order to improve the relevant provisions on compensation. The working group in charge of the review comprises representatives from the Government, employers and employees, the medical as well as the audiological profession. The working group has completed its review, and has proposed a number of improvement measures, which extend to every detail of the compensation scheme, including mainly the widening of the scope of compensation, to enable employees of more noisy occupations to be entitled to compensation. Besides, the working group has also proposed a number of suggestions to improve the operation of the compensation scheme, with the objective to enable more employees who suffer from deafness by reason of their employment to obtain reasonable protection. We are now evaluating the extent of the financial impact that these improvement suggestions might have on the ODC Fund in order to make appropriate arrangements so that in implementing these suggestions by the Government, qualified claimants would not be made to face unnecessary difficulties as would under Mr LEUNG's Bill.

I would also like to point out specifically that we expect to present the entire improvement proposal to the Labour Advisory Board (LAB) for discussion within two months. If a consensus is reached within the LAB, we will table the relevant legislative proposals, and hopefully to implement the various improvement measures early next year. As the improvement proposal of the Government is more comprehensive than Mr LEUNG's Bill in that the former includes the addition of a few more noisy occupations that are entitled to

compensation involving almost 9 000 employees, we do not see the reason why the Bill and the amendments which have gone through no consultation should be passed so hastily at this stage. At its meeting on 28 May 1997, the LAB discussed Mr LEUNG's Bill in detail, and all members supported the comprehensive review of the compensation scheme, but not the passing of the Bill. The hasty passing of the Bill not only ignores the opinion of the LAB but will also prevent the various suggestions of the above-mentioned working group from being implemented for an immediate increase of the financial burden to the ODC Fund, which will consequently deprive employees of the newly added noisy occupations, who are not entitled to compensation for now but will be in the future under the Government's improvement proposal, of their benefit. This will create an unfair situation. I hope Members will understand that this is a very serious consequence.

I would like to simply respond to the Honourable Michael HO's criticism towards the Government earlier on. I have grown to like Mr HO's speech more and more. Minutes ago, he did not support the Government, but he appreciated the opinion of the employer. This time he also supports the Bill although he is rather upset and has many reasons for that. The ultimate reason is, and I hear it very clearly, that it is the Government's fault again: "the Government deserves it." The Honourable CHEUNG Man-kwong recently wrote an article in memory of the Legislative Council, describing the civilized and courteous way of dealing with legislative work within this Council by Members. I doubt that Mr HO's words match the spirit of the article! (*Laughter*)

Thank you, Mr Deputy. Pardon me, I still have to urge Members to vote against the Bill. (*Laughter*)

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, I want to thank colleagues for their support to my Bill.

First of all, I have a few words to say to the Honourable Michael HO. Mr HO said that some members of the Labour Advisory Board (LAB) wondered whether I chose to propose an amendment bill at this moment because I wanted to pre-empt their efforts and to claim their credits. I have listened to the Secretary's response very carefully just now and I think his reply will suffice to answer Mr Michael HO's question. Am I trying to take the credits? The Secretary has said that there are two important aspects to the review. First, the

Government wants to extend the coverage of the scheme. Second, the number of employees covered by the scheme will be increased to 9 000. But the Secretary has never mentioned anything about relaxing the disability requirement. My proposals in this Bill are very different and I am not trying to snatch other people's efforts nor claim their credits. My bill only focuses on relaxing the disability requirement. So I am not trying to claim the credits. In fact, I am just trying to do what the Administration is not prepared to. Mr HO has quoted other members of LAB as saying that I was taking somebody's credits in this matter. But that is not my intention at all. That is my first point.

Secondly, many colleagues have said that if I had not amended my original bill, they might not give their support. They think that my original proposal to lower the disability requirement from 50 dB to 30 dB is too drastic. On top of that, I also proposed to increase the percentage of compensation from 60% to 100%. This has also caused concern among other Members. It might be that I have been working quite close with Mr LEE Cheuk-yan recently and I have learnt from him. Like him, I am now willing to listen to advice from others. In the past, I have discussed the matter again and again with other groups, including the Democratic Party, the Hong Kong Federation of Trade Unions and even the Association for Democracy and People's Livelihood (ADPL). Now I will use two minutes to praise the ADPL. ADPL has given me advice and I have revised the requirement to 40 dB, which is the result of my colleagues' advice.

They have asked me to consider the actual facts and see if this dB requirement is more desirable. I did spend much time to think the matter through and to collect information. I have also met with workers who have been affected. From what they told me, even if my bill is passed, it can be of no great help to them. At least 10 workers whom I know still fail to get compensation. Why is that so? It is because even though some of them have hearing loss in one ear of up to 80 dB, hearing loss in the other ear is just about 30 dB as a result of the requirement of their occupation to wear protective gear at work. Under the circumstances, these workers will not get any compensation at all. However, they still said to me, "LEUNG, you should go on proposing amendments to the law! Because revising the disability requirement to 40 dB is still better than no amendment at all." In fact, should the 50 dB requirement be maintained, the number of workers who are not protected by the law would be even greater. Therefore, with no better alternative, these workers would like to take the opportunity of the last sitting in this session to get at least some

improvement, which is better than no improvement at all. On the one hand, I would like to commend the Administration for listening to our advice last year. The review was advanced on our request. I want to thank Mr Joseph WONG for that. However, on the other hand, it was quite regrettable that the review has not been going smoothly and it has been dragging on for quite some time. The review should have been completed by the end of last year. It is now the middle of 1997 but the review has not finished yet. The Secretary has told us earlier on that the results of the review would be submitted to the LAB within two months. We are not at all sure what its findings will be. Therefore, I have chosen to propose this Bill now. I think that if we wait any longer, it will be unfair to the workers. It will also have a great effect on them for some of the workers are quite old already. How long must they wait? In this regard, I want to thank colleagues from the ADPL for their advice. They have advised me to revise the requirement to 40 dB as this will increase the chance of success for my bill. Therefore, I will move a Committee stage amendment to the effect that the requirement be revised from 50 dB to 40 dB.

Since we, including organizations working for the grassroots and trade unions have now come to an understanding, let us pay no attention to the call from the Secretary for Education and Manpower to object to the Bill. As organizations fighting for interests of the grassroots, we should stand united. The affected workers are people who have contributed to the success of Hong Kong, and now they suffer a disability (I think that deafness can be regarded as a disability). We can lend a helping hand to them and make sure that their misfortune is compensated. The Bill I am proposing now has not sought to increase the level of compensation. It just seeks to relax the disability requirement. I do hope Members can bear this in mind, and given that the Secretary has spent much effort in lobbying for Members' support, I hope Members would still stand firm and support my bill.

Thank you, Mr Deputy.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I request your permission for me to speak so that I can explain the part of my speech which Mr LEUNG misunderstood.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): I request so under Standing Order 28(2). As Mr LEUNG just mentioned that

DEPUTY PRESIDENT (in Cantonese): You request to clarify. The President said let you have it (*Laughter*).

THE PRESIDENT resumed the Chair.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Yes. The reason that I would like to clarify is that Mr LEUNG misunderstood what I said. Regarding the Government's improvement proposal, Mr LEUNG points out that it only increases the number of occupations that could receive compensation. My speech, in fact, has pointed out clearly that the Government's proposal not only includes the increase of the number of occupations but also the relaxation of the disability requirement for occupational deafness compensation. This is a very important point. If I do not clarify on this point, people will think that my improvement proposal is entirely different from Mr LEUNG's suggestions. My improvement proposal, in fact, is comprehensive because it also includes the relaxation of the disability requirement for occupational deafness compensation.

I hope Members will consider this point very carefully when they vote again. Thank you, Mr President.

PRESIDENT (in Cantonese): You added in new information. The last two sentences are new. (*Laughter*)

Question on the Second Reading of the Bill put.

Voice vote taken.

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

Mr James TIEN and Mr LEUNG Yiu-chung claimed a division.

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 Occupational Deafness (Compensation) (Amendment) Bill 1997 proposed by Mr LEUNG Yiu-chung be read the Second time.

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? The result will now be displayed.

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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, 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, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, 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 Paul CHENG, 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.

Miss Christine LOH abstained.

THE PRESIDENT announced that there were 30 votes in favour of the motion and 22 against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL 1997

Clause 1 were agreed to.

Clauses 2 and 3

MR LEUNG YIU-CHUNG (in Cantonese): Mr Chairman, I move that clauses 2 and 3 be amended as set out in the paper circularized to Members.

Mr Chairman, as I have said earlier on, the amendment in question seeks to lower the threshold of hearing loss of not less than 50 dB for both ears as stipulated under the existing law to not less than 40 dB, so that employees suffering from hearing loss would be given greater protection. Moreover, this amendment Bill has not sought to increase the percentage of compensation. It will remain the same. I hope Members can give me their support.

Just now, the Secretary said that in future, the Administration may also propose to relax the threshold of dB requirement. But the Administration has also said that if my amendment is passed, the financial resources of the Compensation Fund will be depleted within three years. In other words, he does not have any sincerity in saying that the dB requirement will be relaxed.

Therefore, I hope you will not believe in the Secretary's promise that the dB requirement will be relaxed.

I hope Members will support my amendment. Thank you.

Proposed amendments

Clause 2 (see Annex XVIII)

Clause 3 (see Annex XVIII)

Question on the amendments put.

Voice vote taken.

Mr LEUNG Yiu-chung claimed a division.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (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 LEUNG Yiu-chung be passed.

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

CHAIRMAN (in Cantonese): Before I declare the result, please check your votes. Are there any queries? The result will now be displayed.

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, Mr James TO, Dr

YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, 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, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, 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 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 amendment.

THE CHAIRMAN announced that there were 31 votes in favour of the amendments and 21 against it. He therefore declared that the amendments were carried.

Question on clauses 2 and 3, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

MR LEUNG YIU-CHUNG reported that the

OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill**EMPLOYMENT (AMENDMENT) (NO. 3) BILL 1997****Resumption of debate on Second Reading which was moved on 9 April 1997**

MR MICHAEL HO (in Cantonese): Mr President, this Bill is very simple. It only seeks to add 1 May, the Labour Day, a statutory holiday. As it is so simple, we will not say any more. The Democratic Party supports the Bill.

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

MR MOK YING-FAN (in Cantonese): Mr Deputy, Hong Kong's economic development, prosperity and affluence nowadays are inseparably linked to the contribution of workers. Their contribution to our society is something that cannot be ignored and it deserves our respect and recognition. Hong Kong's achievement to this date and the fact that it has overcome so many obstacles in the past are closely linked to the participation of our labour force. Out of respect and recognizing the contribution of the labour force, it is really very important that we set aside a special day to mark their achievement, so that they can share the fruits of their hard work and at the same time help our society become more aware of their contribution.

Mr Deputy, I am also aware that there has been a lot of improvement in respect of welfare for workers, and we have indeed come a long way when compared with the situation many years ago. Many people have been fighting incessantly for the interest and welfare of the labour force. Some Members of this Council are certainly very good examples. In recent years, there has been a lot of improvement in respect of occupational safety, minimum pay for workers and the status of trade unions.

Mr Deputy, as an association that is very concerned about people's livelihood and democracy, the Association for Democracy and People's Livelihood (ADPL) recognizes the importance of labour interest and labour rights, and we also think that it is important for workers to have both physical

and mental well-being as well as a balanced life, so that they can enjoy the fruits of their hard work. Therefore, we suggest that we should fight for an additional statutory holiday as a tribute to their contribution. At the same time, we think that an additional statutory holiday will not incur too much of a loss to the employers and the economy of Hong Kong. The price to pay for one statutory holiday is very small, but the labour force would be able to share the fruits of economic success of Hong Kong as well as the joy of our reunification with China, just like everyone else in the territory. This is indeed worthy doing and meaningful.

If we are to add one statutory holiday, which day is more suitable than the first of May? Mr Deputy President, as far as I know, since the International Labour Organization declared the first day of May as International Labour Day in 1889, many countries have taken the occasion to pay tribute to the contribution of the labour force to their economic success and development. These countries include member countries of the former Soviet Union, countries in both eastern and western Europe and many other countries in South East Asia. The Singapore government has even pointed out in its website that the first day of May is made a statutory holiday in the country to pay the highest tribute to their labour force.

Given that so many countries have already made the first day of May a statutory holiday in order to show their appreciation to the contribution of the labour force, how can Hong Kong, an advanced society respecting democracy and human rights, lag behind in this respect? Mr Deputy, I would also like to stress one point. After 1 July, Hong Kong will enter a new era. It will become part of China again; yet it will enjoy a high degree of autonomy and self-governmentship. The way Hong Kong people look at various matters will also change, from a confined local perspective to a much wider nationalist perspective. In China, Labour Day has already been a statutory holiday for a long time. After the reunification of Hong Kong with China, we should also recognize the first day of May, the International Labour Day, as a statutory holiday. At the same time, many labour groups have been fighting for years for the designation of Labour Day as a statutory holiday. Such a call has also won wide support from the community. But during the British rule over Hong Kong, we have not been successful. Mr Deputy, at this joyous juncture when we are reuniting with China, I think it is a very opportune time for us to designate the

first day of May, the Labour Day, as a statutory holiday, so that our labour force can share the joy of Hong Kong's reunification.

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

MR JAMES TIEN (in Cantonese): Mr Deputy, I absolutely agree with the argument that the workers, that is our labour force, has contributed much to the success of Hong Kong. Now if the proposal is to make the first of May the Labour Day, I daresay the business sector will render its support. But the question is: although we are only talking about one more day of holiday, such a proposal will have an accumulated effect on the overall system of "paid holidays" or "public holidays" in Hong Kong. We should not forget about the operation of businesses in Hong Kong, as well as our competitive edge as a centre for international investment.

Mr Deputy, I want to make one point here. I have a list showing the public holidays of other Asian countries. There are 20 days of "public holidays" in Hong Kong, 15 days in Taiwan, 15 days in South Korea and 12 days in Singapore, the country which Mr MOK Ying-fan has just praised so much about. Of course, Labour Day is one of the 12 days of public holiday in Singapore. For the "four small dragons", Hong Kong has 20 days, and the other three just got 15, 15 and 12 days respectively. As for the "four small tigers", Thailand has 14 days, Philippines 11 days, Indonesia 13 days, and Malaysia 16 days. The number of holidays of these countries is all smaller than ours. For Southeast Asia or even the entire Asia, I think Japan is the most developed country. It just has 16 days. As for the two most populous countries, India and China, they only got 7 days and 6 days respectively. Where do I get this list? I got it from the president of a large overseas corporation which has branch offices throughout Southeast Asia. He has this list to facilitate his contacts with his staff working in these countries and to know whether they are on holiday. He may not care so much about the number of holidays in these countries as we do. But we can see that Hong Kong has already the largest number of holidays. In fact, as Hong Kong has so many holidays, I want the public to know that the employers are not being mean by rejecting the idea to make the Labour Day a public holiday. In comparison, we are not mean to our employees at all.

Mr Deputy, the second point that I want to raise is that if Mr LAU Chin-shek is not proposing to make the Labour Day an extra holiday on top of the 20 days of holidays we already have, that is, if he is not proposing to increase the total number of holidays to 21 days, we are absolutely in support of his proposal. If he is proposing to make the first of May a public holiday, but it will take up one of the two floating holidays we have each year, it is all right with me too. But that is not what Mr LAU proposes. He wants to have one more day on top of the two floating holidays we already have, and in that way, the total number of holidays will become 21 days. For that reason, I will wait for the President to resume his seat. For that reason, Mr President, the Liberal Party and the business sector are against this Bill.

Thank you.

THE PRESIDENT resumed the Chair.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Government objects to the Employment (Amendment) (No. 3) Bill 1997 introduced by the Honourable LAU Chin-shek. This, however, does not mean in any way that we have no respect for the status of the labour force; what I would like to point out is that if the Bill is passed, the number of annual statutory holidays in Hong Kong will be increased from 11 to 12 days. In other words, there will be one holiday more. Our objection to the Bill is based on two reasons: firstly, when the Labour Advisory Board (LAB) discussed the Bill in May of this calendar year, its members unanimously agreed that since public holidays for the year of 1998 had already been made and announced, the matter in question should not be considered until 1998, and that any decision made thereafter should be implemented in 1999; secondly, the Bill has not been scrutinized by a bills committee of this Council, which means that it has not gone through wide consultation. What effect will an extra holiday cause or what kind of economic effect that there could be has not been assessed. As an adaptation may have to be made to the provisions of the existing Employment Ordinance in respect of the two "floating" statutory holidays, the Labour Department will consult the LAB in July about it, and we will then request the LAB to consider altogether the arrangements on statutory holidays for the year of 1998. As statutory holidays affect the interests of both employers and employees, as well as the economy as a whole, we should not pass the Bill in such a hasty manner before a consensus has been reached within the LAB and before a wide

consultation on the community has been conducted by the Government. Therefore, I hereby urge Members to vote against the Bill.

Thank you, Mr President.

MR LAU CHIN-SHEK (in Cantonese): Mr President, the objective of this Bill is very simple. It seeks to amend the provision of the Employment Ordinance in relation to "paid holidays" by adding the "International Labour Day" on the first of May, commonly known as "Labour Day", as a statutory holiday. I would like to point out here that "public holidays" and "labour holidays", the so-called "paid holidays", are different. There are only 11 days of "paid holidays". In many countries, "Labour Day" is included as a "statutory labour holiday" and that day is a "paid holiday". The purpose of this is to show respect of the whole community to the contribution the labour force made to the society. In most countries, "Labour Day" which falls on the first day of May, the "International Labour Day", is a "paid holiday".

For a long time, Hong Kong has not designated the first day of May as a statutory paid holiday. Therefore, the labour force cannot display their solidarity by having a holiday in their honour and enjoy the respect of the community for their contribution. This is very disappointing indeed. I would like to particularly point out that in China, Taiwan and even Macau under Portuguese rule, the first day of May is designated as a public holiday — the "Labour Day". There is no reason why Hong Kong should continue to be the exception among the "four places of China". On 3 February 1993, the then Secretary for Education and Manpower stated clearly in an oral reply to the Honourable PANG Chun-hoi's question in this Council that the Government would complete its review by the end of 1993 and decide whether the first day of May should be designated as a statutory holiday. But regrettably, until now, June 1997, the Government has not yet made known the result of such review. I can say that this Bill that I proposed has come too late, not too early. Some people say that the Provisional Legislative Council (PLC) has already endorsed the arrangement for holidays in 1997 and 1998, and therefore any review about labour holidays should be conducted in 1998 for implementation in 1999. However, the bill that the Chief Executive Office presented to PLC has just provided for the "public holidays" in 1997 and 1998 and the "labour holidays" in 1997. As to the "labour holidays" in 1998 and thereafter, the bill has not made any provisions at all.

If my Bill is passed today, it would only be implemented as from 1 May 1998 to make that day the "labour day holiday", and the "public holidays" for this year would not be affected. The Secretary for Education and Manpower has just said that any changes to our "public holidays" should only be made after wide public consultation. I think we have to differentiate between dates which are in general related to the public and widely-known and those that only affect a certain group of people. For example, I have never heard that anyone is against the making of the "Reunification Day" or the "Reunification Commemoration Day" a paid "public holiday", nor the making of the "National Day" a holiday. If I say that the holiday of "Labour Day on the first day of May" is related to all the workers in Hong Kong, I think no one would dispute against it. The labour sector has all along been fighting for the designation of Labour Day as a holiday, and it has two important meanings. First, it commemorates those who have been involved in labour movement and the fighting of labour rights over the past hundred years or so. Second, it reminds the labour sector that although our society has made great economic achievement, there is still a lot to be done about labour rights and our fight has to continue.

Mr President, the Hong Kong Government has always stressed its concern about labour rights, but I think in fact it has never had any respect for the achievement the workers made to the society. If the Government would not even acknowledge the "Labour Day" which has so much symbolic meaning, how can it convince the general public and the workers? Therefore, on behalf of the two million or more workers in Hong Kong, I urge my colleagues to support my Bill and give all workers some good news.

Mr President, these are my remarks. Thank you.

Question on the Second Reading of the Bill 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 Employment (Amendment) (No. 3) Bill 1997 standing in Mr LAU Chin-shek's name be read the second time.

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? 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, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, 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, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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 Paul CHENG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.
Dr LEONG Che-hung abstained.

THE PRESIDENT announced that there were 27 votes in favour of the motion and 22 against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EMPLOYMENT (AMENDMENT) (NO. 3) BILL 1997

Clauses 1 and 2

Question on the amendments put.

Voice vote taken.

CHAIRMAN (in Cantonese): The Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that clauses 1 and 2 stand part of the Bill.

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

CHAIRMAN (in Cantonese): Before I declare the result, Member 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, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, 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, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

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 Paul CHENG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

Dr LEONG Che-hung abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendments and 22 against it. He therefore declared that the amendments were carried.

Council then resumed.

Third Reading of Bill

MR LAU CHIN-SHEK reported that the

EMPLOYMENT (AMENDMENT) (NO. 3) BILL 1997

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

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

EMPLOYEE'S RIGHTS TO REPRESENTATION, CONSULTATION AND COLLECTIVE BARGAINING BILL

Resumption of debate on Second Reading which was moved on 9 April 1997

MR LAU CHIN-SHEK (in Cantonese): Mr President, while the Employee's Rights to Representation, Consultation and Collective Bargaining Bill, for which

the second reading debate is resumed in this Council today, is a bill sponsored by the Honourable LEE Cheuk-yan on behalf of the Hong Kong Confederation of Trade Unions, I have to emphasize that the bill actually represents the long term common goal of the entire labour sector.

The labour sector has been, in different occasions and through various means, striving for enacting in Hong Kong legislation on collective bargaining during the last decade or so, which clearly indicates that labour groups in Hong Kong, on the common basis of safeguarding the rights and interests of employees, have established a consensus on the subject of collective bargaining.

When the Basic Law was being drafted, the labour sector, as I remember, made concerted efforts to strive for the insertion of a clause on securing employees' rights to collective bargaining. Unfortunately, due to the objection of the business sector, their efforts in this respect have been in vain.

In less than a week, Hong Kong will reunify with China. It is especially meaningful to put the issue of the rights to collective bargaining on the agenda again. It proves that the labour sector has never abandoned the goal of securing the rights to collective bargaining despite the setbacks in the past. I wish that today the labour sector would demonstrate again the spirit of solidarity and make further contribution in securing reasonable rights and interests for all workers in Hong Kong.

Mr President, I firmly believe that the primary task of trade unions is to unite workers, through which they can improve the working conditions for them. When disputes arise between employers and employees, trade unions are the most reliable partners of employees. Standing firm on the position to safeguard workers' rights and interests, they negotiate with employers in a practical manner.

However, in my past experiences in labour movement, we often encountered lots of difficulties, with employers refusing to involve representatives of trade unions being the most common scenario. In fact, the employers' refusal to negotiate with worker representatives was the cause of many labour disputes in the past. In 1974, a strike was caused as the Cable and Wireless (Hong Kong) Limited refused to recognize the status of the trade union. The labour movement finally ended when the employer accepted the trade union and undertook to negotiate with its representatives on salary increase and staff benefits. The Cable and Wireless (Hong Kong) Ltd. also became one of the few corporations that offered collective bargaining arrangements.

Other examples include: the collective resignation launched by staff members of the Swire Coca-Cola Hong Kong Limited, the suspension of train service called by the staff association of the Mass Transit Railway Corporation, the slow-driving procession organized by drivers of the Kowloon Motor Bus Co (1933) Limited, and the prolonged protest initiated by staff members of the Hong Kong Telecom. Only through such activities would the employers make some concessions and be willing to negotiate with trade unions.

After all, the absence of such legislation in Hong Kong which recognizes and protects the workers' rights of being represented by trade unions is the major cause of these incidents. The efforts the labour sector made in establishing the right to collective bargaining through legislation actually aim at preventing disputes concerning employee representatives from arising between employers and employees. I really do not understand why the government and the business sector have all along been refusing to legislate in this aspect.

Mr President, Mr WONG Wing-ping, the Secretary for Education and Manpower, has been busy these days trying to persuade Members to object to this Bill. One of the arguments put forward by the Secretary is that the Bill may cause confrontation among trade unions as they may try to absorb more members for their status to be recognized. Mr President, I would like to tell the Secretary that he is over worried.

Undoubtedly, different unions would have different views and situations on individual matters, but it is perfectly normal in a diversified society and there is nothing special about it. I do not deny that sometimes there may be disputes among trade unions but I want to emphasize that these are rare cases. A major cause for these disputes is the "divide and rule" tactics adopted by employers. By discriminating against one and favouring the other, they will have dialogue with only one of the trade unions while refusing to talk to the others.

Employers can split up the unions simply because there is no procedure, which is fair and equitable, in the undertaking to confirm the status of the trade unions to represent workers. The prime goal of the Bill is to establish such a fair and equitable procedure so that various trade unions may, on the common basis of safeguarding employees' rights and interests, carry on healthy competition. To ensure that the procedure for recognizing trade unions is absolutely fair and equitable, the Bill provides that as a notary public, the independent scrutineer shall cancel the certificate of representativeness of a recognized trade union should it is found to hinder, through abnormal means, employees from

expressing their wishes. You may notice that the provisions of the Bill are in line with the election procedure in a modern democratic community.

