

1 HONG KONG LEGISLATIVE COUNCIL -- 6 June 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 6 June 1990

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE CHIEF SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE DAVID ALAN CHALLONER NENDICK, J.P.

THE ATTORNEY GENERAL

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

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

THE HONOURABLE CHEUNG YAN-LUNG, O.B.E., J.P.

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

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

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

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

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

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

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE YEUNG KAI-YIN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS. ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE RAFAEL HUI SI-YAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE CLIVE WILLIAM BAKER OXLEY, E.D., J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE IAN ROBERT STRACHAN, J.P.  
SECRETARY FOR SECURITY

ABSENT

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

THE HONOURABLE JAMES DAVID MCGREGOR, O.B.E., I.S.O., J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation

L.N. No.

Pawnbrokers Ordinance

Pawnbrokers (Amendment of First Schedule)  
Order

1990..... 169/90

Weights and Measures Ordinance

Weights and Measures Order 1990..... 170/90

Sessional Papers 1989-90

No. 77 -- Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1989-90

Public Finance Ordinance: Section 8

Address by Member

Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1989-90

Public Finance Ordinance: Section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8)(b) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved estimates of expenditure for the third quarter of the financial year 1989-90.

Supplementary provision of \$875.5 million was approved. It was fully offset

either by savings under the same or other heads of expenditure or by the deletion of funds under the Additional Commitments subheads. This included \$474.0 million for advance payment of water charges.

Approved non-recurrent commitments were increased by \$638.9 million during the period, and new non-recurrent commitments of \$2,197.1 million were also approved.

In the same period, a net decrease of 1 679 posts was approved.

Items in the summary have been approved either by Finance Committee or under delegated authority. The latter have been reported to the Finance Committee in accordance with section 8(8)(a) of the Public Finance Ordinance.

Oral answers to questions

Arms and equipment of a policeman on beat patrol

1. MISS LEUNG asked (in Cantonese): In view of the sharp increase in the number of armed robberies recently and the powerful firearms used by the robbers, will Government inform this Council of the standard arms and equipment of a policeman on patrol and whether these are adequate to the needs of the police in effectively discharging their duties and protecting themselves?

SECRETARY FOR SECURITY: Sir, police officers on beat patrol normally carry:

a 0.38 calibre Smith and Wesson model 10 revolver;

a truncheon;

a pair of handcuffs;

a whistle and lanyard; and

a beat radio.

A Remington shotgun, a 1 1/2-inch tear smoke pistol and tear smoke grenades are

carried on mobile patrol and emergency unit vehicles. If required, rifles and other weapons are available for issue from police station armouries.

A recently completed police review has concluded that the standard weapons carried by officers on patrol are adequate. Given the potential dangers to members of the public which might arise from an exchange of fire involving more powerful weapons, it is not proposed to upgrade the standard weapons package. I can, however, assure Members that the adequacy and effectiveness of that package is kept regularly under review.

MISS LEUNG (in Cantonese): Sir, how does the power of firearms carried by the police compare with that of robbers'? If the firearms carried by the police are not as powerful, will that affect the effectiveness of the police in dealing with robbers?

SECRETARY FOR SECURITY: Sir, I believe I have answered this question in paragraph 2 of my main answer. I think I may repeat that again. The police have conducted a review and found that the standard weapons they have at present are adequate and that there is nothing to be gained from increasing the weaponry, which would only lead to a further escalation in exchanges of fire.

MR. MICHAEL CHENG (in Cantonese): Sir, could I ask the Government when the police last changed their firearms? What are the circumstances and conditions under which the Government will change their firearms?

SECRETARY FOR SECURITY: Sir, I shall have to make a written reply to this question. (Annex I)

DR. LEONG: Sir, could the Administration inform this Council whether there is in toto an adequate element of protection for the public?

SECRETARY FOR SECURITY: Yes, Sir, there is.

MR. EDWARD HO: Sir, will the Secretary please inform this Council how many practice hours are given to a police officer in the use of firearms so that he can effectively carry out his duty and minimize danger to members of the public?

SECRETARY FOR SECURITY: Sir, may I be permitted to give a written reply to this question. (Annex II)

MR. ANDREW WONG: Sir, would the Secretary inform this Council as to the standard equipment for the marine police?

SECRETARY FOR SECURITY: Generally, it is the same as carried by policemen on beat patrol. There are, of course, other weapons on the police launches themselves.

MR. MICHAEL CHENG (in Cantonese): Sir, will the Government inform this Council how policemen killed or injured on duty are compensated at present? Does the compensation given have any positive effect on policemen's hunt for robbers?

HIS EXCELLENCY THE PRESIDENT: This is far beyond the lines of the first question and should be put down as a separate question, please.

Phasing out of certain education services

2. MRS. FAN asked: In his Budget debate speech in this Council on 9 May 1990 the Secretary for Education and Manpower stated that several education services have been identified for pruning and phasing out. Will the Government inform this Council:

(i) what these services are;

(ii) the estimated total savings that can be achieved; and

(iii) whether other educational services will receive additional funding from the savings achieved and if so, what are they?



SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of the question, the educational services and activities that have been identified for pruning, phasing and reform are as follows:

- (a) a phased contraction of adult education services;
- (b) effecting a greater devolution of authority to schools over the management of certain staff and financial matters;
- (c) lowering the frequency of subject inspections in respect of the better established schools;
- (d) reducing annual re-makes of educational television (ETV) programmes and discontinuing ETV inspection work;
- (e) re-deploying staff within the Education Department, and merging certain units;
- (f) making the Director of Architectural Services the authorized person for major and emergency repairs in respect of all non-estate aided schools; and
- (g) changing the mode of refresher training courses for serving secondary school teachers from a block release to day release basis.

As regards the second part of the question, these measures are expected to generate annually recurrent savings of about \$7.7 million in the first year of implementation, rising to \$18.1 million on reaching maturity in about four years' time. Much of these savings are expected to be in the form of Personal Emoluments.

As regards the final part of the question, the extent to which policy secretaries may deploy savings within their programme areas is still under examination against the wider background of the stringent budgetary strategy to be adopted for 1991-92. A decision will be made on this issue towards the middle of this year. I am hopeful, however, that the decision will be a favourable one as far as my programme area is concerned. For this reason, I am planning to re-deploy these savings towards two urgent activities for which no provision has been made in the 1990-91 Estimates of Expenditure. These are, first, the preparation of the syllabuses for Advanced Supplementary Level subjects, which are due to be introduced into all Sixth Forms

in 1992 and, secondly, research and development work involved in formulating attainment standards and associated tests for core subjects in schools.

MRS. FAN: Sir, I would like to thank the Secretary for Education and Manpower for his comprehensive answer. May I ask whether it is his intention to start the pruning, phasing and reform as indicated in his answer immediately so that his hope of using such saving towards the two urgent areas may be implemented now?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, my intention is to start pruning as soon as I am authorized to use those savings.

#### Certificate of No Criminal Conviction

3. MR. HUI asked: Will Government inform this Council:

(1) of the number of applications for Certificates of No Criminal Conviction received in the first quarter of 1990 and how this figure compares to that in the preceding quarter;

(2) of the time required to issue these certificates; and

(3) whether the Administration will consider taking measures to speed up the processing of these applications by deploying more staff, so that certificates can be issued within three weeks?

SECRETARY FOR SECURITY: Sir, 17 355 applications for Certificates of No Criminal Conviction (CNCC) were received in the first quarter of 1990, as compared with 18 327 in the preceding quarter.

Because of resource constraints, a ceiling of 300 applications to be processed per day was imposed in January 1990. Applicants are now required to book an appointment for the processing of applications for which there is currently a waiting time of 17 days. Subsequent processing will normally be completed within 21 working days.

As the present average processing time is considered reasonable it is not intended, given other policing commitments, to deploy additional staff to the CNCC Office at this time.

MR. HUI: Could the Administration inform this Council if it would consider having an office in Kowloon and another in the New Territories so as to facilitate the work of the police and for the convenience of the people of Hong Kong? And could the Administration also inform this Council if it would consider reviewing the relationship between the Spent Conviction Scheme and the CNCC, since the former has been implemented successfully for some time?

HIS EXCELLENCY THE PRESIDENT: Before I ask the Secretary for Security to reply could I please repeat the request to Members to keep supplementary questions simple and on one subject.

SECRETARY FOR SECURITY: Sir, my honourable friend, Mr. HUI, has asked two separate questions. My answer to the first one is that we have considered having more offices in order to expedite the CNCCs. As I said in my main answer, one problem is the lack of resources at present to do this. But even if we had the resources there is one other problem which is that all records have to be checked by the Criminal Records Bureau in police headquarters. In other words, whatever happens, it has to go through one bottleneck in the system at some stage.

Sir, as to the second question, at present the police do not issue a CNCC where an applicant has a conviction whether or not it is spent under the Rehabilitation Scheme. The views of the public on this practice were sought in the public consultation exercise, which was conducted in May 1989, on the review of the Rehabilitation of Offenders Ordinance. This matter, together with the Rehabilitation of Offenders Ordinance, are being reviewed by the Fight Crime Committee at present.

MR. ARCULLI: Sir, could the Secretary for Security explain to us why it is necessary for an applicant to attend in person to process his application and whether in fact

time and, indeed, cost can be saved by processing an application by post?

SECRETARY FOR SECURITY: Sir, clearly the issue of this document is very important, both for the Administration and for the applicant. People of the same name may apply and there have been various errors in the past in identifying that somebody is in fact the person whom he says he is. It is, therefore, necessary for applicants to attend in person.

MR. ANDREW WONG: Sir, how is the CNCC Office staffed? Is it staffed by police officers largely, or by civilian officers such as clerks? If staffed by police officers, can consideration be given to converting such posts to clerical posts?

SECRETARY FOR SECURITY: Sir, the current establishment of the CNCC Office comprises the following:

- 2 Inspectors of Police
- 5 Police Constables
- 2 Clerical Officers II
- 5 Clerical Assistants, and
- 3 Typists,

a total of 17 posts. If we were to replace the Inspectors, and presumably they would be replaced by Executive Officers or officers of a comparable grade, I think it would still cost about the same amount of money.

MR. MARTIN LEE: Sir, does the Administration not accept that a conviction which is spent under the Spent Conviction Scheme must be considered to be spent for all intents and purposes and therefore should not be in any way revealed in the Certificate of No Criminal Conviction?

SECRETARY FOR SECURITY: Sir, I acknowledge the point made by my honourable friend, Mr. Martin LEE. However, the position at present is that we want the views of the Fight Crime Committee on this in order to take this forward. Anyway I acknowledge what he says.

MR. HUI: Sir, from what the Secretary has just said in reply, if most of the staff are replaced by civilian staff, who are relatively easier to recruit and retain, the applicants can be charged a fee at cost so that it will not be a charge on public resources or finances; in other words, they can pay for the costs and get issued a three-year certificate. My question is, could this be done, Sir?

SECRETARY FOR SECURITY: Sir, we will have a look at this.

Academic staff for tertiary institutions

4. MR. EDWARD HO asked: Will Government inform this Council whether the tertiary institutions, especially the City Polytechnic, the Polytechnic and the Baptist College, have encountered difficulties in recruiting suitable academic staff to cope with their academic development programmes and to maintain a high academic standard, and if so, what measures the Government will take to address these problems?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, on at least two occasions in the recent past, I informed Honourable Members that there had been no falling off of interest in academic employment from either local or overseas sources, and that our tertiary institutions would be able to compete successfully for staff. I have enquired again of the University and Polytechnic Grants Committee (UPGC) and can confirm that on the whole this remains the case. There are, however, certain sectoral shortfalls. A common feature amongst all the institutions is that good people are hard to get in certain disciplines, such as finance, accounting and computing. I am informed, however, that this reflects world-wide shortages.

While the tertiary institutions are, by and large, able to recruit suitable academic staff, the challenge posed by the Government's plan to double the provision of first-year first-degree places by 1994-95 is a very real one and should not be under-estimated. The UPGC has been working with the institutions to see how the increased demand for academic staff could be met and I can assure Honourable Members that the Committee's recommendations will be very carefully examined when they reach me later this month. I understand that the measures that the Committee has been

considering include a review of salary relativities between the different institutions, an examination of possibilities for having a more flexible package of fringe benefits, the raising of existing levels of productivity, increased funding for academic research, and increasing the local supply of academic staff through enhanced post-graduate programmes. Separately my Branch is also considering the need for augmenting our existing complement of international school places, as it is evident that the recruitment of overseas academics will add to the growth in demand for this type of education.