Moreover, the Bill also provides a mechanism to allow two or more trade unions to form a federation, that is the group of unions mentioned in the Bill, to apply as a single unit for representing the employees. Therefore, instead of arousing confrontation among trade unions, I think the Bill will provide them opportunities to cooperate.

Mr President, those who know me know that I am someone who sticks to certain principles and makes no concession, but on specific matters, I am absolutely open to negotiations. Mr President, I would also like to tell my colleagues that most members of trade unions adopt a similar approach: while emphasizing on principles, they are also practical. As the right to collective bargaining is employees' basic right, the labour sector must safeguard it, not just in the past or at this moment, but also in the future. However, when negotiating with employers on service conditions and salary increase in future, we will certainly be practical and realistic, with a view to settling matters with employers through discussion and cooperation.

I wish colleagues would understand that the labour sector is striving only for negotiating with employers, on the basis of mutual respect, for a reasonable reward of their efforts. We are by no means plotting to seize the property of employers. It is totally unnecessary for the business sector to be so much on guard and to regard collective bargaining as great scourges. I emphasize again, collective bargaining is just a fair and systematic mechanism for employers and employees to resolve their conflicts of interests through democratic participation on a reciprocal basis.

Mr President, the Bill represents the goal that we have been striving for the last decade or so. I would like to call upon Members from the labour sector not to give up rashly at this critical moment. I would also like to make an appeal to Members of the Democratic Party that the Bill goes along with our principles of pursuing democracy. Apart from the democracy in political system, we must also pursue democracy in different aspects of life. A bill of democracy concerning the relationship between employers and employees actually represents the first step taken in realizing democracy in undertakings. I hope therefore you will not abandon the democratic stance to which you have been sticking.

Mr President, these are my remarks in calling upon colleagues who safeguard the rights and interests of workers and who stick to the principles of democracy to vote for this Bill. Thank you.

MR PAUL CHENG: Mr President, the concept of collective bargaining may, and I emphasize may, be justifiable in an environment where a small number of companies employ a large number of people and where majority of employees are represented by trade unions. At the height of the industrial cycle in the United States, this was the case. The recent trend, however, is that unions are losing their influence because collective bargaining at its extreme has proven that it can put a stranglehold on economic development. The record, in place after place, speaks for itself.

In Hong Kong 94% of our establishments are small, employing less than twenty employees. It is simply not practical to introduce the concept of collective bargaining, not to speak of the fact that we should learn from the bad lessons experienced by many other economies which have gone down this slippery slope.

Hong Kong's success is the envy of the world because our free economic system with minimum interference has worked well, and our community, with one of the highest *per capita* incomes in the world, has benefited from our market economy.

I would like to borrow a phrase which the Honourable Martin LEE used in the Smoking (Amendment) Bill debate yesterday. He said "if it ain't broken, why fix it?" I hope his Democratic Party colleagues will take note of their leader's wisdom and apply the same principle in voting on this Bill today. I particularly hope that Mr Martin LEE and I can see eye to eye, which is far more preferable to me than lung to lung, for just one more day. It would really make my day.

Seriously, we must not get ourselves onto this slippery slope. We must avoid at all costs inflicting a fatal blow to our thriving economy. I appeal to those colleagues who plan to support this Bill to please reassess their position and vote against this very dangerous proposition in the interests of maintaining Hong Kong's prosperity and stability.

With these comments, Mr President, I shall vote against this Bill.

MR MICHAEL HO (in Cantonese): The Democratic Party supports this Bill. The setting up of a collective bargaining system has always been included in the platform of the Democratic Party. We consider this Bill a progressive one as it can introduce into Hong Kong the concept of collective bargaining. In fact, our genuine hope is, with the enactment of this Bill, both employers and employees may come together to negotiate through a system of collective bargaining. As for whether the negotiations are successful and how such a system will develop in future, I believe that it would take both trade unions and employers in Hong Kong some time to learn. However, if a collective bargaining system is not set up in the first place, I believe that trade unions and employers could never manage to learn to grasp the concept of collective bargaining.

Just now the Honourable Paul CHENG pointed out that certain trades and industries in Hong Kong would be affected once collective bargaining was introduced. On the argument put forward by Mr CHENG, I must point out, if we set up a good system and help trade unions to develop, I definitely believe that the development of trade unions will attain maturity. Under these circumstances, it will be impossible for trade unions to behave irrationally. On the contrary, if we do not set up a collective bargaining system or help trade unions to become mature, wildcat strikes may occur. Therefore, on the issue of collective bargaining system, I hope the Government can put in more resources, helping both trade unions and employers in Hong Kong to participate in collective bargaining, so that a collective bargaining system which is genuinely effective may emerge.

During the deliberations of this Bill, we have in fact spent quite a lot of time discussing with the Legal Adviser and giving heed to opinions of employers. Apart from the explanation the Honourable LEE Cheuk-yan has made, we think that consideration must also be given to the views expressed by employers. Let me clarify a point here. In addition to recognizing employers' views, we have also considered those views seriously. After consideration, however, we still think this Bill acceptable and we therefore decide to support it. I would also like to point out that while discussing the Bill in question at a meeting last week with officials from the Education and Manpower Branch, all of us were

concerned about the right to consultation as mentioned in clause 7 of the Bill. The officials of the Education and Manpower Branch remarked that certain problems would arise if consultation had to be made on every issue, including those relating to buying offer, selling offer, transfer of shares and so on. The situation that trade unions should keep information confidential may conflict with the laws concerning takeovers and mergers. After the meeting, I studied the relevant clause again and consequently found that according to clause 16(3B), "an employer is not required by this section to disclose information which he could not disclose without contravening a prohibition imposed by or under any law." The matters mentioned above are not included in the information to be disclosed by an employer. In other words, the provision in clause 16(3B) makes me refuse the viewpoint the Government in lobbying us as it is an invalid argument.

Mr President, in paragraph c of its letter, the Government pointed out that these clauses were not assessed thoroughly. However, Mr President, as the second reading debate has already resumed, I feel that there is no room for turning back. Nevertheless, I still hope that we can do better in future. What I mean is all of us, including both the Government and political parties, should do more. Of course, political parties do not have as many resources as the Government. I really hope that we can communicate at an earlier stage when similar cases occur in future. I also hope that the Government can, as it has much more resources than we do, put more efforts and do a better job when carrying out an assessment. If the Government can make a better assessment and provide more information for Legislative Council Members, be they Members of political parties or independent Members, it will indeed help every colleague to understand more thoroughly the clauses and the problems arisen from the clauses. I think it will be a more progressive arrangement.

Mr President, we have only a short history in introducing Private Member's bills. It will be necessary for the Government, political parties and other Members of the Legislative Council to spend some time to work, explore and accumulate experience together. Should we still have a chance to debate in this Chamber again in future, I sincerely wish that the Government can offer assistance in advance by providing us the assessment results, so that we can do a better job. For all other bills to be submitted in future, or Private Member's bills that can still be introduced to the legislature in future, it will be an improved arrangement.

Mr President, I am looking forward to this situation, and I wish that under the leadership of Mr WONG Wing-ping, the Education and Manpower Branch will cooperate better with us in future.

Thank you, Mr President.

MISS CHRISTINE LOH (in Cantonese): Mr President, I have never spoken on labour matters and seldom speak in Cantonese for the past few years. For the past five years, the Honourable LAU Chin-shek has been saying that I should address the Council in Cantonese. Today, it may be the first and the last time that I speak on labour matters in this session. While this is the first time that I address the Council in Cantonese, I may dedicate this speech to Mr LAU as a souvenir.

Mr President, the first point that I would like to make is that, in these years, I have had the greatest esteem for those colleagues representing the labour sector. The series of labour-related laws we have today are in fact the achievement of their efforts. They have always been putting great efforts on labour matters and have obtained lots of achievements. We may say that they are really doing their best today to fight for the workers. I fully understand why they do so. It is because they really want to get more for the workers. Since this Bill is introduced by the Honourable LEE Cheuk-yan, I would also like to say a few words to him. Though I do not know who did the drafting, I must say that the Bill is indeed well drafted. However, my focal point is not on the drafting aspect. The important point is we actually do not have sufficient time to deliberate on the Bill to find out what situation will be caused if the system that he proposed is being implemented. Therefore, I will support the Bill at the Second Reading debate today as I feel that Mr LEE has really done a lot and deserves spiritual support. However, at the final voting during the Third Reading debate, I will vote against the Bill. The primary reason is that we do not have time to study it thoroughly. While looking back, we would find that we have tried to achieve something but finally we failed to do so. This is most probably because we do not have sufficient time to discuss. When the Governor attended the last question time session in this Council, I requested him on that day to review the experience in the Old Age Pension Scheme and asked

whether he considered it too rash for the Government to introduce the proposal. Right after the proposal was introduced in a rash manner, diversified views emerged in the community. As Members began to be concerned about the proposal, discussion went on and nothing was achieved in the end, but we still felt that no matter what the proposal was, it would be better to have proposals than nothing. As in the present case, I do not know how this issue will develop in future, but to a certain extent, collective bargaining is a similar issue and should have room for further development. However, the issue is now introduced to this Council so hastily. I believe that the Secretary for Education and Manpower would certainly make some commitments later to show that the Government would consider the issue again. Just now the Honourable Paul CHENG did not say that it was absolutely impossible to discuss these concepts in Hong Kong. The problem is we really do not have sufficient time to allow all interested parties to discuss on the issue.

Let us have a look at the issue of equal opportunities. In fact, the concept of equal opportunities has been brewing in this Council and the community since 1993. Therefore, when the Bill was put to the vote in 1997, we were comparatively more well prepared and understood the contents of the Bill, although we still remember the Honourable James TIEN said on that day that he did not know what family status meant. In view of that, I believe that when an issue arises, Hong Kong people can, with their present education level, keep abreast with the situation swiftly in two to three years' time.

Finally, I would like to respond to Mr LAU's speech, in which he indicated that, as a democrat and someone who pursues democracy, one should support this Bill. However, I cannot agree with him on this occasion. Even if we pursue democracy, it does not mean that we have to support the passage of the Bill at this moment today. I can only say that I will not vote against the Bill at the Second Reading debate and I will support it. At the Third reading, however, I beg your pardon, Mr LEE, I cannot support you. I hope that we can follow up with the discussion when we come back to this Council in future.

MR FREDERICK FUNG (in Cantonese): Sorry, Mr President. I went out the Chamber for a paging call that I had just received, and I apologize for returning now in a rush.

Mr President, I speak on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL) to support the Bill.

Collective bargaining is the goal which the labour sector has been fighting for during these years. When the Basic Law was drafted in the 1980s, the labour sector strived to include the right to collective bargaining in the Basic Law. At the time the ADPL also supported it, hoping that the Basic Law could include the right to collective bargaining as part of the constitution. The ADPL supports the right to collective bargaining primarily because our members come from the proletariat, or the working class. We think that a worker in Hong Kong only has very little bargaining power. If he wishes to discuss with his employer on an issue, it can also be very difficult as the employer may listen to him only when he is in a good mood. How can workers discuss directly with their employers on a parallel and equal basis about issues concerning their own benefits, wages or unfair dismissal? Quite often, the workers themselves have no way out except relying on collective efforts to demand for discussion. In the 1970s or 1980s, the so-called collective approach is most commonly reflected by petitions, or even by mass movement such as assembly. Of course, in these 20 years, there are more trade union activities in Hong Kong indeed, but it does not mean that the emergence of trade unions has successfully gained the right to collective bargaining because legally speaking, trade unions do not have the power of collective bargaining. In other words, even if the workers get organized in trade unions, it does not mean that the unions can discuss with employers on behalf of the workers. Therefore, we think that although trade unions have emerged and acquired collective power, it is not statutory. It will at best provide merely one more chance which is slightly better than a worker fighting alone. As such, labour movements fail to succeed in these 10 to 20 years. The dismissals in the Hong Kong Telecom and Cathay Pacific labour disputes reflected the situation. How can the workers' position be recognized reasonably and discuss with the employers on equal terms? We think that the only answer is to provide a statutory identity to a worker, workers or the trade union.

In fact, there are two levels in the Bill. Firstly, a trade union needs the membership of 15% of the employees of related undertakings or organizations before it can have the right to consultation. Of course, it may be said that if 15% of the employees belong to several trade unions at the same time, the enterprise or organization may need to consult as many as six trade unions. It is

not a big problem in this regard because even if a worker is so actively involved in trade union activities, it is still convenient for the employers as the trade unions are representative and they can sit down and discuss with the employers on behalf of the workers. The reason is that the employers will know clearly who to consult and negotiate with. The result will be what everyone expects.

Secondly, when problems arise and the employees have to sit down and negotiate with the employer, related trade unions will need the membership of 50% of the employees in the undertakings or organizations before they have the statutory negotiation power. In other words, under this circumstance, two or more of the trade unions must join hands before gaining the right to negotiation. The reason is that there is little chance for 100% of the employees to agree to authorize two trade unions, each of which has the membership of 50% of the employees, as their representatives. Under this circumstance, the trade unions must co-operate before they can get the right to collective bargaining. In fact, the mechanism in the Bill has stipulated this point clearly. In view of that, if 50% or more of the employees agree to authorize the trade unions as their representatives, it is obvious that the employers need to sit down and discuss with them.

Moreover, the Bill also states that it targets at organizations with 50 or more people, or medium-sized or large organizations. For small organizations or factories with 10 to 20 workers only, it is very easy for the trade unions to have the support of 50% of the employees. For example, as the Hong Kong Association for Democracy and People's Livelihood (ADPL) has less than 20 staff members, with the support of ten of them, a trade union can be formed successfully with the right to collective bargaining. Hence many people worry that labour movement may rise one after another. Yet the Bill stipulates that it targets at organizations with 50 or more people. I think that it is not bad as a starting point. What I mean is that only big organizations with 50 or more people will allow employees to have the right to collective bargaining. This enables the employers to see whether the situation is as worrying as they have expected. I think that it is relatively more convenient for employers as they will know the party, target and trade unions to negotiate with in future. Of course, it may be trade union A this time but trade union B the next time because the 50% membership may differ. There may be more than one trade union as the employer's definite opponent, but this is also the point of flexibility.

The Bill is also flexible in another aspect. When the commercial and industrial sectors and Government officials were discussing with the ADPL, they suspected whether friction and struggles between trade unions would be created. As the trade unions themselves have to compete for the right to collective bargaining, endeavours to solicit members will naturally appear. I think that this is only a possible negative effect. To look at it more positively, trade unions may become active and positive. Furthermore, if each trade union operates actively and solicits members, it may result in three trade unions each taking up 30% of the workers. All the three trade unions will then lose the right to collective bargaining. If they wish to obtain the right to collective bargaining, trade union A may join trade union B, or trade union B will join trade union C, or trade unions A, B or C will join together. Therefore, apart from competitions during the process, there will be coordination and cooperation before the trade unions can obtain the right to collective bargaining. From a negative point of view, the mechanism of collective bargaining in the Bill may lead to competition among trade unions, as mentioned by the lobbyists. However, from a positive point of view, employers may find that it is easier to handle or resolve disputes with employees.

Another point I want to mention is that we always say that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights must be fully implemented in accordance with Article 39 of the Basic Law. However, we seldom pay attention to or may have forgotten other conventions, such as the international labour conventions as mentioned in the Basic Law. The right to collective bargaining is not perceived as great nuisance internationally. It is only a systematic approach to propose problems for discussion. At present, the United States, Japan, Canada and even Germany all adopt this approach. If the western capitalist countries adopt it, why do we still need to worry? If collective bargaining will lead to economic recession or slow-down in economic growth, the economies of all these countries will theoretically have problems, but it is not the case in reality. We all know that the locomotives of world economy is the United States, Japan and Germany, but these countries all adopt the system of the right to collective bargaining. If such argument was correct, why the reality shows otherwise? I cannot understand the logic on which this argument is based at all.

I may illustrate the advantage of the right to collective bargaining with an example. In the past, when we organized social actions, which were of more

concern to us than trade union activities as we usually supported the residents at district level, quite often we could not meet the housing managers. Eventually we had to call for press conferences to start off a petition before we had a chance to bring together the residents and the manager for discussions. As we have now been elected members of the District Board, the Urban Council or the Legislative Council, it is easier for us to join the representatives of the residents to resolve and discuss community problems with the housing managers. I quote this example to illustrate that when a trade union does not have statutory status, recognition or representativeness, the employers may ignore it and refuse to discuss with it. However, when a trade union obtains the legal status, as in the example of our work for the community which I have just mentioned, the trade union will enjoy the status, identity and representativeness so that the employers will consider it their negotiation target or opponent. This helps both parties come together for discussion and deal with the problem more easily.

Since the birth of the democratic election system, we have observed that district social actions still exist but they have not become fiercer, nor have the number of participants increased to an extent that is out of control. They do not turn out to be more serious nor more violent. Conversely, more and more are included in the consultation structure in Hong Kong. In fact, we think that it is not necessary for us to consider the right to collective bargaining a great power, because during the process of negotiation, the employees do not have the right to dismiss the employers, or to close the factory. Only when the employers are successfully made to discuss the issues can the problems be resolved. Hence I will view this problem from another perspective. To a certain extent, the right to collective bargaining only provides the trade unions with legal and statutory consultation position to achieve the effects of bringing together both parties to discuss the problems. From this perspective, I think labour movements in Hong Kong have not taken off yet. This means that most of the existing trade unions do not organize labour movements. Instead, they work more on labour welfare. However, a trade union should work more on organizing labour movement, the welfare work should only be done in an appropriate portion. This is my understanding of and expectation from trade unions.

As such, the ADPL supports the Bill. Of course, I have also considered a problem: why do we have to deal with it so anxiously; why do we deal with it so urgently at this last moment, that is, in 1997? My reply is: firstly, this is the work which we have been striving for in the last 10 to 20 years; secondly, and regrettably, the Legislative Council will be dissolved in two days, and we do not

know whether we have a chance to do so any more. After 1 July, as we also know, no matter for the Provisional Legislative Council or the future Legislative Council, Members do not have the chance, conditions and power to move a Members' Bill under the Basic Law. Therefore, it is the last chance for our Members of the labour sector.

Secondly, the ADPL also handed this Bill to its legal advisers for study because I remembered that the Bill was not handed to the Bills Committee. We know that whether the ADPL will support a Bill depends on the standpoint as well as if the Bill itself is well-drafted. We have also looked at this Bill and given it to two or three lawyers to study its feasibility, or if it will be successful when implemented. Except for the political factors of trade unions mentioned during our discussion with the Government, we cannot see what problems the Bill will have during the implementation process. We think that among the many labour-related Member's bills, this is a well-drafted and feasible one. Upon viewing the problems from this perspective, when asked if the ADPL will support and agree to a bill, we will say, firstly, if the bill allows the grassroots or labour to work more smoothly or with more welfare in the future, we will support it. However, I wish to add that we have no intention to implement the welfare state because we are still a long way from the countries which practise such systems. Secondly, if the Bill itself is not well-drafted and bears a lot of loopholes, we will not support it. If it is well-drafted and feasible, we will support it.

We have examined the Bill and found that it matches with the two principles stated above. Therefore, the ADPL will support this Bill.

Thank you Mr President.

MR JAMES TIEN (in Cantonese): Mr President, why does the right to collective bargaining, which trade unions have long pursued, not seem to be making much headway or getting anywhere over the years in Hong Kong? In foreign countries, trade unions are in a position to grow stronger for many reasons which are unique to the individual country. In the United States, there are heavy industries such as the car manufacturing industry. In some small towns in central United States, a large company usually employs as many as

10 000 or 20 000 townspeople, accounting for almost 80% or 90% of the population of the town. Without such a company, the townspeople would become jobless. Certainly, the company or the employer has considerable power. Even if the employer refused to increase the wages, what could the workers do? Could they spend two hours every day driving to work in another town which is 100 km away? This is one of the reasons why trade unions are needed. Another example is Poland, which was formerly a communist country and a welfare state. This country has an extensive territory but the small number of large-scale enterprises take on a large number of workers. Therefore, I think it is necessary for Poland and some other similar places to have trade unions. Another reason is that unemployment in these countries is very high. If the employees are laid off, it will be very difficult for them to seek employment. Even if the employers refuse to increase their wages, they will be left with no choice but continue to work for the same employers. In these countries, it is understandable that trade unions have gained tremendous support and many workers are eager to become union members.

Let us now turn to Hong Kong. Both the Honourable Henry TANG and I have run factories in Hong Kong for many years. Why are workers in Hong Kong reluctant to become union members? The reason is that workers can talk to their employers on their own should the circumstances so warrant. If the negotiation turns out well, the workers' requests will certainly be acceded to by the employer. On the contrary, the workers will simply resign and work for another factory. Why are negotiations to no avail? Very often, it is because of the specific constraints of the employer and the factory. For example, with the relocation of the factory, the workers will have to travel a longer distance to work and are likely to be caught up in traffic congestion and so on. But how can these problems be resolved? There is no solution to the problems. Besides, workers may complain that the factory next door has a canteen but this factory does not provide the same. Again, this cannot be solved easily because the factory next door may be an owner-occupied property but the employer concerned does not own the premises. For these objective reasons, many factory workers are reluctant to join trade unions because they can talk to the employers by themselves. If the problems cannot be sorted out through negotiations, they simply resign and find another job. This has reminded me of the several pieces of legislation on which we debated yesterday. During those debates, I have said repeatedly that if the economy of Hong Kong is good, and with a high employment rate and little unemployment, the majority of the people

can certainly share the fruits of prosperity. If such being the case, is it still necessary to have trade unions? The formation of trade unions is not our objective. Our objective is to enable everyone to live a better life and do whatever he or she wishes. It is not our objective to widen the influence of trade unions.

In Hong Kong, trade unions have small membership and are few in number. If they are given the chance to expand their 'union business', will they be genuinely willing to play their role by reducing the extent of any dispute to the minimum, but not working for their own expansion in the market? If a trade union with three members has the right to be consulted by the employer and another trade union having a trio of members also has the same right to consultation, I believe that the trade unions, driven by their desire to enlarge their share in the market, will merely be working in the interests of individual trade union. They will not genuinely represent workers and fight for the interests of workers. This is an important point. Under such circumstances, it is certain that any dispute, albeit trivial, will be exacerbated eventually.

Mr President, collective bargaining can play its role well when the corporations are small in number but large in scale. As we all know, nearly 95% of the employers in Hong Kong take on less than 20 people and the total number of people employed by these employers accounts for about 60% of the total workforce. If we calculate on the basis of the three-million strong workforce at present, there should be over 1.8 million people working in companies which employ less than 20 people. Having regard for these data, I would like to comment on certain specific provisions in the Bill. Regarding the right to consultation, the Bill stipulates that in a company with 20 or more employees, a trade union comprising members who constitute 15% of the employees of that company has the right to be consulted. From the perspective of democracy, and considering the concept of the majority view overriding the minority view and the need for trade unions to be representative, how representative a trade union is should it be made up of 15%, or a mere three of the 20 people? Worse still, those three people will speak on behalf of 20 people and proceed to press the employer for the purpose of consultation. While this provision applies to consultation, and that is general discussion only, there is another provision on negotiation, under which companies with 50 employees or more are affected. I do not have the statistics concerning the number of companies with over 50 employees in Hong Kong. Perhaps the Government can respond on this point later on. I do not know the number of companies

which take on 50 employees or more. But even in a company with just 50 people, 15% of its strength means 7.5 or eight people, and that group of eight can represent 50 people in negotiations. While it is proposed that the agreement so reached must have the consent of 50% of the employees, which means that 25 out of 50 workers must concur with the agreement before it can be endorsed, the problem is that, as stipulated in the Bill, employers must observe any agreement reached while there is no stipulation requiring similar compliance by employees. I have to ask whether the trade union asking for negotiations with the employer is actually in a position to bargain with the employer? Obviously, the trade union will claim that they are in such position and that they are representative. However, after everything has been settled, the other 25 of the 50 employees can resign and find another job. Although the employer has acceded to the many requests from the trade union during the negotiation, the workers can subsequently leave for another job in the factory next door. But what can the employer do? How will employers consider it worthwhile to negotiate with trade unions? Another problem is that 15% is a very low percentage. In a company with 50 employees, eight of the employees can form a trade union. The other eight employees may form another trade union while another group of eight may form the third one. Under the circumstance, with which trade union should the employer negotiate? The three trade unions will approach the employer for negotiations but all are minded to expand their share in the market so they certainly hope that more members will be recruited. As each of the trade unions will be lodging increasingly more requests, problems which are trivial originally will turn into big problems. Then, under the collective bargaining mechanism, with whom the employer should negotiate? There is only one employer but at the same time, there are several trade unions. What should the employer do under the circumstance?

Furthermore, civil liability poses another problem. The Bill does not provide for the ceiling on compensation. In other words, the amount of compensation is entirely up to the judge. In fact, employers in Hong Kong have already been affected by certain legislation or legislative proposals in such aspects as equal opportunities, sex discrimination and age discrimination recently. Are employers capable of meeting so many requirements at one time? I think it is very difficult for them to do so, especially in respect of the right to collective bargaining. In my opinion, given that the current economic development in Hong Kong has been able to create so many employment opportunities and with a low unemployment rate, the right to collective bargaining is unnecessary.

Moreover, I do not see the need for a strong and fairly representative trade union in Hong Kong for the purpose of negotiation with employers.

Thank you, Mr President.

MR CHENG YIU-TONG (in Cantonese): Thank you, Mr President. Having engaged in trade union activities for over 30 years, I am fully aware of the importance of the right to collective bargaining. In fact, the right to collective bargaining is exactly one of the three major objectives that we pursue in trade union activities, namely the freedom to collective bargaining, the freedom to strike and the freedom to form trade unions. These are the basic rights that we have to fight for and also the goals that we endeavour to attain.

I remember that in the course of the drafting of the Basic Law, in pursuit of my ideals, I had made every effort to strive for the incorporation of these three fundamental objectives into the Basic Law, with a view to entrenching the right and freedom to form and join trade unions, to strike, and to collective bargaining. Even at the very last moment before the Basic Law was finalized at the last meeting of the Drafting Committee in Guangzhou in 1989, our joint committee of the labour sector on the Basic Law went all the way to Guangzhou, bringing banners with us to urge the Drafting Committee to accept our views by incorporating the right to collective bargaining into the Basic Law. Regrettably, only the right and freedom to strike and to form and join trade unions were accepted finally. The right to collective bargaining was eventually excluded from the Basic Law and I found this very regrettable.

Although the Basic Law was endorsed on 4 April 1990, the Federation of Trade Unions, which engages in trade union activities, has endeavoured to put in place a mechanism of collective bargaining. However, in striving for the establishment of such a mechanism, I found that there was very strong resistance coming from the commercial sector and the Government as well. This has made us become all the more convinced that the right to collective bargaining is vitally important to the development of trade unions.

Let me go back to the Bill on the right to collective bargaining tabled for the scrutiny of the Legislative Council today. Ever since we began to study this issue, we have come to the view that the Bill is highly professional. What I

mean is that the Bill is drafted in a very professional manner, containing elaborate stipulations on issues covered therein. I do think highly of the professional standard of the Bill and I must say that the drafting of the Bill is exemplary indeed. Earlier on, I have told Mr LEE Cheuk-yan that the Bill is indeed very well drafted.

Having said that, when we had to decide whether the Bill should be supported, we faced great challenges. On the one hand, there is certainly no reason for someone engaging in trade union activities not to support collective bargaining; on the other hand, when we conducted detailed and in-depth studies on the contents of the Bill on collective bargaining now tabled for the scrutiny of this Council, we must consider whether the Bill, judging from its contents, constitutes a proposal which is in the best interests of trade union activities and most beneficial to workers. Besides, we have to consider whether the Bill in substance actually fulfil our pursuits or not and whether it will give rise to other problems. For example, on the question of the percentage of membership, what percentage is considered appropriate? Moreover, given that the percentage is made up of various trade unions, will different views of different trade unions on this matter result in divisions among various trade unions before they join a united front? These considerations have indeed put us in a dilemma when we studied the contents of the Bill.

It is regrettable that the Bill has not been scrutinized and discussed in detail by any bills committee. I found it most regrettable that a serious and important bill as such which covers a wide range of policy areas has not been scrutinized by a bills committee. If the Bill is passed under such circumstances, I think it will be very difficult to surmise the consequences to follow. For these reasons, having gone through mental struggles many a time, I really cannot support the passage of the Bill at this Council.

Mr President, I so submit.

MR HENRY TANG (in Cantonese): Mr President, I have heard of collective bargaining for a very long time. Some ten years ago when I was a member of the Labour Advisory Board, there were already discussions on this issue.

Basically, collective bargaining is not a bad thing. Just now the Honourable CHENG Yiu-tong has pointed out that trade unions have long striven for the right to collective bargaining. I personally do not resist collective bargaining because under a mechanism of collective bargaining, if a trade union can represent the majority of the employees in a company, collective bargaining can, in fact, facilitate the operation of the company. To cite a few examples, the Hong Kong Telecommunications, the civil service, and the two railway corporations all have in place a mechanism of collective bargaining which has been working well. Everything has been operating smoothly and there have not been many labour disputes. Therefore, I personally do not oppose collective bargaining. Nor do I consider collective bargaining a monster which will greatly affect employers.

However, the fact that I do not oppose collective bargaining does not mean that I am agreeable to legislating on the establishment of a collective bargaining mechanism. While the several establishments that I cited as examples just now have been operating smoothly under a collective bargaining mechanism, there is no legal provision explicitly stipulating that a trade union with membership of a certain number of employees should be recognized by the employer for the purpose of collective bargaining. Now that those establishments have been doing fine and the mechanism of collective bargaining functions properly without any legislation formulated, if we are to introduce legislation at this stage, we should consider the consequences very carefully. Regrettably, the Bill has not been scrutinized by a bills committee. We, therefore, do not have the chance to look at the contents of the Bill seriously. All we can do is to understand the Bill from its wording.

In comprehending the Bill, I have queries about one point. My understanding is that in a company with 50 employees or more, the company has to negotiate with a trade union to which 15% of the employees belong. That is to say, theoretically, a company can have as many as six trade unions representing the employees (15% multiplied by six is 90%). This is my understanding, unless I have interpreted the relevant provisions wrongly. Since the Bill has not been scrutinized by a bills committee, I am not sure whether I understand this point rightly. Judging from the wording, I understand that a trade union can be formed as long as it comprises members who constitute 15% of the employees. Therefore, in a company with 50 employees, there can be several trade unions. In this connection, we can make reference to the many precedents in western countries. In those countries, a company can have several trade unions representing workers in different departments. Eventually, while trade union A has reached an agreement with trade union B, trade union C may

raise objection to the deal, resulting in a myriad of difficulties to the company in its operation. Britain is a case in point. In the early 1980s when I started investing in Britain, trade unions still had great influence in the country. However, the leverage exerted by trade unions had gradually hampered the operation of the companies concerned. For this reason, workers began to disapprove of trade unions. I think the experience of Britain is worth in-depth studies for us to look into the collective bargaining mechanism and the circumstances under which recognition should be given to a trade union by the company concerned. If there is a trade union comprising members who constitute 50% of the employees or more in a company, it is certainly unwise for the management not to negotiate with the trade union. Obviously, if the trade union represents over half of the employees in the company, it will be very stupid of the company to refuse to negotiate with it, unless the company is actually adopting an ostrich policy. Furthermore, why can some trade union representatives manage to negotiate with their employers without a hitch? The reason is that Hong Kong people are very rational and pragmatic. If a trade union is genuinely representative, the company will negotiate with it, even in the absence of legislation on collective bargaining. Therefore, I think we should take this point into careful consideration and proceed to further actions only after the scrutiny of the Bill by a bills committee.

I think there is something wrong with the Honourable Frederick FUNG's interpretation of the Basic Law. He said that Members would not be allowed to introduce private bills after 1 July. In fact, this is not the case. The introduction of private bills is allowed under the Basic Law, provided that government revenue and policies are not affected. The Basic Law does not preclude the introduction of such bills. They are actually allowed under the Basic Law. I do not know why Mr Frederick FUNG, being a member of the Preparatory Committee, would opine that such bills are not permitted. Finally, I wish to point out that it is unfortunate for the Bill to be brought up for discussion only on the last two days (perhaps the Honourable LEE Cheuk-yan was not ready to introduce his Bill and join the queue earlier). Nevertheless, if the Bill fails to secure enough supporting votes for passage today, it is my hope that next time when Mr LEE Cheuk-yan is here in this Chamber, we will have the chance to further discuss this issue again.

Mr President, with these remarks, I oppose the Bill.

MR TSANG KIN-SHING (in Cantonese): Thank you, Mr President.

What the Honourable Henry TANG said just now is right. If the Bill is voted down later on, it can be re-introduced. If Mr Henry TANG really has such mind and that the Bill cannot get passed, I hope that he will bring this matter up again at the Provisional Legislative Council (PLC) on behalf of the labour sector, and suggest to hold discussions on the right to collective bargaining.

Just now the Honourable Frederick FUNG mentioned that 1 July soon comes, and from then on, the scrutiny of private bills at the PLC or the future Legislative Council, especially bills on the interests of workers, will become very remote. As we all know, 80% of the seats of the PLC will be taken up by the business sector, and it is in fact a legislative body dominated by this sector. Certainly, the legislation enacted and the rules of the game laid down will be conservative, and tend to safeguard the interests of that sector. This is obvious to all, not to mention the electoral system to be put in place in 1998, which is also tailor-made for themselves. Therefore, it will be extremely difficult to introduce bills in the interests of workers to the Legislative Council, let alone having them passed.

The Honourable CHENG Yiu-tong has been committed to labour campaigns for over 30 years, and I am sure he should know the significance of collective bargaining to the interests of workers. I believe he should also know that either the PLC to be established after 1 July or the Legislative Council to be returned by the 1998 election will be dominated by the business sector. Just as Mr CHENG has said, since there are flaws in the bill on collective bargaining, or imperfections, in the words of Mr Frederick FUNG, which render it unsatisfactory, he may disapprove of this Bill of Honourable LEE Cheuk-yan (but I have no idea how he will cast his vote). If this is really the case, I regard this a further retrogression of the local labour movement! The Federation of Trade Unions (FTU) is a major trade union and labour association in Hong Kong, which has repeatedly claimed its commitment to the interests of the grassroots and workers. Thus, it will be disappointing if it really decided not to support the right of workers to collective bargaining. It should know that this is only a matter of negotiation, and the workers may not necessarily win. The legislative intent is to confer rights on the representatives of workers to call upon their employers for negotiations. It is found that in cases of close down of factories and restaurants, or unjustifiable dismissal of workers, employers usually turned

their cold shoulders to us when we approached them for negotiations. I think people who engage in labour campaigns should have had similar experience.

I will not have any sad feelings regardless of how other Members vote upon the bill on the right to collective bargaining. However, if it is the trade unions that make the passage of the Bill impossible, we will see Members from the business sector all wear winning smiles on their faces, because they are happy to see internal dissension among trade unions again. I hope that Members from the FTU and the Federation of Hong Kong and Kowloon Labour Unions will not make things difficult for the Honourable LEE Cheuk-yan. Instead, they should vote for his Employee's Rights to Representation, Consultation and Collective Bargaining Bill. It does not matter if they do not support it, but at least they should not vote against it.

We all know that Hong Kong legislators will not have the liberty to introduce private member's bills after 1 July like we do now. Mr TUNG Chee-hwa has remarked a dozen times that the Government of the Special Administrative Region under his leadership will be executive-led. Therefore, the PLC will only be a rubber-stamp. Furthermore, only 20 seats of the Legislative Council will be returned by the 1998 direct election. If the Bill cannot get passed today, I do not know how much longer we will have to wait. Will it be the year 2007 or 2047? The world is ever-changing. Although it has not been many years since 1949 when the Communist Party built up itself by relying on the general public and workers, nowadays, any attempt to launch mass movements, social campaigns or labour movement will be thwarted by the Party.

Will colleagues from the FTU have good sleep tonight if they vote against the Bill?

Thank you, Mr President.

MR CHAN WING-CHAN (in Cantonese): This Bill concerns with the question as to whether a mechanism of collective bargaining should be established. Just now the Honourable CHENG Yiu-tong has explained our stand very clearly. However, the Honourable TSANG Kin-shing of the Democratic Party (Oh, he is gone!) queried the firm stand that the Federation of the Trade Unions (FTU) has kept in safeguarding labour interests. Has anything the FTU done over the last 40 years not in the interests of the labour? We have just pointed out clearly that

the Bill has not been scrutinized by bills committee, nor is it sent to any interested parties for comment. If we consider from the standpoint of trade unions, it is a bill that safeguards the interests of the labour. Yet, will it have any operational problems? Besides, will representatives of the business sector or any other people be given the opportunity to attend bills committee meetings to hear more opinions? As negotiations may affect the future operation of the Bill, hence this is a necessary step to go through. It is inappropriate to consider whether a piece of legislation is enforceable after it is passed and put into force.

I am a "freshman" in the Legislative Council. Before I was elected to this Council, I thought it was a very democratic forum. I have been calling for democracy for over a decade. Today, I am so honoured to have a seat here. This reflects that the contributions of the FTU to the welfare of the community and its good standing in the eyes of the general public and labour are indisputable. Otherwise, the FTU will not have secured a membership of over 200 000 to date. Do we get this by deception? Certainly not, as there is no way we can deceive anyone.

Regarding democracy, Mr President, I would like to make a quotation. I am not sure whether it was said by Mr LU Xun, which reads, "To hurl abuse is no way to fight." I am not sure if it was said by Mr LU Xun because I am not very well educated. Democracy is not achieved by fighting. Instead, it is achieved by persuasion through reasoning and education. Only in so doing will others endorse your idea. There is no use shouting abuses. Nowadays, the same applies to the teaching of children, where reasoning and education should be used. Parents may say, "You should do it this way, my son." We have become legislators to serve the people of Hong Kong. As the labour sector should work for the interests of the labour, representatives of this sector should vote out of respect for their fellow electors. This is something the Honourable Members of the labour sector should take into consideration. No Member in this Council is an "idiot", and all of us should have the faith to serve and not to hurl abuse. For example, in dealing with the issue of smoking which we discuss the day before, I tried hard to lobby Members to support the bill concerned. Despite the smiles on my face when I made my speech, to be honest, I would be frustrated if it could not get passed, because this would fail my attempt to save employees of the catering industry from troubles. Nevertheless, I did not shout abuses but merely said, "I have no intention of influencing your choice of vote. You can vote at liberty, but I do hope that you will support me."

Therefore, "to hurl abuse is no way to fight". The more fierce you shout abuses, the less convincing you are. I think this is something that children can understand. I find that the appropriate way to convince others is by persuasion, teaching and reasoning. No one should adopt a slanging approach in this Council. That is the way the Legislative Council should work. The Honourable CHENG Yiu-tong has already told us the result of voting. I hope that all colleagues of this Council should adopt an appropriate way of discussion, and not to shout abuses or oppress others.

Mr President, these are my remarks.

PRESIDENT (in Cantonese): Does any other Member wish to speak? I think that is about it because we have already deviated from the subject. Our focus has now shifted to whether debates in this Council should be in the form of fighting or persuasion.

MR BRUCE LIU (in Cantonese): Mr President, I would like to simply respond to the views expressed by the Honourable Henry TANG concerning whether Members can introduce private Members' bills after 1 July 1997. I am making a clarification only. According to the Honourable Frederick FUNG, Members can do so, but the bill will not get passed. This is what matters. For a private Members' bill to be introduced after 1 July 1997, there are at least two hurdles to clear beforehand, and we therefore

PRESIDENT (in Cantonese): Mr TANG, do you wish to clarify your point? You may if Mr LIU allows you to do so.

MR BRUCE LIU (in Cantonese): Mr President, please let me finish first before asking Mr TANG to clarify his point. I would like to speak a little longer in that case.

Why and which two hurdles? Let me begin with the first one. For a Members' bill to be introduced after 1997, according to the Basic Law, three tests are necessary: firstly, whether the bill would affect government policies; secondly, whether it would affect the political structure; and thirdly, whether it

would have charging effect. Taking a Members' bill on collective bargaining as an example, I think it would definitely be barred before the hurdle of "not affecting government policies", meaning that it would be rejected upon introduction. Well, suppose the bill had the consent of the Chief Executive (only with the consent of the Chief Executive can the bill be tabled), the next step would be voting according to divisions, which is the second hurdle. If this had to be done, I think the chance that the bill could get passed is even slimmer. It would be rejected again.

That is why the bill would not get passed eventually even though it "can" be introduced by Members and tabled in the Council then. The Honourable LEE Cheuk-yan must have that feeling, realizing that it is important to race against time, so he has done his best to introduce his Bill before 1 July 1997 wherever possible. We have to totally understand this because it would have been very strange if he had not introduced such an important bill when he already had it.

So let us check his Bill out to see if it works. I have studied his Bill in detail, especially because I once thought of drafting one myself. Instead of doing it himself, he had a professor of the Law Faculty of Cambridge University draft it. The Bill was very comprehensive and very beautifully drafted, apart from a few necessary imperfections which need to be reviewed. Nevertheless, if we pass the Bill, those imperfections would be the areas where this Council can work on when the Bill needs to be further improved or updated in future. That is all I want to clarify.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr Henry TANG, do you still want to make your clarification?

MR HENRY TANG (in Cantonese): Mr President, I just have one more thing to say. Was the Honourable Bruce LIU clarifying the said point for the Honourable Frederick FUNG, or was he speaking for himself?

PRESIDENT (in Cantonese): He was speaking for himself, but he did not intend to speak in the first place. He did so because you said something earlier on; he was only clarifying the said point for Mr Frederick FUNG.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Government strongly opposes the Bill put forward by the Honourable LEE Cheuk-yan, mainly because it is inappropriate to introduce hastily any legislation to enforce collective bargaining at this stage. In addition, the proposals of the Bill will have far-reaching consequences on the labour relations in Hong Kong. Therefore, it deserves serious consideration to avoid damages before benefits. According to Mr LEE, one of the major reasons for which he introduces this Bill is that for many years, the Government has not honoured its obligations under the International Labour Convention No. 98 (the Convention), and failed to introduce legislation on collective bargaining. However, I must point out that the reality is just the opposite. The Government has discharged its obligations under the Convention, and devised a mechanism appropriate to Hong Kong for handling labour disputes. With this mechanism in place which dovetails with the judiciary system, we have established harmonious labour relations in Hong Kong. I must point out that the Convention does not require the Government to introduce legislation on a mechanism of compulsory collective bargaining.

In Hong Kong, whenever labour disputes arise, both labour and management will voluntarily come into negotiations on a direct basis. The Labour Department, on the other hand, will provide conciliatory services. All along, such dispute handling system has been operating very smoothly. Over the last three years, the average workday lost as a result of labour disputes is only half day for every 1 000 salaried employees. Hence, I think we need not make major changes to the existing system.

Should the Bill be passed, it will bring serious consequences to the harmonious labour relations which we now enjoy. On the one hand, the management will be very cautious in the face of trade unions with legal status in respect of negotiations, and will seek legal advice as far as possible. Trade unions, on the other hand, will fight for the best interests of workers as far as they can with an aim to attract membership. As a result, the relations between the two parties will become so tense that serious conflicts may be triggered at any moment. To fight for a legal status in negotiations, trade unions will have to

come up with all kinds of devices to attract new membership and to confront the management. Hence trade unions are prone to conflicts and disputes among themselves. Furthermore, union and non-union members may have rows or repel each other.

Secondly, as a matter of fact, no statutory mechanism of collective bargaining can guarantee agreement between management and labour or improvements on remuneration and benefits of employees. On the contrary, the detailed procedures as laid down in Mr LEE's Bill concerning the determination of trade union representatives for the purpose of collective bargaining will hinder the existing effective mechanism to settle disputes quickly with labour and management voluntarily engaging in negotiations on a direct basis.

Thirdly, many provisions of the Bill will have serious adverse effects on employers in respect of business operation. For instance, if the management wants to draw up a commercial plan which involves changes in ownership, relocation or restructuring, they will have to first consult the employees. This provision will give rise to unnecessary interference to the investment plans drawn up by business owners and potential investors. As a result, investment activities in Hong Kong will be impeded, and employment opportunities of local workers will be affected in the end.

Mr LEE will move an amendment at the Committee stage, adding a provision to prohibit union representatives from disclosing commercially sensitive information that comes to their knowledge during consultation with the management. However, as there is no penalty clauses nor specific provisions stating that employers can seek compensations from the trade union concerned if the disclosure of commercially sensitive information by the latter inflicts losses on the former. Therefore the proposed amendments cannot help resolve problems brought about by the Bill in respect of the rights to consultation conferred onto employees. It only reveals that the whole Bill has not been well conceived. Amendments are made rashly as remedy when problems are pointed. Such way of doing things is unbelievable.

Fourthly, according to the Bill, a trade union must go through a series of procedures before it is recognized for the purpose of collective bargaining, which include the appointment of an independent scrutineer to determine whether the trade union concerned is sufficiently representative for the purpose of consultation or collective bargaining. The relevant certificate of

representativeness will be valid for three years from the day of issuance. Just now the Honourable LAU Chin-shek has pointed out that this is a good protection. But I must say that due to the high turnover of local labour, the recognized trade unions may not truly represent the interests of employees of their respective companies at that time over disputes, or in the course of negotiations between the two parties on employment problems. This is because the employees who were in support of that trade union may have left.

The major scope of the Bill applies to employers hiring more than 20 employees. I want to elucidate this point. At present, about 18 000 employers in Hong Kong hire more than 20 employees, which involves over 1.3 million employees. But civil servants, who accounts for over 5% of the total work force in Hong Kong, are excluded because the Bill has no bearing on them at all. The Bill is more relaxed in respect of the right to collective bargaining, which only applies to employers having more than 50 employees. But I can tell you that once the Bill is passed, it will have effect on some 6 300 undertakings in Hong Kong where nearly 100 000 employees are working and which accounts for about 40% of the total work force, including civil servants. Thus, we can see that this Bill has very, extensive and far-reaching effects on Hong Kong. Hence, as responsible legislators, we must think twice and should not pass the Bill hastily.

I am not going to keep on pointing out the weaknesses of this Bill, because I suspect that the majority of Members who support it will behave like tourists who are hunting for gifts in the course of voting. Since there is not much time left for buying gifts, when someone promotes the sale of products of a famous brand, they will all jump to them regardless of their quality and style, and are ready to pay for them so that they can have gifts for their friends and relatives. In so doing, they will have their duties done and perhaps expect a return in future. The product itself is not a matter of concern. I hope that our Honourable Members will not behave like that. In the meeting held on the 28 May, the Labour Advisory Board (LAB), an organization which is very familiar to negotiations and has great interests on such matters, examined in great details the Bill put forward by Mr LEE Cheuk-yan. The majority of members did not support it because of its far-reaching adverse effects on the interests of both employers and employees. They needed more time for consideration, and agreed that the Bill should be fully examined by the Labour Relations Committee (LRC) under the LAB first, and then submitted to the LAB for further discussions.

As for the Committee Stage Amendments to be moved by Mr LEE, they have not been considered or discussed by the LAB at all. In the light of the decisions made by the LAB, the Labour Department will examine in detail the mechanism of consultation and negotiation between labour and management, and make suggestions to the LRC under the LAB by drawing experience from overseas. Here I would like to solemnly undertake in front of Members representing the labour sector, that the Government fully respects their stance on the right to collective bargaining, and will put forward a proposal for making substantive improvements on the mechanism of negotiations between management and labour as soon as positive considerations are made to the suggestions of the LAB.

Mr President and Honourable Members, we must treasure the harmonious labour relations that Hong Kong enjoys. The rate of strike and the workday lost as a result of labour disputes are among the lowest in developed countries. Yet, if the Bill is passed, harmony will turn into confrontation. This will deal a severe blow to the economy of Hong Kong and discourage foreign investors. As a result, overall employment opportunities will drop, and the damage caused to the prosperity of Hong Kong is incalculable. This is to the detriment of labour.

I would also like to reiterate that this Bill introduces a brand new legal mechanism of collective bargaining to Hong Kong. The drafter, who is said to be an overseas expert, has not instituted extensive consultation with local employers' or labour groups before he drafted the Bill. Its text is essentially copied from foreign legislation. No bills committee has been formed to examine in detail the provisions or implications of it, nor have any bodies of local employers and labour or the general public been consulted. Under such circumstances, political parties or Honourable Members who vote for it shall bear the consequences that it brings about if it is passed in such a hurry. Just as the last sentence of the editorial which I quoted earlier on, "This is an inappropriate and irresponsible way of doing things."

Mr President, the speech I just delivered may be a bit harsh. But I believe that Honourable Members who have been working with me for two years know that my colleagues of the Education and Manpower Branch and I have been "going here and there", to borrow the words of Mr LAU Chin-shek, to deal with labour issues over the last two years. We have been "going here and there"

mainly to obtain a tripartite consensus among employers, employees and the Government on proposals for the interests of employers and employees. Improvements made in this respect over the last two years is obvious to all. Sometimes we are criticized by the business sector in our attempts to seek tripartite consensus. But it seems to me that it was only after I took office as the Secretary for Education and Manpower that the term "collaboration between government officials and labour" appeared in this Council, which I have never heard of before. My speech is indeed a very bitter and painful one. I still hold that there is an actual need for us to make gradual improvements on the rights and benefits of both employers and employees in Hong Kong. We have in fact done a lot in this respect over the last two years. But I hope that in the coming two years, after the setting up of the Hong Kong Special Administrative Region Government, we will continue to pursue it. Should I remain in office by then, I will continue this pursuit too. However, the introduction of a statutory mechanism of collective bargaining for no reason and without full consultation, and just copying blindly from overseas experience which the majority of them can be said to be unsuccessful, will, in a broad sense, bring serious consequences to the economy of Hong Kong, and in a narrow sense, will do no good to local employees either.

I hope that if you understand the stance of the Education and Manpower Branch on labour issue over the last two years, you will consider in great care the serious adverse effects brought about to local labour by the passage of the Bill.