MR. EDWARD HO: Sir, I am glad to learn from the Secretary's reply that he did not see any difficulty in recruiting academic staff for our tertiary institutions. Yet, can he explain the reason why the May statistics from the City Polytechnic, for example, showed that in the case of Readership there is a 43% vacancy and in the case of Principal Lecturership a 34% vacancy? Would he not think that it was a problem, and if yes, what was the cause of the problem?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, on the face of it, figures like 43% and 34% for vacancies appear to be quite formidable. But I am sure that Mr. HO, in his capacity as vice-chairman of the City Polytechnic Council, has better answers to the problem than I. These vacancies arise through a variety of circumstances, not the least of which is the rapid pace at which that polytechnic has been expanding. I understand that the overall vacancy ratio amongst academic staff at the City Polytechnic was as high as 35% last September, but that in overall terms it has fallen to about 10% in April this year. Obviously, in a rapidly expanding situation, time has to be allowed for actual recruitment to catch up with the creation of posts, but I am confident that the City Polytechnic will overcome its difficulties given its able leadership.

MR. EDWARD HO: Sir, may I say I am not the vice-chairman of the City Polytechnic. Would the Secretary inform this Council when the review of salary relativities and fringe benefits will be concluded and when the result of the review will be ready to be put into practice?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of the question,

the review of salary relativities will be contained in the UPGC's report which I expect to receive later this month. As regards the second part of the question, that would depend on whether or not a view can be reached quickly on the UPGC's recommendations. Obviously they have to be carefully studied.

MR. EDWARD HO: Sir, would the Secretary please inform this Council whether the University of Science and Technology will be fully staffed when it begins operation in October 1991?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am told by reliable sources that the University of Science and Technology will be able to open as planned in October 1991.

MRS. CHOW: When the various tertiary institutions recruit academic staff, is adequate effort being made to give opportunities to local candidates over and above overseas candidates?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as far as I am aware the tertiary institutions' recruitment policies try to strike a fair balance between local and overseas candidates. I think most candidates are chosen more on the basis of merit rather than origin.

Triad problem

5. MRS. TAM asked: Will Government inform this Council:

(a) whether the incidence of crimes committed by triads has been on the increase in the past five years; and

(b) of the progress made in implementing the recommendations contained in the discussion paper: "Options for Changes in the Law and in the Administration of the Law to counter the Triad Problem" published in 1986, and what operational difficulties have been encountered?

SECRETARY FOR SECURITY: Sir, the number of crimes involving triads has decreased from 4 391 cases in 1985 to 2 587 cases in 1989, a reduction of 41% over the period.

A number of recommendations contained in the discussion document "Options for Changes in the Law and in the Administration of the Law to counter the Triad Problem" were strongly supported by the public. Some of these have been implemented through administrative measures. They include:

- (a) omitting addresses from witness statements to be served on the defence;
- (b) allocating, where possible, police manpower to respond to witnesses who may be intimidated;
- (c) issuing a notice of the power of the court to remove undesirable persons from the public gallery and to protect witnesses;
- (d) introduction of one-way viewers for identification parades in suitable cases; and
- (e) use of the task force approach to investigate triad-backed organized crime.

Other recommendations, strongly supported by the public, which have been, or are being, implemented through legislation include:

- (a) increasing the fines under the Societies Ordinance for offences relating to triad society membership;
- (b) introduction of the triad renunciation scheme;
- (c) imposition of harsher penalties for illegal gambling; this item, Sir, is on today's agenda for completion of the legislative procedures;
- (d) better control of nuisances associated with prostitution -- this is being examined by the Legislative Council ad hoc group; and
- (e) imposition of harsher penalties for drug traffickers.

Divergent views were expressed on other recommendations. Those which are being



further studied include:

- (a) introduction of a post release supervision scheme for ex-offenders;
- (b) introduction of organized crime legislation -- this has the support of the Fight Crime Committee in principle. A White Bill is being prepared for public consultation; and
- (c) introduction of legislation governing prosecution witness agreements.

There were recommendations which did not receive wide comment or approval. They include:

- (a) compulsory attendance at identification parades. This proposal has now been ruled out; and
- (b) amendments to the Crimes Ordinance to protect witness evidence.

Apart from the above recommendations, the following measures have also been implemented to combat triads:

- (a) introduction of a teaching package on the dangers of triad involvement to all primary and secondary schools;
- (b) continuous publicity efforts; and
- (c) introduction of the Release under Supervision Scheme and the commissioning of a study on post-release services for ex-prisoners.

Sir, so far, we have not encountered any particular difficulties in implementing these recommendations.

MRS. TAM: Sir, I am pleased to know that the number of crimes involving triads has decreased. But can the Administration inform this Council of the major types of crime among the 2 587 cases in 1989 involving triads? Are there any differences in the nature of crimes now committed by triads as compared to five years ago?

SECRETARY FOR SECURITY: Sir, of the 2 587 cases involving triads in 1989, the largest number, 1 041, are attributable to unlawful society; the second largest number is the category of "others" -- 576; third, wounding and serious assault -- 531. In 1985, when the total figure was 4 391 the largest number is in the category of "others" -- 1 603; the next largest were:

1 392 for membership of an unlawful society,

751 for serious dangerous drugs offences, and

466 for wounding and serious assault.

MR. MARTIN LEE: Sir, is the Administration aware that, arising from a recent incident involving alleged triad elements during the sale of uncompleted flats in Laguna City, it was revealed by the representatives of the Royal Hong Kong Police Force to the Consumer Council that normally for similar sales the first 50 places in the queue would go to triad society members? And what does the Administration propose to do about the presence of these gentlemen at the head of the queue?

SECRETARY FOR SECURITY: Sir, clearly, where the police have such intelligence they will act on it promptly.

MR. TAI: Sir, there are two aspects I would like to raise.

HIS EXCELLENCY THE PRESIDENT: Could you do it with two supplementary questions, please?

MR. TAI: Thank you, Sir. Regarding the introduction of one-way viewers for identification parades, has it been implemented in all police stations, and if not, why not?

SECRETARY FOR SECURITY: Sir, the police plan to build five purpose-built

identification parade rooms. One is now in operation. Funds are currently being sought to build three more.

MRS. FAN: Sir, is the Secretary for Security aware of the view held by many in our community that the Laguna City incident represents an open challenge by triad elements to our law and order? And does he not agree that the reduction of 41% in triad cases over five years should be no reason for complacency in combating triad activities?

SECRETARY FOR SECURITY: Sir, if I may take the first question first, yes, the Government is concerned. And to answer to the second, the Government is not complacent.

MRS. LAM (in Cantonese): Sir, may I ask the Secretary whether the Triad Renunciation Scheme is successful or not? And how many people have made use of the scheme in the past few years?

SECRETARY FOR SECURITY: Sir, the Triad Renunciation Scheme was introduced in December 1988. Up to 31 May 1990, a total of 781 applications for renunciation of triad membership were received of which 386 were successful, 43 unsuccessful, and 138 were declared dormant. An application declared dormant means that the applicant could not be reached by the Tribunal's Secretariat to arrange hearings or interviews after more than two attempts had been made. A review of the scheme was conducted in September 1989 and the Fight Crime Committee advised that the scheme should be extended for one further year up to 7 December 1990 and any further extension would be subject to another review.

In order to expedite the processing of applications, the procedures of the Triad Renunciation Tribunal have been streamlined and the backlog situation has now been greatly improved. The next review of the scheme will be conducted shortly.

MR. MICHAEL CHENG (in Cantonese): Sir, can the Government provide the figures of the past three years on crimes involving triad elements under the age of 21? What measures does the Government have to curb the increase of crimes committed by these young triad members?

SECRETARY FOR SECURITY: Sir, juveniles and young persons roughly account for about 30% to 40% of the crimes involving triads in the three years 1987-1989. In 1989 unlawful society offences accounted for 64.12% of the total juvenile and young persons offences, with wounding and serious assault accounting for 11.9%.

MR. BARROW: Sir, with reference to the first paragraph of the answer, could the Secretary clarify to what extent he is confident that it is possible to identify in all crimes whether or not there is triad involvement?

SECRETARY FOR SECURITY: Sir, this is a difficult question. It is a matter for the police to identify whether there is triad involvement and they clearly do their utmost to identify such.

MR. TAI: Sir, could the Secretary inform this Council how successful attempts have been to combat the infiltration of triads into our primary and secondary schools?

SECRETARY FOR SECURITY: Sir, the indications are that triad activities in schools have decreased in recent years. According to territory-wide surveys conducted by the Standing Committee on Unruly and Delinquent Behaviour in Schools, the number of incidents reported of suspected involvement in triad activities in secondary schools dropped by over 50% in the last five years. The number of students involved in unlawful society offences has also dropped over the same period. Measures are taken by the police and the Education Department to counter triad activities in schools and these include regular visits by District Police School Liaison Officers and seminars organized for school principals and teachers on various aspects of unruly and delinquent behaviour, including triad activities. Material on triad activities is produced for schools to enhance awareness among teachers and students. Junior Police Call continues to be successful. Warnings against involvement in triad activities have been announced through educational films, announcements of public interest, and pamphlets. These measures, Sir, are regularly reviewed to assess their effectiveness.

MR. MARTIN LEE: Sir, what does the Administration propose to do about the rather

large number of gentlemen, each wearing a white glove, trying to join the queue to buy flats in the Laguna City project? And also, what is going to happen to the gentleman who shortly thereafter held two press conferences complaining of unequal treatment?

SECRETARY FOR SECURITY: Sir, these two serious matters raised by Mr. LEE are currently under investigation by the police force.

MRS. LAU: Sir, can the Secretary inform this Council why it is considered sufficient merely to increase the fines for offences related to triad society membership and not the other penalties, for example, custodial penalties?

SECRETARY FOR SECURITY: Sir, a review having been carried out, the view of the Administration was that fines at this stage being increased was sufficient, but this is being continuously monitored by the Administration.

Waste discharge from High Island Detention Centre

6. MR. CHOW asked (in Cantonese): In view of the discharge of large quantities of improperly treated waste from the High Island Detention Centre into the nearby waters, will Government inform this Council:

(a) of the cause of the discharge; and

(b) whether any government department is responsible for the environmental pollution caused or whether anyone responsible will be prosecuted?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the discharge from the High Island Detention Centre consists principally of grey water, that is storm water, waste water and so on, which is, however, from time to time contaminated by small amounts of human waste. This contamination is the result of the bad hygiene habits of a few detainees but I must stress that it is not of major significance. The detainees themselves are therefore responsible for the pollution caused, and not a government department.

Regular testing by the Environmental Protection Department has indicated that negligible pollution of the surrounding waters has occurred. Nevertheless, there is a vigorous education programme underway within the detention centre which has already resulted in a marked improvement in behaviour.

MR. CHOW (in Cantonese): When the High Island Detention Centre was built last year, the Government undertook to ensure that it would not cause any pollution to the surrounding environment. As regards the management of Vietnamese refugees and boat people, the authorities concerned have already had experience of more than 10 years. Why was it that they still failed to notice the unhygienic habits of these people, and thus failed to take appropriate sewage treatment measures at the time the detention centre was designed? Has the Government gone back on the promise it gave last year?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the principal reason for the small level of contamination which does occur is because of the nature of the Vietnamese boat people themselves. Many of them are rather unsophisticated and it is felt by the Administration that a programme of education into the proper use of the facilities which are provided is the best course of action. I would stress that the treatment of wastes which is available in the High Island Detention Centre is coping well with the discharges at present.

MR. PETER WONG: Sir, will the Secretary please confirm that Hong Kong's drinking water from High Island Reservoir is by no means contaminated from the discharges of the detention centre?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Yes, Sir, the High Island Dam is very high -- of the order of 70 metres. It is extremely difficult to envisage how waste discharged at almost sea level could actually get into the drinking water system and I can assure Members that it has not happened.

MR. LAM (in Cantonese): Will the Government inform this Council whether there is regular sampling of shellfish in the area to identify their level of contamination?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, there is regular sampling of the water and of fish stock in the area. The shellfish and fish are examined on a regular basis by the Agriculture and Fisheries Department and water samples themselves are taken on a very regular basis by the Environmental Protection Department. If I could give one example of the degree of pollution: the dissolved oxygen content in normal unpolluted seawater would be regarded as 100%; in the case of the High Island discharge, in a small area of approximately 10 sq m immediately adjacent to the outfall there is a small reduction of 2% in the dissolved oxygen content which is regarded by the Environmental Protection Department to be of no significance.