With the aforesaid reasons, I earnestly urge Honourable Members to examine the Bill put forward by Mr LEE Cheuk-yan in a rational and responsible manner, and to vote against it after careful consideration.

Thank you, Mr President.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, the Secretary for Education and Manpower (the Secretary) presented a long list of his viewpoints, describing the present labour relations as very

PRESIDENT (in Cantonese): Mr LEUNG, do you wish to clarify or otherwise? Do you wish to speak now?

MR LEUNG YIU-CHUNG (in Cantonese): I wish to speak.

PRESIDENT (in Cantonese): Why did you not say so when I asked earlier if any Member would wish to speak? Usually we let Public Officers speak last before they reply to Members, but occasionally I am less strict about this than I should. However, a number of Members have already spoken.

MR LEUNG YIU-CHUNG (in Cantonese): Just because you were less strict, I thought you would still be. (*Laughter*)

PRESIDENT (in Cantonese): So you want to refute the Officer after he has spoken? Now it is Mr LEE Cheuk-yan's turn to make the final reply. I was less strict because many Members were not ready then, and it would be too early for the Officer to speak. After you have spoken, I will still ask him to speak once more. I have to let him speak once more; otherwise, it will be very unfair. Now you may speak.

MR LEUNG YIU-CHUNG (in Cantonese): Thank you, Mr President. Mr President, the Secretary cited a number of situations in order to emphasize that the present labour relations are very good. He also quoted some figures such as the number of lost workdays in order to elaborate on how good the situation is. I really hope the Secretary will explore this so-called good labour relations to see if they are reality or fantasy. Just as the Secretary said, we lack the kind of legislation to ensure that workers can collectively hold discussions with their employer. On many occasions, owing to the lack of protection by law, no matter how workers are discontented or how inappropriately or unreasonably they are treated, they dare not raise complaints to their employer. What consequences they will have to face after they have complained? The answer is simple: they will be sacked the next day. This is one of the reasons why I have introduced the Unfair Dismissal Bill. Without protection by law, workers will be asked to leave even if they make the smallest complaint of all. I remember clearly how I tried to help the workers with the Jing Kung Electronics Factory back in 1986. The workers did form a union on their own, and went to negotiate with their employer directly. What were the results? More than 30 of them were dismissed while the negotiation was still going on. We asked to negotiate with the employer, and we were joined by representatives of many

other trade unions, but the employer said that it was not our business, that we had no right to be involved in the negotiation because we were not employees of the factory, and that we should mind our own business! I was not qualified to negotiate with the employer. As the Honourable CHENG Yiu-tong said earlier on, over the past 30 years, the labour sector has never stopped fighting for the right to collective bargaining. Why? It is because workers hope to be given the right and opportunity to have dialogue with their employer. However, workers have never had that right. Nevertheless, labour relations seem to be good on the surface for most of the time. Why? It is because no labour disputes have ever happened. Why not? Well, if workers are discontented, their employer will simply ask them to leave. Things are as simple as that. Therefore, the harmonious labour relations as people emphasize are probably only of the surface. I hope the Secretary will do some more research to see if labour relations are really that good; if not, they are not true. To cite an example, why would so many workers petition to the Governor's house or strike for no reason in the past? Although strikes are rare now, they were frequent in the past. They do exist. Therefore, I hope the secretary will give some serious thought about it.

Secondly, the secretary said that the passage of the Honourable LEE Cheuk-yan's Bill will have extensive implications, and Members therefore have to be careful. In my opinion, just because of the claim that there will be very extensive implications, there is the need to introduce a law. If only one person or two are involved, it is not necessary to introduce a law. If only two organizations are involved, why bother making a law? The purpose of legislation is to deal with common phenomena of society; otherwise, we do not need to introduce a law. Just as the Secretary has said, the right to consultation may involve 50% of the people whereas the right to collective bargaining may involve 40%. This is the most important part. Since so many employees are affected, why should we not introduce a law? If no law is introduced, how can we protect workers' rights? Therefore, I hope the Secretary will again pay attention to this issue.

Thirdly, the Secretary gives an undertaking to those of us who are actively involved in union activities that later on he will actively consider the right to collective bargaining, or will actively consider in that direction. Earlier on, Mr CHENG Yiu-tong said clearly that the fight for the right to collective bargaining has been going on for over 30 years. Why were the Government not active in those 30 years? Why has it started to be active just for a few days? Maybe it

has become active only after the Secretary took up the post! Why? Why now? Why not in the past? The Secretary has now undertaken to actively consider the issue when we are about to pass the Bill, which is really too late. If the Government does nothing in future, we cannot do anything about it either, because as you are all aware that under the election arrangements of the Provisional Legislative Council or the future Legislative Council, the chance that those of us representing the grassroots or the labour sector will return to this Chamber is slim. Now that the Secretary himself is clear on the way forward and realizes that the problem does exist and must be faced, I do not see why he does not support the Bill. Why should there be constant procrastination? On that basis, Mr President, I do not think I am speaking for no reason. As a matter of fact, after the Secretary had spoken, I found many areas of his speech to be inconsistent and problematic, which were unacceptable to me, which was why I had to take the opportunity to speak once more.

Thank you, Mr President.

PRESIDENT (in Cantonese): You seem to have become the main speaker making the final reply.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I thank you for being so impartial. Let me not waste too much time. I would like to simply make two points in response. Firstly, after I have arranged the record of my speech, I hope Mr LEUNG will read it immediately and read it carefully. That is my first point. He does not have to hurry for I believe that it is crystal to all as to how he will vote. Secondly, regarding the undertaking that I made earlier on, I doubt whether Mr LEUNG can cite even one instance where the Education and Manpower Branch failed to fulfil its undertaking in the last two years. Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Thank you, Mr President.

The Secretary for Education and Manpower just now concluded his speech by saying that it would be like tourists rushing for souvenirs if Members supported the Bill. Yes, it is correct. If Members support the Bill, it will be

the best present to all workers in Hong Kong at the time of reunification with China. On behalf of the working class, I would like to thank all of you.

First of all, I wish to thank Members who spoke on the Bill. While I am not going to repeat the viewpoints of Members who are in support of the Bill, I will try to respond to opposing remarks. I would also like to thank the Government, the Chief Executive's Office and the industrial and commercial sectors for joining forces to canvass Members for opposition to the Bill, which enables me to learn the very importance of unity as demonstrated. Besides, I wish to extend my special thanks to many Members of the Council who have spent much time in studying the Bill no matter whether they support it. Although no Bills Committee on the Bill was formed, I know you have studied the Bill in great detail. I am also grateful to the Labour Affairs Committee of the Hong Kong Confederation of Trade Unions and my colleagues for their considerable effort in dealing with the Bill since last year. Lastly, I have to thank the person who has helped me draft the Bill. A lot of friends from the Hong Kong Federation of Trade Unions, the Democratic Party, the Hong Kong Association for Democracy and People's Livelihood and the Honourable Miss Christine LOH have a high opinion of the drafting of the Bill. The credit should go to one of my professors, Professor Bob HAPLE, who is an expert in comparative labour law at the Cambridge University. The Bill drafted by him can indeed be regarded as unassailable despite some possible imperfections. However, I must clearly point out that our bill is not copied from overseas legislation. Since there is no law on collective bargaining in the United Kingdom, we cannot possibly copy anything. We have only sent someone to the United Kingdom to discuss the issue with Professor HAPLE and see what kind of legislation is most suitable for Hong Kong.

Mr President, I would like to speak briefly on the specific details of the Bill before I respond to the arguments put forward by a number of Members and the Government. Firstly, the Bill aims at granting workers a right to representation, which means that workers can be represented by trade unions in labour disputes. For many workers who have no knowledge of labour legislation and do not know how to communicate with their employers, they can be represented by trade unions to carry on a dialogue with the employers. Timid employees can also turn to trade unions for help in solving their problems. This is the first right in question — the right to representation.

The second right in question is the right to consultation. The right to consultation I refer to does not apply to everything in practice. My Bill has clearly provided that only some special issues are subjected to consultation, such as changes in business ownership. In the course of handling labour disputes involving changes in business ownership, we are often asked by workers, "What about our severance payment? Will our seniority be recognised? What about our benefits?" Their new employers would then give them a document in English which, however, is unintelligible to them. Now we hope that employers will have discussions with workers in advance rather than merely giving them a document. For example, if the place of work is to be relocated from Tai Po to Yuen Long, the employer can first discuss with workers such things as transportation arrangements, availability of free transportation and travelling allowance, compensation for the long travelling time or any assistance that could be offered to workers. These are what we are asking for. In other words, we want consultation between employers and employees. The Honourable James TIEN just now said that if a company consisted of 20 workers who belonged to various trade unions in groups of three, it would be too busy for the employer to consult all of them. However, I would like to make it clear that if these 20 workers have to be consulted, the respective trade unions can indeed only represent their own members and not any other people. Of course, to be honest, it is quite likely that other workers will also seek representation from trade unions when problems arise. In that case, it is most likely that a trade union representative is going to negotiate with the employer. What we are talking about is just consultation. In fact, there are no such big issues over which employers must give in to employees. They just have to consult their employees To be frank, I do not like the word "consultation" very much because employers can totally disregard the views of workers even after consultation. But it is most important that the Bill as a whole involves the right to collective bargaining. I have to point out clearly that the Bill will have no cost implications as employers do not need to pay a penny under it. What we are talking about is the right to communication only. Actually, collective bargaining takes place every day in a free market. When I discussed the Bill with Mr Donald TSANG, he said it would violate the principle of free market. There are also some commentaries of the like. However, bargaining takes place every day in a free market. In some cases of collective bargaining, it is a powerful body which confronts the general public. For instance, how can the general public bargain with property developers who have formed a syndicate of monopoly? They are collective in nature. Have fuel companies ever negotiated with anybody? Can you bargain with them over fuel prices? No.

They are collective in nature. They are so strong that they can enhance their self-interest by collective forces. Therefore, collective bargaining takes place in Hong Kong every day, but the ones who bargain are neither workers nor members of the public. It is the most powerful employers and consortia that can negotiate. What I have to do today is to give the right to collective bargaining back to the most powerless and vulnerable group in the community — the workers of Hong Kong.

The right to collective bargaining has a few merits and value of great importance. Firstly, although Miss Christine LOH just now said that the Bill would not be necessarily supported by all Members of the democratic camp, I have to say that this is a very important step in democratization, as there is democracy in labour apart from that in politics. Collective bargaining is democracy in labour where a trade union can be chosen to assist workers in bargaining. If we are in support of collective bargaining, it actually ascertains one thing: workers are men with human needs rather than commodities. Therefore, we have to join efforts to discuss with employers the needs of workers in labouring.

The second reason for requiring the right to collective bargaining is related to my response to the Honourable Paul CHENG's speech just now. Mr CHENG said, "If it ain't broken, why fix it?" But I must say, "It has been broken." Labour relations have been broken as a whole. They do not work. If they worked, I would not have introduced the Bill. At present, the entire labour relations are imbalanced. How imbalanced is it? Mr James TIEN would definitely say, "There are no such cases of imbalance. If you do not like your present job, you can just look for another." This is what he said just now. However, times have changed, and this is no longer the case in Hong Kong. In times of economic transformation, it is no longer so easy for local workers to change their jobs any time out of dissatisfaction. Now the term "factory" is almost unknown. It is a hard time of employment. Very often, workers cannot share the profits of big consortia. Therefore, the right to collective bargaining is particularly required at this time. Among the three million workers in Hong Kong, how many of them can negotiate with their employers on a collective basis? Well, let us put aside the question of collective bargaining. How many of the workers can discuss their wages with employers? Maybe professionals, "kings of employees" and many highly skilled workers can do so even on a one-to-one basis. But we should not forget that the majority of workers in Hong Kong are neither highly skilled nor professional. They only possess some general skills.

If they leave their jobs, other people will queue for the vacancies left by them. Thus, most workers are in trepidation, having no guts to bargain with employers on their own. They could do nothing but bear it, even though they feel aggrieved. This is our labour relations. If you think this is not the case, my Bill will be of little value. If you think this is the case, my Bill will be able to alter the situation to achieve a better balance in labour relations. Why? It is because only through collective bargaining can workers bargain for the wages and working conditions they want. If they bargain on a one-to-one basis, they are bound to lose. Collective bargaining, however, gives workers an opportunity to have joint discussions about issues of mutual concern. This is what we have to do — to achieve a better balance in labour relations and improve the existing wages and working conditions of workers. Why does the level of wages decline year by year? It is because workers cannot unite themselves. Why is it so? It is just because they do not have the right to collective bargaining. If trade union movement is likened to a body, the right to collective bargaining would be the soul. Now we have to give the soul back to trade union movements in Hong Kong, which is something we should do at present. Therefore, I hope you will lend your support to my Bill because only this can lead to more balanced labour relations. Mr Paul CHENG just now said that he did not want the economy of Hong Kong to go down the slippery slope. However, this is just the way workers are going today. I hope that more balanced labour relations can be fostered if we do not want workers to keep on going that way. But be sure not to consider the right to collective bargaining as something omnipotent. To be frank, even if the legislation on collective bargaining is passed, it can only give trade unions statutory recognition. What can it bring about afterwards? Probably not too much. The greatest gains may be that employers cannot always take the lead in labour relations, work and other aspects while workers will be able to participate and express their views, enhancing mutual communication between employers and employees. This is what we have to pursue now in the hope of balancing labour relations and enhancing communication between labour and management, so that employers will give up their say in various aspects, in particular wages and working conditions, and listen to the views of their employees.

Just now the Honourable Henry TANG said that the telecommunications industry was operating smoothly and there would be a lesser need for legislation if good cooperation existed between the trade union and the management of the Hong Kong Telecom. However, the Hong Kong Telecom does not recognise its trade union at present. If the trade union has to discuss any matters with the

management, they could only talk while drinking in restaurants or pubs. Now the so-called good co-operation is something like this. It is just because there are so many similar cases where trade unions cannot negotiate with employers that legislation is required. If employers are ready to negotiate with employees and trade unions, there will be no need for legislation. According to WONG Wing-ping, voluntary negotiations have been a great success. But the problem is that such negotiations have indeed failed. He must sort out one thing. In delivering his speech, he said that International Labour Convention No. 98 (the Convention) was now fully complied with and a mechanism was in place to settle labour disputes. Yet, the Convention does not lay down the mechanism for settling labour disputes; nor is it saying something so simple as workers and bosses sitting together for discussions as arranged by the Labour Relations Service. The Convention is about collective bargaining rather than the mediatory function of the Labour Relations Service. Therefore, in our view, voluntary negotiations are not successful as employers are reluctant to negotiate with employees. Under such circumstances, we have to safeguard employees' right to collective bargaining by means of legislation.

Another big problem has come up just now. In fact, WONG Wing-ping has been opposing the concept of the right to collective bargaining even though he keeps on saying that what he opposes is only the legislation introduced by me. In that case, how can the Convention be complied with? WONG Wing-ping has just said that trade unions very often.....

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you cannot address him by name.

MR LEE CHEUK-YAN (in Cantonese): The Honourable Secretary.

PRESIDENT (in Cantonese): You do not have to say "the Honourable Secretary". Just "Mr WONG Wing-ping" or "the Secretary for Education and Manpower" will do.

MR LEE CHEUK-YAN (in Cantonese): So I cannot call him "Brother Ping".

PRESIDENT (in Cantonese): It is not so good either for some Members to say "Brother Tong" just now. We had better be more decent.

MR LEE CHEUK-YAN (in Cantonese): The Honourable Secretary has just said that trade unions very often would fight for as much rights and interests as possible when they have the right to collective bargaining. I would like to tell him that there is a concept called "concession bargaining", or compromised negotiations. Now overseas trade unions have compromised negotiations with employers and take the initiative to cut their own benefits when they find their employers in deficit. Why are they willing to cut their own benefits? It is because they can discuss pay rise with their employers who have made a profit. However, this has never happened in Hong Kong. When there is a profit, employers do not have any discussions with employees. When there is a deficit, how can they expect the employees to negotiate with them? Thus, the right to collective bargaining is in the interests of employers because employees will consider their situation when they are in deficit. This is very important protection.

Therefore, I hope Members will support the Bill. I may not be able to respond to all arguments. But as what the Honourable Secretary said, he is not prepared to further point out the flaws in the legislation introduced by me. He is not prepared to do so because he can point out no flaws at all. Thus, I am not going to respond to all remarks. But I have to say that even if the Bill is passed, we will have to keep on working hard in this direction since our task has not been accomplished yet. It is by no means easy to acquire the right to bargaining. I hope all workers will pay attention to this issue.

Finally, I would like to extend my heartfelt thanks to fellow Members including those of the Hong Kong Association for Democracy and People's Livelihood, the Democratic Party, the 123 Democratic Alliance and The Frontier, and the Honourable Miss Christine LOH. They have studied my Bill very seriously. I know Mr Paul CHENG and Dr the Honourable LEONG Che-hung have also read the Bill. Thank you for studying my Bill in such a serious manner. But lastly I would like to respond to the remarks made by the Hong Kong Federation of Trade Unions (FTU). It is a pity that Members from the FTU cannot support me as they consider the existing option not the best in itself.

However, I want to tell them that it is my fervent hope to work out the best option with them. Yet, we have not been able to really come together and deliberate on the best option over the past few months. I have set aside a lot of time for joint examination of the option. Unfortunately, Members from the FTU have never told me the best option in their mind; otherwise, I would surely have discussed the issue with them.

Thank you, Mr President.

MR PAUL CHENG: Mr President, Mr LEE referred to my speech earlier and said that "if it ain't broken, why fix it?" I was referring to Hong Kong, not trade union relationship, and anybody who loves Hong Kong cannot possibly vote for this kind of Bill.

PRESIDENT: And you said you borrow that from Martin LEE who borrowed that from the Americans.

Question on the Second Reading of the Bill put.

Voice vote taken.

PRESIDENT (in Cantonese): Council shall 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 Employee's Rights to Representation, Consultation and Collective Bargaining Bill under the name of Mr LEE Cheuk-yan be read the Second time.

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? The result will now be displayed.

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, Mr James TO, 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 LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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 LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 30 votes in favour of the motion and 25 against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

EMPLOYEE'S RIGHTS TO REPRESENTATION, CONSULTATION AND COLLECTIVE BARGAINING BILL

Clauses 7, 9, 10, 15, 17, 18 and 22

MR LEE CHEUK-YAN (in Cantonese): I move that clauses 7, 9, 10, 15, 17, 18 and 22 be amended as set out in the paper circularized to Members.

As a matter of fact, these are all technical amendments. For example, clause 7 is amended to clarify that only issues relating to the interests of employees are subjected to consultation with trade unions; a provision is introduced to clause 9 to state the requirement for trade union representatives to keep secrets; clause 10 is amended to provide that the acts which may be declared void by the Labour Tribunal refer to those related to the claimant; for clause 15, it is also a technical amendment only; a provision is introduced to clause 18 to stipulate that a collective agreement shall be presumed to be valid for one year if it does not expressly set out the time limit for application; it is another technical amendment with clause 22, which points out clearly that for the purposes of collective bargaining, if a trade union fails to commence negotiations with the employer within one year, it shall be deemed to give up its own right to negotiation. The aforesaid are all technical amendments. I hope you will support them.

Thank you.

Proposed amendments

Clause 7 (see Annex XIX)

Clause 9 (see Annex XIX)

Clause 10 (see Annex XIX)

Clause 15 (see Annex XIX)

Clause 17 (see Annex XIX)

Clause 18 (see Annex XIX)

Clause 22 (see Annex XIX)

Question on the amendments put.

Voice vote taken.

CHAIRMAN (in Cantonese): Committee shall proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question now that the amendments moved by the Honourable LEE Cheuk-yan be passed.

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

CHAIRMAN (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, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

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, Miss Christine LOH, 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 LO Suk-ching and Mr NGAN Kam-chuen voted against the amendment.

Dr LEONG Che-hung abstained.

THE CHAIRMAN announced that there were 28 votes in favour of the amendment and 26 against it. He therefore declared that the amendment was carried.

Question on clauses 7, 9, 10, 15, 17, 18 and 22, as amended, put and agreed to.

Clauses 1 to 6, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23 to 27

MR LEE CHEUK-YAN (in Cantonese): I move that clauses 1 to 6, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23 to 27 be amended as set out under my name in the paper circularized to Members. The amendments are merely the inclusion of some Chinese terms in the English text of the Bill. Thank you, Mr Chairman.

Proposed amendments

Clause 1 (see Annex XIX)

Clause 2 (see Annex XIX)

Clause 3 (see Annex XIX)

Clause 4 (see Annex XIX)

Clause 5 (see Annex XIX)

Clause 6 (see Annex XIX)

Clause 8 (see Annex XIX)

Clause 11 (see Annex XIX)

Clause 12 (see Annex XIX)

Clause 13 (see Annex XIX)

Clause 14 (see Annex XIX)

Clause 16 (see Annex XIX)

Clause 19 (see Annex XIX)

Clause 20 (see Annex XIX)

Clause 21 (see Annex XIX)

Clause 23 (see Annex XIX)

Clause 24 (see Annex XIX)

Clause 25 (see Annex XIX)

Clause 26 (see Annex XIX)

Clause 27 (see Annex XIX)

Question on the amendments put and agreed to.

Question on clauses 1 to 6, 8, 11, 12, 13, 14, 16, 19, 20, 21 and 23 to 27, as amended, put and agreed to.

Long title

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the question be amended by adding the Chinese text as set out in the paper circularized to Members. The amendment is just the addition of the whole Chinese text.

Mr Chairman, the Employee's Rights to Representation, Consultation and Collective Bargaining Bill has passed through Committee with amendments. I shall move the Bill.

Proposed amendment

Long title (see Annex XIX)

Question on the amendment put and agreed to.

Question on Long title, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

MR LEE CHEUK-YAN reported that the

**EMPLOYEE'S RIGHTS TO REPRESENTATION, CONSULTATION
AND COLLECTIVE BARGAINING BILL**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill put.

Voice vote taken.

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

Mr Ronald ARCULLI and Mr James TIEN claimed a division.

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

PRESIDENT: Truly high-spirited.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Employee's Rights to Representation, Consultation and Collective Bargaining Bill under the name of Mr LEE Cheuk-yan be read the Third time and passed.

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? 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, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG 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, Miss Christine LOH, 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 LO Suk-ching and Mr NGAN Kam-chuen voted against the motion.

Dr LEONG Che-hung abstained.

THE PRESIDENT announced that there were 28 votes in favour of the motion and 26 against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

TRADE UNIONS (AMENDMENT) BILL 1997

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

PRESIDENT (in Cantonese): The Council now resumes the Second Reading debate on the Trade Unions (Amendment) Bill 1997 (the Bill). Mr LEE Cheuk-yan, you cannot go back to speak on the previous bill.

MR MICHAEL HO (in Cantonese): Mr President, I now report the deliberations of the Bills Committee on the Bill in the capacity of the chairman of that committee. The Bill is introduced by the Honourable LEE Cheuk-yan. Its main purpose is to relax the laws on trade unions. The Bills Committee has examined the Bill and met six deputations from employers and employees.

One of the controversial proposals of the Bill is the proposed replacement of the existing electoral fund by a political fund. This proposal has not received support from some members of the Bills Committee, the deputations or the Administration on the grounds that it permits the use of union funds for political purposes. They consider that union activities might be politicized and regard such tendency as incompatible with the primary objective of a trade union and is not in the interest of union members. Most of the members and deputations who are in support of the proposal consider that the setting up of a political fund will help the pursuance of workers' interest through political means. In order to allow greater flexibility on the use of union funds, Mr LEE Cheuk-yan will move further amendments to retain the present provisions on electoral fund as well as to specify that union funds can be used for any purpose subject to a majority vote of union members. The Bills Committee has not reached a consensus on this matter.

Another major amendment proposed in the Bill is the proposal to allow persons who have not been engaged in the trade with which a union is concerned to become an officer or executive of that union. The proposed amendment has not received majority support from members or deputations. They are of the opinion that such persons might not be competent in striving for the interest of union members because they do not know the actual situation of the trade. However, members who support the amendment hold the view that trade unions should be given full autonomy in selecting its officers. It is also pointed out that, as section 17(2) of the Trade Unions Ordinance (TUO) will be deleted under this proposal, it may have the effect of allowing persons who are not ordinarily residents in Hong Kong to become trade union officers. Mr LEE Cheuk-yan has indicated that this is not his intention and that he will move an amendment in the Committee Stage to retain the ordinary residency requirement.

The Bill also proposes that approval of the Governor is not required for a local trade union to make contributions to overseas trade unions or become their member. Some members and deputations regard affiliation at the international level of utmost importance following the growth in multi-national enterprises. However, members and the Administration who are against the proposal are deeply concerned about possible internationalization of union activities whereby local trade unions will be unduly influenced or controlled by overseas political organizations. The Administration has also reiterated that it has been very

careful and flexible in examining application by local trade unions for affiliation with overseas organizations. So far, no such applications have ever been rejected. Therefore, the Administration considers that there are no sufficient grounds for removing these existing essential measures.

As regards the formation of trade union federations, most members support the proposed amendment as it is compatible with workers' freedom of association and conducive to the development of trade union movements. The Administration, however, objects to the proposal on the ground that federations bonded together for political purposes only will be inconsistent with the primary role of trade unions.