MR. CHOW (in Cantonese): This is an instance of waste discharge by a government department. But under normal circumstances, in order to protect the environment, will waste discharge of such an extent lead to prosecution of the polluter by the Government?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I think that is rather a wide question. If an offence which is covered by any of the existing Ordinances occurs and a prosecution is capable of being brought, then that will certainly be considered.

MR. TIEN: Sir, could the Administration confirm to this Council that the sewage treatment plant at High Island Detention Centre is working properly as designed and being checked regularly?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I must clear up any misunderstanding. There is no sewage treatment plant at High Island Detention Centre. There is a water treatment plant which is designed, as I said in the principal answer, to treat grey water, which is essentially storm water, waste water, kitchen sullage and so on. Human waste is removed by tankerage by the Regional Services Department, I think, on a twice daily basis at present but that will be increased during the hot summer months. The two systems are totally independent.

Transactions or settlements between the Government and private entities

7. MR. PETER WONG asked: Will the Administration inform this Council of the criteria for the disclosure of transactions or settlements between the Government and private entities such as the recent out of court settlement between the Overseas Trust Bank Limited and the Coopers and Lybrand?

FINANCIAL SECRETARY: Sir, the settlement referred to by Mr. WONG is one between the Overseas Trust Bank Limited (OTB) and Messrs. Coopers and Lybrand. Although Government is currently the sole shareholder of OTB and I, as Secretary for Monetary Affairs, an ex-officio Chairman of the board of directors, the Government is not a party to the settlement. Management of the Bank rests with its board of directors whose duty it is to act in the best interests of the Bank. The settlement is a private commercial matter and it is for the directors to decide the extent to which the deal and its terms should be disclosed. It may be noted that the Bank has issued a press release on the settlement, and this may be taken to reflect all that the Bank wishes to say on the matter.

On the broader question of disclosure of transactions and settlements by Government, I find it difficult to give Mr. WONG a precise answer without knowing what particular transactions or settlements he has in mind. Transactions or settlements between the Government and private entities are numerous. As in the case of those only involving parties in the private sector, some may well be commercially sensitive whilst others will be of little general interest. There will also be cases where disclosure might prejudice ongoing investigations or proceedings. In my view, there can therefore be no hard and fast rules. Each case must be considered in the light of its circumstances and a view taken as to how the public interest is best served in that particular case.

MR. PETER WONG: Sir, since the Overseas Trust Bank is now wholly owned by the Government and supported by Hong Kong taxpayers through the Exchange Fund, would the Acting Financial Secretary deny that this Council and the Hong Kong public have a right to know the magnitude of the settlement by Coopers and Lybrand? And I will remind the Secretary that the settlement has been transferred to the bank's inner reserves and thus is not subject to scrutiny by even the Public Accounts Committee.



FINANCIAL SECRETARY: Sir, as I have already indicated, this is a matter for the board of directors of the Bank, not for the Government. I accept that there has been, in the widest sense of the term, taxpayers' money used in the rescue both of the Overseas Trust Bank and of other banks. And as Sir Piers JACOBS has already said that he intends in due course to announce what the net cost of rescue of the Hang Lung Bank was when it can finally be determined, I can confirm that it is also the intention to provide the same information in relation to the Overseas Trust Bank. But at the moment we are still in the process of recovering pre-acquisition bad debts. The settlement with Coopers and Lybrand is part of that process and I have already said that it is deemed by the directors to be commercially sensitive. There are still other debts to be recovered and it would prejudice the recovery situation if the bank were to start announcing what was happening or what had happened so far. But I can once again confirm that as and when the situation is fully known -- this will not be until the bank has been returned to the private sector -- the net cost will be disclosed.

Written answers to questions

Oil depot at Cha Kwo Ling

8. MR. POON CHI-FAI asked: In his reply to my Legislative Council question on the oil depot at Cha Kwo Ling raised on 29 January 1986, the then Secretary for Lands and Works pointed out that by virtue of the fact that such oil depots stored large quantities of flammable liquids and liquefied gases, they constituted a potential hazard to neighbouring development. It was also learned that the oil company concerned had subsequently discussed with the Administration the question of relocating the depot. Will Government inform this Council:

(a) of the progress of relocating the oil depot at Cha Kwo Ling; whether consideration has been given to the needs of keeping pace with the progress of large-scale residential development such as Laguna City in the district; and

(b) whether assurance will be given that the whole oil depot will be relocated before the occupation of Laguna City; if not, please explain how the safety of the residents there can be ensured?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Shell Oil depot at Cha Kwo Ling which stores large quantities of flammable liquid and liquefied petroleum gas does constitute a potential hazard to neighbouring developments in the event of a fire or other incident.

In January 1988, Government concluded a package deal with Shell Hong Kong Limited to relocate the depot to west Tsing Yi. The present timetable for the relocation of the oil depot at Cha Kwo Ling is that the depot will be totally decommissioned by the end of March 1992. Site clearance will follow decommissioning and will take about four months. However, the decommissioning of the liquefied petroleum gas (LPG) spheres which constitute the major potential hazard at the depot is expected to take place before the end of 1990.

Government is closely monitoring the progress of the decommissioning of the oil depot to ensure that it ties in with the only large-scale residential development in the area, which is Laguna City and which, when complete, will, according to present plans, comprise 44 blocks. Permission for occupation will not be granted in respect of any of these blocks until decommissioning of the LPG facilities has been completed. During the interim period between the decommissioning of the LPG facilities and total clearance of the depot site limited occupancy of selected blocks will be permitted, as the Government is satisfied that the fire protection measures in the depot are provided to internationally recognized safety standards and that the remaining oil storage tanks do not pose an unacceptable risk to nearby residential developments. The Fire Services Department will continue to inspect the site regularly to ensure that the highest safety standards are maintained.

Oil depot at Tsing Yi

9. MR. CHOW asked: According to a petrochemical industry company, a proposal was made to Government in 1982 to relocate the oil depot adjacent to the residential area on north Tsing Yi Island to the southern part of the island, but no affirmative reply has been received from Government so far. Will Government inform this Council whether there is any plan to remove the said oil depot, and what accounts for the prolonged consideration of the issue?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I presume the oil depot being referred to in the question is that operated by China Resources Company (CRC) at Nga Ying Chau. It is true that CRC did approach the Government in 1982 with a proposal to relocate its oil depot at Nga Ying Chau to a site adjacent to the company's other depot at southern Tsing Yi. Discussions were held between Government and CRC but were subsequently suspended due to various factors including uncertainties over the availability of the proposed relocation site as a result of Port and Airport Development Strategy studies and of the planning for the Route 3 connection. The availability of the relocation site has still not been conclusively resolved pending completion of the Container Terminal 9 Study. However, the indications are promising and a firm decision can possibly be made early next year.

CRC's oil depot at Nga Ying Chau is not regarded as a potentially hazardous installation since it does not store or handle liquefied petroleum gas. In the 1989 Tsing Yi Risk Assessment study, the consultant nevertheless recommended the eventual removal of the oil depot since it is considered to be incompatible with nearby residential development, and Government acknowledges the environmental benefits of removing the oil depot from its existing site. However, since the desirability of removing the oil depot is based on planning, and not on risk grounds, there are insufficient grounds for Government to force CRC to relocate.

The oil depot site at Nga Ying Chau has already been rezoned in the draft Tsing Yi Outline Zoning Plan from "Industrial" to "Comprehensive Development Area". This should provide an enhanced incentive for CRC to relocate its depot and redevelop the site. The Government will be happy to consider any reasonable proposals from the company.

Domestic homicide

10. MRS. TAM asked: Will the Government inform this Council:

- (a) whether the number of cases of domestic homicide has been rising recently;
- (b) whether the Administration has found out the causes of such tragedies; and
- (c) what can be done to identify at an early stage families with problems and to provide prompt assistance so as to avert similar tragedies?

SECRETARY FOR SECURITY: Sir, the number of domestic homicides has remained fairly constant. The numbers of such cases occurring between 1 January 1989 and 31 March 1990 were --

Period	No. of Cases
1st Quarter 1989	6
2nd Quarter 1989	7
3rd Quarter 1989	11
4th Quarter 1989	6
1st Quarter 1990	7

Such tragedies are attributable to a wide range of factors. Direct causes include problems arising from personality and communication difficulties; marital discord; financial worries; and mental or physical disabilities which result in intolerable stress, and eventual tragedy; or indeed a combination of any of these factors which together result in a family member being unable to face the stresses and problems of everyday living. The police routinely report any such cases of significance to the Social Welfare Department.

Early identification of problems by the individuals concerned, and by a caring community, coupled with timely intervention by professional social workers, can help alleviate stress and reduce family tragedies. However, because of the unpredictability of human behaviour under pressure there will always be an element of the unforeseen.

With the loosening of traditional family ties, family members with serious problems may not be able to find support and help within the extended family. Sometimes, traditional Chinese values, such as keeping family problems within the family, tend to inhibit people in trouble from seeking professional help at an early stage.

We will continue to work to change these entrenched attitudes, and to enhance public awareness of the various welfare services available to them. With this in mind, the Social Welfare Department has been carrying out a variety of programmes, such as --

(a) introducing the public to social welfare services by means of pamphlets, posters,

talks and exhibitions, and making people aware that it is no disgrace to seek help;

(b) organizing supportive group work services, family life and community education, through which local residents are helped to realize their own responsibilities to their family members, and the need to promote mutual aid and neighbourliness, so that timely assistance can be made available to families at risk; and

(c) in terms of the provision of welfare services, Government and voluntary agencies working together to identify the needs of the community, developing appropriate supporting welfare services, improving the quality and quantity of existing social services, and forming community networks among social welfare organizations and the public.

In addition, the territory-wide network of family service centres adopts a positive role by initiating outreaching contacts to families reported to be in need of help. Special cases may also be helped by the district social case teams comprising, as appropriate, representatives from the City and New Territories Administration, Hospital Services Department, Housing Department, the police and the Social Welfare Department.

Folding tables

11. MISS LEUNG asked: Will Government inform this Council whether consideration has been given to the introduction of measures such as enacting legislation to require all domestic folding tables on sale to be installed with satisfactory safety devices in order to prevent recurrences of accidents involving injuries and deaths to children trapped by folding tables? If not, why not? If yes, why has no concrete action been taken so far?

FINANCIAL SECRETARY: Sir, the Government is actively developing a control scheme to deal with the problem of children being trapped by folding tables. The scheme will be provided for under a Toys and Children's Product Safety Bill which I hope to introduce into this Council by the end of this year.

Under the proposed control scheme, folding tables intended for children's use will be required to meet specific safety standards before being allowed to be imported

into Hong Kong or put on local sale. Any folding table not found to be totally safe will be removed from sale by means of a prohibition order which the Secretary for Trade and Industry will be empowered to issue.

For all other folding tables, a similar control scheme is envisaged, and this will be provided for under a General Consumer Products Safety Bill which I hope to introduce into this Council some time next year.

#### First Reading of Bill

##### INSURANCE COMPANIES (AMENDMENT) BILL 1990

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

#### Second Reading of Bills

##### INSURANCE COMPANIES (AMENDMENT) BILL 1990

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Insurance Companies Ordinance."

He said: Sir, I move that the Insurance Companies (Amendment) Bill 1990 be read the Second time.

The purpose of the Bill is to amend the Insurance Companies Ordinance in order to remove doubts about the enforceability of unauthorized insurance contracts and to provide for the prior approval of controllers of authorized insurers.

#### Enforceability of unauthorized contracts

The Ordinance restricts the carrying on of any class of insurance business in or from Hong Kong to insurers authorized for that purpose by the Insurance Authority. However, as the law stands, it is not clear whether insurance contracts entered into by unauthorized insurers are valid and enforceable. We believe this doubt should be removed.

The object is to protect the ordinary policy holder from being adversely affected, directly or indirectly, by any breach of the Ordinance by an insurer. We propose therefore that a direct insurance contract issued by an unauthorized insurer should be enforceable at the option of the policy holder. Thus the policy holder may choose either to enforce or to void the contract and, in the latter case, to recover any consideration paid under the contract.

As to a reinsurance contract entered into by an unauthorized insurer, we propose that it should always be enforceable. If a reinsurance contract were not to be enforceable because of a contravention by either contracting party, insurer or reinsurer, this could materially affect the ability of the insurer to meet claims of direct policy holders.

Prior approval of controller

The Ordinance requires an authorized insurer to notify the Insurance Authority, in arrears, of any appointment as or change in the controller of the company. For the purpose of the Ordinance, a controller is defined as a managing director or chief executive of an insurer or its parent company, a person whose instructions the directors of the insurer or its parent company are accustomed to follow, or a 'controlling shareholder', that is a person who, alone or with an associate or nominee, controls 15% or more of the voting power of the insurer or its parent company.

Upon notification, the Insurance Authority may object to any particular controller if it appears to him that the controller is not a fit and proper person to hold such a position. We consider this arrangement to be unsatisfactory. We believe it is important for the Insurance Authority to be informed before the event, rather than after it. In the interests of policy holders, a person who is not fit and proper should not be in control of an insurer for even a short period of time.

We propose therefore that prior approval be obtained from the Insurance Authority before any appointment as or change in controller of an authorized insurer takes place.

To prevent an unfit controlling shareholder from continuing to exercise any influence over an insurer, we also propose that the Insurance Authority should be able to impose certain restrictions on the shares held by any person who has become a controlling shareholder without prior approval of the Insurance Authority and,

where necessary, to apply to the High Court for the sale of such shares. A restriction order imposed by the Insurance Authority will effectively prohibit the transfer of the shares, the exercise of voting rights, the issue of bonus shares and the payment of dividends.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

#### EMPLOYMENT (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 10 January 1990

Question on Second Reading proposed.

MR. PAUL CHENG: Sir, the Employment (Amendment) Bill 1989 seeks to introduce a number of amendments to the Employment Ordinance, which governs the relationship between employer and employee in respect of an employee's rights, benefits, and protection. The more significant amendments are:

- (a) removing the distinction between manual and non-manual employees, so that all employees come under the protection of the standards set in the Ordinance, irrespective of their wage levels;
- (b) revising the definition of "continuous contract of employment" so that an employee who has worked a total of 18 hours a week within a period of four consecutive weeks will come under the protection of the Ordinance;
- (c) re-defining "lay-off" so that an employee is deemed to be laid off, hence entitled to severance payments, if his employer does not provide him with work on more than half of the number of normal working days in four consecutive weeks; or if his employer does not provide work on more than one-third of the number of normal working days in 26 consecutive weeks. On the other hand, the Bill also provides that an employer may avoid laying off an employee by paying the latter wages even if no work is provided; and
- (d) providing a qualifying period of 12 weeks of continuous employment before a



pregnant employee is protected from being dismissed.

A Legislative Council ad hoc group was formed to study the Bill in January. It became obvious at an early stage that views were polarized between employees and employers. As a result, Members have had to involve themselves in lengthy and intense discussion on the issues raised by both parties.

The group has held altogether 12 meetings, and a total of 10 representations have been received. After careful consideration of the arguments in the representations and the explanations given by the Administration, the group has recommended that the Bill be supported. Members of this Council have endorsed the recommendation.

The most controversial part of the Bill is the proposal to remove the distinction between manual and non-manual employees. The proposal will significantly increase employers' financial liabilities towards their employees, particularly in respect of severance payments or long-service payments. Whilst it is true that the Bill does attempt to mitigate the financial burden for employers by providing that monthly wages in excess of \$15,000 (which is the revised wage ceiling proposed under this Bill) should not be taken into account in the calculation of employees' long-service payments or severance payments, employers generally find it difficult to take on the liabilities all at one go. Strong representations have been made particularly by legal and accountancy firms. The group is told that these firms are operated on a partnership basis. The principals of such firms are personally liable for all debts of the firms. Because partnerships tend to change over time, and in the event of a winding up, present partners may be unduly burdened with huge financial liabilities incurred by partners who are no longer with the firm.

The group has therefore agreed that, in respect of those employees earning more than \$15,000 a month, there should be phased implementation regarding their severance or long-service payments entitlements. In essence, the phasing begins by calculating entitlement on the basis of three years, past service from the first year of the enactment of the Bill. Thereafter, two more years of past service are added on a yearly basis until the maximum entitlement of 18 years' past service is reached in the eighth year from 1990. I shall move amendments in the Committee stage. I wish to emphasize here that this arrangement does not affect manual employees whose entitlement will be calculated as originally proposed in the Bill.

Agreement to accept phased implementation is not a totally new concept. There is precedent set for acceptance of phased implementation in clause 31W of the

Employment Ordinance.

The proposed re-definition of continuous contract of employment has caused concern among employers who claim that it casts too wide a net to protect even students and housewives who do not depend for their livelihood on their part-time employment. Nevertheless, having regard to the fact that the Employment Ordinance must seek to protect all regular employees, the group is satisfied that the revised definition is appropriate and proposes no change to it.

Similarly, employees have expressed concern that the re-definition of lay-off has not gone far enough to prevent abuse by employers, and that the stipulation of a 12-week qualifying period before a pregnant employee is protected from termination of service is not good enough. There is no doubt, however, that the Ordinance must operate in fairness to both employers and employees. The group therefore agrees that there is no need to change these clauses in the Bill.

Sir, the Bill seeks to strengthen the provisions in the Employment Ordinance and, indeed, improve the protection for employees generally. Whilst it does have financial implications for employers, I am personally satisfied that it will be well-received by employers who take the welfare of their employees to heart. After all, manpower is a major asset for any enterprise. In Hong Kong, as we continue to strive for our prosperity and stability for the years ahead, we cannot afford to lose sight of the welfare our workforce truly deserves.

With these remarks, Sir, I support the Bill.

MR. TAM (in Cantonese): Sir, after five months of deliberation, the Employment (Amendment) Bill 1989 is at last presented to this Council for resumption of the Second Reading debate today. During the period, trade unions and labour organizations have put forward many valuable views which I think should not be ignored.

Hereunder I would like to submit the opinions of the trade unions and offer my own analysis on the four major amendments proposed in the present Bill.

Firstly, I would like to address the problems concerning the definition of "continuous contract of employment". According to the existing Employment Ordinance, an employee in a continuous contract of employment is defined as one who has been employed for four consecutive weeks for three days each week working six hours every

day. That is the so-called "436" requirement. It is commonly known that the said requirement lacks flexibility and deprives many long-term workers of their entitlement to reasonable protection even though they work for the same employer throughout their employment. For example, the compositors and the workers at the printing press of some newspaper offices have to work each day, but their daily working hours are less than six hours; on the other hand, there are occasions when stevedores may have to work continuously for several tens of hours and then stay idle for several days. It should be borne in mind that employees have to satisfy the basic requirement of "continuous contract of employment" before they are entitled to protection under the Employment Ordinance. The foregoing examples reflect that many employees are denied the fundamental protection because they fail to meet the qualifying factor under the "436" requirement.

It is proposed that such requirement be amended so that an employee who is employed by the same employer for four consecutive weeks for 18 hours per week (the "4-18" rule) will satisfy the definition of "continuous contract of employment". In my opinion, such amendment is certainly far more flexible and reasonable than the present "436" rule. Many employers, however, take the view that the proposed amendment will inflict heavy financial liabilities on them; and that it will also induce more workers to engage in several part-time jobs at the same time so as to reap multiple benefits. I think that there is no cause for such unnecessary worries. Though employees who fulfil the "4-18" rule will now be covered under the scope of protection in the Employment Ordinance, they are still subject to other qualifying conditions before they are entitled to other benefits of the Employment Ordinance (such as long service payments and severance payments and so on). What I would like to point out is that, as an adjunct of social and economic development, to take up part-time jobs has become a popular trend; the proposed "4-18" approach only serves to improve flexibility in the application of the existing Ordinance, so that those employees who work more than 18 hours per week may come under protection. Nonetheless, this new definition still fails to offer protection to part-time employees who work less than 18 hours per week.

The second major amendment proposed in the amendment Bill is the re-definition of "lay-off". The existing definition of "lay-off" obviously enables the employer to easily make use of the loophole of the law to put the employee in a state of long-term under-employment without having to make severance payment. The principal change is that "lay-off" is re-defined as a situation where the employer does not provide the employee with work on more than one-third of the total number of working days over a period of 26 consecutive weeks. However, we consider that such a definition cannot

really protect an employee from the plight of having to survive on the so-called "intravenous drip", that is, doing his stint because his employer cannot provide him with enough work. To avoid laying off his workers, an employer can offer them work for half of the number of normal working days per month in a period of 17 consecutive weeks or four consecutive months, and for the remaining months, offer them full working days. The problem is that since the employee is living from hand to month, he can hardly maintain his daily living with the pay he gets for working only half of the number of normal working days in a month. Therefore, the employee has no alternative but to quit on his own accord. Then the employer can spare the severance payment. The trade unions have received a lot of complaints from the employees about such treatment, especially relating to those factories with their production lines relocated or about to be moved elsewhere. The employees have pointed out that their employers deliberately made such arrangements to avoid the severance pay.

The proposed amendment will bring no great improvement in real terms to the situation of the employee who is in a long-term state of under-employment. First, it is hardly possible for an employee to maintain a family if he is provided with work for only half of the normal working days during a prescribed period. According to the Government's Monthly Digest of Statistics, for the month of September in 1989, the average daily wage of an employee in the manufacturing sector is \$167; while for those industries with really all their production lines relocated elsewhere, such as the plastics industry, the employee's average daily wage is only \$134. In general, the number of working days for an employee in the manufacturing sector should be 24 days in every four weeks. Half the number of the normal working days would mean 12 days. If an employee in the manufacturing sector is only provided with work on 12 normal working days in every four weeks, he can just earn \$2,004 in four weeks. Do you think that this sum of \$2,004 is sufficient to maintain a family? Obviously not. I have made some rough calculation. According to the statistics from the 1984-85 Household Expenditure Survey the average expenditure of an ordinary worker's family for every two weeks was \$2,654. Taking into account the increases in the Consumer Price Index (A), the average expenditure of the same household for every two weeks should have risen to \$3,519 in the month of September in 1989. These figures speak louder than words, making us realize what it means by the term "hard up".

Therefore, I entirely agree to the proposal of trade unions and labour organizations. Firstly, the specified period of 26 weeks as proposed in the Bill should be shortened to 16 or 20 weeks; that is to say, if within 16 or 20 weeks, an employee is provided with work on less than two-thirds of the number of normal working

days, then he is taken to be laid-off. If it is reckoned in terms of every four consecutive weeks, the number of days worked is less than two-thirds, then it is lay-off. Secondly, in defining "lay-off", paid holidays and annual leave should not be counted as working days, so as to recognize the employee's right to have rest days. Thirdly, since the basic salary of an employee in the manufacturing sector amounts to only several ten dollars per day, in calculating pay in lieu of working days, the basic salary should not be used as the basis for calculation; instead, the average daily wage of that period should be used as the basis for calculation.

Hereunder I wish to comment on the third major amendment proposed by the Bill which deals with maternity protection for pregnant employees. Under the proposed amendment, a pregnant employee has to fulfil a 12-week qualifying period of service before she is entitled to protection from termination of service. Labour unions consider this proposal to be retrogressive, because under the existing legislation there is no such requirement for fulfilling the specified length of service in the sense that once a pregnant employee has given her employer notice of the expected date of confinement, she will be protected from dismissal. The Bill obviously imposes an additional requirement on the length of service. At this juncture, I must point out that the so-called protection from termination of service only means that employees will not be dismissed on the ground of pregnancy. Under the existing Employment Ordinance, employers cannot by virtue of section 6 or 7 terminate the employment contracts of those female employees who have submitted notices of the expected dates of confinement; however, in accordance with section 9 of the Employment Ordinance, an employer can still terminate the service of an employee, including a pregnant employee, on the ground of discipline.

The Administration intends to amend the existing provision concerning the protection of pregnant employees from termination of service in order to avoid doubts. However, I take the view that the Ordinance itself has not given rise to any doubts at all. It is the authorities concerned that are in doubt. I have scrutinized the relevant information and found that at the time of making amendments to the relevant provisions of the Ordinance in 1987, the authorities concerned clearly indicated that, once certified pregnant, an employee could immediately give notice to the employer, then during the period between the employer's receipt of the notice and the end of the maternity leave, the employee concerned would be protected from termination of service. Obviously no requirement for length of service was imposed at that time. I therefore consider the proposed amendment to be truly retrogressive.