Lastly, the Bills Committee has no strong views on the relaxation of age requirement for executives of trade unions as well as the procedures for changing the name of a trade union. The Administration has stated that it will not support the Bill or the amendments to be moved later by Mr LEE Cheuk-yan but has agreed to follow up on the relevant proposals raised in the Bill in its future review of the TUO. The Bill has been studied by the Labour Advisory Board (LAB) as well. The employer representatives at the LAB do not support the Bill whereas the employee representatives have expressed strong reservations on certain provisions. As such, there is no clear consensus among LAB members in support of the Bill in whole or in part. After detailed discussions, the Bills Committee has not reached any consensus on individual contentious proposals.

Mr President, these are the outcomes of deliberations of the Bills Committee. Now I would like to turn to the stance of the Democratic Party. It is in support of the various amendments proposed in the Bill. First of all, I would like to talk about the electoral fund. The relevant provision will be amended later so that a trade union can use its funds for any purpose subject to a majority vote of members of the union. We think that this will enable a trade union to have some flexibility in the management of its own finance. Under existing provisions, the use of funds is in fact very restricted. The present TUO restricts union funds to be used for certain purposes and this is provided for in section 31 of the TUO. If the funds are used for purposes other than those specified, the Registry of Trade Unions (RTU) can in theory prosecute the trade unions concerned. We are greatly worried that, as seen in past years, some trade unions used their funds on advertising in newspapers, for example, as in the "June 4th"

event, they used their funds in support of certain bills or other publicity. We do not know whether these grey areas have been caught by the restrictions on the usage of trade union funds. If, in future, the Special Administrative Region (SAR) Government resorts to certain high-handed measures or there happens the situation like the Singapore Government used to deal with their trade unions, then prosecution can indeed be taken and it can easily lead to bankruptcy of the trade unions. Therefore, we are in support of this amendment.

As regards the proposal to allow persons who have not been engaged in a trade with which the trade union is concerned to become officers or executives of such union, it actually is very difficult to prove their line of work. If members of a trade union consider that the appointment of certain people to become its executives or officers is of benefit to the union, then I would think that the executives of the trade union is in the best position to know their own needs. If they think that such appointment is conducive to the development of the trade union, I do not think it is necessary to make legislative restrictions on that matter.

As for the formation of trade union federations, I really do not agree with the Administration or some of the employer representatives that their formation is definitely for political purposes. As we can see, there are many trade union federations in the world and local trade unions with all kind of political affiliations have long been fighting for that goal. Therefore, we should not be unduly worried about it. Regarding the relaxation of age requirements and change of trade union names, it is obvious that, as the legal age has been lowered from 21 to 18, at which age one should be able to act on his own accord, there is no reason why a person of that age cannot become an officer of a trade union. As for the change of name of a trade union, for those who have engaged in trade union matters would know that, if a trade union is to change its name, it has to call on all its members and obtain the endorsement of over two-thirds of its members. But this is a very difficult task to accomplish. As such, I think this can be left to the trade union concerned to decide for itself.

Mr President, this is the sixth bill on labour legislation in today's meeting. In the previous debates, the Secretary for Education and Manpower once indicated that the present labour-management relations are good, the loss of workdays due to strike is not much, and he is therefore of the opinion that our labour-management relations are rather good. In those aspects, I have to

express my disagreement because it is now too easy to dismiss employees. Some employees may have been sacked before they can take part in a strike. I hope the Government can adopt a more open attitude and do not ignore the need to carry out a review simply because the system seems to operate all right. It is because that is not the case. If the review is not done properly, my feeling is that the present situation will persist. Earlier, we have passed the bill on collective bargaining and obviously the Government will have a lot of things to do. However, I think this is also a very good opportunity for trade unions to further develop so that the trade unions and the employers of Hong Kong can develop more harmonious labour-management relations.

Mr President, as the chairman of the Bills Committee, I have a very strong feeling which came up in the course of our deliberations. While meeting with the deputations from employers and employees, I feel that neither the employers nor the employees were prepared to make any concessions. In fact, in the course of such discussions, I really thought that there could hardly be any genuine discussion. The employers' groups were not prepared to support anything or to make any concessions, and the employees were taking the same attitude. Mr President, if both employers and employees in Hong Kong insist on their extreme attitudes, it will be very difficult to have a satisfactory discussion in future. I have been the chairman of a number of bills committee on labour-related laws recently. At the beginning of a meeting of one of those committees, the subject of which I do not remember now, Mr James TIEN said that he wanted nothing and would definitely not give his support whatsoever. However, Mr LEE Cheuk-yan was very persistent on every issues. Yet it came to a happy ending because Mr James TIEN and Mr LEE Cheuk-yan could iron out their differences and the bill concerned was passed eventually. Right now, I cannot remember which bill it was. In fact, if employers and employees can take a more open attitude on various matters, then a lot of things will become negotiable. If the Bill is passed, neither the Government nor the employers should be too worried because compromise can be reached by both sides if we really put in some more efforts.

Mr President, this is the sixth bill that we have debated today. In this Chamber, when I am excitedly involved in a debate, I believe that my use of words might frequently be a bit out of line and I hope Mr Joseph WONG and his colleagues do not mind that. Today, the Democratic Party supports all the six

bills and I hope that employer representatives with whom we have held long discussions would not mind my use of words either. I look forward to having more communications and cooperation with them in future. Although this is the last labour-related bill we have debated in this Chamber, we Democrats promise that, after we have left our office as Members, we will continue our communications with employers and employees to work towards even more harmonious labour-management relations.

Mr President, with these remark, we support this Bill.

MR JAMES TIEN (in Cantonese): Mr President, most of the bills on labour, trade union, employers and employees are likely to get passed today. With the dispute we have engaged so far, I think there is still a message which remains unclear. The employers and employees in Hong Kong enjoy good relations and everything is negotiable between us employers and the employees. The demand of employees will always be met after discussions. Therefore, I do not see a dire necessity for a trade union to come in between. The presence of trade unions does not facilitate the solution of problems. Instead, they will just exaggerate the differences. Why? It is because they want to "grab" more members so that they can earn more membership fees. If that is not the case, what purpose does a trade union serve?

Mr President, there are altogether six bills about trade unions today. If you bring them together one by one, you will see the whole picture. The previous bills have not touched the issue on money but this one does. It is mentioned in paragraph (c) that, apart from their welfare funds and political funds, local trade unions also receive financial contributions and donations from overseas trade unions or similar organizations. This is a well-known phenomenon. But how can you prove it? Whether money spent on holding demonstrations and making banners by a trade union should be regarded as expense incurred on political fund or welfare fund, the judgment is entirely up to you. You can raise a lot of money overseas but deny that when you come back here. That is to say, not only the funds raised in Hong Kong will be used for political or welfare purposes, money raised overseas, the sources of which have been withheld, can still be used for such purposes. In that case, how can the money be differentiated?

Also, it is mentioned in paragraph (e) that the provision on joining overseas trade unions by local trade unions will be removed. We have always emphasized that the Government of the Special Administrative Region should uphold the principle of "Hong Kong people ruling Hong Kong and a high degree of autonomy". Why do the trade unions in Hong Kong lack confidence in themselves? If they are run properly, many people will be keen to join them. If this is the case, why must they affiliate with trade unions in the United States, the United Kingdom, Poland or other countries? Do you think that you are no good? Why do you want foreigners to intervene and teach you how to run your own business? I do not think that you need these.

The Bill also makes reference to trade union federations. Just think about this: if there is a problem pertaining to a taxi driver, how can you discuss the problem with a trade union on garment or catering? Mr Michael HO said that he aims to solve problems. You aim at solving problems too. But inter-trade federations are no solvers of problems; they are their creators. In fact, there is no need to hold any discussions. How can those people in the garment trade know about the problems in the taxi trade, and how can those in the taxi trade know about the problems in catering business? If you belong to a trade and know about the problems in that trade, you should solve the problems as far as possible. Today, I can see that all bills will get passed as long as they are supported by the Democratic Party. I think that the Democratic Party should change its name, it is in fact a labour party. If you want the business sector to cooperate with you, it can only be done after you change your name and confess that you are a labour party in all sense, and that you strike for labour welfare only and nothing else. Otherwise, we will not cooperate with you. You always quote the saying "Cry up wine and sell vinegar". You are basically a labour party but you claim yourselves democrats. In fact, you are not a democratic party.

Mr President, my final conclusion is that, if all the six bills are passed today, it will be of grave concern in the business community. Earlier on, I thought that we could let it be if only one or two bills were passed. In the light of the current situation, I think I need to urge Mr Joseph WONG, who will continue to be our Secretary for Education and Manpower after the 1997 transition, to further review the consequences when he works under the Special Administrative Region Government and the Chief Executive, and to see whether there is a need to repeal, delete or amend this Bill.

Thank you, Mr President.

MR LEE KAI-MING (in Cantonese): Mr President, I would like to respond to the points raised by the Honourable James TIEN.

First of all, he has said that the development of labour relations is due to the move of trade unions to recruit members, and that the presence of trade unions in between does more harm than good. In fact, this is not the case. In many labour disputes that I dealt with, the problems in labour-management relations could indeed be solved in harmony and to the benefit of both sides with the involvement of the trade unions. Perhaps Mr TIEN does not understand the situation at all and it may be that he discriminates against trade unions.

Secondly, I object to the Bill proposed by Mr LEE Cheuk-yan. It is because the Bill allows the use of union funds for political purpose. We know that the existing Trade Union Ordinance has already allowed the use of union funds for electoral purpose, provided that the trade union has amended its constitution and uses it funds accordingly. At present, although trade unions in Hong Kong are given the power to amend their constitutions, they rarely exercise that power and very few of them amended their constitutions to allow the use of union funds for electoral purpose. As such, it can be seen that it is the intention of local trade unions to use theirs funds on welfare of their members and operation.

Moreover, I have reservation on the point that union staff need not be engaged in the trade. I think that it should be a minimum requirement that the staff concerned have working experience in the trade. Otherwise, they will know nothing about that trade and problems in respect of their credibility will arise. For this reason, I have reservation on the amendment Bill as proposed by Mr LEE Cheuk-yan.

Thank you Mr President.

MR FREDERICK FUNG (in Cantonese): Mr President, I have mentioned some of the arguments and I shall not repeat them. For example, the bargaining power of an individual worker is very weak and he can only have the opportunity to bargain with his employer through a trade union. Of course, if a trade union has a recognized and statutory status, there will be more opportunities for

discussion and both sides can make use of this more efficient formal channel. We have cited examples about problems of local communities solved through the elected members on the District Board and the Legislative Council. I have cited many such examples and I am not going to repeat them.

In connection with this Ordinance, I have to read out Article 39 of the Basic Law again. In respect of the Trade Union (Amendment) Bill proposed by the Honourable LEE Cheuk-yan, the Hong Kong Association of Democracy and People's Livelihood (ADPL) agrees all but one of the provisions by reference to Article 39 of the Basic Law. I will mention that provision later. It is pointed out in Article 39 of the Basic Law that, the provisions in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, social and Cultural Rights and the International Labour Convention (ILC), which we frequently ignore as we often talk about human rights and politics, as apply to Hong Kong shall remain in force and implement through the laws of the Hong Kong Special Administrative Region (SAR). In other words, the SAR should have the right to legislate for some of such matters under the ILC and for which legislation can be made. Therefore, the ADPL is in support of some of the items contained in the Trade Union (Amendment) Bill as proposed by Mr LEE Cheuk-yan.

Firstly, on the eligibility of union staff, only the residency requirement is maintained. In other words, being a Hong Kong permanent resident is still the basic requirement but the restriction that one must engage in the trade is lifted. However, if this is compared with the principle as contained in the ILC, such rules should be removed. Therefore, I consider the lifting of this requirement acceptable.

As regards a trade union changing its name, at present, this requires a vote of two-thirds of its members at a general meeting. The Bill changes that requirement to the endorsement of half of its members. I think this is only a technical amendment and should cause no serious problems. Perhaps some trade unions need to change their names in order to adjust to changes to their trade. We think that this is acceptable too.

Thirdly, on affiliation with international unions, as well as the one on the use of money to be raised later, I mention it because it is the cause of our strong reservations on one of the provisions. Actually, the ADPL frequently agrees with and supports trade union activities and movements so that the employees

can have a proper channel to air their opinions about their welfare and their pay. However, if international labour organizations are allowed to take part, it is possible that political issue will be involved, in particular when international labour organizations are being engaged. Of course, we are looking at it mainly from the perspective of labour movement. But then, if the involvement at the international level is concerned, it will be quite distant for me too because I am not familiar with the matters behind those international labour organizations. Being a formal trade union organization, I think the trade unions in Hong Kong should be allowed to take part in international labour organizations. Of course, I also assume that the international trade unions concerned have properly registered and their nature are well known. Given that the Governor has to be consulted and affiliation with foreign organizations are allowed with his approval, and that no such application has ever been rejected, therefore, to a certain extent, this relaxation has made no changes and the operations remain very much the same as before.

As regards the merits of trade union federations, I think they are good. The case of the Honourable LEE Kai-ming has provided one of such examples. The Federation of Hong Kong and Kowloon Labour Unions (FLU) is making itself a federation of that kind and provides services to members of various trades. I think that the FLU is quite successful. Of course, the Hong Kong Federation of Trade Unions (FTU) mentioned by the Honourable CHENG Yiu-tong is another example, so is the Hong Kong Confederation of Trade Unions (CTU). In fact, although these three organizations have not registered in the form of trade union or federation, they have helped a lot in solving labour disputes throughout the years, be they registered as a limited company or a society. Therefore, I do not think that trade union federation will create serious problems. On the contrary, I think that members as well as leaders of trade union federations have been very restrained and self-controlled as they always discuss problems with the Government and resort to solving problems through negotiations. Therefore, we are of the view that these situations are basically acceptable.

I have mentioned just now about the area which we feel difficult. This lies in trade union funds because in the past there were restrictions imposed on the use of trade union funds in political activities. In other words, if we use the funds we raised for political purposes, it may be an issue of concern. Being a responsible member, we should take into account the Basic Law. Since I can cite provisions of the Basic Law to support the Bill of Mr LEE Cheuk-yan, I can also cite provisions to object to it. Under Article 23 of the Basic Law, political

organizations or bodies of the SAR should not establish ties with foreign political bodies. Obviously, such "ties" include financial connections with and donation from these bodies. Of course you may say that trade unions are only involved in labour movements and not political activities. However, the question is that if trade unions raise funds overseas and the provision disallowing them to use the funds they raised for political work and activities is deleted, then probably trade unions will be able to raise funds overseas and apply them for political purposes. This may become a trap of violating Article 23 of the Basic Law because trade unions can use the funds they raised for political activities or otherwise. If trade unions use the funds for political activities, this may be caught in the definition of political organizations under Article 23, which has been endorsed by the Provisional Legislative Council of the Special Administrative Region. In other words, the trade union has changed its nature and becomes a political party. As far as the latter is concerned, if it can raise funds overseas for conducting trade union and political activities, there will be a risk. We must rule out the areas in breach of the Basic Law and issues of great concerns in the legislating process, or areas that may cause concerns in the current legislation.

Mr LEE Cheuk-yan proposes the deletion of the provision on disallowing the use of trade union funds on political activities. If Mr LEE's amendment is passed, there will be a risk. The Hong Kong Association of Democracy and People's Livelihood (ADPL) has been encouraging labour activities and movements, but we do not encourage the formation of a disguised labour party. We think this is unacceptable. We do not object to the formation of a labour party under a formal manner, and the one so established can conduct election and carry out political activities for workers. But please do not do these in the name of a trade union. We very much disagree with this.

Therefore, when we cast our vote later on, there is a condition attached to it. In fact, we have told Mr LEE Cheuk-yan two or three days ago that if his amendment to the provision on disallowing the use of trade union funds on political activities in the Trade Unions (Amendment) Bill 1997 was passed, the ADPL will object to all provisions, including its Third reading. If Mr LEE's amendment fails, that is, the provision on disallowing the use of trade union funds on political activities is retained, the ADPL will support all other provisions. I have mentioned the reasons for our decision earlier. We have been a good friend of many trade unions since the 1980s. At that time, we supported them to carry out labour movements and sometimes even helped them with the promotion work. Therefore, we totally and sincerely support in

principle the rationalization and legalization of labour movements in the meantime. However, we also hope that the Hong Kong Confederation of Trade Unions knows we do not want our labour movements to fall into the trap of Article 23 of the Basic Law. Of course I believe this is not the original intention of Mr LEE Cheuk-yan to form labour parties. However, there is no guarantee that someone will not set up a labour party in the name of a trade union in future. Although this might not be happened, the amendment would give some people a chance to get into contact with foreign organizations and raise fund with them for political purposes. This is the situation we do not want to happen. Therefore, we must have full guarantee before we accept this amendment. We will look into the voting result in a moment. If the amendment is passed, the ADPL will object to all other provisions. If not, we will support them.

Thank you, Mr president.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Government objects to the Trade Unions (Amendment) Bill 1997 introduced by the Honourable LEE Cheuk-yan. The Bill aims to relax the control on trade unions by the existing Trade Unions Ordinance in respect of certain controversial areas. The main reason for the Government's objection is that most of the Bill's suggestions are of no help to the sound development of trade unions in Hong Kong.

First of all, the Bill suggests permitting trade unions to use their funds for political purposes, which is in contravention of the real objective of establishing trade unions. If this suggestion is passed, trade unions will use their funds to support activities that have nothing to do with trade unions, which is not in their members' interests because the funds of trade unions should only be used for improving their members' welfare. The existing Trade Unions Ordinance requires the Governor's approval for trade unions to make contributions or donations to overseas union organizations and requires the Governor's consent for trade unions to become members of overseas trade unions or other organizations. This is an important and essential preventive measure, which will protect local trade unions against unnecessary influence and control by overseas political organizations, which otherwise will hamper the sound development of trade unions in Hong Kong.

The Government has been exercising these powers with prudence and flexibility, and has never rejected any applications from local trade unions to join international organizations. Therefore, we think it is essential that this provision be retained.

The existing provisions on trade union federation aim to encourage trade unions within the same trade with a common goal and who truly care about their members to form a federation among themselves. The original intent of these provisions aims to prevent trade unions from different trades and with different interests from forming a federation for pure political purposes. We think that the said provisions fit Hong Kong and are effective, and therefore there is no need to change them at the present stage of time.

The amendments that Mr LEE Cheuk-yan intends to propose at the Committee stage, include among others, the extension of the use of the funds to any other purpose. As provided in the existing legislation, the use of trade union funds for any other purpose requires the Governor's approval, but the amendment will replace that requirement with the authorization by secret ballot of a majority of the voting members of the union present at a general meeting. If this amendment is passed, trade unions will be able to use their funds to support activities that have nothing to do with trade unions, which is not in the interests of their members. When the Labour Advisory Board (LAB) considered the Bill on 21 May, employer representatives did not support it, and some of the employee representatives also expressed reservation over some of the provisions of the Bill. It was concluded by all in the end that they needed more time to study the Bill. Trade unions will conduct a comprehensive review on the Trade Unions Ordinance in the light of the decision of the LAB, and will submit the report of the review to the LAB for discussion. If a consensus is reached with the LAB on the suggestions of the report, the Government will implement the suggestions as soon as possible. We therefore do not think it is appropriate to hastily pass the Bill at this stage of time.

Mr President, the Bill is the sixth labour-related Member's Bill we are dealing with today. I hereby would like to take the opportunity to make two personal comments: firstly, the Government approved six labour-related bills last week. Those six bills, which aim to improve workers' interests, had all gone through wide consultation and thorough deliberation, two of which even took up

an entire year of the Legislative Council to scrutinize. The six bills that we are working on now, however, are being dealt with in a hasty manner. Just as I said earlier on, some of these bills with far-reaching effects have not been scrutinized by a bills committee set up by this Council. In my opinion, under the existing mechanism here in Hong Kong, if the improvement of workers' interests is no longer dependent on thorough discussions, on wide consultation and on a tripartite consensus among the employee, the employer and the Government, but only on the Members representing the industrial and commercial constituency or the grassroots constituency present at any sitting of the Legislature at any time to vote on bills aiming at improving workers' interests which are to have a far-reaching effect, I do not think it is a democratic and responsible phenomenon, nor is it in the long-term or short-term interests of employees, let me emphasize, of employees' interests.

Mr President, I urge Members of this Council once again to vote against the Bill introduced by Mr LEE Cheuk-yan. Thank you, Mr President.

MR RONALD ARCULLI (in Cantonese) : Mr President, I just want to say a few words. As regards the arguments put forwarded by Mr Joseph WONG, I think one of the reasons for the success of Hong Kong today is the good labour relations. This relationship is not determined by a counting of votes that takes only three minutes. It has taken several decades to develop. Perhaps employees sometimes find employers unreasonable, and on the other hand, I believe that sometimes, employers think that employees demand too much as well. But I think, to be fair, the employer also want to establish long-term cooperation with the employee. In fact, the Government serves as a referee. And as far as a referee is concerned, the two sides will sometimes deliberately kick at the referee with the ball. In this respect, I think Mr Joseph WONG and his colleagues will not find themselves in a easy position every time.

I know what I am saying is unable to convince those Members who are going to support this Bill. But I just want to put it on record here, that not only for this Bill, but for all the bills that are passed tonight, employers are a bit worried about their adverse effects on the long term development of Hong Kong's economy. I hope you will bear this in mind because I say this wholeheartedly and I am not making a threat here. I have no such intention

whatsoever. I do not think that the passage of legislation should depend on which side has more supporters: you win this time because you have more supporters and next time I win because my supporters outnumber yours. Instead, it should be viewed from a long term perspective. I hope that, no matter what outcome turns out tonight, we should all take a cooperative attitude in future. Thank you, Mr President.

MR LEE CHEUK-YAN (in Cantonese): Mr President, firstly, I thank the Honourable Ronald ARCULLI for saying this from the bottom of his heart. In fact, I think it is also what we wish to say. We are not talking about winning or losing. In fact we just want to make Hong Kong a successful place. It is just a matter of different views or different priorities. I believe that the passage of the five bills today, with one being voted down, will have good effects on the Hong Kong society as a whole. I wish Members to see that the three bills I propose today in fact all deal with one thing: how to improve the operation of the trade unions. Improved trade union operation will facilitate better communication with employers, which will eventually benefit both employers and employees. Therefore, we want everyone to know today that the laws we pass today will have far-fetching effects to Hong Kong, and definitely good ones.

Before responding to other replies, I wish to respond to questions about some information. The Honourable James TIEN has said that after the law is amended, trade unions in Hong Kong can receive money in future. What he means seems to be donations. He must make it clear that after the law is amended, it does not mean that the Hong Kong trade union may receive money, because it has never been said that this matter is regulated. Instead, the Hong Kong trade unions cannot make donations overseas, or to overseas trade unions. This piece of information must be clarified. It is about making donations, not asking donations from overseas.

The objective of the bill as a whole is to eliminate the outdated and unreasonable restrictions on trade unions to ensure the implementation of the workers' freedom of association. When drafting the Bill, the International Labour Conventions No. 87 — the Freedom of Association and Protection of the Right to Organize Convention (the Convention), is our yardstick. I hope that the Hong Kong laws can fully comply with this Convention. We all know that the Convention itself is the basis of all international labour organizations.

Over a hundred countries have endorsed the convention because it is the most fundamental part in the whole trade union movement. Though Hong Kong always boasts that it ranks fourth in national wealth, we still allow in our laws the act of breaching the most basic International Labour Convention. I think that such situation has lagged far behind the development of Hong Kong society, so I hope that everyone will support the Bill because it is really a very trivial matter.

Why do I say that it is trivial? What am I saying exactly? I aim at eliminating some unreasonable restrictions imposed on trade unions. Members will know how unreasonable it is by just listening to it. Firstly, the use of trade union funds is restricted. Why the use of trade union funds be restricted? Why does the Government bother about how trade unions use the money they receive from their members? The money belongs to the trade union members, so they should be allowed to decide how to use it. Why should the Government step in? Let us consider the first issue: why should the use of trade union funds be restricted?

It has also been mentioned that using union funds for political purposes should be restricted. In fact, as trade union organizers, we sometimes do not know how to define "political purposes" because they can be defined in a broad sense. The defence for the Diaoyu Islands has taken place in recent years. Is it political to advertise the Diaoyu Islands movement? If so, the trade unions have fallen into the trap of laws. For example, we have been lobbying on laws and policies. Some money is required. The Confederation of Trade Unions has just gone for a petition today. Banners were displayed during the petition yesterday. Would the money so spent be counted as being used for political purposes? In fact, there are such things political purposes, but the major problem is that I do not know how to define the phrase "for political purposes" and I believe that no one can make a definition.

The second provision that can be removed is the one disallowing Hong Kong trade unions to join international and overseas trade unions and make donations to trade unions overseas without the approval of the Governor. The Honourable James TIEN has said that the Confederation of Trade Unions or trade unions in Hong Kong can get organized themselves so they do not have to form an alliance with others and it is not necessary to learn from others. In fact, we form alliance with others not purely for learning from others or for support. In fact, the concept of labour movement is an international concept because it does not work if trade unions are not organized on an international basis. Why so?