Lastly, I wish to comment on the removal of monthly wage ceiling of non-manual employees. Dating back to a number of years ago when I was still a member of the Labour Advisory Board and served as a new Member to the Legislative Council, I already pointed out several times that the monthly wage ceiling of non-manual employees could not reflect the trend of social development in Hong Kong and that the distinction was doing the non-manual employees an injustice. The Administration's proposed abolishment of the wage ceiling in the Bill was therefore most welcome to me at first. However, the employers concerned put forward a number of pretexts and were reluctant to accept the Administration's proposal. Subsequently, the authorities concerned yielded to those unreasonable counter-proposals. As a result, those non-manual employees whose wages exceed a certain limit can only get compromised protection in respect of their entitlements to long service payment or severance pay.

I consider that the revised version of amendment proposal is contrary to the spirit of the original proposal. I envisage that the labour disputes between employers and employees in the past arising from the existence of the monthly wage ceiling will still be with us in the future. On the other hand, it is unconvincing that the employers should be so worried that the relevant amendment will inflict heavy financial liabilities on them. Such worries have been over-exaggerated. Even on the basis of the original proposal, the monthly wages of any employee in excess of \$15,000 would not be taken into account in the calculation of long service payment and severance payment and the total amount of such payments would not exceed one year's total sum of wages. Such provision, if enacted, would provide double safeguards.

Sir, in view of the foregoing analysis, I can hardly accept in total the revised amendment proposals, therefore I abstain from voting on the motion of this Bill. Sir, I cannot help but feel sorry for the local labour sector for the feeble protection that has been given to them. Furthermore, it has put me in grief that the attempts to improve labour protection in Hong Kong should be such a formidable task. Now that the Government has given approval to the importation of foreign labour and even the importation of unskilled workers at the operative level, I am of the view that henceforth it will be even more difficult to improve labour protection.

MR. PANG (in Cantonese): Sir, subsequent to the introduction of the Employment (Amendment) Bill 1989 into this Council for First Reading on 10 January 1990, a Legislative Council ad hoc group was set up to study the Bill. The group held 12 meetings altogether, including meetings with representatives from employers' and

employees' associations and with the Administration. A consensus was eventually reached and some minor amendments to the Bill were proposed. It is hoped that in resuming the debate on the Bill today, Members of this Council will support and pass it subject to the amendments being made.

The Bill has proposed a number of amendments to the Ordinance, the more significant ones being:

- (1) the removal of the distinction between manual and non-manual employees;
- (2) a revision of the definition of "continuous contract of employment";
- (3) a revision of the definition of "lay-off"; and
- (4) the provision for a qualifying period of employment before a pregnant employee is given the protection from termination of employment.

The aforesaid item (1) expands the scope of application of the Ordinance to cover all employees, including non-manual ones, irrespective of their monthly wages. Item (2) amends the definition of "continuous contract of employment". Under the new definition, any employee who has worked a total of 18 hours a week within a period of four consecutive weeks will come under the protection of the Ordinance. Other items -- though I have reservations about them in some areas -- seek to amend those unclear definitions and provisions which often give rise to controversy.

Sir, I support the Employment (Amendment) Bill 1989 despite the fact that it has not turned out as one wishes.

MR. ARCULLI: Sir, before I say a few words on the Employment (Amendment) Bill I must declare my interest as an employer in a variety of capacities not the least of which I am a partner in a law firm.

Those of us who participated in the ad hoc group that considered the Bill thought that it was nothing out of the ordinary. However, the amount of time that was spent and the different issues that surfaced on different aspects of the original Bill proved that we were wrong. The Honourable Paul CHENG has highlighted the main issues. I shall only speak, Sir, on the removal of the difference between manual and non-manual workers and the date on which such rights will accrue to employees.

During the course of the ad hoc group's deliberations there might have been occasions when it was thought that some were seeking to be overly protective of employers including those in my branch of the legal profession as well as those in the accounting profession. It was also thought that the purpose of the Employment Ordinance was to safeguard the interests of those who were least capable of protecting themselves and if this were correct it seemed to us to be straining a point to suggest, for instance, that a qualified lawyer required this sort of protection. Indeed, would anyone seriously suggest that business people in top management positions like the Honourable Paul CHENG, the convener of the ad hoc group, actually required the protection of the Employment Ordinance? Be that as it may, there are, however, in my view some extremely cogent reasons why the Bill in its original form would have met serious opposition particularly if one took into account some points that are of particular relevance to accountants and solicitors.

Sir, accountants and solicitors are not allowed to practise their profession in the form of a limited company which simply means that they are liable personally for any debt of their firm. In essence this means that these professionals, and perhaps others, are exposed to the risk of insolvency should they or the firm in which they are partners be unable to meet long-term service payments or severance pay should the occasion arise. They cannot shield themselves behind a limited company. But that is not to say that businesses which are conducted in the form of limited companies can always avail themselves of limited liability. Secondly, partners within these firms always change which means that partners of yesterday are not necessarily the partners of today. Therefore if we ask these firms, and therefore the partners, to assume today the burden of long-term service payments or severance pay to employees in respect of the period starting from the date of employment of each employee, we are basically asking the partners of today to bear the burden of liabilities of the partners of yesterday. It seems to me that there is little fairness in this approach. Thirdly, professional firms tend to remunerate their staff on the basis of annual performance which is related to annual profitability. In other words, if a firm is profitable the employees' participation is reflected in the level of bonuses paid. The problem, however, is that such bonuses are not deductible from any long-term service payment or severance pay when such payments are required to be made. This, taken together with the practice that most, if not all, of the profits each year are paid out, means that employees enjoy the benefits of good times but not the bad for they do not have to disgorge such bonuses in bad times. However, because of the nature of partnerships one can hardly ask a retired partner to disgorge any profits to be



enjoyed by making a contribution today from past profits simply because a law enacted today requires such partnership to bear a new financial burden. The nature of partnership is such that a material change in partners over a three-year period is not the norm and therefore the proposal that the commencement date of such benefits be back-dated three years from its enactment and moving forwards two years at a time thereafter would give these partnerships and indeed all employers some time to make the necessary provisions. In case it be understood that these reasons apply only to existing partnerships, let me dispel that myth, for today's employees can indeed be tomorrow's partners. It is therefore also with succession in mind that opposition was put forward to the original Bill.

Sir, having put forward these and other reasons and whilst it was not easy to persuade the Administration to see the errors of its ways, I am happy to say that a compromise has been reached which partly alleviates the tremendous financial burden that all employers particularly the two professions would face and yet meets with established policies of the Government. I know that the proposals before the Council today may not meet entirely the aspirations of all employees and employers but I would nevertheless commend these proposals to all my colleagues.

Sir, with these observations, I support the motion.

MRS. SO (in Cantonese): Sir, the amendment Bill laid before this Council today seeks to introduce amendments of far reaching implications to the Employment Ordinance enacted in 1968. This Bill proposes to remove the distinction between manual and non-manual employees in order to put them all under the protection of the Ordinance. This proposed amendment differs in spirit from the original intention of the principal Ordinance which, at the time when it was first made, only sought to provide protection to employees at the middle and low-ranking levels. With the continuous development of the economy in our society, the distinction between manual and non-manual employees at the middle-ranking level has become less obvious than it was before. It is therefore desirable to remove the existing line of distinction now.

The amendment Bill proposed by the Government has, however, underestimated the effect of the sudden increase of financial burden on employers as the proposed amendments seek to provide that all employees will be entitled to severance payments or long service payments, irrespective of their wage levels. Although the wage ceiling of \$15,000 has been set, it is still unreasonable to increase the financial

liabilities of the employers by a large margin at one go. Hence, I support the amendment proposal of the Legislative Council ad hoc group that the years of past service should only be recognized retrospectively on a yearly basis for the purpose of calculating such payments. I would also like to request the Government to give wide publicity to the Bill so that employers may be aware of the implications of the amendments on them.

The amendment Bill also proposes that a female employee should be entitled to benefits from maternity leave provisions and protection from termination of employment only after she has satisfied a qualifying period of 12 weeks of continuous employment. This proposed requirement has been objected to by a number of labour organizations. However, it would be unfair to employers if all female employees, regardless of their performance, are protected from termination of employment on the ground of pregnancy even when they are still on trial or have taken up employment for just a short while. I am of the opinion that the proposed amendment is sensible and reasonable.

Sir, the Employment Ordinance should aim at promoting harmonious and well-co-ordinated relations between employers and employees in Hong Kong, instead of bringing about more acute contradictions. Apart from giving employees a better share of the fruit of economic success in this community, the amendments to the Ordinance should also take into consideration the actual affordability of the employers. Most of the enterprises in Hong Kong are of small and medium size. Changes to the Employment Ordinance will bring relatively greater impact on them than on large enterprises. In recent years, the economic growth in Hong Kong has slackened but inflation remains high. There is a significant fall in the margin of profit of the employers. The condition for the operation of small and medium-sized business has become increasingly difficult. Amendments to the Employment Ordinance should be introduced gradually to avoid increasing too much burden on the employers. Mutual benefit in employer and employee relationship is the main driving force in economic development in Hong Kong. It is hoped that the situation will be maintained for a long time to come.

With these remarks, I support the motion.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I should like to thank Mr. Paul CHENG and his colleagues on the ad hoc group for the time and effort they have spent on

examining this Bill.

When introducing this Bill last January, I said that one of its main purposes was to remove the distinction between manual and non-manual employees, so that all employees would be protected. As Mr. CHENG has quite rightly pointed out, the removal of this distinction would immediately create substantial long-service payment and severance payment liabilities for employers towards their more highly paid non-manual employees. To soften the impact, the Bill provides that wages in excess of the new ceiling of \$15,000 per month should not be taken into account in the calculation of an employee's entitlements.

The ad hoc group have managed to argue forcefully and convincingly that, even with this qualification to the wage ceiling of \$15,000, an employer's liability towards his non-manual employees who are paid above this wage ceiling could become unacceptably high. Under existing legislation their immediate maximum exposure could be as high as \$180,000 per employee. When this burden is considered against the circumstances of unincorporated professional partnerships, the Bill would require current partners to inject very substantial funds into their businesses to cover liabilities that have in many cases been incurred by their predecessors. I am persuaded, in the circumstances, that there is a case for phasing in these liabilities. In reaching this decision I have had regard to the precedent that we have set when in 1986 we phased in employers' liability towards long-service payments.

I realize that this concession will have the effect of deferring the full benefit of our long-service payment and severance payment provisions for non-manual workers paid above \$15,000 a month, and I can therefore understand Mr. TAM's disappointment. I have carefully considered the possibility of restricting the scope of this concession to the accounting and legal professions, but came to the conclusion that this would conflict with the spirit of the principal Ordinance, which does not allow individual industries and professions to contract out of its ambit.

Sir, perfection, not like beauty, is in the eye of the beholder. In this sense, employment legislation can never be perfect, because it is invariably the outcome of consultation and compromise. In commending this Bill and the Committee stage amendments for acceptance, may I ask honourable Members to bear in mind that the perfect is very often the enemy of the good.

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).

#### GAMBLING (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 21 June 1989

Question on Second Reading proposed.

MR. NGAI: Sir, the Gambling (Amendment) Bill 1989 seeks to provide more stringent enforcement measures and tougher penalties against illegal gambling.

An ad hoc group was formed to study the Bill. The group has met the Administration to discuss and clarify various points of the Bill and the overall gambling policy.

In the course of scrutinizing the Bill, the group expressed concern in two areas. Firstly, the seemingly contradictory approach adopted by the Administration towards illegal gambling activities, that is, while taking tougher measures to eradicate illegal gambling within Hong Kong, off-shore but Hong Kong-based gambling on floating casinos is tolerated. The group suggested that the Administration should reconcile its overall approach towards gambling activities, both conducted within and outside Hong Kong territorial boundaries. The group is pleased to learn that the Administration has decided to tackle the problem of floating casinos and that legislative amendments are being drafted for submission to this Council.

Secondly, the group has reservation on the proposed outright abolition of the requirement of the Attorney General's consent before instituting prosecutions relating to assisting in bookmaking under section 7(1)(c) as this would remove the safeguard for innocent persons. The group proposed that the requirement of the Attorney General's consent be retained, but in order to facilitate legal proceedings against persons involved in bookmaking, a new provision should be introduced to empower the courts to amend charges under section 7(1)(a) or (b) to one under section 7(1)(c). The proposal has been agreed by the Administration and I will move the agreed amendments in the Committee stage.

The group welcomed the Administration's initiatives to eliminate illegal gambling. The proposed tightening of certain provisions in the Ordinance and the increase in the maximum fines for operators of illegal gambling enterprises from \$500,000 to \$5 million and increase in various maximum penalties for other illegal gambling offences would undoubtedly deal a severe blow to gambling operators and deter people from patronizing illegal gambling establishments.

With these remarks, Sir, I am pleased to support the Bill.

SECRETARY FOR SECURITY: Sir, I am most grateful to my honourable friend, Mr. NGAI Shiu-kit, and his colleagues on the ad hoc group for the careful consideration they have given to this Bill. Sir, I agree to the proposed amendments which Mr. NGAI will be moving at the Committee stage.

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

EMPLOYMENT (AMENDMENT) BILL 1989

Clauses 1 to 8 and 10 to 24 were agreed to.

Clause 9

MR. PAUL CHENG: Sir, I move that clause 9 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 9

That clause 9 be amended --

In the proposed section 31G, by adding after subsection (2) --

"(3) For the purposes of this section, in the case of an employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the date of commencement of the Employment (Amendment) Ordinance 1990 ( of 1990) exceed \$15,000, a reference to the period of employment under a continuous contract shall not include a reference to any such employment occurring more than --

(a) 3 years prior to 1 January 1990, where the relevant date occurs in 1990;

(b) 4 years prior to 1 January 1990, where the relevant date occurs in 1991;

(c) 5 years prior to 1 January 1990, where the relevant date occurs in 1992;

(d) 6 years prior to 1 January 1990, where the relevant date occurs in 1993;

(e) 7 years prior to 1 January 1990, where the relevant date occurs in 1994;

(f) 8 years prior to 1 January 1990, where the relevant date occurs in 1995;

(g) 9 years prior to 1 January 1990, where the relevant date occurs in 1996;

(h) 10 years prior to 1 January 1990, where the relevant date occurs in 1997 or any year thereafter."

Question on the amendment proposed, put and agreed to.

Question on clause 9, as amended, proposed, put and agreed to.

New clause 12A          Calculation of period of employment

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

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

Clause read the Second time.

Proposed addition

New clause 12A

That the Bill be amended by adding after clause 12 --

"12A. Calculation of period of employment

Section 31W is amended --

(a) by being renumbered as subsection (1); and

(b) by adding after subsection (1) --

"(2) Notwithstanding subsection (1), for the purposes of this Part, in the case of an employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the date of commencement of the Employment (Amendment) Ordinance 1990 ( of 1990) exceed \$15,000, a reference to the period of employment under a continuous contract shall not include a reference to any such employment occurring more than --

(a) 3 years prior to 1 January 1990, where the relevant date occurs in 1990;

(b) 4 years prior to 1 January 1990, where the relevant date occurs in 1991;

(c) 5 years prior to 1 January 1990, where the relevant date occurs in 1992;

(d) 6 years prior to 1 January 1990, where the relevant date occurs in 1993;

(e) 7 years prior to 1 January 1990, where the relevant date occurs in 1994;

(f) 8 years prior to 1 January 1990, where the relevant date occurs in 1995;

(g) 9 years prior to 1 January 1990, where the relevant date occurs in 1996;

(h) 10 years prior to 1 January 1990, where the relevant date occurs in 1997 or any year thereafter."."

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

#### GAMBLING (AMENDMENT) BILL 1989

Clauses 2 to 4, 6 to 9 and 11 to 13 were agreed to.

Clauses 1, 5 and 10

MR. NGAI: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members. The reason for amending clause 5 has been stated in my speech earlier. Sir, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended by deleting "1989" and substituting "1990".

Clause 5

That clause 5 be amended by deleting the clause and substituting --

"5. Bookmaking

Section 7 is amended --

(a) in subsection (1) --

(i) in paragraph (b), by repealing "receives or negotiates" and substituting "solicits, receives, negotiates or settles"; and

(ii) by repealing "\$500,000" in both places where it occurs and substituting



"\$5,000,000"; and

(b) in subsection (2) by adding after "Attorney General" --

"but if on the trial of any person for an offence under subsection (1)(a) or (1)(b), it is not proved that the accused is guilty of an offence under either one of those subsections but it is proved that the accused is guilty of an offence under subsection (1)(c), the accused may, notwithstanding the absence of consent of the Attorney General to the institution of a prosecution under subsection (1)(c), be convicted of an offence under subsection (1)(c) and dealt with accordingly".

Clause 10

That clause 10 be amended by deleting the clause.

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 5 and 10, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

EMPLOYMENT (AMENDMENT) BILL 1989 and

GAMBLING (AMENDMENT) BILL 1990 the original short title of which was GAMBLING (AMENDMENT) BILL 1989

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

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

Bills read the Third time and passed.

Member's motion

#### ALLEGED SMUGGLING OF CARS TO CHINA

MR. MARTIN LEE moved the following motion:

"That this Council notes with concern the incident involving the alleged smuggling of three Mercedes Benz motor cars on 3 May 1990, the temporary detention of two Hong Kong policemen and the four-week-long detention of five Hong Kong seamen in the People's Republic of China in relation to the alleged smuggling."

MR. MARTIN LEE: Sir, before I begin, I would like to apologize to my honourable colleagues for the fact that I did not table this motion until last Thursday, the day immediately following the release of the five seamen. As I explained in my memo last week, I thought it would be better if we waited for their return before having a debate on this matter.

I would like to emphasize that the purpose of today's debate is not to cause confrontation, nor to embarrass either the Hong Kong or the Chinese Government. Rather, the purpose of this debate is to seek the truth of the incident last month which has caused widespread concern in Hong Kong, and to stress that truth and the rule of law are two values which must not under any circumstances be sacrificed for political considerations.

Indeed, truth and the rule of law are the most critical ingredients of confidence in Hong Kong. For if the people of Hong Kong were to think that their present or future government is not honest or that the rule of law will not be upheld, then how can one expect them to have faith in the future of Hong Kong?

In the present situation, however, both the rule of law and truth have so far been sacrificed for political reasons, so as to give "face" to one or the other of the governments concerned. Yet, I ask, what good is "face" to a government which cannot even face the truth?

Three weeks ago, this Council received the detailed version of the facts of the incident from the Secretary for Security. Yet, that version has been entirely rejected by the Chinese Government, and the Hong Kong Branch of the New China News Agency has stated on more than one occasion that the Hong Kong Government's version

is false. And none of these accusations has been withdrawn.

Now it has been reported in the press that the Hong Kong Government has a series of photographs which showed uniformed Chinese personnel in Hong Kong waters. Indeed, the press has said that the Government has shown these photographs to the Chinese authorities. The Government, however, has so far declined to show any of these photographs to Members of this Council or to release them publicly.

What will the public think? They are aware that the Hong Kong Government has been called a liar, but they have no basis on which to judge the accuracy of that charge. Is the public to conclude that the truth is not important? That truth must always be sacrificed to maintain "harmonious relations"? That it is not important for a government, which has been repeatedly labelled a liar, to clear its name even when it claims to have the evidence to do so? Sir, good relations which are built on a total disregard for truth are but built on sand and will not last.

Now I turn to the question of the rule of law. As 1997 approaches, it is imperative that we maintain the rule of law and insist that no one be above the law. Yet, in the instant case -- no matter which version one accepts -- we have seen a flagrant violation of the law, but no attempt is being made to determine who have committed that violation or to punish the offenders.

Sir, up to this point I have not assumed the validity of either side's version of events because many important questions, which are set out at the end of my speech, still remain unanswered. But I would like to discuss for a moment the significance of the events if one does accept the facts as outlined by the Secretary for Security in this Chamber three weeks ago. And what follows is based on that assumption.

Three very expensive Mercedes Benz motor cars have been stolen from Hong Kong and brought into China. In spite of the fact that these cars currently remain in China, the Hong Kong Government seems to be making no effort to have them returned to Hong Kong.

It now seems that in spite of the recent border liaison meeting, the smugglers will neither be identified nor prosecuted. China will keep the cars, and the people of Hong Kong will be stuck with a bill for transportation of the cars to China. Such a passive acceptance, indeed, financial support, of illegal activity does great damage to the public's confidence in the rule of law, and the ability of their

government to govern. If the rule of law is so flagrantly violated seven years before 1997 and the Hong Kong Government does not even object, what will happen after 1997?

Further, according to the Government's version, the Chinese have clearly committed a very severe infringement on the territorial integrity of Hong Kong. The incursion of Chinese armed personnel into Hong Kong waters, moreover, was not an isolated event, but one that is repeated dozens of times a year. Yet, this case is different and far more serious than the other recent incursions by Chinese border inspection vessels.

For, in this case, Chinese armed personnel, who were involved in a serious violation of Hong Kong law within Hong Kong waters, refused to obey the lawful orders of the Hong Kong police. In fact, while in Hong Kong waters, they threatened to use deadly force in order to prevent the police from enforcing the law.

It is significant that the Chinese side has never contended that the armed and uniformed personnel were either imposters in uniform or law enforcement agents performing unauthorized activities. The only possible conclusion, then, is that the Chinese uniformed personnel were acting under orders from superior officers to smuggle the cars into China. Such a scenario is extremely disturbing to the people of Hong Kong.

The spectre of armed Chinese law enforcement agents or soldiers making forays into Hong Kong, smuggling stolen goods, and then using, or threatening to use, force to escape back into China must make one wonder about the viability of the promise of "a high degree of autonomy." And, the precedent of the Hong Kong Government playing down the issue and refusing to determine the guilt of the parties involved, sets a wretched precedent for the post-1997 Special Administrative Region Government. If the current Hong Kong Government has such little power to prevent such incidents from happening or bring the perpetrators to justice, or give consular protection to the five crewmen who were taken away from Hong Kong and wrongfully detained in China, what can one expect of the future Special Administrative Region Government?

And in this connexion, I refer Honourable Members to clause 4 of the Joint Declaration which casts a duty on the British Administration to govern Hong Kong until 30 June 1997; and China has given an undertaking to co-operate with the British Administration in order to preserve the economic prosperity and social stability of Hong Kong. This as well as other similar incidents are in breach of the promise

contained in the Joint Declaration, and cannot be treated lightly by either government.

Sir, I would urge the Government to answer fully the following questions and I have given notice to the Secretary for Security before:

1. According to the Chinese version, Hong Kong police launches came into Chinese waters in pursuit of the tug and lighter after 6:00 am. Would the Government please inform this Council what happened after 5:50 am, stating, in particular, whether or not Hong Kong police launches had crossed into Chinese waters?

2. Will the Government release the photographs showing the location of the incident?

3. What were the terms of the deal, arrangement, or understanding reached between the two governments at the border liaison meeting on 30 May 1990 resulting in the release of the five seamen?

4. Through what channels is the Government seeking the return of the three Mercedes Benz motor cars? And who is to bear the loss of the stolen cars and who is to pay for the four-week-long rental of the tug and lighter?

5. Did the Government seek to give consular access to the detained seamen? If yes, what was the result of the Government's efforts? If not, why not?

6. Is the Government aware whether any one or more of the five seamen had made any written or oral confessions while in China? If so, what is the Government's understanding as to whether the Chinese Government will ever act on these confessions?

7. Will the Government state categorically that no pressure or advice had been given to the five seamen to the effect that they should not hold their abruptly cancelled press conference of 1 June? Will the Government assert that it will offer no such advice or pressure in the future? Is the Government aware of any individual or organization that has exerted pressure or offered advice to the seamen to the effect that they ought not hold the press conference? If so, please identify such individual or organization.

8. What are the arrangements for post-1997 concerning Hong Kong's territorial waters and law enforcement within the Hong Kong Special Administrative Region? In

particular:

- a) Will the Hong Kong Special Administrative Region have its own territorial waters after 1997?
- b) If so, will the boundaries of such waters be the same as today's?
- c) Who will be responsible for law enforcement within those waters?
- d) Who is to determine the rights of passage after 1997 for civilian and non-civilian vessels in what are currently Hong Kong waters?
- e) Will Chinese military forces have any role to play in determining such right of passage?
- f) Will the Hong Kong Special Administrative Region Government have the right to prosecute individuals for illegal acts committed in what are now Hong Kong waters?
- g) Will the Hong Kong Special Administrative Region Government have the right of access to individuals detained in China for acts committed within the Hong Kong Special Administrative Region?

Sir, the purpose of this motion has been to seek the truth of this incident, and to express the concern of the people of Hong Kong over it, and the importance they place generally upon truth and the rule of law. I trust that my honourable colleagues share these concerns, and I hope that they will support the motion.

Question on the motion proposed.

MR. HUI: Sir, my main concern about the incident is as follows:

The incident will further dampen the confidence of Hong Kong people in the ability of both the Hong Kong and British Governments in running Hong Kong properly until 1997. How could Chinese soldiers and officials be allowed to come and go freely in Hong Kong waters without being intercepted and charged accordingly?