Because the world is very small. There is fast and free flow of capital in the world and I think that this is a very important concept. I am disappointed to see that with the approach of 1 July 1997, I still have to explain these basic concepts to Members. In fact, international trade unions are like this. Why should we restrict the affiliation between international and local trade unions?

Thirdly, it is also unreasonable that federation among trades is not allowed in Hong Kong. Why cannot industries and trade unions form trade unions of different industries? Are we not saying that labour interests should be protected? Can we still separate labour interests by industries? No, we cannot. We have to work together.

The fourth issue is that the existing laws still disallow people not coming from the trade to become office bearers of the trade union. This is also unreasonable because trade unions should be allowed to decide who to work for them. What have such decision to do with the Government?

The above restrictions not only violate the international labour conventions, but also breach the provisions on the rights to organize trade unions stipulated under Clause 8 of the International Covenant on Economic, Social and Cultural Rights. It was concluded in the Economic, Social and Cultural committee in November 1996 that the Committee criticized the Hong Kong Government as its restrictions imposed on trade unions contravened the Covenant. The present Trade Union Ordinance is a typical example of draconian colonial laws. Why do we say so? Do we know that the existing Trade Union Ordinance is in fact the Illegal Strikes and Lock Outs Ordinance enacted in 1927? The Hansard of the Legislative Council clearly recorded that the ordinance enacted by the Government at the time aimed at curbing the series of trade union activities initiated by strikes in Guangdong and Hong Kong. Why was such a move taken? As it was a general strike in Guangdong and Hong Kong jointly organized by the trade unions in Hong Kong and Guangdong Province, this law was enacted to sever the affiliation between trade unions in Hong Kong and in the Mainland, and to assail trade union activities so as to prevent them from threatening the British-based and the British colonial Government. The record is so-written at the time," it is to prohibit, except with the consent of the Governor-in-Council, any trade union established within the Colony being affiliated or connected with any trade union or other organization outside the Colony". The recent history has provided clear arguments as to why the provision has to be adopted. What is the recent history? There were the

General Strike of Sailors in 1927 and the General Strike in Guangdong and Hong Kong. The colonial rule will be over several days later. Do we have to reserve the draconian laws of the colony? The provision against patriotic trade unions in 1927 is still here. Why do we not remove it?

Labour movement in Hong Kong can be said to have reached its maturity. It has also become a responsible labour movement. We are not trying to turn every matter into a big problem, as some Members have mentioned. It is a responsible labour movement, and the social partnership status of trade unions has been established. We think that unnecessary restrictions on trade unions must be removed. To put it simply, my Bill seeks to do one thing only: matters of trade unions should be managed by trade unions themselves.

I also wish to explain my amendment briefly. The principal amendment lies in the original suggestion that political funds will replace the existing electoral funds. As some trade unions have set up electoral funds, in order not to affect these trade unions with such funds, I am going to deal with the situation by making an amendment to the effect that the electoral funds will be reserved but trade unions which wish to use their funds for other purposes, including for political purposes, will need the approval of their members at the General Meetings. It is proposed that Section 34 of the Ordinance about the restrictions on political purposes be cancelled, and it turns out that the funds can be used for whatever purposes as long as endorsement is secured at a General Meeting.

Secondly, after considering the Honourable CHENG Yiu-tong's opinions, I preserve the requirement that trade union staff must be permanent residents of Hong Kong. Why should I do so? Some people do not understand why the trade union staff must come from the trade. But we know that the existing trade unions sometimes have to recruit staff as their representatives to attend hearings at the Labour Tribunal. If the staff must come from the trade, recruitment is limited to people in the trade. For example, trade unions of the catering industry must recruit staff from workers of the trade. In fact it has restricted the choice of the trade union. However, to attend the Labour Tribunal is not a simple matter. Such restriction will adversely affect the protection to workers of the trade. Therefore, I very much hope that we can remove the restriction so that trade unions can recruit the right staff to represent the trade unions for carrying out the work.

Mr President, these are my remarks. I am asking Honourable Members to support this Bill.

Question on the Second Reading of the Bill put.

Voice vote taken.

PRESIDENT (in Cantonese): 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 Trade Union (Amendment) Bill 1997 moved by Mr LEE Cheuk-yan be read the Second time.

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? The result will now be displayed.

Mr SZETO Wah, 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, 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, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, 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.

Miss Christine LOH abstained.

THE PRESIDENT announced that there were 28 votes in favour of the motion and 15 against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

TRADE UNIONS (AMENDMENT) BILL 1997

Clause 1 was agreed to.

Clauses 2, 5, 6 and 11

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I would like to ask for a break of five or 10 minutes as there are things I want to discuss.

CHAIRMAN (in Cantonese): I know what you want to say, so you can spell it out and let everyone knows about it. It is not much a political issue although it could be said so. Mr Frederick FUNG has just asked me if it is possible to conduct separate voting on different clauses at the Committee Stage. After considerations, I think it is not impossible but it will be very confusing. But in fact, the problem is much simpler and Mr Frederick FUNG will be satisfied if the matter is dealt with by that method. The meeting will adjourn for 10 minutes.

9.47 pm

Sitting suspended.

9.57 pm

Committee then resumed.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clauses 2, 5, 6 and 11 be amended as set out in the paper circularized to Members. The purpose of this amendment is to remove the restrictions on the use of union funds for political activities, to delete the item on political fund as suggested in the original Bill and to retain the item on electoral fund as contained in the existing legislation.

Thank you, Mr Chairman.

Proposed amendments

Clause 2 (see Annex XX)

Clause 5 (see Annex XX)

Clause 6 (see Annex XX)

Clause 11 (see Annex XX)

MR BRUCE LIU (in Cantonese): Mr Chairman, I urge Members to vote for my amendment. If my motion is carried, the effect will be that the electoral fund as contained in the Bill originally proposed by the Honourable LEE Cheuk-yan can be used for political purposes. Mr LEE Cheuk-yan has agreed to this arrangement and he will move another amendment later to state other purposes. Members may further deliberate the matter.

I hereby urge Members not to vote against my amendment. Thank You.

CHAIRMAN (in Cantonese): I do not know which clause you are referring to.
(Laughter)

MR BRUCE LIU (in Cantonese): I am referring to clauses 2, 5(a), 6 and 11.

CHAIRMAN (in Cantonese): That seems different from what I originally thought, it is still on political issues.

MR BRUCE LIU (in Cantonese): No, he is now moving an amendment.

CHAIRMAN (in Cantonese): It is up to you to think of the consequences. I am not in a position to tell you that much.

Question on the amendments put.

Voice vote taken.

CHAIRMAN (in Cantonese): Committee shall now proceed to a division.

CHAIRMAN (in Cantonese): Let me make an explanation here. If Members vote for the amendments, that means the electoral fund can be used for political purposes subject to a majority vote of union members. If Members vote against it, there will be a political fund as well as an electoral fund.

CHAIRMAN (in Cantonese): I would like to remind Members that you are now called upon to vote on the question that the amendments on clauses 2, 5(a), 6 and 11 moved by Mr LEE Cheuk-yan 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?

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

Mr SZETO Wah, 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, Mr James TO, 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, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendments.

Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr CHAN Kam-lam, Mr CHEUNG Hon-chung, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LO Suk-ching and Mr NGAN Kam-chuen voted against the amendments.

Mr CHAN Wing-chan, Miss CHAN Yuen-han and Mr CHENG Yiu-tong abstained.

THE CHAIRMAN announced that there were 29 votes in favour of the amendments and 10 against it. He therefore declared that the amendments were carried.

Question on clauses 2, 6 and 11, as amended, put and agreed to.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 5(b) be amended and that clause 5 be further amended to add in a sub-clause (c) as set out in the paper circularized to Members.

The main purpose of this amendment is to allow trade unions to make contributions to overseas trade unions without the approval by the Governor. That is to say, regarding the use of union funds for other purposes, the requirement of approval by the Governor will be changed to the majority votes of union members.

Thank you Mr Chairman.

Proposed amendment

Clause 5 (see Annex XX)

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, he said that the approval by the Governor was required. Why is the approval by the Chief Executive not required now?

MR FREDERICK FUNG (in Cantonese): Mr Chairman, as I indicated in my first speech made on behalf of the ADPL, this clause is the most crucial one in the voting. We will still follow the provisions in the Basic Law. For example, it is pointed out in Article 23 of the Basic Law that local political organizations should not establish ties with foreign political organizations and bodies. Otherwise, it may violate Article 23 of the Basic Law.

Should all other provisions proposed by the Honourable LEE Cheuk-yan be approved, that is to say, if a trade union is allowed to establish ties with foreign organizations and to make contributions to them or make requests to take part in political activities in Hong Kong, then it may lead to violations to Article 23 of the Basic Law.

Hence we support all the provisions proposed today by Mr LEE Cheuk-yan in relation to trade union on the basis of the Basic Law. And for this same reason, we think that the ADPL should follow the provisions of the Basic Law as well. However, we are unable to vote for it because of such limitations. Of course, whether this amendment will be approved will affect the voting of the ADPL. As I have said, if this amendment is passed, we will vote against all other provisions.

Thank you, Mr Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, my view on this matter is different from that of the ADPL. It is indeed possible that local trade unions receive foreign donations. However, there are quite a number of trade unions in Hong Kong whose funds come from membership fees and service income, which are unrelated to foreign ties whatsoever. All this money is collected from local members. If such funds, which come from local members, are used for purposes agreed by their members at a general meeting, then it can be spent on the provision of services or for social purposes. Of course, it is very complicated as far as social purposes are concerned because they can be regarded as political issues as well. For instance, in relation to human rights issues or environmental issues, very often, joint advertisement with say, 60 other human rights organizations, is needed. In such cases, would you classify it as a political or social purpose? In fact, it is their money; it is money coming from their members in Hong Kong, from their membership fees, and their members have agreed at their general meetings to use their money for those particular purposes. If they are not allowed to use their money in their own ways, you are in fact depriving the unions their right to use their own funds. How can we legislate to deprive the unions of their rights to decide on the use of their own funds? I think the ADPL should get a clear understanding on their views because they are in fact restricting the legitimate use of trade union funds.

MR BRUCE LIU (in Cantonese): Mr Chairman, I would like to make some further remarks about the viewpoints raised by the Honourable Frederick FUNG just now.

First of all, we are sure that the connections between local and foreign trade unions are allowed and safeguarded under Article 149 of the Basic Law. In our opinion, any connections between local and foreign trade unions actually meet the requirement of maintaining and developing relations set out in the Basic Law, and are safeguarded accordingly.

Meanwhile, it is not the aim of this legislating exercise to deal with this issue. What we have to handle is the situation where it is very likely that trade unions would have breached the Societies Ordinance enacted as well as Article 23 of the Basic Law when they receive money from political bodies overseas and use it for political purposes in Hong Kong. Under such circumstances, by taking a careful look at the Ordinance in question, we can find that the use of funds for "any other purpose" provided therein requires the approval of the

Governor as well. Thus, we have no intention to deprive trade unions of their rights. As the existing arrangement has been in operation for a long time, what we want is only to preserve it rather than to violate the freedom of trade unions in this aspect by means of legislation today.

Thank you, Mr Chairman.

MR LEE CHEUK-YAN (in Cantonese): The Honourable CHIM Pui-chung just now asked me why it turned out that the Chief Executive's approval would not be required for the use of funds by trade unions in future, and why I did not object to the stipulation that the Governor's approval was required. Actually, you all know that I have always been opposed to that, having called for changes to be made for years. Therefore, it is in fact the requirement that the Governor's approval be obtained that I oppose to in the first place. However, I can do nothing about it, given that the objection now I raise against the provision on the need for the Governor's approval can last two or three days only. Thereafter, I believe the Chief Executive will think that Hong Kong should be ruled by Hong Kong people, and may thus respect the operation and opinions of trade unions in the territory.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

CHAIRMAN (in Cantonese): Committee shall proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the Honourable LEE Cheuk-yan's amendment to clause 5(b) and further amendment with the addition of clause 5(c) be passed.

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

CHAIRMAN (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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, 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 TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr David CHU, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the amendment.

Miss Christine LOH abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 18 against it. He therefore declared that the amendment was carried.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, on behalf of the Dr the Honourable LEONG Che-hung, who is now "listless" (*Laughter*), I move that pursuant to Standing Order 37(4), if any Member claims a division on the rest of the amendments to the Trade Unions (Amendment) Bill 1997 at this meeting, the Committee of the whole Council has to proceed to the relevant division immediately after the division bell has been rung for one minute.

Question on the motion proposed and put.

DR LEONG CHE-HUNG (in Cantonese): Mr Chairman, is the expression "listless" out of order? *(Laughter)*

CHAIRMAN: I did not put that to be part of the question.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, I take back the expression "listless".

Voice vote taken.

CHAIRMAN (in Cantonese): I think the Ayes have it. I declare that the Ayes have it. That is to say, the ringing time of the division bell will be reduced from three minutes to one minute when a division is held on each of the rest of the amendments to the Bill in question at this meeting of the Committee of the whole Council.

Question on clause 5, as amended, put and agreed to.

Clause 12

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 12 be amended as set out in the paper circularized to Members.

I urge for Members' support as it is a technical amendment. This technical amendment is to confirm the deletion of provisions relating to the setting up of political funds, and to reinstate those provisions relating to electoral funds. I hope Members would agree to this proposal and no division is required.

Thank you, Mr Chairman.

Proposed amendment

Clause 12 (see Annex XX)

Question on the amendment put and agreed to.

CHAIRMAN (in Cantonese): As the amendment to clause 12, which is to delete the clause, has been agreed, clause 12 will therefore be deleted from the Bill.

Clause 3

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 3 be amended as set out in the paper circularized to Members. This amendment provides that officers of a trade union are not required to have been employed in the trade which the trade union is concerned, while retaining the requirement for permanent residency in Hong Kong.

Thank you, Mr Chairman.

Proposed amendment

Clause 3 (see Annex XX)

MR FREDERICK FUNG (in Cantonese): Mr Chairman, the ADPL originally agrees to this amendment. However, as clause 5(b), which has been agreed to, permits the association of trade unions with international organizations by allowing their acceptance of international donations and the use of their funds for all purposes including political purposes, I consider that this may contravene Article 23 of the Basic Law. We, on such considerations, object to this amendment.

Question on the amendment put and agreed to.

Clause 3

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 3 be further amended as set out in the paper circularized to Members. In fact, this amendment is of the same nature as the previous one. Thank you, Mr Chairman.

Proposed amendment

Clause 3 (see Annex XX)

MR FREDERICK FUNG (in Cantonese): Mr Chairman, the ADPL objects to this amendment. Originally, we support the basic content of this amendment. However, since clause 5(b) has been agreed to, trade unions may, after their establishment, have association with western or foreign trade unions. The trade unions may accept foreign donations as well as spend such funds on political activities. In view of our consideration that such clauses may contravene Article 23 of the Basic Law, we must register our objection to this amendment notwithstanding our support for its original content. Since clause 5(b) has been approved, we object to this amendment.

Question on the amendment put and agreed to.

Question on clause 3, as amended, put and agreed to.

Clause 4

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 4 be amended as set out in the paper circularized to Members. This amendment serves only to refine the drafting of the Chinese text .

Thank you, Mr Chairman.

Proposed amendment

Clause 4 (see Annex XX)

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, it was reported by the press that the ADPL considered their four votes very crucial. Since the Liberal

Party has decided not to cast their votes, their four votes are of not much significance now. These are my remarks. *(Laughter)*

MR SZETO WAH (in Cantonese): Mr Chairman, have such remarks strayed from the scope of our debate?

MR FREDERICK FUNG (in Cantonese): Mr Chairman, we must register our objection. Each and every vote cast by members of the ADPL is of significance.

MR SZETO WAH (in Cantonese): Mr Chairman, it is not a question about the Chinese text of the amendment.

Question on the amendment put and agreed to.

Question on clause 4, as amended, put and agreed to.

Clause 7 was agreed to.

Clauses 8, 9 and 10 were agreed to.

Council then resumed.

Third Reading of Bill

MR LEE CHEUK-YAN reported that the

TRADE UNIONS (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill**CROSS-HARBOUR TUNNEL (CROSS-HARBOUR TUNNEL REGULATIONS) (AMENDMENT) BILL 1997****Resumption of debate on Second Reading which was moved on 16 April 1997**

MRS MIRIAM LAU (in Cantonese): Mr President, as the bill introduced by the Honourable IP Kwok-him in respect of the Cross-Harbour Tunnel is identical with the bills to be introduced by him later in respect of the Eastern Harbour Crossing and the Tate's Cairn Tunnel, I intend to speak on them in one go. The arguments in my speech are applicable to all three bills.

The Cross-Harbour Tunnel Regulations enacted in 1972 specified that the concentration of carbon monoxide gas should not exceed 400 parts per million (p.p.m.) at any time. Almost 20 years later, the Tate's Cairn Tunnel Regulations stipulated that the concentration of carbon monoxide gas should not exceed 150 p.p.m. Today, that is 25 years after the enactment of the Cross-Harbour Tunnel Regulations, the Honourable IP Kwok-him proposes to bring the requirement relating to the concentration of carbon monoxide gas in the three tunnels under a set of uniform standards of 100 p.p.m. In addition to the requirement relating to carbon monoxide gas, air quality standards in terms of concentration of nitrogen dioxide gas and visibility are also included. Over the past 25 years, old standards have been constantly replaced by new ones. It might happen that in five or 10 years' time, the present new standards were revised to become 1 p.p.m. or even 0 p.p.m. By then, the standards to which everyone agrees today might be criticized as substandard and need to be changed. Naturally, in an ever-progressing society, air quality standards and public health should be continuously improved. From this perspective, I should not reject the bills introduced by Mr IP. Yet Mr IP's approach and the effects thus created are extremely disappointing.

Mr IP employs the approach of "exerting downward pressure" to coerce the tunnel companies into accepting the revised standards. Had Mr IP ever held detailed discussions with the three tunnel companies before he decided to propose the Bills? Did he take an in-depth look at the difficulties encountered by the companies? I doubt whether he has ever taken such steps. He thinks that the Cross-Harbour Tunnel and the Eastern Harbour Crossing can meet the

revised standards with the existing facilities, while the Tate's Cairn Tunnel will have to acquire additional ventilation facilities before it can meet the requirements. For this reason, a grace period of six months is provided for in the three bills. He thinks that the companies concerned can undertake improvement works within that period. However, before he specified the length of the grace period, had he considered whether or not the period was sufficiently? Had he listened to the views of the companies? As far as I know, at least one company will encounter practical difficulties if it is required to complete the works within six months. The feasibility study undertaken by the Government to improve the air quality in publicly-operated tunnels will have to take one to two years to complete before any improvement works can commence, not to mention the time required for the completion of the improvement works. Being blind to such reality, Mr IP seems to be determined to exert pressure downward, making use of his authority to introduce Members' Bills to coerce these tunnel companies into accepting and bringing the air quality of their tunnels up to the revised standards within the time span specified by him.

Mr IP's amendments are proposed on the premise of protecting public health. In the light of public health, the tunnel companies are willing to undertake the improvement works. Despite such willingness, we must also take a square look at the crucial issue behind the Bill under discussion: should the Government or Members propose changes to the terms of a private contract irrespective of the agreements previously made between the Government and private companies? The Government surely enjoys the right to amend the law. Members also have the right to propose legislative amendments that do not have charging effect. Of course, as regards private companies, the law is above any agreements.

After the three tunnel companies had signed the build-operate-transfer (BOT) contracts with the Government, they built the tunnels in full accordance with the specifications then made by the Government, which included requirements for air quality. If, during the construction period, the Government proposed changes to such specifications, it would have to bear the costs thus incurred. Such commitment made by both parties showed the willingness displayed by both sides to abide by contracts. Either side of the contractual parties who proposed to revise the terms of the contracts would have to pay for such revision. The tunnel companies constructed the tunnels in accordance with the terms of the contracts which were the result of discussion between the companies and the Government on the basis of the amount of investment and the

time-horizon for investment returns. But now, the relevant regulations may be amended at any time. While the changes to the regulations involve only a few words, the actual effect may be of great significance. The companies may be required to spend millions of dollars to acquire additional ventilation machines, or may even have to spend over \$100 million to construct a ventilation tunnel. If the companies have to make such intensive capital investment, it is certainly beyond the estimation or the consideration of the companies when they entered into the contracts.

Last week in this Council when we debated the amendment bill concerning public bus services, the Honourable CHAN Kam-lam of the Democratic Alliance for the Betterment of Hong Kong (DAB) remarked that if the Legislative Council passed a piece of legislation to revise or to change the spirit of the franchise agreements which had been signed by the Hong Kong Government and the bus companies, this would constitute a unilateral breach of commercial agreements on the part of the Hong Kong Government. He also remarked that such action would undermine the confidence of investors in Hong Kong's position as a finance and service centre. When such remarks are still fresh in our mind, Mr IP Kwok-him of DAB today proposes to amend the law. Does it not constitute changes to the spirit of agreements made between the tunnel companies and the Government? Is he not undermining the confidence of investors? Mr IP may claim that protecting public health overrides other considerations. I totally agree that protecting public health is of paramount importance. However, it is a dangerous belief to think that the Government has the right to disregard the agreements made between itself and private companies solely for the sake of the interests of the public. Many totalitarian countries confiscate privately-owned property on the pretext of safeguarding the interests of their people.

In 1984, the Government introduced a \$5 passage tax on vehicles using the Cross-Harbour Tunnel in order to reduce the traffic flow through the Tunnel. The Government therefore offered to compensate the company for the loss arising from such a measure. As I have just said, the Government has the right to amend the law from time to time in order to levy additional tax. If the Government had held such a view at that time, it would not have compensated the company. Yet the Government did make such a compensation eventually. Why did the Government offer to compensate? I speculate that one of the reasons lay in the consideration of the Government that the introduction of passage tax was not envisaged or taken into account by the company at the time

when it signed the contract. Since the company suffered loss as a result, the Government believed that it should commit itself to compensating for such loss.

In a society that upholds the rule of law, it is imperative for us to uphold the sacredness of a contract. A contract entails contractual obligations. We must respect a contract itself as well as the spirit embodied in it. While we respect the right for either side of the contractual parties to modify the terms of a contract, we also respect the right for the other side to claim for compensation. I believe the Government shares my view. When this Council debated the amendment bill concerning public bus services, the Secretary for Transport admitted candidly in his speech that the proposed amendment in the bill ran against the spirit of the franchise agreements. He therefore appealed to Members to vote against the bill.

Mr President, from the viewpoint of improving public health, the Liberal Party will not vote against the three bills introduced today by Mr IP, but we will abstain from voting. I believe the three bills introduced under Mr IP's name will be agreed to even if we abstain from voting. Whatever the voting result may be, and whether or not the three bills under Mr IP's name will be passed or not, I understand that the tunnel companies have proceeded to plan for the works that seek to improve air quality in the tunnels, though the works may not be completed within six months. Such actions are taken on the premise of protecting public health, carrying no implication that the three tunnel companies recognize the Government's right to change the terms of agreements or alter the spirit of agreements without having to make the necessary compensation. I do hope that the Government can respect the contracts between itself and private companies. After the enactment of the legislation, I hope the Government will not sit idly and remain indifferent to the difficulties faced by the companies and pass all responsibilities to the tunnel companies. I really hope that the Government will start discussing with the tunnel companies over the problems arising from the bills as soon as possible, and help them overcome such difficulties so as to enable the three tunnel companies to meet the requirements specified in the new legislation within the shortest possible time. If the Government does not take such steps, I believe the tunnel companies as well as other private companies will feel disappointed at the performance of the Government, thereby undermining their confidence in the Government.

Mr President, these are my remarks.

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

DR JOHN TSE (in Cantonese): Mr Deputy, I would like to make a brief speech in support of the following bills regarding the air quality in the tunnels. Here are the four points that I would like to raise.

Firstly, it is known that carbon monoxide gas is hazardous to pregnant women and patients with heart diseases. The concentration of nitrogen dioxide gas also affects the incidence of disease attack among patients suffering from respiratory problems or chronic diseases. On the ground of safeguarding public health, it is fully justifiable to enhance the implementation of measures for environmental protection.

Secondly, the standards currently in place for regulating the concentration of carbon monoxide gas in different tunnels are inconsistent. The relatively loose standards vary from one tunnel to another, while the concentration of nitrogen dioxide gas is not subject to any regulation at all. Therefore, the passage of the bills under discussion may, in the long run, help improve the air quality in the tunnels.

Thirdly, the standards as proposed in the bills are consistent with those in the guidelines issued by the Environmental Protection Department (EPD). Falling in line with international standards, the proposals are worthy of support.

Fourthly, the tests conducted by the EPD in the tunnels also showed that it was possible to implement the standards as proposed in these bills.

However, the Democratic Party worries about the possible scenario that toll increases may be proposed by the tunnel companies to shift the rising operating costs, consequent upon the higher standards stipulated in the bills to be passed, onto the consumers. We hope the Transport Branch will do something in this regard.

We also hope that the Government can set an indicator for the air quality in the tunnels because there is none to date. If more guidance can be given to the public in this regard, it will certainly be conducive to protecting the environment.