The incident also reveals beyond doubt that smuggling activities between Hong Kong and China have been rampant. But the Government, even with full knowledge of such activities, has been reluctant or undecided in the past to deal with them squarely

until the eruption of the current incident.

The anti-smuggling measures introduced recently by the Government have proved to be less than effective. This is evidenced by the casualties suffered by marine police when attempting to intercept a suspected speedboat the day before yesterday. It has also been suggested by a high-ranking police officer that speedboats may have been illegally used to smuggle gangsters from China to Hong Kong to commit serious crimes here in our territory. What then can a government do to assure its people that law and order, which is vital to our stability and prosperity, can be properly maintained in Hong Kong?

Sir, I support the motion and urge our Government to take immediate and positive action to address the situation.

MR. SZETO (in Cantonese): Sir, the five Hong Kong seamen involved in the Tap Shek Kok incident, where a tug and a lighter together with crew and others on board were seized, have eventually been released after a period of detention in China. On the face of it, the incident has come to a close. Yet, in reality, the underlying question has not been resolved. Not only has this incident compromised the rule of law we hold dear in Hong Kong, but it has also shaken local confidence further. People who love Hong Kong and the motherland should not feign ignorance and keep silent about the incident. It is fitting and proper that this Council should express concern for it.

On 16 May, the Acting Secretary for Security gave this Council an account of the incident based on available information. Some sources in China alleged that the account was a serious distortion of the facts. Other sources remarked that each side told a different story. Which story should Hong Kong people believe?

The Hong Kong Government need to further adduce evidence to make it clear and to prove that it made no distortion. The Chinese Government should likewise disclose all relevant information it has to corroborate its own story of the incident. A vague and at best generalized comment in terms of "serious distortion of the facts" will not do. Hong Kong people have a right to know the full story of the other side.

The two policemen, the five crewmen and the lighter have now been released. But the three Mercedes Benz cars, alleged to be smuggled goods, are still being held by

the Chinese authorities. This constitutes a glaring inconsistency as far as Chinese law is concerned.

The Chinese law against smuggling provides for penalty as follows:

"Where smuggled goods or items are worth over RMB 500,000, the offender shall be liable to imprisonment for not less than 10 years or imprisonment for life and to a monetary fine or forfeiture of property; and, where the circumstances of the case are particularly serious, the offender shall be liable to the death penalty plus forfeiture of property."

A supplementary regulation to the said law provides as follows:

"Where two or more people jointly commit smuggling, each of them shall be sentenced according to the value of the goods or items he smuggles and the part he plays in the joint endeavour. A ringleader of a smuggling syndicate shall be sentenced according to the total value of the goods or items smuggled by the syndicate. A principal offender in a joint endeavour to smuggle shall, where the circumstances of the case are serious, be sentenced according to the total value of the goods or items smuggled in the joint endeavour."

The three Mercedes Benz cars are worth HK\$2 million which works out to well over RMB 500,000. It was a smuggling case of huge proportions from the point of view of Chinese law. If the facts were indeed as described by the Chinese Government, why is it that only the smuggled goods were confiscated while the arrestees and seized lighter were released? Was this in pursuance of a decision handed down by a court of law after an open trial? Hong Kong people who will become SAR citizens in seven years have a right to know.

To adopt an attitude of resignation will only lead to more and more unnerving incidents occurring. I urge the Hong Kong Government not to adopt such an attitude. This will be a test of the Chinese Government's bona fide intention of maintaining the rule of law in Hong Kong and the territory's prosperity and stability.

If we take what the Hong Kong Government has made public as the true facts of the case, we should give our warmest regards to the two policemen, the five crewmen and their families.



Sir, with these remarks, I support the motion.

MR. PAUL CHENG: Sir, I thought I should first briefly explain why I had circulated notice of my intention to move an amendment to my honourable colleague Mr. Martin LEE's motion. My intention was not to soften the motion as reported in one English language newspaper this morning. Nor was it to impinge on Mr. LEE's statement. Rather, my intention has been to re-focus attention on what is important to Hong Kong people -- attention to how well our Government has served us in her subsequent actions in upholding the interests of Hong Kong and effecting fruitful communication with the People's Republic of China on the alleged smuggling incident which occurred on 3 May.

The motion under debate carries with it a negative connotation. Rather than giving due consideration to a legislative matter, we are being asked to express our feelings on an administrative matter: "To note with concern", as stated in the motion, places emphasis on the negative without due regard for balance from the positive actions taken.

Even though some of us may feel inclined to support Mr. LEE's motion as it is constructed, I feel if this Council were to support this motion we are in a sense also supporting a negative stance which achieves no purposeful objective. I feel we must all focus more on rebuilding confidence in Hong Kong rather than on seeking every opportunity to put undue pressure on the People's Republic of China and/or the Administration during these sensitive times. It merely runs the risk of further undermining confidence in the territory.

As Legislative Council Members, we take an oath to serve Hong Kong people through service in the Hong Kong Government. We have a responsibility to communicate on Government action in order to contribute to successful governance. Given that I believe the Administration acted both responsibly and appropriately once the problem occurred, I think this is where attention should be focused.

The motion -- as proposed -- calls into question our responsibility as Legislative Councillors to provide leadership and direction for the people of Hong Kong. It is this broader issue that concerns me today. We have a responsibility to take actions which focus on rebuilding confidence. We should not be spending valuable time on efforts that may run the risk of undermining the confidence of our community.

Of course, I share concern over the incident itself and over the communication difficulties in its aftermath; but, that does not have to translate into supporting a motion which will once again fuel the worries of Hong Kong people. Let me ask you. Would it not be better to make a statement affirming our support for the Hong Kong Government's handling of the dilemma to date?

Whilst in hindsight it is always easy to say what should have been done in a given circumstance, leaders must enable those around them to move ahead on the basis of what has already transpired. We appreciate what the operating people must do when called upon to take a decision on the spot. We understand that such "judgement calls" are just that: a matter of judgement based on the perspective of the people taking the decision. Decisions were taken during the operation of 3 May, and the Administration was called upon to react to the consequences of those decisions.

As Legislative Councillors, we are duty bound to exercise sound judgement, wise counsel, and responsible leadership. With this duty in front of us, I believe we should not merely register concern, but we should also let the people of Hong Kong know that the Administration has our support in the way the matter is being resolved. The community already knows the gravity of the matter through various media reports. What they may not fully appreciate is our Hong Kong Government's response to the matter.

With these remarks, Sir, I will vote against the motion and I encourage Members to do likewise as a signal to the community that this Council prefers to focus our attention on rebuilding confidence in Hong Kong rather than fueling concern in our community.

MR. DAVID CHEUNG: Sir, I do not wish to go into details. I will keep my speech short.

It is obvious that the people of Hong Kong are extremely concerned with what has happened on 3 May. The smuggling activities and the intrusion into Hong Kong waters by boats of the People's Republic of China are matters of great concern that the people of Hong Kong never like to see it happen again. I therefore support the Honourable Martin LEE's motion. Viewed from another angle, however, I do not hold the view that the matter should be excessively blown up and over-politicized. It is neither wise nor necessary nor will it help solve the problem and problems of similar nature in future. Smuggling cases should be dealt with by means of law and order and in a

low-key manner. Too much publicity, thus arousing too intense the public curiosity and problem of such nature, does not necessarily serve any meaningful purpose. To prevent events of similar nature from happening again in the future, our Government must leave no stone unturned and solicit full co-operation from the Chinese Government which I presume should be equally keen in stamping out smuggling. Only joint efforts could resolve problems of such nature to the mutual benefits of both Hong Kong and China. As long as problems of similar nature could be prevented or kept well under lawful control it would not, in my view, create unnecessary uproar.

Sir, I support the motion and urge the Government to take all necessary actions to prevent incidents of similar nature from happening in the future.

MR. CHOW: I would like to speak in support of Mr. Martin LEE's motion. I also am quite concerned about Mr. LEE's reference to the rule of law and the damage this incident has done to confidence in the supremacy of the rule of law both before and after 1997.

One of the most critical elements of confidence in the future of the territory is a belief that the rule of law will continue to be supreme and that no individual or government will be above the rule of law. Yet, in the present instance, despite the fact that a serious violation of the law has occurred, it appears that no one will be prosecuted by either the Chinese or the Hong Kong Government for the smuggling of the motor cars, nor will the stolen cars be returned.

The disregard for the rule of law in the current incident is a very important matter in its own right. Yet, I find this incident particularly disturbing because it can be seen as part of an escalating pattern on behalf of both governments to not fully uphold and adhere to the supremacy of the rule of law and international commitments.

In April of this year, the Chinese Government promulgated the Hong Kong Basic Law. Both the Chinese and British Governments, however, have chosen to ignore and brush over the Basic Law's several clear breaches of the letter and spirit of the Joint Declaration.

And just two weeks ago, the Hong Kong Government -- in a "kowitz" to pressure from China -- decided to prosecute five leading democracy advocates under the

frequently violated but almost never enforced law prohibiting the use of a hand-held loud hailer without the prior consent of the Commissioner of Police. The decision to placate China and prosecute these five pro-democracy advocates represents a dangerous disregard for the Government's self-acknowledged obligations under the International Covenant on Civil and Political Rights and its commitments to the United Nations Human Rights Committee contained in its October 1989 Third Periodic Report.

Especially now as 1997 approaches, I call on the Government to be more conscious than ever in upholding the absolute supremacy of the rule of law. There are no political considerations that can justify disregarding the law and international commitments. If we place "face" and "good relations" above the rule of law, then Hong Kong will face a grave future indeed.

Sir, with these remarks, I support the motion.

MRS. LAU (in Cantonese): Sir, the smuggling incident involving a tug and a lighter which happened in the early hours of 3 May has given rise to grave concern among the community.

At the initial stage of the incident, the Chinese and Hong Kong Governments each told a different story, which led to rather strained relations between the two sides; the dispute that ensued intensified and confidence of the people of Hong Kong has, to a certain extent, been affected.

Last month I raised a question before this Council as to how the incident had come about and the course it had subsequently followed. My purpose was to let the public have a clear understanding of the matter so that further speculations and the disquiet arising therefore could be avoided.

The reply the Acting Secretary for Security gave this Council indicated that the incident was just an instance of regional smuggling, which had no political implications. Since it was an illegal activity on a regional scale this should precisely have been the reason for the two governments to display, right from the start, a true spirit of co-operation and to handle the matter through proper channels. If this had been the case, the incident would not have escalated and progressed to the stage where relations between the two governments became strained and our confidence shaken. I therefore believe that the two governments, in dealing with

illegal activities of such nature, should take care to maintain the confidence of the people of Hong Kong. Full co-operation on both sides can prevent similar incidents from escalating into political crises which may spread anxiety among the community.

The way the matter was handled at the initial stage and the subsequent strained relations between the two governments has dealt a severe blow to the confidence of the people of Hong Kong. To express our grave concern over the matter, I consider it necessary for the Administration to reflect to Her Majesty's Government the damaging effect this sort of approach has had on our confidence. Through diplomatic channels, the British Government can, on behalf of Hong Kong, contact senior officials of the Chinese Government and make them understand that this incident has severely undermined the confidence of the people of Hong Kong. It is hoped that both governments can, after this incident, look squarely at the matter, take care to maintain the confidence of the people of Hong Kong and co-operate fully to prevent similar occurrences in the future.

In fact, there is the Border Liaison Group which can deal with regional matters of such nature. If necessary, such matters can even be dealt with at a higher level through diplomatic contacts between the Chinese and British Governments. If only both sides will sort matters out in a spirit of sincere co-operation, it is believed that potentially explosive incidents can be played down, reduced to trifle and hence to oblivion.

What I have just said focuses mainly on the way this incident has been handled by the two governments. Regarding the strategy of the marine police in tackling smuggling, I consider that a comprehensive review is necessary. The Administration should examine thoroughly whether the existing anti-smuggling measures should be stepped up and whether the present equipment is adequate to enable police launches to intercept the speedboats of smugglers. Recently, the Security Branch has adopted a series of measures to tackle smuggling at sea between China and Hong Kong. But are these measures adequate? The Administration should conduct a review in this respect.

The Chinese and Hong Kong Governments had dispute over the actual boundary of territorial waters during this smuggling incident. I hold the view that the matter should be dealt with through proper channels, the Border Liaison Group for instance, or, if necessary, via diplomatic contacts between the Chinese and British Governments.

The purpose is to see to it that border guards shall strictly observe the Sino-Hong Kong boundary of territorial waters so that intrusions can be avoided in the future.