In the long run, the Government should consider putting air-borne toxic pollutants under its regulation. These pollutants include benzene emitted from vehicles and other highly volatile organic compounds.

However, even after the bills have been passed, they are not the permanent solutions to regulating the air quality in the tunnels. As a long term solution, we should attach importance to the use of cleaner fuels in Hong Kong, and the public should be educated to keep their vehicles in good condition so that the emission of pollutants can be reduced.

Although it appears that these bills relating to the air quality in the tunnels will be passed, we hope that the Government will honour its commitment to carry out more studies on indoor air quality and the air quality inside tunnels. Legislation, researches and education should run parallel if the air quality inside the tunnels of Hong Kong are to be improved.

Thank you, Mr Deputy.

MR MOK YING-FAN (in Cantonese): Mr Deputy, on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL), I would like to speak on the three bills on tunnels introduced by the Honourable IP Kwok-him. Responding to the advice given last night by the President of the Council, the Honourable Andrew WONG, I will keep my speech brief so as to expedite the scrutiny of the bills.

The ADPL supports these bills, on the grounds of both protecting the environment and safeguarding public health. I would like to point out, in particular, the situation of chauffeurs. I have much sympathy for bus drivers and truck drivers, especially those who drive vehicles with no air-conditioning. It is likely that they may have to drive through these tunnels a dozen times a day. I believe that even if some of them are non-smokers, their frequent use of these tunnels has caused their lungs to develop into a condition similar to those of smokers. For these reasons, the ADPL supports these bills.

Just now the Honourable Mrs Miriam LAU mentioned that these tunnels were constructed more than 20 years ago, and that the Government should help make improvements. However, I think these companies should take the

initiative to enhance the standards of air quality inside their tunnels when their profits so permit, instead of remaining idle until the Government or Members prompt them to do so, or until the law requires them to do so. In fact, they should have proceeded with the works long before the Government prompted them, or before Members introduced relevant Members' bills in the Legislative Council. I do not sympathize with these companies and do not think that we are "exerting downward pressure". I hope, through the enactment of the law, the tunnel companies or other franchise companies can be made to understand that they should be more proactive when undertaking improvement measures, instead of remaining idle until such requests are made by the Government or the Legislative Council, or until complaints are lodged by the public.

Mr Deputy, in order to speed up the scrutiny of bills, I would like to indicate in advance our support for the subsequent two bills.

These are my remarks.

SECRETARY FOR TRANSPORT (in Cantonese): Mr Deputy, from the point of view of environmental protection and public health, the Government has all along been very concerned about air quality inside tunnels. We can see that more stringent requirements have been imposed by on the concentration of different types of gases inside tunnels over the past decades. The problem we now face is that the tunnels concerned, namely the Cross Harbour Tunnel, the Eastern Harbour Crossing and the Tate's Cairn Tunnel, were built in three different periods of time. Undoubtedly, the newest tunnel should have the highest air quality standards. However, it is irresponsible to impose such standards on tunnels being built two or three decades ago, and requiring the tunnel companies concerned to meet such standards without considering the difficulties they would have. For years, administrative indicators have been used to encourage progressive improvements of air quality inside tunnels.

Originally, I eagerly hoped that a bills committee would be set up to study the three bills put forward by Mr IP, so that the tunnel companies could have an opportunity to make suggestions and give advice after formal consideration of the new standards. Moreover, the Government can also take that opportunity to study the amount of resource and effort required on the part of the tunnel companies to meet the new standards as prescribed by the three Member's Bills. However, Mr Deputy, it is a pity that no bills committees have been set up.

Though the Government supports the principle of improving the air quality inside the tunnels, it has great reservations with regard to the means and schedule of implementation.

Regarding the matter of toll increases, if the ventilation system of a built tunnel is to be greatly improved, investments would have to be made. The present issue concerns the size of the investments. The impact, if any, on the toll to be borne by the users is still unknown. Therefore, despite the six-month grace period during which we can continue our study on the issue after those three bills come into effect, the Government has to know exactly the time required for such improvement works. More negotiations with the tunnel companies concerned are needed. Probably, the Government may have to amend the regulations in the future so as to defer the effective date of those new standards.

Thank you, Mr Deputy.

MR IP KWOK-HIM (in Cantonese): Mr Deputy, first of all, I would like to thank Members who have expressed their views on the bills presented by me. Today, this Council resumes the Second Reading of the three bills introduced under my name. Notwithstanding the strongly-worded comments against my bills made by the Honourable Mrs Miriam LAU, I believe Members of this Council will not be opposed to or stand against the principle of enhancing the air quality standards in vehicle tunnels. Given that the two bills on railway services introduced by the Honourable SIN Chung-kai and the bill on public bus services introduced by the Honourable LAU Chin-shek have, by way of legislation, unilaterally breached the agreements signed between the Government and private companies, some Honourable colleagues, especially Mrs Miriam LAU, are very concerned as to whether or not the bills introduced by me will have the same effect. If I do not clarify this point, it will be impossible to allay the doubts of Mrs LAU.

DEPUTY PRESIDENT (in Cantonese): Point of order?

MRS MIRIAM LAU (in Cantonese): He has misunderstood my meaning. I did not mention the bills relating to the Mass Transit Railway Corporation. I only mentioned the bill on public bus services.

DEPUTY PRESIDENT (in Cantonese): Mr IP, you may continue.

MR IP KWOK-HIM (in Cantonese): I hold that we should look at things from all angles and from all sides, always taking into account the interests of the whole. As I have said in my speech on the resumption of the Second Reading of the bills, the three bills under my name were introduced on the premise that a responsible operator should, in addition to making profits, take account of the health of tunnel users in operating its tunnel. I also hold that while a responsible legislator may agree that tunnel operators should enjoy reasonable returns, he must also take account of the health of tunnel users. With this idea in mind, I introduce these three bills on improving the air quality in the tunnels. Pursuant to the terms and conditions of the agreements signed between the Government and the tunnel operators, they are duty-bound to comply with all statutory requirements, including environmental requirements which the Government may introduce from time to time. The tunnel companies have the obligations to take up such responsibilities. If we have to sacrifice public health to protect investors' profits, my answer is a definite "No". Of course, I cannot rule out the possibility that some Honourable colleagues may say "Yes". Should this happen, I will again feel shocked. I consider it unacceptable for legislators to protect investors' profits at the expense of public health.

Mr Deputy, as an international city, Hong Kong should adopt international criteria for its health-related standards. The promotion of environmental awareness is at present high on the agenda of the whole world. It is utterly unacceptable to stick to a set of timeworn standards for regulating the air quality in the tunnels, which were set with reference to the fire hazards posed by the concentration of gases. Moreover, the standards imposed on different tunnels may vary. Given that there is now sufficient evidence in support of the health hazards caused by air polluting gases, how can we accept the lower standards? The air quality standards as proposed in the bills under my name are set in accordance with the 1990 World Health Organization (WHO) standards. They also fall in line with the requirements specified in the Practice Notes on Control of Air Pollution in Vehicles Tunnels ("the Practice Notes") issued by the

Environmental Protection Department (EPD). I have proposed my amendment bills with reference to international standards.

Mr Deputy, some Honourable colleagues may ask why the EPD made no reference to the WHO standards when it formulated the Practice Notes in 1993. Why did the EPD not set such standards for the tunnel companies till now? Such being the case, public health is perhaps not safeguarded at all. This is the exact reason why I have proposed the bills. Over the past four years, the Practice Notes issued by EPD and the respective standards set for different tunnel companies have been operating within their own spheres, while the health of tunnel users is under constant threat. I find such situation grossly unacceptable. My decision to propose amendments to the air quality standards of the three tunnels was made upon receiving numerous complaints against the unacceptable air quality in the Tate's Cairn Tunnel. Since the Government knowingly ignores the problem, I have no alternative but to introduce Members' bills to meet this end.

Furthermore, before I decided to introduce the bills, I had contacted various policy branches, government departments and tunnel companies. I got from them the message that they agree to improve the air quality standards in the tunnels, and that they considered the principle of safeguarding public health acceptable. In fact, I was told by the management of the Tate's Cairn Tunnel over the phone this afternoon that the tunnel company had started preparing for the improvement works. This suffices to prove that all parties are endeavouring to work in concert with a view to improving the air quality in the tunnels.

I will move Committee stage amendments later regarding the commencement dates for the implementation of the revised air quality standards, which will be set at six months from now, so that the tunnel companies can make use of the six-month grace period to purchase the required facilities to improve the air quality in the tunnels. I agree that tunnel companies should be given a grace period to purchase and install the required facilities. It is likely that while some tunnel companies may achieve the required standards within the six-month period, some may not be able to do so. In view of the fact that I had proposed similar amendments to the resolution which I moved earlier in respect of the Western Harbour Crossing, I would move the same amendments today with a view to achieving uniform standards. I believe if the tunnel companies do, during the six-month period, go ahead with preparing for their concrete measures to improve the air quality, even if they cannot meet the required standards when

the grace period is over, the general public and the Government will accept and understand the situation and look for a better solution. According to the terms and conditions of the contracts, the Government can play a monitoring role.

Mr Deputy, with these remarks, I recommend this Bill to all Members and hope that they will support it.

DEPUTY PRESIDENT (in Cantonese): Point of order?

MRS MIRIAM LAU (in Cantonese): Yes, Mr Deputy. I request the Honourable IP Kwok-him to clarify a point that he has just made. May I ask for your leave to do so?

DEPUTY PRESIDENT (in Cantonese): Mr IP, do you wish to clarify?

MRS MIRIAM LAU (in Cantonese): Thank you, Mr Deputy. Just now, Mr IP said that if there were any Member who claimed to protect investors' interests at the expense of public health, then he would feel shocked. I would like to ask Mr IP whether or not any Member has put forward such an argument. If there is none, would Mr IP please consider withdrawing his remarks of "feeling shocked"?

MR IP KWOK-HIM (in Cantonese): If there were any Member who had such a thought, I would really feel shocked. I do not think that I have to withdraw my remarks.

MRS MIRIAM LAU (in Cantonese): Mr Deputy, I demand for clarification. Is there any Member who has ever put forward such an argument?

MR IP KWOK-HIM (in Cantonese): Mr Deputy, my sentence was preceded by a conditional clause: "If there were any Member". I believe I have made my point clear.

DEPUTY PRESIDENT (in Cantonese): Mrs Selina CHOW, point of order?

MRS SELINA CHOW (in Cantonese): Mr Deputy, I am not allowed to speak now, am I?

DEPUTY PRESIDENT (in Cantonese): Since Mr IP has already replied, you may only speak at the Committee stage.

MRS SELINA CHOW (in Cantonese): Well, up to you! *(Laughter)*

DEPUTY PRESIDENT (in Cantonese): This is stipulated in the Standing Orders, not "up to me"! *(Laughter)*

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 Bill

Council went into Committee.

CROSS-HARBOUR TUNNEL (CROSS-HARBOUR TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

Clause 1

MR IP KWOK-HIM (in Cantonese): Mr Chairman, I move that clause 1 be amended as set out in the paper circularized to Members.

My amendment to clause 1 is mainly on the commencement date of the Bill. Under the proposed amendment, the Bill shall come into operation six months after its passage. On 23 April, this Council passed the resolution I proposed which sought to amend the Western Harbour Crossing Regulation in respect of the air quality in the Western Harbour Crossing. At that time, a new clause was added to the Regulation to the effect that the Western Harbour Tunnel Company could attain the enhanced standards of air quality. As the Western Harbour Tunnel Company was given a six-month grace period, to ensure fairness and a uniform requirement for all tunnel companies, I now propose this amendment.

The Bill also provides for a six-month grace period so that the company concerned will make sufficient preparations in this six-month period and install new facilities so as to meet the new standards.

Proposed amendment

Clause 1 (see Annex XXI)

Question on the amendment put and agreed to.

Question on clause 1, as amended, put and agreed to.

Clause 2

MR IP KWOK-HIM (in Cantonese): Mr Deputy, I move that Clause 2 be amended as set out in the paper circularized to Members.

The amendment to Clause 2 seeks mainly to provide in a clearer manner air quality standards for the Western Harbour Crossing. It is purely a technical amendment.

Proposed amendment

Clause 2 (see Annex XXI)

Question on the amendment put and agreed to.

Question on clause 2, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

MR IP KWOK-HIM reported that the

CROSS-HARBOUR TUNNEL (CROSS-HARBOUR TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed.

DEPUTY PRESIDENT (in Cantonese): Mrs Selina CHOW, do you wish to speak?

MRS SELINA CHOW (in Cantonese): Mr Deputy, first of all, I would like to express my disappointment at the Honourable IP Kwok-him. The Liberal Party has discussed his bill in great detail and we entirely agree that we should take account of the health of the public. We also agree that we must do something to improve the air quality in tunnels and we should also encourage the tunnel companies to do the same. Nevertheless, Mr IP makes use of the legislative approach, which is equivalent to "the Imperial Sword" granted to Members of the Legislative Council, to achieve his aim. He has given no consideration to the option of consultation or other weapons available for use, such as the active exertion of pressure often adopted by the Legislative Council, in order to make tunnel companies do something meaningful of their own accord.

A six-month period is very short indeed and it is quite common for the Government itself to spend at least one or two years to conduct studies. Therefore, it is a case of double standards that the tunnel companies are required to meet the new standards within six months. Firstly, we are not saying that the tunnel companies do not have to observe the new standards, but the question

is how long the companies will take to meet such standards. Secondly, I was rather shocked to hear what Mr IP said just now. He hoped that we would support the enactment of this bill and give the tunnel companies a six-month grace period to prepare for the enhanced standards. But he himself was not sure whether the tunnel companies could make it. He hoped some progress would be made within six months and if the tunnel companies should fail to meet the enhanced standards after such a period, he expected that everybody would find it understandable. This is simply impossible because any non-compliance on the part of the tunnel companies with the laws we have enacted constitutes an offence. Who will be in a position to make allowances for the tunnel company? Mr IP himself or the Secretary for Transport? This is out of the question. No one is in a position to make allowance for the tunnel companies as far as the enforcement of legislation on environmental protection is concerned. In other words, the tunnel companies must meet the stipulated standards within the time frame as prescribed under the law, no matter how much it will cost them to do so. As Mr IP has adopted certain international standards in his bill, it is impossible for anyone to challenge them and not to accept them as the goal.

In my opinion, it would be unfair to the tunnel companies if we required them to meet the new standards within six months irrespective of the costs involved. I am not speaking for the tunnel companies. I just think that as a responsible Member of the Legislative Council, we should not only have the health of the public on our mind, but also take into account the principle of fairness. We should not care only about whether we can attain our goal and pay no attention to how we achieve it.

Mr IP said earlier on that the tunnel companies should earn less for the benefit of the health of the public. This is not a question of earning less but whether the tunnel company will incur a loss as a result, and how much the loss will be. In fact, I have heard that the tunnel companies will run in the red because some of the tunnel companies concerned are already operating at a loss. So it is not a question of asking the tunnel companies to spend a portion of their profits to do something meaningful. Even if we want them to do so, it should be done on a voluntary basis instead of

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): Paragraph (1) of the Standing Order (51) on Third Reading states that "debate on that motion shall be confined to the contents of the bill". If you just say something such as "A six-month time frame is too short", you are in compliance with the Standing Orders. But if you speak on the merits, demerits and the broad principle of the bill as a whole, it will go beyond the scope of the Third Reading. You must concern your remarks with the contents of the bill in a skilful way, otherwise you will contravene the Standing Orders.

MRS SELINA CHOW (in Cantonese): Mr President, the contents of his bill do touch on

PRESIDENT (in Cantonese): When we come to "the Eastern Harbour Crossing", you can speak on the principles.

MRS SELINA CHOW (in Cantonese): Mr President, maybe I will talk about the contents when I speak on the Eastern Harbour Crossing Regulation later.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

EASTERN HARBOUR CROSSING (EASTERN HARBOUR CROSSING ROAD TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

Resumption of debate on Second Reading which was moved on 16 April 1997

MRS SELINA CHOW (in Cantonese): Mr President, this is the continuation of my speech made just now. Earlier on, the Honourable IP Kwok-him and his colleagues from the Democratic Alliance for the Betterment of Hong Kong (the "DAB") took part in the vote on some labour-related bills. I believe that they will not say that they represent employers or defend their interests. They have

voted for justice, and that is to say, one should not exploit other people's generosity and impose some bills upon other people without prior consultation.

But now his stance has taken a complete turnaround. What he is doing is a typical example of exploiting other people's generosity. He is trying to force the tunnel companies through this bill to reach standards which he thinks would serve public interests. I believe that no one will dispute the importance of protecting public interests, in particular the health of the public. Therefore, it is simply not possible for the Liberal Party to vote against this bill. We have always regarded the health of the public as something of utmost importance. Nevertheless, we are of the view that what Mr IP is doing is not fair and we cannot support him. Therefore, we will abstain from voting.

Thank you, Mr President.

DR JOHN TSE (in Cantonese): Mr President, it is rare for the Democratic Party to support proposals put forward by the Democratic Alliance for the Betterment of Hong Kong (DAB), but as the spokesman of the Democratic Party on environmental affairs, I wish to say something tonight in defence of the Honourable IP Kwok-him.

Earlier on, the Honourable Mrs Selina CHOW said that the role of the Legislative Council was to pass legislation. However, if the passage of the legislation on the regulation of air quality in tunnels would affect tunnel operators, or even cause some companies to suffer financial losses, is it correct to do so? In my opinion, the Legislative Council should be concerned about the legislation itself, and it should not do the calculations for businessmen to see whether business was viable for them. If it was viable, then the bill should be passed. Otherwise, the bill should not be passed. I don't think this is what a responsible legislator should do.

MRS SELINA CHOW (in Cantonese): I did not mean that we should do the wishful calculations for businessmen.

PRESIDENT (in Cantonese): Mrs CHOW, you can explain yourself at the end of the debate.

DR JOHN TSE (in Cantonese): Secondly, regarding the regulation of air quality in tunnels, can it be done through legislation? Is it right to legislate only when the legislation is expected to be effective, and not to do so if we think otherwise? I do not think that we should legislate only when we are sure that the legislation would be effective. If we enact legislation in accordance with certain internationally accepted standards, as these are criteria adopted throughout the world and we just follow them, then why do we not make these regulations?

Another point of view is: why do we not consult the tunnel companies first to see if something can be done to raise the standards before enacting the legislation? As a matter of fact, how can the operators be expected to make improvements without certain strict legislation being enforced? They simply lack the motivation to do so. I do not mean we should force the tunnel companies to make improvements. What I mean is that we would try to improve the air quality if it affects the health of the public. If we just keep on saying that the health of the public is very important and must be protected but do not support the enactment of legislation to this effect, then our words are nothing more than "empty talks". This is not genuine concern for the health of the public.

Finally, she said that legislation made in this way would be unfair. I am of the opinion that the purpose of legislation is to regulate the conduct of these companies and establish certain standards and criteria for measurement. As legislators, we must find out whether these standards are reasonable. As to whether it is fair, we can see what our 59 Members think from the way they vote. If we really care about the health of the public, I think the intention of this bill, which is concerned with environmental protection, is worth our support tonight, even though our political stance is often different from that of the DAB.

Thank you, Mr President.

MR CHAN KAM-LAM (in Cantonese): The Democratic Alliance for the Betterment of Hong Kong (DAB) fully understands the feeling of dissatisfaction among the business community with the proposals of some Members to require them through legislation to pay more, thereby increasing their operating costs. We fully understand such a feeling. However, regarding this issue, I hope

Members of this Council acknowledge the efforts made by the DAB since the year before last in striving through various channels for improvement to the air quality in tunnels. It is also widely known that we have discussed this issue with the tunnel companies, the Transport Branch and various government departments. But it seems that little progress has been made in this respect.

We also understand that if we force tunnel companies through legislation to make improvements, it will inevitably increase their operating costs. Nevertheless, it is widely known that each time when the relevant companies turned to the Legislative Council for help in justifying their demand for a toll increase, the DAB has never "turned their backs on them". In other words, we always adopt a pragmatic approach in scrutinizing their applications. Therefore, I hope Mrs Selina CHOW will let her anger cool off. We have indeed considered this issue very carefully.

Thank you, Mr President.

MRS MIRIAM LAU (in Cantonese): Mr President, I have listened carefully to what Members have said in respect of this Bill. But it seems to me that none of my colleagues have clarified their positions regarding the point I raised just now: can we justify altering through legislation contracts made between the Government and private firms, or should we handle this matter with great care? Should the Government's position be given due consideration; or, as some Members have said, no consideration should be given to anything other than the health of the general public, which is of paramount importance? Is it right for us, as legislators who have "the Imperial Sword", as well as the absolute authority and power to legislate, to do whatever we want as long as it does not involve public money and does not require the Government to "dig into its pocket"? Should we adopt such an attitude? It seems to me that none of those Members who have spoken have touched on this point.

I would like to say something in response to the Honourable CHAN Kam-lam who has told us that the Democratic Alliance for the Betterment of Hong Kong (DAB) has discussed this issue with the tunnel companies. How

many rounds of discussions have been held and how long ago were they held? As far as I can remember, it should not be too long ago that some members of the public complained about poor air quality in the Tate's Cairn Tunnel. What has happened afterwards? Have the relevant panels of this Council discussed the matter? Has the Panel on Environmental Affairs discussed the matter? Has the Panel on Transport discussed the matter? Has any Member raised this issue for discussion? Has any Member raised a question on this issue? Has any Member moved a motion for debate in this respect? No. Following complaints by members of the public, we have seen no action taken other than this Member's bill as introduced by the Honourable IP Kwok-him, which seeks to regulate the air quality in the tunnels through legislation. As the tunnel companies have shown their willingness to make the improvements required, what I question is the way in which we force the tunnel companies to make the improvements rather than the need for such improvements.

Mr President, these are my remarks.

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, the Government's stance on this Bill and the one on Tate's Cairn Tunnel to be read later is completely the same as our position which I have explained just now on the Cross-Harbour Tunnel (Cross-Harbour Tunnel Regulations) (Amendment) Bill 1997.

I would like to reiterate that all tunnels were designed to meet the prevailing standards of the time when they were built and the three tunnels have completely different designs. Since we do not have the chance to clearly explain the implementation of the provisions to the companies concerned at any panel or bills committee meeting, it is absolutely necessary for the Government to retain the right to request for an extension of commencement date.

Thank you, Mr President.

MR IP KWOK-HIM (in Cantonese): Mr President, I originally thought that we would not spend so much time on discussing this Bill as I think we should all

understand that the foremost spirit of this Bill is to protect the health of the general public.

I would like to respond to a few questions now. Firstly, regarding the question of exploiting other peoples' generosity as raised by some Members, I cannot see how this could be the case. As a matter of fact, tunnels are built for the people of Hong Kong and they have to pay tolls when using them. This being the case, my view is that the expenses incurred by the tunnel companies in procuring or replacing facilities in order to reach international standards, will ultimately be borne by tunnel users. As the saying goes, "the wool comes from nowhere but the sheep". So I think that in this context "exploiting other people's generosity" should actually mean "at tunnel users' expense". I do not think that such expenses would be solely borne by the tunnel companies in the form of reduced profits. The issue is as simple as that.

Another question is whether we have introduced the Bill hastily. Is it true that we have introduced amendments to these ordinances without consulting the tunnel companies at all? I would like to briefly present some background information. This issue has actually arisen from the Tate's Cairn Tunnel. The poor air quality in this tunnel has long been the subject of complaints by the public, especially residents of Sha Tin. I went to the tunnel management company along with some Sha Tin District Board members on several occasions, to hold discussions with them and urge them to solve the problem expeditiously. If the Honourable CHOY Kan-pui were around, he might confirm that he had called on the tunnel company repeatedly to ask for remedial measures.

However, after taking a look at the relevant ordinances, we have found that the air quality standards set out therein have not been drawn up in compliance with international standards. As a result, the air quality in the tunnel can still reach the standards as laid down in the existing ordinances despite numerous complaints by the public. Under the circumstances, there is simply no incentive for the tunnel company to make any improvements at all, as it has already satisfied the prescribed standards in the original agreement with the Government in terms of air quality.

We must bear in mind that the existing air quality in the Tate's Cairn Tunnel is hazardous to the health of its users. This being the case, I do not see

why we should not require the tunnel operator to make improvement in this respect as soon as possible. As far as I remember, while introducing this proposal, it so happened that the Tate's Cairn Tunnel Company Limited was making an application for a toll increase. At that time

PRESIDENT (in Cantonese): Sorry, Mr IP Kwok-him, we are discussing the Eastern Harbour Crossing.

MR IP KWOK-HIM (in Cantonese): Mr President, I am aware of that, but what I am saying is related to this Bill. Therefore, I would like to give this piece of background information. I believe that you will find it relevant after hearing what I have to say.

When the Tate's Cairn Tunnel Company applied for a toll increase, it undertook to make improvements in many aspects and to engage consultants to conduct investigations. But when it found out later that the Legislative Council did not have the authority to approve its application, it was no longer eager to make improvements. It made excuses such as needing more time to study and consider the matter. Such a change of attitude indicates that in the absence of legislation requiring the tunnel companies, including the Eastern Harbour Crossing Company, to follow prescribed standards, they will never take proactive measures to make improvements.