Sir, with these remarks, I support the motion.

DR. LEONG: The ordeal of the five Hong Kong seamen detained across the border ended last week with their release. Both the Hong Kong Government and the Chinese authorities may heave a deep sigh of relief on an apparent breaking of an embarrassing political deadlock.

But the smuggling case, regrettably, is far from being resolved.

The crux of the case had largely been left untouched.

Sir, I am particularly concerned on two scores. Firstly, as most of the Honourable Members have mentioned, the issue has underscored significantly the confidence of Hong Kong people for the future; and secondly, I was told two of the stolen cars belong to members of my functional constituency. (Laughter)

Who are the guilty parties? Has any craven concession been made on the part of the Administration so as to secure the seamen's freedom?

What measures will the Administration take to prevent similar unsettling problems in the future?

How are we going to stop unauthorized incursions into Hong Kong waters by Chinese security vessels in connection with smuggling activities?

And how do we retain credibility of Hong Kong's territorial integrity up to and beyond 1997?

Sir, the authorities concerned should join hands and launch a full-scale enquiry into this highly controversial incident.

This incident unfortunately had been escalated into a political celebre with each side pointing its accusing finger at the other for juggling with facts.

There has also been extensive, smouldering discontent with the apparent

arbitrariness, belligerency, pushing and over-bearing attitude displayed by the New China News Agency over the handling of the incident.

This, I am sorry to say, Sir, has a very bad effect on Hong Kong. Our people are feeling more fidgety and insecure about their future, and the future integrity of this city.

Sir, Hong Kong people are pragmatic. They will salute a government that has the guts to face the music and to eat the humble pie.

They would scorn at a government which puts the word "FACE" on top of all the others, even to the extent of covering its black sheep.

They also cannot tolerate any more political cover-ups and under-table deals which may result in their interests being sold down the river.

Sir, Hong Kong people do not want to be in the dark. They demand the right to know. Hong Kong people's confidence cannot and will not be improved by the gesture of "see no evil, hear no evil or speak no evil", but rather by seeing the rule of law being carried out to the letter.

With respect, Sir, in this transitional period, the last thing that Hong Kong people need is to feel that our Government is a lame duck government. I therefore urge the Administration to give assurances that it has not been cowed into subservience behind closed doors for the return of the seamen.

At the same time, Sir, in this sensitive period, the least that the Chinese Government can do is to show her sincerity through expressions of fairness and justice.

Unfortunately, this incident is not an isolated example.

The fact that a police constable was critically injured over the weekend after being struck by the propellers of a smuggler's speedboat which rammed a marine police boat in Tolo Harbour is just as worrying.

The controversies have accentuated the lack of effective communication between the Hong Kong and Guangdong authorities in the face of a worsening trend of cross-border smuggling activities and the intrusion of Chinese security officials

into Hong Kong waters.

It is a blatant challenge to the authorities and, Sir, these activities must be stopped at once before they get out of hand.

I would suggest that a joint security task force be set up to crack down on these cross-border smuggling activities. This action group should be composed of security officials from both sides of the border who would work together to curb the illicit trade and black sheep in their forces.

This should help contribute effectively to the "peace and good order of the Hong Kong/Guangdong border" as stated in an earlier joint official statement.

With these remarks, Sir, I support the motion put up by the Honourable Martin LEE.

MRS. CHOW: Sir, the purpose of being critical of ourselves is not to undermine confidence although there might be a short-term consequence of that self-criticism process. It is, however, necessary to be self-critical for the long-term confidence. And if we acknowledge that Government and the people of Hong Kong are at one, then we should not worry too much about our being critical of ourselves.

The duty of legislators is to, on the one hand, tell the Government that the people are concerned. But at the same time it is also the duty of legislators to tell the Government that the people are behind it so that the Government can have the confidence to do a good job. And to ask the people to grope in the dark does not help to inspire that confidence. Therefore I support any effort to get at the truth. However, at the same time we have to be realistic that, alas, the truth is often elusive. As our colleague, the Honourable Martin LEE, could probably tell us, in a court of law, the plaintiffs, the defendants, the lawyers and the witnesses can all play havoc and give their own version of the truth. Nevertheless, the Hong Kong Government does have the responsibility to be accountable to the people.

In the Secretary for Security's answer given to this Council the other afternoon, there appeared to have been gaps in the operation on the morning in question which would require very careful scrutiny within the Police Force. In other words, we must ensure that we all benefit from hindsight so as to enable a prevention of similar mistakes occurring in the future and not to use hindsight as an excuse for what had happened.



I agree with the Honourable Paul CHENG in one respect. We must support and not censure the Government. We must give a clear message to our Government that we expect it to act in our interest even at the risk of offending our neighbour, so long as it is acting within the law. This is how confidence is built.

Sir, I support the motion.

MISS LEUNG (in Cantonese): Sir, after listening to the Honourable Paul CHENG's speech, I have changed my mind and decided to join this debate.

Sir, I am sure every Hong Kong citizen, just like me, is very concerned about the incident involving the alleged smuggling of motor cars into China. Several Members who spoke before me have said some of the views I had thought of saying. But I would like to point out that up to the present moment the course of events associated with this incident is still far from clear. In fact, we ordinary people have no means of grasping the full picture of the incident.

I believe the Honourable Martin LEE's motion aims only at finding out the truth. I do not see any negative connotation in the motion. If we would care to take a fair look at it we would find that Mr. LEE's motion is a very positive one, indeed one which adverts to the spirit of the rule of law. This spirit will be very important to Hong Kong after the territory's reversion to China in 1997.

Sir, with these remarks, I support the motion.

SECRETARY FOR SECURITY: Sir, three weeks ago, I made a full statement to this Council on the facts of the case. I do not wish to re-tread old ground. The only point which I would add to the facts, in response to the specific question by Mr. LEE, is to satisfy him that Hong Kong police vessels did not enter Chinese waters during this particular incident. I would now like to go on to clarify some other points raised in this debate by Members. And I would like to thank those Members who have shown their support for the Administration.

Let me first deal with photographs. Sir, this issue is on its way to settlement. I see no advantage which would be gained by making them public.

The primary objective of the border liaison meeting which was held on 30 May was to secure the release of the five crewmen. This happily was achieved. The two sides also agreed to increase cross-border liaison and co-operation to control smuggling and to try to ensure that such an incident does not happen again. I must emphasize, and I do so most strongly, that there was no question of any secret deal to obtain the release of the crewmen.

As to the three stolen cars confiscated by the Chinese authorities, may I assure Members, particularly Dr. LEONG, that we shall continue through the normal channels to seek their return to Hong Kong. They represent important evidence against those already arrested in connection with this incident.

There have been suggestions that the Hong Kong crewmen have been in some way prevented by the police or the Government from speaking to the press. This is not true. All people in Hong Kong have right of free expression, and it is entirely up to them whether or not they exercise that right. Throughout their detention, we constantly sought their immediate release. This important objective was eventually obtained. As to consular access, this is not normally granted, as Members will know, to Hong Kong residents regarded by China as Chinese nationals. Access by family members is sometimes allowed. In this case it was not. During their detention, the four seamen apparently signed confessions, but subsequently, before their release, they withdrew them.

I can confirm that the Government intends to pay compensation to the crewmen. Since they were employed by the police, this is fair and proper. Details of the compensation package are currently being worked out, and it will be paid as soon as possible. The four-week rental of the tug and lighter will be paid by the Hong Kong Government.

With regard to the questions on Hong Kong's territorial waters after 1997, Sir, these go far beyond the motion before Council this afternoon. However, as Members will be aware, four rounds of discussions relating to the boundaries between Hong Kong and Guangdong have been held. The maintenance of public order in the Hong Kong Special Administrative Region (SAR) will be the responsibility of the SAR Government -- and here I quote from the Joint Declaration.

Sir, we all regret that this incident occurred. What is important now is to look to the future, and particularly to the control of smuggling between Hong Kong and

China. This is at the root of this incident. The incident which has been referred to already this afternoon on the evening of 4 June off Shum Chung, when three police constables were injured, and one seriously, when a smuggling boat rammed a police craft, only serves to underline the determination of this Administration to strike at the smugglers.

I have already mentioned that the Chinese authorities and their Administration have agreed to step up cross-border liaison and co-operation. In addition, the Government on 25 May announced new controls on the use of high-powered, multi-engined pleasure craft, and on the exportation of cigarettes to China. Further, with effect from this coming Friday, all vessels under 250 tonnes carrying televisions and video recorders from Hong Kong to any country will require an export licence. Stiff penalties and powers of confiscation will be invoked where necessary.

Sir, Members may rightly ask what progress has been made in recent weeks to strike at the smugglers. Since the beginning of this week, seven speedboats and one sampan have had their licences suspended by the Marine Police under powers delegated by the Director of Marine for breach of regulations or licensing conditions.

Further, the Director of Marine has prepared a target list of some 60 vessels, suspected of being involved in smuggling by the Marine Police. The Director of Marine intends to impose new licensing conditions on these vessels, particularly as regards the fitting of outboard engines.

In addition, clear progress has been made to control the export of cigarettes to China. In the seven-day period before 25 May, 307 permits involving 46 000 cases of cigarettes were issued to vessels below 250 tonnes. Since 25 May when we brought in our new measures and up until yesterday, none have been issued to vessels below 250 tonnes. This is a significant step forward to control smuggling. Further, the total number of cases of cigarettes released from bond for export to China by ship (regardless of tonnage) in the seven-day period before 25 May was over 150 000. During the next seven days after we brought in the measures, this dropped by 52%. This is a reduction, an incredible reduction, of 807 million cigarettes in the two seven-day periods.

During the past two weekends since we introduced the measures, the number of speedboats seen incoming by the Customs Department reduced from 19 to 16 and outgoing from 39 to 23. These figures are also corroborated by police statistics.

Sir, in partnership with the Marine Police, the Royal Navy, the Customs and Excise Service and the Marine Department, this Administration intends to tackle smuggling vigorously. We are not at all complacent that these measures so far introduced will necessarily resolve this particular serious problem. We will carefully and closely monitor the results of these measures. If additional measures prove necessary, they will be introduced. Our objective is to maintain law and order in our waters.

MR. MARTIN LEE: Sir, I am grateful for the speeches delivered by my honourable colleagues in this debate. I would not seek to reply but for the fact that one Honourable Member has indicated his intention of voting against the motion and indeed he also called upon other Members to vote against it.

But first, let me say I am also grateful particularly for the many answers provided by the Secretary for Security who has almost answered all my questions.

Sir, I too, like anybody else in Hong Kong, was extremely happy, first of all, to see the two policemen return and then, after almost four weeks, to see the five crewmen return to Hong Kong. But while we are happy about their return, we must not lose sight of a very important fact, and that is that they should not have been taken away from Hong Kong at all, and any detention in China is wrongful. Sir, I have not blown up this matter nor is it my intention to undermine confidence in Hong Kong because, on the contrary, I am trying very hard to rebuild it. But what I hope Members will understand is that this incident was blown up by the way the matter was handled by certain quarters; and this incident, because it had been blown up, has struck at the confidence of the people of Hong Kong to its very foundation. And we cannot rebuild confidence now by sweeping it under the carpet or to adopt the attitude of the proverbial three monkeys referred to by Dr. the Honourable C.H. LEONG. Otherwise, the Chinese Government or the Guangdong Provincial Government may well get the wrong message, namely, they could jolly well infringe the territorial integrity of Hong Kong; the Hong Kong Government is not going to give them any trouble; and the Legislative Council will support whatever the Hong Kong Government does. They think they will get away with anything. So we must not allow that to happen and that is why I am pleased to hear from the Honourable Mrs. Miriam LAU that the matter should be dealt with now by the British and Chinese Governments through the usual diplomatic channels. The matter must not be forgotten.

Sir, the Honourable Member who indicated he would vote against the motion has also said that like everybody else, he feels concerned about the incident. I am therefore surprised to hear that he intends to vote against it because the motion is simply this: "That this Council notes with concern the incident .....". Now this Council is either concerned or it is not concerned. If a Member of this Council feels concerned then the only logical thing for him to do is to vote to support the motion. But if he votes against it, then people will say he is not concerned.

Sir, for these reasons, I hope the Honourable Member will re-consider and I hope that all Members of this Council will support the motion, so that the right message is sent to the relevant authorities.

Question on the motion put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 27 June 1990.

Adjourned accordingly at one minute past Five o'clock.

Note: The short titles of the Bills/motions listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.