Of course, I have to admit that it may be unfair to the Eastern Harbour Crossing Company or the Cross Harbour Tunnel Company because it was the Tate's Cairn Tunnel that we focused on at that time. Yet according to our ensuing discussions and the information provided by the Environmental Protection Department, these two tunnel companies can reach the stipulated air quality standards without having to carry out major works. This is what I was given to understand in my discussions with them. Therefore, in my opinion, as long as the tunnel companies would make an effort within the grace period provided in the Bill, they will be able to reach the standards. I think the tunnel companies have the responsibility to protect the health of the public.

Just now, some Members also queried whether it was fair to require the tunnel companies to reach the standards within six months, when we are fully aware that they might not be able to do so. In fact, we all know that this Bill is related to the contract between the Government and the tunnel company. The enforcement of its provisions is done through monitoring on the part of the

Government and the tunnel companies will not be liable to prosecution even if they fail to reach the required standards within the grace period. The Government should play a major monitoring role in this respect. Therefore, the Secretary for Transport has specially pointed out that the Government could suggest extending the grace period if it finds that the tunnel companies cannot reach the stipulated standards within that period. Therefore, I do not think this Bill will be unfair to the tunnel companies.

Thank you, Mr President.

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 Bill

Council went into Committee.

EASTERN HARBOUR CROSSING (EASTERN HARBOUR CROSSING ROAD TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

Clause 1

MR IP KWOK-HIM (in Cantonese): Mr Chairman, I move that Clause 1 be amended as set out in the paper circularized to members. Clause 1 is on the commencement date of the Ordinance.

Proposed amendment

Clause 1 (see Annex XXII)

Question on the amendment put and agreed to.

Question on clause 1, as amended, put and agreed to.

Clause 2

MR IP KWOK-HIM (in Cantonese): Mr Chairman, I move that Clause 2 be amended as set out in the paper circularized to members.

The Amendment to Clause 2 aims mainly to set out clearly the air quality standard for the tunnel. It is purely a technical amendment.

Thank you, Mr Chairman.

Proposed amendment

Clause 2 (see Annex XXII)

Question on the amendment put and agreed to.

Question on clause 2, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

MR IP KWOK-HIM reported that the

EASTERN HARBOUR CROSSING (EASTERN HARBOUR CROSSING ROAD TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

**TATE'S CAIRN TUNNEL (TATE'S CAIRN TUNNEL REGULATIONS)
(AMENDMENT) BILL 1997****Resumption of debate on Second Reading which was moved on 16 April 1997**

DR JOHN TSE (in Cantonese): Mr President, Members are fortunate tonight to be able to scrutinize three bills of a similar nature, and we have the opportunity to take an in-depth look into a number of related issues.

I would like to respond to some comments made by the Liberal Party, which sought, on the basis of the theory of free market economy, to discourage involvement by this Council in commercial relationships between businessmen and Government. At a glance, their argument appears to be flawless. Upon closer scrutiny, however, it turns out that this in fact is not the case. Many aspects of environmental protection, such as noise generated by motor vehicles or even the quality of fuel, are subject to regulation, and some are even regulated by legislation. Such being the case, why is it that this Council cannot propose legislation to regulate some business activities in accordance with certain international standards? Actually, this issue is worth Members' deliberations, especially when the focus is on public health. When it comes to public health, I think legislation should be instituted at times and to a certain extent in order to improve the situation.

The second point that I wish to make is simple. In this ever-changing world, standards are constantly being improved. If some air quality standards which are almost universal have already been set, why should Hong Kong, being an economically prosperous city, refrain from adopting such improved standards? I cannot see any sound reasons why the relevant legislation should not be put in place.

Thirdly, I have spoken a lot for the Democratic Alliance for the Betterment of Hong Kong this evening. However, I really want to lodge a complaint against them, which is about their adoption of double standards this evening. In discussing air quality, they advocate regulation by legislation. When it comes to fare increases for the three railways, why do they not adopt the same standards? I think this is rather unfair. If we believe in the effectiveness of legislation and

the benefit that it will bring to the public, then whether the subject matter is public health or fare levels, we have the right to propose regulation. Why do they adopt double standards?

Thank you, Mr President.

MR CHAN KAM-LAM (in Cantonese): Mr President, I am afraid that Dr the Honourable John TSE has made a mistake. In preparing the Bill, the Democratic Alliance for the Betterment of Hong Kong (DAB) has given it careful consideration. As I have just mentioned, it is our hope to improve the air quality of the tunnel, as an aspect of service improvement, through legislation. In the event of higher costs due to service improvement, it is hoped that the Government will take account of the factor of higher costs when negotiating about fare increase with the operators concerned.

Regarding fare increases of the three railways, the DAB has stressed repeatedly that it is an entirely different issue. If this Council were to take control of the fare adjustment mechanism of the railways, the repercussions would definitely be very serious. Not only would there be no service improvement, the operating environment of the companies concerned would also become increasingly difficult. Under the influence of political factors, it is extremely likely that the involvement of this Council will aggravate the problem. After all, this is an entirely different issue.

I therefore hope, in the event that implementation of the Bill may lead to higher costs, that the Government will take into account the factor of higher costs in considering future tunnel toll adjustments. It is also hoped that the Democratic Party will feel at ease about supporting the DAB, as your support this time will not entail any grave repercussion.

Thank you, Mr President.

MRS MIRIAM LAU (in Cantonese): Mr President, I would like to respond to two points which Dr the Honourable John TSE made just now.

Dr John TSE asked why we opposed to regulation of air quality inside tunnels through legislation, despite the fact that we passed other laws to control

noise or air pollution. The reason is simple. The Government has never made such agreements with vehicle drivers; neither has it made any agreements on noise control with the general public. The Government, however, did make agreements with the three tunnel companies to impose standards for air quality control. Such standards are now being revised to keep abreast of the time. As I pointed out very clearly during the Second Reading debate of the first Bill, in the event that the laws were amended to impose higher standards, the agreements between Government and the private companies would be violated in spirit, even if it is not violated in letter. As such, the situation at issue is different from the one described in Dr TSE's example given just now, because if the Government imposes new noise level standards, motor vehicle drivers and other people will of course have to abide by them; and if other air pollution standards are being imposed, members of the public will have to conform to them as well. These are situations where no specific agreement is in existence. However, the situation at issue now concerns agreements which do exist, and provisions on air quality have already been laid down in the agreements. If such provisions are to be amended, can we quote the same examples to illustrate our point?

Regarding Dr TSE's criticisms on the stance taken by the DAB on the fare increases of the three railways, I think the example which he quoted was inappropriate. In referring to the bill on buses during the Second Reading debate of the first bill just now, I have pointed out the diametrically opposing stances adopted by the DAB on the two different occasions, even though the subject matter remains the same. Whereas the three railways are operated by statutory corporations which are wholly owned by the Government, the bus companies are private companies. The bill on buses at issue then was targeted at private companies, in the same way as the three bills which the DAB submits today are targeted at private companies. Nevertheless, in dealing with the two different groups of private companies, the DAB has adopted attitudes which are poles apart. I think I had better leave it to the DAB to explain why this has been the case.

Thank you, Mr President.

MR MOK YING-FAN (in Cantonese): Now that it is so late in the evening, I am going to be brief. The Hong Kong Association for Democracy and People's Livelihood will also support the Bill on the Tate's Cairn Tunnel, for the same reasons as we support the Bill on the Cross-Harbour Tunnel.

Thank You, Mr President.

MR IP KWOK-HIM (in Cantonese): Mr President, first of all, I would like to thank the Honourable CHAN Kam-lam for reiterating the view of the Democratic Alliance for the Betterment of Hong Kong in this respect, and I am not going to make further elaboration. I would also like to thank the Democratic Party for their support of the Bill. Perhaps I was too brief just now. I have not made more mention of our thanks to the Democratic Party for its support to this Bill because I think this is an issue related to the well-being of the community, and we all should care about public health.

Just now, Mr CHAN Kam-lam has pointed out the fundamental difference between the objective of this Bill and the regulation of fare increases of the Mass Transit Railway or buses, so I am not going to waste any more of my colleagues' time in this aspect.

Thank you, Mr President.

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 Bill

Council went into Committee.

TATE'S CAIRN TUNNEL (TATE'S CAIRN TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

Clause 1

MR IP KWOK-HIM (in Cantonese): Mr Chairman, I move that clause 1 be amended as set out in the paper circularized to Members. Clause 1 is on the commencement date of the Ordinance concerned.

Thank you, Mr Chairman.

Proposed amendment

Clause 1 (see Annex XXIII)

Question on the amendment put and agreed to.

Question on clause 1, as amended, put and agreed to.

Clause 2

MR IP KWOK-HIM (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out in the paper circularized to members. The amendment to clause 2 aims mainly to set out more clearly the air quality standards for the tunnel. It is a purely technical amendment.

Thank you, Mr Chairman.

Proposed amendment

Clause 2 (see Annex XXIII)

MR CHAN KAM-LAM (in Cantonese): Mr Chairman, the criticism made by the Honourable Mrs Miriam LAU has won our full acceptance, as it is to a certain extent an irregular practice to change the terms of the agreements between the Government and private companies by means of legislation. However, to make a comparison of the Bill in question with the one on bus services is to bring together two entirely different issues. While our objective is to bring about an improvement in tunnel services, the bill on bus services will be detrimental to the fare increase mechanisms of the bus companies. This is totally unacceptable to us. In case a bus company performed poorly, we would most probably propose a Members' bill urging the Government to press for service improvement.

Thank you, Mr Chairman.

Question on the amendment put and agreed to.

Question on clause 2, as amended, put and agreed to.

Council then resumed.

Third Reading of Bill

MR IP KWOK-HIM reported that the

TATE'S CAIRN TUNNEL (TATE'S CAIRN TUNNEL REGULATIONS) (AMENDMENT) BILL 1997

had passed through Committee with amendments. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

Resumption of Second Reading Debate on Bill

SECURITY AND GUARDING SERVICES (AMENDMENT) (NO. 2) BILL 1997

Resumption of debate on Second Reading which was moved on 9 April 1997

MRS MIRIAM LAU (in Cantonese): Mr President, I would like to declare my interest first. I am the Chairman of the Security and Guarding Services Industry Authority (the Authority).

Mr President, the Member's Bill introduced by the Honourable CHAN Wing-chan seeks to amend the Security and Guarding Services Ordinance (the Ordinance), so that a particular group of people will be exempted from the regulation of the Ordinance and the Authority will not be able to replace

watchman's permits (commonly known as "white cards") gradually with security personnel permits. As the Chairman of the Authority, I am strongly oppose to the Bill.

The spirit of the Ordinance is to place security companies and their personnel under appropriate regulation through the establishment of a licensing system, so as to enhance the quality of security services, protect the interests of consumers and help to fight crime. The Ordinance provides that all security personnel and security companies have to apply for permits and licences respectively. The Ordinance replaced the Watchmen Ordinance, the only legislation governing the industry. The Authority is responsible for issuing licences to security companies and determining the criteria for issuing permits to security personnel.

The Government, when drafting the Ordinance, has been mindful of the need to ensure that the employment of aged security personnel would not be unduly affected. Transitional arrangements have already been built into section 33 of the Ordinance to facilitate the continuous employment of holders of watchman's permits ("white cards") issued under the Watchmen Ordinance. Irrespective of age, they can continue their service in all types of buildings until they receive notice from the Authority to change their watchman's permits into security personnel permits. It will take five years to complete the replacement exercise and arrangements have been made for elderly security personnel to have their permits replaced in the final stage.

The Authority has taken the actual situation of the industry into consideration when it determined the criteria for issuing permits to security personnel. Efforts have been made to strike a balance between the interests of those in the trade on the one hand, and public interests on the other. In fact, those in the trade have greater expectations in promoting the quality of security personnel and have asked the Authority to draw up more stringent requirements for the age limit of security personnel. However, we understand that there are many elderly persons in the trade. In order to ensure that the implementation of the Ordinance will not bring about any drastic changes, we decide to proceed gradually in introducing various improvement measures. Under the licensing criteria determined by the Authority, persons aged over 65 can apply for a Category A permit and work in single private residential buildings, that is, buildings with one main access point and used substantially for residential purpose. This covers a large proportion of residential buildings in Hong Kong. There is no upper age limit for security personnel working in this type of

buildings. The Ordinance has come into full operation for just over a year and the Authority is now conducting a comprehensive review on the licensing criteria, with due regard to the practical needs of the trade and the community.

With the above arrangements, we believe the number of watchmen affected by the Ordinance is far fewer than that suggested by Mr CHAN Wing-chan. According to records kept by the Labour Department, there are only 19 cases in which security personnel were dismissed on the ground of age since the Ordinance came into operation on 1 June 1996. Most of these cases were caused by misinterpretation or deliberate distortion of the Ordinance by the employers concerned. The cases have been conciliated by the Labour Department. Proper arrangements have actually been made in the Ordinance for aged security personnel so that they can continue to undertake type A security work irrespective of age until they transfer to another job, retire or die, so long as they are in good health and are still competent at security work.

The amendments proposed by Mr CHAN Wing-chan represent a severe retrogression. They seek to provide a group of so-called "existing security workers" with the privilege of being exempted from the regulation framework of the Ordinance. The provisions are contrary to the spirit of the Ordinance in improving security services. Efforts made by the Government and the Authority in the past to promote the quality of security services have also been wasted.

Another amendment proposed recently by Mr CHAN seeks to include an additional provision in the Ordinance, so that the Authority will be prevented from imposing the transitional arrangements provided for in section 33 of the Ordinance on those persons he suggests to exempt, and have their "white cards" replaced by security personnel permits gradually. The replacement exercise has already started on 12 May and so far notification has been given to over 2 000 "white card" holders, informing them to have their cards replaced at the office of the Authority. If Mr CHAN's amendment is endorsed, the replacement exercise will have to be shelved until a clear definition is established to determine the persons to be exempted.

To sum up, I am strongly opposed to the amendments proposed by Mr CHAN Wing-chan for the following reasons:

- (1) The amendments go against the spirit of the Security and Guarding Services Ordinance.
- (2) The exemption granted to "existing security workers" will not prevent employers from intentionally distorting the Ordinance as they can use other excuses to dismiss elderly security workers. The proposed amendments fail to provide effective remedy to address the crux of the problem.
- (3) Singling out a group of people and granting them the privilege of exemption from the vetting procedures provided for in the relevant legislation is not only unfair to the majority who are not exempted, but also an infringement of public interests.
- (4) The definition of "existing security workers" proposed by Mr CHAN would create confusion, disputes and enforcement problems. According to the suggestion of Mr CHAN, "existing security workers" refers to all persons who were lawfully employed as watchmen on 31 May 1996, or who have been lawfully employed as watchmen within the period of 24 months before 1 June 1996 and are capable of producing evidence issued by the employers or by the registered trade unions to prove that within the said 24 months the aggregate periods of being lawfully employed as watchmen are not less than 6 months. However, the proposed amendments fail to provide any practical guidelines to other important definitions such as the meaning of "lawfully employed"; the kinds of evidence which will be accepted; the trade unions whose evidence issued is considered reliable; means to determine the admissibility of evidence; and measures to ensure that the system will not be abused.
- (5) The Authority started issuing letters to "white card" holders on 12 May notifying them to replace their permits. Mr CHAN, on the other hand, introduced his amendments on 7 June, trying to stop the Authority from issuing such notification letters. Hundred thousands of people waiting to replace their permits will inevitably be thrown into confusion and at a loss as to what to do;
- (6) "White cards" held by the security workers whom Mr CHAN seeks to exempt were issued under the Watchmen Ordinance, which was

repealed on 1 June 1996 upon the commencement of the Security and Guarding Services Ordinance. This category of security workers are neither governed by the Watchmen Ordinance nor covered by the licensing criteria specified in the new legislation. However, under existing legislation, notice may be served by the Authority where necessary to require the persons concerned to apply for new permits so that he will come under the regulation of the new legislation. The Bill introduced by Mr CHAN, once enacted, will leave security workers exempted free of full regulation of any legislation, which is absolutely unacceptable from the security point of view.

- (7) Records kept by the police reveal that there are over one hundred thousands of "white card" holders in Hong Kong, among whom there are both young and elderly security workers. They make up two thirds of the security personnel in the industry and over seventy thousands of them are under 65. If the proposed amendments are endorsed, "white card" holders of all ages will be exempted. The Authority will be unable to impose any control over them and implement any improvement measures to enhance the quality of their services. In view of this, the policy objective of improving the quality of security services will only be achieved in the next generation after the death of these one hundred thousands of "white card" holders.

Mr President, the proposed amendments go against the original intention of the legislation. It will bring about unfair treatment, create confusion, damage the existing licensing mechanism and infringe public interests. I sincerely urge fellow colleagues to vote against the Bill introduced by Mr CHAN Wing-chan.

MISS CHAN YUEN-HAN (in Cantonese): Mr President, it is nearly midnight and I may have got it wrong just now. I am aroused by the six to seven indictments set out against the Honourable CHAN Wing-chan by the Honourable Mrs Miriam LAU, and I hope I have not got anything wrong.

First of all, I would like to clarify the reason for Mr CHAN Wing-chan to propose amendments to the Security and Guarding Services Ordinance (the Ordinance). The objective is to reflect the views of the Hong Kong Federation

of Trade Unions (FTU) and a number of labour organizations. When the issue was discussed at the Legislative Council in the last session, people working as watchmen and the relevant trade unions expressed their views. Unfortunately, it seems that our views were not taken into consideration when the relevant subsidiary legislation was drafted and I wonder if it was the result of the Government's failure to catch our points.

I would like to discuss the six to seven indictments set out by Mrs LAU against Mr CHAN.

Mrs LAU claims that the amendments go against the spirit of the legislation but I have given it very serious thought and can find no evidence to support her allegation. Our objectives are very simple: we are just trying to safeguard the livelihood of those people who are working as watchmen and to avoid breaking labour relations which are acceptable to both employers and employees. Why do I say so? The management of single private residential buildings or multi-block housing estates and security workers actually like to establish working relationships with each other. In other words, some employers would like to employ the elderly or security workers and the latter are willing to get the jobs. Under such circumstances, what is the point of separating them through legislative means? Despite much thought about this, I remain perplexed. Mrs LAU insists that the spirit of the legislation should be maintained so as to enhance the standard and quality of watchmen, but I would like to ask if it is appropriate to determine the quality of services of a watchman by his age. There are Members in this Council who are over 70 and we would not say that they are of lower standard. The meeting tonight is so lengthy that it is nearly midnight now but Members over 65 are still with us in the Chamber, full of energy and remaining in action. It really bewilders me when it is suggested that the quality of a person's services should be determined by his age. The Honourable Martin LEE is turning round now and I cannot help thinking: how energetic he is although he is almost 60. (*Laughter*) I think it is somewhat unfair to determine the quality of services provided by security workers by their age.

Mrs LAU said that the amendments go against the spirit of the legislation but I would like to point out that there is now a trend towards equal opportunities for people of all ages and the elimination of age discrimination. If the bill on the prohibition of age discrimination, which the FTU fully supports, is endorsed tomorrow, the code of practice prepared by the Authority should also be amended.

Therefore, it should be the code of practice instead of the amendments we propose which goes against the legislation. Even though we do not take the bill to be read tomorrow into consideration, as there is the trend towards the prohibition of age discrimination, why do we not let watchmen continue with their work if they are physically fit to do so?

I agree that no provision on physical examination is incorporated in the amendments proposed by Mr CHAN. We are not opposed to the arrangements but we think that it is unfair to require watchmen over 65 who are working in multi-block housing estates to undergo physical examination, while the provision does not apply to other people working in single private residential buildings. Why should there be such a difference? I think it is an assumption which forms the basis of the rationale behind the provision or the drafting of rules and regulations. However, I would like to draw Mrs LAU's attention to the fact that we Hong Kong people are so fortunate that the lifespan for women and men may be as long as over 80 and over 70 years respectively. Perhaps there will be widespread discussions in our society on retirement age as in the case of Japan, which has altered its compulsory retirement age to 65 from 60, and will probably raise it to a more advanced age in future. Determining the quality of a person by his age is an insult to us, including Members who are present here in this Chamber. Therefore, among the seven indictments set out by Mrs LAU against Mr CHAN, not a single one of them can be used to refute our arguments.

Let us take the provisions involving the date of 30 June as an example. Mrs LAU accused Mr CHAN of hindering the implementation of the Ordinance with the introduction of the proposed provisions. In my opinion, if it is a sound proposal and if you realize that you have done something wrong before that date, you had better rectify the situation. If there is nothing wrong with the proposal, why do you stick to a wrong course so obstinately? Though fully aware that you are caught in a trap, you still think that I am being nosy in telling you the truth and disregard my opinion. This is really unfair to me. If we agree with the major premise that a person's age is equivalent to his quality, we mean to say that Members over 65 in the Council are not very competent. I think my fellow colleagues and people outside the Council will definitely object to the argument.

Furthermore, I would also like to talk about the issue of care for the elderly, which has aroused much public concern. Frankly speaking, the current salaries for watchmen or security workers are not very attractive. They could earn \$5,000 to \$6,000 per month seven to eight years ago but their salaries have

dropped to the present level of \$3,000 to \$4,000 per month. This group of people would have retired by the age of 50 if they were better off. Why are they so eager to work though they are so advanced in years, and take part in demonstrations held in this Council to tell us their difficulties? This only shows that there is no retirement protection in Hong Kong. Not only do they really want to have a job, their physical condition also allows them to do so. It is the opinion of the FTU that elderly security workers will quit their job if their physical condition does not permit them to continue working. But why should we disallow people who are physically fit to take up security work? They are in genuine need of the money they earn through their hard work. Although there is the Comprehensive Social Security Assistance Scheme in Hong Kong, a lot of elderly people have indicated their wish to get a job. As the employers also wish to employ them, why do we deprive them of a chance? With the arrangements acceptable to both the elderly and the employers, as well as the fact that the services rendered are of desirable quality, why must we insist on depriving the elderly of a means of livelihood?

A survey conducted a few months ago by the University of Hong Kong reveals that the rate of committing suicide among the elderly in Hong Kong ranks high in the world. It is also found that there is a higher rate of suicide among the elderly who are jobless. Under the pressure of such social problems and due to the objective fact that there is no need to enact any rules at this stage to prevent elderly from taking up employment on reaching the age of 65, why do we not give them a chance to work? These are in fact artificially imposed restrictions. Nothing can convince us to agree with the provisions which prevent these healthy and energetic workers from taking up security work.

Mrs LAU also mentions that there are only ten odd cases involving the alleged problem of unfair dismissal last year and it seems that the FTU and people in the labour field are exaggerating the seriousness of the problem. I think the remarks only reflect Mrs LAU's ignorance of the issue of labour relations. For Members' information, in fact the FTU have received hundreds of similar complaint cases. A number of procedures are involved from the lodging of a complaint to the settlement of a case at a tribunal. There is the possibility that some cases are settled without the conciliation of the Labour Department or the Labour Tribunal, but it does not mean that the Ordinance satisfies both the employers and the employees. The fact that there are only ten odd cases which require further action is in no way an indication to suggest that the problem is not serious. It is only the result of our efforts to settle the problems involved one by one without referring the cases to the Labour Department or the Labour Tribunal.

It cannot be used as evidence to prove that there is nothing wrong with the present system. If Mrs LAU thinks that the number of cases is too small to prove that a serious problem really exists, I venture to ask if she would like to see the emergence of more complaint cases. Arrangements can of course be made for a substantial number of security workers affected by the Ordinance to give us a demonstration and sit-in at the Legislative Council Building tomorrow. There are actually a large number of elderly who are in good health and full of vigour. Though the employers very much like to hire them, they are under the regulation of the relevant provisions. What is the point of imposing such restrictions?

The FTU agrees that we should not try to protect ourselves at the expense of public interests. We have made this point very clear. Elderly security workers should not carry on with their security duties if they have any serious illness or cannot pass the physical examination. However, we should not establish 65 years old as the age limit for hiring them. The elderly are willing to undertake physical examination and an age limit should not be set. I would like to emphasize once again that Hong Kong people now have a longer lifespan than before. We may follow the footsteps of Japan and encounter the same problem it once faced. It must be noted that the established retirement age in Japan was 60 but it is altered to 65 now, and perhaps to an even more advanced age in future. This only reflects that the lifespan for human beings is lengthened and we have improved our physical condition now. Why must we deprive the elderly security workers of a means of livelihood with all these restrictions?

Mr President, I hope fellow colleagues will, after listening to my speech, support the Bill introduced by Mr CHAN if they accept that some elderly people including Members over 65 in this Council are in very good health. Please grant us your support if you agree that we should not resort to legislative means to deprive the elderly of an opportunity to work, as long as they are eager to take up employment and the employers are willing to employ them. Furthermore, if fellow Members consider that there should not be any form of age discrimination and decide to support the Honourable LAU Chin-shek's bill on the prohibition of age discrimination tomorrow, I call upon their action in the same spirit to support the Bill introduced by Mr CHAN Wing-chan today.

Thank you.

SUSPENSION OF SITTING

PRESIDENT: I am afraid I have to suspend the sitting for the night. Council will resume at exactly 9 am tomorrow morning.

Suspended accordingly at four minutes to midnight.